not liable as an inn-keeper, for things lost in his rooms by a person eating a meal.[1]

Where there has been an omission in the description of the buildings insured, whereby the risk is not exhibited properly, the insured may prove that the inexactitude of the description resulted from the act of the agent of the company-insurer in writing the policy, provided all be shown to be unaltered and just as the agent saw them.[2]

Where a house insured is described as within three miles from Montreal, the distance must be measured in a straight line on the horizontal plane from point to point, and not by the roads in existence when the insurance was effected. So, if toll were prohibited within three miles from Montreal, the distance would have to be calculated in the same manner.[3]

A building fifty feet off was held not "contiguous" in *Arkell* v. *Comm. Ins. Co.*—69 N.Y. (Gas was prohibited to be in the insured building or contiguous thereto)

The condition of a policy was as follows:—"The application shall contain the place where the property is situated; of what materials it is composed; its dimensions; how constructed and for what occupied; its relative situation as to other buildings; distance from each if less than ten rods." The conditions were part of the policy; the application was not. The policy covered $750 on a paper mill, and an equal amount on personal property therein. The defence was that the application did not mention all the buildings within ten rods of the mill. Held, that the condition related exclusively to applications upon buildings, and therefore furnished no ground of defence to the plaintiffs' claim respecting the personal property covered by the policy. *Trench* v. *Chenango Co. Mut. Ins. Co.*[4] This case was overruled, however, in the case of *Smith* v. *Empire Ins. Co.*[5] Here B, the insured, signed the application, and gave it to the company's sub-agent C, telling him to fill it up. He did so, and stated only one mortgage, whereas there were more. It was held that B was responsible, as C was *his* agent, and the insured could recover nothing. A later case, *Rowley* v. *Empire Ins. Co.*,[1] is opposed to the above. In this case the defendant's agent filled up the application. The agent was told everything, but made a mistake. He was held to be the company's agent, and the company was estopped from saying that the application was not according to the conditions.

§ 202. *Effect, where the insurance is divisible.*

Sometimes insurance is divisible, sometimes indivisible. The objects insured, being distinct and in different situations, make as many insurances as subjects. Journal du Palais, A. D. 1877, p. 1885. Reticence as to one by the assured may not be fatal to the whole policy. *Ib.*[2]

The sum of $1,150 was insured, the insurance being distributed over several items. There was a condition that in case the insured shall mortgage the property without notifying the secretary, then the insured shall not recover any loss or damage which may occur in or to the property insured, or any part or portion thereof. The insured mortgaged one of the subjects. Held, that the contract was one and indivisible, and the entire policy was avoided.[3]

[1] *Carpenter* v. *Taylor*, Com. Pleas, N. Y., A. D. 1856.

[2] Cour de Cassation, 19th January, 1870; Journal du Palais, A. D. 1871, p. 239.

[3] *Jewell* v. *Stead*, Q. B., England, A. D. 1856.

[4] 7 Hill, 122.

[5] 25 Barbour, 497.

[1] 36 N. Y. Rep. (March, 1867).

[2] See strong argument for indivisibility by Avocat Général Reverchon (Journal du Palais, A.D. 1878, p. 147), where a policy is issued covering different subjects for different sums, and the insured has been guilty of fraud, leading to insurance, as to one subject. Yet the original Court held the policy in this case to involve two contracts, and the Cour de Cassation said it could not interfere in such case, which the editors seem to question. See also *Gore Dist. Mut. F. Ins. Co.*, appellants, & *Samo et al.*, respondents. A building was insured for $1,000; stock, $2,000. The policy was subject to 36 Vict., c. 44 (Ont.) Its sect. 36 has been repealed by 39 Vict., c. 7. The insured made further incumbrances after the policy, and did not notify. The policy was held by the Court of Error of Ontario to be divisible. But the Supreme Court in 1878 held it indivisible and the policy wholly void. Bramwell, B., in *Haine* v. *Venables*, L. R., 7 Exch. 240, is approved by the Supreme Court, and in New Brunswick the same has been held. See 2 Supreme Court Rep. of Canada, p. 423.

[3] *Platt* v. *Minnesota Farmers' M. F. Ins. Co.* (A. D. 1877), Albany Law Journal, A. D. 1877, p. 483. *Day* v. *Ch. Oak Ins. Co.* cited, 51 Maine. *Lee* v. *Howard Ins. Co.*, 3 Gray, also cited in Albany Law Journal, p. 483.