had, a short time before the fire, examined his books and found that his stock amounted to $5,000, which had not been much reduced by sales previous to the fire, was held a sufficient compliance with this requirement. [1]

Where the form of notice is not specified, a verbal notice or a notice directed to the agent of the insurers, and deposited in the post office is sufficient. [2]

§ 245. *"Most contiguous"—meaning of.*

The American clause at the head of this chapter imposing duty on insured, after a loss, to produce a certificate under hand and seal of a magistrate or notary, most contiguous to the place of the fire, stating that he has examined the circumstances, that he is acquainted, etc., and verily believes, etc., is very unfavorable to the insured. Numerous are the arguments that under it the insurers can use to resist payment. A prudent man ought never to take a policy with such conditions. Certificate is to be under hand and seal; suppose it to be wanting in the last particular.

It is just as bad as an appointment executed under hand alone (without seal) where, previously, ordered to be executed by writing under hand and seal; seal must be. [3]

Certificate of loss, if to be under hand and seal of a magistrate, is null, if signed but not sealed. [4]

"Magistrate or notary most contiguous"—does this mean that if both magistrates and notaries be there, the insured must employ that one of the magistrates and notaries who is most contiguous, or may he go to the magistrate of the magistrates, or to the notary of the notaries, who is most contiguous? Magistrate or notary as he pleases, I would say.

"Most contiguous," does this mean in an air line, or by common road line? There is something in favor of the air line. Say one magistrate's house adjoins in rear to the insured's; the next nearest one is twelve houses off, say 400 feet, but by the street line. Which is to be the one? The one nearest to walk to; the insured need not fly over back yards. (See art. on "Interpretation.)

Where the amount of loss is to be certificated by a magistrate, his saying "beyond the amount insured" won't do. [1]

The magistrate need not state that he was or is most contiguous to the fire. This may be proved *aliunde*. [2]

Under the American clause the insured undertakes that whoever of the magistrates may chance to be, when a fire happens, most contiguous to it, or whoever of the notaries may chance to be most contiguous, will certify as stipulated; else that insurers need not pay. It often happens in America that the two qualities of magistrate and notary are combined in one individual. Two days before a fire such an individual may have removed from a distance to a house near, *say* next door to the one destroyed by fire. He may be totally unacquainted with the insured, and may be conscientious, and, if he be, the insured will suffer, though he could easily procure the certificate, in due form, of a magistrate four or five houses further off well acquainted with the insured and his circumstances from having known him for ten years, and from having resided near him during all that time. As strict construction was required under the old English conditions requiring certificate of the minister of the parish; so under this American clause may it be. [3]

Certificate of ministers, magistrates, etc., after loss. Not absolute conditions precedent are these in Scotland, to enable persons hostilely disposed to extinguish just claims of insured. Bell's Comm. Legitimately you ought not to go further than ask stronger proofs where such certificates are so refused, says Bell.—*Wood* v. *Worsley*, *ante*, is not per-

[1] *Norton* v. *R. & S. Ins. Co.*, 7 Cowen, 645.

[2] *Curry* v. *Commonwealth Ins. Ca.*, 10 Pick. 535; *Inman* v. *Western Fire Ins. Co.*, 12 Wend. 461.

[3] 1 Parsons Select Eq. Cas., p. 436.

[4] *Mann et al.* v. *Western Ass. Co.*, 17 U. C. Q. B. Rep.

[1] *Mann et al.* v. *W. Ass. Co.*, 17 U. Ca. Q. B. R.

[2] *Ib.* See *post*, proceedings on policies, *Lounsbury* v. *Prot. Ins. Co.*

[3] Suppose wilful immoral refusal by magistrate, p. 113, Bell's opinion.

Condition precedent; the vendee was to deposit a sum in a bank on a certain day, and a bank was named; that bank would not take the money; so the vendee deposited it elsewhere and notified the man who had promised to sell, but he held himself to be freed; yet it was held that the vendee had done all possible, and that the vendor was not freed. 20 Howard's Rep. *Secombe* v. *Steele*.