Mellen v. *Hamilton F. I. Co.*[1] was an action by an assignee for the benefit of the creditors of one O'Brien (assured.) The policy prohibited other insurance, unless notified with all reasonable diligence, and indorsed on the policy, or otherwise acknowledged in writing by the insurers. Before the fire the insured did effect other insurance without endorsement or acknowledgment such as required. The agent of both companies was the same man, and he knew of everything, (said the insured;) but, *per* Duer J., "this is no sufficient answer to the insurers' objection." The loss was held not recoverable, and verdict against the insurers was set aside. (Notice of other insurance is required sometimes by condition partly that the insurers may determine the policy, returning portion of premium—*per* Duer, J.)

Suppose insurance to have been effected, and the insured to take a new policy with condition at head of this section, suppose the first insurance to have been notified and endorsed, but not "at or before the time of making insurance," would the new policy be of no avail? No. Yet, under literal interpretation, yes.

Suppose A insuring his property under conditions at head of section, to have a prior insurance, but expiring two days afterwards, and which he does not intend to renew, is he bound absolutely to give notice of it? Just as much as if it was to expire only in one month or three.[2]

The condition that the person effecting an insurance must, at or before the time of making insurance, under pain of nullity, give notice of any "other insurance made," will not bind the insured to give notice of insurances afterwards made, under pain of nullity.

If the condition read that the insured effecting an insurance must declare all insurances existing on the property insured, the insured is not bound to declare posterior or subsequent insurances.[3] Declaration by the insured of a previous insurance does not amount to a warranty to keep up such insurance, yet ceasing to do so, the risk on the insurer is aggravated.

If double or after insurance be prohibited by the first policy, this policy will be vacated by later or after insurance being taken by the insured.

In a Massachusetts case, where there was a condition against double insurance, a subsequent invalid policy was held not fatal, and the insured was permitted to recover.[1] But in New York, in one case,[2] the condition was held fatal whether the second insurance could be avoided or not. In another case,[3] in the same State, the contrary was held. In Ohio also, it was held[4] that a condition against subsequent insurance was not broken by the taking of subsequent policies which never took effect by reason of conditions therein contained. The Louisiana rule is different.[5]

If the charter of the defendant company say that it shall go free in all cases of other insurances by the insured, not endorsed upon the defendant's policy under the hand of their secretary, the company cannot waive this form.[6]

Where previous insurance has to be notified and endorsed, or the policy is to be null, parol evidence cannot be adduced to prove that, though there was previous insurance, the second insurers (defendants) knew of the previous insurance.[7]

In such cases as the above, what if two or three subjects be insured at first, and other insurances be effected only on one of them? Is there to be divisibility?

Is a mortgage creditor insuring bound to declare other insurances save of his own? *Semble*, No! not, for instance, the owner's

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[1] 5 Duer's R.—Flanders, p. 246, is against Duer. He does not notice the Mellen case.

[2] See *ante*, Jacobs case.

[3] It has been so judged in France, Colmar, 20 January, 1835.

[1] *Thomas* v. *Builders' Fire Ins. Co.*, Mass., A.D. 1875. It has been so held in Iowa, and in Maine a negatory policy constitutes no contract at all.

[2] *Bigler* v. *N. Y. Central Ins. Co.*, 22 N. Y.

[3] *Carpenter* v. *The Prov. Washington Ins. Co.*, 16 Peters.

[4] *Insurance Co.* v. *Holt*, Albany L. J., A.D. 1880, p. 284; *Thomas* v. *Builders' F. Ins. Co.*, 119 Mass.; 20 Am. Rep. is cited.

[5] *Allan* v. *Merchants' Mutual Ins. Co.*, 30 La. Annual.

[6] *Couch* v. *The City F. Ins. Co. of Hartford.* Flanders, p. 49, in note.

[7] *Barrett et al. Union M. F. Ins. Co.*, 7 Cushing.