the policy in question. Early in the morning of the 13th, a fire again broke out in the work-shop of Jasper, and consumed the premises insured. The jury acquitted the plaintiff of any fraud or dishonest design, the fire being apparently extinguished when he ordered the insurance, but thought that the circumstance of the fire on the 11th ought to have been communicated to the defendants, who, without this information, did not engage on fair grounds, and for whom they gave their verdict. A motion was made, to set aside the verdict and have a new trial, but refused.[1]

The insured has no right by tendering an increase of premium to require the insurer to confirm a contract invalid in itself; for the insurer has in such a case a right to say, that he would not have subscribed the policy upon *any terms* if he had been informed of the circumstances which were withheld from him. His intention being to undertake only for the risks that were communicated to him, if he is deceived, that is sufficient to avoid the contract.

Shaw upon Ellis says that in Louisiana it was held that if the jury considered that the vicinity of a gambling establishment to the building insured enhanced the risk, the concealment of that fact would discharge the insurers. [2]

Such was not held. The mere fact of the vicinity of a gambling establishment to the building insured could no more discharge insurers than could the vicinity of a grocer's shop. In this case of Lyon the insured was lessee of a big building and insured his own stock in it. He had a gambler as his tenant in the second story. Pending negotiation for the insurance the insurer stated objection to insure near gambling establishments, and plaintiff withheld information about his subtenant gambler; he made a concealment in fact. But, as the materiality of it was left to the jury, plaintiff recovered.

In *Westbury* v. *Aberdein*,[3] insurance on a ship, the jury found for plaintiff, and that a fact not communicated was not a material one. The Court granted a new trial, the defendant paying the costs. A fact had not been observed upon by the Judge at the first trial in his charge, which fact the Court thought might have affected the Jury's finding, had it been put, viz. the fact of one ship having arrived three days before the insurance of the others.

In the United States it is not considered incumbent upon the insured, unless inquiries are made especially in regard thereto, to describe his property particularly, or represent its situation in respect to other buildings, provided there is no extraordinary circumstance in the case. In the absence of inquiries, no representation need usually be made of what materials a building is constructed, how it is situated in reference to other buildings, to what uses it is applied, or how it is heated. [1]

But if the circumstance concealed be of an extraordinary and unusual nature, the existence of which would not naturally be presumed or expected by the insurers, the strict rule as in marine insurance applies, and the concealment, if material, will avoid the policy. The consent of the insurer must not be obtained by a surprise.

In *Drury* v. *The Staffordshire Fire Ins. Co.*,[2] one Thacker, a furniture maker, applied to a company for insurance, but refused to take the policy because the agent would not take the premium in furniture. Subsequently upon another application, the company refused to send down a policy, they having already sent one which had not been taken up. He afterwards insured in another company. One of the questions was, have you been refused by any other office? This question Thacker answered in the negative. Mr. Justice Stephen held that it was immaterial upon what ground the refusal was based, and Thacker was not allowed to recover.[3]

In *Goodwin* v. *The Lancashire F. & L. Ins. Co.*,[4] the insurance company had many agencies. The plaintiff applied, in August, 1870, in one place for insurance upon a tannery. The application was sent to the Head

[1] *Bute* v. *Turner*, 6 Taunt.
[2] *Lyon* v. *Commercial In.* 2 Rob. (La.) 266.
[3] 2 M. & W. 268.

[1] *Clark* v. *Manufacturers' Ins. Co.*, 8 Howard, 235.
[2] 2 M. & W. A.D. 1837.
[3] Midland Circuit, A.D. 1880.
[4] 16 L. C. J. (A.D. 1872).