Mr. Justice Story seems purposely to go beyond the particular case then before him, and to extend to and include all cases where the policy was not void upon its face, but was liable to be made so by extrinsic circumstances. And indeed the decision, if there was no such general language to make it applicable to all cases that came within that principle, would necessarily extend to them, for that is the very ground on which the decision rests. It is very clear then to me that this case distinctly overrules Jackson *v.* the Massachusetts Mutual Fire Insurance Company, 23 Pick. 418, and being the judgment of the highest Court in the United States, we must take it to have settled the question. It is true that Mr. Justice Story does not expressly, in so many words, overrule the case in 23 Pick., which I take him to refer to; and he does certainly intimate that the circumstances in that were distinguishable from those of the case which he was then deciding. But one cannot read his remarks without perceiving that his decision does overrule the other, and that he was conscious that it did so, for in conclusion he says, "if the result to which we have arrived differs from that of those learned State Courts, we may regret it, but it cannot be permitted to alter our judgment."

There is another case from the Supreme Court of New York, to which we were referred at the argument—that of Bigler *v.* the New York Central Insurance Company, 20 Barbour, 635.

There the same state of circumstances existed as in the case before this Court, and the same question arose upon them as here. Subsequent to the policy with the defendants, the plaintiff effected a policy with the Globe Company, but gave no notice to them of the policy with the defendants; nor did he give notice to the defendants of the Globe policy. Mason, J., by whom the opinion of the Court was delivered, says: "The clauses in the policy of the Globe Company (requiring notice) relieved that company from liability on their contract of insurance (as notice of the prior policy had not been given to them), no action could be maintained on it, if they saw fit to set up the defence." The Globe policy was not void upon its face, but as soon as the fact was alleged and proven it relieved that company from any liability upon their contract. The real question therefore presented for our adjudication, is whether this policy in the Globe Company can be set up by the defendants to avoid their contract of insurance with the plaintiffs; in other words, whether an insurance that shall operate to avoid the defendant's policy under the clause (requiring notice of any subsequent insurance), must not be a valid policy—one that is binding on the insurers. He then refers to the case of Carpenter *v.* the Providence Washington Insurance Company, 16 Peters, which I have so fully stated, and says it determines the question in favor of the defendants. That case holds, that under such a condition notice of subsequent void or voidable policies must be given to the underwriters, unless the policy is void