

raised to three per cent.; that, on account of financial difficulties, the company had not been able to complete the buildings and plant; and that the plaintiff hoped before the expiry of the policy to have control of the premises and to complete and operate the smelter, when the insurance would be adjusted. The following day, Thompson called at the defendants' office and delivered to Wilgar a slip containing a detailed description of the property and particulars. This referred to the property as "buildings and additions now in course of construction," "machinery," etc., to be occupied when completed as a customs smelter, and contained a warranty by the plaintiff "that the premises will not go into operation during the currency of this insurance." The defendants issued a policy, dated the 25th, with the slip attached, to expire on the 2nd November, 1909. The property was burnt on the morning of the 1st November.

. . . The buildings had not been completed nor the machinery and plant installed, on account of the financial difficulties of the company; the last of the workmen left at the end of February, and the watchman on the 18th May, when he fastened the doors and boarded up the lower windows, although he continued to live near-by and keep an eye on the property; the first mortgagee had taken steps to foreclose, and the plaintiff was making arrangements to acquire and complete the smelter, which were interrupted and put an end to by the fire.

Whether these buildings were properly described as being "in course of construction," as contended by the plaintiff, or whether they were really abandoned or vacant buildings, within the meaning of the 4th addition to the statutory conditions, as contended by the defendants, is really a question of fact, to be determined by the evidence and what passed between and was within the knowledge of the contracting parties. Recourse should be had to all the surrounding circumstances which may throw light upon the actual situation.

It is admitted that the work of constructing these buildings was not going on either at the time of the insurance or up to the time of the fire. But there are circumstances in which the description would be quite accurate, although no work was going on at the time. In most buildings there are intervals, longer or shorter, between the operations of the different trades. . . . Again, it is quite common in this climate that construction is suspended during the whole winter. . . .

Here we have buildings begun but not completed. During the early part of the period in question the company intended to complete them; during the latter part the plaintiff was making arrangements to do so. The defendants, having previously had insurance on them, issued a policy to the company on the