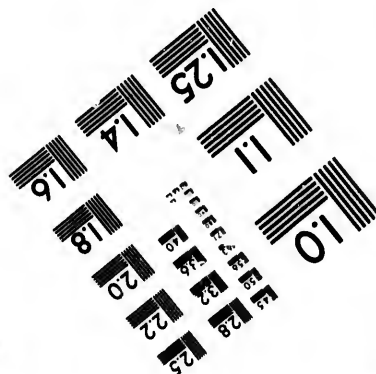
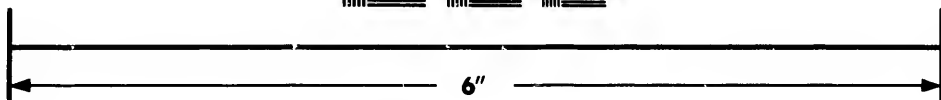
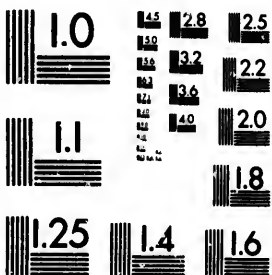


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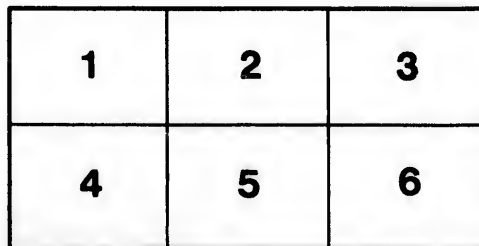
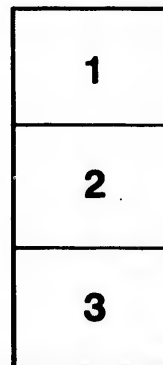
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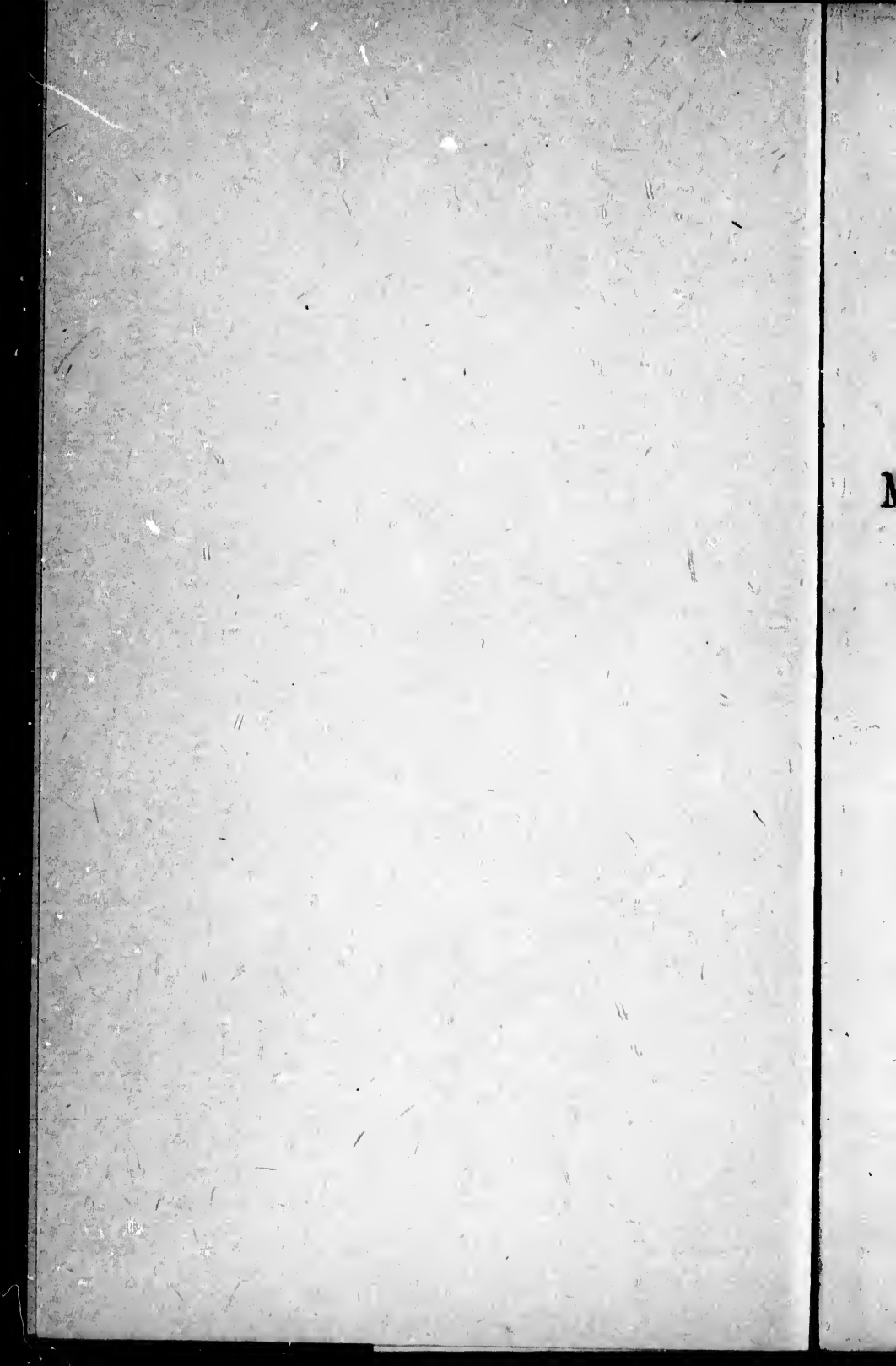
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IMPORTANT INSURANCE CASE.

SUPERIOR COURT.

BEFORE HIS HONOR JUDGE SMITH.

MORISON, CAMERON & EMPEY,

vs.

THE PHOENIX INSURANCE CO.

Attorneys for the Plaintiffs, Messrs. A. & G. ROBERTSON.

Counsel for the Plaintiffs, Messrs. ROSE & MONK.

Attorneys for the Defendants, Messrs. ABBOTT & BAKER.

“ “ Messrs. CROSS & BANCROFT.

Counsel for the Defendants, Messrs. BETHUNE & DUNKIN.

The following Jury was empannelled:—

JAMES CLAXTON,
NORTON B. CORSE,
THOMAS DAVIDSON,
GEORGE DOWKER,
J. H. DORWIN,
JAMES DOUGALL,

BENJAMIN FRANCIS,
DANIEL DRUMMOND,
WILLIAM MANNING,
WILLIAM SNAITH,
JOSEPH TUSKEY,
JAMES JEFFREY.

MONTREAL:

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1856.



IMPORTANT

INSURANCE CASE

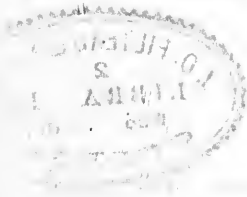
SUPERIOR COURT

INVESTIGATION OF THE FACTS

MORSEY, CAMERON & COMPANY

THE FIRE INSURANCE CO.

IN THE MATTER OF THE ESTATE OF J. B. MORSEY
DECEASED
AND
THE FIRE INSURANCE CO.
PLAINTIFFS
VERSUS
MORSEY, CAMERON & COMPANY
DEFENDERS



IMPORTANT INSURANCE CASE.

SUPERIOR COURT, MONTREAL,
Monday, May 12th, 1856.

Before His Honor JUDGE SMITH.

MORISON, CAMERON & EMPEY,

vs.

THE PHOENIX INSURANCE COMPANY.

Attorneys for the Plaintiffs, Messrs. A. & G. ROBERTSON.

Counsel for the Plaintiffs, Messrs. ROSE & MONK.

Attorneys for the Defendants, Messrs. ABBOTT & BAKER.

“ “ Messrs. CROSS & BANCROFT.

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DANIEL DRUMMOND,

WILLIAM MANNING,
WILLIAM SNAITH,
JOSEPH TUSKEY,
JAMES JEFFREY.

JOHN ROSE Q. C.—In opening the case, said, May it please the Court, and Gentlemen of the Jury, I have seldom in the course of my professional career risen to address a Jury with deeper anxiety, with a deeper sense of my responsibility than I now do. It is not that I feel any weakness in the cause I advocate, or that I doubt in the smallest the perfect justice of the claim of my clients, but lest my exertions should be inadequate to the magnitude of the interests involved, and the inadequacy of my abilities to place this case before you in its true colors, should bring

failure upon it. The issue before you to-day is not simply a pecuniary one, it involves the deeper and more enduring one of character and moral rectitude; you are called upon not only to try a question of money, but to decide by your verdict whether a dark and damning crime has been committed, which must consign the character of my clients to eternal obloquy, or whether on the other hand they are deeply injured men, unjustly deprived of their legal rights, and subjected to an unmerited and monstrous persecution. This cause is brought by the plaintiffs, Morison Cameron and Empey, Dry Goods Merchants of this city, to recover from the Phoenix Insurance Company, of London, its proportion of a sum insured on the stock in their premises lost by the fire on the 5th of April, 1855. The claim is one of fifteen, involving a very large amount of money, and on the fate of this action hangs the issue of the remainder against almost every Insurance office in this city. The action is based upon two policies of insurance for the sum of £2,500, the proportion of loss upon which is £2,282, 17s 4d; and the question may arise whether we should not recover for the full face of the policies, instead of this proportion. The Defendants have set up seven pleas why they should not satisfy this demand. The first is, that by the terms of the policies, the Plaintiffs were bound within fourteen days to have furnished them with a detailed statement of the loss, which they allege has never been complied with, although one was furnished upon the 3rd of May and the second upon the eighth of June. The second sets forth a condition of the policy which provides that any overcharge, imposition or false swearing vitiates the policy, and the insured loses all interest in it, and avers that in the claims filed, there is fraud and imposition, supported by false swearing, or perjury. The third sets forth this more fully, and alleges that the fraud and imposition consisted in the fact, that the Plaintiffs had exaggerated the quantity, description and value of the stock destroyed, and, after wilfully exaggerating the amount of the supposed loss, swore falsely to it. The fourth after setting forth the same avers that the false swearing was contained in affidavits made by Mr. Empey on the 3rd of May, 8th of June, and 12th of September, by which he sought to make the Defendants liable for a greater loss than that actually suffered. The fifth is substantially the same, but refers more circumstantially to the proof on which the Defendants rely to support these accusations of fraud and perjury, viz: fabricated stock books, mutilated account books, falsified, re-written, and erased. The sixth demurs to the form of the demand. And the seventh is a general denial, requiring us to prove every circumstance of our case. These pleas, stripped of their technicalities, may be summed up in the allegation, that the claim of the plaintiffs is a fraud supported by perjury, that detestable crime which strikes at the root of society, because it strikes at the existence of truth itself. These are no common issues; they affect not only in the serious amount of money involved, the fortunes of my clients, and their

existence as traders, but what is of more importance still—their future life—their integrity and character. We do not shrink from the investigation ; we have no desire to escape from any of the consequences involved in them ; we court the fullest enquiry ; we challenge the Defendants to prove the assertions so recklessly made ; we shall object to no evidence, keep back nothing that can throw light upon the case, and, before this trial is over, we will compel the Defendants themselves to admit that these pleas have been unwarrantably and inconsiderately placed on record. These are bold declarations, but not a whit beyond the truth, and I am sure will be borne out by the evidence which will be brought before you. I have investigated this case step by step from the day of the fire, and I defy the Defendants to prove one act of the proceedings of my clients which will bear on their allegations. I have no desire to recriminate, or to bring into the calm consideration of this case, upon its merits, any exciting or extraneous matter ; but I feel deeply the position of my clients ; I cannot avoid the natural indignation which every honest man must feel at imputations so injurious, unnecessarily and unwarrantably cast upon them. Now-a-days the first step which the insured has to take, in prosecuting a loss, is to vindicate his character from the aspersions cast upon it by the subordinate agents of Insurance Companies. From the day of the fire the Plaintiffs have been subjected to a harsh, cruel and ungenerous course of conduct. From these proceedings I desire to disconnect the highly respectable Phoenix Company and their Agents. I am glad that this Company has been selected as the one with which we are to fight the battle ; I am willing that the others, who can claim no such standing, shall have the full and entire benefit of its respectability, and that of its Agents, Gillespie, Moffat & Co. ; I fully admit the whole force of that reputation, against which, if other defendants had been selected for the test, we should not have had to contend. But it is upon the facts to be submitted to you that we depend—upon the facts alone ; and, as we have no desire to interfere with the course of Justice by the introduction of any extraneous matter, not of the gist of the case, so we have nothing to fear from the adventitious advantages of the Defendants. On the contrary I am satisfied we shall receive from them after this trial is ended a prompt and magnanimous acknowledgment of their error.—The fire took place upon the 5th of April, 1855, the night preceding Good Friday. Shortly after receiving notice of it, the Insurance Companies named a committee to enquire into it, to investigate the loss, and to settle the amount on it. The action of this Committee was eventually confined to three persons, who will occupy, before this trial is over, a position a little more prominent before the public than they will desire. These persons were Mr. Whyddon, the agent for the Beacon Insurance Company, Mr. C. Geddes, and Mr. Davison, a clerk with Gillespie, Moffat & Co., the Agents of the Defendants. I shall have in the elucidation

tion of the proceedings, to read to you a good deal of correspondence, as also, to satisfy the court that the proper notice of the loss was given. But, before doing so, I will explain to you in what manner Plaintiffs claim is made up, amounting in the whole to £23,696. Of this £2,647 was allowed by the valuator appointed by the Insurance Companies for depreciation on the value of Stock saved, damaged by fire, water and smoke; a further amount of goods seriously injured of the ascertained value of £4,522 were sold by Messrs. Benning and Barsalou, for the benefit of the Insurers, realising the sum of £1,056, which money they received, and yet retain, and the balance of £16,525 is for stock totally destroyed, or so injured as not to be invoiceable. The manner in which this loss will be proved will satisfy the most incredulous that these figures are literally correct. Morison Cameron and Empey commenced business in 1850 upon a very small capital, little more than £200 a piece. By great attention and scrupulous integrity, they built up an enormous cash business, and their establishment is now the largest retail store in the city.

At some expense and an immense deal of trouble his clients had secured the services of Messrs. Court, Spiers and Rufford, three of the most intelligent, clear-sighted and scrupulous accountants in this city, and these gentlemen had prepared the balances, a printed copy of which he would now hand to the jury, and request their particular attention to them:—

STATEMENT NO: 1.

| | | |
|---|--------------|--------------|
| Showing Goods on hand at time of Fire, starting from the Stock as taken on 28th February, 1854. | | |
| Amount of Stock in February, 1854, at cost,..... | | £23,748 18 3 |
| Add purchases up to 5th April, 1855, at 50 per cent advance on sterling; and 15 per cent on £518 9s 10d American Invoices—Balance bought in town..... | £27,094 4 1 | 49,332 13 1 |
| Total to be accounted for at cost price,..... | | £78,081 11 4 |
| Deduct amount of Sales in interval between Feb., 1854, and 5th April, 1855,..... | £45,459 17 5 | |
| Less one-fifth, for Profit and expenses of Establishment, Salaries, &c.,..... | 9,091 19 6 | 36,367 17 11 |
| Leaves net value on hand at time of fire,..... | | £41,713 13 5 |
| <i>Note.</i> —Of this amount there was retained in the Store, Damaged Goods to the value of..... | | |
| There was Invoiceable sold by Auctioneer,..... | £20,013 2 7 | |
| Totally lost not Invoiceable..... | 4,522 18 11 | 16,425 4 11 |
| Total,..... | £41,061 6 5 | |

STATEMENT NO. 2.

Starting from taking Stock in February, 1855.

| | | |
|--|-------------|--------------|
| 1855, February 28th, Stock on hand at cost, | | £41,250 16 8 |
| Add purchase up to 5th April, 1855, at 50 per cent advance on sterling; and 15 per cent on £148 11s 3d American Invoices—Balance bought in town, | £1,634 2 6 | 2,814 6 0 |
| Total to be accounted for at cost price, | | £44,065 2 8 |
| Deduct amount of Sales in interval between 28th Feb., 1855, and 5th April, 1855, | £3,754 15 2 | |
| Less one-fifth, for Profit and Expenses of Establishment, Salaries, &c., | 750 18 11 | 3,003 15 3 |
| Leaves net value on hand, | | £41,061 6 5 |
| <i>Mem.</i> —Of this sum there remained in the Store damaged, ... £20,013 2 7 | | |
| Invoicable and sold by Auctioneer, | 4,522 16 11 | |
| Totally lost and not Invoicable, | 16,525 4 11 | |
| Total, | | £41,061 6 5 |

STATEMENT NO. 3.

Statement of Claim as verified by result of operations since Plaintiffs began business in May 1850, to 28th February, 1855.

| | | |
|---|---------------|--------------|
| Total importations from 22nd May, 1850, to 28th Feb., 1855, at cost price, with charges, | | £165,875 7 1 |
| Deduct total sales, | £148,789 7 7 | |
| Less one-sixth for Profit and expenses of establishment, &c., on £61,096 9s 2d, being sales to March 1853, up to which time their purchases were chiefly in Montreal, | £10,182 10 10 | |
| Less one-fifth for profit and expenses of establishment, &c., on £85,092 18s 5d, being sales since March, 1853, | £17,018 11 7 | £27,301 6 5 |
| | | £119,583 1 3 |
| Stock which should have been on hand as by above estimate, | | £46,237 5 11 |
| Stock as taken by measurement, 28th February, 1855, | | 41,250 16 8 |
| Reduced by depreciation at Stock takings, | | £5,036 9 3 |

STATEMENT NO. 4.

Showing the Assets and Liabilities of the Plaintiffs on the 28th February, 1855.

| | |
|---|--------------|
| Stock on hand at cost, | £41,250 16 8 |
| Cash on hand at Bankers and open accounts receivable, | 790 14 5 |
| Total amount of Assets, | £42,041 11 |

| | | | |
|--|---------|--------|-------|
| Deduct—Due to sundry persons on acceptances and notes payable, outstanding..... | £22,000 | 1 | 7 |
| Due to sundry persons on open accounts, payable,..... | 2,603 | 0 | 7 |
| At credit of profit and loss undivided,..... | 185 | 17 | 6 |
| | | | <hr/> |
| Total amount of liabilities,..... | | £2,807 | 19 8 |
| | | | <hr/> |
| Balance standing at credit of partners, being net profit of the three since they began business in May, 1850, after deducting expenses of living,..... | | £9,223 | 11 5 |
| | | | <hr/> |

STATEMENT NO. 6.

Showing the Separate Accounts of the Partners with the Firm, from 22nd May, 1850, to 28th February, 1855.

| | | | |
|---|--------|--------|-------------|
| JAMES MORRISON , brought capital..... | £104 | 11 | 1 |
| Has been credited with profit..... | 2,323 | 16 | 3 |
| | | | <hr/> |
| Total to his credit..... | £2,420 | 7 | 4 |
| And has been debited with, being at the rate of £108 per annum,..... | 487 | 17 | 8 |
| | | | <hr/> |
| Leaves balance to his credit,..... | | £2,946 | 9 11 |
| | | | <hr/> |
| ALLAN CAMERON , brought capital..... | £245 | 7 | 10 |
| Has been credited with profit..... | 2,320 | 16 | 6 |
| | | | <hr/> |
| Total to his credit..... | £2,576 | 6 | 3 |
| And has been debited with, being at the rate of £127 5s per annum..... | 604 | 10 | 9 |
| | | | <hr/> |
| Leaves balance to his credit,..... | £2,976 | 15 | 6 |
| | | | <hr/> |
| ALERE EMPY , brought capital..... | 748 | 17 | 9 |
| Has been credited with profit..... | 2,363 | 6 | 10 |
| | | | <hr/> |
| Total to his credit..... | 4,112 | 6 | 7 |
| And has been debited with, being at the rate of £168 10s per annum..... | 791 | 0 | 7 |
| | | | <hr/> |
| Leaves balance to his credit,..... | | 3,321 | 6 0 |
| | | | <hr/> |
| Total amount of balances | | £9,223 | 11 5 |
| | | | <hr/> <hr/> |

The following is the statement of claims, made out and sworn to by Mr. Empey on the 3rd of May and 9th of June, referred to in Defendants pleas:—

Mr. dants
 11 6
 0 0
 0 11
 0 0
 0 11 5
 0 10 8

STATEMENT OF CLAIM ON UNDERWRITERS,

Caused by Fire on the Morning of the Sixth day of April, Eighteen Hundred and Fifty-five, to our Stock of Dry Goods, on the premises of the Honorable James Ferrier, being Two Hundred and Eighty-eight, Notre Dame Street.

| | 8 | 11 | 6 | 2 | 3 | 7 |
|---|----------|----|----|--------|----------|---|
| To Stock on hand April 6th, 1855, as per Statement No. 1. | 40,692 | | | | 20,013 | |
| To ditto as per Statement No. 2. | 368 | | | | | |
| To Depreciations on Stock, April 24th, as per Statement No. 2, caused by Fire, Smoke, Water and Dirt. | 2,647 | 11 | | | | |
| | \$43,709 | 5 | 4 | | | |
| By Stock on hand, April 24th, 1855, as per Statement No. 2..... | | | | | | |
| By Insurances on Stock at the following Offices, April 6th, 1855, viz:— | | | | | | |
| "Globe's" | \$2,300 | 7 | 5 | 3,013 | | |
| "Royal's" | 2,000 | 8 | 9 | 2,739 | | |
| "Atlas" | 2,000 | 5 | 10 | 1,826 | | |
| "Home" | 2,000 | 5 | 10 | 1,826 | | |
| "Hartford" | 1,000 | 2 | 17 | 913 | | |
| "E. America" | 1,000 | 2 | 11 | 684 | | |
| "Western" | 750 | 17 | 2 | 2,191 | | |
| "Monarchs" | 2,400 | 11 | 0 | 1,826 | | |
| "Provincial" | 2,000 | 5 | 10 | 913 | | |
| "Beacon" | 1,000 | 2 | 11 | 1,826 | | |
| "L. and London" | 2,000 | 5 | 10 | 2,263 | | |
| "Phoenix" | 2,000 | 17 | 4 | 1,826 | | |
| "Equitable" | 2,000 | 5 | 10 | 913 | | |
| "Montreal" | 1,000 | 2 | 11 | 22,696 | 20,096 | 2 |
| Insured | \$25,950 | | | | | |
| Loss. | | 2 | 9 | | | |
| | \$43,709 | 5 | 4 | | \$43,709 | 5 |
| | | 4 | | | | 4 |

MORISON, CAMERON & EMPEY.

Montreal, May 3rd, 1855.

DISTRICT OF MONTREAL, }
Province of Canada. }

Personally came and appeared before me, one of Her Majesty's Justices of the Peace for the City and District of Montreal, Alexander Empey, one of the Firm of Morison, Cameron & Empey, who doth declare that the annexed Statements contain a true and particular account of our Loss by the Fire of the Sixth day of April last, when the greater portion in value of the contents of our Store were destroyed by Fire, commencing in the Second Story of the said Store, the cause of which cannot be ascertained.

I further declare that our Stock, at the time of the breaking out of the said Fire, was Forty-one Thousand and Sixty-one Pounds Six Shillings and Five Pence, and that our Loss is Twenty-three Thousand Six Hundred and Ninety-six Pounds Two Shillings and Nine Pence Currency, being as per Statements herewith delivered, to the best of my knowledge, and that the foregoing Insurances of Twenty-five Thousand Nine Hundred and Fifty Pounds were effected on the said Stock.

Sworn at Montreal, } (Signed) ALEXANDER EMPHEY.
this Ninth day of June, 1855. }

(Signed) S. A. LABARDIE, C. S. C. & J. P.

In every year but two they took their stock upon the 28th of February, and having done so immediately before the fire, their stock was found to amount to £41,250. The amount has been verified from an investigation of their accounts by Messrs. Spiers, Court and Rufford. The stock on hand, at the time of the stock taking, was £41,250 16s 8d., and the additional purchases, previous to the fire, £2,814 6s 0d., to be accounted for on the night of the fire. Deduct from this gross amount of sales made since the stock book was made up £3,754 15s 2d., less the profit and expenses £750 18s 11d., and there remained of goods on hand the amount of £41,061 6s 5d.

The amount is thus accounted for:—

| | | | |
|---------------------------------------|---------|----|----|
| Partially damaged..... | £20,013 | 2 | 7 |
| Invoiceable and sold..... | 4,522 | 18 | 11 |
| Totally lost and not invoiceable..... | 16,525 | 4 | 11 |
| | <hr/> | | |
| | £41,061 | 6 | 5 |

If we establish then that this stock was taken with scrupulous nicety, and that there is no legal or moral doubt that this amount was actually upon the premises before the fire, this investigation is at an end, unless the defendants are prepared to show that goods have been surreptitiously removed; and we challenge the proof that a single shilling's worth was sold or taken from the premises which has not been accounted for, except that which was sold by the authority of the Insurers for their benefit, and of which they have received, and now have the proceeds. The manner in which the stock was taken is this:—For weeks before the day upon which

the annual account is made, the doors of the establishment are closed at an early hour, the 40 clerks in the establishment, besides the three partners, measure every piece of goods, yard by yard, and inch by inch, those of the highest value, and those of the least account; everything is measured, numbered and ascertained. The contents of each piece and package is ticketed on it with the selling price—the cost price being also attached to it. In the interval, before the final entry, if anything is sold from a piece so marked, the amount cut off is marked upon the ticket. Upon the 28th of February, the doors are closed altogether to complete the stock account, and the work is continued day and night, until every piece and package of goods with its valuation is entered in the stock sheets. The entering was done thus:—One clerk took the goods from the shelves, commencing at one end of the store from the top to the bottom, and he handed them to another, who gave them to Mr. Morison, who called out the number of yards, and the price, to a clerk who entered them on the stock sheets; it was then passed to another clerk, who checked and corrected any inaccuracies in quantity or price, and he handed it to another who returned it to the shelf. By this means the actual value of the stock was ascertained to a mathematical certainty. If this is proved, and I challenge it to be disputed, what becomes of the case of the Defendants, unless, as already said, they are prepared to show that a greater amount of goods left the premises between the time that the stock was taken and the fire than we have accounted for? But the proof does not rest here; we will go back and trace the business of the firm for the year preceding that of the fire, and by comparing the amount of stock at that period, the purchases since, and the sales, show the amount nearly the same. The reason why the stock in 1855, largely exceeded that of 1854, was because the Plaintiffs found their business largely increased from the preceding year, and calculated upon doubling it for the coming one. The purchases were made by Mr. Morison, Mr. Cameron attended to the shop, and Mr. Empey took charge of the books. Commencing business with an united capital, of which the contribution of neither exceeded £200; going on, increasing their business, and gaining every day in public estimation, as the business of 1853, was double that of 1852, they were justified in supposing that the advance of 1854 would be proportionate. They had made their purchases upon this supposition; but the sickness of the season had curtailed their business, and before they could advise Mr. Morison, then in Europe, of the decline in trade, he had made heavy fall purchases, and the consequence was that the spring of 1855 found them with a very much heavier stock than common; in fact, it will be proved to you that their premises were literally crammed with goods. In verifying this amount of stock, we shall prove everything word by word, fact by fact, figure by figure; the stock books of 1854, taken in the manner explained,

show the goods on hand at that date, the purchases we will prove by the stamped Custom House invoices; and as no business was done except for cash, and a most perfect system of daily sales enforced, this will exhibit the amount disposed of. The stock in February, 1854, amounted at cost to £28,748 18s. 3d; the total purchases from that date to 5th April, 1855, with an advance of £50 per cent on sterling, and 15 per cent on American purchases, was £49,332 13s 1d.; in all to be accounted for, £78,081 11s. 4d. The total sales between the two periods amounted to £45,459 17s. 5d., deducting one-fifth for profit and expenses, representing a cost value of £36,367 17s 11d.; and showing a nett value at the time of fire, by this test, of £41,713 13s 5d., or about £650 more than was found by actual stock taking in 1855. This discrepancy occurs from the annual marking down in value of such goods as were depreciated in value or un-saleable, a practice which was constantly followed and had during the time they had been in business extended to £5,000. The actual value of goods then on hand, at the time of the fire in April, and for which the Insurers are liable, should be £41,713 13s 5d., instead of the £41,061 6s 5d., which we claim, for they are not entitled to take advantage of this voluntary depreciation. But this case, involving rights dearer than money, the issue of which is either to clear the character and to reimburse my clients, or to send them forth to the world branded as swindlers and perjurers I do not wish to rest upon the proof of one statement. It has been tested in five different ways, assisted by all the skill which the most competent accountants could bring to bear on them. Viewing the difficulties in which the Plaintiffs have been placed under the heavy imputations cast upon them, the care and anxiety of their position, the great expenses to which they have been subjected in preparing evidence, (much of which had to be procured from England and other countries,) they must have succumbed under them and been unable to have brought the cause before a Jury (at a cost equal to some men's fortunes,) if they had not been supported by creditors who had every confidence in their personal integrity, and in the justice of their claims.— We are content to carry our investigations back to the day when they commenced business with their insignificant capital, with a small store and limited business, and show that the total value of their purchases since they commenced business were £165,875 7s. 1d.; that their total sales were £146,789 7s. 7d.; and deducting from this one-sixth for profit while purchasing in Montreal at the commencement of their career, and one-fifth after they became importers themselves, reducing the cost value of the goods so sold to £119,588 1s. 2d., we find that the stock which should have been on hand from this estimate to be £46,287 5s. 11d.; and deducting £5,036 9s. 3d., for depreciation of goods, we arrive at exactly the

same result as that afforded by the stock taking of 1855, and corroborated by the other checks. We will now prove the accuracy of this estimate, and of the stock-books by another test. The assets of the Plaintiffs on the 28th of February, 1855, were,—stock on hand £41,250 16s. 8d., cash on hand and at bankers £790 14s. 5d., in all £42,041 11s. 1d. They owed on notes and acceptances, payable, £23,009 1s. 7d., on open accounts £9,603 0s. 7d., and had at credit of profit and loss undivided £195 17s. 6d.,—in all £32,807 19s. 8d.,—leaving a balance to the credit of the partners of £9,233 11s. 5d., or less than £3,000 a piece as the result of five years of most arduous labour, early and late, frequently protracted through the whole night until five in the morning. Yet it had been bruited about through the streets that this amount which they sought to recover from the Insurance Companies would go into their own pockets when in fact, it is all owing to their creditors. After the fire it had been a question of life and death with them whether they should not stop their business, call their creditors together, assign their property to them, and allow them to sue the Insurance Companies. This amount of indebtedness is another proof of the correctness of their statement of their stock at the time of the fire. This case does not turn upon whether there has been an exaggeration of the loss since the fire, it does not hinge upon any imposture or attempt at fraud since that time, but upon the question whether, from the hour that these young men commenced business, they have carried on a gigantic system of fraud and imposture, with false books, false entries, imaginary stocks, and this great web of imposture has endured from the first day they were in business until the final consummation of which it was the preparation—the fire. This is the real charge that is made here to-day. Because, if the accusations made against them are true, the misrepresentations are not of to-day, they commenced with the beginning of their business, were continued uniformly month by month and year by year throughout every one of their transactions down to the result prepared by one of the most stupendous systems of deceit, without a parallel in commercial history. There is no escape from this alternative; this dilemma is inevitable; either this fraud has been continuous, uninterrupted, perpetual from the beginning of their career, or the statements exhibited to you are true, and my clients deeply injured men. The Defendants have not been bold enough to raise this issue, because it led to the inference that the Plaintiffs had wilfully set fire to their premises. If their statements are untrue, then every act of their life since they first entered business has been a damning lie; this deception could not have been engaged in without an object which gained its consummation in the fire. Now let us take another proof, let us go back to the commencement of their career, and trace it through their books down to the time this loss occurred; let us see what amount has been credited year by year to each individual

partner, and how this account corroborates the results obtained in the previous statements. If this account is fabulous too, it must have been fabricated year by year. We find that James Morison brought into the concern a capital of £104 11s. 1d., that he has been credited with profit to the amount of £3,323 16s. 3d., and has been debited during about five years with an annual amount of £103. This man, who is now charged with the worst of crimes, has been living at the rate of £103 per annum. What motive was there in a man of this thrift to commit the acts imputed to him? Allan Cameron brought into the partnership a capital of £245 7s. 10d., and has been credited with a profit of £3,330 18s. 5d., and has been debited with a sum of £127 5s. 0d., for the support of himself and others dependent on him. Alexander Empey, by his first contribution, and interest subsequently obtained on money by inheritance, is a stockholder to the amount of £748 17s. 9d., has been credited with profit to the amount of £3,363 8s. 10d., and debited at the rate of £166 10s. 0d., per annum, on which he supported a wife and family. If you will compare this result with the amount of assets and liabilities at the time of the fire, you will find that, after receiving the amount of the insurance and paying all creditors, there is a balance of £9,233 to the credit of all the partners, the same result as that obtained by the other statements. Some of these statements have yet to be proved by the books, and we now come to the astounding part of the case. After the fire, the Insurance Companies, and I desire to disengage the Phœnix Company and its respectable agents from the cruel and malevolent proceedings of the subordinate of its own and other Companies, because I believe that when the facts become known that we shall have a prompt and full disclaimer of the cruelty exhibited to these unfortunate young men. I say the Insurance Companies obtained possession of all the Books of Account of the Plaintiffs, and these they still retain; they have refused to give them up to their owners, and we have been compelled to serve them with an order of the Court to produce them here. Does it look like the act of guilty men to freely place in the hands of the Defendants, at the solicitation of a gentleman who, I repeat, before this trial is over, will obtain a prominence and a notoriety he little counted on, every book and paper that could throw any light upon their claim?

For the elucidation of the circumstances after the fire, when for five months the Plaintiffs were put off from day to day, subjected to extraordinary demands and unnumbered insults, I shall have to read to you a long and wearisome correspondence, but before doing so I will state to you that previous to the fire the store was so crowded with goods that they had to be placed endways in the shelves, so that each compartment held about three times the amount that it would do if displayed lengthways in the usual manner. The night before the fire, a great many of the goods had

been removed from the shelves in the second story where it originated to enable the fronts to be painted, and these so taken out were piled upon the floor about the well and reaching up to the ceiling, and from the great bulk of goods thus lying around, ladders were used to get up to pile others on the top. The Plaintiffs were desirous of getting the fronts, of the shelves in the second flat painted as the next day was Good Friday, a holiday, and the Painters were at work. It was to allow this to be done that the goods were removed from the shelves, a portion only being left in them, and these pushed back to the wall. Plaintiffs were desirous of getting the Painters to work all night, that it might, be completed, and have time to dry the next day, that there might be no interruption in their business; and, to induce them, they offered them refreshments; but as they had only provided coffee, and the men wanted something stronger, they would not comply, and left. Of the great piles of goods thus displaced and crowded upon the counters, round the well and upon the floor, on the morning of the fire hardly a vestige remained; and yet I expect some witnesses will appear on behalf of defendant to tell you that this fire had not burned a single piece of goods, although after the fire pieces of broadcloth fourteen feet from the place where the conflagration was fiercest were found burned through; the lead of the inkstand in the office at the front of the building was melted, and the glass inside of it fused into a mass. Yet with a fire so violent, so intense as to reduce the most incombustible goods to a shapeless wreck, we are told that no goods were so burned as to be undistinguishable; at least such testimony we have lately heard in similar cases, but fortunately they were not believed by the Jury. I will now call your attention to the voluminous correspondence which has taken place between the Plaintiffs and the Defendants relative to this loss and which will be put in evidence. On the 6th of April, the day after the fire, the following letter was sent by the plaintiffs to each of the Insurance Agents:—

MONTREAL, 6th April, 1855.

SIR,—We regret to state that between one and two o'clock this morning a fire broke out in the second story of our store and premises, by which considerable damage has been done to our stock, partly insured with you. It will be absolutely necessary, in order to avoid still greater loss, that the goods partially injured and destroyed by the fire, be at once attended to, and we would feel greatly obliged by receiving any suggestions as to the best means of doing so, and also what particulars you will require from us, as to the nature and extent of our loss. We should be glad that you would appoint some one to represent your office alone, or in connection with the other offices in which we are insured, with whom we might put ourselves in communication, and whose suggestions and instructions we might be able to follow.

We remain, Sir,

Your most obedient servants,

(Signed)

MORISON, CAMERON & EMPEY.

Upon the 9th Mr. Glassford, the Agent of the Monarch, replied as follows:—

MONTREAL, 9th April, 1855.

MESSE. MORISON, CAMERON & EMPY,

GENTLEMEN,—I have to acknowledge the receipt of your communication, announcing the fire which occurred on your premises on Friday morning last.

Immediate steps will be taken by all the Companies interested (acting in concert) to look into and adjust the loss.

I remain yours, truly,

(Signed)

HENRY A. GLASSFORD.

Upon the 10th Mr. Chapman, the *Globe* agent, wrote as President of the Committee of Investigation,—

GLOBE INSURANCE AGENCY, }
MONTREAL, 10th April, 1855. }

GENTLEMEN,—I am directed by the Committee of Investigation to state that they would be glad to have an interview with your Mr. Morison and Mr. Empey, at my office, this afternoon at five o'clock, in order to ascertain some further information as to the circumstances connected with the fire in your premises.

The Committee will thank you to send to them also, this afternoon, at 4 o'clock, the following parties, viz:—Mr. Bernard, Mr. Barron, Mr. Betty, the storeman or porter, the party who last left the premises before Mr. Morison and Mr. Empey, the young men who had charge of the departments in, and near, which the fire is supposed to have originated, together with any other of your employees, or others, who can throw any light or give evidence upon the subject.

I am, gentlemen,

Your obedient servant

(Signed)

HENRY CHAPMAN,

Agent, *Globe* Insurance Company,

President of the Committee of Investigation.

To Messrs. Morison, Cameron & Empey, }
Montreal. }

And the following letter was received on the 13th from Mr. Chapman:—

GLOBE INSURANCE AGENCY, }
MONTREAL, April 13th, 1855. }

MESSE. MORISON, CAMERON & EMPY,
Montreal.

GENTLEMEN,—You will oblige the Committee of Investigation by furnishing them, at 5 o'clock this evening, with a statement of the stock on your premises when the value was last ascertained, also, of the value of the goods subsequently received and sold.

If your Mr. Cameron has arrived from England, the Committee would like to have an interview with him at the same hour.

It would be also satisfactory to the Committee to have Mr. Empey's written declaration, embodying all the circumstances connected with the fire on your premises, which he is cognizant of.

Yours respectfully,

(Signed)

HENRY CHAPMAN,

Chairman Committee of Investigation.

This statement was sent, but no copy kept of it. The account rendered at this time amid the hurry, the anxiety and confusion, may probably con-

tain inaccuracies and contradictions in figures when compared with subsequent and more matured statements. But these are no evidence of fraud, they are easily and naturally accounted for without the necessity of pre-suming falsehood or imposition; indeed, if my clients were the gigantic scoundrels which the Defendants represent them, they would have been prepared with a statement cut and dried for the occasion. You will make allowances for these trifling variations, and attribute them to the circumstances under which they were made. On the same day, Messrs. Lunn and Murray, as a Committee of Investigation, wrote as follows:—

MONTREAL, 13th April, 1855.

Messrs. MORISON, CAMERON & EMPY,

GENTLEMEN,—The representatives of the different Companies interested in the loss, by fire, on your stock of goods, desire that an invoice of the damaged goods sent out to be disposed of by public auction, should be made out and accompany the goods; and if any are sent to Messrs. Benning & Barsalou's without invoice, it is absolutely necessary that an account of such goods should be made out and handed to the Auctioneers, giving the quantity and cost price of the same, where practicable.

We are, Gentlemen,

Your most obedient servants,

(Signed) } WM. LUNN, } Committee.
WM. MURRAY, }

An invoice was prepared by measurement, where possible, of these goods to the amount of £4,522 18s 11d., but there were besides these thirteen cart loads so badly burned as not to be invoiceable, or distinguishable. So had in fact, were they that they could not be sold at all, and the Auctioneers had to pay to have them carted off the premises. Those not so much injured, were sold by the direction of the Underwriters for about £1,059, and the fire companies received, and yet retain the money. On the first of May, Mr. Maitland of the *Liverpool and London*, wrote as Chairman of the meeting of Insurance Agents:—

LIVERPOOL AND LONDON INSURANCE Co., }
MONTREAL, 1st May, 1855. }

GENTLEMEN,—I am instructed by the Committee of Insurance Agents to request you to furnish them with the stock sheets made up in February, 1855, upon which your recapitulation, as rendered, has been prepared, setting forth the several descriptions of goods and the prices attached to the same, so as to show what each of the lots, as specified by numbers 1 to 372 inclusive consisted of, and also a list of the goods sent to Messrs. Benning & Barsalou's, with the quantities and net cost prices attached thereto.

I am, Gentlemen,

Your obedient servant,

(Signed) J. H. MAITLAND,
Chairman of Meeting of Insurance Agents.

To Messrs. Morison, Cameron & Empey, }
Montreal, }

These were furnished as far as practicable, for in taking the stock it was not customary to enter the description of the goods, as I have explained before, but the quantity and value. On the 2nd, Mr. Gault, as Secretary *pro tem.*, writes :—

MONTREAL, 2nd May, 1855.

GENTLEMEN,—I am, desired by the Underwriters, interested, to request from you as early as possible, a statement, duly attested, of the total amount claimed for the loss, by fire, on your premises.

I remain,

Your obedient servant,
(Signed)

M. H. GAULT,
Secretary, *pro tem.*

Messrs. Morison, Cameron & Empey.

This was furnished the following day, but some errors and inaccuracies having been discovered in it, an amended statement was prepared by Mr. Empey and given in on the 9th June following. On the 9th of May, Mr. McKenzie, as acting Secretary, wrote :—

MONTREAL, May 9th, 1855.

Messrs. MORISON, CAMERON & EMPEY,

GENTLEMEN,—In reply to your verbal request, to be permitted to sell your stock, I am directed by Committee of Insurance Offices interested, to intimate to you that they accept the appraisal on the same, but require further proof as to the amount of goods lost.

I remain, Gentlemen,

Your obedient servant,
(Signed)

A. MCKENZIE,
Acting Secretary.

The appraisal was a bad one for the Plaintiffs, the damage being assessed too low, and many of the goods yet remain on their hands unsaleable and worthless. The same day, Mr. Glassford, as Secretary to the Committee of Investigation, wrote :—

MONTREAL, May 9th, 1855.

Messrs. MORISON, CAMERON & EMPEY,
Montreal.

GENTLEMEN,—I am directed to inform you that Mr. Geddes has been engaged by the Committee to make the necessary examination into your claim, and to request that you will supply him with every facility for the performance of his duty—such as Books, Invoices, Sales Book, &c., &c.

I remain,

Your obedient servant,
(Signed)

HENRY A. GLASSFORD,
Secretary to Committee.

Mr. Geddes was engaged in examining the books and papers from the 10th of May until the 8th of June following. Defendants complain of fabricated entries and mis-statements, and of fraudulent exaggerations of loss, yet, one of the first discoveries made by Mr. Geddes was the omission of the entry of an Invoice of £368 in our favor, which for some reason had not

passed regularly thro' the books, and for which a subsequent claim was made on the 26th of May. It may be that the Plaintiffs were not the best book-keepers in the world, not so artistically correct as regular accountants, but I challenge it to be shown that there is in their books one single entry to show a fraudulent intention. Mr. Geddes having finished his examination, which the Plaintiffs had in every way facilitated, by laying open to him every means of information in their power, and which they had reason to suppose was perfectly satisfactory, on the 8th of June they wrote to the Insurance Agents, enclosing duplicate copies of their claim. Two months had now elapsed since the fire, with the fullest scope for examination; a large amount of Plaintiffs liabilities were falling due the following month, and they were naturally anxious that as Mr. Geddes was now prepared to report, as little further delay as possible in the settlement should take place. But on the following day Mr. Geddes called on Plaintiffs, and said he was deputed to ascertain what rates of exchange they had been paying, as representations had been made that they had paid enormous premiums upon bills. The Plaintiffs could not see what this information had to do with the loss, and at first declined to furnish it without consulting their legal adviser; but the same day, in order to remove any misapprehension on this subject, they wrote to Mr. Lunn informing him that the total amount of Exchange remitted to England by the Plaintiffs from the 1st of Jan., 1854, was £26,770 sterling, on which they had paid an average of $11\frac{1}{2}$ or $11\frac{3}{4}$ per cent, the greater portion being bought of the Banks; that in some cases they had paid $2\frac{1}{2}$ per cent for negotiating 3 months paper for Exchange, but not from necessity, but to introduce themselves in Foreign Markets with cash, and always recovering this by discount on purchases of 5 to $7\frac{1}{2}$ per cent. That the British bank had always granted them all the discounts asked, and never refused a Bill. That they were more easy in financial condition than at any other period, having in Bank on the first of April, £886 12s. That they paid no commissions at home, their business being transacted by Mr. Morison's father, to whom they presented about £50 per annum, where others paid from $2\frac{1}{2}$ to 5 per cent on their purchases. That they bought of the best houses in Europe, at from 6 to 8 months time. That they would willingly take cash at 10 per cent for their purchases, and make £2,000 a-year more out of their business by the discounts and cheaper markets. An attempt will be made to show that there was a misrepresentation here of the amount to be paid Mr. Morison's father, who, it appears, did make a charge of £150 for services. This was not known to the partners; and it is not probable that so small a matter, of no interest to the issue was anything but an error. No doubt many were jealous of the success of these young men; all sorts of rumours were in circulation to their prejudice; and in the magnitude of their interest in the speedy adjustmet of their claim they had to submit

patiently to many indignities, but now they feel that the day of expiation is come ; now they challenge a tangible shape to be given to these hints and insinuations ; they are prepared to meet them, and they ask of you that if you find in their transactions the slightest intentional fraud, that you will not allow any false feeling of sentimentalism to shield them from the consequences. To-day these suspicions, so freely bruited about, must take a different shape from the slur inflicted in the back office of an Insurance Company, which frequently destroys a character with a shrug of the shoulders ; here at last they must appear in a tangible shape, or disappear for ever, like snow before the sun of summer. Having waited a week for the result of Mr. Geddes's report without communication, upon the 16th they wrote the following letter to the Secretary :—

MONTREAL, 16th June, 1855.

H. A. GLASSFORD, Esq.,
Secretary, to
Board of Underwriters, &c.

DEAR SIR,—We are very desirous of having some information of the course likely to be pursued by the Companies in regard to the settlement of our claim; so as to be able to inform our creditors in England, France and Germany, by the next mail, as to what is likely to be done. A large amount of our liabilities will become due on the 4th of July, and it is of the utmost consequence that we should be able to write our creditors that, from what the Companies hold out, we have reason to hope for a speedy and amicable settlement—or the reverse. We beg you, therefore, to let us know the views of the Committee with the least possible delay, so that we may be justified in writing them in explanation of our position.

And we remain,

Your obedient, humble servants,

(Signed)

MORISON, CAMERON & EMPEY.

To this letter Mr. Glassford replied the same day, that it would be submitted to the Committee at a meeting that afternoon. On the 18th, the same gentleman, as Secretary of the Committee, wrote :—

MONTREAL, June 18th, 1855.

MESSRS. MORISON, CAMERON & EMPEY,
Montreal.

GENTLEMEN,—I am led to think that no difficulty need occur in adjusting settlement of your claims on Insurance Companies. The only question with them is as to the amount, which, in fact, is very large, and requires further proof before it can be admitted in its entirety.

Your obedient servant,

(Signed)

H. A. GLASSFORD,
Secretary to Committee.

The Plaintiffs replied as follows :—

MONTREAL, 18th June, 1855.

H. A. GLASSFORD, Esq.,
Secretary to Committee, &c.

SIR,—Yours of to-day we have just received, and, in reply, beg to state, we were fully convinced that C. Geddes, Esq., whom you have employed to exam-

ine our Books, Papers, &c., to prove the amount of our partially destroyed Stock Books of February, 1855, had carried with him sufficient evidence of its correctness; but it appears from your letter that such is not the case. And will you be kind enough to grant us a copy of the Report he sent in, or to give us, in writing, any time before the English mail closes this evening, what further proofs are required of us in order to make it clear to all concerned.

Your most obedient servants,

(Signed)

MORISON, CAMERON & EMPEY.

This Mr. Glassford declined to furnish without the authority of the Committee, as until adopted, it was not the property of the Companies to copy. On the following day, Mr. Glassford applied for the partially burned Ledger and Journal, Cash Book, Day Book, and stock sheets for 1853 and 1854, and other books and papers; also, a small pocket Ledger, belonging to Mr. Empey, as the Committee wished to get everything so as to clear up the affair. The books and papers were furnished at once, with the exception of the Pocket Ledger, which was a private book, and which Mr. Empey, in a letter to Mr. Glassford, said he had no objection to show him, but which he would not have brought before a public meeting any more than a packet of private letters. We shall hear a great deal about this pocket ledger, that all the books kept were false but this. I shall say no more on this head, I freely give them all the benefits to be derived from it; but I tell them to beware; let Messrs. Geddes and Whyddon beware how they speak of this little book. I have yet to learn that a private memorandum book, containing a father's will, and all the little memorandums of private life from youth, and of domestic incidents is to be dragged into a case like this; but let them beware; they have been warned. Even his book was surrendered at last to the blandishment of Mr. Whyddon who professed a great friendship for Mr. Empey, and a desire to serve him. After various interviews and communications, all leading to no satisfactory result, on the 29th of June, the Plaintiffs wrote:—

MONTREAL, 29th June, 1855.

H. A. GLASSFORD, Esq.,

Secretary,

Committee of Investigation of
Board of Underwriters, &c., &c.

DEAR SIR,—As it is now nearly sixty days since our statements of claim for loss and damage by fire, to our goods, on the morning of the 6th of April last, was handed to the Board of Underwriters, duly attested, and since then an examination has been made into our Books, Invoices, &c., &c., and everything granted by us that has been demanded to prove its correctness—still, without coming to any conclusion on your part. And now, we beg to inform you that we shall hold all and every privilege of our policies, notwithstanding all and every document we have heretofore presented to you; and also, to reiterate our request of the 18th of June, that you will state to us what points of our statements are not borne out by the proofs adduced.

Yours truly,

(Signed)

MORISON, CAMERON & EMPEY.

On the 2nd of July, Mr. Glassford replied as follows :—

MONARCH FIRE AND LIFE ASSURANCE COMPANY, }
GENERAL AGENT'S OFFICE, }
MONTREAL, July 2nd, 1855. }

MESSRS. MORISON, CAMERON & EMPEY,
Montreal.

GENTLEMEN,—I beg leave to acknowledge the receipt of your communication of the 29th ultimo, which has been submitted to the Committee of the Underwriters to your stock, and duly considered by them.

I am instructed, in reply, to state that the Committee have not yet been able to bring their enquiry to a satisfactory conclusion, and that they are not prepared to specify all their objections to your statements, until they have duly considered the whole affair.

I am further requested to state, with regard to the intimation contained in your letter, that the Companies presume you do not consider it a concession to them—your forwarding information from books and invoices, with a view to make up for deficiencies, in detail or otherwise, of your accounts; also, that in desiring to adhere to the terms of their policies, as you profess to do, they have not expected you to relinquish any of your privileges under them, nor do they, on their part, waive any of their rights.

You will be duly apprised of the result of their enquiries as soon as they have brought them to a termination.

I am, Gentlemen,

Your most obedient servant,

(Signed)

H. A. GLASSFORD,

Secretary of Committee.

And on the 3rd the Plaintiffs further asked by Letter :—

MONTREAL, 3rd July, 1855.

H. A. GLASSFORD, Esq.,

Secretary Committee of Insurance Companies.

DEAR SIR,—Yours of the 2nd instant was duly received, and, in reply, we would enquire at what time the investigations of the Insurance Companies are likely to be terminated, and the result made known to us. The sixty days, from the rendering of our statements, have expired, and you must be aware that longer delay must entail very great inconvenience and serious loss to us.

We think, after all the exertions we have made to satisfy the different Companies as to the particulars of our loss, we are surely entitled to know what the objections are, if any, to the payment of our claim by the respective Companies.

We shall still furnish all information that may be required, but hope to learn the decision of the Committee without delay, in order that we may govern ourselves accordingly.

We are,

Your most obedient servants,

(Signed)

MORISON, CAMERON & EMPEY.

At this moment Mr. Whyddon appears upon the scene. We shall become better acquainted with him presently; he came to this country as the agent of the Beacon Insurance Company, a situation he no longer holds, but why, I cannot tell you. This is the gentleman who is to receive a service of plate for his disinterested services in defeating this claim; but I will venture to say that the metal from which it is to be made has not yet left the mine, and I am afraid never will. This gentleman, a London Attorney, I believe, was supposed by the united Insurance Companies to be so good at

ferreting out fraud that the direction of the whole matter was now entrusted to him, and at once the proceedings assumed a more offensive shape; a demand was made on Plaintiffs for a statement of their yearly expenses, verbally, and they replied as follows:—

MONTREAL, 4th July, 1855.

H. A. GLASSFORD, Esq.,
Secretary

Committee of Investigation, &c., &c.

DEAR SIR,—In reference to a request made, verbally, this morning by Mr. Geddes, that we should furnish him, for the Committee, with a statement of our expenses, year by year, from the commencement of our business up to the present time, we beg to address you, as Secretary of the Committee, and remark that we cannot see what the Companies have to do with our expenses and charges, or how such a statement can at all affect the loss sustained by us to our stock; and can hardly believe that such information is sought for by the Agents of so many respectable Companies, and we should like to know if such is the case. We have yielded to the requirements of the Committee so far as to show even the private accounts of one of the firm, so desirous have we been to do every thing to satisfy the Companies as to our loss; and now, even if the above information is required, please inform us in writing, and the same will be forthwith furnished you. We beg to call your attention to our note of yesterday, and hope for an early reply.

We remain,

Your obedient servants,

(Signed) MORISON, CAMERON & EMPEY.

And on the same day Mr. Glassford replied:—

MONTREAL, July 4th, 1855.

MESSRS. MORISON, CAMERON & EMPEY,
Montreal.

GENTLEMEN,—In reply to yours of yesterday and to-day, I beg leave to say that I shall advise you of the decision of the Companies as soon as practicable; but, at this moment, cannot fix the precise period when the Committee will close its enquiry.

Whatever information Mr. Geddes or any member of the Committee may require, is asked for on its behalf, and any hesitation in supplying it, when possible, seems only to protract the adjustment of your claim.

Yours truly,

(Signed) H. A. GLASSFORD,
Secretary of Committee.

And the Plaintiffs sent the statement demanded:—

MONTREAL, 4th July, 1855.

H. A. GLASSFORD, Esq.,
Secretary, Committee of Insurance Companies.

SIR,—We have just received yours of this date, and herewith forward you the statement demanded from us, this day, by Mr. Geddes, verbally:—

| CHARGES FOR PRINCIPALS' SALARIES, INTEREST, CLERKS' WAGES, &c. | | | |
|--|--------------------|---------------------|------------|
| From May, | 1850, to | February, 1851..... | £742 5 0 |
| " | February, 1851, to | " 1852..... | 814 16 9 |
| " | " 1852, to | " 1853..... | 1523 11 0 |
| " | " 1853, to | " 1854..... | 2802 10 11 |
| " | " 1854, to | " 1855..... | 3159 9 7 |

Yours, &c.,

MORISON, CAMERON & EMPEY:

And on the 5th, the following letter was received by the Plaintiffs:—

CANADA BRANCH,
BEACON LIFE AND FIRE INSURANCE CO'Y OF LONDON, }
MONTREAL, 5th July, 1855.

MESSRS. MORISON, CAMERON & EMPY,
Notre Dame Street, Montreal.

GENTLEMEN,—Seeing that your first Stock taken was in February, 1851, as per your letter, without date, addressed to Mr. Glassford, as Secretary of the Committee, and that the subject matter of insurance, in question, is made up of sundry balances of unsold stock and of various purchases, from the opening of your business to the 5th of April last, the Committee are compelled to ask for the Recapitulation Stock Sheets for 1851 and 1853, and Goods account for 1852. As Mr. Empey stated, on Saturday last, that your Books could be balanced in a few days, the Committee are desirous that this should be done as soon as possible, so that no unnecessary delay may be incurred in adjusting the matter now at issue.

I am, Gentlemen,
Your faithful servant,
(Signed) JOSEPH WHYDDON.

And on the same day another letter from Mr. Whyddon:—

MONTREAL, 5th July, 1855.

MESSRS. MORISON, CAMERON & EMPY,
Notre Dame Street.

GENTLEMEN,—In answer to yours of this day's date, I am authorized, on behalf of the Committee, to state that the Recapitulation Stock Sheet of 1851, and the Balance Sheet of 1853, being in Mr. Empey's power to deliver at once, as stated by him this morning, we shall wish the same to be shown us in the course of the day. Should you require to retain copies of the same, they shall be prepared by Mr. Geddes for you, rather than that our investigation should be hindered. As I am, of necessity, obliged to postpone all my other business in order to bring this to a close, I trust this will be attended to to-day; if not, fresh business will intrude itself, and Mr. Geddes and myself will have to work over our figures again, to enable us to renew the subject—all which will be so much time lost.

I am, Gentlemen,
Your faithful servant,
(Signed) JOSEPH WHYDDON.

The next demand was for a statement of all the Exchange bought, and the amount of each bill, and the premium paid. These demands were complied with, although contrary to the advice of Counsel now first consulted, for at this time rumours began to be circulated of leaves being missing from their account books, and of false entries in books which had been for months in possession of the Insurance Companies. The next requirement was for the dates that the liabilities maturing became due. Plaintiffs hesitated to give this information because they did not know whether its injudicious use might not seriously affect their credit. And since the investigation of their claim efforts had been made both here and abroad to injure their credit; the unsatisfactory state of the investigation prevented parties from giving them goods, who had before trusted them. But they gave this information too. Then came the following demand:—

MONTREAL, 13th July, 1855.

Messrs. MORISON, CAMERON & EMPY,

Notre Dame Street.

GENTLEMEN,—Seeing how many books and documents are, by your Mr. Empey's statement, burnt, by which the Committee had hoped to have completed their investigation of your claim, I am compelled to call on you, on behalf of the several Companies, for a statement of your Importations from the commencement of your business to the 28th February, 1854, and also for a statement of your Exchange for the years 1852, 1853 and 1854; and, until the same are furnished, the investigation necessarily remains suspended.

I am, Gentlemen,

Your faithful servant,

(Signed)

JOSEPH WHYDDON.

Then for a list of all the books and documents owned on the 5th of April, showing those, if any, lost before the fire; and on the 14th July, the Plaintiffs received the following letter:—

MONTREAL, 14th July, 1855.

Messrs. MORISON, CAMERON & EMPY,

Notre Dame Street.

GENTLEMEN,—I am authorized by the Insurance Companies' Committee to apply for a list of the several books and documents which belonged to your firm on the 5th April last, setting forth those which are for inspection by the Committee. Should any have been lost or mislaid prior to the above date, or their non-production be attributable to any cause other than the fire, you will please to state at what period such loss was first observed by your firm.

Mr. Davison, one of the above Committee, has, by letter, addressed to Mr. Glasford, called on him to ask you for an attested statement of the Goods that were totally consumed on the second floor, independent of the Goods that were sent to Messrs. Benning & Barsalou's stores. As the Committee have figures only to govern them on the Stock Sheets, this statement should classify the Goods, so consumed, under their several heads, so far as practicable, as for example:—

| | |
|------------------------|---|
| Straw Bonnets..... | £ |
| Other do | £ |
| Mantles and Capes..... | £ |
| Cloths..... | £ |
| Silks..... | £ |
| Velvets..... | £ |
| Ribbons | £ |
| Laces | £ |

&c., &c., &c., as the case may be.

Whilst this classification is requested, it is not wished to restrict the information to such narrow limits, leaving it to yourselves to render a document which will give ample details.

I am, Gentlemen,

Yours faithfully,

(Signed)

JOSEPH WHYDDON.

It was manifestly impossible that Plaintiffs could answer to all the items of £20,000 worth of goods, or make any catalogue or valuation of them whatever. While furnishing all the other information required, they stated

the impracticability of preparing the last statement, and offered to bring before the Committee competent and disinterested parties to attest that it was impracticable. But Mr. Whyddon persists in the demand, and this too after every demand for information had been liberally met.

MONTREAL, 17th July, 1855.

MESSE^{RS}. MORISON, CAMERON & EMP^{EY},
Notre Dame Street.

GENTLEMEN,—Your letter of yesterday's date has been submitted to Mr. Davison for perusal, who writes me to the effect that, if a complete statement cannot be furnished, he is still desirous of having the next best statement that can be given, and that as the Goods referred to were all contained in the vicinity of where the fire broke out, he does not see that there can be much difficulty in furnishing, at least, an approximate statement of their quantity, qualities, and prices.

In an establishment of such magnitude as yours, it is manifest that a system prevailed by which you could ascertain, at any time, if any particular portion of your stock was running low or in excess; indeed, it suggests itself as an almost moral certainty, that stock sheets composed of figures only, as yours, were governed by some document for your clearer guidance. If not, what check have you against speculation, or how can you prove that no portion of the stock of February, 1855, had been removed, to your loss, before the 5th of April last. I would further ask, if the assured states that he cannot identify his burnt property by his books, and fairly to make all proper efforts to attain that object, who is to do so? Up to the present moment, the burden of proof is thrown upon the Committee; but it cannot do without the production of such a statement as Mr. Davison refers to.

I am, Gentlemen,

Yours faithfully,

(Signed) JOSEPH WHYDDON.

Plaintiff wrote to Mr. Davison, one of the Committee of investigation, to call on them. He came, and they explained to him the difficulty there was, in fact the utter impossibility of preparing any such statement, to be in the least degree reliable. Mr. Davison admitted the impracticability of the demand, and in the presence of their clerks, dictated a letter for them to send to Mr. Whyddon, viz:—

MONTREAL, 18th July, 1855.

J. WHYDDON, Esq.,

Agent Beacon Insurance Company.

SIR,—In reply to yours of yesterday's date, we beg to state that we are very anxious to render the Companies every statement, and give them every information, it is possible for us to do; but, in this case, as our stock has always been regulated by the stock itself, and as we have never kept any such book as you describe, the Board, as intelligent business men, will at once perceive the unsurmountable difficulty we should have in making up so large a stock, composed of so great a variety. And we hope the Companies will not insist upon it, as we shall use our every exertion to give them all the information we can possibly obtain.

And we remain, Sir,

Your obedient servants,

(Signed) MORISON, CAMERON & EMP^{EY}.

And on the very next day went to a meeting of the Committee and moved the Resolution in the following letter from the Secretary :

MONTREAL, July 19th, 1855.

MESSRS. MORISON, CAMERON & EMPEY,
Montreal.

GENTLEMEN.—I beg to convey to you the terms of a resolution come to, to-day, by the Committee, and to request, in its favor, your most serious consideration.

"Resolved unanimously,—That the requirement embodied in Mr. Whyddon's letters to Messrs. Morison, Cameron & Empey, of the 14th and 17th instant, be persisted in, and that the Secretary be requested to intimate the same to them by letter."

I remain, dear Sirs,

Your most obedient servant,

(Signed) H. A. GLASSFORD,
Secretary.

Thus condemning the very act that he had recommended, and persisted in the demand. The Plaintiffs furnished the nearest approximate statement they could. Mr. Morison had left for England via Boston, and was then on board the Steamer, they telegraphed him to prepare a statement from his memoranda, or to return. Between Boston and Halifax he prepared it, it was corrected and checked by the clerks and made as perfect an approximate statement as under the circumstances could be produced. After this it was despatched with the following letter:—

MONTREAL, 2nd August, 1855.

H. A. GLASSFORD, Esq.,
Secretary Committee of Insurance Companies.

SIR,—In accordance with the resolution contained in your letter of the 19th ultimo, we herewith enclose an approximated statement of the Goods which, as near as we can arrive at it, were on the second story and first room of the third story of our store, on the night of the fire, and were then consumed. It includes those pieces which were so damaged as to be necessarily cut off from the goods invoiced at Messrs. Benning & Barsalou's, by order of the Underwriters' interested, as well as those which were so charred and burned as to be wholly unvoiceable. We have taken the greatest care to make the statement as correct as possible, under the circumstances, and we believe that the details of the statement are, in the main, correct, as far as it was possible to make it so.

We, however, only send it as an approximate statement of the details of the Goods consumed, as it must be obvious there exist no means of verifying each item with a positive certainty.

Hoping to have an early decision of the Companies, in regard to the settlement of our claim,

We remain
Your obedient servants,

(Signed) MORISON, CAMERON & EMPEY.

And on the 16th of August the Plaintiffs addressed each company as follows:—

MONTREAL, 16th August, 1855.

WILLIAM LUNN, Esq.,

Chairman Committee of
Insurance Companies, &c., &c.

DEAR SIR,—We are reluctantly compelled to address you on the subject of our loss, occasioned by the fire in April last, the particulars of which have been furnished to the various offices with which we effected Policies. We had hoped, not unreasonably we think, that the Committee would, by this time, have reported, and that the decisions of the various Companies would have been communicated to us.

We have given our current books, and the past year's invoices and other documents, to the gentleman named by the Companies, when a particular investigation ensued, and then, no decision having come to, we sent our old books and what other documents we had saved, from the commencement of our business in 1850, to the delegates appointed; and have, from time to time, prepared statements and given every information required by them, and we have endeavoured to afford them all the facility in our power in the course of their examination, for the four years previous to the first investigation. We are conscious of having nothing to keep back; but, on the contrary, have courted the fullest scrutiny and examination, as we do not claim one penny more than we most conscientiously believe is our undoubted right.

We do not wish to advert here to some circumstances, hurtful to our feelings, which have taken place in the course of our communications with the delegates of the Underwriters, but they have so painfully conveyed the impression of a general distrust in our statements, that it is due to our own character we should now ask a candid communication, on the part of the Companies, whether any and what objections exist to our claims.

We fully recognize the right and duty of the Underwriters to scrutinize rigorously the details of so large a loss, and we should not have alluded, in the way of complaint, to what persons, circumstanced as we are, must be content silently to bear, in furnishing the technical proof of their loss; but we do ask that the vague distrust, which seems to be attached to us, should give place to a candid communication of the distinct objections, if any, which the Underwriters see to the payment of our claim.

It is nearly five months since the fire took place, and it is needless for us to point out the extreme inconvenience, to say the least, which the want of so large a sum of money entails upon us.

We remain, dear Sir,

Your obedient, humble servants,

(Signed)

MORISON, CAMERON & EMPEY.

Some answered this letter, but others did not; the excuse for further delay was the absence of Members of the Committee, and its not having made its report. Nearly five months having now elapsed since the fire, after having made every concession, and put up with every indignity in the hope of an amicable settlement, finding legal proceedings inevitable, on the 24th of August, the plaintiffs applied to Mr. Glassford and Mr. Whyddon for their account books and papers. Mr. Turner on behalf of the Committee replied, that the Committee had not completed the examination of them, and must postpone their return. Mr. Whyddon's reply was a demand for a variety of new information.

MONTREAL, 27th August, 1855.

MESSRS. MORISON, CAMERON & EMPY,
Notre Dame Street.

GENTLEMEN,—On behalf of the Committee of Insurance Agents, appointed to investigate your claim, I have to request to be informed the date of first entry in Cash Book No. 2; also, date of first entry in Journal No. 2; also, the date of which the New Ledger was opened, and with what account; also, to be informed from your Exchange account, as furnished us, each private Bill and its sight, without which the Exchange cannot be made up.

I am, Gentlemen,

Your obedient servant,

(Signed)

JOSEPH WHYDDON.

This letter they were advised not to answer. On the following day Mr. Whyddon made the following proposition :—

MONTREAL, 28th August, 1855.

MESSRS. MORISON, CAMERON & EMPY,
Notre Dame Street,

GENTLEMEN,—On behalf of the Committee of Insurance Agents, appointed to investigate your claim, I enclose you draft of Affidavit to be sworn to by Mr. Empey, he being the partner who has had the supervision of your books, and, therefore, most competent to supply the information sought for in the Affidavit, and which Mr. Empey has repeatedly expressed his readiness to make. When the draft has been approved, you will please return same to me, to be far copied for Mr. E.'s signature, to which will be annexed copy of Balance Sheet for 1851, as in old Ledger, and copies of Balance Sheets for 1853 and 1855, as supplied by you to the Committee. This document, when completed, will then be laid before the Committee, together with the report. Messrs. Davison, Glassford and Maitland, three of the Committee, are expected home, from Canada West, this week, and I, therefore, trust you will put me in a position to place the report before them *immediately on their return to Montreal.*

I am, Gentlemen,

Your obedient servant,

(Signed)

JOSEPH WHYDDON.

This affidavit was to be laid before the Committee of investigation with the report which it appeared had never reached them yet. The affidavit sent, Mr. Empey could not swear to, it contained statements which were not true and others which could not be verified without reference to the books, and the Plaintiffs replied :—

MONTREAL, 29th August, 1855.

J. WHYDDON, Esq.,
Agent, Beacon Insurance Company.

SIR,—We laid your letter, and the affidavit which you enclosed with it, before our legal advisers, and, anxious as we are to answer every question and give every information, we have been recommended not to execute this document.

Without adverting to the circumstances of calling on us to sign a ready-made affidavit, embracing many matters which cannot, in any way, affect our claim, you must be well aware it is totally impossible for us to verify the statements without a full examination of our books, which you retain, and have refused to deliver.

We again repeat our willingness to give the various Agents every explanation and information, on any points, required; but seeing the, to us, apparently inex-

pliable attitude assumed by the Companies, with reference to our claims, we feel it incumbent on us to be guided by the legal advice we receive.

We remain, Sir,

Your obedient servants,

(Signed) MORISON, CAMERON & EMPEY.

This man attempted under the guise of consolation and sympathy, to entrap these young men into swearing a falsehood. We sent them an affidavit embodying all the facts, but that did not suit him. Mr. Whyddon finding his blandishment in vain, and that he could not obtain the affidavit he wanted, by promising us our money if we could sign it, retorts as follows :—

MONTREAL, 29th August, 1855.

MESSRS. MORISON, CAMERON & EMPEY,

Notre Dame Street.

GENTLEMEN,—I am in receipt of yours of this day, in which you state that you have been recommended not to execute the affidavit, the draft of which I forwarded you yesterday. That draft which you have characterized as a ready-made affidavit, has been prepared upon statements made by Mr. Empey. Whether these embrace many matters which cannot, in any way, affect your claim, is a point which remains to be proved ; but, even if they did not, there ought not, in my humble opinion, to be any hesitation, on Mr. Empey's part, to verify statements which he has repeatedly made out of book, and to substantiate which he need not refer to any one of the books or documents now under the control of the Committee, but which shall be open to Mr. Empey, for verification on the points deposed to, whenever he is sworn. Under the conditions expressed in all the Policies granted to your firm, you are required to support your proofs by affidavit, whenever called on so to do, under penalty of forfeiture of claim, if not complied with. I again repeat that the affidavit calls on Mr. Empey, as having the superintendence of your books, to verify his repeated statements made to Mr. Geddes and myself, accounting for the state in which those Books now are, and that it is drawn as to enable Mr. Empey to be sworn to the truth of the statements therein, without having occasion to refer to any one page or line of the books or documents therein referred to. The original Balance Sheet of 1851 is with you ; those of 1853 and 1855 will be appended to the affidavit, and the several pages referred to, Mr. E. has the numbers already, upon examination. If, after this statement, you still decline to give the affidavit, I shall be under the painful alternative of stating, in the report, our present correspondence and its result, in which case, after this report shall have been transmitted to London, it will be too late to remedy the evil.

Waiting an early reply to this and to my letter of the 27th instant, on the points therein referred to,

I remain, Gentlemen,

Your obedient servants,

(Signed)

JOSEPH WHYDDON.

Mr. Empey could not have conscientiously sworn to this affidavit embracing all the transactions of the firm, and identifying particular pages of books out of his possession without reference to the books, and it will be borne in mind that it is principally on this affidavit that the charge of false swearing is made, in the pleas of the Defendants. If this affidavit was intended in good faith, merely to confirm the truth why were not the books produced to allow him to verify the testimony he was asked

to swear to. But he was told he must swear first, and then he might verify his oath by the fact instead of the fact, by his oath. And if he refused to make this affidavit, we were to forfeit all our claims on the Company, the report would be sent to London, and it would be too late to remedy the evil. What care we for Mr. Whyddon's reports, or for Boards of Directors in London; we have our own laws and our own Juries; it is for you to decide whether Insurance Offices shall be allowed to repudiate their contracts. I say that when the facts of the case are known to the principals of the respectable Insurance Companies we shall have a prompt repudiation of the acts of their subordinates. The Plaintiffs refused to have any further communication with Mr. Whyddon who had insulted them, and gone into their store and in the presence of their clerks, told them that he came there to get facts and not falsehoods, so, on the 30th august the Plaintiffs wrote Mr. Whyddon:—

MONTREAL, 30th August, 1855.

J. WHYDDON, Esq.,

Agent, Beacon Insurance Company.

SIR,—In answer to your letter of yesterday, we regret to say that we are more than ever convinced, by its tenor, of the propriety of the course recommended to us by our legal advisers, as mentioned in our last. As to Mr. Empey's statements "made out of book," and which you call upon him to substantiate, you do not precisely point out what these statements were; and it is evident the draft of affidavit must have been prepared by you under misapprehension of facts, for it is, in several particulars, erroneous.

Nor could Mr. Empey, with every desire to meet the views of the Companies in general, or your own views as representing one of them, have safely made the affidavit without correction and inspection of the books. We think it proper to add that, notwithstanding the long period that has elapsed since the fire, and the fullest access to our books and documents furnished to Mr. Geddes personally, we are, to this moment, entirely in the dark as to the grounds upon which the Companies object to our claim, or as to the matters in the report which require explanation. Whatever we may think of the conduct of certain subordinates, we do not think that the various Companies can have any desire to resist our claims, unless on good and substantial grounds—and we have nothing to conceal or to be ashamed of. We believe our claim well founded in every respect, and we regret to be obliged to take steps to secure the fullest legal investigation into the nature and origin of the fire, and the amount of our loss.

We are compelled to this course, not only to secure the recovery of what is justly due us, but to preserve our character above the petty surmises of parties desirous to have even a pretence for suspecting our conduct. At the same time, we beg to repeat that, if the report made by Mr. Geddes some weeks ago, or the report which it appears you are about to make, is communicated to us, we are ready and desirous to give every information in our power on points which may need it; but, to this moment, we are ignorant of what these points are, and we again earnestly press the Companies to inform us fully on this head, in justice to us and to themselves.

In the absence of the members of the Committee and all official information as to the points to be cleared up, we do not wish to continue a correspondence with you, as an individual, as to the propriety or impropriety of our declining to send you the affidavit, or as to the consequences threatened for our complying with the advice given us by our legal advisers.

We would, however, again beg of you to send us back our books, which have been for so long a time in your possession. We are informed that you are liable

to heavy responsibility in not complying with the formal Notarial demand made on you for them, and, although we can have no desire (with so large a claim unsettled) to get ourselves into unnecessary difficulty with yourself or with any of the Companies, we are led to believe, from the course adopted towards us, that we have no means of avoiding it—notwithstanding all our concessions and all our efforts to do so.

We believe the way to prevent so painful and, to us, so serious a result would be, by a frank communication, on the part of the Companies, of the real grounds of objection to our claim, and the statements and explanations given by us in support of it.

We are,

Your obedient servants,

(Signed) MORISON, CAMERON & EMPEY.

P.S.—We beg to say that we are just advised to give to the several Companies copies of our correspondence with you, which we shall do accordingly; and we also would state that, if specific questions are put to us by the Companies, or any one of them, as to particular facts in either report or in our statements of claims, requiring explanation, we are ready to give our answers to them either with or without oath, as they may require.

M., C. & E.

And, on the following day, the Plaintiff's wrote each Agent as follows:

MONTREAL, 31st August, 1855.

H. L. ROUTH, Esq.,

Agent, Royal Insurance Company.

Sir.—We beg herewith to enclose you copies of correspondence between Mr. Whyddon and ourselves, in reference to our claim, in order that the various Companies may be informed—in case his report should not contain the full correspondence—of what has passed between us. We beg further to say that we conceive we have reason to complain of the delay which has occurred in settling our claim, and would submit to the good faith of the respective Companies, whether we should be kept uninformed as to the real ground for not settling our claims. We cannot suppose the various Companies can sanction anything like unfair insinuations against us and our claim, from any subordinate persons, and we are advised to appeal directly to the character and standing of the respective Companies for a fair settlement, before proceeding to litigation to secure our rights and preserve our character.

We are,

Your obedient servants,

(Signed) MORISON, CAMERON & EMPEY.

On the 6th of September Mr. Glassford applied to the Plaintiffs for the inventory of the goods taken after the fire claiming it as the property of the Insurance Companies which was refused, but they were offered reference to it. On the 7th Mr. Whyddon again wrote:—

MONTREAL, 8th September, 1855. }
SATURDAY. }

MESSRS. MORISON, CAMERON & EMPEY,
Notre Dame Street.

GENTLEMEN,—I have again to address you on the subject of the affirmation required of your Mr. Empey. An enquiry was instituted, to which, I presume, you will not say you refused your sanction. My letter to you, of the 28th ult., required statements to be made regarding certain specific matters of fact, in accordance with previously reiterated allegations of Mr. Empey; it neither involved questions as to objections on the part of the Companies, the respective treatment

of any of the parties in this affair, nor a demand for books—all of which are susceptible of discussion apart from the object of my request, which I desire to keep distinct from any embarrassment. The form of the affidavit prepared points to specific facts, yet, as is shown on the face of it, the purport or nature of the statements to be made are to be given by the deponent. Permit me, further, to say that, in your several correspondences, as well as in your communications from the first, your professions have been of the most extensive character; yet, a request for a specific statement, as to a very limited category of particulars, is met by a refusal, for which the only pertinent reason given is its being erroneous in many particulars, which you do not condescend to point out. While your professions are thus, as I regret to find, so wide of your acts, what are the Companies to think of the proposal, by you, to extricate yourselves from your position by repudiating my authority and declining further correspondence. Notwithstanding this, seeing that the return to town of the other members of the Committee may lead you to conclude that I would not arrogate to myself more than a just share in their counsels, and being desirous that no personal allusions should have the least weight, I would again request you to reconsider this matter, trusting that further reflection will dictate to you the propriety of complying with my request.

Should I not be favoured with a communication from you by four o'clock, p.m., of Monday, the 10th inst., I shall consider myself at liberty, and with your assent, to construe your silence into a refusal to give the affirmation required by the Committee.

I remain, Gentlemen,

Your obedient servant,

(Signed)

JOSEPH WHYDDON,

Agent for Beacon Assurance Office, and

Appointed by Committee of

Insurance Offices to investigate claim.

P.S.—Mr. Geddes and myself are prevented from completing our report to the Committee, by your omitting to give me the information requested in my letter of the 27th ult., to which I have received no reply.

And this was said to men who had given up their books and papers, of which they were now refused possession, who had done everything in their power to facilitate the enquiry, and who, disregarding the injurious suspicion thrown on them in this investigation, so hurtful to the feelings of honorable men, had made every sacrifice and concession until further yielding became a crime—said to a man who had laboured to all hours of the night, making up statements extending over an enormous business for a period of five years, until the number of statements and letters filed in the Records of this Court amount to over 170! And the Plaintiffs replied as follows:—

MONTREAL, 8th September, 1855.

H. A. GLASSFORD, Esq.,
Secretary to Underwriters,
&c., &c., &c.

SIR,—We have received a communication, dated this day, from Mr. Joseph Whyddon, concerning the affidavit he sent us on the 28th ultimo, and the correspondence which ensued.

We now address you in reply, and beg to state, had Mr. Whyddon treated us with even customary respect during his investigations, we should not have desired to have no further correspondence or interviews with him; but his manner became so impertinent and arbitrary, and his gross insinuations so broad and painful to our feelings, that it became imperatively necessary that we should have no further communication with him as an individual. We have already informed the various agents that we are perfectly willing to give them what affi-

demands they may reasonably and justly demand from us, and though we have been advised that we have complied with all the conditions of the Policies, and already given all information that can reasonably or legally be required, yet, in case the other offices should, for reasons which we do not understand, desire an affidavit of the facts alluded to by Mr. Whyddon, and, with the view of preventing any misrepresentations that might be made by him, we now transmit the draft of one we are prepared to make, which covers all the facts embraced in his. At the same time, we must beg that the separate Companies will each communicate with us, as we are fully persuaded they would never sanction the course of proceeding to which we have been subjected. We regret to be forced to add that, to prevent further loss of interest and to bring matters to a close, we have instructed our counsel to institute proceedings without delay.

Concerning the information asked for by Mr. Whyddon, we will state that the first entry in Cash Book No. 2 was made on the first day of October, 1852, and the date of first entry in Journal No. 2 was the first of May, 1854, and the date the new Ledger was opened was the first of May, 1854. We cannot point out each private Bill in our Exchange Account, as many Bank Bills were bought from private parties; and that we believe nearly all the Bills not marked 3 days were 60 days sight. We have no means at hand of ascertaining the sight of each Bill to a positive certainty. We omitted to mention above that the first account in new Ledger was "Goods Account."

And we remain,

Your obedient servants,

(Signed) MORISON, CAMERON & EMPEY.

Access to their books was denied them except in the presence of Mr. Geddes, although they had left them for months with the Companies. On the 10th of September a formal demand was made on Mr. Glassford for these books, which was refused. On the 12th, an affidavit, such as Mr. Empey could swear to, was transmitted, attested, to the Committee. On the 24th another demand was made for the books by Messrs. Robertson, to which Mr. Turner, for Mr. Glassford, replied:—

MONTREAL, 24th September, 1855.

TO MESSRS. A. & G. ROBERTSON.

GENTLEMEN,—In reply to your note of this morning, I have to state that the books placed in the hands of the Committee by Messrs. Morison, Cameron & Empey, were furnished in support of the claim sent in for loss, and were considered, at the time, as of no value to the assured in connection with their general business. As these books are important only as bearing on the subject of the amount of loss actually suffered by the fire, and as I have always understood them to be of no value as regards Messrs. M., C. & E.'s general business, unconnected with such loss, I am somewhat surprised at their persisting in demanding they should be delivered up. At the same time, as there is no disposition on the part of the Insurance Companies to prevent access to and every reasonable inspection of the books, and to extracts being made therefrom, the Committee has no objection to your clients examining them as often as they wish, on the understanding, of course, that no attempt at seizure or forcible abstraction of the books be made; and, on hearing from you to that effect, I shall be happy to make arrangements accordingly. I have only to add that I should not have appended any conditions whatever to the inspection of the books, were it not for the hostile position assumed by your clients in regard to them.

I am, Gentlemen,

Your obedient servant,

(Signed)

H. A. GLASSFORD;

Per W. TURNER.

And on the following day, in answer to a similar application, Mr. Glassford wrote :—

MONTREAL, 25th September, 1855.

Messrs. A. & G. ROBERTSON.

GENTLEMEN,—In reply to your note of last evening, as you inform us the books are necessary for the prosecution of the suits you have instituted, it must occur to you that they will be useful for our defence. That they should be available to both parties cannot be deemed unfair. The Insurance Offices cannot but express their surprise, therefore, that a proposal so reasonable as that contained in my last note should be demurred to by your clients, and they confidently trust that Messrs. M., C. & E. will press the matter no further.

I am, Gentlemen,

Yours truly,

(Signed)

H. A. GLASSFORD,

Per W. TURNER.

Legal proceedings were now instituted, and after the case was returned into Court, and insinuations of the vilest character had been made against the Plaintiffs, the following proposal was made to them on the 13th Oct :—

MONTREAL, Oct. 13, 1855.

Messrs. MORISON, CAMERON & EMPY,

Montreal.

GENTLEMEN,—I am directed to transmit to you the following resolution came to this day, at a general meeting of Underwriters on your stock, and to request that you will favour me with your reply at the earliest date possible :—

“Resolved unanimously,—That, with the view of affording Messrs. Morison, Cameron & Empey an opportunity of amicably adjusting their claims on the several Companies, it is the opinion of this meeting that such claims, and all questions connected therewith, be submitted to arbitrators mutually chosen, whose decision shall be final—such arbitration to be conducted under bond of submission and according to conditions of Policies in which said claims are made, without waiver of any rights at present held by the Companies, in case of its rejection.”

I need scarcely say that your acceptance of the proposal embodied in the above resolution, will receive my earliest attention.

I remain, dear Sirs,

Yours very respectfully,

(Signed)

H. A. GLASSFORD,

Secretary.

I say at this time insinuations of the vilest character had been made against my clients, that attempts had been made to destroy their credit in England and New York, instructions had been sent from parties to this vile conspiracy to arrest Mr. Morison for having made a fraudulent claim for an imaginary loss—and after this the parties to it wished to hush it up in the back offices of some Insurance Company, under a bond of arbitration. No, gentlemen, perish the money we seek to recover, but send us forth with our character unscathed; we will not take one farthing less than our claim, if that is to be constructed into an admission of dishonor. Let the case

stand or fall upon the question of fraud or no fraud. We replied to this offer of arbitration as follows:—

MONTREAL, 19th October, 1856.

H. A. GLASSFORD, Esq.,
Secretary Insurance Companies.

SIR.—We deemed it our duty to lay your letter of the 13th instant before our legal advisers, in whose hands our claims against the respective Insurance Companies had been placed.

We need not say that had the proposition to arbitrate been made to us in the first instance, we should unhesitatingly and cordially have assented to it. We waited for a long period without having any specific ground of objection to our claim stated to us, although solicited by us. No mode of settlement whatever was proposed. We could not learn whether our claims were recognized or not, and it were only after an interval of five months that we were reluctantly obliged to go into Court. During that period, you are aware that a course was pursued by certain parties, who claimed to represent the Underwriters, calculated to throw a grave stain on our character. We were virtually charged with having made fabricated statements—with intentional mutilation of our books and accounts; and other representations were made, on which we need not now animadvert, of a still more painful nature, and our very books have been withheld from us as a means of proving these charges.

We are far from imputing the responsibility of these proceedings to all the Offices—from the Managers of some of which we have privately met with sympathy and consideration,—but you must be well aware that the course which, if they have not impliedly sanctioned, has hitherto received the weight of their name, has attained a most hurtful publicity; and in justice, not only to our own character, but to those friends who have continued their support through this calamity, we cannot dispense with a public investigation so long as the odium of unsustained imputations rests upon us. We, therefore, beg you to inform us whether all the Companies are disposed, now that they have had full opportunity for a detailed examination, unqualifiedly to withdraw all imputations upon us, and that the question for arbitration is simply to adjust the amount of our claim—a point which, we are advised, might, with propriety, be settled by competent and disinterested parties.

When we are favoured with an answer to this enquiry, we will at once give a definite reply to your proposal.

We are, Sir,

Your obedient servants,

(Signed) MORISON, CAMERON & EMPY.

And Mr. Glassford answered:—

MONARCH FIRE AND LIFE ASSURANCE COMPANY, }
GENERAL AGENT'S OFFICE, }
MONTREAL, October 20th, 1856. }

Messrs. MORISON, CAMERON & EMPY,
Montreal.

GENTLEMEN.—Without discussing the correctness or incorrectness of the various statements contained in your favour of the 19th instant, respecting the course adopted by the Insurance Companies interested in your claim, but confining myself to the subject of arbitration, I beg to say in reply, that, were arbitration to be adopted as a means of disposing of your claims, the Companies would expect to submit to the arbitrators all matters in difference between you and themselves, as provided by one of the conditions of their respective policies; but, as such a submission would seem, from the terms of your letter, to involve matters affecting your character, and that, consequently, you are unwilling to dispense with a public investigation, I am instructed to state that the Companies

will have no objection to the arbitration being conducted under a rule of Court, and that in as public a manner as you wish—a course of procedure which will secure to you the utmost publicity you can desire.

I remain,

Your obedient servant,

(Signed)

H. A. GLASSFORD,

Secretary to Companies.

- An arbitration by rule of Court was offered us, but this would have afforded us no public vindication; the stigma would still have remained and my clients replied in the exact terms of Mr. Glassford's letter of the 18th June:—

MONTREAL, 22nd October, 1855.

HENRY A. GLASSFORD, Esq.,

Secretary, &c., &c.

SIR.—In reply to your letter of Saturday we beg to say that we infer from its tenor that our condition as to a withdrawal of all imputations on our character, before any arbitration could be acquiesced in by us, has not met with the approval of the Companies. We regret this, as by declining to accede to this condition, the Companies may be thought to endorse the surmises and hints of certain parties, connected with some of the Insurance Offices, against us, which we are desirous to meet in some tangible and distinct shape, so as to be able to know what they are. We must, therefore, adhere to the condition, from a sense of what is due to ourselves, and leave the result to await the proceedings. At the same time, we may state that we have been, and still are, perfectly willing to have our claim settled by competent and disinterested parties, who can ascertain the loss, and take all matters connected with its amount into consideration. This may be done by rule of Court, or otherwise—as may be agreed on. We cannot, however, consent to leave questions of law to arbitrators, and we wish the matters they may have to consider should be simply the questions connected with the amount and character of our claim.

We remain,

Your most obedient servants,

(Signed)

MORISON, CAMERON & EMPEY.

Either this is a case of damning fraud, such as no commercial community has ever witnessed, or one of unparalleled oppression. Let the Defendants not shrink, as shrink they will, from pushing it to the legitimate conclusions of their defence, as one of imposition, of fraud and perjury, for that is the amount of their pleas. After having taken possession of our goods, sold them, and pocketed the money, on the 25th of October, five months after, they offer us the amount of the sale at Benning & Barsalou's, £1046 6s 11d. This suit has been brought under great disadvantages; our books were necessary to us, and they could not be obtained, a mere examination of them at their Office was not sufficient to enable us to prepare the elaborate statements required to support our claim. We were desirous of submitting to the inspection of Messrs Spiers and Rufford, two of the first accountants in the city. The Plaintiffs are not practical book-keepers, and they wished that competent men should investigate them, and see what was the worth of the errors imputed to them. These gentlemen

pledged themselves if they were allowed to do so, and remove them for that purpose, that they would restore them in the same condition as soon as the examination was completed. The Insurance Companies would only allow access to them in the presence of Mr. Whyddon and Mr. Geddes. To make the necessary investigation would have occupied fourteen days of constant labour; and their possession was refused to these gentlemen. Have these men, Mr. Joseph Whyddon and Mr. Charles Geddes, of all men in the world, a monopoly of all the honesty of the country, that it should be presumed that Messrs. Spiers, Court and Rufford were leagued with the Plaintiffs to falsify these books, it is a monstrous insinuation. The extent of the Plaintiffs business, the regularity and method with which it is conducted will be proved to you by the witnesses to be examined. We will exhibit to you every book which they possess from the commencement of the career of men who are fast raising the city and country in the scale of commercial importance, who are branded as perjurers, swindlers and impostors; character is of so much importance to us that we desire to remove from your minds the smallest shade of suspicion. We will show you that so perfect is the check established in their business that it is impossible for goods to have left the premises without passing through their books, and we will prove to you by a number of current proofs, that at the time of the fire, their stock was literally what we claim it to have been. Whatever discrepancies there may have been since in statements are of little value, if we show that we were in possession, at the time this loss occurred, of the amount of stock represented by our claim. I call on you to follow me step by step in this proof, and I will pour on you such a flood of light as shall satisfy you of the integrity of my clients, and that they have been the victims of a gross and cruel oppression, and I will defy the most incredulous sceptic to take the Evangelists in his hand, and say he doubts their integrity. So common has the style of defence set up in this case become, that, on a late occasion, the Judge upon the bench was compelled to charge the Jury that no moral turpitude attached to the Plaintiff. I tremble in view of this system, lest, in my own household, a loss should occur, and that, in attempting to recover it, the first plea which I should have to combat would be fraud and falsehood, if I happened to be obnoxious to some Insurance Agent. I leave the issue to you with confidence. If you believe that my clients have been guilty of fraud denounce us and send us forth to merited contempt, but if you find that we are innocent in giving us a verdict for our just rights, record also your sense that our character has been groundlessly assailed.

James Blundell, sworn.—Is a shoemaker in Notre Dame Street, opposite Messrs. Morison, Cameron and Empey; recollects the fire in that store. Had been up reading a paper when he heard an alarm of fire from a po-

diceman; went out and looked in and saw the flames inside Plaintiffs store; this was between 12 and 1 on the night of 5th of April. I tried to find out where Mr. Morison lived and in about a quarter of an hour, found him at Duclos'; told him his place was on fire and asked him for the key. When I returned some person broke in the door with an axe, and then the fire burst out of the upper windows. There was some delay in the firemen playing on it. The fire lasted from the time I saw it until out, about two hours. I went into the store after the fire, the damage was very great.

Cross-examined.—The fire lasted two hours fully. I did not go to bed again until half-past three, there was then a great noise. Did not go into the store that night. The fire was in the middle floor of the building. The shelving was most burned on the side next Laurie's. I have bought galloons and other goods in my line from that side; they also kept flowers on the counter, and on the opposite side cloths, and along the railing silks, and ladies' capes, and also near about the front part of the store.

John Gardoer, sworn.—Is a Druggist and lives opposite Morison, Cameron and Empey; I heard an alarm of fire at a little before one, and got up; my room is directly opposite Morison, Cameron and Empey's; saw a blaze through the middle flat window, apparently at the back of the store; wondered why Mr. Morison was not there. In about a quarter of an hour Mr. Morison came and opened the door, when the fire broke out through the window; afterwards saw Mr. Morison go up a ladder with a man with the hose to play on the fire. The fire lasted fully two hours, if not more.—I went into the store the next day, and saw a great deal of damage, burnt goods, ashes, &c., lying about, and goods blackened on the opposite side to where the fire appeared to have been heaviest.

Cross-examined.—The fire was burning a quarter of an hour before Mr. Morison came; ten minutes after his arrival the engines came. The engines played half an hour before the firemen got into the upper window. I am quite sure of this. I was present there the whole time. Mr. Morison was on the ladder at the same time with the fireman, and they stood there a long time, as though uncertain what to do, on account of the smoke.

James Haldane, sworn.—I am a Shoemaker, and lives opposite Morison, Cameron and Empey's; heard an alarm, jumped out of bed and opened the window; asked the policeman what was the matter; he said, "I think this store is on fire;" I saw there was no doubt of that, from the smoke coming from the roof. I prevented people from breaking open the door; by this time Mr. Morison had arrived; the door was broken in and the fire then burst out from the upper window; I had seen no flame before.—The fire broke out a good while before one; the engines played until two.

A few goods were brought across the street, ribbons, &c. ; saw a good many people in the place. Was not present all the time, but was looking after my own family and furniture, as I expected to have to move them.

Cross-examined.—I do not say that the engines had ceased pumping at two o'clock, but I did not take much notice after that time, being busy with the family. I believe Mr. Morison to have been the first person who went up the ladder with the fireman ; I saw no other before him to my recollection.

J. A. Mathewson, sworn.—On the night of the 5th of April, between 12 and 1, near 1, I was awoke by the reflection of the blaze, which was very great, I was much alarmed ; I live in McGill Street, opposite Re-collet Street. I got up and went to the fire ; I went into the building, the heat was very intense, the fire was in the second story ; I had brought a lamp, and went up stairs, as soon as it was possible ; it was one mass of flame ; the flames were all around that part of the building ; the firemen labored hard, but the fire appeared very obstinate. The heat was so intense, that when I tried to go up to the third flat I could not go. This was a full hour after the fire began. The heat was so intense, that it was impossible to stay any time ; the heat extended to the garret ; the goods and every thing was hot, as though the whole place was on fire. The fire extended all around the building from back to front, the ends of pieces of goods next the wall were burning ; I took some out of the shelves and threw them into water. The balustrade was burned ; there was a great heap of the burned ends of valuable goods choking the balustrades. The smoke was very great, and the heat so intense, that in attempting to open a plate glass window at the south I burned my hand. The iron railing round the well was gone, and I hung a lamp to prevent any person falling down. When I burned my hand on the south window, it was an hour or an hour and a half after the fire commenced. Any goods piled around the well must have been totally consumed, as the counters were burned. After the firemen left, the fire broke out in the third story ; the flames were rushing up behind the plaster as through a chimney ; I assisted to put it out. This was two hours after, and day was beginning to dawn. The office was burned ; I must have seen the reflection of fire coming from the front before I left home ; the engines had not then arrived. Saw bales of carpeting so burned that I could not tell what they were. The damage done was immense ; I handled the wreck of much valuable goods ; it is impossible from the wreck to estimate the value of those destroyed.

Cross-examined.—The fire was equal all over, although the damages was most at the north. The partition of the office was gone, also the railing round the well, and part of the counters ; I was particularly struck

with the fact of the ends of the goods next to McGill Street side, and furthest from the fire, being burned. Mr. Empey told me the principal books were saved. The fire broke out in the third story, two or perhaps three hours after the first; I went home and changed immediately after, and I then returned when it was quite clear, about five o'clock. The new fire broke out in the third story, nearly over the north side; it was behind the plaster, and burning fiercely, roaring; the shelving had to be torn down to get at it. I saw the fire raging there, behind the shelving, whether the shelving was on fire or not I cannot say.

George Nunn, sworn.—I am a painter, and a fireman also, my men were employed the evening before the fire in painting the store, worked until after 10; Mr. Morison asked them up to take some coffee or other refreshments; but the men refused, wanting something stronger. They left their pots and paints; I heard the alarm, and went to the fire; it was heavy, and the smoke so dense that it was stifling the men, I broke a window to give them air, and clear off the smoke. I had requested the goods to be moved well away, as last year they said I spoiled goods with paint. Round the well great quantities of goods were piled, and upon the counters. I was at the fire, I am Captain of an Engine. When the fire was raging, I did not see these goods, and I am certain they were burned. The ashes and plaster on the floor after the fire was twenty inches thick in some places.

Cross-examined.—I do not know what time it was when the fire occurred; when I got there there was an engine there, but don't know the name of it. I asked the Chief Engineer if my engine should pump; he said no, two were sufficient. One engine pumped through the office window, when I was up stairs opening the back window to give the men air. The bulk of the fire was next to Laurie's. The goods round the well were burned so as to be unsaleable; I did not pay much attention to the quality, but I did to the condition. I cannot tell the value of them, I am not a dry good merchant but a painter.

William Stephens, sworn.—Is a saddler, lives in McGill Street, was in bed and heard the alarm; saw the reflection distinct; thought it near, and dressed and went there. Stopped at the door until Mr. Morison came; there were from 50 to 100 people in the shop below. I attempted to go up stairs, but the fire and smoke were so great I could not. After a while I returned again, when the chandelier in the well hole fell, almost on my head. When I went up stairs I found the broad-cloths on fire; I helped to put them out; this was on the side next to Nichols', others I could not put out. The flames were chiefly next to Laurie's, but went all round to Nichols's side. Mr. Empey came to the door while I was there, much excited. I went into the shop next day, and saw a great deal of burned

rubbish, I pulled the piles off the counters round the well while burning; on the side next Laurie's, there were shelves with silks on fire, which I pulled down. It was over two hours, from the time the fire commenced until it was out.

Cross-examined.—I got to the fire between 12 and 1; stopped until 8; was there before the Engine; don't know how soon after me the engine arrived. I got up stairs about half an hour after I got there; they had not ceased pumping when I went up stairs. One engine played into the window, and one up the stairs. I took silks on the side next to Laurie's on fire, and threw them into the water. There was a large space of shelving burnt; in one place about six feet square burned, but also all round I saw many pieces of carpets burned; it was hard to get round the well, there was such a pile of burned goods; I was up to my knees in water and rubbish. There were more goods consumed by fire than water.

Joseph Keefe.—I am porter to Morison, Cameron & Empey; did not know of the fire until I went to Mr. Morison for the keys the next morning. He always locked the place himself. Mr. Morison was walking about his room in his night dress; he said the store was open. I went there and found everything in a ruinous state. On the 12th of April I carted 21 loads of goods damaged more or less; and on the 14th four loads to Benning & Barsalou,—the last were the worst; they were undistinguishable; no person could tell what they were, except from fragments of cloth and silk. There was no rubbish but burned goods among them. I shovelled up the remains of goods round the well. The iron railing round the well, about half an inch or $\frac{3}{4}$ thick, was burned so as to be destroyed, and twisted every way. The glass of the inkstand in the office was melted and reduced to a shapeless mass. I saw books and papers burned in the office; some of them half across, the backs of some and the fronts of others. On the outside of the building the stone shows the mark of the flame to this day.

Cross-examined.—I did not see the inkstand or the burned books until the second day after the fire, when Mr. Empey called me into the office to remove them; they were on the desk opposite the front window—some on a safe or book-shelf. I took two books to Mr. Empey's house, and packed them in a box there with others—so many I could not count them. They were long narrow books. The back of one book was burned, and the opening part of the other that I carried. I put them into the box in the garret of Mr. Empey's house. The others were carried by other parties, and were lying on the floor when I put them into a box and case. This was sometime in the week following the fire. The two carried by me were given me by Mr. Empey, who told me to take them to his house: this was the day after the fire. I don't know what part of the office these

came from; never saw them in the office. I should know these two books if I saw them again: they were given up to the Insurance Company.

Mr. Rose asked the production of the books by the Defendants, which was refused at the present stage, with the assurance that at the proper stage they would be forthcoming.

Examination resumed.—The other books in the box and case were such as the check books used by the clerks.

Cross-examined.—I did not take the books to Mr. Glassford, but was sent for them; I have been told that they were sent to him.

Daniel McNevin.—Fitted up the shelving after the fire: the fire commenced near the stairway leading to the third floor on the side next Laurie's; swept round both sides of the well-hole, and scorched the opposite side so bad that all had to be renewed. Front and rear windows had to be renewed. The fire burned through the third floor round the truss beam, and some of the shelving was burned. All the counter and shelving next to Laurie's were completely burned; the shelf could not have been burned until the goods were burned off it. The stairs leading to the third story was also burned; the joists of the floor also. The remains of burned goods round the well-hole were 18 or 20 inches deep. The drawers were about 2 feet 6 inches to 3 feet long, and 9 to 11 inches deep. The goods lying round the well-hole were not worth carrying away. The pilasters on the back side of the building had to be made new. Lost about £5 above what was awarded by arbitrators by the amount of damage being so much greater than I estimated it at sight.

Cross-examined.—The shelving next to Laurie's was 25 to 30 feet long, 3 feet at bottom, and 20 inches at top. The drawers reached 3 feet, and the shelving to the ceiling, 10 or 11 feet high from the floor. On the other side the shelving was 50 feet or thereabouts, and the same depth. There was some 14 or 15 feet shelving burned next to Laurie's. There was a bannister and hand-railing round the well, with open shelving 18 inches deep. Round the circular part this was all burned. The bonnet stands were entirely destroyed. The railing of the office was destroyed—the upper part swept away in toto. The door was in the same state as the rest; that end of the office was gone entirely, burnt out. I noticed this the morning of the fire.

Mr. Pape, sworn.—I am a clerk in the employ of Morison, Cameron, and Empey, and was there at the time of the fire, have been in two of the largest wholesale houses in England, Foster, Porter & Co., and Bradbury, Greatorex & Beal, London, and Messrs. J. & D. Lewis, of Montreal. For weeks previous to taking down stock, we were occupied in measuring goods, taking the length and selling price, the cost price was on the goods. One hand took the stock from the fixtures, and gave it to one who stood

by Mr. Morison, who took down the price and number of yards, which he called to me in the lower story; another young man stood next to Mr. Morison, and checked him if he made any mistake in price and quantity, and handed the goods to another, who placed them on the shelves again. Anything sold off a piece of goods, previous to the final stocktaking, was marked on the ticket. At the stock taking, the shop was closed, and business suspended. If a piece of goods was found without a stock taking ticket, it was passed into a box to be measured. The stock books are plain books of paper, ten or twelve pages. In stock taking, I wrote down the yards and price, if there had been any error in the statement of quantity and price, as the goods are passed to a clerk, he would have checked it. There was no possibility of a mistake, or of goods being taken twice. The stock sheets were headed *Cloths, &c.*, but each article was not enumerated. The numbers of these stock sheets were consecutive, and they were extended after the stock taking. The stock taking was a short time previous to the fire; all hands were kept in from 5 at night on an average, till 2 o'clock in the morning; I have left at 5, at 6, and 8, in the morning. I wrote down the stock downstairs with Mr. Morison. The second story was taken by Mr. Empey and Mr. Neal. I believe they also took the upper story; I never lived in a store where there was so much uniformity of system, there is a fine of 7½d for putting the price before the number of yards; up to 2s, the price is put in pence, and a fine for not doing this; if yards are omitted after the number, the same; and if in measuring, the ticket is left on the counter, instead of being pinned on the collar of the clerk measuring, there is also a fine. I have not the shadow of a doubt that the goods entered into the stock books, were in the store previous to the fire. After I serve a customer, I make out a bill, which I get another young man to check, having found my bill correct, I enter the amount in my book, which checks the cashier's book; I then write on a ticket my number, and the amount of the sale; I then call *cash* to the shopwalker, who receives the amount, and takes it to the Cashier, after my loudly announcing the amount; the Cashier sits in the centre of the store, and files my ticket on a file for the purpose, and enters the amount in his book before he gives change. The shopwalker receives the change and brings it to me, I check it, and give it to the customer. By this means, my book checks the cashier's, and the tickets on the file must tally with both. Thus a perfect check is obtained of all goods sold. We had a very heavy stock previous to the fire, heavier than we ever had before; the trade of the summer previous had been slack. The goods were put on the shelves endways, by which we put in three piles into a shelf, and this was universal in the whole establishment, there was not a particle of available space that was not so occupied. Starting from Laurie's, where the fire originated, were kept Paramattas, Alpacas, Merinos, and Dress Goods, in

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the drawers, haberdashery, &c. The day before the fire, a large quantity of silk was brought up from the lower story, to have mantles cut off, a very large quantity was brought up for this purpose; thus, for instance, forty yards might come up, from which but four or five were cut. Mr. Morison frequently took such goods up at night for this purpose. The night previous to fire, the painters were there to paint the shelves; the greater portion of the goods were taken out of the shelves, and the others turned round, so that the shelves would still look as full. There were always piles of goods on the floor. The piles taken from the shelves reached up to the ceiling, in as compact a state as possible, and as tight as in a packing case, and holding twice the amount of ordinary piles. Many of these goods were Paramattas and Merinos, worth from 4s. to 10s. per yard. The stock was worth, before the fire, about £45,000. I left at half-past eleven, before the fire, two hours after the painters; the Plaintiffs wished them to stop all night, but they left because they could not get any refreshment stronger than coffee. When I returned the next day, the goods piled up were a mass of rubbish. I have no doubt the stock taking of the year, established the real amount of stock in the premises. The night before the fire, a quantity of ribbons arrived which were taken to the upper floor to be marked off. The most valuable goods were on the second flat. There were sometimes 4,000 bonnets on the stand; there was the largest stock we ever had, on the premises, at the time of the fire; none were saved. I have no doubt that the goods I saw piled up in the second story, were burned in the fire. There was a clock, not near the shelving or goods, fully fifteen feet in the centre of the stairs. We had a large stock of furs over the bannister of the stairs; very valuable furs. One drawer would hold 100 mantles, worth on the average, \$10 each. We had mantles worth £12 10s., and shawls worth £10 to £15. I saw shawls very much burned. There was a strict watch kept day and night after the fire. We were divided into parties of three, until the underwriters had got through taking stock. The young man who sells the most each day, gets 1s 3d, and each week 2s 6d, and at the end of the year, the highest salary. We imported largely by the Cunard Steamers, in the month of December, as much as 30 cases at the time. The Stock was taken by the valuers after the fire, in the same manner as before, it was taken a second time to ascertain if the first was correct, by the order of the Insurance Company, the difference was about 18s on £20,000. The last was taken by the clerks without the participation of Morison, Cameron, and Empey. We scrupulously measured every thing sent to Benning and Barsalou that was measurable; much could not be measured, for instance, the but ends of pieces of Merino at 10s. per yard, and others burnt sideways, half through, these were chiefly

on the McGill Street side. I am not surprised that there was £16,000, uninvoiceable, I have no doubt that there was that quantity destroyed.

Cross-examined.—I wrote down into the Stock sheet at the Stocktaking of 1855 in the lower story, I filled 15 or 16 stock sheets; I do not remember the names of the young men who assisted. I have been in Platt's employment four years. I was not confined to the Lower story; I was as much in the one as the other. In the lower shop, the goods were gloves, hosiery, white shirtings, fancy trimmings, peaks, and haberdashery, these were the most important. In the drawers the retail stock of haberdashery. In the rear, prints only; in the drawers, plain muslins; on the other side, colored cobourgs and fancy delaines, plain French delaines, and colored French Merinos; and the drawers under, nets and common laces. In the drawers found the counters, ribbons and silks; these were the bulk I have enumerated. The value of this in the Lower Story I should call about £15,000 at selling price, or £12,000 cost. On the second story, next to Laurie's, on the shelving, there was Black French Merinos, Black Paramattas, Black Henriettas, Cobourgs, Alpaccas, Silk War-lustres, Watered Orleans, Figured Serges, French Delaine; large assortment of mourning Dry Goods; this was called the mourning department; in the drawers, Stays, and I think a portion of the reserve stock of haberdashery, but I am not sure. Round the wall a large assortment of Flowers, and other goods; at the head of the wall was shelves filled with what I can not remember. Along the front, the goods were in drawers and piles on the counter; in the drawers were silk, velvet, and other mantles. In the shelves were shawls, and piles of Cloth mantles; in the shelving next McGill Street, were scarf and square filled Shawls, Crape shawls, Cashmere scarf and Square shawls; Wool, long and square, Shawls and handkerchiefs. Black watered Moreens, colored do, Black Russel Cords, colored do, Black Cotton Velvets, colored do, Union Damasks, all wool Damasks, colored Satinets, Canadian Cloths, Fancy and Black Doeskins, Fancy and Black Cassimeres, Whitney Tweeds, Broad-cloths, Pilot Cloths, Beavers, Crapes, Table cloths, Napkins, Linen Sheetings, Cotton do, Damasks, and other goods which I do not remember. There were no shelves except for a third of the way, on Laurie's side, but the spaces were filled with expensive goods. In the drawers there were Black and colored Cashmere Shawls, Embroidered Shawls. The goods next to Laurie's were so totally consumed that they could not be moved; I don't believe that there was one sixteenth remaining fit to be invoiced. On the other side, I think one-half. The goods in the drawers were much damaged; there were some on Nichol's side that could not be invoiced. There was a vast amount of the silk and velvet mantles, next to Notre Dame Street, that could not be invoiced; evidently the fire got into them. Some were

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not invoiceable by reason of water, and others, as far as my memory serves me from fire. The stock of straw bonnets, was the largest I ever saw; I have seen 4,000; I should calculate there was 3,000, but might have been only one thousand. These were all destroyed. There were silk bonnets in stock, I don't know if any were burned. On the night of the fire I saw the goods taken down on the second floor. Mr. Potevin and Mr. Betty took them down; the first cloths, which was his department, and the next, mourning goods. The whole of the goods were wholly or partially taken out of the shelves that night. I think Miss Robertson took down some of the mantles from the recess in front of the shawls. The cloths were put on the counter in front of the department, the largest pile being the centre of the counter, four or five feet from the top of the counter. Some of the shawls were taken off the shelves, and put on the floor, others were pushed back in the shelves. The mourning goods were put on the counter opposite that department, five or six feet above the counter. The value of goods in that story, was about £25,000 selling price or £20,000 cost. The mourning department might have been worth from £8,000 to £10,000.— Every fixture in the house had the goods put in endways. The value in the garret was not great, being cottons, shirtings, batting and bulky goods. On the third story, was the wholesale and reserve stock of haberdashery; all the summer and reserve hosiery, blankets, counterpanes, quilts, and many other goods; the value was probably £3,000 or £4,000, as near as I can tell; it might have been less, perhaps not £2,000. The value of the attic might have been £100 or less. I entered the stock; I believe each class of goods was headed, but not particularly mentioned; the extensions were done in the office, either by Mr. Neal, or he checked what others did. We entered the goods in the lower story at the marked selling price, each piece bearing a cost ticket also; the advance was 25 to 27 per cent., the average of the whole would be fully over 25 per cent., on currency cost, (this is the average over the whole establishment. There were 12 or 14 clerks employed in the second story; each either had a separate department, or assisted in it. The Plaintiffs never sold on credit except where the clerks was responsible for it; that is the rule. The night of the fire there was a large pile of goods on the floor near the chimney, about 4½ feet by 5 feet high, I do not remember its contents; it usually stood there. I am not aware that there was a case of shawls unopened. Several cases came in that night, and one case of ribbons was opened. I swear those ribbons were not carried down stairs that night. They were placed on the side next Nichol's, near the sweep of the well—I should think its value was £80,—I think the bulk of them was left up stairs, one or two cartoons might have gone down stairs. I assisted in the stock taking of 1854, also below; the stock books were numbered in rotation, independent of the

paging, I believe, in both years. I do not recollect of the stock sheets in 1854, being marked at the head with the advance, it is not necessary, as the entries are made in the advance price. I assisted in 1853 also. I do not remember the amount in each year. I have never thought of the value of the stock until now, my estimate is a guess from memory, and it may be thousands less or more. I would unhesitatingly swear that the stock books represent the actual value in the store. We occasionally sold small wholesale lots of goods, with a discount of ten per cent for cash.

Patrick M'Guirk sworn.—Is a clerk in the Silk Department of Morison, Cameron & Empey : in the stock taking, helped to measure and mark the goods. At night helped to hand down the goods, regularly from the top to the bottom all round the store. In my department nothing could have been set down in the stock book wrong without my noticing it, in quantity or value. Many of the silks in my department were taken up stairs the night of the fire ; after the fire I found many of my goods missing which I never saw again. The greatest value of goods was on the second story. The goods were set in endways all over the store, and there were piles on the counters and floor. Before I left, the night of the fire, the clerks up stairs were engaged in taking down goods and packing them on the floor and the counters, the next morning these were all missing, destroyed, the remains on the floor in places three feet deep. I left the evening before at half-past nine, and saw the clock going at that time. I called off the stock to satisfy the valnators at the second valuation for the insurers, enumerating the articles, which had not been done before. I called off from window to window ; Mr. Morison told me to do it, but did not interfere with me, we came within 18s. of the previous stock. I am satisfied that at the regular stock taking all the articles in my department were correctly taken, and in the same manner as in former years.

Cross Examined.—At the second stock taking I have mentioned the goods were not remeasured, as the lengths were not disputed. The stock was always more correctly taken in Morison, Cameron and Empey's than in Mussen's and others where I have lived. I should consider the stock on the second floor as equal to that of both the others. The Stock of Mr. Mussen is very valuable, and when I left him to go to Plaintiffs I expected to find theirs of an inferior value, but was surprised at its exceeding it ; his was three years ago, and their stock has largely increased since that time. Mr. Mussen keeps fifteen clerks, Plaintiffs about forty. I believe Plaintiffs have sold goods since the fire to the amount of about £45,000.

SECOND DAY.

Archibald McDonald, sworn.—Is an Architect and civil engineer, proves the correctness of the plan exhibited from actual measurements.

Cross-examined.—I am not aware that this plan shows the state of the building before the fire, of my own knowledge, but from instructions given by Mr. Morison, the measurements were made.

The Court here announced that since yesterday the Court House had sunk two inches, and this particular room six inches, and that in all probably it would be down before the trial was over, and advised gentlemen to keep off the centre of the floor.

Thomas Betty, sworn.—Is a clerk in the employ of Plaintiffs, in the department of mourning goods in the second story. Is aware that all the goods in this department were measured in the usual manner at the stock taking previous to the fire. The store was very full; all the goods in my department were destroyed by fire. Corroborates the evidence of other witnesses as to the quantity of goods on the counters, floor and shelves. Left the store after eight the night before the fire. Mr. Morison sent for me at four in the morning; these goods were all gone, and I have seen nothing of them since, but burned pieces. I watched the goods after the fire was extinguished lest the fire should break out again, and after day light, I found delaines on fire. I have no doubt the stock was correctly taken at the stock taking before the fire.

Cross-examined.—I cannot tell the exact value of the mourning department, it was very great. I have had 18 years experience; without measuring my department I could not tell the value. The greater part of my department was destroyed, but little was left invoiceable; the greater part was reduced to ashes and burned pieces. The fire commenced about Laurie's chimney, and the shelving was burned about there, and a good piece beyond. In my department, in the drawers, were stays, and other goods I do not recollect what.

Edouard Portevin, sworn.—Is a clerk in Morison, C. & E.'s in the cloth department of the second story, on Mr. Nichols' side, is the chief of the department; assisted at the stock taking. If Mr. Empey had made any mistake in calling off the goods, I must have noticed it. All the goods were properly measured and ticketed, I have no doubt that the stock was correctly taken. The night before the fire I made a large pile of cloths and cassimeres so high that I had to use steps to get on it; I tightly packed it and two other piles; these were valuable cloths, all the best. The next morning these were nearly all destroyed. In the shelves I used to put in endways, ten or twelve pieces of goods; all the shelves throughout the store were so filled. The shelving now erected is the same as before the fire. I could check any error made by Mr. Empey in stock taking, I did so check an error of half a yard on a piece of cloth; the clerk on the other side could have checked it, we were there for that purpose. I corroborate the statement of Mr. Pape as to the manner of taking stock. I

have no doubt that an error of £100 in the whole could not have occurred. I have seen stock taken at Laurie's and other places I have lived, but never saw it done more carefully.

Cross-Examined.—The cost price was not on the stock ticket. The goods were entered on the stock sheets at the selling price. Had nothing to do with the entering the goods into the stock sheets. The advance was marked by Mr. Morison or some of the partners. I have been ten years in this business, but cannot tell the value of stock in my department. I did not pack the shelves on the night before the fire as full as they could hold endways; I have never told any one that I did so. One pile of cloth was put near the back window on a table; this pile was 6 or 7 feet high the table was filled; I was obliged to use the steps; the second, round the well on the counter, endways, five or six feet high. The table was about a yard and a quarter wide but much longer. The third pile was on the floor, very high, arranged endways; this stood near the office, and the bonnet stand. I cannot tell the size of this pile, or how arranged. I went into the store, the morning after the fire about half-past 8, and nearly all these piles were burned; I cannot tell the proportion. I did not see a piece of those on the counter left the next morning; there was a great quantity of ashes, but I cannot tell if they were the remains of my cloths. I did not see the cloths placed near the office, the next morning; I have never seen any of them since.

Re-Examined.—Mr. Morison has nothing to do with making the stock tickets, but only the original ticket. There was never a second price made in the Establishment. In removing the goods the night previous to the fire, I put as much lengthways as I could into the shelves, so as to leave sufficient room for the painters to work without rolling them. I made the same statement as this to Mr. Geddes, when interrogated concerning it.

Edward Bernard, sworn.—Has been three years Clerk in M. C. & E.'s in the small ware and haberdashery, in the second and third stories. The stock was taken in the third story, at 75 per cent on the sterling. I took every package in my department and marked it, mostly in original packages unbroken, every broken package was measured or counted. Our orders were to be very particular; we had fines to make us so. I have no doubt that the stock in my department was correctly taken. The stock was taken by me with any clerk I called; we did it in the manner that the rest was taken. The most valuable part of my stock was on the second story, very valuable fringes and trimmings. I left before the fire, at half-past eleven, turning out the lights, and leaving with Mr. Motion who always left last, locking the doors himself when in town. We had been marking new goods the night of the fire; the Painters had left some

time before. I helped to move goods that night, and saw the piles of goods about, I could not say the height. The goods were all put in the shelves endways before the fire. The small wares were marked and sold at wholesale, but many went down stairs and were sold at 100 to 110 per cent on the sterling. I came to the store the morning after the fire, and saw a great amount of damage, I took goods out of which three fourths were burned at the back part of the shelves. Of the goods round the well some of them were burned in the very centre of the piles, these were cloths; of the mourning department, so little was left that they were hardly distinguishable. The stock of 1854 was £28,000, that of the year of the fire was much greater as we had more goods and business had been dull; I don't know the value at the time of the fire exactly.

Cross-examined.—I had any young man I called to assist me in taking the stock. I do not recollect exactly who. Both the cost and the selling price were marked on the packages in my department. My department was not the only one on that floor; I cannot tell the value of my department. I heard that the stock of 1854 was £28,000, I believe both before and after the fire. I believe I asked the book-keeper myself. I have been out of the establishment shortly after the fire.

Thomas M. Neal, sworn.—Was Plaintiffs book-keeper at the time of the fire; left them on the 1st May, 1855. I prepared the blank stock books, twelve pages, numbered 1 to 45, the pages running consecutively. The day before the first of March, Mr. Empey and I went to the third story, and he called and I wrote, most of the goods were arranged so as to be taken without moving. The goods which were not taken were thrown out into another room, and taken after; also some carpets were measured afterwards. The stock was correctly taken. Witness corroborates the manner of stock taking as deposed by Pape and other witnesses. The price and quantity were marked on stock sheets, and sometimes the articles, but not always. I am certain that any error must have been detected by the clerks assisting and standing by; I extended the stock sheets, or I checked them; I have no doubt of this, they were then added up; the additions were checked by myself or others, always passing through two hands; they were then entered by me into the recapitulation book, thus book one, page one, and then book two, page thirteen; the amount of each book is also extended. The paper produced is a copy made by me from the recapitulation book. After making the deductions the stock was worth at 50 per cent on the sterling £41,250, 16s 8d. This is the copy I handed to Mr. Chapman for the Insurance Companies, at six in the evening, about a week after the fire, about the 13th of April. This recapitulation sheet was sent in answer to a requisition from Mr. Chapman for it; it was not completed at the time of the fire, I was checking the additions and entering

them in the recapitulation book, I left some on my desk the night before the fire after entering them, the rest were in the safe. I took them one by one from the safe to enter, and once entered they were left on the desk, I cannot conceive how there could be any mistake in entering them. Mr. Empey checked them afterwards page by page with me. A considerable quantity of goods were received between the stock taking and the fire. On the 1st of March 1855, I am prepared to swear there was in the store goods to the amount of £41,250 at cost price, 50 per cent on sterling. I have no doubt of this. This is a statement of the Cash Sales made by me from the cash book, between March 1st, and the fire amounting to £3,754 15s 2d; the cash book is taken from the daily sales book; I am prepared to swear to the amount being correct. There were goods received between the time of the fire and March 1st; taken from invoices in the safe, the amount was ascertained by me, in all £2,845, 8s 6d. I helped to take the stock after the fire both times, it was exactly in the same way as before; at the second time the Insurance Valuators asked us to take it specifying the articles, it took three times as long; the difference of valuation by the two stock-takings was about 19s. I left between 8 and 9 before the fire, the clerks had then began to take down the goods, I saw some around the well, and the pile of cloths described by Mr. Portevin. I went to Mr. Maitland's office with Plaintiffs, taking the remains of the stock-books, and they were left there. I recognise the gentleman in court; this was a few days after the fire; the office was in the Place D'Armes. For some time after the fire I supposed the stock-sheets were saved, until some were found missing, which I recollected to have left on my desk on the night of the fire. The books were numbered consecutively from 1 to 32—then, by a mistake, a clerk took No. 45, the pile having been reversed and continued on. This accounts for jumping from book 32 to 45. I remarked that it had happened to Mr. Empey, and asked him if I should alter the pages, and he said No. One was afterwards used for a recapitulation book. I discovered this on making the extension. The morning of the fire, while it was going on, I met one of the young men with part of the books, I went and got a carter to carry them to Mr. Empey's house, I left them there, and afterwards worked at them at his house. After returning from Mr. Empey's, I saw fire in the third story, goods were burned there; shawls were handed down from the shelves on the M'Gill Street side of second story, on fire on the side next the wall, and I dipped some in the water. The fire appeared to have run round at the back of the goods. This was after the firemen had left, some time before day; I recognize this paper to be a valuation of saved stock, made by Mair and Roy, to the amount of £20,013 2s 7d.; they checked them; the valuator were very particular, and took things that were not usually taken. I

went to the Insurance Office, and was examined by the Insurance Agents; they had then the stock books; I gave them what information I could. The values were true, but I could not distinguish what the kinds were. Before the fire, there was a case in the store without an invoice, which had come through the Custom House without an entry; it might have been gloves, Mr. Empey told us not to open it till the invoice came, and duty paid on it. The glass of the inkstand in my office was melted, and the tin invoice-holders were all crumpled up. The weekly wages for making up dresses and mantles were about £60; there were also goods out manufacturing, these goods were entered in the stock books after the fire. Mr. Empey sent Miss Robertson round to ascertain the amount in the hands of the work people. There were 40 clerks in the establishment.

Cross-examined.—I do not remember the precise day on which the stock-sheets were taken to Col. Maitland's, whether it was before the 1st of May. My examination was a few days after this. I entered each book in my Recapitulation as soon as it was properly extended and checked. I began to extend the book afterwards, on the Recapitulation, as they were finished, without regard to number. Every sheet was checked before entering. I made sure they were right first. I cannot tell what number of books I left on the desk on the night of the fire; there might have been six or only three. I do not know how many stock-sheets I had entered at that time, or on that day. I think the whole number was 36. Some of those I had entered, I think were put in the safe before the fire. The stock-taking was finished 1st March, and from that time I was engaged portions of the time in entering and checking the stock-sheets. I recollect that I left some on my desk; these were those I had been occupied at on that day. I was called down to convert an invoice from sterling, and forgot them. I did not recollect this until I found some were missing: portions of them were found burnt. I numbered the stock-sheets myself from 1 to 45, besides paging them. I think I left stock-sheets on my desk two or three times, and they were put away by Mr. Empey. I left after eight; I left Mr. Empey there to lock up the office and the safe; I do not remember altering the number of pages of the stock-books; I might have done so to correct an error; I was careful. Each book contained 12 pages. The rates of advance marked on this recapitulation sheet sent to Mr. Chapman, I was told to put on by Mr. Empey. The stock was taken at the selling price. The figures on the head of the stock-sheets was to distinguish them. The penciling on this paper looks like Mr. Empey's; they are not mine. (The Defendants file the original stock-sheets.) I recognize them, and the recapitulation-sheets, and the pieces of burnt ones also. The mark 100 on the top of this sheet is to distinguish the goods in it from the 75; the goods are supposed to be marked at that advance, but do not average that; also on the

remnant I see the same mark. I recognize this figure 21 on this sheet as mine; also the No. 11. I do not remember when I saw burned remnants for the first time; I think the day after the fire, at the store, or at Mr. Empey's house. The safe, I think, contained all the books in use; of the others, two, a journal and ledger, were on the top of the safe. The body of the writing in this recapitulation-sheet is mine; the pencil marks and summings in red ink are not; the word recapitulation and figures on the top look like Mr. Empey's. I can't point out the figures of the amount of fixtures from this book £798 15s 1d; if I had the sheets I think I could. I have examined the sheets and cannot find them. I can't say whether I entered these burned books into the recapitulation book the day of the fire, but am not sure. They were entered from time to time as I had finished them. I checked them all, the amount and addition. 40 times 7½ is 25s; I find it entered in this burned book at £25. It is my extension, and has been checked by some one else. I presume it has been added up so. I am sure this is one of the stock-sheets which I entered into the recapitulation-sheet. This document is an affidavit made by me, and this is my signature, sworn before Mr. Labadie. (Affidavit put in.) The affidavit was drawn by Mr. Robertson. I did not intend to state some things said here of the stock-sheets. I identify the figure thirty-six in the recapitulation sheet. The mark on the head, 75, means an advance of 75 on the sterling cost, but the mark of 100 does not necessarily follow that this is an advance of 100 per cent. Mr. Empey told me to put this rate on, and I put it on it: the entry on the original sheet, 87½, is in Mr. Empey's hand—I had nothing to do with it. This 87½ in pencil on sheet 26 are not mine, nor do I know them; the meaning is, that the goods average this advance; the 75, was a specific rate, but the 100 was a mere distinguishing mark of different rates. I have no recollection of telling any one otherwise.—Mr. Geddes enquired this of me, and I directly told him it was merely a distinguishing number. Those not marked were taken into the recapitulation sheet at 87½ per cent; books 26, 23, 2, are of these.

Re-examined.—With respect to the error of £25, it is an error which may have been deducted from the foot; but, if an error, Morison, Cameron & Empey knew nothing of it. There are several classes of goods, but in some departments there are goods which are at different advances, and this mark 100 was placed on the stock-sheets to distinguish the mixed departments; the other advances were actual; this one had nothing to do with the actual advance. These that have no mark are of departments containing exclusively goods of 87½ per cent. In the affidavit I speak certainly of the numbers of the stock books; I did not intend to do this, but merely to say that these were missing, and, I supposed, must have been left on my desk the night before the fire.

J. G. Mackenzie, sworn.—I am acquainted with the plaintiffs and have known them some years, am a Director of the Equitable Insurance Co., one of the defendants, I am not aware of what the Company has done with regard to the withholding the books of accounts of plaintiffs. I am not prepared to give an opinion as to the propriety of the proceeding. I have sold to them before and after the fire, from the day they commenced business; I had a high opinion of Mr. Morison. I have sold them since the fire to the amount of £2,000, half of which is paid; plaintiffs had a large stock previous to the fire.

Cross-examined.—About thirty thousand pounds is a large stock, I should call Mussen's that, and Benjamin's forty thousand.

Mr. Rufford, sworn.—I am an Accountant, largely connected with business 28 years, and was one-time a member of the Imperial Parliament.—I have been engaged since February last in investigating the accounts of plaintiffs. Applications were made to defendants for the Account Books, which were necessary for the elucidation of their affairs, which we did not obtain. (The witness here entered into an elaborate statement of the affairs of the Plaintiffs, the same as given in the opening address of Mr. Rose, and detailed the method by which the results were obtained, and one statement verified by another.) The books from which I had to prepare these statements, were the Cash Book down to the time of the fire, and the Journal and Ledger from the 1st of May, 1854. I have had in my possession the sterling invoices of the purchases up to £500; I have also seen a Custom House certificate, which comes to within £1,500, and if the Custom House makes its advance at par to an equal sum. Fifty-two or three per cent advance is about the cost of the goods imported by the plaintiffs. I am aware that they imported goods by the Cunard Steamers by bill of charges passing through my hands. I start on the basis of the stock, 1st May 1854, previous to that time I had not the books. I took a letter from Mr. Empey to Mr. Glassford, requesting the books for investigation, from the Insurance Company, a message came in two days that we could not have them. The balance sheet shows, that in April, 1855, the plaintiffs had a stock worth £42,000, besides over £3,000 of profit. I had to test this in several ways as the only data I had, wanting the books. I marked off and compared the invoices of purchases between the stock-taking and the fire, with their sales, and the total amount of the stock on the night of the fire was £41,061 6s 5d, of cost. These statements have cost me months of labor, and I am perfectly satisfied that they are correct. Assuming that the stock in 1854 was correct, then the amount of goods in the store at the time of the fire was fully equal to that claimed. I produce all the accounts, invoices, and customs receipts, which have been examined and tested by me. I have the bulk of the notes that were liabilities at the

time of the fire in my possession, all that are paid, I have traced them all. As an experienced accountant I say these results are the true ones, which appear from their books, and I have no doubt they are.

Cross-examined.—I predicate all my statements upon the assumption that the balance sheet of May, 1854, is correct. By adding the amount of the purchases in March and April of the same year to the stock account, and deducting the cash sales, I found the amount of stock on the 1st May, 1854. The result is within £10 of the balance struck in May. There was nothing off for profit on the sales of March and April. The goods purchased from May 1st, 1854, to the night of the fire, I checked the invoices with the entries in the Journal, the sterling purchases were to February 23, 1855, £25,470 1s 7d—£30,988 9s 9d. at par of 9½ per cent. The American purchases were £360 18s 1d, without the advance of 15 per cent; goods purchased in town, £5,243 13s 2d, exclusive of cash purchases; £3,000 by estimation by invoices and bills payable. I had vouchers for all these purchases. I estimated them by representations of the parties, if they are not purchases, they are charges. I had some invoices and memorandums. I have included interest and discount in the charges. The shipping charges were £1,495; agents charges £1,100; duties over £3,000. (Account Books belonging to Plaintiffs put in by Defendants.) This Journal terminates in September, 1853; this book would not have aided me; the Ledger produced would have done so in my investigation of the affairs of 1854 and '5. Of the foreign invoices some are duplicates, but most are original, and nine-tenths bear the Custom House stamp. I did not ascertain by this stamp whether these goods had been taken into stock at the time of the fire, many of them are very faint. I can furnish the details of the £3,000 estimated as cash purchases; there is about £1,000 for mantua making; the Cash-book states Goods Dr. to Cash, so that I cannot tell the precise articles. There was a few bills from Laurie's and Morgan's, and other shopkeepers where they sent for goods which they had not; I had some bills to the amount of £700, and I believe that the sum of £3,000 was thus had either for merchandise, or it was for charges. I am quite satisfied of this. I have verified the amount of sundries unsettled exhibited to me, £3,732, being the last item in the goods account, and found the unsettled account, £3,400. This difference is in Plaintiffs favor, making the cost of the goods more than I had allowed.

James Court, sworn.—I am an accountant, I have been employed 8 or 10 days, verifying the accounts of Messrs. Morison, Cameron and Empey, assuming the same things as Mr. Rufford has done; I have come to the same conclusion, and I believe them to be substantially correct. I have

seen nothing in these accounts either fraudulent or wrong, and no greater errors than will ordinarily be found; I find their stock at the time of the fire to be £41,250. I have verified all Mr. Rufford's statements, and corroborate them; we have checked the liabilities with the bills, and the cheques to pay them in Canada at the time of the fire, and find them correct, with the exception of two, said to be yet outstanding. I believe the accounts to be *bona fide*. The sterling bills we have checked and compared in different ways, and I have no doubt it was also a *bona fide* liability. I have also checked the statement of open accounts with the evidence put before me, and I believe it to have been due at the time; I have minutely examined the invoices from Feb. 1854, to Feb. 1855, I find invoices to within £100 of Mr. Rufford's statement, his being in currency, and mine in sterling. I have examined the validity of the invoices as genuine documents, by various evidences, internal and otherwise, deductions for packages, addition to convert sterling into currency, the checking of the goods, and the custom house stamps, and I am satisfied that they are what they pretend to be. Some of the goods were in the store 1st March, and these had ought to go to the purchases for 1854; and on enquiring, I was informed that the system of the firm is not to charge goods until paid for, and these were deducted from the stock book of that year. Generally I verify Mr. Rufford's statements assuming the balance sheet of May, 1854, to be correct. I had no idea of the magnitude of the establishment of the Plaintiffs, until I commenced this investigation. I entered upon the examination with a bias against these gentlemen, from the opinion of many friends of that opinion, and I say solemnly, having carefully examined everything, that I see nothing substantially wrong in their statements. I have verified the daily sales book.

Cross-examined.—I did not ascertain whether the fixtures were included into the stock of 1855. I first verified Mr. Rufford's balance sheet of May, 1854, by the Ledger, and have since verified the stock account to March 1854, and found it within the estimate, to £9. It was not necessary to make my deduction for profit, and it was not done in this estimate. About half the invoices have Custom House stamps, the invoices immediately previous to the fire, have nearly all the Custom House marks.

John Spiers, sworn.—Is an Accountant, I have examined the statements produced and testified to, by Mr. Court and Rufford, I have no doubt that the value of the goods in the store on the night of the fire, was of the value claimed, provided the balance sheet of May 1854, be correct. The bills previous to Feb. 1854, for that year paid, as checked by the Ledger produced by Defendants, are £12,000. Assuming the balance,

that of May 1854, to be correct, and taking the other matters into consideration, I have no doubt the stock in the premises on the night of the fire, was of the value claimed.

Cross-examined.—I corroborate Mr. Court's testimony with regard to the invoices, and the marks thereon.

Harrison Stephens, sworn.—I was at the store of Morison, Cameron and Empey, a fortnight previous to the fire, the stock was fully as large as ever, quite up to the usual quantity; I did not particularly note it. I was in also, the morning after the fire; it had almost destroyed the upper part of the building, and there were great quantities of charred and destroyed goods, mostly on the north side.

Cross-examined.—The damage in the lower story was chiefly by water and smoke. The second story was much burned, I saw woollen and silk burned to a crisp.

H. A. Glassford, sworn.—Proves exhibits; Mr. Davison acted for the Phoenix Insurance Company as a member of the Committee appointed to investigate the claim of Morison, Cameron and Empey. The Committee consisted of Messrs. Wood, Lunn, Glassford, and Whyddon. I have heard nothing of a service of plate. The agreement of the agents of the Companies was, that the majority of the Committee should decide the question of paying the loss. The Companies have paid over £500 to Messrs. Geddes and Whyddon for the services in this case, out of a common fund subscribed by the companies, £300 to Mr. Geddes, and £200 to Mr. Whyddon. I am aware that the Companies agreed to the valuation of the depreciation assessed by Mair and Roy. I recollect the amount sold for by Benning and Barsalou; the money is to my credit in trust for the owner. The advertisement of this sale shown me, I do not think, was authorised by the Insurance Agents. I presume the goods were sent to Benning and Barsalou's by the appraisers, jointly named by the Plaintiffs and the Insurers. The tender of the money, arising from the sale at Benning and Barsalou's, was made after the institution of this action.

James Benning—of the firm of Benning and Barsalou, sworn, the goods were sent from the Defendants appraisers; we had communication with Mr. Glassford, the last witness, and Mr. Gault, Mr. Lunn, and Mr. Murray, the two former were the acting men. We received and advertised the goods; the sale was postponed at the request of Lunn and Murray on account of the navigation not being open, and they were afraid there would be no sale. Part of the goods were reduced almost to cinders; the gross result of the sale was about £1,200. A large quantity on the outside was sold for a very small sum, and part we had to pay to cart away. I paid the money of the sale to Mr. Glassford. I do not think it possible for any person to

distinguish the value of the goods sent to us: there was a large portion totally uninvoiceable. I was in the Plaintiffs premises in January, I walked through the store with one of the partners. I remarked the size of the stock, it was accounted for by the choicera. The goods were kept in too small a space. The stock was very heavy, and I remarked that it was a wonder they should keep so large a stock. I received no orders from the Plaintiffs regarding the sale of these goods; had the sale gone on at the time first advertised, they would have sold for £500 more than they did. The sale was stopped by Messrs. Lunn and Murray.

Cross-examined.—The goods invoiceable were invoiced by the Plaintiffs. The advertisement was inserted on the authority of Messrs. Glassford and Gault: I believe it was submitted to them, but am not sure.

James Ferrier sworn.—I am the owner of the premises occupied by Plaintiffs. I was in the store-house shortly before the fire, and observed the premises were very full. The store was very crowded, and one of the partners asked me if I could get a piece of ground to build larger premises. He showed the daily sales to be for cash £250 to £300 a day. I am aware they give no credit, not even to my family. I was there the morning of the fire. I went to see the cause of the fire: the whole shelving round the second flat were burned and the goods on them charred: the fire seemed to have acted all around. There was an immense mass of burned goods on the floor. The stair railing was destroyed, and the counter round the well was burned, and the goods on it either burnt or lying among our feet.

Cross-examined.—The larger portion of the fixtures below stairs are mine, those above belong to Plaintiffs.

William T. Kay, sworn.—Had the superintendence of Benning & Barsalou's establishment at the time of Plaintiff's fire; there were brought 25 loads to our premises, part were put inside, part in the front, part in the back yard; in the last place were put 6 loads sold for £24, in the front the four loads we had to pay to take away. It is impossible to estimate the value of these by their appearance; they were utter ashes. The invoiceable goods were very valuable, a general assortment. The goods sold for £1,090. The sale was postponed to the 9th of May.

H. L. Routh, sworn.—I am agent for the Royal Insurance which has a risk on the same stock as the Defendants are sued for. I have examined the Plaintiffs claim as far as I could; I saw the statements of Mr. Geddes, and Mr. Whyddon. I never heard of any service of plate to Mr. Whyddon. The Royal Insurance Company has contributed pro rata towards the expenses of Messrs. Whyddon and Geddes; I have every confidence in these Gentlemen. I have never desired to settle this loss apart from the other Companies.

By the Court.—The statements of Messrs. Gaddes and Whyddon, of which there were several, were seen by me, and were in the possession of the Companies some time before the action was instituted. I know no reason why the objections to the claim should not have been communicated to the Plaintiffs, but presume the investigation was not over; I was in favor of arbitration.

Cross-examined.—I was in the premises of the Plaintiffs next day after the fire, and also on the same day.

John Campbell, sworn.—I was in the Premises of the Plaintiffs on the night of the fire; I got there just at the same time as the engines, the flames were then breaking out of the front window. I remained until the flames were subdued so as to allow me to enter. I saw J. A. Mathewson there and many others offering assistance. We got a lantern I went up stairs; the cloths on the side next to Nichols' were burning on the shelves; they were taken down still burning, some pieces were burnt to the middle, and on the side next the wall were burning also. I saw shawls also burning and taken down and dipped in water, in the front of the building near the bonnet stand. The accumulation of the burnt goods on the floor was so great that the water was dammed up above my knees. The gas chandelier fell in the wall from the heat although some feet from the shelving. I went up stairs with Mr. Mathewson and searched for, and helped to put out the fire on the third flat, this was two hours or two and a half after I got there.

Case for Plaintiffs closed.

Court adjourned.

THIRD DAY.

FOR THE DEFENCE.

Mr. Bethune said that as to the supposed waiver by the Insurance Companies in selling the goods damaged, he would call the attention of the Court to the doctrine laid down in Marshall, 2d vol., page 740, section 6, that after payment of a loss in ignorance of circumstances which, if known, vitiated the contract, the Insurers had the right to recover the payment back.

The court.—The doctrine is well established, but your case does not fall under this definition.

Mr. Bethune.—Circumstantially it does not, but I take the higher ground, and hold that the rule applies equally to an acceptance of abandonment, as to an actual payment. Arnaud lays down the rule, that where by fraud, misrepresentation or concealment which if known, would have

prevented payment; if the amount of insurance has been paid it is recoverable. The French authorities are still stronger on this point.

Mr. Rose—Undoubtedly, if there is fraud, but that you have to make out yet. We do not dispute the principle, but so far it has no application to the facts of this case.

The Court,—Proceed with the defence.

Mr. Dunkin.—May it please the Court Gentlemen of the Jury:—My learned friend the Counsel for the Plaintiffs has told you that he addressed you under feelings of deep anxiety and responsibility; I may say the same; I have a painful task to perform; it will be painful for you to listen and for me to speak. I do not like to have to press home a charge of the magnitude involved in our defence; nothing but a sense of its perfect justice, and of its absolute necessity, not only in our interest but for the public welfare, would induce me to do it. Painful as it is, I have a duty to perform, and I shall not shrink from it. I am aware that the public feeling is more with the Plaintiffs in such cases as these than with Insurance Companies, and that I have to reason contrary to sympathies which however misplaced are entitled to respect and esteem. In the first place you are naturally unwilling to believe evil of the Plaintiffs, and you are right to be so; every man is supposed to be innocent until found guilty by his peers. It is my duty to urge upon you also the rights of my clients, and to make manifest to you the serious wrong doing of the Plaintiffs in this case. I feel the responsibility of such a defence, because while I have to press home charges gravely affecting the character of the Plaintiffs, I have also to defend that of the Insurance Agents, more particularly of those who have been especially employed and prominent in this case. Great as the imputations are, which are cast upon the Plaintiffs, grave indeed as are the charges on which we rest our defence, I must tell you that these are well founded, and will be supported by overwhelming testimony. Attempts have been made to show that the gentlemen employed in the primary investigation of this case, and who simply discharged a duty which could not have been a pleasant one for them, have been actuated by the basest motives. The charges implied against them are of the baser character than those of moral turpitude with which we charge the Plaintiffs. We have heard a great deal of an imaginary service of plate, and the attempts made in connection with it to impute evil motives to one of our witnesses; one of the Plaintiffs evidences, a gentleman of high respectability, also an Insurance Agent, and one of the Defendants in these suits, has told you that the first he heard of was in this Court. Much has been said of the gentlemen employed in this investigation having received money for their services; I shall not descend so low as to show what has been paid by the Plaintiffs for the services of the accountants employed by them. I know they are paid, and

for that my learned friend is paid, and I am paid; all that work should be paid; and I have yet to learn that a man is a scoundrel who receives payment for laborious services. Mr. Whyddon is not known to you, but until it is proved contrary, you are bound to believe that he is an honest man. Mr. Geddes is well known, and he is little likely to be mixed up in a conspiracy or brand the Plaintiffs with crime. It is all very well to tell you that they separate the agents of the Insurance Companies from the acts of their subordinates; this is the mere clap-net of speechification, for no such distinction exists. We do not desire to deny that the defence to this action is the result of joint action upon the part of the Offices interested. If these Companies lent themselves to the base purposes of their underlings; if they defended this action without a full belief in the goodness of their cause, I admit to you they are deeply wrong, and they are incurring a heavy responsibility. For myself, I tell you, upon the word and honor of a professional man that if I did not believe this defence to be an honest one founded on truth and justice, I should look upon myself as a dishonored man. In stating this case to you, I shall carefully guard all my assertions, and in no respect go beyond the evidence that will be brought to support them; the charges are grave enough without this. We make no accusation of arson, we freely admit that there is nothing to justify such a suspicion; we do not pretend that the falsification of books and papers was made preparatory to the burning; but we do say, and we shall prove that after the fire there was gross overcharge, broad imposition and fraud supported by false swearing; grave as these charges are they are nothing to that which we do not make of defacing and falsifying books and accounts with a view to the destruction of property, and the making of a fraudulent claim thereafter. We set up in the first place that the Plaintiffs have not complied with the conditions of their policies; that they have never furnished us with a statement of their loss, the quantity, quality and value of the articles destroyed. But what we have received from them is an insufficient approximate calculation of what it might be. *Secondly*, that in this there were gross overcharges, to the extent of fully one half of the claim. *Thirdly*, that this statement was fraudulent and supported by false swearing. That this false swearing was contained in the affidavits of Mr. Empey, one of the Plaintiffs; and that these acts have vitiated the insurance, and relieved us of any liability for the loss which did actually occur. The facts on which you will have to return your verdict are seven; these have been ruled by the court, and will be submitted to you for your answers. The real salient points of the case are few and simple. There is no doubt that a fire did take place, and that a considerable amount of property was destroyed, some completely and more partially; it is not denied that there was a considerable loss, but it is absolutely necessary that these contracts

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of insurance should be carried out in good faith on both sides; if they are not so, the necessary consequence must be that there will be an end of them altogether. If when a fire takes place, the loser is allowed to estimate his loss at his own pleasure, without a specification of its nature or amount, if it is to be groped at through such a mass of vague figures and calculations extending over transactions of years, as we have had presented here, without a description of what kind of things were lost, the plain and simple course, which ought to be and must be taken—there is no security for Insurancé Companies at all, no safety in assuming risks. It is a provision of our policies, and a reasonable provisio, that we shall receive within a stated time if not an absolutely correct inventory, yet the best evidence which can be given; it will not do for the insured to say that because he cannot give an exact statement, he will give none at all. I admit that in the case of the destruction of a stock like that of the Plaintiffs, it would be impossible to go into precise details, but it was not impossible in a well regulated establishment, and the proofs of the Plaintiffs have specially tended to show that theirs is elaborately such an one, to have come within a reasonable time to a close approximate estimate of the kind and value of the loss. Our proposition is this, that such a statement the Plaintiffs were bound to have furnished us, and this we never had; we received no description of the articles destroyed, of their quantity, quality or value; these approximate details the Plaintiffs would never risk; they gave us nothing but a mass of figures to prove an enormous loss, a loss which if you do not suspect it now, I will prove to you before this case is over was a practical impossibility. We are told that at such a time their stock was worth so much, that since that their purchases were so much, and their sales so much, and the balance of deficiency is the amount of the loss. This is all we have ever got; we have investigated these statements for weeks and months, and tested them in every way, and the only conclusion we could come to, a conclusion which will be equally apparent to you is that they contain a gross overcharge, double the amount of the actual loss. I shall prove to you that these statements contain conflicting and fraudulent representations, supported by false oaths; that the books of account and papers have been mutilated, erased, and defaced; that there are discrepancies of all kinds, exaggerations, and all sorts of misstatements and evasions until the first wrong doing of an overcharge was added the greater crime of attempting to support it by fraud, imposition and false swearing. We rest our case upon these acts; we contend that they have vitiated the policies, and that we are not bound to pay anything on account of them. I tell you on behalf of the highly respectable Company that I represent that it is fully prepared to pay this and every claim that it is satisfied is fair and honest; this defence connected as it is

with a grave impeachment of the Plaintiffs character is to them a painful step, and one which they would have shrunk from if they did not feel it necessary to take it in their own and the public interest. It is necessary that Insurance Companies should have the courage and manliness to vindicate the public right as well as to protect their own property in cases of such gross imposition. If Insurance Companies are to understand that they are to be denuded of their legitimate defences, if public opinion is to pre-
judge these cases before they are heard, then is their utility destroyed, and their right to be protected from fraud, which they are entitled to in common with private individuals, unjustly taken away. If any man can upon his bare demand, unsupported by facts or probabilities, compel the Insurance Companies to pay him £12,000 more than his loss, then the making of such claims will become the best business going. We make no charge of intentional burning, but we rest our defence upon an overcharge unfairly supported by false testimony. The statement furnished us by the Plaintiffs after repeated demands, as an approximate description of the loss is a ridiculous affair, drawn up, as stated by the counsel for the defence, on board a steamboat between Boston and Halifax, sent back to Montreal, altered and corrected here, and handed in to us in the month of September six months after the fire. And such a statement as this we are expected to be satisfied with. Now let us take the circumstances of the fire, for on them the defence of the action principally rests. It was confined to the second story of a building 57 feet long, and less than 30 wide. The shelving extended upon the whole of the side next to Nichol's and upon about half of the other; there was none in front or rear; on the front there was a counter, with drawers beneath it, and there were also drawers under the greater part of the shelving. In the front next the window was a small office, railed off, but open above; on the outside of this a counter; on the inside was a desk, fire-place and safe, between this and the North side a table and the bonnet stand, 9 feet long by 3 feet 5 inches. The counter was 3 feet 7 inches wide; round the well of the stair-case was also a counter with shelving below; there were also two tables near the stairs. On the shop or lower flat the shelving extended upon three sides, the ceiling was higher and the shelves deeper. All the evidence goes to show that the fire lasted but a small space of time; without challenging the correctness of the testimony given on this head, which makes its duration from first to last but two hours, this is established. The alarm was given before one o'clock; two of the Plaintiffs were in the building after midnight; I call attention to this not as throwing any suspicion on the character of these gentlemen, I entirely ignore and disavow that intention, and I mention the fact because I am obliged to do so as a simple fact, from which I desire no evil inference to be drawn. They had gone over the building before they left, there had been no fire in it that day, there was no light,

no smoke, nothing to raise a suspicion. There was then no fire after midnight, which is an important fact. The gas was turned out by them above and below, and after the door was locked, one of them re-entered the shop to secure the bolt of a shutter which was not fastened. Mr. Morison says in his affidavit that he went immediately home, and that he noticed when he reached there that it was twenty-five minutes past 12. At a quarter past 12 there was no appearance of fire in the building, and in half an hour the first alarm was given; on this point the Plaintiffs evidence does not conflict with that which I shall bring. The engines were quickly on the spot, the fire was only a slight one, and active steps were taken to put it out. It could not have been burning long, it was in a close building, had no draft, and could not spread much. If the Plaintiffs had set fire to the premises themselves they would have given it air, and with a draft no doubt the whole would have been destroyed. Until the front door was broken in and a draft supplied the fire was not active; with the draft thus supplied the flame at once broke out of the front window. With the least possible delay after this two streams of water were poured on it, and it was put out; there was no difficulty in getting it under as soon as the engines played on it. A good deal has been said by some of the witnesses about the intense heat; it does not take much fire to make the building in which it is very hot, and uncomfortable; but it is evident there was but little fire; much of the counter was not burned, only a small portion of the shelving, the bonnet-stand was not entirely destroyed, and not even all the bonnets. The fire did not extend up stairs, and, although surrounded by combustible articles, only a few of the bannisters were burned. The door of the office was not burned, but only charred on one side, and on the top where the blast of flame passed over to the window on the door being opened below. Even the papers hanging on the wall were not entirely consumed. It is evident that the fire had got no hold of the office. It has been said that glass was melted in the office, and that it and a pewter inkstand were run together. I never knew that such things could be melted while standing on wood, and the wood not be consumed; it is a physical impossibility. If this melted glass and pewter were found in the office, they were put there afterwards. Except on the side next to Laurie's it is certain that however much the wood-work was charred it was not destroyed, neither the office railing, the shelving, counters or floor. It is not the manner of the fire we contest, we cast no imputation on the Plaintiffs on that head, and I am certain that you also will scout that idea; what we contend against is the imposition in the amount claimed. One witness spoke of having been knee-deep in water on this flat; how this could be with an open stair-case I cannot understand; burned and fallen goods might have choked the escape at times, but this could not have been

for long; there were no such piles of burned goods about the well as would occasion this for more than a few minutes. In the room of persons unaccustomed to fires, naturally excited, and forming erroneous impressions, I will bring you the firemen themselves, men accustomed to such scenes, perfectly cool and collected, and capable of forming reliable opinions of what did occur. They will tell you that Mr. Morison did not, as has been testified, enter the upper flat by the window; that he was not the first person to go up the ladder, nor was he on it at all while the engines were playing. If it was, as said, impossible at this time for any one to go up the stairs from the lower shop on account of the heat and smoke, how was it possible for him to have entered the office where pawter and glass was melting, from the window and be here to tell of it to-day, unless he is a Salamander. If he was the last to leave the premises before the fire, he certainly was not the first to enter after it. If he had done so the fact proves as much for the Defendants as any, for it shows that there was no fire of any consequence in the building. Witnesses have deposed that they saw him enter; I do not doubt that they honestly believe so, but it is only another proof of the unreliableness of impressions formed in much cases of excitement, as a proof of this I will mention a circumstance of recent occurrence, of a gentleman who was saved from a steamboat and was the means of saving two ladies. On his examination he swore that he went from one end of the boat to the other on the upper deck, and there dropped into the water; it was proved to him that this was an impossibility and that he must have gone down the stairs to the lower deck in order to do so, and although he was himself satisfied that he must have done so, yet he could not recall the circumstance to his mind, and he retained a vivid remembrance of a circumstance which could not, and did not occur. I say that there was but little fire in the building, and none in the office, the flame merely swept over it during the short time between the opening of the front door and the extinguishing of the flames; nothing of value or consequence was burned in it. All the fire on this flat to which it was confined was of such small extent, and of so short a duration that it could not have done any great amount of damage to woollen goods, which are naturally difficult of combustion, and of which the stock here principally consisted. Nothing was burned upon the story above but a small case of hosiery; as for the fire which witnesses have spoken of as breaking out there after the other was put out, it was confined to a partition, created no alarm, and was put out by tearing down the plaster, and pouring in a few buckets of water; some shelves were torn down, but none were burned, and all was put out without difficulty or damage but what I have stated, which was fully assessed. Of so little account was this fire that the tenants of the adjoining stores removed none of their goods; and on the

ground floor hardly any injury was done except by smoke and water. On this head I will give distinct and actual proof by firemen and Insurance Agents, men entitled to credit, accustomed to such scenes, whose business it is to observe closely, and competent to form an accurate judgment, far more so than the casual and unaccustomed spectator, and not liable to form exaggerated and unreliable impressions. After the fire the first thing done was to ascertain its origin and although this could not be traced, yet I am bound to tell you that this raised no difficulty or suspicion. When one of the plaintiffs was asked if their books and papers were saved, he said that they were; the stock was taken but a short time before, and it was supposed that there would be no difficulty in the settlement of the loss. The Insurers under these circumstances did not exercise that caution which they would otherwise have done; they presumed that everything was correct and left everything in the hands of the plaintiffs. When the Insurance Agents found that goods were being sent to Banning & Barsalou's by the cart load, they required that an invoice should be made of them, but this was entrusted to the plaintiffs and their clerks without interference or supervision. At this time the Insurance Agents were not exhibiting harshness or suspicion; the fault was in entertaining too great confidence, and in not protecting their own interests with more jealousy. As to the bulk of goods sent to auction, and the number of cart loads, the fact is that the loads were not of the largest; the actual quantity of destroyed goods among them was small; before the carting took place a good deal of rubbish from the shelves and the broken plaster had doubtless been mixed up with them. With regard to those invoiced at £4,522, and sold, there is no dispute, nor of the £2,647 allowed as depreciation upon the partially damaged stock left with the plaintiffs, and assessed by Messrs. Mair and Roy. It was not until this appraisal was made, and a fanciful balance struck, and we found the deficiency was estimated at £23,696, that suspicions were aroused that there was some great mistake. The stock was taken again by the plaintiffs Clerks in the presence of the appraisers who occasionally verified their work and the result proved just this, that assuming the measurement and prices on these to be correct, the stock was twice called off with the same result. Of the £23,696 being the total of plaintiffs claim, £16,525 represented goods which had totally vanished, gone off in smoke and ashes and left no trace, but a mass of indistinguishable rubbish. In this extraordinary fire which burned but a small fraction of woodwork, which had not lasted half an hour and smouldered perhaps fifteen minutes, which had left the banisters standing, did not consume all the bonnets, nor the stand they were on, which scorched only one side of the office partition, which left papers on the wall not entirely consumed, and abundance of goods invoiceable in the shelves—this fire smouldering and

not flaming, which had water cast on it as soon as it burst out,—had reduced to ashes, and indistinguishable rubbish, goods principally woollen, and the hardest to consume, to the amount of £16,525. Gentlemen, it is impossible; I cannot believe it; the age of miracles is past; wool does not burn as fast as dry wood, and that was only scorched. These goods were packed, it is said, in solid piles as tight as it was possible; such piles are not to be destroyed in five minutes; wool is an animal substance; it is as hard to burn as the human body; it takes a great deal of wood to burn it; it melts down before it consumes. The carpets were not burned, they were injured, and some ends of them charred; if these did not consume what became of these extensive piles of cloth sworn to by the witnesses, which it was hardly possible to have put in the space described? There could have been no such piles, and no such quantities upon the counters as described. You cannot believe—no one in their senses can believe that all this destruction could have been done in this short time; the counters would have burned first and then the goods, but the goods were gone and the counters left. If there had been the piles described about the staircase, when water was thrown on them they would have been knocked over, and fallen down the well hole; but there was no quantity of rubbish below. No doubt some were destroyed, and the ends of others; it is quite possible that the store was too full for Plaintiffs interests, and that goods were packed in endways on the shelves. But common sense points out that in removing them the night before the fire, to allow the painters to work, that as much as possible would be packed in the shelves, and what were put down on the floor and counters would be laid loosely. I doubt this hypothetical great pile; it is impossible that it could have utterly perished; clerks may not have seen these goods after the fire, because they were probably thrown down into the water, but remained they must have done in a state to be recognized and invoiced; neither were the costly goods described. Some of the carpets nearer to the strength of the fire than these were, sold at the auction as high as 4s 5d a yard, as damaged goods, and yet we are told that further off, £16,500 of woollen goods went off in smoke and ashes. Subject this statement to another test and its improbability is more apparent. The goods left little injured upon the second story were appraised at £1,524, there were invoiced to Benning & Barsalou £4,522, allowed for cuttings of burnt ends £904, claimed as destroyed totally £16,525, making as the valuation of the stock in this part of the premises £23,475. The goods on the ground floor where there is far more shelving, in length and height, and where the silks, ribbons and velvets were kept, were only appraised at £11,000; on the third floor at £6,000, and on the Attic £700, which makes the value of the second floor double that of the one below, and one half more than all the others put together;

more in fact than could be under any circumstances packed into the space. Upon this claim a long and painful investigation followed. It was the beginning of May that the first intimation of its magnitude reached the Insurers, and suspicions were aroused, but still there was no intimation of the loss of any books or papers, but on the contrary a positive declaration that all were saved. Upon the receipt of the claim Mr. Maitland wrote to the Plaintiffs, requesting that the stock sheets upon which the recapitulation was founded should be sent to the Committee of investigation. Up to this time the Insurers had felt nothing but a confidence almost childish, and the enquiries had been confined to the origin of the fire alone; now it was found that the greater part of these stock sheets for 1855 were not forthcoming. It has been said that Plaintiffs did not resort to Council until September, but we find that they had been taking advice since the time of the fire, and on the 2d of May Neil, the Book-keeper, swears to an affidavit drawn up by their legal advisers. You have heard the explanation which he has given of the loss of these sheets, and the wide difference between his first and subsequent statements. Six is the greatest number of these stock sheets which he admits that he left on his desk the night of the fire, but there are seventeen missing. I do not charge him with perjury, but I say that he incautiously swore to an affidavit without due consideration of its contents. These seventeen missing stock sheets were not left out upon the desk the night of the fire; we have had ample proof of the exact manner in which the Plaintiffs conduct their business, and may be sure that their keenness and methodical accuracy would extend also to the careful security of all their books and papers. I do not believe that there was any intention of fraud before the fire. Mr. Empey was the last person in the office; it was his particular department. If these books had been left upon the desk it is reasonable to suppose that he would have placed them in the safe, as it is testified that he had done before. It is not to be supposed that he took these sheets out of the safe and left them there to be burned, nor do I believe he did; nor do I believe that in that fire any were burned. There are both external and internal evidences upon the stock and recapitulation sheets of 1854 and 1855 to show in spite of all boasts of the accuracy of their concoction, that they are neither infallible nor free from the taint of strong suspicion. They contain many errors of calculation, addition and extension, and some of them the appearance of alterations, abstraction and fabrication. With respect to the rate of advance marked upon these sheets, the witness, Neil, says that those marked 50 meant an advance of that percentage, that those marked 75, an advance of that amount, those not marked at all are taken at 87½ per cent, but those marked 100 mean all sorts of rates averaging 87½. The result of this rating of the 100 per cent sheets at 87½ per cent is to give the Plaintiffs

an addition of £700 to their stock. This item of £700 thus gained may not have been intended as a fraud before the fire, but it became so afterwards by the claim being based upon it. There is another significant fact as connected with these stock sheets—the 16 saved average about £1,000 of valuation each, but the 17 missing average about £2,000 each, those that we cannot check are double the average of those we can. From the witnesses produced by Plaintiffs, clerks in their store who have been with them for years, nothing in the shape of an estimate of the stock before the fire could be got; they had abundance of information on other subjects, but when it came to this there was a stoppage. Mr. Pape estimated the lower story at £12,000 which was near the mark, and he was the only man that swore to a loss of £16,000 upon the second story; but with the exception of his own department he is all at sea; he estimated the third story at £2,000 instead of £6,000, and the Attics £75 instead of £700, and did not estimate enough to cover the claim put in. The others would not value or guess anything. They believe the stock-taking to be perfectly correct and the amount of it undeniable in the gross, but when they are called upon to show how they arrive at this conclusion, and to test the details, they cannot condescend to particularise, but deal in generalities alone. Attempt to locate this imaginary stock, and value them department by department, and the thing wont work out; they cannot account for half the goods represented to have been on the second story, and yet we were expected to pay it without a question. We find in these stock sheets £798 of fixtures carried in with the goods, and although we had no insurance on fixtures, and they were paid for in other offices, yet this goes to swell this *hocus pocus* of a claim against us. Fixtures are more liable to damage from fire than goods, yet we find that the loss on these was only a fourth of the value, while the claimed damage on goods at their own valuation is vastly greater; although wood burns easier than wool, we contend that the stock sheet are utterly unreliable; we have shown in them overcharges to the amount of £1,500 and probably there is more. The Committee of Investigation was not satisfied with these figures, and, to test them, made an effort to locate the goods. Stock-book No. 17 was put into Mr. Empey's hands, and he was asked to tell what the goods were upon that sheet, and where they were situated at the time of the fire. The answers made by him were of such an evasive and an unsatisfactory character, that one of the gentlemen made the memorandum—"Empey shirks." Foiled in the attempt to find what these goods were that had disappeared in rubbish and ashes, and then place in the inventory, Mr. Geddes set to work to go over the Invoices of importations, and thus attempt to verify the stock-book. Mr. McKenzie has told you that £30,000 is a very large stock for a retail Dry Goods establishment; men of his stamp could not be got to

say that £40,000 was a probable stock for such a store. It suits the business purposes of this firm to let the clerks and others understand how enormous their stock is, how much greater than that of Mr. A. or Mr. B.; it is a trick of the trade; there is an advertising House, which now and then announces that it is selling off at 25 per cent below cost, not that I believe it does so as a rule, but during the bad season of 1854, with an enormous stock, slow of sale, and with a necessity to obtain means to meet their engagements, I have no doubt that they did. Mr. Geddes in his attempt to verify the stock of 1855, assumed that the stock shown as a balance in 1854 was correct; he added to this the amount of goods on the face of the invoices, and deducted therefrom the cash sales, less the assumed profit, and the calculation broke down with a deficiency of £3,000. It has been said that Mr. Geddes in this investigation discovered an error of £386 17s 6d in favor of the Plaintiffs, for which they made an additional claim upon the 26th of May; the discovery was not made by Mr. Geddes nor was he at all satisfied of its correctness. The stock sheets and balance of 1854 were no more reliable than that of 1855, and by estimating in these some statements at cost price, and others at selling price, errors to a large amount were made in the sales between March and May, 1854, amounting to over £1,000.

It has been said that Plaintiffs did strictly a cash business, and at fixed profits, upon which their final profit is predicted. Now, it will be shown that credit is given, and that ten per cent. is deducted to wholesale purchasers. This seriously interferes with the profit of one-fifth, which they start upon, which is the basis of all the calculations submitted to you as proofs of the amount of stock in either years. The larger the apparent profit, the larger the estimated stock on hand. The able and honest accountants who were examined yesterday in support of this claim, have told you that these goods, estimated to cost them, laid down, £150 currency for the sterling hundred, in reality cost them from £152 to £153; therefore, to make this suppositious profit of one-fifth, they would have to sell their goods at an average of 90 per cent. advance, instead of at their average of 87½. If they did not do so, they never got this profit of one-fifth, and away go all these calculations. Admit all my premises, and I will prove anything. And this is the amount of the evidence of these gentlemen. Granting that the balance of 1854 is correct, and that the goods account of 1854 and '5 is correct, and the rate of profit correct, why, then, the stock in store on the night of the fire was £41,230. I don't deny it; the calculation is perfectly correct; establish the truth of your data, and the results follow as they have been stated, as a mathematical demonstration. But we deny that any of the premises are true, and thereon the whole fabric built upon it crumbles down. Figures can be made to lie tremend-

ously, and the man who accepts them as infallible is a great fool. The amended claim was filed in June, full of flaws, errors and inconsistencies, and the books were called for to verify and unravel these contradictory statements; and now, for the first time, we became aware that the old journal and ledger were partially destroyed. Pages were missing from both,—the former burnt off, and others partially so. There was also a private ledger, with a lock, belonging to Mr. Empey, out of which he had given the committee information which could not be found elsewhere; and they asked for this too to aid them in clearing up matters which otherwise they had no clue to. Mr. Empey demurred to giving it up, as a private book, which he would no more allow to be brought before a public meeting than a bundle of private letters, that it contained nothing more than was to be found in their perfect ledger. Now these perfect books, upon examination, we found to be altered; to contain falsifications and erasures, with many leaves and pages abstracted. The casual glances which the Committee got satisfied them that instead of private memorandums, it contained information relative to the affairs of Morrison, Cameron & Empey, to be found nowhere else. We have demanded the production of this book, and served a notice for it, but no doubt we shall have as much trouble in obtaining it as we had in getting at the amount of goods turned into ashes. Difficulties constantly multiplied about this investigation; whatever information was wanted had got burned, and everything that was particularly looked into crumbled away before our eyes. The books were so mutilated as not to explain themselves, and when we asked for information we sometimes got an answer and sometimes not. There is no doubt that the chief part of this burden fell upon Messrs. Geddes and Whyddon. The stock sheets of 1853 were burned; those of 1854 were in an unsatisfactory state from erasures. In order to check these, a goods account, from the commencement of their business, was required; and on the 6th of July, a paper purporting to be an account, Cr. Cash Sales and Dr. Goods Purchases, was put in. The accountants who had examined it will tell you its peculiarities. Almost as soon as it was looked at a glaring error was perceived, and the list was at an end—knocked into a cocked hat. Another was prepared to put in, and Plaintiffs asked to be allowed to withdraw the first which was not granted. More was coming out about burned books, and on the 14th of June Mr. Whyddon wrote to the Plaintiffs for a statement of quantity, description and value of all the goods burned into ashes, and a list of all goods and documents burned in the fire, and of any missing before that time. *Apropos* of this last question, comes the answer, we lost no book or document previous to the fire. In the list of burned books now furnished were many of great importance. Much has been said about the statement re-

quired by Mr. Whyddon of the description, quantity, and value of the goods totally consumed; and it has been attempted to be represented as a demand for a thing which was manifestly impossible for the Plaintiffs to supply—a document literally accurate. We never expected, we never asked for it; all that we required was an approximate statement, according to the terms of the policies issued by us; the best evidence which the insured was capable of giving. There was no desire to entrap these unfortunate men, as they are termed by the learned Counsel; we asked for no more than our perfect right; for what we have been labouring to obtain for months; for let it be remembered that the written communications put in, form but a small portion of the correspondence. We were in daily, almost hourly, communication with the Plaintiffs, and all our efforts from the time of the fire had been directed to obtaining something like an account of the enormous loss claimed, its quality, quantity and value. We had had calculations of all sorts; accounts running back to the commencement of their business; everything except what we wanted. Give us a list, we said, of what was destroyed, as near as you can make it; surely there was no trap in this, and no unreasonable demand. But, Gentlemen, this was exactly what the Plaintiffs did not want to do; they did not dare to trust their case upon this foundation, and they do not do it now.

The first goods account furnished was full of errors; the second, called a corrected statement, differed materially from the first; but the errors were greater, and there were radical changes in it, to which I shall refer hereafter. And now, when it became so necessary to us that we should be able to check and examine, and disentangle these contradictory statements, we found that these perfect books, as Mr. Empey called them, were imperfect, just where we required them. Great stress has been laid upon the efforts which the Plaintiffs made to supply us with information, of their anxiety, in spite of distrust, unjust suspicions, and the oppression of the Insurance Offices, to supply us with every possible explanation concerning their affairs. If promises were of the same weight as performances, this would be literally true. When anything was asked of them, we had an immediate reply, "Oh! yes, certainly; we will obtain it for you immediately;" but we never got beyond the promise to its consummation. They were like the son in the parable—he was always saying, "I go," but went not. We could get abundance of information that was of no use to us, and of calculations which we did not need. We asked for bread, and they gave us stones; but the simple and easy reply, to be given information which we did need, we could not get. We told them to locate this loss, show us what this £16,000 of burned goods consisted, and how they were placed—make this apparent. We have had generalities enough with regard to the loss; now let the truth come out—let the spear of Ithu-

riel touch it, and let us see the facts. It has been complained that, for months, we kept back our grounds of objection to this claim, and that we should have put in specific reasons and made specific requirements for proof. This is a mere evasion. From the moment that this claim was made, it was known to the Plaintiffs that we were not satisfied with it—that we could not believe it possible, either, that they had such a stock, as they alleged, in their possession, or had suffered any such loss as they set up. We asked for proof of both; the want of it was the sole objection to its payment, at first. We had a right to know the particulars of the claim we were called on to pay; we had a right to demand reasonable proof of it; we did not get it, and this was our objection. Others arose after, and every demand for information was a clear intimation of what we required. Complaints have been made at Mr. Whyddon's enquiries, and his rudeness. No doubt, they came in contact under painful circumstances—painful to both parties. It was not an enviable office for Mr. Whyddon to tell any man that he doubted what he said—that this claim was a fraudulent one, and that the books which were intended to support it had been altered, defaced, retracted and mutilated. It is said that he endeavoured to entrap Mr. Empey into swearing a false affidavit, and of being liberal of blandishments to do so. The party assured is bound by his policy to make one oath, when required, of a statement of his loss, and the circumstances attending it. These circumstances had been stated to Mr. Whyddon again and again, by Mr. Empey, and the former more than doubted them; he used no blandishments—if anything, it was bullying; there was neither blandishment or intention to entrap; the parties were not on terms of this kind—they had already come into unpleasant collision. When Mr. Whyddon found out the imposition attempted to be practised, the disappearance of the stock-sheets and books, the abstraction of leaves from the books of account, the elaborate be-puzzling of what remained, and the mystery of this little ledger and the doubtful explanations, he gave Mr. Empey that affidavit as a challenge—he said to him, I test you; swear it. Do you call this entrapping; it cast down the gauntlet to him to verify these repeated statements, and to give them an enduring form. The affidavit was full of blanks. It was not asked of him to swear this, although it suggested his former statements; he could alter it at his pleasure, and the notes at the sides pointed this out. Mr. Empey refused to swear it, and swore something else. What he refused to do is of very little consequence; what we have to deal with is, what he did depose to. There is this approximate statement, too. After great pains to prove the impossibility of preparing, we get the thing; it is made, as it was, on board a steamboat, when the Agents insisted that they would have it in black and white what was destroyed; but it was neither signed nor attested, nor is

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it to this day. And that is all we have got, except the burnt ends of the damaged goods sold, and set down at 20 per cent., of the value of £904 11s 9d, in the shape of detail for the £16,000 that disappeared in this fire. What was there, in the persisting in the demand for this information, extraordinary or unjust. Let any one look at this approximate statement and say that he believes such a fire, so faint and dull, smouldering for a few minutes, not active enough to burn the counters and the partitions— which left the shelving up and the stairs unhurt, and plenty of goods uninjured, utterly destroyed and swept away, without leaving a trace or vestige, but these apocryphal cartloads of rubbish, £16,500 of woollen cloths, bulky, inconsumable, and of no great value, relatively; if he can, I have done with it. After the Plaintiffs had exhausted all their ingenuity in the concoction of this list, they were compelled to add to it the small sum of £600 for sundries that could not be forced otherwise. There was £100 for parasols; there might have been a few, but that amount is not likely. The great mass are bulky woollen goods, not inflammable; goods that would not burn as fast as wood—that had been packed as close as they could be, and thus protecting themselves. I say that it is perfectly certain that nothing like the quantity claimed could have been destroyed, unless the whole building had gone, too. We allege that the affidavit of Empey, which sets forth this loss and the extent of it, is not true; and that the affidavit of Neil, relative to the burning of the stock books, we stamp as false, and procured by Plaintiffs for their benefit. Now, I come to the circumstance of the books and stock sheets; it will be proved to you that, the day after the fire, one of the Plaintiffs stated to several witnesses that they were all saved; after a considerable time, we are told that some are burned; then, more are missing, just as they were wanted. The stock sheets, said to be at Empey's house in the course of extension, have also disappeared, and the missing ones are just those that are required to verify the approximate statement. We are told that these were left out on the night of the fire, and not discovered to be lost until some time after. The statements made by Plaintiffs at different times, respecting these sheets, are as contradictory as possible. Then comes this dark, blue, private ledger, so sedulously concealed, and afterwards defaced. The learned counsel for the Plaintiffs has threatened us with some terrible infliction on this head; *a la bonheur*, we shall traverse this somewhat, and shall not fear to fight this battle, if tendered to us. The reason why the specific objections to this claim were not made before, was simply because the investigation was not terminated, and the report of the Committee was not made until the 18th or 20th of September, after this action was instituted. Mr. Routh was mistaken when he stated in his evidence that this report was made before the institution of the action; the final report was not made. The

gentlemen employed delayed so long as there was a possibility of obtaining an explanation of these wide discrepancies; what has been imputed to them as a fault was really creditable to them—it was the result of a generous forbearance. They were desirous of avoiding, like kind-hearted men, coming to the conclusion forced upon them; and, although individuals had made up their minds as to the nature of the case, yet the final decision was put off, to afford the Plaintiffs the opportunity of explanation, so long as they showed any disposition to give it, and to relieve them from a painful and, otherwise inevitable duty. And they acted rightly, if not wisely, in so doing. It was not until they were compelled that they adopted the last alternative. Even then they were willing to waive the advantages of their position, and then came the offer of arbitration; and that offer was made by advice of counsel. It is provided for in clauses of the policies, when other means of coming to an agreement have proved to be ineffectual. The answer was a clever one, they said they would be happy to arbitrate, provided that we would withdraw the insinuations on their character. When the question was one of belief—when we were satisfied that an attempt had been made at egregious swindling—when the statements, and explanations, and swearing, to support the evidence, a gross overcharge, imposition, fraud, and false swearing, we were asked to commence an inquiry, which must naturally embrace their investigation into these, by a declaration that we believed the Plaintiffs to be honest men, and thereby to cut us off from the very foundation of our defence, to establish the truth and genuineness of the very documents we challenged as untrue and sophisticated, and to commence the trial of the claim by admissions that established it to be correct. We could not do it; we replied that we would give them a public arbitration, under an order of Court, in a manner to ensure as ample an amount of publicity, and opportunity for vindication as could be had by this. It has been said that the arbitration would have been a back office affair, and the arbitrators, Messrs. Geddes and Whyddon; they know when an arbitration is offered that one side does not choose the arbitrators; the Agents of the Insurance Company on their side would have named a man of the highest standing, of the greatest experience, and unimpeached integrity; their arbitrator would have been Mr. Court, and no doubt the Plaintiffs would have acted similarly. There was no idea of taking any man against whom there could have been the slightest imputation of interest, or unfairness; the offer was made in good faith, and if accepted would have secured as large a measure of publicity as a public trial. What publicity is obtained by this, witnessed only by a few dozen spectators? It is the result which constitutes the publicity, and that would have been had. The ending, if in their favor, would have been more honourable by the sub-

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mission of the whole facts of the case, than by confining it to a mere question of figures : all the points would have been discussed, investigated, and disposed of, and the decision, whatever it was, would have commanded the respect of all. The Insurance Companies are now defending this case with a view of saving a few pounds ; it is well known that they compete most keenly for the reputation of liberality of settlement of honest claims against them ; it is peculiarly their interest to establish a name for prompt and honourable conduct. The attempt to cast the responsibility of this contest upon the subordinates, is all clap-trap ; the Agents and Boards, in view of the facts of this case, have come to the conclusion of resisting this claim upon higher grounds than mere personal feeling. There has been exaggerations, if not moral turpitude ; the case does not rest upon a mere question of figures ; it is not a mistake to be adjusted by a determination of a sound amount ; we claim that this exaggeration has been fraudulently made ; we claim exemption on this alone ; we waive all other pleas ; we are content to confine ourselves to the issue of fraud, or no fraud, since this fire ; and if there has not been our contract holds. Neither the instructions of my client, or my own feelings, lead me to do more than their sense of duty dictates, and the facts will warrant. We contend that claim this has been exaggerated to double its true proportion ; it is out of the range of possibility ; it is not proved by direct evidence to have been even as much as this. The plaintiffs are men of exact system, of high administrative talent ; each department has its chief and his subordinate, and with their combined knowledge there could be no difficulty in ascertaining the whole loss to within £500 or £1,000, instead of this great margin of £16,000. The evidence has been all loose impressions of individuals, not of the firemen who put out the fire, as to its extent or duration, not of the clerks ; and that which could have been easily established by positive evidence, has been left to be waded for through masses of distorted figures, and loose generalities. We are told of a Bonnet stand that was capable of containing an almost incalculable quantity, that it has contained thousands, that it was fuller than ever, but when we press home the determination of the number we are balked, and cannot get any nearer than it might be 1,000 or 4,000. The piles of cloth and other goods are only piles ; we can get no information of their size, no clue to their contents, no approximation to their value. If they were piled as represented, they were not destroyed ; they could not have been. Accountants are brought up, and this is the most imposing part of the case, and they predicate their statements, and work out the conclusion on data, which I shall show you to be false. Granting that the stock-taking of 1854 is right, the conclusions they draw from it are essentially right also, but there is nothing to show that it was correct. But even the statement established on this basis, by a single error, falls £1,000 short of the amount

returned as the balance of the stock account of last year. Grant all the facts assumed, and the conclusions follow, it needs no accountant to tell us that; but investigate them and the whole fabric built on them, falls to pieces. The second statement is of the same nature, and open to the same objections; it is predicated upon assumptions not provable, but which on the contrary are untrue. The starting balance is taken for granted, the advance is not a real but an imaginary one, and some of its other details equally erroneous. The books do not prove the correctness of these statements, they corroborate them in no essential, but on the contrary they disprove them. Our accountants have gone over the same ground, but instead of assuming as correct the balance of May, 1854, they have worked back to the statement of February, and there is at once a difference of £1,000 in the result. These gentlemen instead of going direct to the results, have gone round about and deceived themselves, because they should take the one-fifth off the March and April sales, in order to bring the proper balance over, and which makes a difference of over £1,000.

Nor is this the only error of the same kind; there is a further amount of £3,000 set down as cash purchases in the year 1854 and '55 for which there is insufficient data. We shall prove to you that the goods which passed through the Custom House are less by £3,000 than the amount claimed in another statement as the importation of that year. The accountants state the European purchases from the 28th of February, 1854, to the same date 1855, to be £25,470 1s 7d sterling, or, at the Custom House rate of 94 per cent. advance, in currency, thus:—

| | | | |
|-------------------------|---------|----|---|
| European Purchases..... | £30,588 | 5 | 9 |
| American Purchases..... | 369 | 18 | 1 |
| | £30,958 | 3 | 0 |

The returns given by the Custom House, and which will be proved by its officers, show only these amounts:—

| | | | |
|-------------------------|---------|----|----|
| European Purchases..... | £27,378 | 17 | 3 |
| American Purchases..... | 340 | 14 | 3 |
| | £27,919 | 16 | 11 |

The difference between the two statements, being on this item alone £3,258 12s 4d. And the Customs returns show also that within a very short time after, about a week, there was taken out of the bonding Warehouse an amount which would cover this discrepancy, or about £4,000. These goods belonging of right to the following year. It was the same result which had in the first place staggered Mr. Geddes in his investigation; he first came upon this mistake of £1,062, then this other of £3,258 of goods not received into stock, yet carried to it, then came the estimation of profits at

one-fifth which was based upon the assumption that these goods cost them an average advance of 50 per cent on the sterling, when it was evident to him and has been proved by their own accountants that they stood them in 52 or 53 per cent, which showed that even if they sold at an average advance of 87½ per cent, would not bring out the profit of one-fifth on which all these calculations are based. Now with regard to this advance, the kind of business done by the Plaintiffs, the bad season from the Cholera, the necessity which existed of a firm holding so heavy a stock upon a small capital to realize the means of meeting its current liabilities even at a sacrifice, combined to make it quite evident that as regarded the operations of 1854, no such profit could be presumed. Plaintiffs statement No. 3 is of the same kind, it is predicated upon unproved assumptions, all of which require to be granted to obtain the required result; it is a repetition of the old joke of going from London to Westminster by way of York; it extends to the transactions of all the years the Plaintiffs have been in business, sets forth the gross amount of their purchases, deducts the total sales, adds to the result the imaginary profit, and amount for depreciation, and brings out a balance to prove a foregone conclusion. No dependence is to be placed on this system of retrograde arithmetic. There are mistakes upon mistakes in all these statements, and in all the accounts and calculations on which they are founded. In the goods account of 1853, we find the sum of £1,272 abstracted from its proper position as charges, and converted into goods; the corresponding item in that account, for which it is submitted being, £617 15s 9d, while the same sum of £1,272 in the charges account, so abstracted, remained still under its proper head, and was carried on to the next page as charges, and added unto the final result of that account, £2,900, and ledgered so. When was this change made? The alteration was clearly after the posting, and we shall prove it. The folio of the charges account is 12, that of Goods 6, the figura 12 has been changed to 6 but the alteration is not completed, and bears over it a pencil entry of "Goods only"—£617 15s 9d; it has been clobbered to bring about the required result. Instead of the account being made up from the books, the books have been manufactured to fit the accounts. Other alterations and erasures have been made, other entries carried from the proper place, to swell the amount of the supposed stock, and to build up a foregone conclusion of an exaggeration, on which to erect the fabric of this claim, and to convince us that these stock-takings and balances, proving each other by a novel species of arithmetic, are all correct. We are also charged with fixtures upon which we had no insurance, but which have been covered by Policies in other offices, and which have been settled for, carried into the goods account, from which the claim against us is drawn, a sum of £798 15s 1d; by these, and a third small error of £23 5s, we get a sum of over estima-

tion of stock, admitting the stock sheets to be otherwise correct, of £1,522 10s. The stock sheets of 1853 are missing altogether, said to be burned. The Goods Account in the Ledger is burnt out, and of the entries covering four pages there remain but a few figures; almost the last amount which can be traced in that account is a balance of £16,760 14s 7½d, and not £23,087 11s 1d pretended to have been and set forth in these statements as having been the balance at the end of that year. The Journal ends in September or October, 1853; the Day Book, although it contains entries up to the 8th of February, 1855, is prepared in such a way as to give no information from February, 1854, to July 1854. What then becomes of the stress laid upon the repeated demands of the possession of these books by the Plaintiffs as necessary to support their claim? They could not have been, in their then state, of any possible utility to the Plaintiffs, and the demand was plainly, like the comments on it, for mere stage effect. Then we come to the gaps in these books, all occurring just where information was required to check the validity of others, just where we need light, and turn towards it, it disappears through some mysterious and incomprehensible accident. The gap in the Journal and two others were found at the same time, and then it was found necessary in our own defence to retain these books. When Mr. Empey was told of the absence of these four leaves, and the book was laid open before him, he told the story of the Clerk, Rutherford, having spilled the ink over them, and of his having scolded him for it, that it was proposed to start a new book, but it was finally determined to tear the leaves out. But in turning over the leaves he pointed out the place of another gap as the location of this abstraction. What would have been proved if the contents of these pages had remained we cannot tell; they might have been of the last importance to us as establishing the real amount of previous stock balances apart from the stock sheets, the effect to us is that we cannot verify anything from 1851 to 1854. I am aware that a sort of insinuation is made that the abstraction of these leaves has been the act of the Defendants or their agents, and done after these books passed into their possession; the insinuation is too monstrous for belief that such a diabolical conspiracy existed to bring the Plaintiffs under the imputation of wrong doing, and to deprive them of the advantages of their policies. I tell the learned Counsel and the Plaintiffs in this case that they had better pause; that they had better take care, for by Jove there are some things which cannot be borne. In withholding these books, we knew exactly the kind of risk we ran, and were prepared to stand the brunt of it. In our own defence we had to keep them, they contained a large portion of our evidence in the alterations, abstractions and erasures; which had been made for the purpose of supporting this astounding claim. We could arrive at no other conclusion than that these

were positive and undeniable evidence, that, not before but since the fire the books had been erased, mutilated and destroyed to obliterate the traces of a dishonest act, and to foil the detection of gross fraud, broad imposition, and false swearing. This is the conclusion which the Defendants came to; on my honor, sorry as I am to come to it, it is mine also: and when you have heard the evidence, it will be yours. And now, gentlemen, having placed before you these grounds of our defence, I shall without further comment proceed to lay before you the evidence on which they rest. I hope I have kept the promise which I made you at the beginning of my remarks not to travel out of the record, to make no assertion that is not within our proofs, to cast no imputation that is not warrantable, and unavoidable, to exaggerate in no manner the sufficiently dark features of this case. I have had a painful duty to perform, one that I would gladly have shrunk from, one that my clients but from imperative necessity would gladly have escaped from. I tell you, as a gentleman, as a man, that my instructions have been rather to extenuate than to exaggerate, and to push nothing further than the truth would warrant, and their rights required; and on my honor, gentlemen, as a professional man, I tell you had more been asked of me, I would not have done it. Having done no more than the right appreciation of the broad facts demanded, in the just exercise of a public duty, I will lay the evidence before you; I shall call men of high character, of unimpeachable integrity to substantiate the charges made in the pleadings, and I trust you, gentlemen of the Jury, on your consciences as men bound by an oath, if you believe the Plaintiffs to be honest and true, if you believe that this evidence does not substantiate the record, will give the Plaintiffs a deliverance; but if not, if you find that there has been in this approximate statement of their loss, as we allege, gross exaggeration, broad imposition, and fraud, supported by false swearing, you will not shrink from your duty and give my clients a verdict which on my conscience I believe they richly deserve.

The Notice to produce Books of Accounts was then read; as also the several affidavits of the Plaintiffs referred to and in the records.

William Spiers, sworn.—I was called on professionally to examine the premises after the fire, the shelving next to Laurie's was partially burned, a small portion under the stairs; the bulk of the fire was in front of the chimney and under the stairs; very little of the wood work was consumed, but broke away; the size of the gap, in a slanting direction, was 8 or 10 or 12 feet in different places from where the fire originated near and under the stairs; the shelving opposite was blackened, but not consumed. The end of the railing of the office was charred and some of the top gone, standing entire, but charred. Part of the railing of the stairs leading to the third story was charred, and part of the railing burned; the railing is generally hard wood, and hard to burn. Top rail of the office the same,

the shelves are pine. The base next to Laurie's was not burned, and no fire proceeded from below; there were three holes in the floor from burning down.

Plaintiffs Counsel.—I have no question to ask this witness.

Robert Williams, sworn.—I am a fireman; was at the fire in question with the Union; am a cabinet maker also; arrived at the fire between 12 and 1 with the first engine on the ground, the next was the Protector; Hook and Ladder Co. came as soon as us; a ladder was put up to the second story window as soon as we got there; I went up with Hudson the assistant branchman; there was a small fire coming from the window. After pumping a while, I went inside, then went down leaving the branch in charge of Hudson. Mr. Morison did not pass me on the ladder; I would not have let any one pass me; I left Hudson on the window sill. We pumped not more than twenty minutes from the commencement until we began to pack up. From the time we got there, the fire gained no head. I did not go through the shop. The fire did not get into the lower part of the office, the rail on top was partly burned; it did not take two minutes to put out the fire about the window. I don't think a bound book could have had the cover burned off in the office, as the panel work was not burned.

Cross-Examined.—I was out in Notre Dame Street that night near St. Gabriel Street, when I heard the alarm from the Police Station in De Bleury Street, I ran down to the Haymarket, and met the engine at Kelly's; saw fire and smoke in the premises as I passed. There was a scrimmage about the ladder, and also about the Hose Reel; one man was shoved over. The Protector Engine came from St. Lambert's Hill, the Hose Company from Craig Street, the Union from the Haymarket. They got there almost all together. I will not swear Mr. Morison did not hold me on the ladder, I don't believe he did do so; I did not see him; I believe the man behind me was Hudson, and another man named Fabien who lived at Stephens', the Saddler's. Mr. Morison could not have passed me without my seeing him.

John Hudson, sworn.—I lived in McGill Street, on the night of the fire, and went there as Assistant Branchman to the Union. When the ladder was placed, Williams went up first and me after. Williams broke open the window standing on the sill, and in a few minutes put out the fire; he then came down and I went into the office with the branch, and played on the goods burning on the floor. The chief came in and ordered me to stop after we had been pumping 20 or 25 minutes, we then packed up and went home. I know the plaintiffs, did not see them pass on the ladder, they could not. When I was in the office, no one was with me until the chief came. The rail of the office was burnt when I got in; the fire had not gained any head after we began pumping but went right out.

Plaintiffs Counsel.—No question to ask the witness.

Alex. Bertram, sworn.—I am the chief of the Fire Department, on the night of the fire I lived in Dalhousie Square, was alarmed by the Police as usual, proceeded by a Calash, as hard as he could drive, knowing the direction of the alarm. When I got to the French Square, I saw smoke and a dark light; when near the old residence of Mr. Gibb, I saw the flames coming from the front. When near the Recollet Church saw a ladder go up, and a branchman playing on it. By this time the fire had slackened, and I went into the building, there was a good deal of fire on the side of Laurie's. The engines played about 12 or 15 minutes; I supposed the fire was out, and allowed the engines to go away, but afterwards found fire in a partition and put it out on one side without damage to goods by fire or water. Then went into the garret, and lifted a plank, we found no fire there. When the fire was all out, I went home about 3 o'clock, having been there about an hour and a half. The following morning I went to see the amount of real estate destroyed, which is part of my duty; I went through the building; I found the fire originated immediately below the staircase, the stair started from the office railing; the shelving for 8 or 12 feet was totally destroyed, and goods could not be distinguished. Further back they were damaged but distinguishable; these were women's woollen ware. On the side next Nichols' were cloth, and trowser pieces, very pretty goods, recognisable, only singed, not burnt; on the front of this side, ladies' shawls damaged by smoke, and water, not by fire. In the drawers of the bonnet stand were ladies' made up bonnets not burned, on the stand there had been a great quantity of straw bonnets, some remains of which were left. On the side next to Laurie's the goods were entirely destroyed, and were undistinguishable. The rail of the office was mostly gone; none of the banisters of the stair were gone, but were charred. If there was anything lying upon the office board next the rail it would have been completely destroyed, but not from off the desk. Mr. Morison told me the books were saved.

Mt. Rose.—I have nothing to ask Mr. Bertram. I thank him for his evidence!

By the Court.—From the time I got the alarm until the fire was confined could not exceed twenty or twenty five minutes. From the appearance of the flame when I got to the fire, I cannot tell how long the goods had been burning. I once saw a house which had been on fire with the door shut, and the fire went out of its own accord. This building was close, and without draft until the door was opened.

Samuel H. May, sworn.—I was Captain of the Union at the time of the fire; when I got there the fire was nearly out. I went up stairs; the bulk of the fire had been on the side next Laurie's; on the side next Notre Dame Street, near the well, I saw a good many bonnets burned. I did not see any goods on the side next Nichols' which were so burned but what I

could distinguish them. My impression is the goods could not have been burning more than half or three quarters of an hour. The fire was put out quickly, I saw no goods burned on the third story. There were ashes in the lower story which had come down from above. The burned shelving next Laurie's was about 6 or 7 feet.

Plaintiffs Counsel.—No question to ask the witness.

Jean Baptiste Dubuque, sworn.—I was Fire Inspector, and of hot air furnaces, I was in the premises on the morning of the fire between 6 and 7. I went up stairs, at the north east gable, ten or twelve feet shelving was completely destroyed, with the drawers. I was told that the Ribbons in the drawers were worth £500. I saw Merinos and Coburgs on the side most burned, and remains of bonnets about the stand, and thrown down. Bonnets also in the drawers, wetted. A good deal of Broad-cloth on the opposite side charred with the fire, but in their places. Mr. Morison, so far as I remember, said that the books were saved. The railing of the office was burned and broke away. The damage appeared large.

Cross-examined.—Mr. Morison did not specify what books were saved.

H. L. Routh, sworn.—I am the Agent of the Royal Insurance Company; after the fire, having gone to Plaintiffs with Mr. Davison, Mr. Chapman and Mr. Wood, I had conversation with Mr. Morison and Mr. Empey, they said the books were safe, that nothing was burned. They said that they had just taken stock, and the stock sheets had been taken to Mr. Empey's house to have them extended, and it would take two or three days to complete them. The inference I drew from the conversation was that not a single book or paper had been burned.

Cross-examined.—The conversation was upon the Saturday or Monday after the fire; I was either in their office or looking over the rail; I saw no papers burned in the office, or on the desk, or books either. I did not pay much attention. I saw a mantle marked £9 damaged slightly.

Robert Wood, sworn.—I am Agent for the Aetna Insurance Company. I had not heard of the fire before Friday morning; the counters and the lower flat were covered with goods; these were not burned, but wetted—I went up stairs and saw Mr. Routh, and Mr. Glassford; I said to Mr. Empey, are your books safe, and your stock sheets; he said, yes. The impression made on my mind, was, that he said that it was fortunate that the stock-sheets had been taken to his house to be extended. I then said, that if your books are safe, and your stock has been so recently taken, there will be no difficulty in settling your loss. The railing of the office was burnt on the outside, but not inside; I saw no books or papers in the office, except some remnants in a letter slip on the wall. I considered the whole side of the store next to Laurie's as a total loss. In the centre was a stand, with the remains of straw bonnets, near the window there was a pile of Ladies' mantles; Mr. Empey said they were worth about £5 each; in that case,

the loss was in that pile £500. The shawls were burned on the fold and destroyed; the cloths were burned through some folds, but much of them was good. I estimated the loss on Laurie's side, at £3,000, supposing 30 feet by ten, at £10 a foot, is £3,000. Gentlemen may laugh, but I have had great experience, and believe this statement to be reliable. In examining into the cause of the fire, I turned over the goods in the heaps next Laurie's, and found cotton fringe and velvet ribbon, all of which was distinguishable; there was no difficulty in the owners going over it shelf by shelf, and putting down the number of pieces and the value of them.—Mr. Empey told me the value of the bonnets was £1500, the side at £10 per foot, the Mantles at £500, and I considered the total loss £5,000, and considered this a liberal estimate; leaving the damage to be estimated thereafter. The goods next Nichols' could be invoiced, they were burned two or three ply deep, but were distinguishable. Having examined the approximate estimate I do not believe that the goods here set down were on Laurie's side at all; the goods there were mostly thin stuffs. I have made a careful calculation of the value of a Dry Goods stock like that destroyed, and am satisfied that it is about £10 per superficial foot. I have confirmed this by actual measurement.

Cross-examined.—I measured at Mr. Mussen's last night; the square foot is a true way of estimating dry goods. (Sensation and laughter.) I saw very few Henrietta Cloths as fine as that produced; I suppose it is worth 6s or 7s a yard; I could tell the value of 50 pieces better than one, there is about 40 yards in the piece. Mr. Mussen's cloths were put in endways, and some longways. Mr. Mussen said that my estimate was about correct.

James Stirling, sworn.—I am in the employ of Laurie, next door to Plaintiffs. I heard the cry of fire near one o'clock, I dressed quick; the engines had not arrived, they came a quarter or twenty or twenty-five minutes after that. I could see the fire in the window of the second story. The engines played in about ten minutes, they had not played more than ten or fifteen minutes before I felt our place safe. I went in to the store the morning after the fire, I saw where the bulk of the fire had been in the second story, next to our place. I did not notice anything particular, but the flue which I went to look at, as the supposed cause of the fire.—The value of our stock in the Spring, is about £10,000. If a fire took place in our premises, I think I could tell within a few hundred pounds the amount of the loss.

Cross-examined.—We take stock twice a year, specifying the kinds of goods as well as values; we keep twelve clerks; our goods are put in sideways. I will not swear that I could tell the value of stock burned if it had been removed from the shelves and mixed up.

William Lunn, sworn.—I am Agent for the Equitable Insurance Office. I was in Messrs. Morison, Cameron & Empey's the morning after the fire. The shelving was totally consumed next to Laurie's; I cannot tell the measure of it, it was between the stair-case and the rear. The goods on the opposite side could all be distinguished and invoiced, they were charred. On Laurie's side there were Coburgs and other descriptions of goods. The railing round the office was much burned; Mr. Empey said the books were all saved, and there would be no difficulty of making a statement of the loss. The first intimation I had of any of the stock-sheets being burnt, was from the book-keeper at Mr. Murray's office. The book-keeper said he left some of the stock-sheets on the desk; he said he had never done it before, and that it was negligent, this was the witness Neal. I had a conversation after the fire with Mr. Empey; he said that the safe was too small, and he sometimes took home books to work on at home. I understood this remark to apply to the night of the fire also. I did not hear that any of the books had been burned until many months after the fire. I did not believe the amount of the goods claimed for, could have been destroyed in this fire.

Cross-examined.—It was some time after the fire before we began to investigate their affairs. We had supposed before that there would be an amicable settlement. I will swear that Mr. Empey did not open the safe and show me parts of burned books; I never told Mr. Empey that if the stock-sheets were carried into the recapitulation book, the loss of the first was of no consequence. It was at a meeting at the Montreal Office that I heard first from Mr. Neil, that part of the stock-sheets were burned. I considered the loss of the stock-sheets as a matter of importance; I may have spoken to Mr. Empey about this, but I do not recollect. I do not intend to say that Mr. Empey told me that he carried home books on the night of the fire. It may have been that he had sent home the stock-sheets to be extended. My impression was, that no books were burned; I did not suppose that any not in use were lying in the office. Of course he referred to books in use. The safe is small. I understood Mr. Empey to say he had at times taken books home.

James Davison, sworn.—I am the sub-agent of the Phoenix Insurance Office. I visited the premises of Plainiffs after the fire; I went in with Mr. Empey. I saw the goods in the shop, but noticed them more particularly the next day. There were no goods univoiceable except in the second story. On the side next to Laurie's were said to be mourning goods, Coburgs, &c.; in the drawers, trimmings; I carefully examined the goods on the ground; on the top there was nothing but ashes—underneath, pieces of Coburg—further down, bunches of velvet trimming, also cotton fringes—and, further down, they were less damaged. No doubt there was a total loss on that side; and, if a proper statement had been made, we

should have paid it. Beyond this, on the floor, most of the goods were invoiceable, except the bonnets; these were represented as being on the stand; some of the crowns were left. On the other side there was nothing burned so as not to be invoiceable, although much that was destroyed, such as shawls and cloths burned through the folds, and others charred. I asked Mr. Empey what had better be done with the damaged goods; he said, the best plan would be to send them to auction. Mr. Empey told me all the books and papers were saved; that was the impression made on my mind, and I left with that impression; I saw no remains of papers. On the first of May I was at a meeting at the Montreal Office, and suggested that Mr. Gault should be put on the Committee; we had before us a recapitulation book which we could make nothing of; we, therefore, asked for the stock sheets. I estimated the loss, without professing to be a judge of goods, as very heavy—about £1,000 consumed, a good deal of damage by smoke and water—in all £10,000, and I reported this to the Home Office. I had a conversation with Mr. Morison concerning the stock sheets; he said that they would be ready in a few days; they were then being extended at Mr. Empey's house. This was some days after the fire; he did not say any had been burned. Mr. Empey told me that the stock in March, 1854, was about £28,000. I did not see the stock sheets until the 10th or 12th of May; some had been burned, and there were marks on the top of some of them—some 100, some 75, and some 50. I considered there could be no difficulty about the claim, if the Plaintiffs would furnish a statement of the loss. This they declined doing, as impracticable; afterwards, an approximate statement was furnished. I am manager of the Phoenix Insurance Office, under Gillespie, Moffatt & Co. In July, I saw Mr. Empey, who told me he was much disturbed about a report of leaves being taken out of the books, and that he could not sleep; he said the leaves had been taken out because a clerk had blotted the book.

Cross-examined:—Mr. Empey appeared much concerned about these leaves. My impression was that Mr. Empey stated that the clerk had taken them out; that, when he came to recollect the circumstances, this was the only way he could account for it. I had an interview with the Plaintiffs about the 17th of July, respecting the attested statement of the loss; they said it was impossible to make out a statement. I knew the fact that, as far as regards the mourning department, the goods had been removed to allow the painters to work. I did not express myself satisfied that they could not make this statement. I said, "send a reply to Mr. Whyddon's note, and say what you can do; if you can't do it you can't do it, and it will be for the Companies to say whether they will press it." I never dictated any reply such as was sent; I positively swear I did not do so; I never saw that letter or heard the words of it, or any other of substantially the same character, until the letter was received from Plaintiffs.

I was not satisfied that the giving of the information sought was impossible, or even difficult; and I did not suggest the course adopted, and had no knowledge of it. I can declare that my impression at that time was, that the Plaintiffs were endeavouring to entrap me into making admissions to be used hereafter. I did not go to them as the agent of the Phoenix, or in any official capacity, but simply as a private individual, in reply to a note signed by the firm. I believe the Plaintiffs have not had, since the fire, one word of communication with Gillespie, Moffatt & Co., the General Agents of the Phoenix, the business of the branch being done by me. I have said to the Plaintiffs that if, in the course of the investigation, I found that the general features of the claim were correct, I would not stand in the way of its settlement on account of any trifling differences. To the best of my knowledge I never stated that I was, myself, satisfied of the correctness of the claim, and that the statement asked for was only for the Head Office.

William Murray, sworn.—I am the Manager of the Montreal Insurance Company; after the fire I went to the premises with several other Insurance Agents. Mr. Empey told us that the books were all safe, in the safe; and that some of the stock sheets had been taken home to make out the extensions. There was nothing said of any books or papers being burned. From my examination of the damaged goods, I should say three fourths of them could be invoiced, and that there could be no difficulty in stating what were the goods upon the shelves destroyed. I considered the loss would be about a third of the insurance between £8,000 and £9,000. At a meeting of the Committee Mr. Empey stated that some goods were sold less than cost, and some at a profit of 100 per cent. The goods upon the side next Laurie's were generally the most valuable, but there was more bulk value on the opposite side. I showed a stock-sheet to Mr. Empey, in which the amount seemed large, but he would not or could not tell me where the goods were placed, or whether they were silks or woollens.

Mr. Rose—I have no question to put the witness.

H. A. Glassford, sworn.—I am the Agent of the Monarch Insurance Company; I was at the fire and assisted in putting it out. I got there about one, my residence being close by, and I left at day break. The engines only worked for a short time; the fire was quickly extinguished; I arrived after the first engine. I have been a Dry Goods Merchant, and I estimated the loss and damage, the latter being the largest item, at £10,000, and I advised my head office so. I have since made an estimate of what amount of goods described could be put in the space burned. I took equal quantities of Henrietta cloths, Coburges, Orleans, Alpaccas, Silk warp Lustres, De'laines, &c.; I call the space of shelving destroyed 30 feet run of from 20 to 24 inches deep, and 7 feet high, the goods being put in endways as close as they will pack, and I find that their total value will be £2,667

16. 3d. I examined the premises after the fire, going about with a lamp; I looked round the office; it was carefully arranged, and I saw no books or papers there; the impression left on my mind was that office had been properly cared for the night before. It was at a meeting at Mr. Murray's that I found out about the burned stock sheets. At another meeting, I asked Mr. Empey to show us the locality of the goods entered upon it; with considerable hesitation and difficulty he did place some of them. I have a minute of this meeting taken at the time in pencil. I was so impressed by his manner at the time that I made a memorandum, "Empey shirks." The stocksheets marked at 100 contain a third of the value of the whole or £14,000. Either Mr. Empey or some of the persons in the establishment told me that the marks on these stock sheets represented the advance charged to convert the sterling cost price, into the selling currency.

Cross-examined.—Mr. Neal, the Plaintiffs book-keeper, was present when I made the memorandum, "Empey shirks," I understood from what passed, that he unequivocally refused to give the information required, that he knew where the goods were and would not tell. I believe I made this memorandum when Mr. Empey was present; *it is in ink, the balance in pencil.* The question was with regard to the locality of the stock upon sheet 17. I saw no books in the office on the night of the fire, and I think there were none. When I wrote "Empey shirks," I meant to put down the impression his conduct produced on my mind; I cannot tell the expression he used.

Court Adjourned.

FOURTH DAY.

M. H. Gault, sworn.—I was not consulted by Mr. Benning, or any one else, as to the advertisement of the sale of damaged goods, from Plaintiffs.

David Mair, sworn.—I was one of the Appraisers of the saved stock, a week after the fire. The goods sent to Benning & Barsalou's were those most destroyed; we examined all the goods in the building. The fire was confined to the second story; some were charred in the third story, but not consumed; this was at the top of the stair. The shelving next to Lauries, contained black stuff goods, half of this was consumed; near the well there were many ashes, also much burned on the bonnet stand; next to Nichols' the goods were not totally consumed, but damaged, there were portions of each piece invoiceable. The bulk of the silks were down stairs on the counter and in drawers. I could not tell the value of the goods on this flats before the fire. The damage might be guessed by parties acquainted with the premises to within a few thousand pounds. In the drawers of the

second story were very valuable trimmings, also some cotton. The stock was taken a second time, because in the first it was not sufficiently described; to test it we went over it again, describing every article, and obtained the same result; my duty was confined to the valuation of the stock.

Cross-examined.—I had not a shadow of a doubt that on both occasions the stock was correctly taken. The advance on the goods was 75 and 87½ per cent on the sterling. Without having seen the goods on the second flat before the fire I could not tell their value.

Re-examined.—I should deduct the same advance as that charged, to reduce the selling price to cost. The cost price was established by communication of the private mark by Plaintiffs.

James Roy, sworn.—I was one of the Appraisers with Mr. Mair. Some of the goods on the Laurie side at the rear were appraisable; on the other side most of the goods were invoiceable, but much charred, and some almost defaced. In the drawers were silks, fringes, and trimmings; the contents of some of these next to Laurie's were invoiceable, nearly all on the other side.

Cross-examined.—I told Mr. Morison in Benning's shed that it was useless to attempt to invoice the goods there; these were charred to a cinder. Mr. Morison was attempting to invoice them. I told him that it was a perfect farce to attempt to do so. There was a large quantity of these. Those which were invoiced were invoiced only at actual measurement; what was saved, not the burnt part. We made no allowance for burnt parts cut off. We invoiced only what was merchantable. I have no doubt both stock takings were perfectly correct. The private cost mark was given us.

Ezra H. Merrill, sworn.—I was in Plaintiffs premises after the fire. I am a Dry Goods Merchant. I suppose there would be no difficulty in a person of the establishment setting down and making a statement of the loss; if the fire had taken place in my premises I could do it within £2,000. My store is 120 feet deep; my stock is worth from £16,000 to £20,000. I do not think that Morison, Cameron & Empey had more goods on the second flat than I have in my store, unless they were packed very close. I have 18 young men in my store.

By the Court.—If a great quantity of goods had been burned about the well and totally consumed, I do not think any one could have made out a correct statement of them from memory.

James Hurley, sworn.—Was book-keeper to Plaintiffs from Sept. 1852 to May 1853. This page 257 in the Journal, is in my writing—all but the posting figures, which are Mr. Empey's. Goods Account is posted to page 6 in the Ledger, and Charges Account to page 12. I have gone through

these books before with the Defendants' Attorneys, and found the entries brought from the day-book month by month, except these. Sheets are out that were in at the time this was posted. The entry N. S. Whitney and Mr. W. Hill & Co., are mine, the posting Mr. Empey's—the amount, too, is mine. There is a blank in Ledger from 119 to 125 exclusive, and I do not find the posting of these entries—the dates are March, 1853. There is a blank in the Ledger from 126 to 131 also; the pages have existed about the check of the posting by Mr. Empey. I examined page 244 in the Journal Goods Account; the original entry was in my hand *charges*; it has been altered to *goods*; I recognise the alteration as Mr. Empey's; by this £1272 has been carried from *Charges Account* to *Goods Account*—this is in Feb., 1853. (Plaintiffs' Counsel—Admit the fact.) The pencilling, "Goods, £617.9s. only," on the same page over the original entry, is in Mr. Empey's writing. On page 246, I changed the charges from the *Goods Account*, where they were carried previously, to the *Charges Account*. The figure over the erasure on the burnt piece of the fragment supposed to be part of page 308 of the Ledger, I recognise as Mr. Empey's.

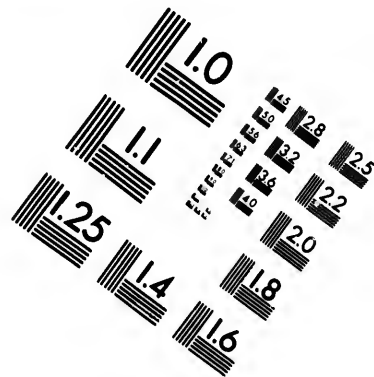
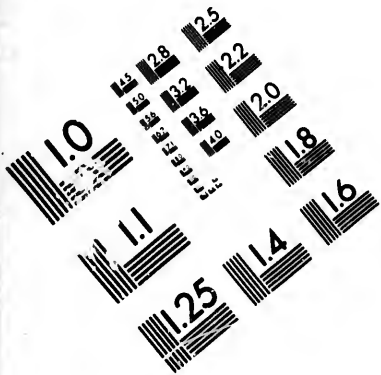
Cross-examined.—These entries are all of houses from which the Plaintiffs were in the habit of buying goods. I think some of these entries were for premium; I think an entry of £300 to J. G. McKenzie was for that. Amount of £1272 for charges, they are all salaries. The entries on the pages now in the day-book are to be found in the Journal, and the Journal exhibits correctly what they were. I have no doubt of this. The piece of page 308, exhibited on which is the altered *six*, I recognise as having been torn from this burned book. The balance £16,000 is brought down by me in 1853 as an arbitrary balance to close the Goods Account, and not to show the value of goods on the shelves. Other charges and entries had to be added afterwards.

By the Jury.—Among these entries of charges, do you recognise any as erroneously made to goods?

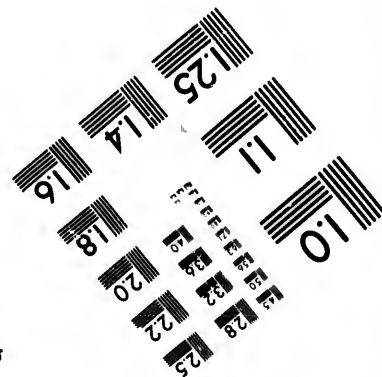
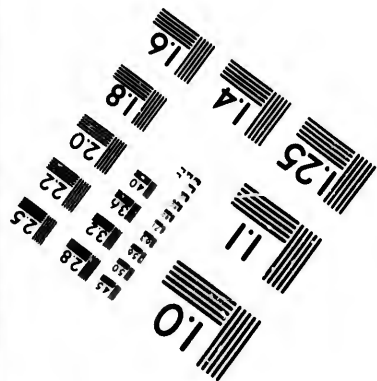
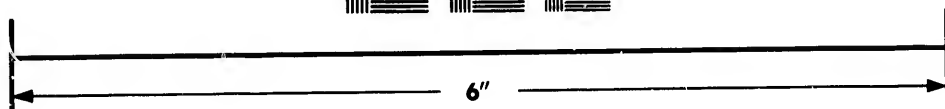
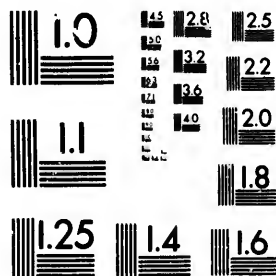
When I was with Plaintiffs the charges were kept apart from the goods. They are not false entries, but real charges, which eventually go to *goods*.

By the Court.—Charges are assuredly part of the cost of the goods. An entry of £400 to James Ferrier for rent, entered to charges, might go to the same account as an expense of business. Whatever account they are charged to, it does not affect the result at the end of the year. Charges are frequently advised by exporters separate from the goods. Some houses have slips on purpose to advise these on. It is a common thing for merchants in England, and elsewhere, to put charges of goods on their invoices, and all go into goods. It makes no difference when or how these charges are put to *goods*.





**IMAGE EVALUATION
TEST TARGET (MT-3)**



**Photographic
Sciences
Corporation**

23 WEST MAIN STREET
WEBSTER, N.Y. 14580
(716) 872-4503

1.5 28
1.6 25
1.8 22
2.0 20
2.2 18

1.5 10
1.6 10
1.8 10
2.0 10
2.2 10

Charles Geddes, sworn.—I was employed by a Committee of Insurance Agents, to look into the claim of Plaintiffs. The first entry in the Ledger shown me by Mr. Empey, was £24,107 16s. 8d., in goods account, and is substantiated by a letter from Mr. Empey; the date of this entry is 1st May, 1854. I traced this account to Feb. 1854, the time of stock taking, because they started with an account of £28,000; I then take off one fifth from the sales in the interim. By this, I figured the stock at £27,695 8s. 6d., on the first of May, 1854, instead of £28,404, as represented. I tested by turning up the stock sheets of 1854; I made the result £27,192, 4s. 2d. Mr. Empey claimed to add to that goods out on approbation, £282 19s. 10l., from which deduct a fifth for profit, it leaves £226 7s. 11d; he further claimed for shop fixtures and furniture, £585 10s. 8d. I believe he was dissatisfied with the result, and he further claimed £399 18s. 2d., because he maintained I had taken a fifth off goods charged at currency, which I had put down at 87½ per cent. I have my doubts as to this being the recapitulation sheet of 1854. I find written on it, goods on approbation, and petty balances, which I never could have passed over as part of a stock account. There is an erasure of a line which I do not recollect to have seen before. The recapitulation foets up £28,748 with corrections. I recognize the Ledger and Journal produced, partly burned. I saw them first in Mr. Glassford's office, on the 22nd or 30th of June, and also the cash-book, day book, and stock sheets. I examined them some time after that, about July, they had been backwards and forwards between Plaintiffs and Mr. Glassford's. The stock sheets of 1854 were finally sent in 27th July; I noticed something so peculiar about them, that before granting the receipt, I marked down these peculiarities. In getting them in my hand, I saw a scraping on Book No. 1, or No. 2; page 13, a piece torn out, on another from page 25, an erasure, 37, a piece cut off, on pages 73, scraped, 85 the same, 121, 133, 145, scraped, some pencilling taken out of 181, also on 193, 205, 219 and 229. These erasures were on when they came into my possession, and also on the recapitulation sheet (admitted by Plaintiffs, as regards the stock sheet.) After examining these books of account, I noticed a piece of a leaf gone. I heard of this from Mr. Whyddon. Mr. Empey said it was probable his little boy had torn it off, and he would send it in with the other burnt papers on 26th July. Mr. Whyddon asked how many more pages the Journal contained that were burned: Mr. Empey said from nineteen to twenty. In the day book there are pages 76 and 77 missing; also the counterpart of these sheets, from 129 to 134 all gone. Mr. Empey, on 25th, in reply to Mr. Whyddon, said that a clerk of the name of Rutherford had done it. The next morning he was asked to explain it, he said Rutherford in pouring ink, spilt it on the book, the ques-

tion arose whether they should get a new book, but finally decided to tear them out; it could not, he said, effect the book, as the pages 76 and 77 were in advance of the work. We then turned over the pages to the larger space 129 to 134, and said this was the place. The other places he said was beyond him, he could not make it out. He was then asked with regard to the Ledger, how he accounted for the pages gone, and he said an enemy had done it. The Journal is from 1850 to 1853; the Ledger is the preceding Ledger to that opened 1st May, 1854. Mr. Whyddon asked him if he thought there was any person in his employ that would do it, he said he thought there had been a person in his employ, who, if he had the opportunity, would have done it; and on one occasion he had gone into the office, and was surprised to find the Ledger left upon the desk. This torn off piece forms part of the account Goods debtor to Cash. I, Mr. Glassford, and Mr. Whyddon, had an interview with Plaintiffs on 21st July; we went to get information of the safe. I asked who had charge of the woollen department, Mr. Empey said Mr. Portevin. I asked him the value of his department, and how the goods were placed; he said that usually they were put in endways, but on the night of the fire lengthways, as full as they could be crammed. When I wanted to come at the value of the goods, Mr. Cameron interrupted me and said it was not to be supposed that his young man could tell the value. Mr. Whyddon said we had come for this purpose, and after some conversation I was allowed to go on. Mr. Empey said if he had packed the shelves he could get in £5,000; I told him that he could not with the stock he had, for the finest piece of cloth he had imported last year (1854,) was an end of cloth, 66½ yds., which cost 16s. sterling; he seemed confused at my knowing this. At Mr. Empey's house I had occasion to ask the cost of the goods laid down, he produced his private ledger, and gave me extracts from it. I saw this book on three occasions, he told me the cash sales from it, and about the partners. I told the Committee when I made my report, that it was essential that they should see it, as I had been supplied with information from it. Mr. Empey was asked for it, and on the 30th of June it was produced, I had seen it before three times; he showed the first sheets to Mr. Whyddon, he went fast over the middle, the end he said was his father's will.

On the next occasion he said there were some leaves taken out of it, two or three at the end. Mr. Whyddon asked if there were no more, and he said there were not. On 31st July Mr. Whyddon received the books from Mr. Empey, in the establishment of plaintiffs. Mr. Empey challenged Mr. Whyddon that he had said more leaves were taken out, and he defied any one to prove it. The book was handed to me to examine. Mr. Cameron said if he had known that book had contained one line regarding the business it should not have been kept back one hour. I saw

an entrance in this book and showed it to Mr. Cameron. Mr. Whyddon said that from fifteen to twenty pages had been taken out. On 20th August I saw the book for the last time, in Mr. Whyddon's office. Mr. Empey was present. Mr. Whyddon asked me to go over it and page it, and I took notes from it. I heard Mr. Empey say he had taken out four pages, but when pressed he said no, and when pressed further, said if there were more, they did not relate to the business. The book looked as though pages had been taken out, and the clasp overlapped. The book is irregularly paged, part folio and part single paging. I have seen this Petty Balance Book produced, Mr. Glassford took it from the safe. Mr. Empey said it was the petty balance book containing accounts from day to day. On examination I think this is not the book. On two pages I found £1,100 sold as goods on credit in two entries. The result on any mind was that there was credit given, and for months. Part of this credit went over five months. I told Mr. Empey that this did not look like only doing a cash business. I looked on these entries as so much not in stock, nor in the cash book as sales. The account produced is not the one I saw there. Mr. Neil, the book-keeper, told me concerning the marks on the stock sheets, that all the sheets not marked are at 87½ per cent, and those marked represent the true rate at which they were taken. With regard to the missing sheets from the day book and ledger, Mr. Empey on the morning of 28th July, said he had compared the pages missing with Mr. Gillespie, and they agreed with those stated by Mr. Whyddon's statement. I did not ask Mr. Neil specially with regard to the advance mark of 100. I asked leave to measure the shelving of the store, and Mr. Empey gave me a little assistance. My object was to ascertain department by department the amount of goods they would contain. The next time I went I was told I could not do it, as their legal advisers had recommended them not to do it. I paced the store, and found it 50 feet. I then planned out the departments, and having received the approximate statement of the loss given in by plaintiffs, I found this part of the store would not contain them. There is in the store a run of 140 feet of shelving, by an average of six feet high. From my calculations, and such knowledge as I could obtain from their own invoices of the quality of the goods in stock, and upon this flat, I am quite satisfied that a valuation of £15,000 for the whole at selling price of 87½ per cent, advance on the sterling cost, and that this amount will fill the second store where the fire was, as full as it will hold. I endeavoured to get a measurement of the premises to make this calculation by, but plaintiffs, by direction of counsel refused. I paced it, however, and ascertained the size. In making this estimate I filled the whole shelving drawers, and spaces under the shelving, with articles such as described to have been there, at the average value of plaintiffs importations, and £11,000 filled them full. I left the balance to

be placed by them on the floor, counters, and round the wall. I think, without the goods being there to prove it, that this calculation is as far as possible correct. I have estimated the goods as put in and ways.

Cross-examined.—On the balance sheet of 1854 I saw on the debtor's side of cash between the months of March and May, 1854, an amount as purchases. I got this from Mr. Empey. I deduct the whole profit of the cash sales at this period, but make no allowance for charges on the purchases; the charges for these two months I do not know. I checked off the recapitulation sheet item by item with Mr. Empey. I recognize my own figures in pencil on it; but I can't say that this is the original one first shown to me; I cannot swear it is. On close examination I think I might have checked this sheet with Mr. Empey. I think it must be the same; (Great sensation.) I see the words "on approbation," and "petty balances," are in a different ink from the body of the writing in this recapitulation sheet. I have examined the account books carefully; I do not know whether there are any other leaves out except those which Mr. Empey, Mr. Whyddon and Mr. Gillespie agreed to. I considered the absence of the leaves very important and I prefaced a memorandum of the leaves missing on the first discovery of any being absent; I have it not here, but will furnish it; this memorandum was made before the month of September. On the 19th and 20th of September I gave in the exact number missing to Mr. Whyddon; I went over them with Mr. Whyddon, and afterwards checked it myself. The stock sheets I have represented as scraped and erased substantively corroborate the balances as shown in the books of plaintiffs as examined by me and Mr. Whyddon. These sheets are those of 1854. I When Mr. Empey was asked to explain the absence of the leaves in the book he was taken by surprise in some degree. The next day he told the story of Mrs. Rutherford, and that the enemy had done it; when asked the name of the enemy he said it did not do to mention names. I took memoranda from the pages and contents from the private ledger of Mr. Empey. Mr. Whyddon has this paper, which he values so much that he refused to part with it to me yesterday, when I asked him for it. I first saw this ledger after 11th of May, and the last time about 20th of August. Mr. Whyddon discovered the pages missing from it; I never examined this book except in the presence of Mr. Empey; it was never left with us when Mr. Empey went to dinner. I have no memoranda of the pages taken out. It was on the 20th of August I ticked off the leaves of this book; Mr. Whyddon asked me to take the paging; I did it rapidly; Mr. Empey was present. I turned the leaves and took the memorandum; Mr. Whyddon has it. I think I saw "Bills payable" on one of the pages of the book before this day, but I did not see it then, but it might have been there. The impression made on my mind was that there were pages taken from it; the leaves ripped up in one place. I felt no doubt that leaves had

been taken out. Mr. Whyddon will testify to this. I cannot help believing that there were leaves out more than accounted for. I do not know whether I should recognize this book again. I cannot say that I observed the erasures in the stock sheets of 1854, at the time I checked the recapitulation sheet with Mr. Empey; I cannot swear these are the same, they have been out of my hands into those of Mr. Whyddon for the Companies.

I remember an altercation between Mr. Cameron and Mr. Whyddon, which was unpleasant to me, and I left then. Mr. Cameron alluded to insinuations thrown out by Mr. Whyddon, that something had been done by plaintiffs which should not have been done. I made a report to the Investigating Committee; in it I recommended they should not settle without a balance sheet; this was in June. I made a second report on the 18th September; Mr. Whyddon and myself made a joint report between these times. When Mr. Empey refused to allow me to measure the premises it might have been after the institution of the action. The book placed in my hands I cannot identify as Mr. Empey's private ledger without examination. Upon comparing it with my memorandum, I find the paging does not accord. I have got on my memorandum "table of artificers" at page 90, and I find it on the same here. My memorandum says 50 has been altered. I cannot recognize this as the book; I cannot tell if it is the book yet; *on my oath, I do not think it is the book.* (Sensation. Book and memorandum both fyled.) I judge by the paging not agreeing with my memorandum; the outward appearance is the same and some of the pages correspond with my memorandum. I remember an error of £300 I was not satisfied with, and this was one of the reasons why I reported that the books should be balanced before adjusting the loss. I am free to admit that there was a difference of £300 as an error in the favor of plaintiffs, for goods received, but I was not satisfied that the money was paid for them; it might have been a bill. I identify this goods account from February, 1854, to the time of the fire; this is the one checked by me. I worked by that paper; I cannot say whether it is correct without examination. I believe it to be correct, having checked it by the books.

Joseph Whyddon, sworn.—I was agent for the Beacon at the time of the fire; I am now of the Athenæum. I went to plaintiffs after the fire, the day after; Mr. Empey said they had been taking stock the night before, very late. I observed the counters in the lower store covered with cloths; I went to the office with Mr. Empey and asked him if he had saved the books, he said yes; I said then I congratulate you Mr. Empey, for I will be very candid with you, and state that if you had lost your books with such a store as you have here, at this season of the year, it would be a great misfortune indeed. I said that as you had been working so late the night before, it struck me your books might have been left out; he said no, the books are my department, and I make a point of going round at night

and never leave a scrap out. No allusion was made to the loss of any stock sheets, but I was told there would be no difficulty in making out the loss. I am familiar with the account books exhibited; this is the ledger. I examined the goods account with Mr. Empey, and were stopped because it was balanced in April, 1851, instead of February, and there was an error. A new one was finished, he taking back the books with him. On receiving this and proceeding with the examination, on looking the goods account over for 28th Feb., 1853, I found an entry of £1,272 2s to the debit of goods account; I endeavoured to trace it from the journal, and after great difficulty got it thus, goods account dr. to sundries, (page 244,) charges being changed into goods and carried over as charges upon the other side. The entry of same date in the amended account stood at £617 15s 9d only. I found all the entries making up this sum carried to the account of the parties as charges and not as goods. On the 28th February 1853, the books had been balanced; I found set down as sundries £1,454, which stood thus in the journal—goods account sundries dr. to cash account £1,454. I tried to verify this by the day book, but the months of March and April were gone. There was a difference between the balance of 1853 and the reality of that amount; Mr. Empey verified this with me; when I found the gap in the day book I sent for Mr. Empey, and told him I had an unpleasant duty to perform to allude to sheets taken out of the books; he repudiated it at first, but then, when I pressed it, said that the books had met with an accident through a clerk; this was the gap 75 to 78; the next day he referred to 129 as the place, the others he could not account for; I noticed on going over the leaves he counted one, two, three, four; of the pages in the ledger missing he could not give any satisfactory explanation; on my pressing him he said an enemy had done it; I asked him to show me how the accident occurred with the ink; he put the books together and said the ink was spilled over both, and the leaves torn out on that account. There is a gap in the ledger at page 126, accepted bills; I could obtain no satisfactory evidence to account for these gaps. The examination took place in the presence of Mr. Empey; one morning the clerk brought up the books, and on opening them I found two pieces torn off. I drew Mr. Empey's attention to it; he professed his ignorance, but he said his little boy might have done it, and he promised to return the pieces to me; the pieces were sent back with other burnt pieces; I saw an erasure made evidently since the fire; I think 12 was there before, and the alteration is 6, the effect is to carry charges to the amount of £195 to the debit of goods; this was the year 1853. The books were balanced; I found in several places the word goods inserted where charges had formerly been; these charges are at page 148, interest, discount and commission; this is the same as altered in the journal, and several others are the same. I got a statement of Plaintiffs European im-

portations between 29th Feb., 1854, and the same time in 1855, passing through the Custom House,—it is £27,378 17s 3d currency, the American were £340 14s 3d, in all £27,719 11s 6d. I have no doubt that they did not receive more than these goods; I believe they did not receive more than this amount, because they did not pass through the Custom House; I cannot mean they did not receive them otherwise; invoices are credited before the arrival of the goods in all well-regulated establishments. When Mr. Geddes consulted with me with regard to the re-examination, he told me of Mr. Empey's private ledger, which he considered important; I applied for it and he objected; after great difficulty he showed me the book in a qualified sense, holding the book he showed the beginning, the middle he passed rapidly over as private, although I could see the items were large; at the end he said his father's will was, and some calculations. At another interview, when I pressed him for it again, he told me some leaves had been taken out of it; he brought it to me and reluctantly gave it me. When I came to the part he had called private, I found the pages were no longer there; at the end I saw some measurements, and at the same time he showed me where the leaves had been taken out; he told me there were on these calculations of American exchange, which did not affect the business; I asked why he had taken them out, he said he could give no reason. I saw the book on another occasion and counted the pages, I found the numbers came out right, there being no ledger pageing in it; I counted twice to be certain, and either on this occasion or another I sketched the entries of one or two pages; this is the memorandum it alludes to—"Bills Payable," "Rate of Exchange," and "Accepted Bills;" the dates of these were 1853 and 1854; I think the last is Feb., 1854. The inference I drew from these was that they had some connection with their affairs. *I swear, by the solemnity of this Court, that this memorandum is the one I took, at that time, from Mr. Empey's private book.* I went to the store to get the evidence of the young man; Mr. Cameron objected, but I told him I must do so; and saw the young man in the cloth department. Mr. Empey challenged me to prove that he had taken twenty of the pages out of the private ledger. I told him that I had not said so, but was prepared to prove that he had taken fifteen or twenty. He showed the book to Mr. Geddes, who said that it appeared to be altered. The book exhibited is not that private ledger, *but a very clever imitation!!* (Great astonishment and sensation in Court.) The witness here asked the Plaintiffs counsel if the book had been repaired?

Mr. Rose,—Oh! Mr. Whyddon, let us hear what you have to say about it.

Witness continued:—Well, then, when I saw the book before there was a peg missing which is here now.

The Court.—It is astonishing you can tell a *page* is gone when you have not looked into the book!

Witness.—A *peg*, a *peg*, your honor. (Laughter.)

The Court.—*Oh! a peg*. Well, is it a *peg* to hang an argument on? (Laughter.)

Witness.—By the *sanctity of this Court*, I solemnly believe it is not the book at all!!! (Great sensation. The witness here examined the book on the outside and inside with a microscope, for a long time, as though searching for some mark, which seemed to amuse the learned Judge, and caused considerable merriment to the whole Court, which, at this time, was excessively crowded.) The real book had some Insurance regulations written on the inside of the cover in red ink, that is not here now. Mr. Empey told me a friend had given him some valuable advice on that subject. *I have no hesitation in saying this is not the book*. I see nothing in it to lead me to believe it is; it is evidently new, and much larger than the one I saw; the ink and paper show it to be so. On page 118 there is an entry of packages of goods which was not there before; the book is totally different, it is not the same. In the other there was a *peg* missing, and it lapped over as if the pages had been taken out. The Insurance directions in the old book were in red ink on the cover; *I find them now in a different place*. Mr. Empey acknowledged that more pages had been taken out besides those at the end, but that they had nothing to do with the business.

Cross Examined.—I have been four years in Canada. In May, 1854, I became Agent of the Beacon Insurance Company. I was formerly an attorney in England. I am not now Agent for the Beacon but for the Athenæum. I yet retain the books and papers of Beacon Company until my account is adjusted. I have not been threatened with an action for the recovery of these books; there is a correspondence going on concerning them. The memorandum exhibited to me is I believe in Mr. Geddes' writing, but I am not sure. On examination I believe it to be the veritable document made by him as testified, as it is also the one given in my charge, and which I was unwilling to part with, and referring to the private ledger. I do not recollect Mr. Geddes taking any notes from the private ledger, except checking the paging, which he did at my request; I swear that the book was never left in my possession while Mr. Empey went to dinner; and on my oath, I never had it except when he was present. This book is externally and in its general appearance like it, but it is not the original one. I endeavoured to make a mark on that to recognise it by in case it might be altered. I noticed the pegs of the back fastening were worn, and one was out; on this they are new and perfect. (The witness went over to the Jury to explain, and one of the Jury here pointed out to Mr. Whyddon that the *peg* he was speaking about was out of

the lock of the book!) There is a difference too in the size of the book, of almost one sixth in thickness, this is the thicker; the clasp of the other overlapped from the slackness of the covers, owing to the taking out of many leaves, this shuts tight. (The Jury here remarked again to witness, that the lock of the book in his hand overlapped also.) In the Ledger shewn me before at the end was a copy of the will of Mr. Empey's father, and some leaves torn out; there are the arms in this. I do not remember seeing a loose thread in the centre of this book, and speaking to Mr. Cameron concerning it. I had a conversation with Mr. Cameron about this ledger and he said if he had known that it contained any information relative to the business it would not have been withheld one day.

By the Court.—I considered that the pages removed from the private ledger contained an epitome of the whole affairs of the firm. And this was Mr. Geddes' supposition too. I believe now that if we could have got that book in its original condition, at the time we received the first statement of loss from Plaintiffs, we could have settled the exact amount of it in three months. I cannot give any reason for this supposition other than that was my impression from the casual examination of it I obtained. I can prove this by nothing but my general impressions; I cannot say that anything contained in this book would have any effect upon the stock-sheets of 1853, or upon the balance sheet of 1854; but we might have found in this book errors and discrepancies which would have affected the final result. I know of no such errors; but if by chance they had been there, and been unexplained they would have done so. On this account the possession of this book was important to us.

John Jordon, sworn.—I am a Custom House officer, the 3rd in the Department, first landing waiter; I have prepared a statement of the Importations of Plaintiffs from 28th September, 1851, to the time of the fire, from the record; this shows the number of packages; these are all the goods entered by Morison, Cameron & Empey; it does not include any entered by William Coote in his own name.

Francis Crampton, sworn.—Is second clerk of the Customs produces a statement of the value of the importations of the Plaintiffs from 5th Jan., 1854 to 1855, it was £26,795. I have not on the 17th July, 1854, £57, 12s 9d; nor on the same day £42 6s 2d; nor on 17th £14 6s 11d; I have no other entries on these dates.

Case of the Defence closed.

Francis Rufford.—I have examined the balance of £16,769 14s 1d brought down in the burned Ledger, and on a few pages further another of charges of £6,447 18s 1d; on the burned Journal, page 264, there are three items placed to the debit of goods, and credited to James Morison for £437, Allan Cameron for £437, and Alexander Empey for £437, which three sums amount to £1,311; those three amounts and the balances above named amount to £24,535 9s 2d. There in Journal, and 264 same page, goods are credited by amount to balance stock of 1st March, 1853, the sum of £1,447 18s 1d; deducting that sum from that above given, leaves the balance of goods account £23,087 11s 1d; this being the stock balance of 1853, and corresponds with the trial balance of 1853. I have heard Mr. Geddes' testimony with reference to the figuring out of the stock of 1854. He was quite right to deduct the one-fifth from the sales between Feb. and April, but he should have added twenty per cent to the cost.

James Court corroborated this, also Mr. J. Speirs. Samuel Benjamin, sworn.—I tried with Mr. Whitney and Mr. Brown to place the goods contained in the Plaintiffs approximate statement upon the shelves of the store. We counted out the quantities; we took every item on the list, and here is the result of our labor upon the plans produced: after finishing the list, it leaves 110 vacant shelves, 28 drawers, and all the tables. We worked three nights, and did it with the greatest care—this is from the approximate statement at fair cost prices.

Cross-examined.—We took the data from the average cost of an ordinary stock; for instance, Broadcloths at from five to twenty-five shillings currency. No shelving contained more than one depth of goods. I was very particular; so much so, that the Plaintiffs complained. I had my own way, without any interference on the part of Plaintiffs.

N. S. Whitney, sworn.—Corroborates the statement of Mr. Benjamin.

James Brown.—Not sworn. Corroborates Mr. Benjamin's and Mr. Whitney's evidence.

Mr. Dunkin.—It is not necessary to swear Mr. Brown.

E. H. Parsons, sworn.—I was brought up a practical Chemist. I am acquainted with the composition of wool, and effect of fire or heat on it. Wool or woollen goods will be destroyed at a much lower temperature than any other organic or inorganic fabric. The reason of it is this, wool contains both oil and sulphur which are volatilised at a temperature not greatly exceeding that of boiling water, and in that act burst the cells in which they are enclosed, converting the original substance into a puffed up, shapeless mass, which can afford no clue to the original appearance of it. In the course of this trial, a doubt arose on my mind as to the fact of the possibility of the complete destruction of the large piles of woollen goods described, in a close building, and in a short time, with so little injury to

the wood-work. To satisfy my own mind, I tried the experiment of subjecting a tight roll of woollen, sixteen folds thick, to the heat of an oven, by the side of a piece of thin pine. The result was, that the woollen was charred to the heart, and the piece of pine—not more than the sixteenth of an inch thick—was not discolored. Close heat, like that of a building, or fire without vent, chars without destroying wood. Thus, wood may be subjected to the action of long continued heat, in a close retort, and it becomes converted into charcoal, retaining the shape it possessed before; and it is not until air is admitted to convert it into carbonic acid, that it consumes. Wool, on the contrary, and all fabrics of it, are utterly destroyed by heat alone, without the necessity of air, and retain no trace of their original appearance. Pewter melts at about an average temperature of 500, more or less, according to the composition; glass requires to melt at a temperature much greater; the boiling point of water being 212°. A heat in which these would melt, would utterly destroy woollen goods.

Dr. Hall, sworn.—I was formerly Lecturer on Chemistry, in the School of Medicine here. I have heard the testimony of the previous witness, and I corroborate it. I have made no experiment, but the other statements are substantially correct.

Cross-examined.—The effects would be the same as to the quick destruction of wool, whether the agent was close heat or flame.

Samuel J. Davis, sworn.—I am a Custom House agent; I have examined the statement filed as the amount of importations of the Plaintiffs, the gross amount £87,166 8s 6d from September, 1851, to the 5th April, 1855, being £3,000 larger than that put in by Defendants. (Statements from all shippers of foreign ports filed by the Plaintiffs.) I have examined all these shipping statements, and they exactly agree with the amounts passed here at the Custom House, less the packages and discounts. These statements are sworn to by the shippers.

John Garvin, sworn.—I know Williams the fireman, an upholsterer; I saw him on the night of the fire; he was excited, and in liquor. I saw Mr. Morison go up the ladder, passing me; I am a fireman. Afterwards the Union took our ladder; I saw Williams strike a man; Williams had not gone up the ladder when Mr. Morison went up. Hudson was discharged the next day for drunkenness. The firemen had been paid their quarters salary that night, and they had been drinking—Williams, Hudson, and others; they quarrelled with a policeman; at the fire there was a row between the men of the Union and the Protector, and some fighting for a few minutes.

Cross-examined.—I did not see Mr. Morison come down the ladder. It was after the fire broke out of the window that he went up. I was not drunk. I do not drink.

Thomas M. Neal, recalled.—The book produced is the only petty balance book we had at the time of the fire, the one Mr. Geddes did not recognize. Parties get goods on approbation to choose from, not paid for at the moment; other amounts are charged to the clerks. I have known the first families of Montreal refused credit at the Plaintiffs. I have no recollection of Mr. Empey blaming me for leaving out books at night. These books, the hurred Journal and Ledger, were before the fire lying next to the office rail, and leaning against it; and the old invoices, in bundles, between them and a box on the top of the safe; there were also a number of old account books of Waddell, Smith & Co., lying upon the floor, covered with dust which had been there ever since I had. I identify the book produced as Mr. Empey's private ledger, I identify my own initials in it to the payment of my salary month by month. I never saw Mr. Empey have any other book but this.

Cross-examined.—I see entries on the petty balances book of items carried to a new book, these are not in my handwriting, but have been entered since I left the establishment in May, 1855. *I swear that I entered my initials on this book at the moment I received the amounts set down there.*—(Loud Applause.)

David Gillespie, sworn.—I know this to be Mr. Empey's private ledger, these are my initials opposite the payments every month. I can swear to this book *positively*. On the 27th July, I went over to Mr. Whyddon's office, concerning the missing leaves of the day book and ledger with Mr. Empey. Mr. Whyddon brought them down with reluctance, and told me to remain in the public office while he had a private conversation, he evidently did not want me there. When we got the books, I went over them page by page, verifying every leaf four times, twice with Mr. Whyddon, and twice with Mr. Empey. I made notes at this time of what I observed; these notes I have here; Mr. Empey also made notes. When I made this examination of the old ledger then in Mr. Whyddon's possession, the pages 177 and 178 were not out. I take my solemn oath of that fact, the leaves were not out then. I did not know that they were so, I never heard of it until I saw the books here in Court. Another copy of the memorandum made at this time, in case I might lose my book or leave, was made and certified. (Memorandum put in.) I examined the day book before it was taken to Mr. Glassford's; I went over it because some accounts were not kept according to the rules of book-keeping in which I had been brought up; I went over it page by page and item by item to test its correctness; there were no leaves out of it then. I saw it afterwards in Mr. Whyddon's office, and on going over it, found pages 76 and 77 out; they had evidently been torn out, for pieces of the paper were yet sticking to the threads; some of them can be seen yet. When I was going over this book with Mr. Whyddon, counting the pages and came to this spot, I wanted to call

his attention to it, and I said, "Hold on, Mr. Whyddon, I take nothing for granted." He replied, "Pass on, pass on, I have no time to waste," evidently desirous of withdrawing my examination from it. In this checking of pages, Mr. Empey gave me his memorandum to check, and I gave mine to Mr. Whyddon, and he called his clerk and made him take down a list of the pages. I was very particular, and I was so because I had suspicions of foul play: I told my suspicions to Mr. Empey, and said he was a simpleton to allow his books to go out of his hands. I am certain that the pages 177 and 178 were in the Ledger when I last saw these books in Mr. Whyddon's office. I unequivocally swear that this is the truth.— On the 17th of July, Mr. Davison of the Phoenix Office, came to Plaintiff's office in compliance with a note from them, in reference to a request that had been made through Mr. Whyddon for a statement of the quantities, qualities and values of the goods utterly destroyed. The Plaintiffs went over the premises with him, explaining the number of the articles sold in their business, and the other difficulties in the way of making a statement which could be at all relied on in its details, and not such an one as had been asked for, an attested verification of certainties. Mr. Davison stated to Mr. Empey in my presence, that he was quite satisfied that the statement asked for was impossible. Mr. Empey asked him what he should do; Mr. Davison replied:—"Write to the Secretary of the Committee and tell him that they, as intelligent business men, perceive the insurmountable difficulty of making a statement of so large a stock composed of so great a variety." Mr. Empey copied down these words from Mr. Davison's dictation within twenty inches of his eyes. I recognise this memorandum produced at the same. Mr. Empey frequently worked until 2 in the morning, and sometimes later, making up the various statements demanded by the Insurance Companies; he injured his health by it. I remonstrated with him, and advised him to let the insurance offices point out the errors in his claim after he had sent it in. I was also much employed in getting up these statements. This petty balances book sworn to by Mr. Neal, is the identical one shown to Mr. Geddes in Mr. Empey's office, in my presence; there was no other. There is no credit given; this book is kept for entering goods on sight. Some of the first families of Montreal have been refused credit in their establishment.

Andrew Robertson, sworn.—I have acted as legal adviser to Plaintiff; I am well acquainted with the book, Mr. Empey's private Ledger; I am quite certain this is it; I am perfectly acquainted with its external, and also with its contents. Mr. Empey has shown it to me often, from the beginning, to fix the investigation after the fire. This is the book; I have no doubt of it. I recognize the accounts inside which I am acquainted with. I identified the two leaves produced as those which

were torn by Mr. Empey from this book, containing some pencil calculations.

Cross-Examined.—I believe there has been no alteration in it since. I am acquainted with it; but additional entries, in the way of business, have been made on the pages stated, by Geddes and Whyddon, to have been blank when they saw it.

Mr. Bethune.—Since my learned friend states that this is the book, I can believe it is; and, if it had been stated so at first, Mr. Geddes and Mr. Whyddon would not have denied it.

Mr. Rose.—If my learned adversaries are not satisfied, I have still fifty or sixty witnesses here in Court to identify it.

Robert Miller, sworn.—I am a bookbinder; I have carefully examined this private ledger; there have been no leaves taken out of it, except two at the end. I have counted the sections; they are all correct.

E. C. Tuttle, sworn.—I corroborate Mr. Miller's statement; there is an appearance of a loss of leaves near the centre, but this is common from opening a book too far, and separating the gluing of the sections.

Mr. Graham, Bookbinder, was called, but he had left the Court.

Henry O'Brien, sworn.—I recognize the stock sheet 17; the contents are all ribbons; it is my writing; I wrote it all on the 23rd Feb., at stock-taking; I know the private ledger of Mr. Empey. These are my initial initials, from March 1853, I put every month opposite the amount of my salary as it is received; this is done at the time of receiving it. There is no credit given; each clerk is responsible for anything sold and not paid for.

Mr. Dunkin briefly replied, and admitted that after the evidence that had been adduced, he was free to admit that, with regard to the identity of the little ledger, the witnesses for the defence—Geddes and Whyddon—had been entirely mistaken; they had doubtless stated what they believed, but they were wrong; *it is the book.* The acquaintance with it had been casual; it was supposed to be of great importance to the case, and there was a degree of suspicion about it. It was a mistake of identity, and he felt called to acknowledge it.

The Court then adjourned.

FIFTH DAY.

Upon the opening of the Court, Mr. Rose, on behalf of the Plaintiffs, and at the desire of the Jury, expressed the evening before, asked leave to produce the Book of the Fire Department, showing the record of the dismissal of the Defendants' witness, Hadson, as a fireman, from the force, for drunkenness on the night of the fire; also, the clock destroyed in the premises of the Plaintiffs, at a great distance from the fire. And he was desirous, also, of examining Mr. Kay, the salesman of Benning, the Auctioneer, who had made a calculation that the uninvoiced rubbish in the shed and

yard represented goods to the value of £10,000, a fact of which he was not aware at the time Kay was examined.

Mr. Dunkin, on behalf of the Defendants, objected. The evidence was now complete, and the case was closed; if it was re-opened, he should claim the right of bringing evidence in rebuttal, and no one knew where this would end.

The Court ruled that the objection must be sustained; no further evidence could be brought.

MR. ROSE'S REPLY.

Mr. Rose, Q. C., addressing the Jury, said:—I rise to address you with feelings far different from those which impressed me at the opening of this trial. Conscious, from the outset, that I advocated an honest cause, and had deep wrongs to vindicate, I yet trembled with a painful anxiety. Now, I tremble for very confidence, lest, in the inscrutable wisdom of Him whose aid you have invoked to guide your deliberations, injustice and error should, for the time, be permitted to prevail. And yet, I cannot persuade myself that any lengthened observations, on my part, are needed in reply. I have watched your unwearied and intelligent investigation of every fact connected with this painful and complicated investigation, and I thank you from my heart for it. What is my clients' case to-day, may be that of any one of you to-morrow, and though I would not willingly exhaust your already over-tasked patience, I trust you will bear with me while I perform what, in this instance, is done more in compliance with a conventional duty, than from a conviction of the necessity of a closing address. I feel that my clients but await the formal recording of your verdict to restore them to that position, in the estimation of their fellow citizens, from which the events of the past twelve months threatened, most unjustly, to banish them. I have no desire to over-estimate the importance of the result; still, less humbly to assume on their triumph and the utter discomfiture of their traducers. I had hoped for equal magnanimity on the other side, and that, as each charge was disproved, each suspicion shown to be groundless, and each fact explained away—as, in short, the various grounds of defence, one and all, disappeared like the moving mist, the Defendants would, last evening, have submitted to a verdict against them. Had they been left to their own honest impulses, I feel persuaded that your duty and mine would have, ere now, been ended; but the Defendants cannot sever themselves from the Association with which they are linked. Yet, let them resist and struggle as they please, they cannot long avert the issue, for I know, and every one who hears me shares the conviction, that, before the sun which is now fast ascending to the meridian shall have passed it, justice will have triumphed, and the cloud which has overshadowed my clients will have vanished forever.

You saw, Gentlemen, as the evidence for the defence progressed, as every attempt of the Defendants to establish fraud was baffled and became—I had almost said ridiculously—abortive, after every blow which they aimed at us rebounded on themselves, you saw the tone of my learned friend (who had arrogated to himself, at the outset, the position of public prosecutor) altered to one of depreciation and apology; for the question is not now, as he seems to admit, whether the charges they made are proved, but whether the Defendants ever had any grounds which justified, or even extenuated, their placing the charges on record at all. My learned friend also told you that he had it, in instruction from his clients, to exaggerate nothing and to distort nothing; but to conduct the case with perfect fairness and candour. I can well believe it, for my free acknowledgment of their honorable and high-minded fair dealing, is based on more than ten years of close personal intimacy and professional relationship with the Agents of the Defendants. But, however high a meed of respect I accord to them, I must assert the same for my own clients. I do not hesitate to avow that I entered on the investigation of this case, if not with a prejudice, at least with a doubting and suspicious mind. Unknown, friendless, and without having attained that assured position which requires years of success, in a commercial community, to establish—claiming a loss to a far larger amount than Underwriters are generally called on to make good from a single calamity, they come into Court under every disadvantage. Men could not believe that offices, noted for their liberality and justice, would have combined to resist a claim which was even moderately honest, or that fifteen Companies would have leagued together but to expose some gigantic attempt at fraud, which they had it in their power to defeat. Add to all this the natural proneness of every mind to suspect evil in our fellow men, and you can well see how fearful the odds against my clients were. I doubt if even your minds, Gentlemen, were entirely free from bias when you entered the box. Under all this, nothing but a consciousness of their own integrity, and a dependence on Him who is alike the fountain of justice and the protector of innocence could have sustained them. No man with guilt on his head would have dared to have submitted his case to the scrutiny of an upright Bench, an intelligent Jury and a discerning public. And under what circumstances do they come forward? I am perhaps violating the proprieties of professional intercourse, but my earnestness for the complete vindication of these young men must be my apology for reading a letter I received the night before the Trial and which I need not say affected me most sensibly.

MONTREAL, 10th May, 1856.

JOHN ROSE, Esq.,
Queen's Counsel, Montreal.

Sir,—As we have retained you as Counsel to conduct the suits, we have

"been obliged to institute against several Insurance Companies to recover losses
 "we sustained by fire on the night of the 5th day of April, 1855; and, as very
 "serious accusations are pleaded against us, we feel it our bounden duty to you,
 "as an honorable man, now to inform you, that if, during the course of the trial,
 "of the case filed to take place on Monday, 12th instant, you are convinced there
 "appears to be any 'Fraud,' 'Imposition' or 'False swearing,' on our part, in
 "making and sustaining our claim, we shall relieve you from further advocating
 "cases founded on such a foundation.

"We remain,

"Your most obedient servants,

(Signed)

J. MORISON,
 A. CAMERON,
 ALEX. EMPEY."

The Plaintiffs were utter strangers to me until my professional connection with them in this cause, and I must publicly avow that the intercourse has resulted in my now entertaining the highest respect and warmest admiration for their characters. In every circumstance, however trifling and minute from the first to the last they have shown a straight-forward and high-minded honesty of purpose. And these are the men that are denounced as guilty of fraud, falsehood and perjury!!! I will not recriminate, though my heart swells with indignation at those whose low and suspicious natures prompted the accusation deep as is the wrong inflicted. I trust that their accusers may never themselves be placed in a like strait. Ah, Gentlemen, it may seem to superficial observers that my clients are men of callous, bustling natures, who have, since the occurrence of the fire, pursued their trade unaffected by the stain on their character which these charges involve! But God forbid that you or any one dear to you should have to pass through the same terrible ordeal, hopeless, companionless the object of distrust and suspicion, whether in business relations or social intercourse. God forbid that you should ever be called on to witness in your own circle the suffused and downcast eye, the swelling heart, and choking utterance which bespeak the inward anguish of an honest spirit sinking under a sense of unmerited suspicion. But he who punishes guilt as surely protects innocence and the unmerited obloquy which has been heaped upon us will soon under God's help be removed.

We have been somewhat tainted with not submitting the issue to arbitration; but, as I declared at the outset, it became with us a question of guilt or innocence, character or no character, fraud or honesty, and I but convey to you my instructions when I tell you emphatically and unmistakably that we will have no compromise—that we stake all on that issue; we will not consent to receive the smallest coin to which a legal value can be attached, if you believe,—if you have even a lurking suspicion of false dealing, give us all or nothing. If you cannot by the sanctity of that Book on which you have invoked God's aid and direction, avouch that we are wholly and clearly innocent, make no compromise between right and

sympathy—be not deterred from fear of consequences from the solemn duty of recording your verdict against us.

But let me now proceed to review the evidence. I see by your looks that it is needless, that mind and body are exhausted, and I shall be brief.

There is in reality but one question to determine. Were the goods in the store the night of the fire? The Defendants say they could not have been consumed. But it is useless to speculate on the duration or intensity of the fire, because if they were *there* they have *disappeared*, and, if lost to the extent we say, the claim is substantially a just one, and there can have been in no material thing imposition or false swearing.

The learned Counsel then reviewed at great length the whole evidence, as to the nature of the fire, its duration and its intensity; he reconciled those differences of opinion as to the time it was burning, particularly that of Captain Bertram and the witnesses for the Plaintiff. He showed that a considerable time must have elapsed from the commencement of the fire until it became apparent, from the alarm until the messenger reached Bertram's residence, in Dalhousie Square, more was consumed in arousing him, his dressing proceeding through streets in the worst condition, neither wheeling nor sleighing, but a mixture of ice, snow, and mud. The time thus occupied, short as it might appear to those engaged, was sufficient to have enabled the fire to gain great headway, and to be distinctly visible from the Place d'Armes, as what Captain Bertram called a dark light. No estimate could be formed on the mere question of time as to the amount of destruction which fire would do; he called to the remembrance of the Jury the great conflagration in St. Paul's Street a few years ago, when in not one quarter of the time, admitted by the Defendants that this lasted, large stocks of valuable goods, and the stores which contained them, were utterly destroyed. As a scientific corroboration, he adduced the important evidence of Mr. Parsons and Dr. Hall, to show that the very nature of the stock destroyed was such as to make its utter destruction in the intense heat of its confined space certain and complete, and he called to mind the all-important evidence of Bertram, the Defendants witness;—"It was not the Building, but the *Goods* that were burning." The evidence of the value of the stock on the premises at the time of the fire was as perfect as it could be; there were the stock sheets, and the books, the corroborative testimony afforded by the accountant after an elaborate investigation of the whole business transactions of the Plaintiffs, since the beginning. Not one fact alone, nor one proof, but a succession of evidences dovetailing and fitting together until they assumed the form of unimpeachable certainty. They had heard the testimony of Mr. Court, a gentleman of the highest standing in the community, of strict rectitude and calm judgment, who had told them that he carried to this investigation a strong bias against the Plain-

tiffs, and they had heard him declare with a solemnity that those who knew his character could alone estimate, that after the fullest investigation, on his conscience he believed the claim to be a good claim. Messrs. Rufford & Spiers, able accountants, none more so, had testified to the same; they had subjected the statement of the loss to every test which a practical knowledge could suggest and they had arrived at the conclusion that it was in truth and fact no less than it was made.

But the case did not rest on mere opinions. Had we not invoices for every shilling in value of the goods? Had not the stock been taken minutely and accurately, and when no possible motive existed for exaggerating its quantity or value? Had it not been taken at a *reduction* to bring it down to its lowest *cash value*? Had the Jury not the original bills which the Plaintiffs had given for their purchases, stamped and bearing such conclusive marks of genuineness as that even the Defendants could not doubt their authenticity? Had they not the returns from the Custom House? Had they not the entries in the Plaintiffs books carried from year to year all corresponding? And did not all these united form a mass of corroborative testimony such as was seldom offered in any Court of Justice?

It was said the Custom's Report exhibited a discrepancy of some £3,000, but this was an entire mistake. Mr. Davis had examined the Plaintiffs importations from the beginning of their business, and they tallied exactly with their statement. The difference between it and the Defendant's return was this,—that a certain part of their goods had been entered in the name of the forwarders which did not appear in the Defendants' statement, as they had no means of knowing the fact, and besides, the Defendants took the value as entered for duty, which is the actual *ready cash value*, and is 5 per cent. less than the invoice or credit price actually paid for the goods. These two items accounted for the supposed deficiency. So much, then, as to the existence of the goods. And now let us come to the accusations of fraud, imposition, and false swearing. Never, I believe, were such grave charges made on such slender, unsubstantial, frivolous grounds; never was so much respectable and powerful countenance more unwarrantably or causelessly given! Compelled to wage a contest which involved not only pecuniary ruin, but the loss of character, a contest which, but for the confidence of their creditors in their integrity, they never could have found the means to carry on, against a confederation of Insurance Companies, armed with all the power which wealth and influence gave them; they had been deprived even of the books necessary for the preparation of such a statement of their affairs as was imperative on their defence. To such an extent had this persecution been carried, that they and their creditors were even deprived of that security in their business which was their right; the Companies had, since the fire, refused to insure their stock, and they were compelled in a great

measure, to become their own insurers. We have heard of prosecutions instituted against laboring men for combinations to raise the rate of wages, and against bakers for endeavoring to enhance the price of bread, and of punishment inflicted on them for such acts; but what are these in comparison with a combination of Insurance Companies to deprive the Plaintiffs, by withholding their books, of the means of establishing their legal claim,—then of an organised resistance of that claim itself, and finally by excluding them from the right which is accorded to the humblest man in the community, if he be respectable, of protecting himself from disaster by insurance.

We have been told that in the proceedings on this case, there is no distinction between the Agents of these Companies and their principals, that the one endorses the acts of the others; if this is the truth, let it go forth through the length and breadth of the land, [that parties insured may know what they have to expect when the misfortune of a loss against which they have endeavored to secure themselves, comes upon them. Let it be known that accusations of fraud, of imposition and perjury, are to be made upon vague suspicions and foregone conclusions, upon the mere inferences of evil minds, without tangible proof, or a shadow of testimony, and that to the loss of property is to be added the loss of character, when they attempt to claim the indemnity of their contracts. I say that Insurance Companies must be taught, and I believe the result of this trial will teach them that they are not to be allowed to assail character with impunity, that when they are called upon to investigate a claim, they are to proceed to it in good faith, and not to commence it with a foregone conclusion of imposition, supported upon such weak premises as an error here, or an erasure there, and stories of private books, on which to found accusations of fraud. They must be compelled to meet men who claim from them the fulfilment of their contracts as honest men, and not lightly or needlessly raise such issues as those upon which this defence is based. It is useless to say that they ignore the graver charge of arson, that they repudiate the intention of imputing a fraudulent destruction, and confine themselves to the plea of imposition, fraud, and false swearing, since the fire. The whole course of the defence goes to show that if fraud there was, it was not of to-day; that it commenced with the first day that my clients began business, that it has been continued from year to year for the specific ultimate purpose of a criminal destruction of property, and a false claim. This conclusion is inevitable, it cannot be avoided. The Pleas in the defence, if proved, would have established a deep and damning crime, a depth of infamy of which the commercial history of the world affords no parallel.

Into what then do these charges resolve themselves?—that the half burnt books which have been produced and the stock sheets were destroyed since

the fire, that they have been mutilated, and that the "little private ledger," of which we have heard so much, has also been torn and destroyed so as to hide the real position of the Plaintiffs' business; and, finally, that we have claimed for some £700 odd for fixtures, as part of our stock. Really the answering of such far-strained arguments and erroneous assertions seems like combating with a shadow. The witnesses by whose testimony it was intended these charges should be supported, Messrs. Geddes and Whyddon, were self-condemned; you saw their confusion, their self-contradiction, the embarrassment of their looks and of their ideas; and I might dismiss their testimony without a word of comment. I should have done so, for they are to be regarded more in pity than in anger; one of them at least, Mr. Geddes, having evidently found out his mistake and evinced a disposition to acknowledge it. Take as a specimen the recapitulation stock sheets; you remember the mysterious solemnity with which he announced that he did not believe, or doubted it was the first shown to him; and yet he finds, and admits on cross examination, that the pencil initials and corrections shown to him on it are *his own*; that he had gone over it, figure by figure, column by column with Mr. Empey, and himself verified its correctness!!!

And now let us come to the *Private Ledger*. Mr. Geddes conscientiously expressed some doubt as to its identity, but you recollect Mr. Whyddon's microscopic and prolonged examination of it, outside and in, back and front, and the air of self-complacency, and tone of voice with which he laid it down and pronounced it "a clever imitation." You remember, also, when hard pressed, with what solemnity he asserted that he *could not be mistaken*; that the real Book was a much larger Book, and how positively he declared as if surprised at my persistence in the interrogation that the one produced was *not the Book*. That you may comprehend the full force and importance of this evidence, I must call to your recollection that the mutilation of this Book is the key stone of the defence. It was this Book from which Messrs. Geddes and Whyddon had declared at least fifteen or twenty leaves had been extracted. In the affidavit sent by the latter to Mr. Empey, he, Empey, swears that no leaves whatever were taken out; and after this the mutilation is averred in the *Pleas*, and Mr. Empey's denial of it on oath is formally set forth and specially set out as the false swearing, by which the claim is forfeited. We must, therefore, suppose that Messrs. Geddes and Whyddon were prepared, beyond all doubt, to prove the mutilation between the intervals when it was exhibited to them. Now, mark the issue. They knew before going into the witness box, (for they had heard it at the outset of the case) that we would prove, by the testimony of all the Bookbinders in town, that not a square inch of paper ever had, or could, have been taken out of the Book; and they saw that the only alternative was either, on the one hand, to persist in that as-

assertion which would have been so triumphantly disproved, or, on the other, to throw a doubt on the identity of the Book. Partly honest, partly puzzled, they stuck on the latter horn of the dilemma. But how did that avail them? The defendants, it is true, at first, threw all manner of doubt about its identity; but you remember the spontaneous burst of applause which greeted the manly, straightforward assertion of Neal, "that he would take a thousand oaths it was the Book." And when they found that we had fifty unimpeachable witnesses to support him, the defendants bent beneath the mighty wave of truth, which they felt powerless to breast, and my learned friend deprecatingly admitted that there had *been a mistake and that the Book must be the very Book indeed!!!*

What then becomes of the blundering self-confidence of Mr. Whyddon, the nonchalant air with which he produced the extracts he had made from the "little book?" at the time, and which he did not find in it now, as conclusive proof that it *could not* be the same? We were all struck with this. I, myself, was staggered, confounded, and, for the moment, mistrusted the whole case. Every man in Court held his breath, and felt it was inexplicable. The only solution which occurred to me was, that his extract must refer to some other book. I could not believe any man would have wilfully fabricated such a memorandum; and yet, how could there be any mistake committed in relation to a paper which, as Mr. Geddes stated, was considered, by Mr. Whyddon, "too sacred" to be entrusted even into his hands?

And yet, Gentlemen, so it is! The man, all the while, was referring to *another book*, and that other book is the *half-burnt Ledger*, which has ever since been in *his* possession. Did he calculate on our not making the discovery during the hurry of the trial? If he did he reckoned in vain, for here is the page and here the entries, not in the little book, but in that Ledger! (The learned Counsel here, amid great sensation, shewed the book to the Jury, and pointed out the entries; and then took up the other memorandum of Mr. Geddes, which that witness had shewed he made from the private Ledger, and shewed the Jury that it indisputably proved the identity,—having reference to entries contained in the different pages, bearing peculiar marks. These explanations were given amid great sensation.) The Counsel continued, at some length, to review the evidence of these witnesses on other points, and, turning to the Counsel of the Defendants, said, he hoped their clients were satisfied that they had got full value for the £500 paid for it.

He also showed, from the small private Ledger, that Mr. Empey had an income from another source than his business—enough to support him well, without all this toil and anxiety of business; as it had been said, since this trial commenced, "How could a man, with a family, live upon £166 a-year?"

He showed them that no charge had ever been made on the Defendants for fixtures, as alleged; that although they had been properly introduced into the amount of the general stock, yet they had been credited to them as so much saved. He proceeded to explain away the supposed misentries, and showed that even had they been all that they were represented, yet they involved no evidence of fraud. The items of charges afterwards transferred to goods, he admitted had been so done since the fire. But it was openly and honestly done, in presence of plaintiffs clerks and to Mr. Whyddon's knowledge, when one or two items were found to have been wrongly charged in the year 1853, by a careless clerk. He contended that the first entry was an error which the Plaintiffs had a right to correct. The mass of these were for premiums of exchange, and commissions paid for negotiating loans, the proceeds of which enabled them to purchase with cash in foreign markets, obtaining thereby discount far greater than the interest; and while the price of the goods was thus diminished on the one hand it was strictly correct that there should have been added to it, the charges incurred on the other. The declaration of Mr. Empey after the fire that the books were safe, and in the safe did not allude to books out of use, but to the current books of account that were in use; the very size of the safe, one of the very smallest kind, only capable of containing these was an evidence of this. The learned Counsel concluded his address by a recapitulation of the issues which their verdict must decide, and the manner in which, if in favour of his clients, this must be done; and an appeal to the Jury under the extraordinary circumstances of the case, the grave charges that had been made against his clients, and the utter failure to establish a single suspicion of wrong doing, that in addition to this, if they were satisfied that they were innocent men that they should make such a special return in addition, as would publicly record their opinion of their honest and honorable conduct.

The learned Counsel closed his eloquent address about 12 o'clock. (The Court, which had been throughout the whole of this long trial full of attentive listeners, was now absolutely crowded.)

Mr. Dunkin desired before his Honor charged the Jury to make an explanation purely personal to his own position. He had examined the matter of the Fixtures, and he was free to admit that he had been misinformed on that head; there could be no doubt that the amount of them had formed no part of the claim against the Defendants. He trusted it would be believed that he was entirely unaware, that he had no suspicion of the truth, until it was exhibited by the learned Counsel. Had he known the fact, the accusation would never have been made.

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THE CHARGE.

His Honor Mr. Justice Smith, said:—Gentlemen of the Jury,—At last we have arrived at the termination of this case, which has, throughout so many days, occupied your attention. It is one of great importance, not only as affecting the position of the Plaintiffs as merchants, striving to establish and carry on an extensive business on the basis of their personal respectability and credit, but also for the large amount involved in it, and the implications of moral turpitude on their character. The case resolves itself into a simple point. I confess to you, when it first commenced, I thought that there were great doubts of the validity of the claim set up by the Plaintiffs, and of their conduct in its proof; but as, from day to day, the enquiry proceeded, these doubts have, one by one, disappeared, and now I have none.

Gentlemen, it is not for me to control your verdict; the law makes you the masters of the facts, and I do not desire, by a whisper of mine, to influence your decision. And I shall make no remarks on this, but what I feel necessary to be made, of which I know the responsibility, and which I shall willingly assume. The claim is for a proportion of a loss incurred by the Plaintiffs by fire on their premises, on the night of the 5th of April, 1855, as covered by two policies of insurance, that proportion being the ratio which the whole loss bears to the aggregate of the whole of the insurance. Your verdict, if for the Plaintiffs, will be for this proportion, as set forth in the statement in the record. You have nothing to do with the origin of the fire—this is not challenged. The extent or duration of it is no sound conclusion of its effects; no man can limit the amount of destruction, the intensity or effect of fire. It is an agent whose power cannot be estimated, that cannot be bound down by any given rules; its power is only to be judged of by its effects. It is not for you to decide what amount can be destroyed in a given time, but how much was destroyed in this conflagration. Its duration has been variously estimated from twenty minutes to two hours; it has been set up that it is a physical impossibility that the amount of loss claimed could have taken place in these limits. The fire must have burned some time before it was discovered, a further time must have elapsed before the arrival of the engines, it had then reached such a head that the flames were visible at a great distance, and the fact that it was easily put out proves its intensity; the inflammable nature of the goods, and the rapidity with which they were consumed, was also a reason why they should be easily quenched. A few minutes of such a fire were sufficient to destroy a great amount of goods. It has been proved that it burned a long time; but it is not with the time you have to deal, but with the results. If it is proved to you that the quantity claimed was in the premises previous to the fire and that they have not been seen since, and you are satisfied they were not taken away, it is in vain for any man, or any set

of men, to say that it is not possible for them to have been burned. There is no measure for fire; you cannot tell what it can do, until it is done. If you are satisfied the goods were in the premises, these suppositions cannot be brought as evidence against the facts. It has also been attempted to be shown that it was impossible that the space would contain the amount of goods described. On this head you have the evidence of the witnesses, Benjamin and Whitney, to prove that, not only was it not impossible, but that they actually placed them. It is in vain for any person to set up mere opinions against the practical knowledge and experience of these gentlemen. It is alleged for the Defence that the Plaintiffs have claimed for an amount of stock which they did not possess, that they have supported this claim by false statements, erasures, mutilations and false stock-sheets, and that the overcharge thus made has been supported by false swearing. The real issue, then, before you to-day is, whether the Plaintiffs did actually possess this stock; for, if they did, the other pleas fall to the ground. The Plaintiffs have attempted to establish this fact by witnesses, by their books and documents, extending over a number of years, and the balance sheets annually struck. Fraud is so mingled up with this question that, if you abandon the idea of it having, from the first, tainted all these evidences—preceded and pointed to the final consummation,—the defence falls to the ground. Such a course of systematic falsification could not have been commenced at so distant a period, and extended over such a term of years, except to prepare the way for a gigantic fraud—a fraud, I am bound to say, without a parallel, and almost beyond the limits of belief. The documents and books which they produce must, unless destroyed, be taken as substantial evidences in their favour. A merchant's books are his legitimate proofs; is he to be denied the benefit of their testimony, when verified by documents, examination, and every test which the skill of accountants can subject them to? If so, they become so many traps for him and for others. If they are to be taken against him, and against their sense, and used as evidences to constitute fraud, while he is denied the benefit of their proof, they become so many traps to ensnare him when the time comes, to charge him with fraud. If these books are not sufficient testimony in his cause, then Gentlemen, I am at a loss to say what is. We come now to the consideration of whether there was furnished to the insurers such a preliminary statement of the quantity, and quality, and value of the loss as they have by the conditions of their policies the right rigidly to exact. The conditions of their contract give to the Insurance Companies the right to ask the best evidence which the assured can give of the nature and extent of his loss; this is just and reasonable. The absence of this only affects the right of action, but it does not affect the merits of the claim. The right of action does not accrue to the insured until this statement is received. This then is the first point of the defence. We find that the

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Insurance Companies did receive notice of the fire, they took possession of the injured goods, sold them, received and retained the money; they appointed jointly with the Plaintiffs, appraisers to value the amount of damage upon those remaining, and accepted their report. These acts destroy this plea, and establish satisfactorily the finding of the preliminary statement. It is said that the document submitted to the companies was a mere *precis* or recapitulation of the stock-taking, containing discordant elements, with no proper description of the goods, but a mere statement of yards and values; whether such a manner of taking stock is usual I do not know, but I know I am bound to assume, as no evidence has been brought to establish the contrary, that it is so. If the stock was taken in the usual manner, and you believe that, by this it was possible to arrive at a satisfactory result, then it is established as a proper evidence. There is verbal testimony which is sufficient evidence to show that, on the second story of the premises, there was, on the night of the fire, the quantity of goods stated to be there. If these evidences be not impeached, then a *prima facie* case is established for the Plaintiffs. There is no occasion to go into minute details of this matter, you are far more competent than I to judge of them, if they do not strike at the general result, if you are satisfied of the accuracy of the mass, these need not be touched; and you are able to test the value of the figures submitted to you, better than the Court can direct you. The Plaintiffs assert that the value of their stock was what they have set out;—they go back to the balance of 1854; show the amount of their purchases and sales, and establish that the balance and stock sheets of 1855 are accurate in all essentials. When further called on to verify this, they start from the beginning of their business in 1850, and trace it up through all its transactions to the date of the fire; and when all are compared and verified the difference of result is so small and trifling that it is not worth mentioning. The chief objection is that the stock-taking of 1854 is not verified by the invoices, that the amount set forth in the one is £30,000, while there is nothing to show that more than £27,000 passed through the Custom House. Admitting this to be true, is that an evidence that goods to the amount of the difference were not received otherwise, or that the stock-taking of that year is wrong. Unless you come to the conclusion, of which there is no evidence, that Goods were put down on these inventories which were not upon the premises, there is nothing to justify you in considering this a solid objection; it is merely a supposition against the actual measurement and valuation of 1855. Unless there is something on these documents which can be impeached, something which takes the eye as a manifest exaggeration, I don't see on what principle you can come to the conclusion that they do not represent the quantities and values which they set forth. Now to the pleas set up by the Defendants, which I have placed before you in a sub-

stantial form. They allege, 1st:—That the stock of the amount and value claimed was not on the premises upon the night of the fire. 2d:—That the statements furnished to them were insufficient; that no proper description of the quality, quantity, and value of the loss was ever given them, but that those rendered were inadequate and supported by false representations, over-charge, and false swearing: and 3rd:—That the Plaintiffs had included in their statement of loss, property which was not insured by them; and that therefore on these accounts the policies are vitiated. I will now call your attention to these different features of the case. In the first place, that they had not the amount of goods: that may be, and still the Plaintiffs not be chargeable with fraud; there might be mistakes, errors, and miscalculations, which had produced false results, but this does not constitute fraud, and therefore this would only go to diminish the amount recoverable on proof. The real question, however, is this fraud. I must admit that when this trial first began, my suspicion was that the fraud charged extended over a period of years, and that you would be called upon to try issues involving the characters of the Plaintiffs for a series of years. The defendants disclaim the charge of fraud, as thus involved, and allege only fraud since the fire. From the moment the charge was so put, as not to go beyond the fire, you have nothing to do with anterior circumstances. If there was no fraud previous to the present statements, that charge cannot be proved by going back from 1855 to 1850, and endeavouring to show that the entries in the books of these years were evidences of a fraud which did not come into existence until April, 1855. I do not mean to say that you cannot go back to prove fraud, but this is different from making these entries establish a crime which it is admitted they did not contemplate, and, therefore, they could not be secondary evidence of. If this fraud had been contemplated when these entries were made, before the effecting of this Insurance, and with a view to some object—for object there must have been,—and that object, the only one to be predicated on them, the fire, I say no language can paint the magnitude of the crime. The fraud you have to do with is that after the fire,—the overcharge and its accompanying circumstances. Much stress has been laid upon the condition of Plaintiffs books; I confess I cannot see the weight of the argument as it stands alone. If errors and erasures in merchants' books are to be brought up to proclaim him guilty of fraud, no man will be safe, no character, however high or honourable, will be able to stand the test, and the most honest may be brought up as criminals. This is the charge—because there are erasures, therefore, there is fraud. It is competent to trace back these things, not to show fraud then, but as evidences of fraud now. Now, let us look at the value of the evidence on this important point, extending back to 1850. You have heard of little pieces of fraud, alterations and erasures, from the witnesses Whyddon and

Geddes—little scrapes and marks rubbed out, and leaves missing. Gentlemen, if I had not heard the charges contained in Defendant's declaration, I should have stopped the case long since. All this amounts to nothing but mere suspicion. Where is the evidence to show, or how is it possible to show, if even all these accusations are true and unexplainable, that they amount to charge of fraud, or in any way change the position of affairs. Fraud must have a result, and if that is not contemplated there is no fraud. What description of evidence is this, made up of all these petty minutiae, to establish a charge so grave? If it had not been to allow the Plaintiffs the opportunity of complete vindication, not to satisfy my own mind, but yours, and those of every one to whom this evidence shall come, I should have stopped the case at once; I allowed it to proceed only to effect this result. The charges which have been withdrawn ought never to have been made; they have been disclaimed by the counsel for the Defendants, and they have relieved your mind and mine. What evidence has been adduced that the Plaintiffs, in their statement, made any overcharge, or were guilty of fraud, falsehood and imposture. Where is the fraud tangible to your minds; where is the single act brought up subsequent to the fire—a single act or a single piece of paper, upon which to found a charge of fraud, after it. You have heard how these accusations were made and supported by the witnesses Whyddon and Geddes—of these little peddling matters of marks and erasures; they amount to nothing, and I shall not enter into their details. There has been no proof given that the leaves torn out of the Books of Account were so removed with a fraudulent intention, after the fire. If at all, they were taken out before. How is this to support a charge of fraud after the fire, unless it can be shown that it was done to avoid the detection of false statements of loss, involving a design of intentional burning. The marks and erasures on the stock sheets are nothing, and I dismiss them. The question arises, by whom were these leaves torn from the Books of Account, and for what purpose. The Plaintiffs have a right to say that their loss casts a suspicion on Defendants Agents. I shall not go into this matter; it is sufficient for me to say that, if their absence does not alter the result of Plaintiffs statement, this contains no charge of fraud. If it could be shown that their loss was less than they claimed, even to the extent of one farthing, and the overcharge was made intentionally, their policies are void. Now, what other evidence have you besides these leaves torn out, and these marks and erasures? The last and most important item is the alteration of entries from the charges account to that of goods, by which they magnified the extent of their stock; you have had the evidence of able business men, and can determine on its value. But, even if this was wrong, there was no evidence of its being designedly so. Whether these charges were such as legitimately go to the price of goods is a question of book-keeping, but it does

not affect the result to which you have to come. If the entry was a wrong one, its discovery only goes to diminish the value of Plaintiffs stock. The entry of the fixtures into their claim, not having been explained, if substantiated and done intentionally, would have been a point difficult to get over; but that has been disproved, and has been withdrawn. The third and last point is the false swearing, founded on the affidavits made since the fire. It is stated in evidence that the morning after the fire, one of the Plaintiffs said that the books were safe; this evidence is given by several witnesses in different forms; one says they were safe, another that they were all safe; and that afterwards they were found to be burned. Plaintiffs swear they were burned in the fire; and this evidence has gone to you. Considering all the circumstances could the Plaintiffs have intended to say that all their books were saved, or only such as were in use; or was not the statement made under excitement natural to the occasion with the belief that it was true. Some of the books have been produced to you, and you have seen that they are burnt, and you must believe if they did so state boldly and positively that all their books were saved, that those were burned since. But one of the witnesses qualified his first statement, by adding that the books saved were those required in business, the current books of the time. Is this evidence sufficiently satisfactory to your minds that their oaths have been false? If there is no other circumstance of fraud to be found in this case, if there is nothing else in it to arouse suspicion, is this sufficient? It is inconsistent with human nature, and contrary to our knowledge of the human heart, to believe that men who had been hitherto honest, who had, upon their personal integrity during five years, carried on a most extensive business, without suspicion of wrongdoing, would suddenly have become such rogues as this implied, and in a manner so easily detected. No, gentlemen, it cannot be believed, and whatever admission was made was either misunderstood, or referred only to such books as were in use, in the safe, and not to the old ones. Beyond this there is not a tittle of evidence of false swearing. If you find for the Plaintiffs on these issues, then it is an instruction from the Court that you may express an opinion beyond the issues submitted to you. You cannot fail to have observed the peculiar hardships imposed upon the Plaintiffs in prosecuting their claim against these wealthy and powerful companies, acting in consort. To support what they considered their legal rights, they had a powerful enemy to meet; and thus under circumstances of great disadvantage. Deprived of the books of accounts, and everything concealed and kept back from them, they had to make their way against circumstances hardly ever witnessed in a Court of Justice. These books withheld from them, this combination of powerful influences, these grave suspicions, injuring their character and credit, and finally, these charges call on you, when you return your verdict, if you find that the defendants

have failed, under all these circumstances of advantage, to establish against them one single fact of fraud, imposition, or false swearing, to make a return to that effect. It is of great importance to the character of the Plaintiffs, that you should declare it if you are satisfied, as I, for my part, am, that these charges of fraud are utterly destitute of foundation.

When the Judge concluded his charge a loud burst of applause rose in the Court House, the officers of the Court having some difficulty in restoring order. His honour then again read over the issues of the case to the Jury, commenting shortly on each of them as he went along, and finished speaking about 3 o'clock, occupying 3 hours in charging the Jury.

The Jury was desirous of rendering a verdict unanimously without leaving the box, but in order to arrange its technicalities they retired.

On returning into Court, they rendered a verdict for the Plaintiffs unanimously, upon all the issues, as follows:

Did the Defendants execute and deliver to the Plaintiffs the two Policies of Insurance filed in this cause by the Plaintiffs, at the periods they respectively bear date; and were both such Policies in force, and all premiums due in respect thereof paid before and at the time of the fire in the Plaintiffs declaration referred to? Yes.

Was the stock of dry goods in the said two Policies referred to, and thereby assured against loss by fire, burnt and consumed by fire, as in Plaintiffs declaration stated, either in whole or in part, and if only in part to what extent was such stock of dry goods so burnt, and what was the amount of loss suffered by the Plaintiffs? Yes.—The loss by the Plaintiffs was £23,696 2s 9d.

Was the stock of dry goods at the time of the said fire, insured against loss by fire by any other, and what Insurance Companies, and to what extent? Yes.—To the amount stated by the Plaintiffs—viz. £25,950.

Did the Plaintiffs at any time after the said fire and when, delivering to the Defendants, the accounts and statements required by the said Policies, and in all other respects comply with the requirements, terms and conditions thereof? Yes.—They did comply with all requirements and conditions.

Does there appear to have been any fraud, overcharge, imposition, or false swearing, in support of the claims of the Plaintiffs. If so, state in what respect there has been such fraud, overcharge, imposition, or false swearing, and by whom committed, and how and when? There has been no false swearing, fraud, or imposition of any kind on the part of the Plaintiffs.

Was any and what portion of the said goods which were damaged, sold after the fire? Goods were sold after the fire to the amount stated in the auction sales at Benning & Barsalou's.

Do you find for the Plaintiffs, or the Defendants, and if for the Plaintiffs, for what amount? Find for the Plaintiffs the amount stated in their claim with interest on the sum up to the present time.

J. H. Dorwin, Esq., the foreman of the Jury, then rose and addressing the Court, said with great emotion that he was desirous of stating in addition to the verdict, that when he entered the box the Plaintiffs were perfect strangers to him, even by sight; that he had even a prejudice against their case from all he had heard regarding it, but that that impression had been most completely removed. The whole jury were fully satisfied of their entire innocence and uprightness, and sent them out of Court without a shadow of suspicion against their character as honourable men.

The Jurors all bowed in acquiescence of this. And the verdict and statement were received with applause by a crowded court.

EDITORIALS OF THE MONTREAL PRESS.

(From the *Commercial Advertiser*, May 17.)

INSURANCE CASE.—This case, which we continue to-day, terminated yesterday, after a strong charge from the Court in the favour of the Plaintiffs, and emphatic declaration of the total failure of proof of bad faith in every particular, in a verdict in their favor for the full amount claimed, as the proportion of the Phoenix Company of the whole amount of the loss.

This verdict covers all the other cases, fifteen in number.

The jury were desirous of returning a verdict without leaving the box; and by their foreman, through the Court, declared that they had entered on the investigation with a prejudice against Messrs. Morison, Cameron & Empey, the Plaintiffs, but that they were entirely satisfied of their perfect innocence of the charges set up in the defence, and congratulated them upon leaving that Court without a taint of suspicion, established in character as upright honest honourable men.

The charge of the Judge, and the delivery of the Jury, were received with loud acclamations from a crowded Court.

Of the great pains bestowed on our report, and the enormous labour it has involved, the reporter having been engaged on it five days and three nights without rest or interval, we shall say no more than to express an opinion, without vanity, that few such labors have been accomplished in the same time by one hand.

If we have gone beyond and far beyond the ordinary limits of such proceedings, it has been with the desire of presenting a perfectly faithful and

reliable record of a case not only of great private interest and paramount public importance.

It is gratifying to us to know that it has received the highest encomiums of the Bench, the Bar, and the parties interested, as accurate and disinterested. It will, probably, require two publications more to complete.

(Mr. Pickup is indebted principally to this report for this pamphlet.)

(From the Montreal Herald, May 17.)

MESSRS. MORISON, CAMERON & EMPY vs. THE PHENIX INSURANCE COMPANY.—We publish, this morning, the result of this trial, which has occupied so much of the public attention and interest during its continuance; and we need scarcely add that we do so with the most unfeigned satisfaction. That the case was a complicated and difficult one, we think no disinterested and candid man will dispute; it is therefore extremely gratifying to find that, after so complete and thorough an investigation—so trying an ordeal—not only have the Plaintiffs obtained their just rights, but that, alike by the charge of the Judge and the verdict of the Jury, they are exonerated from even the suspicion of anything inconsistent with honorable and straightforward dealing.

(From the Montreal Witness, May 19.)

GREAT INSURANCE CASE.—An Insurance case, involving a very large amount, (£23,000,) in which Messrs. Morison, Cameron and Empey of this city were the Plaintiffs, and fourteen or fifteen Insurance Companies acting in concert were the Defendants, although nominally the suit was against only one of them, has just terminated by a verdict for the Plaintiffs, to the full amount claimed. This case was deeply interesting, from the fact, that the Insurance Companies had leagued or combined together with reference to it; the minority, supposing a difference of opinion to exist, being bound to submit to the majority, and in this way, very probably, the whole of the companies kept each other in countenance, to do what no one would have ventured to do individually. It appeared that the Plaintiffs had been treated with harshness and suspicion, in the investigations following the fire, that their books had been kept from them, and that they had been accused of misrepresentation, fraud, and false swearing. They had consequently declined an offer to arbitrate, feeling that as accusations had been raised against their character, they must have an open trial, and either get all they asked with a complete clearance from suspicion, or lose all if they were guilty. They had thus come through a year of very great mental and commercial trial.

In the progress of the case, which occupied four or five days, the proof of their loss was made satisfactorily; and the evidence relied upon to convict them of fraud and perjury completely broke down, so that the counsel

for the Plaintiffs, Mr. Rose, was enabled to make one of the most convincing and triumphant appeals to the Jury we ever heard.

This case suggests some reflections upon the Insurance business, to which we take the liberty of asking the attention both of Insurance Companies and of the public.

1st. There is no doubt that Insurance Companies are often sadly imposed upon and victimized; and, that as a general rule, they are very liberal in settlements, seldom taking advantage of mere technical or clerical errors, if the intention has been obviously right on the part of the insured; and often even winking hard at what they are convinced is fraudulent, rather than go into Court.

2nd. That when they do go into Court they are very probably defeated, and incur an amount of odium, which is both painful to their feelings and injurious to their interests.

3rd. That all this tends to induce wealthy and honorable companies to withdraw from the business—several have, we believe, already done so—or to raise their rates of premium so as to make the honest pay for the dishonest, thus entailing a great burden on the community generally.

For these reasons, it is obvious, that besides its absolute injustice, nothing can be worse policy in a public point of view, than to make Insurance Companies pay in all cases whether right or wrong.

But on the other hand, honest men who have paid their money for insurance, and who sustain a loss, should not be subjected to dark suspicions and insulting doubts; should not, in a word, be treated as if they were cheats and rogues, as is too much the practice with some agents of Insurance Companies, but should, after a courteous investigation, be paid at once. If a company insures a party at all, it should be prepared to treat him with the ordinary courtesy between respectable persons, unless there is good reason to suspect wilful fire raising or fraud.

Above all, an honest man should never be subjected to the necessity of going to law for his money; as before he can recover it in that way he may be brought to bankruptcy, or, at all events, have to make enormous sacrifices, and sustain an amount of anxiety sufficient to make his hair prematurely gray. It is of little consequence to a great company to go to law when the most it can lose in addition to its liability will be the costs; but it may be a matter of life and death to the assured.

Here, however, the question arises, how is the Insurance Company to know who is the honest, and who is the fraudulent claimant—it being evidently their duty to pay the one promptly and pleasantly, and to resist the other to the last? and we admit that this is a practical difficulty of no small magnitude. Nevertheless, we think it might be got over to a very

great extent if the following rules were adopted, which are only what all other kinds of business men have to adopt at any rate:—

1st. Let a satisfactory introduction and reference be required before insuring for any one who is not well known to the office, and let a reasonably careful investigation be made into the character for integrity, prudence, and sobriety, of the person assuring. Let, in fact, each office have its customers whose character and circumstance it knows, just as a Bank has, and if the party insured wishes to change his office, let him apply to another, giving his references, just as he might change his account from one Bank to another.

2nd. In case of loss, involving points of difficulty, employ disinterested accountants, of high character, long experience and solid judgment to investigate the circumstances, and report to the office; men whose natures will be alike removed from the low suspicion that sees fraud in everything, and from the easy confidence which takes every thing for granted. And upon the report of such investigators, pay the claim, or resist it, as the case may be.

Were some such system as this adopted, character would have its due weight, as it always ought to have; the ordeal would be severe enough to deter, to a great extent, international fraud; the honest man would be paid without suspicion or harassment; and the rate of insurance could, we are convinced, with these precautions, be materially reduced to the public, whilst the Insurance Companies would make a profit on their business, as they ought to do, instead of a loss, as has been the case with most or all of them in Canada hitherto.

To these remarks, we would just add, as a hint to those effecting insurances, look carefully to your policies, read the conditions on the back, see that the description of the risk is correct, and report at once if any building is erected, or any thing takes place that alters it; in a word, act in perfect good faith with the office, as you would have others act with you, and see that every thing is in due form, and nothing depending on conversations or understandings which may be forgotten or repudiated; and especially be careful to deal with a respectable and trustworthy office and agent.

(From the True Witness, May 22.)

The keenly contested case of Messrs. Morison, Cameron & Empey v. the "Phoenix Insurance Company," terminated last week with a verdict altogether in favor of the plaintiffs, who have thus passed through the ordeal unscathed, and with unblemished reputation. In the words of the *Montreal Herald*—"Alike by the charge of the Judge, and the verdict of the Jury, are they—the plaintiffs—exonerated from even the suspicion of anything inconsistent with honorable and straightforward dealing."

(From the Montreal Transcript, May 19.)

THE LATE ASSURANCE TRIAL.—We congratulate Messrs. Morison Cameron & Empey upon the triumphant result of the trial in which they have been engaged—one as momentous and important as ever came before a Court of justice. In its issue was involved, not the credit of the plaintiffs only, but their character also; not the twenty-three thousand and odd pounds, of which for the last thirteen months they have been unjustly deprived, and by which, had it not been for the assistance of those who reposed a high confidence in their integrity and honesty, they would have long ere now been compelled to wind up their business, and so effectually prevented from either bringing or prosecuting a law-suit against rich and powerful Assurance Companies—but all that a man holds most dear,—his reputation and his fair fame. The ordeal through which they have passed has been a very painful and searching one: they have come out of it purified from every stain upon their character; unscathed in their reputation; with the admiration of the crowded court who witnessed the trial, and the sympathy of the public at large. Never men went into court with such a cloud hanging over them—so suspicious, and so suspected: seldom has there been so good a deliverance; so full and ample a recognition of innocence wherever and however called in question.

We cannot help expressing our surprise that with such a case the Assurance Companies ever ventured to come into court. They must know that with the strongest evidence to prove fraud, they have, as a general rule, failed in getting a verdict: that the leaning of a jury is towards the weak and against the strong; and that the poor individual, if his claim has a leg to stand upon, will be sustained against the rich corporation who seeks to contest it. What madness, then, to risk “the glorious uncertainty of the law,” to hazard their position and standing before the public, and involve three respectable merchants in ruin and disgrace, without the smallest amount of evidence to sustain them—without a particle of proof to support the least of their allegations! The combined Assurance Companies now occupy the very same place they would have assigned the Plaintiffs in the cause: the latter they accused of fraud, false swearing, and falsification of accounts: they will themselves be looked upon now as banded together to resist a just claim—to persecute those who sought to sustain it—and crush them even before coming into court with the weight of public condemnation and censure. We regret that it should be so. But we cannot hesitate to say that, by this trial, public confidence in these companies will be grievously shaken; and that it will take a long time to eradicate the seeds of doubt and suspicion this case has sown in the hearts of the public.

We believe most of the offices who contested this claim have been

deceived throughout, and wilfully misled. They have reposed too much trust in others; and have failed to examine matters as they should have done themselves. They have been imposed upon by imaginary discrepancies in the plaintiffs books; or by the scratchings seen through the spectacles of Mr. Whyddon the Attorney. To the jealous, "trifles light as air, are confirmations strong as proofs of Holy Writ." The accountants who examined the books on behalf of the Companies would appear to have determined upon making some notable discovery therein; and diseased imaginations must have conjured up all the bugbears they brought forward to frighten us with. These gentlemen appear to have been the medium of communication with the plaintiffs: had the Assurance Companies attended to their own business, this case, we are convinced, would never have come into court.

There are some offices, Life, as well as Fire, in this city, who, we regret to say, contest every claim—no matter how substantiated—that is brought before them. They pocket the premiums with the greatest nonchalance, but pay only on compulsion. And there are stories afloat in regard to them and others which it would be well for the Government to investigate. It would be satisfactory to the public, at least, to know that in the event of their claims—should they ever unfortunately have any—being sustained, they will be liquidated in the end. It would be satisfactory, we should think, to the different offices to have their stability ascertained and certified by officers appointed by Government for that purpose.

(From *La Patrie*.)

MORISON, CAMERON & EMPEY, vs. THE PHOENIX INSURANCE COMPANY OF LONDON.—This important case, which the people of Montreal have regarded with extraordinary interest, was terminated on Friday, after five days of scrutinising and impartial investigation. The Jury delivered their verdict immediately after the close of the evidence, without deliberation, giving the whole amount claimed, with costs and interest. Judge Smith delivered to the Jury a charge at once eloquent, and remarkable for sound sense. He placed in strong contrast the honorable and upright conduct which had all along characterised the dealings of the Plaintiffs with the very equivocal proceedings which it was evident the Defendants had, without compunction, resorted to. The Judge's charge was received by the audience with applause; and on the verdict of the Jury being pronounced, it was followed by a burst of acclamation. We have perused the detailed report of the *Transcript* and *Advertiser*, who published in a complete and impartial manner the whole of the proceedings. We cannot comprehend how such hitherto honorable Companies, who claim high commercial position and consideration, to deserve the unlimited confidence of the public, could come with such pitiable reasons into a Court of Justice, to contest a claim—the strict justice of which was made at once evident, both to the Court, Jury, and the public at large.

The advocates of the Defendants, with their well-known talents, totally failed in investing the conduct of their clients with even a semblance of justice, and all their efforts to sustain the position only ended in proving the bad faith of the Insurance Companies: we regret to say that the conduct of the Insurance Companies concerned in this affair was anything but honorable. Not satisfied with retaining from Morison, Cameron & Empey for a whole year, the amount claimed by them; some at least, of the assurers at tempted by every means in their power to injure the characters of the young merchants, and contemptibly charged them with fraud. The inju rious reports, so freely circulated, had prejudiced the public, and it was commonly expected that during the investigation, the claim made by Morison, Cameron & Empey would be shown to be utterly unjust. What do we see? On one side, nothing but good faith, and the perfect justice of every thing advanced; on the other, nothing but a sordid desire to retain what was justly due, and by culpable combinations to take away the fortune and honor of upright men.

Messrs. Morison, Cameron & Empey triumphantly gained their suit, notwithstanding all the efforts of their influential adversaries; and this case will have the effect of making the firm much more extensively and favorably known. Every one who listened to the proceedings in Court, appreciated the extent of their commercial operations, and learnt that they are conducted in a manner at once upright and honorable. The Companies felt sure of being able to destroy the reputation of Morison, Cameron & Empey, but in the attempt they not only failed, but drew upon themselves much well deserved public odium. There are honorable ex ceptions among the Assurance Companies. In the previous remarks we do not wish to make any particular allusion to the Phoenix Company, as its affairs have, hitherto, been conducted with great liberality, by its influ ential and highly respectable Agents. On this occasion they have allowed themselves to be led aside, by false representations, out of their usually honorable method of doing business. But there are among them certain Companies, whose good faith is greatly doubted, and who pay, only after they have used every means to evade the claim. We hope this affair will learn them a lesson. We say little of certain individuals, who, during the proceedings, played a game little calculated to retain their hold upon the public esteem; and whose evidence was far from carrying with it the ap pearance of truth! We leave it to their consciences and the public judg ment.

Throughout the whole proceedings, the Court was crowded by a numer ous audience, including many ladies, who evinced much interest in the trial. During the last speech of Mr. Rose, the eyes of many of the fair spectators could be seen moist with tears, at the recital of the wrongs that had been endured by Morison, Cameron & Empey, and at the attempts that had been made to ruin their characters.

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