Copy

TRANSCRIPT OF RECORD

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

L. LOUISE CARPENTER and WILBUR C. HALL, mortgagee or Trustee, as his interests may appear, Plaintiffs	)	TRESPASS ON THE CASE IN ASSUMPSIT
versus	)	AT LAW NO. 1571
AETNA INSURANCE COMPANY, INC., HARTFORD, CONNECTICUT, Defendant	)	

Law File B.

March 25, 1939.

Mr. Hugh D. Marsh,

Attorney at Law,

Fairfax, Virginia.

Dear Hugh:

I am handing you herewith the Transcript of the Record in the case of L. Louise Carpenter and Wilbur C. Hall, Mortgagee or Trustee, as his interests may appear, Plaintiffs, versus Aetna Insurance Company, Inc., Hartford, Connecticut, Defendant, Trespass on the Case in Assumpsit, At Law No. 1571.

In order that Mr. E. H. DeJarnette, Jr., Attorney at Law, Orange, Virginia, who represented L. Louise Carpenter in this case, may have knowledge as to what the Transcript contains, I am setting forth herein the contents of the Transcript and sending him a copy of this letter.

The Transcript consists of the following:

(1) The Declaration filed in the case;

(2) Order of Court entered June 15, 1938, requiring Defendant to file its grounds of defence within twenty days;

(3) A copy of the Grounds of Defense filed June 15, 1938;

(4) Order of Court entered at trial of case October 6, 1938;

(5) Defendant's written motion to strike Plaintiffs' evidence, etc., filed in the Clerk's Office November 1, 1938;

(6) The Final Order of the Court overruling motion to set aside verdict and entering judgment on the verdict of the jury;

(7) Affidavit of Alexander H. Sands as to mailing to E. H. DeJarnette, Esq. on February 13, 1939 of the original of the

attached carbon letter, consisting of two pages, and of the fact that on the 17th day of February, 1939, he (Mr. Sands) received through the mail the attached carbon copy of a letter addressed to Judge Walter T. McCarthy, purporting to be signed by E. H. DeJarnette, Jr., which latter letter acknowledged receipt of the letter mailed by Mr. Sands on February 13;

(8) Letter from E. H. DeJarnette, Jr., to Judge W. T. McCarthy, dated February 16, 1939;

(9) Letter from Alexander H. Sands to E. H. DeJarnette, Esq., dated February 13, 1939, including postscript on second sheet;

(10) Certificate of Exception No. 1 containing summary of the evidence;

(11) Certificate of Exception No. 2 as to Defendant's motion to strike testimony and the overruling of said motion, the grounds of the motion being set out in the Certificate of Exception No. 2;

(12) Certificate of Exception No. 3 containing four instructions granted for the Plaintiffs. The order entered in the trial of this case shows that the Court instructed the jury orally on behalf of the Defendant and that no written instructions were given for it;

(13) Certificate of Exception No. 4 setting forth the verdict of the jury and the motion of the Defendant to set aside the verdict, the grounds of the motion being set forth in the Exception;

(14) Exhibit A - Copy of letter from Mr. E. H. DeJarnette, Jr. to the Aetna Insurance Company, Hartford, Connecticut, dated February, 18, 1936;

(15) Exhibit B - Copy of letter from E. H. DeJarnette, Jr. to the Aetna Insurance Company, Hartford, Connecticut, dated March 25, 1936. stating he was enclosing proof of loss;

(16) Exhibit 4 of Plaintiff - Copy of Deed from Paul T. Powell and wife to L. Louise Carpenter;

(17) Exhibit 2 of Plaintiff - Copy of Aetna Insurance Company Policy No. 1364 issued to L. Louise Carpenter, in the amount of $1,500.00, $1,000.00 on dwelling, $400.00 on barn, $50.00 on hen house and $50.00 on meat house.

The usual Clerk's Certificate, including certificate that the notice required by Section 6339 of the Code was given, appears at the end of the Transcript.

Very truly yours,

(Signed) John M. Thalen,

Clerk.

JMT: MWC

Enclosure

cc: Mr. E. H. DeJarnette, Jr.,
Attorney at Law,
Orange, Virginia.

VIRGINIA:

Pleas before the Honorable Walter T. McCarthy, Judge of the Circuit Court of Fairfax County, Commonwealth of Virginia, at a Circuit Court held for said County, at the Courthouse thereof, on the 23rd day of December, 1936.

L. LOUISE CARPENTER and WILBUR C. HALL, Mortgagee or Trustee, as his interests may appear, Plaintiffs	TRESPASS ON THE CASE IN ASSUMPSIT
versus	AT LAW NO. 1571
AETNA INSURANCE COMPANY, INC., HARTFORD, CONNECTICUT, Defendant	

Be it remembered, that heretofore, to-wit, on the 5th day of January, 1937, came the Plaintiffs, by Counsel, and filed in the Clerk's office of the said Court their memorandum of suit, and sued out process against said Defendant, returnable to second January rules, 1937, which process was duly served by the City Sergeant of Richmond, Virginia upon Peter Saunders, Secretary of the Commonwealth of Virginia, as statutory agent of the Defendant, it being duly returned to and filed in said Clerk's office. On the 13th day of February, 1937, came the Plaintiffs, by Counsel, and filed in the Clerk's office of said County a declaration in said case, the same being in the words and figures following, to-wit:

L. LOUISE CARPENTER AND WILBUR C. HALL, MORTAGEE OR TRUSTEE, AS HIS INTERESTS MIGHT APPEAR:

V:

AETNA INSURANCE COMPANY, HARTFORD, CONN.

IN THE CIRCUIT COURT OF FAIRFAX COUNTY:

L. Louise Carpenter and Wilbur C. Hall, Mortagee or Trustee, as his interest might appear complain of the Aetna Insurance Company, Hartford, Conn. of a plea of trespass on the Case in assumpsit; for this, to-wit: that heretofore, to-wit: on the 31st day of January, 1935, the said defendant caused to be made a certain policy of insurance in writing, purporting thereby and containing therein, that in consideration of to-wit: nine dollars paid by the said plaintiff, receipt whereof the said defendant thereby acknowledged, the said defendant undertook and promised the said plaintiff that if the said defendant would insure the said plaintiff against loss or damage by fire to the amount of $400.00 upon and covering a certain barn therein described belonging to the said plaintiff, in Fairfax County, Virginia, and would make good unto the said plaintiff any such loss or damage as should happen by fire to said barn not exceeding the last named sum of $400.00 for the term of one year from the 31 day of January, 1935, at twelve o'clock, noon, until the 31 day of January, 1936, at twelve o'clock noon on the certain premises then and ever since the property of the said plaintiff in the said policy described as one barn. The said loss or damage to be estimated according to the actual cash value of said property

in the time the same shall happen and to be paid by the said defendant within sixty days after notice of proof thereof made by the plaintiff in conformity with the conditions of the said policy should have been received in the office of the said defendant unless the said defendant should have given notice of it's intention to rebuild or repair the damaged premises and in said policy contained, sundry provisos, conditions, prohibitions, and stipulations were and are contained and thereto annexed, as by the original policy which is filed herewith, will more fully and at large appear, which said policy is now in the Clerk's Office of the Circuit Court of Fairfax County, Virginia, filed with the papers in the pending law suit therein, in another action at law wherein the said plaintiffs are plaintiffs and wherein the said defendant is the defendant, which said policy is #1364, issued in the office of Robert D. Graham, Insurance Agent, Fairfax, Virginia.

And the said plaintiff says that before and at the time of making the said policy of assurance by the said defendant and that all times since and now the said plaintiffs were and are interested in the said insured premises in said policy mentioned and described as aforesaid to a large amount to-wit: the amount of eight hundred dollars, ($800.00) and the said barn in the said policy mentioned afterwards and between the 31 day of January, 1935, and the 31 day of January, 1936, to-wit: on the 12 day of January, 1936, was burned down and consumed and destroyed by fire and damage and loss were to be occassioned to the said plaintiffs to the amount of eight hundred dollars in such manner

and under such circumstances as to come within the stipulation, promise, and undertaking for same of the said defendant on the said policy contained and to render liable and oblige the said defendant to insure the said plaintiffs against loss or damage by fire to the amount of $400.00, and to make good to the said plaintiffs any such loss or damage as should happen by fire not exceeding the said last mentioned sum of $400.00, on the premises aforesaid in the said policy described and thereby intended to be insured of which said burning and destruction by fire, and of the loss and damage aforesaid thereby occassioned to the said plaintiff, to-wit, to the amount of $400.00, due notice and proof was afterwards, to-wit, on the 18th day of February, 1936, made by the plaintiffs to the said defendant and was received at the office of the said defendant in conformity to the conditions of the said policy. And the said plaintiffs further say that they had performed, fulfilled, observed and complied with each and all of the conditions, provises, and stipulations of the said policy, on his part and behalf to be performed, fulfilled, observed, and complied with, and has violated none of its prohibitions, according to the form and effect, true entent and meaning of the said policy.

Yet the said plaintiffs say that, although, sixty days have elapsed since due notice and proof as aforesaid was made to the said defendant of the said burning and destruction by fire, and of the loss and damage aforesaid, thereby occassioned by the said plaintiffs, the said defendant has not paid nor made

good to the said plaintiffs the said loss and damage of $400.00 with interest from April 18, 1936, or any part thereof, but the same and every part thereof are wholly unpaid and unsatisfied to them, contrary to the force and effect of the said policy. Wherefore the plaintiffs say that the said defendant, although often requested hath not kept with the said plaintiffs the agreement aforesaid, contained in the said policy made between it and the said plaintiffs in that behalf as aforesaid but that the said defendant hath broken the same, and to keep the same with the said plaintiff hath hitherto wholly refuses, and still doth, refuse, to the damage of the said plaintiffs, five hundred dollars, which said sum of money in damages is the relief here prayed for. And therefore he institutes this action of trespass on the case in assumpsit.

L. Louise Carpenter and
Wilbur C. Hall, Trustee, as his
interest may appear.

(Signed By) E. H. DeJarnette, Jr. p.q.

And on the 15th day of June, 1938, the following order was entered by the Court, to-wit:

On the motion of the plaintiff the defendant is hereby ordered to file with the clerk of this court its grounds of defense upon which it proposes to rely in writing within twenty days from this date and to mail a copy thereof to E. H. DeJarnette, Jr., attorney for the plaintiff at Orange, Virginia

And on the 15th day of June, 1938, came the Defendant, by counsel, and filed in the Clerk's office of said Court its grounds of defense, the same being in the words and figures following, to-wit:

The defendant, Aetna Insurance Company, a corporation, Hartford, Connecticut, relies upon the following grounds of defense and says that the plaintiff, L. Louise Carpenter, is not entitled to recover in this suit the amount therein claimed by her, or any portion thereof, because:

1. That contrary to the provisions and conditions of the policy sued upon in this case, the building mentioned thereunder was vacant and unoccupied at the time of the fire.

2. That if said plaintiff is entitled to any recovery, which this defendant expressly denies, that the amount of such recovery is and should be limited to the actual loss sustained as a consequence of the fire in the notice of motion mentioned, and that such loss so sustained does not amount to the sum so claimed by said plaintiff in her notice of motion filed in this case.

3. The defendant reserves the right to add to or amend its grounds of defence if and as it may be so advised at any time, with permission of the Court.

Respectfully,

AETNA INSURANCE COMPANY, HARTFORD, CONN.

by (signed) Alex H. Sands
Counsel

And on the 6th day of October, 1938, the following order was entered in said case by said Court:

This day came the plaintiff, L. Louise Carpenter, in person and by counsel, and the plaintiff, Wilbur C. Hall, trustee, by counsel only, and the defendant, by counsel, and this case came on to be heard from plaintiffs' declarations filed herein on the 13th day of February, 1937, the grounds of defense filed herein on the 15th day of June, 1938, by the defendant, and the oral plea of the general issue now tendered by the defendant, to which the plaintiff replied generally and upon which the issue was joined, and thereupon came a jury of nine (9) veniremen, to-wit, Marshal Kitson, J. Russell Lacey, H. A. Timmons, James G. Duvall, Jesse T. Cornwell, John T. Haislip, James B. Cross, Carroll B. Carter, and Mason C. Grasty and took their seats in the jury box and were duly sworn and examined on their voir dire and found to be competent and qualified jurors according to statute, and from said list of nine the names of J. Russell Lacey and Jesse T. Cornwell were stricken off in the mode prescribed by law by counsel for the plaintiffs striking off one name and counsel for the defendant striking off one name, and the said J. Russell Lacey and Jesse T. Cornwell were directed to leave the jury box, which they did, and the remaining seven (7) veniremen, to-wit, Marshal Kitson, H. A. Timmons, James G. Duvall, John T. Haislip, James B. Cross, Carroll B. Carter and Mason C. Grasty constituted the jury for the trial of this case, who, being duly selected, summoned, formed, empaneled and sworn in the mode prescribed by law heard the opening statements of the counsel in the case and all of the evidence

in the case, both for the plaintiffs and for the defendant, and having received their instructions from the Court (written instructions being offered and given on behalf of the plaintiffs and the jury being instructed orally on behalf of the defendants by the Court) took the papers and exhibits in the case and retired to their room to consider of their verdict, and after a while returned into open court and rendered and returned a verbal verdict, finding in favor of the plaintiff, L. Louise Carpenter, for the full amount of the policy so far as it relates to the barn, which verdict, by direction of the Court, was reduced to writing by the Clerk on the back of the Declaration in this case, and thereupon signed by the foreman of the jury, the same reading as follows, to-wit:

"We, the jury, on the issue joined, find for the plaintiff, L. Louise Carpenter, and fix her damages at Four Hundred Dollars ($400.00), with interest thereon from May 30, 1936.

(Signed) Mason C. Gresty, Foreman."

And thereupon the defendant, by counsel, moved the Court to set aside the said verdict on the ground that the evidence in this case shows that the building destroyed was vacant and unoccupied at the time of the fire and that, as a consequence, under the provisions of the policy applicable, the policy was void and unenforceable; that under the terms of the said policy sued upon in this case the loss was not payable until 60 days after proof of loss had been furnished by the plaintiffs and received by the Company and ascertainment of the loss or damage

is made either by agreement between the assured and the company, expressed in writing, or by the filing with the company of an award, as provided under the terms of said policy, and that the plaintiff has introduced no proof as to compliance with this condition of the policy; that the evidence introduced by the plaintiff to establish direct loss or damage of the property, or barn, alleged to have been destroyed, as alleged in the declaration, fails to furnish or prove such loss or damage at the time of the fire; that the same was vague and indefinite and of no probative value to establish a basis for a verdict on behalf of the said plaintiffs; that the evidence shows that the barn insured and described in the policy sued on was, without the approval or consent of the defendant, converted and used by the plaintiff, L. Louise Carpenter, as a dwelling; that the plaintiff failed to prove that she had furnished a proof of loss setting out the requirements in respect of such as specified in the policy sued on, and on other grounds to be stated in a written motion, the defendant asked leave to file, and the Court takes said motion under consideration, and directs that counsel for the plaintiff, L. Louise Carpenter, and for the said defendant, shall file with the Court any briefs which they may desire prior to the argument of this motion, and said motion is now, by agreement of counsel, set for argument before the Judge of this Court, in the recess of the Court, at Arlington County Court House, Virginia, on Saturday, the 5th day of November, 1938, and no judgment is entered at this time on the said verdict of the jury

And on the 1st day of November, 1938, came the Defendant, and filed in the Clerk's office of said Court its written motion, the same being in the words and figures following, to-wit:

Motion made on behalf of the defendant, the Aetna Insurance Company, by counsel, at the conclusion of the evidence introduced on behalf of the plaintiffs in this action, which said motion was, at that time, overruled, and which said motion was renewed at the conclusion of the evidence introduced for the defendant and which motion was again overruled, to the action of the Court in each instance, the defendant, by counsel, excepted on the grounds stated.

The motion is as follows:

Move to strike:

FIRST. Because the evidence shows that the building destroyed was vacant and unoccupied at the time of the fire and as a consequence, under the provisions of the policy applicable, the policy was void and unenforceable.

SECOND. Under the terms of the policy sued on, the loss was not payable until sixty days after proof of loss, as provided, is received by the company and ascertainment of the loss or damage is made by either agreement between assured and the company expressed in writing or by the filing with the company of an award as provided under the terms of the policy and that plaintiffs introduced no proof as to the compliance of such conditions.

THIRD. That the evidence introduced by the plaintiff to

establish direct loss or damage of the property or barn alleged to have been destroyed, as alleged in the notice of motion, fails to furnish or prove such loss and damage at the time of the fire; that the same was vague and indefinite and of no probative value to establish a basis for a verdict on behalf of the said plaintiff.

FOURTH. That the evidence shows that the barn insured and described in the policy sued on was without the approval or consent of the defendant converted and used by the plaintiff as a dwelling.

FIFTH. Plaintiff failed to prove that she had furnished a proof of loss setting out the requirements in respect of such as specified in the policy.

And on the 23rd day of December, 1936, the following final order was entered in said case by the Court:

This matter came on this 23rd day of December, 1936, to be again heard on the motion of the defendant to set aside the verdict herein rendered, upon the grounds set forth in said written motion, and in the prior order heretofore entered herein, and upon the additional grounds that the verdict of the jury was, without evidence to support it; is contrary to the weight of the evidence and is contrary to the law, and upon argument of counsel, upon consideration whereof, the Court doth now consider and order that the said motion be and the same is now overruled, to which action of the Court, defendant, by counsel, duly excepted on the grounds set forth in its written motion and in the order heretofore entered at the September Term, 1936, and uponthe additional grounds herein set forth, and thereupon, the Court entered judgment against the defendant for the sum of $400.00, with interest thereon from May 30th, 1936, until paid, the amount by the jury in their verdict ascertained, to which action of the Court defendant, by counsel, likewise excepted.

Thereupon, defendant moved the Court for a stay of execution of the judgment of the Court in this matter for a period of four months from the rising of the Court in order that it may present a petition to the Supreme Court of Appeals of this State for a writ of error and supersedeas in this action, if it be so advised, which motion the Court grants upon condition that the defendant or someone acting for it, shall within 10 days from the rising

of the Court, enter into bond before the Clerk of this Court in the penalty of $100.00, with approved surety, conditioned according to law.

And thereupon, the defendant, on its motion, and in accordance with the statute, is now granted sixty (60) days from the date of the entry of this order, within which to tender its bills of exception to the Judge of this Court to be signed, sealed and enrolled, according to law, and thereby made a part of the record in this case.

And this order is final.

Presented to me this 16th day of February, 1939.
(Signed) W. T. McCarthy, Judge.

The Clerk will file among papers in this case.
(Signed) W. T. McCarthy, Judge.

STATE OF VIRGINIA,

CITY OF RICHMOND, to-wit:

This day personally appeared before me, the undersigned Notary Public, ALEXANDER H. SANDS, who made oath that on the 13th day of February, 1939, he mailed to E. H. DeJarnette, Esq., the original of the enclosed carbon letter, the same consisting of two pages, and that on this 17th day of February, 1939, he received through mail the attached carbon copy of a letter addressed to the Honorable Walter T. McCarthy, which purports to have been signed by E. H. DeJarnett, Jr., which latter letter acknowledged receipt of the letter so mailed to him by the affiant, Alexander H. Sands on February 13, 1939.

My commission expires December 19, 1939.

Given under my hand this 17th day of February, 1939.

(signed) Sadie B. Clements
Notary Public

February 16, 1939

Honorable Walter T. McCarthy
Arlington, Virginia

Dear Judge: Re: L. Louise Carpenter vs: Aetna Insurance Co.

I am just in receipt of a letter from Mr. A. H. Sands, enclosing what he claimed to be a Bill of Exceptions in the suit of L. Louise Carpenter vs: Aetna Insurance Company. I feel that the notice should be served in the first instance and should set forth what it is all about. The notice was not served on me or on my client. He mails what he claims is a copy of the evidence but is absolutely not in accordance with the evidence introduced at the trial in hardly any particular. He leaves out the names of some of the witnesses entirely and contradicts what they actually did say at the trial. For instance, Louise Carpenter testified that the barn was occupied at the time of the fire and then gave a detail list of things that were in the barn when it was burned composed of furniture which had not bee moved. He fails to copy the insurance policy and undertakes to have her testify that: "The use of said barn as a dwelling house by the plaintiff was without notice to the defendant, Aetna Insurance Company: That the proof of loss required under the provision of the policy envolved was never filed by the plaintiff with the Aetna Insurance Company: That the said barn was vacant and unoccupied at the time of the fire and that notice of the vacancy and thetfact that the barn was unoccupied was never given to the

Aetna Insurance Company: That as a matter of fact Louise Carpenter testified all about the former suit and why she was unable to rebuild: That she was sometime moving from one building to the other and that she never moved all of her furniture. She also testified as to the size of the house and the construction of same and testified that notice of the fire was given to the insurance company and payment asked for. As a matter of fact I testified in the case and proved that notice of the fire was given to the Insurance Company by me as well as Louise Carpenter and that I forwarded to them proof of loss and that A. H. Sands, during my testimony, stated that they were not relying upon lack of proof of loss and the porported copy of the evidence does not state the testimony of Gillette Reynolds or Jarrel: That all testified that they had seen the foundation of the house and they had made the figures according to the testimony of Louise Carpenter as to the size of the house.

I am employed in a criminal case here set for trial at ten o'clock on February 18th and I am asking that Mr. Sands furnish a true transcript of the evidence as given at the trial before same is certified and will appreciate it if you can set some convenient date for hearing and preparation of this evidence and bill of exceptions. I have no engagements for the week beginning February 20th except the 24th and 25th and none for the following week except the 27th and 28th.

You will remember that neither Mr. Sands or Mr. Marsh argued at the trial that proof of loss had not been furnished which they certainly would have done if the fact had not been fully proved

by the evidence.

I am insisting on proper notice as to the time and place for the asking for the signing of the proper bill of exceptions.

Yours very truly,

E. H. DeJarnette, Jr.

DeJ/al
CC:
Mr. A. H. Sands
American Building
Richmond, Virginia

February, 13, 1939.

E. R. DeJarnette, Esq.,
Attorney at Law,
Orange, Virginia.

Dear Mr. DeJarnette:

Re: Aetna - Carpenter.

Iam reminded that final judgment was entered in the last Carpenter case on December 23rd and as a consequence our time for presenting Bills of Exception is waning rapidly.

I am, therefore, giving you notice that I or my association, Mr. Marsh, will present such Bills to Judge McCarthy at his office at Fairfax, Virginia, on Saturday, next, February 18th, which date I trust will be agreeable to you. On Wednesday, next, I will furnish you copies of these Bills, including a narrative of the testimony, and it is my hope that you may be able to approve these and thus save yourself the necessity for another trip to Fairfax. The summary of testimony was substantially supplied by Mr. Marsh who took rather full notes of the same.

According to my understanding the original exhibits such as found in the files will be, as a matter of course, asserted in the Bills of Exception, and copies will be furnished the Clerk if and when necessary in making up the record.

With respect,

Yours very truly,

AHB:C

2-13-30-42

P. S. Since dictating the above letter of this date I have gone over certificate of the testimony of Mr. Marsh and accept the same with the single insert found on page 2, and I have completed the Bills of Exception, which I enclose you herewith.

You will note that Certificate of Exception No. 3 leaves the instructions to be inserted. I have no copies of such instructions if instructions were given, but they will, of course, speak for themselves and be found within the papers.

I am sending this letter to you with a copy to Mr. Marsh as formal notice of appearance before Judge McCarthy at the date and time mentioned, namely, Saturday, February 15th.

Yours very truly,

AHB:C

Presented to me 16th day of February, 1939.
(Signed) W. T. McCarthy, Judge

Certificate of Exception No. 1

Be it remembered, and the Court certifies, that the following is the evidence that was produced at the trial of the above case, which was tried on October 6th, 1938, in the Circuit Court for Fairfax County, Virginia, before a jury, in the above styled law action, said evidence being written in narrative form.

Louise Carpenter, the plaintiff, was called as a witness in her own behalf and testified substantially as follows, to-wit:

That her name is L. Louise Carpenter; that she now lives in Washington, District of Columbia; that she lived in Herndon, Fairfax County, Virginia, up until about two years ago; that there was a deed of trust on the property, upon which was located a barn which was burned and the burning of which said barn is the basis of this action; that the barn burned on January 12th, 1936; that on February 16th, 1936, a report of the burning of the said barn was made to the Aetna Insurance Company; that she took out the insurance on the property and paid the premium on the same; that the policy provided for $1000.00 on the dwelling house on said property, which was the dwelling house that was burned in a prior fire, $400.00on the barn, the subject of this action and $40.00 on the meat-house located on said premises; that the dwelling house on said property was destroyed by fire in April, 1935; that after the dwelling house burned on said

property in April, 1935, the plaintiff lived in the barn on the place until the weather got too cold; that the barn, the subject of this action, was the only place the plaintiff had to go to live, after the dwelling house burned in April, 1935; that she fixed the barn up so that she could live in the same but did not permanently repair the same for living quarters for the reason that she did not have the money to do so; that she lived in this barn "until the late fall" of 1935; that the barn burned on January 12th, 1936, and that the same was completely destroyed; that the said barn, the subject of this action, was not being lived in by her but was used by her for the keeping of harness, one-half barrel of canned goods, several old tubs and boxes with clothes in them and some other articles of clothing not in the boxes and a cook stove, the pipes of which stove were taken out when she left; that she, the plaintiff, had moved out of the said barn some time during "the first part of December, 1935"; that the dwelling house destroyed by fire was never rebuilt by plaintiff prior to the destruction of the barn by fire; and she stated that she had insurance on said dwelling house with the defendant company; that the defendant had, up to the time of the fire in the barn, refused to pay the loss incurred when the dwelling was burned; and that she had no money to rebuild. She further stated that she had obtained a judgment against the defendant for the loss incurred by destruction of the dwelling, which judgment had been affirmed by the Supreme Court of Appeals and that she had not yet received the money; that the value of the said barn, so destroyed by fire, was six or seven hundred dollars at the time

it burned; that at the time the said barn burned, the plaintiff was living two miles from the said barn in a colored settlement known as Oak Grove, just above Herndon in Fairfax County, Virginia; that she learned that the said barn had been destroyed by fire when her children told her that they had heard the said barn had burned; that the barn was located about one mile from the heart of the Town of Herndon, Fairfax County, Virginia; that the barn had a metal roof on it; that the barn had a cement floor; that plaintiff had partitioned the downstairs so as to make several rooms, and had three rooms upstairs, all of which partitions were put in the barn by the plaintiff herself; that there were seven windows in the barn which were used in repairing the barn to make it livable; that the said windows were there when she bought the property from Mr. Powell and that the upstairs of the barn was sealed as far as she could reach; that she knew of no notice of the occupancy on the part of the plaintiff of the barn as a dwelling house, ever being given to the Aetna Insurance Company; and that she gave no notice to the defendant, either that the barn was vacant or that it was unoccupied; that the policy of the defendant company was a reissue of a policy for the same amount carried by a former owner.

E. E. Gillette, a witness called on behalf of the plaintiff, testified that he was a builder; that he had been in the building game for several years; that he lived in the Town of Herndon and had lived there for several years; that he knew, in a general way, the barn that was located on the property and destroyed by fire; that, in his judgment, it would cost about $800.00 to rebuild, according to the foundation which he measured and his

recollection of the materials in the barn, that $600.00 represented the replacement value.

J. W. Reynolds, a witness called on behalf of the plaintiff, testified that he was a contractor and builder and had been engaged in such business for twenty-eight years; that, in his judgment, it would take $694.00 to duplicate the barn as of January, 1936; that the barn was of very good construction and that the woodwork at the foundation was bolted to the cement floor and foundation; that the value of the walls left was nothing; that he had not seen the barn prior to the fire and that the evidence he gave in connection with rebuilding the barn was based on the foundation he saw and the description of the barn given to him by Mr. DeJarnette on the very morning of the trial and the description of the barn given by Louise Carpenter at the trial.

B. L. Jarrell, a witness called on behalf of the plaintiff, testified that he was a carpenter and builder and had been engaged in such business for the last ten years; that he had construction himself eight houses and in order to rebuild the barn, that it would cost $700.00; that he had not seen the barn prior to the fire and that the evidence he gave in connection with rebuilding the barn was based on the foundation he saw and the description of the barn as given to him by Mr. DeJarnette on the very morning of the trial and the description of the barn given by Louise Carpenter at the trial.

E. H. DeJarnette, Jr., testified for the plaintiff as follows:

That he wrote and mailed to the Aetna Insurance Company a letter dated February 18th, 1936 (a copy of which is filed with the papers and marked Exhibit A) and one copy of this letter was mailed to the Aetna Insurance Company on February 18th, 1936, and another copy was mailed to Alexander H. Sands, the attorney for the Aetna Insurance Company on the same date; that a suit was then going on for the destruction of the dwelling house set forth in the ploicy, in which suit Alexander H. Sands was attorney for the insurance company and that he waited, expecting to receive proper forms of proof of loss desired by the insurance company or settlement of the claim, but that neither of them ever replied to this letter and that on the 25th day of March, 1936, he wrote another letter (a copy of which is hereto attached marked Exhibit B) and mailed same to the Aetna Insurance Company, accompanied with proper proof of loss and mailed both of same to the Aetna Insurance Company on that date and that he received no reply to that letter.

E. H. Stover, a witness called for the defendant, testified as follows:

That he was special agent for the Aetna Insurance Company; that he had been traveling representative of the insurance company as special adjuster and investigator; that the rates on the properties covered by the policy involved in this action were 45¢ per $100.00 on dwelling and 90¢ on barn; that the general rule for rating vacant property was 10% increase per month or what would amount to 120% per year, but collected and granted on a monthly basis; that the company has issued vacancy permits on

policies covering dwellings and barns but had never issued a vacancy permit on a policy covering barn alone nor did he know of ever issuing a special vacancy permit for a barn alone when a barn and dwelling were insured in same policy; that the company does not require agents to inspect property and assume that where property is insured that agent considered the valuation as fair.

The folliwng exhibits: A, B, 2 and 4, were introduced as evidence and are attached hereto and identified by the initials of the Judge.

Teste: This 24th day of February, 1939.

(Signed) Walter T. McCarthy
Judge.

Presented to me this 18 day of February, 1939.
(Signed) W. T. McCarthy, Judge.

Certificate of Exception No. 2.

The Court certifies that in the trial of this case issues having been joined and testimony having been introduced on behalf of the plaintiff as is duly set out and certified in defendant's Bill of Exception No. 1, that at the conclusion of the evidence introduced on behalf of the plaintiff, the defendant made a motion to strike the testimony introduced by and on behalf of the plaintiff for the reasons hereinafter related, and such motion was overruled and exception by the defendant thereto was duly taken, and that at the conclusion of the evidence introduced by both the plaintiff and the defendant the defendant again moved to strike the plaintiff's testimony upon grounds here related, which motion was again overruled by the Court and excepted to by the defendant upon the grounds stated, the reasons so assigned being as follows:

FIRST. Because the evidence shows that the building destroyed was vacant and unoccupied at the time of the fire and as a consequence, under the provisions of the policy applicable, the policy was void and unenforceable.

SECOND: Under the terms of the policy sued on, the loss was not payable until sixty days after proof of loss, as provided, is received by the company and ascertainment of the loss or damage is made by either agreement between assured and the company expressed, in writing, or by the filing with the company of an award as provided under the terms of the policy and that plaintiffs introduced no proof as to the compliance of such conditions.

THIRD: That the evidence introduced by the plaintiff to establish direct loss or damage of the property or barn alleged to have been destroyed, as alleged in the notice of motion fails to furnish or prove such loss and damage at the time of the fire; that the same was vague and indefinite and of no probative value to establish a basis for a verdict on behalf of the said plaintiff.

FOURTH: That the evidence shows that the barn insured and described in the policy sued on was without the approval or consent of the defendant converted and used by the plaintiff as a dwelling.

FIFTH: Plaintiff failed to prove that she had furnished a proof of loss setting out the requirements in respect of such as specified in the policy.

Teste: This 22nd day of February, 1939.

(Signed) Walter T. McCarthy
Judge

Presented to me this 18th February, 1939.
(Signed) W. T. McCarthy, Judge

Certificate of Exception No. 3.

The Court certifies that at the trial of this casethe following instructions were given.

The Court instructs the Jury that the burden of proof rests on the Plaintiffs.

The Court instructs the Jury that if they believe from the evidence that the Plaintiff's barn insured by the Defendant's insurance policy No. 1364 introduced in evidence was destroyed by fire on or about January 12, 1936 that they must find in favor of the Plaintiffs and allow them such damages as they have sustained on account of the said burning not to exceed the sum of Four Hundred Dollars with interest from May 30, 1936 and not to exceed Three Fourths of the actual cash value of the barn at the time of its destruction by fire

The Court further instructs the Jury that there can be no recovery in this case by Wilbur C. Hall.

Teste this 22nd day of February, 1939.

(Signed) Walter T. McCarthy
Judge

Presented to me this 18th day of February, 1939.
(Signed) W. T. McCarthy, Judge

Certificate of Exception No. 4.

The court certifies that in the trial of this case after the jury had been sworn to try the issue joined, and after all the evidence set out in Certificate of Exception No. 1, had been introduced before the jury, which the court certifies as a part of this certificate to be the evidence, and all the evidence introduced in this case; and after the court had instructed the jury, as set out in Certificate No. 3, which is hereby specifically referred to and made a part of this certificate and after argument by counsel, the jury retired and later returned to the court the following verdict:

"We, the jury, on the issue joined, find for the plaintiff, L. Louise Carpenter, and fix her damages at Four Hundred ($400.00) Dollars, with interest thereon from May 30th, 1936. (Signed) Mason C. Grasty, Foreman."

WHEREUPON, the defendant, by counsel, moved the Court to set aside the said verdict on the ground that the evidence in this case shows that the building destroyed was vacant and unoccupied at the time of the fire and that as a consequence, under the provisions of the policy applicable, the policy was void and unenforceable; that under the terms of the said policy sued upon in this case, the loss was not payable until sixty days after proof of loss had been furnished by the plaintiff and received by the company and ascertainment of the loss or damage is made either by agreement between the assured and the company

expressed in writing, or by the filing with the company of an award as provided under the terms of said policy and that the plaintiff has introduced no proof as to compliance with this condition of the policy; that the evidence introduced by the plaintiff to establish direct loss or damage of the property, or barn, alleged to have been destroyed, as alleged in the declaration, fails to furnish or prove such loss or damage at the time of the fire; that the same was vague and indefinite and of no probative value to establish a basis for a verdict on behalf of the said plaintiffs; that the evidence shows that the barn insured and described in the policy sued on was, without the approval or consent of the defendant, converted and used by the plaintiff, L. Louise Carpenter, as a dwelling; that the plaintiff failed to prove that she had furnished a proof of loss setting out the requirements in respect of such as specified in the policy sued on.

Teste: This 22nd day of February, 1939.

(Signed) Walter T. McCarthy, Judge

Presented to me this 22nd day of February, 1939.

The Clerk will file among papers in this case.

(Signed) W. T. McCarthy, Judge

VIRGINIA:

IN THE CIRCUIT COURT OF FAIRFAX COUNTY.

L. Louise Carpenter and
Wilbur C. Hall, Mortgagee or Trustee, as his interests might appear, ... Plaintiffs

V.

Aetna Insurance Company,
Hartford, Conn. ... Defendant

TAKE NOTICE that on the 20th day of February, 1939, the undersigned will apply to the Judge of the Circuit Court of Fairfax County, at his office in Arlington, Virginia, at the hour of 10:00 o'clock a.m., or as soon thereafter as the same may be considered by such Judge, for him to sign such Certificates of Exception as may be then presented on behalf of the defendant to perfect and complete the record in the above entitled case.

AETNA INSURANCE COMPANY

By (Signed) Alex. H. Sands

Counsel

I accept legal service
of the above notice.

_____

State of Virginia

City of Richmond, to wit:

This day personally appeared before me, R. Turner Arrington, a notary public in and for the City in the State aforesaid, Alexander H. Sands, Jr. who made oath and said that he personally did, on the 18th day of February, 1939, serve upon E. H. Dejarnette, Jr. in his office in Orange, Virginia, a true copy of the foregoing notice.

(Signed) R. T. Arrington

Notary Public

My commission expires on the 19th day of Feb., 1941.

The following is a copy of the Plaintiffs' exhibit A.:

Exhibit A
(Signed) W. T. M. Judge

February 18th, 1936.

The Aetna Insurance Co.,

Hartford, Conn.

Dear Sir:-

I am today in receipt of a letter from L. Louise Carpenter of Herndon, Virginia, in which she states that her barn insured by your policy No. 1364 covering her property in Herndon, Virginia, was burned on Sunday night, January 12, 1936.

She and her family were then living several miles distant and did not hear of the fire until the 15th when her children went to Herndon. It does seem that this should definitely put an end to any suspicion as to Louise Carpenter having been the originator of the other fires. I am wondering if you intend to continue to fight payment of the old policies.

The barn was 12 x 36 feet with 16 x 14 shed. The insurance on this was $400.00.

Please send me proper proof of loss which you might desire. Also let me know whether you intend to pay this or whether suit will be necessary.

Yours very truly,

copy to

Mr. A. H. Sands,

Atty-at-law,

Richmond, Va

The following is a copy of the Plaintiffs' exhibit B in said case:

Exhibit B
(Signed) W. T. M., Judge

March 25th, 1936

The Aetna Insurance Co.,

Hartford, Conn.

Dear Sir:-

I herewith enclose to you proof of loss of the destruction of the barn of L. Louise Carpenter, of Herndon, Virginia, insured in your policy No. 1364. I have previously written you for proof of loss in this matter, but you seem to disregard my letters entirely and your obligation under your contract.

Yours very truly,

P. S. I would like to know by return mail whether or not you are going to pay the insurance policy. There is no use in battling for a year on this matter if you intend to pay. I would like for you to say one way or the other.

The following is a copy of the Plaintiffs' exhibit 4 filed in said case:

Exhibit 4
(Signed) W. T. M., Judge

THIS DEED made and entered into this 9th day of March, 1934, by and between PAUL T. POWELL and KATHERINE W. POWELL, his wife, parties of the first part; and L. LOUISE CARPENTER, party of the second part:-

WITNESSETH:- That the parties of the first part, for and in consideration of the sum of Ten Dollars, the receipt of which is hereby acknowledged, do grant, bargain, sell and convey, with general warranty of title, unto the party of the second part, with all rights, ways, easements and improvements thereunto belonging, those three certain lots or parcels of land, situated in the Town of Herndon, Fairfax County, Virginia, and more particularly bounded and described as follows:

(1) A lot containing ½ acre, more or less, and bounded on the west by a street (not yet named); on the south by the lots of E. N. Fitzhugh; on the east by the land of Robert Schemeld; and on the north by the lot of H. W. Cross and being known as Lot No. 8, in the Subdivision of land of George A. Williams which said lot was conveyed to the said Herbert M. Powell by J. L. Maffett and Margaret E. Maffett, his wife, by deed dated the 12th day of December, 1921, and recorded in Liber F, No. 9, Page 410 of the land records of said County.

(2) Those two certain lots or parcels of land conveyed to Herbert Powell by deed from E. N. Fitzhugh, et ux., dated July 21, 1927, and recorded in Liber B, No. 10, Page 575 of the

land records of said County, and being therein bounded and described as follows: "Lots Nos. 9 and 10 as shown on plat of Subdivision which is annexed to a deed dated December 4, 1907, from George A. Williams and wife to F. W. Richardson and Samuel A. Wrenn, to which plat of Subdivision recorded in the deed books of Fairfax County, Virginia, reference is now made.

The said three parcels of land are also the same which were conveyed to the said Paul T. Powell and Katherine W. Powell, his wife, as joint tenants with the right of survivorship retained, by H. M. Powell and Esther Powell, his wife, by deed dated the 26th day of February, 1934, and recorded among said land records.

Reference is made to said deeds and subdivision for a more particular description of the said land hereby conveyed.

As a part of the consideration of this conveyance, the party of the second part expressly assumes and agrees to pay that certain deed of trust on said land from the said Herbert Powell and wife, to F. D. Richardson, Trustee, dated the 20th day of February, 1934, and recorded among said land records, securing the payment of the sum of $500.00.

Subject to said trust, the parties of the first part covenant that they have the right to convey the said land; that they have done no act to encumber the same; that the party of the second part shall have quiet and peaceable possession thereof, free from defect or encumbrance; and that they will execute such other and further assurances thereof as may be requisite.

WITNESS the following signatures and seals:

(Signed) Paul T. Powell (SEAL)

(Signed) Katherine W. Powell (SEAL)

State of Virginia,

County of Fairfax, to-wit:

I, E. E. Gillette, a Notary Public in and for the County of Fairfax, Virginia, whose commission will expire on the 7th day of April, 1937, do hereby certify that this day personally appeared before me in my County and State aforesaid, PAUL T. POWELL and KATHERINE W. POWELL, his wife, whose names are signed to the foregoing and hereunto annexed deed, bearing date of the 9th day of March, 1934, and acknowledged the same before me.

GIVEN under my hand this 15 day of March, 1934.

(Signed) E. E. Gillette

Notary Public as aforesaid.

In the Clerk's Office of the Circuit Court of Fairfax County, Va. April 23, 1934 at 3:00 O'clock P. M. this deed was received, duly authenticated and admitted to record. (Stamped $1.00 U. S. S. & C.)

Teste, F. W. RICHARDSON, Clerk,

By (Signed) John M. Whalen,
Deputy Clerk.

Recorded in Liber M, No. 11, page 276 of the Land Records of Fairfax County, Virginia, and Indexed and Examined.

The following is a copy of the Plaintiffs' exhibit 2 filed in said case:

Exhibit 2
(Signed) W. T. M., Judge

NO. 1364 STOCK COMPANY

ÆTNA
INSURANCE COMPANY

Hartford, Conn.

Incorporated in 1819

Amount $1,500.00 Rate 45-90 Premium $9.00

In consideration of the stipulations herein named and of Nine and 00/100 Dollars premium does insure Mrs. L. Louise Carpenter and legal representative, to extent of the actual cash value (ascertained with proper deductions for depreciation) of the property at the time of loss or damage, but not exceeding the amount which it would cost to repair or replace the same with material of like kind and quality within a reasonable time after such loss or damage, without allowance for any increased cost of repair or construction by reason of any ordinance or law regulating construction or repair and without compensation for loss resulting from interruption of business or manufacture, for the term of one year from the thirty-first day of January, 1935, at noon, to the thirty-first day of January, 1936, at noon, against all DIRECT LOSS AND DAMAGE BY FIRE and by removal from premises endangered by fire, except as herein provided, to an amount not exceeding Fifteen Hundred Dollars, to the following described property while located and contained as described

herein, or pro rata for five days at each proper place to which any of the property shall necessarily be removed for preservation from fire, but not elsewhere, to-wit:

FORM No. 127V. DWELLING--With Three-Fourths Value Clause
Virginia (For Fourth Class, Suburban and Country)
(Revised 7-33)

1. $1,000.00 on the two story frame building with metal roof as hereinafter described, occupied by owner as a Dwelling House and situated on the south side of Wiehle Road, ½ mile west of Herndon, Va.

2. $ nil On Household and Personal Effects, as hereinafter described, while contained in the above described dwelling.

3. $400.00 On the frame building with metal roof and its additions including foundations and all permanent fixtures, situated on the above described premises and occupied as a private barn.

4. $50.00 On the frame building with metal roof, occupied as a hen house.

5. $50.00 On the frame building with metal roof, occupied as a meat house.

No insurance attaches under any of the foregoing items unless a certain amount is specified and inserted in the blank space set opposite the item and then that amount shall attach only on that item.

Total insurance permitted, warranted concurrent herwith, including this policy, as follows:

$ on item 1; $ on item 2; $ on item 3;
$ on item 4.

It is understood and agreed that no insurance is permitted in addition to this policy unless the total insurance, including this policy, is entered in paragraph above.

Mortgagee Form--Loss or damage, if any, under the building items of this policy shall be held payable to Wilbur C. Hall Mortgagee (or Trustee) as interest may appear, subject to the conditions of the mortgagee clause herein.

Automobile Permit (This permit is void unless number of machines and location are given--Permission is hereby granted to keep not exceeding three automobiles using gasoline or other inflammable liquids for fuel in the above described garage.

It is understood and agreed that the housing of gasoline motor vehicles is prohibited unless specific permission is endorsed hereon and that no claim shall be made for loss or damage to any vehicle or machine, or any of its parts, unless specifically mentioned as insured under this policy.

Three-Fourths Value Rider (Applies only when the three-fourths value clause applies)--The rate on the property herein described without a three-fourths value clause, is 15% higher than the rate at which this policy is written, and in consideration of the lower rate being used the three-fourths value clause is attached to and made a part of this policy.

Three-Fourths Value Clause (Applies to all items)--It is part of the consideration of this policy, and the basis upon which

the rate of premium is fixed, that in the event of loss, this Company shall not be liable for an amount greater than three-fourths of the actual cash value of the property covered by this policy at the time of such loss, and in case of other insurance, whether policies are concurrent or not, then for only its pro rata proportion of such three-fourths value.

If this policy be divided into two or more items, the foregoing conditions shall apply to each item separately.

Dwelling House--The item covering dwelling house shall extend to cover, as part of the building, on its additions adjoining and communicating, including foundations, exterior attachments, plumbing, piping, electric wiring and stationary heating, lighting and ventilating apparatus and fixtures therein; plate and ornamental glass, frescoes, wall and ceiling decorations; and on all permanent fixtures therein or thereon belonging to and constituting a part of said building; also on awnings, window and door screens, storm doors and windows contained in or on said building or stored in other buildings on same premises. If the building is occupied by a tenant or tenants, insurance under this item shall also cover, if not other wise insured, floor coverings, mirrors, stoves, refrigerators, cleaning apparatus, hose and other fire-extinguishing appliances, fuel, janitor's tools and implements, belonging to the insured as building landlord and constituting a part of the equipment and service of the building, while contained in or on said building.

Household and Personal Effects--The item covering household and personal effects shall extend to cover on household and personal effects of every description (printed Books, musical instruments, pictures, paintings, engravings, including their frames, statuary, sculpture, works of art and objects of virtu to be valued at not exceeding cost) belonging to the insured or any member or guest of the insured's family, usual or incidental to the occupancy of the premises by the insured as a dwelling, excluding radio-sending apparatus, bills of exchange, accounts, bills, currency, deeds, evidences of debt, money, notes and securities; all while contained in said dwelling and its additions, and if not otherwise specifically insured, while stored in outhouses on same premises, but the liability of this company for loss or damage to household and personal effects in outhouses shall not exceed ten per cent of the amount of insurance under this item. This insurance shall also include the interest or liability under contract of the insured in articles, covered under this item, purchased on the instalment or partial payment plan. It is understood and agreed, however, that this insurance does not cover property specifically insured, except for the excess after exhausting such specific insurance.

The conditions and provisions printed on the back of this form are hereby referred to and made a part hereof.

Attached to and made part of Policy No. 1364 of the Aetna Insurance Company, of Hartford, Conn. subject also to the conditions

printed on the back hereof.

Robert D. Graham, Agent.

Brick-On-Edge, Tile, Cement or Metal Flue Warranty--In consideration of the reduced rate at which this policy is issued, it is warranted by the insured that the building and additions, thereto, described in this policy contains no brick-on-edge, tile, terra cotta, cement, or metal flue; nor any metal smoke pipe carried through a combustible partition, floor or ceiling; and it is further warranted that no such flue and- or metal pipe shall be erected during the term of this policy, if this warranty is violated in any particular, this policy shall be null and void.

Vacancy Permit--Permission is hereby granted for the within described dwelling to become and remain vacant or unoccupied for a period of not exceeding thirty (30) days (including the period of ten days allowed in printed conditions of this policy) at any one time. It is understood and agreed that if the vacancy exceeds thirty days at any one time, permission for same must be specifically endorsed hereon, or this entire policy shall be null and void.

Alterations and Repairs Permit--Permission granted during the life of this policy to employ mechanics to make alterations, additions or repairs and this policy (so far as it applies to building) shall cover in accordance with its conditions all materials and supplies therein or therefor adjacent thereto and such alterations or additions, and (so far as it applies to contents of said building) shall extend to cover in such additions.

Builder's Risk Permit--If the buildings insured hereunder are in course of construction, this policy covers also all lumber

and materials used and to be used in same, while on premises, and privilege is granted to complete.

Lightning and Electrical Apparatus Clause--This policy covers any direct loss or damage caused by lightning(meaning thereby the commonly accepted use of the term "lightning," and in no case to include loss or damage by cyclone, tornado or windstorm), not exceeding the sum insured, nor the interest of the insured in the property, and subject in all other respects to the terms and conditions of this policy, it being a condition of this contract that if dynamos, exciters, lamps, motors, switches, radio apparatus, electric automobiles, or other electrical appliances or devices are covered by this policy, this Company will not be liable for any electrical injury or disturbance, whether from artificial or natural causes, unless fire ensues, and then only for such loss or damage to them as may be caused by such ensuing fire. It is also a condition of this contract that, if there be any other insurance on said property, this Company will be liable only pro rata with such other insurance for any direct loss by lightning, whether such other insurance be against direct loss by lightning or not.

Electric Light, Heat and Power Permit--Permission is hereby given for the use of electricity in the above mentioned premises for light, and/or heat, and/or power.

Work and Materials Clause--Permission granted for such use of the premises as is usual and incidental to the occupancy as

described herein, and to keep and use all articles and materials usual and incidental to such occupancy in such quantities as the exigencies of the occupancy require.

Warranties or Conditions Clause--This policy shall not be affected by failure of the insured to comply with any of the warranties or conditions endorsed hereon in any portion of the premises over which the insured has no control.

Mortgagee Clause (Applies only when name of payee is inserted in the Mortgagee Form)--Loss or damage, if any, under the building items of this policy, shall be payable to the aforementioned Mortgagee (or Trustee), as interest may appear, and this insurance, as to the interest of the Mortgagee (or Trustee) only therein, shall not be invalidated by any act or neglect of the Mortgagor or owner of the within described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this policy: Provided, That in case the Mortgagor or owner shall neglect to pay any premium due under this policy the Mortgagee (or Trustee) shall on demand, pay the same.

Provided also, That the Mortgagee (or Trustee) shall notify this Company of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said Mortgagee (or Trustee) and, unless permitted by this policy, it shall be noted thereon, and the Mortgagee (or Trustee) shall, on demand,

pay the premium for such increased hazard for the term of the use thereof; otherwise this policy shall be null and void.

The Company reserves the right to cancel this policy at any time as provided by its terms, but, in such case this policy shall continue in force for the benefit only of the Mortgagee (or Trustee) for ten days after notice to the Mortgagee (or Trustee) of such cancellation, and shall then cease, and this Company shall have the right on like notice to cancel this agreement.

In case of any other insurance upon the within described property, this Company shall not be liable under this policy for a greater proportion of any loss or damage sustained than the sum hereby insured bears to the whole amount of insurance on said property, issued to or held by any party or parties having an insurable interest therein, whether as owner, Mortgagee or otherwise.

Whenever this Company shall pay the Mortgagee (or Trustee) any sum for loss or damage under this policy and shall claim that, as to the Mortgagor or owners, no liability therefor existed, this Company shall to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may at its option pay to the Mortgagee (or Trustee) the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the Mortgagee (or Trustee) to recover the full amount of his (her, their or its)

claim.

This policy is made and accepted subject to the foregoing stipulations and conditions, and to the stipulations and conditions printed on the back hereof, which are hereby made a part of this policy, together with such other provisions, stipulations and conditions as may be endorsed hereon or added hereto as herein provided.

IN WITNESS WHEREOF, this Company has executed and attested these presents; but this policy shall not be valid until countersigned by the duly authorized Officer or Agent of the Company at Fairfax, Virginia.

Frank E. Bush (Signed)
Secretary

(Signed) W. Ross McCain
President

Countersigned at Fairfax, Va., this 29th day of December, 1934.

(Signed) Robert D. Graham, Agent

FRAUD, MISREPRESENTATION, ETC. This entire policy shall be void if the insured has concealed or misrepresented any material fact or circumstance concerning this insurance or the subject thereof; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

UNINSURABLE AND EXCEPTED PROPERTY. This policy shall not cover accounts, bills, currency, deeds, evidences of debt, money, notes or securities; nor, unless specifically named hereon in writing, bullion, manuscripts, mechanical drawings, dies or patterns.

HAZARDS NOT COVERED. This Company shall not be liable for loss or damage caused directly or indirectly by invasion, insurrection, riot, civil war or commotion, or military or usurped power, or by order of any civil authority ; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises.

This entire policy shall be void, unless otherwise provided by agreement in writing added hereto,

OWNERSHIP, ETC. (a) if the interest of the insured be other than unconditional and sole ownership; or (b) if the subject of insurance be a building on ground not owned by the insured in fee simple; or (c) if, with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property insured hereunder by reason of any mortgage or trust deed; or (d) if any change, other than by the death of an insured, take place in the interest, title or possession of the subject of insurance (except change of occupants without increase of hazard); or (e) if this policy be assigned before a loss.

Unless otherwise provided by agreement in writing added hereto this Company shall not be liable for loss or damage occurring

OTHER INSURANCE. (a) while the insured shall have any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy ; or (b) while the hazard is increased by any means within the control or knowledge of the

INCREASED OF HAZARD. insured; or

REPAIRS, ETC. (c) while mechanics are employed in building, altering or repairing the described premises beyond a period of fifteen days; or

EXPLOSIVES, GAS, ETC. (d) while illuminating gas or vapor is generated on the described premises; or while (any usage or custom to the contrary notwithstanding) there is kept, used or allowed on the described premises fireworks, greek fire, phosphorus, explosives, benzine, gasolene, naphtha or any other petroleum product of greater inflammability than kerosene oil, gunpowder exceeding twenty-five pounds, or kerosene oil exceeding five barrels; or

FACTORIES. (e) if the subject of insurance be a manufacturing establishment while operated in whole or in part between the hours of ten P.M. and five A.M., or while it ceases to be operated beyond a period of ten days; or

UNOCCUPANCY. (f) while a described building, whether intended for occupancy by owner or tenant is vacant or unoccupied beyond a period of ten days; or

EXPLOSION, LIGHTNING. (g) by explosion or lightning, unless fire ensue, and, in that event, for loss or damage by fire only.

CHATTEL MORTGAGE. Unless otherwise provided by agreement in writing added hereto this Company shall not be liable for loss or damage to any property insured hereunder while incumbered by a chattel mortgage, and during the time such incumbrance this Company shall be liable only for loss or damage to any other property insured hereunder.

FALL OF BUILDING. If a building, or any material part thereof,

fall except as the result of fire, all insurance by this policy on such building or its contents shall immediately cease.

ADDED CLAUSES. The extent of the application of insurance under this policy and of the contribution to be made by this Company in case of loss or damage, and any other agreement not inconsistent with or a waiver of any of the conditions or provisions of this policy, may be provided for by agreement in writing added hereto.

WAIVER. No one shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of agreement added hereto, nor shall any such provision or condition be held to be waived unless such waiver shall be in writing added hereto, nor shall any provision or condition of this policy or any forfeiture be held to be waived by any requirement, act or proceeding on the part of this Company relating to appraisal or to any examination herein provided for; nor shall any privilege or permission affecting the insurance hereunder exist or be claimed by the insured unless granted herein or by by rider added hereto.

CANCELLATION OF POLICY. This policy shall be cancelled at any time at the request of the insured, in which case the Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rates for the expired time. This policy may be cancelled at any time by the Company by giving to the insured a five days' written notice of cancellation with or without tender of the excess of paid premium above the pro rata premium for the expired time, which

excess, if not tendered, shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand.

PRO RATA LIABILITY. This Company shall not be liable for a greater proportion of any loss or damage than the amount hereby insured shall bear to the whole insurance covering the property, whether valid or not and whether collectible or not.

NOON. The word "noon" herein means noon of standard time at the place of loss or damage.

MORTGAGE INTERESTS. If loss or damage is made payable, in whole or in part, to a mortgagee not named herein as the insured, this policy may be cancelled as to such interest by giving to such mortgagee a ten days' written notice of cancellation. Upon failure of the insured to render proof of loss such mortgagee shall, as if named as insured hereunder, but within sixty days after notice of such failure, render proof of loss and shall be subject to the provisions hereof as to appraisal and times of payment and of bringing suit. On payment to such mortgagee of any sum for loss or damage hereunder, if this Company shall claim that as to the mortgagor or owner, no liability existed, it shall, to the extent of such payment be subrogated to the mortgagee's right of recovery and claim upon the collateral to the mortgage debt, but without impairing the mortgagee's right to sue; or it may pay the mortgage debt and require an assignment thereof and of the mortgage. Other provisions relating to the interests and obligations of such mortgagee may be added hereto by agreement in writing.

REQUIREMENTS IN CASE OF LOSS The insured shall give immediate notice, in writing, to this Company, of any loss or damage, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, furnish a complete inventory of the destroyed, damaged and undamaged property, stating the quantity and cost of each article and the amount claimed thereon; and, the insured shall, within sixty days after the fire, unless such time is extended in writing by this Company, render to this Company a proof of loss, signed and sworn to by the insured, stating the knowledge and belief of the insured as to the following: the time and origin of the fire, the interest of the insured and of all others in the property, the cash value of each item thereof and the amount of loss or damage thereto, all incumbrances thereon, all other contracts of insurance, whether valid or not, covering any of said property, any changes in the title, use, occupation, location, possession, or exposures of said property since the issuing of this policy, by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish a copy of all the descriptions and schedules in all policies and if required, verified plans and specifications of any building, fixtures or machinery destroyed or damaged. The insured, as often as may be reasonably required, shall exhibit to any person designated by this Company all that remains of any property herein described, and submit to examinations under oath by any person named by this

Company, and subscribe the same; and, as often as may be reasonably required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof, if originals be lost, at such reasonable time and place as may be designated by this Company or its representative, and shall permit extracts and copies thereof to be made.

APPRAISAL. In case the insured and this Company shall fail to agree as to the amount of loss or damage, each shall, on the written demand of either, select a competent and disinterested appraiser. The appraisers shall first select a competent and disinterested umpire; and failing for fifteen days to agree upon such umpire then, on request of the insured or this Company, such umpire shall be selected by a judge of a court of record in the state in which the property insured is located. The appraisers shall then appraise the loss and damage stating separately sound value and loss or damage to each item; and failing to agree, shall submit their differences only, to the umpire. And award in writing, so itemized, of any two when filed with this Company, shall determine the amount of sound value and loss or damage. Each appraiser shall be paid by the party selecting him and the expenses of appraisal and umpire shall be paid by the parties equally.

COMPANY'S OPTIONS. It shall be optional with the Company to take all, or any part, of the articles at the agreed or appraised value, and also to repair, rebuild, or replace the property lost or damaged with other of like kind and quality within a reasonable time, on giving notice of its intention so to do within thirty days after the receipt of the proof of loss herein required; but

ABANDONMENT. there can be no abandonment to this Company of any property.

WHEN LOSS PAYABLE. The amount of loss or damage for which this Company may be liable shall be payable sixty days after proof of loss, as herein provided, is received by this Company and ascertainment of the loss or damage is made either by agreement between the insured and this Company expressed in writing or by the filing with this Company of an award as herein provided.

SUIT. No Suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity unless all the requirements of this policy shall have been complied with, nor unless commenced within twelve months next after the fire.

SUBROGATION. This Company may require from the insured an assignment of all right of recovery against any party for loss or damage to the extent that payment therefor is made by this Company.

(The foregoing lines were numbered consecutively from 1 to 200.)

ASSIGNMENT OF INTEREST BY INSURED

The interest of as owner of property covered by this Policy is hereby assigned to subject to the consent of the ÆTNA INSURANCE COMPANY, Hartford, Connecticut.

(Signature of the Insured)

Dated

Note.--To secure Mortgages, if desired the Policy should be

made payable on its face to such Mortgagee as follows: Loss, if any, payable to JOHN DOE, Mortgagee.

CONSENT BY COMPANY TO ASSIGNMENT OF INTEREST

The ASTNA INSURANCE COMPANY, Hartford, Connecticut, hereby consents that the interest of as owner of the property covered by this Policy be assigned to

Agent

Dated

FORM FOR REMOVAL

Permission is hereby granted to remove the property insured by this Policy to the

situate

and this Policy is hereby made to cover the same property in new locality, all liability in former locality to cease from this date.

Rate increased to O/O Additional Premium, $

Rate reduced to O/O Return Premium, $

Fairfax, Va.

Agent

Dated 29th December, 1934

SHEET BLOCK No.

I, JOHN M. WHALEN, Clerk of the Circuit Court of Fairfax County, Virginia, do hereby certify that the foregoing is a true and correct transcript of the record in the case of L. Louise Carpenter and Wilbur C. Hall, Trustee or Mortgagee, as his interests may appear, Plaintiffs, versus Aetna Insurance Company, a corporation, Hartford, Conn., Defendants, at Law No. 1571

I further certify that the notice required by Section 6339 of the Code of Virginia was duly given by the attorney for the Defendant to the attorney for the Plaintiffs, (E. H. DeJarnette, Jr.), as shown by copy of such notice with affidavits of service thereto attached filed in my office.

Given under my hand this 23rd day of March, 1939.

CLERK.

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