

Jefferson County Circuit Court
Case Files - Civil

Box 26 Folder 38

September 1870, No. 30

Equitable Mutual Insurance Co.
of St. Louis

vs.
Klein, Bernhard

Debt, notes

Debt \$162, \$108 on policies on bar
and dwelling house on Elm Street in
Kinswicks' depositions

**ALL OVERSIZED
DOCUMENTS FOR THIS
CASE ARE LOCATED IN:**

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Equitable Mutual Insurance
Company of St. Louis, Plaintiff,
VS.

Bernhard Klein;

Defendant.

State of Missouri,
County of Jefferson } ss

IN THE CIRCUIT COURT OF *Jefferson*
= ~~Low~~ ST. LOUIS COUNTY.

Sept

Term 1870.

Plaintiff, by Attorneys, states that it is a body politic and corporate, by virtue of an act of the General Assembly of this state, entitled: "An act to incorporate the Equitable Mutual Insurance Company," approved January 4th, 1860.

Plaintiff states that on the *10th* day of *August* 186*8*, it executed and delivered to the defendant, who were partners in trade, doing business under the name and style of ~~the defendant~~

upon *his* written application therefor its policy of insurance of that date, numbered *947*

whereby it agreed to, and did, insure the defendant against fire, during the term of *six years*

commencing at noon on the *tenth* day of *August*

Eighteen hundred and sixty *eight*, and ending at noon on the same day of the same month, Eighteen

hundred and *seventy four*, upon the following described property, to wit: on *his*

one story brick building \$1200⁰⁰; on his one and

a half story building adjoining on the north \$400⁰⁰;

on his stock of wines, liquors, cigars, and bar room

furniture and fixtures contained therein \$400⁰⁰.

The said buildings is situated being on the north side

of Elm Street, between 3d & 4th streets, Lots No. 20

of Block No. 12 in the town of Kewissick, Jeffe-

son County, Missouri.

That, in consideration of the said execution and delivery of said policy of insurance, the defendant then and there executed and delivered to plaintiff *his* promissory note, herewith filed, whereby *he* promised to pay to

plaintiff for value received in policy No. *947* dated the *10th* of *August*

186*8*, issued by plaintiff as aforesaid, the sum of *one hundred & eighty*

~~one hundred & eighty~~ Dollars, in such portions, and at such time or times, as the

Directors of said Company, the plaintiff, may agreeably to their Act of Incorporation, require; that defendant

then and there paid to plaintiff ten per cent. of said note, being the sum of *sixteen*

~~sixteen~~ Dollars, as required by the charter of the plaintiff;

20 that defendant has paid ~~ten~~ assessments ~~the amount of~~ *any amount whatsoever*

~~Dollars~~ on the said note.

Plaintiff states that it is provided by the said act of incorporation as follows, to wit:

"§ 2. That all and every person or persons, who shall at any time become interested in said Company, by insuring therein, and also their respective heirs, executors, administrators and assigns, continuing to be insured therein, as hereafter provided, shall be deemed and taken as members thereof for and during the time, as specified in their respective policies, and no longer, and shall at all times be included and bound by the provisions of this act."

"§ 7. Every person who shall become a member of said Company, by effecting insurance therein, shall, before he receives his policy, deposit his promissory note for such sum or sums of money as shall be determined by the Directors; a part, not exceeding ten per cent. of which note shall be immediately paid; for the purpose of discharging the incidental expenses of the institution; and the remainder of said deposit note shall be made payable, in part or the whole, at any time when the Directors shall deem the same requisite for the payment of losses or other expenses; and at the expiration of the term of insurance, the said note or such part of the same as shall remain unpaid after deducting all losses and expenses accruing during said time, should be relinquished and given to the signer thereof."

"§ 8. Every member of this Company shall be, and hereby is bound to pay his proportion of all losses and expenses happening or accruing in and to said Company and all buildings insured by and with said Company, together with the rights, title and interest of the assured, to the lands on which they stand, shall be pledged to said Company; and the said Company shall have a lien thereon against the assured during the continuance of his, her or their policies, and said lien shall continue in force until all assessments made for losses or expenses shall be fully paid."

"§ 10. In case it shall become necessary to resort to the liens on property insured, the General Agent shall demand payment of the insured, or his or her legal representative, or the tenant in possession; and in case of non-payment, said Company may sustain an action on the deposit note, and then execution may be levied on the insured premises, and the officer making the levy may sell the whole or any part of the estate at auction, giving notice and proceeding in the same manner as is required under execution, or may proceed in equity, at the option of the Company, and the affidavit of the person demanding payment of any assessment, naming the day and manner of making the demand, shall be sufficient evidence in all courts of law and equity of such demand having been duly made."

"§ 20. The Directors of said Company shall be empowered to make an assessment or assessments as often as they deem it necessary to meet the requirements of said Company: and said assessment shall in all cases be made payable within thirty days after the publication and notice, and such assessment shall include all necessary incidental expenses."

And it is also provided that "if any member, his heirs, executors, administrators or assigns shall neglect or refuse the payment of any assessment duly ordered by the Directors of said Company, for the term of thirty days after the same shall become payable, agreeable to public notice given as aforesaid, the party so in default shall be excluded and debarred; shall lose all benefits and advantages of his, her or their insurance, respectively, for and during the time of such default or non-payment; and, notwithstanding, shall be liable and obliged to pay all assessments that shall be made during his, or her or their policies of insurance; and the Directors may sue for and recover the whole amount of his, her or their deposit note, or notes, with costs of suit; and the money thus collected shall remain in the treasury of said Company, subject to the payment of such losses and expenses as have or may hereafter accrue; and the balance, if any remain, shall be returned to the party from whom it was collected or demanded, after thirty days from the time for which insurance was affected."

Plaintiff states that by virtue of the said provisions, the defendant became and *is a* member of the mutual division of the "EQUITABLE INSURANCE COMPANY OF ST. LOUIS, MO."

Plaintiff states that its Board of Directors on the *26th* day of *February* 1869, duly made an assessment of *40* per cent. on the members of said Company to be paid on their premium notes, for the purpose of paying losses and expenses incurred and required in said division: that said assessment was duly published and notice thereof duly given thirty days; that the amount assessed to defendant is *seventy two* on said note No. *947* dollars; that plaintiff on *about the 16th day of January* 1870, duly demanded payment of defendant for the said assessment, who refused to pay the same; that the balance of said note is the sum of *one hundred & sixty two* dollars; that by virtue of said provisions the plaintiff has a lien upon said insured property to the amount of said balance of said note: *upon said refusal to pay said assessment is entitled to recover said balance.* Wherefore, by reason of the premises, plaintiff prays judgment against the defendant for the said balance of said note of *one hundred & sixty two* dollars, with interest and costs, and that said judgment may be made a special lien on said property, and that execution may be had thereon as provided in said Charter.

Plaintiff *states* that on the *10th* day of *August* 1868, it executed and delivered to the defendant, *who were partners in trade, doing business under the name and style of* *his* written application therefor its policy of insurance of that date, numbered *948*, whereby it agreed to, and did, insure the defendant against fire, during the term of *six years* commencing at noon on the *10th* day of *August* Eighteen hundred and sixty *eight*, and ending at noon on the same day of the same month, Eighteen hundred and *seventy four*, upon the following described property, to wit: *on his one story frame dwelling house \$1,000.00, {one thousand dollars.} Said building is situated and lying on the south side of Elm Street between 3d & 4th Streets, Lots Nos. 9, 10, 11, & 12 of Block No. 11 in the town of Kimswick, Jefferson County, Mo. - -*

That, in consideration of the said execution and delivery of said policy of insurance, the defendant then and there executed and delivered to plaintiff *his* promissory note, herewith filed, whereby *he* promised to pay to plaintiff for value received in policy No. *948* dated the *10th* of *August* 1868, issued by plaintiff as aforesaid, the sum of *one hundred & twenty* Dollars, in such portions, and at such time or times, as the Directors of said Company, the plaintiff, may agreeably to their Act of Incorporation, require; that defendant

then and there paid to plaintiff ten per cent. of said note, being the sum of twelve Dollars, as required by the charter of the plaintiff;

that defendant has paid ^{no} ~~former~~ assessments to the amount of any amount whatsoever on the said note.

Plaintiff states that it is provided by the said act of incorporation as follows, to wit:

"§ 2. That all and every person or persons, who shall at any time become interested in said Company, by insuring therein, and also their respective heirs, executors, administrators and assigns, continuing to be insured therein, as hereafter provided, shall be deemed and taken as members thereof for and during the time, as specified in their respective policies, and no longer, and shall at all times be included and bound by the provisions of this act."

"§ 7. Every person who shall become a member of said Company, by effecting insurance therein, shall, before he receives his policy, deposit his promissory note for such sum or sums of money as shall be determined by the Directors; a part, not exceeding ten per cent. of which note shall be immediately paid; for the purpose of discharging the incidental expenses of the institution; and the remainder of said deposit note shall be made payable, in part or the whole, at any time when the Directors shall deem the same requisite for the payment of losses or other expenses; and at the expiration of the term of insurance, the said note or such part of the same as shall remain unpaid after deducting all losses and expenses accruing during said time, should be relinquished and given to the signer thereof."

"§ 8. Every member of this Company shall be, and hereby is bound to pay his proportion of all losses and expenses happening or accruing in and to said Company and all buildings insured by and with said Company, together with the rights, title and interest of the assured, to the lands on which they stand, shall be pledged to said Company; and the said Company shall have a lien thereon against the assured during the continuance of his, her or their policies, and said lien shall continue in force until all assessments made for losses or expenses shall be fully paid."

"§ 10. In case it shall become necessary to resort to the liens on property insured, the General Agent shall demand payment of the insured, or his or her legal representative, or the tenant in possession; and in case of non-payment, said Company may sustain an action on the deposit note and then execution may be levied on the insured premises, and the officer making the levy may sell the whole or any part of the estate at auction, giving notice and proceeding in the same manner as is required under execution, or may proceed in equity, at the option of the Company, and the affidavit of the person demanding payment of any assessment, naming the day and manner of making the demand, shall be sufficient evidence in all courts of law and equity of such demand having been duly made."

"§ 20. The Directors of said Company shall be empowered to make an assessment or assessments as often as they deem it necessary to meet the requirements of said Company; and said assessment shall in all cases be made payable within thirty days after the publication and notice, and such assessment shall include all necessary incidental expenses."

And it is also provided that "if any member, his heirs, executors, administrators or assigns shall neglect or refuse the payment of any assessment duly ordered by the Directors of said Company, for the term of thirty days after the same shall become payable, agreeable to public notice given as aforesaid, the party so in default shall be excluded and debarred; shall lose all benefits and advantages of his, her or their insurance, respectively, for and during the time of such default or non-payment; and, notwithstanding, shall be liable and obliged to pay all assessments that shall be made during his, or her or their policies of insurance; and the Directors may sue for and recover the whole amount of his, her or their deposit note, or notes, with costs of suit; and the money thus collected shall remain in the treasury of said Company, subject to the payment of such losses and expenses as have or may hereafter accrue; and the balance, if any remain, shall be returned to the party from whom it was collected or demanded, after thirty days from the time for which insurance was affected."

Plaintiff states that by virtue of the said provisions, the defendant became and ^{is a} member of the mutual division of the "EQUITABLE INSURANCE COMPANY OF ST. LOUIS, MO."

Plaintiff states that its Board of Directors on the 25th day of February 1869, duly made an assessment of 40 per cent. on the members of said Company to be paid on their premium notes, for the purpose of paying losses and expenses incurred and required in said division: that said assessment was duly published and notice thereof duly given thirty days; that the amount assessed to defendant is forty eight ^{on said note No. 948} dollars; that plaintiff on about 10th day of January 1870, duly demanded payment of defendant for the said assessment, who refused to pay the same; that the balance of said note is the sum of one hundred & eight dollars; that by virtue of said provisions the plaintiff has a lien upon said insured property to the amount of said balance of said note; ^{further, and also} upon said refusal to pay said assessment is entitled to recover said balance.

Wherefore, by reason of the premises, plaintiff prays judgment against the defendant for the said balance of said note No. 948 of one hundred & eight dollars, with interest and costs, and that said judgment may be made a special lien on said property, and that execution may be had thereon as provided in said Charter.

John Decker &
John L. Thomas } Attys. for plff.

No.

In the Jefferson County Circuit Court.

Term, 1870.

Equitable Mutual Insurance

Co. of St. Louis

vs. ¹⁸⁶⁹ 1871

vs.

Howard Klein, Def't.

Plaintiff's Petition.

John Becker &

}
vs. ¹⁸⁶⁹ 1871

Defendants in due.

Filed July 25th 1870

Clara P. Henry att

THE STATE OF MISSOURI, } SS.
COUNTY OF JEFFERSON.

THE STATE OF MISSOURI,

TO THE SHERIFF OF THE COUNTY OF JEFFERSON—GREETING:

We command you, that you summon,

Bernard Allen

*if he be found in your County, that he be and appear before the Honorable
Judge of our Circuit Court, on the first day of the next term thereof, to be
begun and held at the town of Hillsboro, within and for the County of
Jefferson, on the First Monday after the fourth Monday
of September next, then and there to answer unto*

*The Equitable Mutual Insurance Company
of St. Louis Mo*

*upon his original petition, a copy whereof is hereunto annexed
and accompanies this writ, and have you then there this writ.*

Witness, ELIAS F. HONEY, Clerk of our said
Circuit Court, with the seal thereof hereunto affixed,

at office in Hillsboro, this, 29

day of July A. D. 1870

Elias F. Honey

Clerk Circuit Court.

By

Dennis H. Ayers

Deputy.

2841
RETURNABLE

TO

JEFFERSON CIRCUIT COURT.

Sept Term, 1870

Ex parte Mutual Fire

Company of St Louis Plaintiff

AGAINST

Bernard Klein

Defendant

Original

Entered Oct 6 1870. Hy. 170.
Continuance " " 227.
Judgment " " 291.

The within was served on the 3 Day of August a D. 1870.
at Jefferson County Mo by Delivering a true copy of the
within writ and Return to the within named Defendant
Bernard Klein as furnished to me by the Clerk of the
Circuit Court.

Fees 100

Fred Schneider Sheriff
by Fred Vollmeck
Deputy

EQUITABLE MUTUAL INSURANCE COMPANY

OF SAINT LOUIS.

Application of Bernard Klein Esq of St. Louis
in the County of Jefferson Missouri for Insurance Against Fire by the

Equitable Mutual Insurance Company of Saint Louis,
for the sum of Two thousand Dollars, viz:

1 On his one story Brick Building 1200' Valued at, exclusive of Land \$ 1500'
2 his one story Brick Building 1200' Valued at, exclusive of Land \$ 800'
Stock of Wines Liquors & Groceries
Bar Room furniture & fixtures 400' 700 to 800'
Containing therein

On Stock in Trade, consisting of Goods, Wares and Merchandise, usually kept in

Stores,

Varying in amount, from \$

to \$

at no time less than the former sum

\$2000'

Where situated? No. of Lot, Block, Street, &c., or Nos. of the Section and Quarter, Township, Range, &c.

Of what material?

Purposes for which occupied?

No. of Stories and Rooms in each?

No. of chimneys, fire-places and stoves? and whether the pipes enter brick chimneys or pass through wooden partitions? If so, how are they secured, and how near to wood work? Is there scuttle?

Is there any reason within your knowledge that renders the risk hazardous, by reason of threats, or otherwise?

Distances and direction from each other, and from other buildings, and occupation of adjacent buildings?

Amount insured by this Office on property in the same exposure?

Have you any other insurance on the same property?

Whether water is near?

What is the title? and whether incumbered by deed of trust or otherwise, and to what amount?

How near the building to be insured, or containing property to be insured, can a building be erected without your consent?

Said Buildings are situated on the North side of Elm Street between 3rd & 4th Streets Lot No 20 of Block No 12 in the Town of St. Louis, Jefferson County Missouri

Buildings in good repair as his Bar Room & Lumbering Hall No 1 one story Brick no 2 one & a half story one Room in each

2 chimneys 2 stories pipes well secured pass brick no Brick chimneys

none

North, Vacant Lots

East, Vacant Lots

West, Vacant Lots

South, Elm Street

none

none

well & custom near by for simple

none inside of 200 feet off

And the said Applicant covenants and agrees with said Company that the foregoing is a correct description of the property requested to be insured, and occupied, so far as regards the risk on the same. The Company will be bound by no statement made to the Agent not contained in the Application. No lighted lamp or candle is allowed to be carried into a barn or stable, unless protected by a lantern. The ashes—if any—to be kept, at all times, in a safe deposit.

In Witness Whereof, the signature of the undersigned is hereto affixed, this 10th day of August A. D. 1868

Bernard Klein

No 947

\$2000-100

At 9 per 100 per Cent.

Oct 180-

Aug 10th 1868

President.

I have examined the within.

A. H. Bels Agent.

NOTICE TO AGENTS.

In making out applications for Insurance, agents are especially requested to give the relative position of Buildings adjoining, or nearly adjoining; stating the kind of materials in the building occupation of the same, and the names of the owners and tenants, in order that the Directors may the more readily ascertain the character of risk, and know the amount we have at risk in the same exposure. Also, give the number of block, lot or quarter section on which said property to be insured is situated. It is always more satisfactory for agents to give a diagram on the back of the application (but not on the note), however roughly done—it gives an idea which can not be conveyed in writing. Agents will confer a special favor by attending to this portion of instructions.

Insurance is in no case made on over two-thirds of the value of any building, or one-half the value of personal property. On stocks of Merchandise, the Company insures one-half of the average amount. Say the stock ranges from \$3,000 to \$5,000, the average would be \$4,000, on which we would insure only \$2,000.

We issue short policies from thirty days to one year, like stock companies—premium to be paid on delivery of policy. In answering the question about other insurance, be as specific as possible, as it is material to know the exact amount in the same exposure, and how near situated to the property desired to be insured.

If insurance be desired on personal property, Agents will always have the Notes endorsed. On buildings no endorsement is required, as our charter gives a lien.

No. 947,
Exhibit A.

Spitalfield Mutual Ins. Co.
New York Office

EQUITABLE MUTUAL INSURANCE COMPANY

OF SAINT LOUIS.

Application of Bernhard Klein of Kimmerich
in the County of Jefferson Missouri for Insurance Against Fire by the

Equitable Mutual Insurance Company of Saint Louis,
for the sum of One thousand Dollars, viz:

On his one story frame \$ Valued at, exclusive of Land \$
dwelling house 1000 1000

On Stock in Trade, consisting of Goods, Wares and
Merchandise, usually kept in
Stores, }

Varying in amount, from \$ to \$
at no time less than the former sum

12%

\$1000

Where situated? No. of Lot, Block,
Street, &c., or Nos. of the Section and
Quarter, Township, Range, &c.

Said Building is situated on the South Side of Elm
Street between 2nd & 4th Streets Lots No. 10 & 11 in the
Block No. 11 in the
Town of Kimmerich, Jefferson County Missouri
frame in good repair
as his Private Dwelling
and Story & Room

Of what material? - - -

Purposes for which occupied? -

No. of Stories and Rooms in each? -

No. of chimneys, fire-places and
stoves? and whether the pipes enter
brick chimneys or pass through wooden
partitions? If so, how are they se-
cured, and how near to wood work? Is
there scuttle? - - -

one chimney, 2 stone pipes well secured pass direct
in Brick Chimneys

Is there any reason within your
knowledge that renders the risk hazard-
ous, by reason of threats, or otherwise?

Distances and direction from each
other, and from other buildings, and
occupation of adjacent buildings? -

none
North, Elm Street
East, Vacant Lots
West, Vacant Lots
South, Vacant Lots

Amount insured by this Office on
property in the same exposure? -

Have you any other insurance on the
same property? - - -

Whether water is near? - -

What is the title? and whether in-
cumbered by deed of trust or otherwise,
and to what amount? - - -

none
well & distant, near by
fire engine
no Building can be erected inside of 200 feet off

How near the building to be insured,
or containing property to be insured,
can a building be erected without your
consent? - - -

And the said Applicant covenants and agrees with said Company that the foregoing is a correct description of the property requested to be insured, and occupied, so far as regards the risk on the same. The Company will be bound by no statement made to the Agent not contained in the Application. No lighted lamp or candle is allowed to be carried into a barn or stable, unless protected by a lantern. The ashes—if any—to be kept, at all times, in a safe deposit.

In Witness Whereof, the signature of the undersigned is hereto affixed, this 10th day of August A. D. 1868

Bernhard Klein

No 948

\$1000 100

At 12 1/2 per Cent.
Note 120—

Aug 10th 1868

President.

I have examined the within.

W. H. Briggs Agent.

NOTICE TO AGENTS.

In making out applications for Insurance, agents are especially requested to give the relative position of Buildings adjoining, or nearly adjoining; stating the kind of materials in the building occupation of the same, and the names of the owners and tenants, in order that the Directors may the more readily ascertain the character of risk, and know the amount we have at risk in the same exposure. Also, give the number of block, lot or quarter section on which said property to be insured is situated. It is always more satisfactory for agents to give a diagram on the back of the application (but not on the note), however roughly done—it gives an idea which cannot be conveyed in writing. Agents will confer a special favor by attending to this portion of instructions.

Insurance is in no case made on over two-thirds of the value of any building, or one-half the value of personal property. On stocks of Merchandise, the Company insures one-half of the average amount. Say the stock ranges from \$3,000 to \$5,000, the average would be \$4,000, on which we would insure only \$2,000.

We issue short policies from thirty days to one year, like stock companies—premium to be paid on delivery of policy. In answering the question about other insurance, be as specific as possible, as it is material to know the exact amount in the same exposure, and how near situated to the property desired to be insured.

If insurance be desired on personal property, Agents will always have the Notes endorsed. On buildings no endorsement is required, as our charter gives a lien.

No. 948.
Exhibit 48.

Exhibit 48. No. 948.
Merchandise.

Equitable Mutual Insu- } In the Circuit
 rance Company of St. } Court of Jefferson
 Louis, plaintiff, } County, Missouri;
 as, }
 Bernhard Klein, defen- } Septer. Term
 dant, } 1870.

Now on this day comes the defen-
 dant in the above entitled case by his
 attorney, and in answer to the first
 count of the petition of plaintiff states
 as follows:

Defendant states, that previous to
 the 10th day of August 1868, one William
 — Bailly, being then an agent of plaintiff,
 and authorized to accept propositions
 for insurances, came to him, defendant
 and proposed to insure in the name of
 and on behalf of plaintiff some of the
 property of defendant; that after some
 conversation with said agent on the sub-
 ject, defendant made an agreement
 with said agent on behalf of plaintiff,
 according to which plaintiff was to in-
 sure the Real and personal property of
 defendant, which is more particularly
 described in the first count of said
 petition, to the amount, mentioned of

posite the description of said property in
said first count, for and during the term
of one year, commencing the 10th day of
August 1868; that in order to perfect said
agreement, said agent of plaintiff caused
defendant, to subscribe his name to the
application, referred to in said first count
and to the note, described in and annex-
ed to said first count, which application
and note were printed and in blank
~~at~~ that time; that defendant then deliv-
ered said application and note to
said agent; that it was then agreed be-
tween defendant and plaintiff's agent,
that said note should be filled up with
an amount, that would be required at
that time for an insurance for one year,
of the premises and property mentioned
in said first count, and that a policy
of insurance should be made out and
delivered to defendant, in which the
property mentioned in the first count
was insured for one year, as agreed upon.

Defendant further states, that in disregard
of said agreement, and falsely and fraudu-
lently the plaintiff filled up or caused
to be filled up said promissory note
filled with and annexed to the said

first count with an amount, equalling an amount of premium for 6 years' insurance, also that defendant had no notice whatever, that the note was thus filled up.

Defendant further states, that in disregard of said agreement, and fraudulently and falsely plaintiff wrote out the policy, referred to in the first count of plaintiff's petition for 6 years, whereas it should have been only for one year; that at the time said policy was delivered to defendant, he did not read the same, as he supposed, the same was made out in accordance with the actual agreement, and that about weeks after the delivery thereof, when he discovered, that said policy did not contain the time of insurance, agreed upon, he offered to return said policy to of plaintiff, and directed to cause said policy to be corrected in accordance with the agreement, or to return said promissory note and receive back said policy and cancel the same.

Defendant further states, that said ~~agent~~ or plaintiff has neither made said policy to correspond with said agreement, nor delivered up said promissory note,

but that plaintiff kept said promissory note with the fraudulent intention, to make defendant pay more, than he agreed, to,

Defendant further states, that he has no knowledge or information, sufficient to form a belief, that the Board of directors of plaintiff on the 16th day of February 1869. or at any other time, duly made an assessment of 40 percent on the members of said company, to be paid on their premium notes, for the purpose of paying losses and expenses incurred and required on said the division of plaintiff, referred to in said petition. that said assessment was duly published and notice thereof duly given thirty days, that the amount assessed to defendant, is seventy two dollars, on the note referred to. ~~Defendant denies.~~ that plaintiff on or about the 10th day of January 1870, ^{or at any other time} duly demanded payment of defendant for the said assessment, that the balance of said note is the sum of one hundred and sixty two dollars; that plaintiff has a lien upon said property of defendant to the amount of said balance of said note.

This defendant therefore states, that on account of the fraud, ^{as aforesaid} and other premises mentioned, he is not liable on the note

sued on. Defendant further states, that plaintiff received fraudulently from several of its members only small portions of the assessments, made on such members, and gave to such members receipts in full of such assessments for such portions, thereby wrongfully and fraudulently increasing the burden of assessments on other members.

Defendant in answer of the second count of plaintiff's petition states, that previous to the 10th day of August 1878, one William ———— Bull, then being an agent of plaintiff and authorized to accept propositions for insurances and make contracts therefor, came to him, defendant and proposed to insure in the name and on behalf of plaintiff some of the property of defendant; that after some conversation with said agent on the subject, defendant made an agreement with said agent on behalf of plaintiff, according to which plaintiff was to insure the Real and personal property of defendant, which is more particularly described in the second count of said petition, to the respective amounts mentioned opposite the description of said

property in said second count, for and during the term of one year, commencing on the 10th day of August 1868,; that in order to perfect said agreement said agent of plaintiff caused defendant to subscribe his name to the application, referred to in said ~~first~~^{second} count and to the note, referred to and described in said second count, which application and note were printed and in blank at that time, said application not showing the number of years for which insurance was to be made, and said note not showing the amount to be paid; that said agent then took the said application and note along, and that it was then agreed between defendant and plaintiff's agent, that said note should afterwards be filled up by plaintiff with an amount, that would at that time be required for insurance of said property for one year, and that a policy of insurance should be made out and delivered to defendant, in which the property, mentioned in the second count, was insured for one year as agreed upon.

Defendant further states, that plaintiff in violation of said agreement and falsely

and fraudulently filled up or caused to be filled up said promissory note, filed with said second count, with an amount equaling an amount of premium for 6 years' insurance, and that defendant had no notice whatever, that said note was thus filled by plaintiff.

Defendant further states, that in violation of said agreement and falsely and fraudulently plaintiff wrote out the policy, referred to in said second count for 6 years insurance, whereas it should have been only for one year; that at the time, said policy was delivered to defendant, he did not read the same, as he supposed the same was made out in accordance with the actual agreement between the parties, and that about weeks after the delivery thereof, when he discovered that said policy did not contain the time for which insurance was to be made according to agreement, he applied to plaintiff to correct said policy in accordance with said agreement, or to cancel the same and return said promissory note to defendant.

Defendant further states, that plaintiff has neither corrected said policy, so as to make the same correspond with the agree-

ment, nor canceled the same and returned said promissory note to defendant, but that plaintiff has kept said note with the fraudulent intention, to make defendant pay more, than he agreed to.

Defendant further states, that he has no knowledge or information, sufficient to form a belief, that the Board of directors of plaintiff on the 26th day of February or at any other time, duly made an assessment of 40 percent on the members of said company, to be paid on their premium notes for the purpose of paying losses and expenses, incurred and required in the division of plaintiff, referred to in said petition, that said assessment was duly published and notice thereof given thirty days, that the amount, assessed to defendant, is ~~seventy~~ ^{forty} ~~eight~~ dollars on the note referred to,

Defendant denies, that plaintiff on or about the 10th day of January 1870, ^{or at any other time} duly demanded payment of defendant for the said assessment, that the balance of said note is the sum of one hundred and ~~sixty~~ ^{eighty} ~~two~~ dollars, that plaintiff has a lien upon said property of defendant to the amount of said balance of said note as plaintiff alleges,

Defendant further states, that plaintiff fraudulently received from several of its members only small portions of the assessments, made on such members, and for such small portions gave to such members receipts in full of such assessments, therefore wrongfully and fraudulently increasing the burden of contributions, made by assessments on other members.

Defendant further states, that an account of the frauds, committed by plaintiff, in filling up said promissory note with an amount for 6 years insurance instead of for 1 year against the will of defendant and in violation of the agreement between plaintiff's agent and defendant, and an account of the other premises aforesaid, the defendant is not liable on the note, sued on in said sec and county.

Henry F. Shivers
Atty for defendant,

In the Circuit
Court of Jefferson
co. Mo.

Sept. Term 1870.

Agustale Nuttall
Plaintiff
vs.
James Adams,
Defendant.

Barnard Kern,
Deputy,
—

Filed Sept. 7th 1870
Chas. S. Henry et

1

Equitable Mutual Insu-
rance Co. of St. Louis, } Plff.
vs.

Bernhard Klein, Defendant.

In the Circuit Court of Jefferson Co.,
State of Mo.: September Term, 1870.

Now at this day comes the plaintiff; by
attorneys; and for reply to the new matter set
up and contained in defendant's answer
says, that; admitting that a conversation,
touching ~~touching~~ the insurance of the prop-
erty described in the first cause of action in
petition contained, occurred between defendant
and William Brill; it denies that in that,
or any such or any other conversation any
agreement was made whereby such insurance
or any insurance should continue for and
during the term of only one year, as alleged;
and it avers that the said insurance and
every insurance in said alleged conversation
agreed to be taken was to be and was in
good faith made for the term of six years;
and further it denies that: in order to per-
fect any agreement for insurance during
the term of only one year, as alleged: but
avers that: for the purpose of perfecting an
agreement for insurance; - which, as plaintiff
avers, was made between said Brill; as the

agent of plaintiff; and defendant for the term of six years; - said Bull: authorized as agent to take insurance by note on the mutual plan, and only for that by note; the mutual plan being; as plaintiff avers; when the insurance exceeded the term of over one year: caused defendant to subscribe his name to the application: - the same being No. 947, which is herewith filed and marked Exhibit A: - and also to the note sued on as the first cause of action in the petition.

Plaintiff admits that parts of both the application and note were printed and also admits that the note was signed in blank: and avers that such signing of the note in blank is in strict accordance with the directions printed on the face thereof and with the customary mode & manner of effecting insurance for more than one year; but it denies that the application, when signed, was in blank.

Plaintiff denies that; at the time of the delivery of the note and application to agent, or at any other time whatsoever; it was agreed between defendant and the said Bull that said note should be filled up with an amount that would be required at that, or any other, time for an insurance

for one year of the premises and property mentioned in said first cause of action; & that a policy of insurance should be made out and delivered to defendant in which the property mentioned in the first cause of action was insured for one year: - and, on the contrary, plaintiff avers that the express agreement between plaintiff's agent & defendant was for an insurance for six years and that, as before plead; said agent had no authority to effect insurance by note except on the mutual plan.

Plaintiff denies that in disregard of said alleged agreement or of any agreement between defendant & said Bull or of any agreement whatsoever or that, falsely and fraudulently, the plaintiff filled up or caused to be filled up the note; which is the first cause of action herein; with an amount equalling an amount of premium for six years insurance: and avers that the note sued on was filled up in good faith according to the agreement between the parties: which was for; as plaintiff avers; a six years insurance: and that whether defendant had no notice or not: touching which fact plaintiff has no knowledge or information sufficient to form a belief: that the note was thus filled

up can have no sort of effect in this cause.

Plaintiff denies that in disregard of said alleged agreement or of any agreement between defendant and said Brill or of any agreement whatsoever or that, falsely and fraudulently, the plaintiff wrote out the policy referred to in the first cause of action in the petition contained for six years, whereas it should have been only for one year: and it avers that the said policy was written out in good faith precisely according to the actual agreement made between defendant and plaintiff and precisely according to the application aforesaid and precisely according to the terms of said contract.

Plaintiff does not know nor has it any knowledge or information sufficient to form a belief whether or not defendant, at the time said policy was delivered to him, read it or not: but plaintiff says that it matters not nor can plaintiff be affected by any laches of defendant in this behalf: and plaintiff denies that, at any time, whatsoever defendant offered to return said policy to plaintiff or that, at any time, he directed plaintiff to cause said policy to be corrected in accordance with any agreement or to return said note and receive back the pol-

and cancel the same: and plaintiff, on the contrary, avers that the said policy was in all respects, made out as was agreed between defendant & said Brill.

Plaintiff admits that it has neither made its policy to insure defendant for the term of only one year; nor to correspond with the alleged agreement for only one year; nor ~~it~~ has it delivered up said note: but it denies that plaintiff kept said note with the fraudulent intention to make defendant pay more than he agreed to or with any fraudulent intent whatsoever: and it avers that under the agreement between defendant & the agent aforesaid: as before plead: defendant was to be insured for six years and that the note was and is kept by plaintiff for the purpose of evidencing the indebtedness of defendant to plaintiff & for no other purpose.

Plaintiff denies that it has received fraudulently from several ^{or any} of its members only small portions of the assessments made on such members and gave to such members receipts in full of such assessments for such portions or that thereby or in any other way plaintiff has wrongfully and fraudulently increased the burden of assessments on other members: but, on the contrary; plaintiff

says that in every case where any sum ~~has~~
~~has taken~~ less than the full amount claimed
by plaintiff has been received it has been
so taken as a compromise and plaintiff
cannot be concluded thereby: and plain-
tiff says the same door is open for de-
fendant if he will enter it on the prop-
er terms.

Wherefore plaintiff, having fully replied to
the new matter touching the first cause of ac-
tion in petition contained, prays; as he has
heretofore prayed in petition; for judgment
against defendant for the balance of said
cause of action: to wit; one hundred & sixty
two dollars, with interest and costs, and
that judgment may be made a special
lien on the property described in first cause
of action as already prayed in petition.

And plaintiff; replying to the new matter
set up and contained in the second defense
in defendant's answer contained; says that:
admitting that a conversation, touching the
insurance of the property described in the sec-
ond cause of action in petition contained, oc-
curred between defendant and William Brill;
it denies that in that, or any such or any other
conversation any agreement was made where-
by such insurance or any insurance should

continue for and during the term of only one year, as alleged: and it avers that the said insurance and every insurance in said alleged conversation agreed to be taken was to be and was in good faith made for the term of six years: and further it denies that: in order to perfect any agreement for insurance during the term of only one year, as alleged: but avers that: for the purpose of perfecting an agreement for insurance; - which, as plaintiff avers, was made between said Bull; as the agent of plaintiff; and defendant for the term of six years; - said Bull: authorized as agent to take insurance by note on the mutual plan, and only for that by note; the mutual plan being; as plaintiff avers; where the insurance exceeded the term of over one year: caused defendant to subscribe his name to the application: - the same being No. 948, which is herewith filed and marked Exhibit B: - and also to the note sued on as the second cause of action in the petition.

Plaintiff admits that parts of both the application and note were printed and also admits that the note was signed in blank: & avers that such signing of the note in blank is in strict accordance with the directions printed on the face thereof and with the cus-

to many mode & manner of effecting insurance for more than one year; but it denies that the application, when signed, was in blank: and it avers that, whether the number of years for which the insurance was to be made was shown on the application or not; the said application was in the usual form of such applications and was for: as was clearly understood by defendant, as plaintiff avers, as well as by plaintiff's agent: an insurance for over one year and in reality for six years: - and admitting that said Bull, as agent; did then take said application and note along; as alleged, it denies that; at the time of the delivery of the note and application to agent, or at any other time whatsoever; it was agreed between defendant and the said Bull that said note should afterwards or at any time be filled up with an amount that would be required at that, or any other, time for an insurance of said property for one year; and that a policy of insurance should be made out and delivered to defendant in which the property mentioned in the second cause of action was insured for one year: - and, on the contrary, plaintiff avers that the express agreement between plaintiff's agent & defendant was for

an insurance for six years and that; as before
plead; said agent had no authority to effect
insurance by note except on the mutual plan.

Plaintiff denies that in violation of said al-
leged agreement or of any agreement between
defendant & said Brill or of any agreement
whatsoever or that, falsely and fraudulently,
the plaintiff filled up or caused to be filled
up the note; which is the second cause of
action herein; with an amount equalling
an amount of premium for six years insurance,
and avers that the note sued on was filled
up in good faith according to the agree-
ment between the parties: which was for;
as plaintiff avers; a six years insurance: &
that whether defendant had no notice or not:
touching which fact plaintiff has no knowl-
edge or information sufficient to form a be-
lief: that the note was thus filled up can
have no sort of effect in this cause.

Plaintiff denies that in violation of said
alleged agreement or of any agreement be-
tween defendant and said Brill or of any a-
greement whatsoever or that, falsely and frau-
dulently, the plaintiff wrote out the policy
referred to in the second cause of action in
the petition contained for six years, whereas
it should have been only for one year: and it
avers that the said policy was written out in

good faith precisely according to the actual agreement made between defendant and plaintiff and precisely according to the application aforesaid and precisely according to the terms of said contract.

Plaintiff does not know nor has it any knowledge or information sufficient to form a belief whether or not defendant; at the time said policy was delivered to him; read it or not; but plaintiff says that it matters not nor can plaintiff be affected by any laches of defendant in this behalf... and plaintiff denies that, at any time, whatsoever, defendant offered to return said policy to plaintiff or that he applied to plaintiff to connect said policy in accordance with the alleged or any other agreement or to cancel the same and return said note to defendant; and plaintiff, on the contrary, avers that the said policy was, in all respects, made out as was agreed between the defendant and said Bull...

Plaintiff admits that it has neither made its policy to insure defendant for the term of only one year; nor has it connected said policy so as to correspond with any alleged agreement for only one year; nor has it canceled the same and returned said note to defendant; but it denies that plaintiff has kept said note with the

fraudulent intention to make defendant pay more than he agreed to or with any fraudulent intent whatsoever: and it appears that under the agreement between defendant and the agent aforesaid: as before plead: defendant was to be insured for six years and that the note was and is kept by plaintiff for the purpose of evidencing the indebtedness of defendant to plaintiff and for no other purpose. -

Plaintiff denies that it has received fraudulently from several or any of its members only small portions of the assessments made on such members and gave to such members receipts in full of such assessments for such small portions or that thereby or in any other way plaintiff has wrongfully and fraudulently increased the burden of contributions made by assessments on other members: but; on the contrary; plaintiff says that in every case where any sum less than the full amount claimed by plaintiff has been received it has been so taken as a compromise and plaintiff cannot be concluded thereby: and plaintiff says the same door is open for defendant if he will enter it on the proper terms. -

Therefore plaintiff, having fully replied to the new matter touching the ~~first~~ second

cause of action in petition contained, says that in no way is plaintiff concluded by any allegations in defendant's answer: and denies that on account of any alleged frauds, committed; as alleged; by plaintiff in filling up said note; as alleged; with an amount for 6 years insurance instead of for 1 year against; as alleged; the will of defendant & in violation; as alleged; of any agreement between plaintiff or the agent of plaintiff and defendant: defendant is not liable on the second cause of action in petition contained, and prays, as he has heretofore prayed in petition; for judgment against defendant for the balance of said cause of action: to wit; one hundred & eight dollars, with interest and costs, and that judgment may be made a special lien on the property described in second cause of action as already prayed in petition.

And further pleading and as a reply to both defences setup in the answer plaintiff says that to this day defendant holds as against plaintiff the policies numbered respectively No. 947 & No. 948: but that he has paid no assessments thereon.

John Decker }
John L. Thomas } Attys. for plff.

In the Jefferson County Cu. Court.

Sept 1870.

Equitable Mutual Fire

Insurance Co. of St. Louis 1870.

27,

Richard Henry, deft.

Plaintiff's Reply.

John de Kers

John H. Thomas 1/19.

Filed Jan 12 1871.

per B. B. Ayres

per H. H. Thomas

In the Circuit Court of
Jefferson County, MO.
September Term 1870

Equitable Mutual Insurance Co.
vs.
Bernard Klein

To the above named defendant or
H. F. Ahlvers, Esq. his Attorney of record.

Take Notice - That the depositions
of witnesses, to be read in evidence in the above cause
on the part of Plaintiff, will be taken at the Law
office of John Decker, at No 318 Market Street in
the City and County of St Louis and State of Missouri,
on the 1st day of Feb'y A.D. 1871. between the hours
of Eight O'Clock in the forenoon and six O'Clock in
the afternoon, and that the taking of said depositions
if not completed on that day will be continued from
day to day until completed.

John Decker &
John L. Thomas } p. q.

I acknowledge service of the fore-
going Notice, and waive the right of
legal service thereof by a proper Officer,
This 23rd day of January A.D. 1871.
Henry F. Ahlvers
Atty for Bernard
Klein.

Notice to take depositions

Spitalto Mutual Ins Co. NY
vs
Barnhart & Co. NY

Original

36

The State of Missouri } ss.
County of St Louis }

To Michael J. Kyne.

You are hereby commanded
to be and appear personally before me,
Sam'l G. Pilkington, a Notary Public in and
for the State and County first
aforesaid, at my office No 318 Market
Street, in the City & County of Saint
Louis, on the Seventh day of February
A.D. 1871, at the hour of One O'clock
P.M. of that day, to testify on the
trial, by deposition, of a cause wherein
the Equitable Mutual Insurance Comp-
any, is plaintiff, and Bernhard Klein,
is defendant, in behalf of the Plaintiff,
and hereof fail not at your peril.

Witness my signature, this
7th day of February, A.D.
1871, with seal attached.

Sam'l G. Pilkington,
Notary Public,
St Louis Co. Mo.

State of Mo.

County of St. Louis, Mo.

John Decker, of lawful age being
duly sworn on his oath says that he
signed the within subpoena by offering
to read the same to the within named
Mr. J. Ryne & that he waived such read-
ing in the County of St. Louis, Mo.

John Decker.

Given under my hand
& notarial seal this 7th
day of Feby. 1871.

John C. Livingston,
Notary Public.

Service, 50^c

Notary, 50

Witness, 1.00

Penning, .50

The State of Missouri }
County of St Louis } ss.

To William M. Brill.

You are hereby commanded, that all excuses and delays being set aside, you personally be and appear before the undersigned, a Notary Public within and for the County of St Louis, on the 1st day of February 1871, at the hour of 3 O'clock P.M., at his office no 318 Market Street St Louis, in said County, to testify, by deposition, on the trial of a Cause wherein the Equitable Mutual Insurance Co of St Louis is plaintiff, and Bernhard Klein of Kimswick, Mo. is defendant, in behalf of the plaintiff, and hereof fail not at your peril.

Witness my signature, with seal attached,
this 30th day of January A.D. 1871.

Samuel G. Pilkington,

Notary Public,

St Louis, Co Mo.

Executed this writ in Saint
Louis ^{Township} this 31st day of
January 1871, by reading
the same to the within named
Wm. M. Brill. J. P. Siegwart
State of Missouri } ss
County of St. Louis } J. P. Siegwart
being duly sworn upon his oath
states that the within facts as set
forth in the foregoing return are true
J. P. Siegwart.

Sworn to & subscribed before me
this 31st day of Jan 1871.

Saml G. Pilkington
Notary Public,

50th & 2nd Siegwart by Notary
50th & 2nd Notary

1.

Depositions of Witnesses, produced, sworn, and examined, on the First day of February, in the year of our Lord 1871, between the hours of eight o'clock in the forenoon, and six o'clock in the afternoon, of that day, at the Law Office of John Decker, Esq., in the City and County of St. Louis, and State of Missouri, before me Saml G. Pilkington, a Notary Public, within and for said State and County, duly commissioned and qualified, in a certain cause, now pending in the Circuit Court of the County of Jefferson, in the State of Missouri, between the Equitable Mutual Insurance Company of St. Louis, Plaintiff, and Bernhard Klein, of Jefferson County, Mo., Defendant, on the part of Plaintiff. John Decker Esq. appearing on the part of Plaintiff, and Henry F. Ahlvers, Esq., on part of Defendant.

W^m M. Brill of lawful age being produced sworn & examined on the part of Plaintiff deposeseth & saith:

1. Question: Give your name, age, residence & Occupation.

A My age is abt 30, my name is ~~William~~ ^{Brill} William Brill, which I always write W. M. Brill. My residence is in St. Louis, Mo. 1219 South seventh. St. Louis Mo. Insurance agent.

2 Question: How long have you resided in St. Louis.

A Answer: On & off fourteen years

3 Question. On the tenth day of August 1868 where did you reside

A Answer St. Louis

4 Ques At that same time what was your business

A Ans. Fire Insurance agent

5 Ques For what Company or for what companies

A Ans. Equitable Mutual Fire Ins. Co. of St. Louis.

6 Ques What authority had you from said company

A Ans. Authority for what

7 Ques. By what authority from that company did you act as Ins. agent

A Ans. By a contract & commission which I held from the company.

8 Ques. If there were more than one department in that company, state if you know, how ~~the~~ many there were & how their work divided

A Ans. To the best of my knowledge there was one department & doing business under two.

9 Ques Tell us ~~what~~ how those two were called, & how their work distinguished one from the other

A Ans. Stock & Mutuels, & issued from one to six year policies

10 Ques. Which did the Stock issue,

Ans. One year policies

11 Ques. Which did the Mutual issue

A Ans. Six years

12 Ques. What was the difference if any, in the mode of payment, between the Stock policies & the Mutual ones.

A Ans. Stock policy was to pay the premium for one year, & that expired at the end of the year. Mutual ~~note given for six years~~, one annual premium paid. Note given for six years.

13 Ques. In Insurance for one year, how far did your authority provide to take notes.

A Ans. None.

14 Ques. When you took a note, what kind of an Insurance was it, was it Mutual or Stock.

A Ans. Mutual.

15 Ques. On such note, what would be the first payment or as you term it the annual premium.

A Ans. Ten percent of the note

16 Ques. On the tenth day of Aug. 1868 ^{Mr. Brill} how long had you been in the Insurance business

A Ans. Two years & upwards

17 Ques. Did you, or not at that time understand ~~at that time~~, the difference between Stock or Mutual Insurance

A Ans. I did.

18 Qus. When you took a Mutual policy what did you do, I speak in reference to taken such policies for the Equitable ^{Mutual} Insurance Company of St. Louis.

A Ans. Take an application, have applicant, to sign it twice.

19 Qus. What would the application contain

A Ans. Contain a specification of the property & premises

20 Qus. Will you examine the paper which I now hand you, & which you will see the Notary mark, exhibit a to the Deponent & state whether you have seen such a paper before, at what time you have seen such papers, where you saw them, & if you have ever used such papers, where in what capacity you used them, & how they were used

A Ans. I have seen the paper, at ~~used them~~ the office Equitable Mutual Insurance Company ¹⁸⁶⁸ have used them; Insurance. In taken applications.

21 Qus. Your last answer is incomplete, there is no connection between the words "them" in the last line but one of the answer & the word "Insurance" the first word in the last line of the answer, I therefore repeat the latter clause of the question,

In what capacity did you use these papers & how were they used

A. As an agent for Insurance
~~and for applications to take depositions~~
 policy

At this point, it is agreed by John Decker Esquire, representing the Plaintiff, and H. H. Ahlvers Esquire - representing the Defendant; that the further taking of these depositions shall be adjourned until Friday the 3^d Inst. at 1 o'clock P.M. Wherefore,

Not being able to complete the taking of said depositions by reason of the aforesaid agreement, ^{Exhibit B} I continue the taking of the said depositions until Friday February the 3^d 1871 - at 1 o'clock P.M. Then to be continued at the same place and until the hour of 6 o'clock P.M. as mentioned in the annexed notice -

Samuel G. Pilkington

Notary Public.

St. Louis, Mo.

February 1st 1871.

Pursuant to adjournment as above stated, on the 3^d day of February in the year of our Lord 1871 - between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon at the office of ~~Samuel G. Pilkington~~ ^{John Decker Esquire} Notary Public No 318 Market Street in the City and County

of St. Louis in the State of Missouri; I continued the taking of said depositions; As follows. viz;

William M. Bill in continuation of his deposition commenced on the 1st day of February A.D. 1871 on his oath further says.

22. Agent for insurance with what company?

A. The Equitable Mutual of St. Louis.

23. Please describe how these papers were filled up when you took an insurance, & where would the applicant's test be signed in your answer to 18 the question: sign it twice.

A. They were filled with a specification of the property & the premises. He would sign it at the lower part of the application above & under the note.

24. In mutual insurance: what right or authority had you, as agent of the Equitable Mutual Insurance Co.; - if any - to take insurance by application & note?

A. I have answered to the best of my knowledge.

25. Where & when?

A. Day before yesterday; in this office.

26. Please point out where: - I hand you your deposition given day before yesterday.

A. In question 1st it is answered; by what authority I acted as insurance agent.

27. How you took an insurance by application

and note what sort of insurance was it?

A. It was for six years. - The question is answered. -

28. Q. Do you know Bernard Klein of Kinsmanck Jefferson County, Missouri.

A. I do.

29. Q. How long have you known him.

A. Since 1867.

30. Q. How did you become acquainted with him and where.

A. Introduced by his friends here in St. Louis.

31. Q. Did you ever take an Insurance from him. if so, when, where and under what circumstances.

A. Be explicit in your answer.

A. I did in 1868, at Kinsmanck Jefferson County Missouri, for one year, that was the agreement.

32. Q. Where did you make this Insurance agreement in the town of Kinsmanck.

A. In his own House. which was kept as a Bar room.

33. Q. Where was this House situated in the town.

A. Street East. Known. In the western part of the town.

34. Q. At the time you made this agreement with Mr Bernard Klein, who else of any name

was present, beside yourself
and Mr Kline.

A. Myself, Mr Kline, Mrs Kline
and to the best of my knowledge
Mrs. Brill, there may have been
others which I do not know.

35 Q. When were any others
than those you have named

A. Mr Litchtemeyer and his
wife when off and on

35 Q. Any one else.

A. There has been a great many there
but had left after the Ball was
over.

36 Q. At what times did you
commence your negotiation
with Bernard Klein touching
this Insurance and how did
your first approach him.

A. About two or three weeks
before the application was taken
at his own House. I asked
him if he wanted any Insurance

37 Q. If he made you any answer
to your venture, what was it

A. He said that he was Insured
on the six year plan, ^{but} that he
would give me a policy for
Insurance on his property on
the Stock plan

38. Q. Give your reply to his answer, and in short Mr Bull give the whole conversation from that point out till you took the application

* A. We both have agreed on the terms. The conversation which had taken place I have forgotten.

39 Q. Had you, or not in your possession at that time, I mean at the time when Mr Klein took this Insurance, any blanks like Exhibit A If so did you fill them up or not at the time and where they signed by Mr Klein

* A. I did have the blanks, filled them up, but did not see Mr Klein sign them

40 Q. I understand that this negotiation was in Kinnick, am I correct in my understanding or not

A. Yes Sir.

41 Q. After this negotiation in Kinnick, what did you do with the papers which you say were filled up but which you did not see Mr Klein sign

* Delivered them to the Office
of the Company

42 Q. When you delivered them
where they signed by Mr Klein
or not

* I suppose they were, I did
not look at them

43 Q. To whom did you deliver them.

* To the President or Secretary I
don't know which.

44 Who was the President

* Henry Pitkin

45 Who was the Secretary

* S. B. Pitkin.

46 Q. If you received back the
Policies upon the applications
presented by you, either as you
have stated to the President
or Secretary, state where you
so received them and what
you did with them, and
from which of those Officers
you so received them, if either

* I received the Policies, and
remember the date, took them
to Kinswick, and collected
the money for them. but do
not know or remember whether
I received them from the
President or Secretary

47 Q. From whom did you receive

the money and how much,
specify on each Policy.

4. I received the money from Bernard
Klein for both Policies, but
do not remember the amount.

4t. 2 Mr Brill I ask you to
look at Policy No 947 and
also to Policy No 948 contained
in the record of Fire Policies
of the Equitable Mutual
Insurance Co of New York
and state, whether or not
upon such examination, your
memory is any way refreshed
as to the Insurance which
you took from Mr Bernard
Klein and as to how much
he paid you, also further
whether you took that class
of Policies in the stock or
Mutual plan.

(Objected to by Defendants Ath-
Henry J. Ahlers Esq. for the
reason that the Policies
referred to in the Question are
neither the originals nor
certified copies thereof.)

To which the Plaintiffs Counsel
subjoins that the Policies are
in the hands of Bernard
Klein the Defendant, and

if the record should be not original or certified copies it is in the power of the Defendant to show it.)

A I see the record of the Policies can't remember the amount which I received upon them and take such notes of the request of the Applicant as either Mutual or Stock plan

49 Q. At what percentage on the Stock plan is it right to take a one story Brick building and a stock of Wines & Cigars and Bar room furniture such is described in Policy No 947 in the country where there is no Fire ~~Insurance~~ Department

A I do not remember, I do not know any thing about Fire Insurance at present, whether the rates would be suitable compensating the risk, either Country or City I ~~that~~ have not been connected or done any Fire Insurance for nearly two years, my business is at present and have been up to the time

50 Q. You testified day before yesterday that on the 10th day of August 1868 you have been in the Insurance business ten years and upwards and you further testified that at that time you understood the difference between State and Mutual Insurance. I now ask you Sir, whether the rate per cent at which you took Kleins Insurance was at a rate for Stocks or at a rate for Mutuals.

A I understood the Fire Insurance business not so thoroughly and there by had an Insurance Insurance Book which guided me to compare the rate with the rate, do not remember whether the rate charged on the notes of Mr Klein's property would either suit Mutual or Stocks.

51 Q. Did you report your affairs to the Office or not.

A I did —

52 Q. How did you report them

as stock in Mutual Insurance

A I do not remember

53 I suppose it to have been
stock, unless you have brought
up a note for it. If so what
note that note has
represented. Has you say
that the stock issued for
one year which was cash

A I had only the Mutual
applications with me at the
time Insuring the premises
property of Mr Klein,
and thereby the note attached
to the application may have
been left there without
knowing to me that it was
signed by Mr Klein
or to call for a five year
Policy. I have often taken
Insurance with the same
applications which are for
ten years with a note attached
for one year and that was
the agreement with Mr
Klein as general Agent of
The Equitable Mutual Insurance
Company St Louis

54 Q. What authority had you as
agent of the Equitable Mutual
Insurance Company to issue her

Mutual applications for a
one year policy

A I have taken notes on some
applications for one year and
was granted by said and
other Companies and at the
time I had no other
applications with me
except the mutual and if
I had not insured the
property of Mr Klein at the
time I would had to leave
without transacting any
business with him, therefore
I was compelled to use
such applications in order
to secure the risk.

55 Q. Did the rate differ between
Stock and Mutuals.

A Don't remember

56 Q. What would be the proper
rate on two thousand dollars
insured on a one story Brick
building and a stock of wine
and liquors and Bar room
furniture and fixtures on
a country town on the Stock
Plan. I ask you this in
view of your answer that
on the 10th day of August 1864
you had been in the Insurance

business for two years and
rephrased and understood
the difference between
the Stock and mutual
Insurance

A I cannot remember the property
premises and boundaries of
the risk and rate referred to

Q. 2. I have a half a dozen times
asked you to look at the
Book will you do so Mr
Bill.

(Objected to by Defendants
Council H. L. Ahlvers Esq
for the reason that it is
not true that Plaintiffs
Council has asked the
witness half a dozen times
to look at the Book referred
to.)

(Plaintiffs Council withdraws
the question and reasserting
the fact that at least a
half a dozen times to look
at the Book he repeats the
question.) (to wit.) ~~to which~~
~~the Plaintiffs~~ I have a half
a dozen times asked you to look
at the Book will you do so
Mr Bill.

A I have looked at the Book

58 Q. Do you understand what premises are therein contained in Policy No 947.

A I do

59. Now Sir I repeat the Question I have asked you. When the Stock plan which would be a fair rate of Insurance upon those premises (you having been an Insurance Agent as by your testimony for two years and upwards) on the 10th day of August 1868.

A I could not tell or fix a suitable rate for the premises referred to as I have forgotten their situation boundaries and also the specified buildings as I have not seen them for over 15 months or more to the best of my knowledge and can not fix a rate from the Register of a Policy or Duplicate thereof unless seeing the premises in person again.

60 Q. Did you ever in your Life ever know anything about Insurance

A I did not take time to study it up

61 Q. Did you ever fairly know

when you were making a
bargain whether you were
taking a stock or Mutual
Insurance.

A I think I did

62 Q. How did you take a Stock
Insurance

A For one year.

63 How was the Premium paid.

A In Cash or money -

64 How was a Mutual Insurance
taken

A Cash and Note.

65 How much Cash

A I have answered that

66 Answer again Sir, How
much Cash

A I can't tell

67 What proportion of the Note was
in Cash

A Ten per cent

68 Ten per cent of the note being
paid what kind of Insurance
was it Stock or Mutual

A If there had been a note it
would most likely be mutual

69 Q. And for how many years
would such Insurance stand

A For six years, provided it
was not cancelled by the
Company or Assured

70 2. Now Sir If you took an application from Bernard Klein on Policy 947 and also took an application from Bernard Klein on Policy 948 and also took a note from him under 947 for one hundred & eighty dollars and under Policy 948 for one hundred and twenty dollars in the form as represented at the bottom of Exhibit A and upon those notes be paid on the first Eighteen dollars being ten per cent of its face and upon the second be paid twelve dollars being ten per cent of its face under what be mutual or stock Insurance

(Objection too by Defendants Council for the reason that Witness has not yet testified that he took the notes and received the amounts referred to in the Question from Defendant)

A I have taken the applications of Bernard Klein for Insurance but no notes for a mutual

policies to the best of my knowledge
and have received money from
Mr Klein in the manner
and with the intention of being
an annual premium, for
an Insurance on his property
from the 18th day of August
1868 to the 18th day of August
1869 ending then

71 Q. How much did you receive

A Can not remember the Amount

72 How then do you know you
received them for one year
only.

A That was my idea at the time
and the agreement which was made
thereby to the best of my knowledge
and belief it was to pay both
policies for the term referred to.
from 68. to 69. not exceeding
one year

73 Q. Did you get Bernard Klein
to sign a note or not at that
time.

A I asked him to sign the
application but not the note,
the Note was not mentioned

74 Q. At that time did Bernard
Klein sign such a paper as
is shown by Exhibit H or Not

A I asked him to sign it but
 did not see him as far as
 I was speaking to the Gentlemen
 at the time, in reference
 to Insurance

75 Q. In your answer to the
 18th Question you said that
 such a paper as Exhibit A
 must be signed twice and
 answer to Question 23 you
 said it must be signed
 above and under the note,
 when you handed in the
 papers of Bernard Klein
 to the Office how were
 these papers signed

A The Papers Exhibit A are
 signed twice above and
 below the note, providing
 it is for six year policy.
 I do not remember the
 conversation in that of issuing
 Policies of Mr Klein, at the
 Office of Company.

76 Q. When you delivered them
 were they in blank or not

A To the best of my knowledge
 they were.

77 Q. What were

A They were ~~not~~ never
 filled out by me, unless

on one or two occasions that
the Assured requested me
to fill out the note for the
amount called for
otherwise he would not
sign it and I am positive
that I did not fill out
the note of Mr Klein's

78 Q. Now about the application
did you fill them or not
A Most likely. The Agt fills
them out as the Assured
and know how to do it

79 Q. Did you look at the
Policies Mr Budd after you
received them or did you
hand them to Mr Klein
without examination

A I received and delivered
the Policies without knowing
or examining whether they
were one or six years

X 80 Q. And on in handing in the
application did you know
whether that was for one or
six years.

A Best of my knowledge for one year
which we have agreed upon

81 Q. Now do you really know
whether Mr Klein signed
the note or not

(Objected to by Defendants
Council because the question
has been repeated by ~~him~~
~~is not~~ put and answered)

A I do not. I did not ask
him

82. Q. If he signed the note
what kind of Insurance was
it for.

Objected to for the same
reason

A I don't know whether he
signed the note or not

83. Q. If he signed the note
what kind of Insurance was
it for

A If I had requested him and
he had signed the note at
my request then and there
it would be called a Mutual
or ten year Policy

84. Q. Did you or not deliver
the papers as made by Mr
Klein to the Office of the
Company or did you in any
respect change them after
Mr Klein gave them to you

A To the best of my knowledge
I returned the applications
to the Office after I received them
from Mr Klein, but they had

been laying on the table in the bar room for fully an hour or more while some persons which I do not know the names and don't remember them looked at the applications to see how they were made out therefore I can not tell whether they were changed or not. I have not changed the applications after I received them.

85 Q Had there ^{or not} been any change made in the notes by you or any one else to your knowledge from the time Mr Klein handled the papers till you handed them in to the Office of Plaintiff.

A I did not change them if others done it unknown to me

86 Q In your conversation with Mr Klein what kind of explanation did you give him about the two kinds of Insurance, Mutual and Stock

A I do not remember any more

87 Q After you received the Policies from the Company what did you do with them

A Delivered them to Mr Klein at Kinsman Mo

7

Not being able to complete the taking of these depositions by reason that the hour of adjournment has arrived, I adjourn the further taking of the same, till Monday January Sixth by consent of the parties Plaintiff & Defendant, by their respective Counsel; then to be continued at the same place, and between the same hours mentioned in the annexed notice.

Saml. G. Pilkington,
Notary Public.

January 3^d 1871.

St Louis Co Mo.

Pursuant to adjournment as above stated on the Sixth day of ^{February} January 1871, between the hours of eight O'clock in the forenoon, and six O'clock in the afternoon, at the office of ~~John Decker~~ ^{John Decker} at ~~no 318 Market Street~~ ^{at no 318 Market Street}, in the City & County of St Louis, I continued the taking of said depositions. As follows. Viz:

Q. Mr. Brill in continuation of his deposition, commenced on the 3rd instant on his Oath further says
St L. At what period of time in this transaction did you collect the premium from Mr Bernard Klein

A I do not remember any more.

89. Was it before or after you handed him the Policies

A I don't remember

90 Did you receive any money from him at the time you took the Insurance or not

A I can not remember.

91 Q When you returned him the Policies did you receive any money or not

A I can't remember any of the transaction only that I received the money from him can not remember whether it was before or after of the Policies. In general we always collect the Premiums at the Policies are delivered

92 Q Were you familiar with the Policies of the Equitable Mutual Insurance Co as to the style of the Paper or which they were printed and the outside finish generally

A I was —

93 Q Was there any difference between the outside finish of a Stock and Mutual Policy

A I could not remember whether there were or not

94 Q You knew at the time did you

A Could not tell.

95 Were you or not thoroughly acquainted with the outside face of the Policies at that time

A I was.

96 Be so kind as to look at the Papers marked Exhibit C & D and state whether or not you have ever seen any Papers

if you sh.
take them in what purposes
Exhibit C was used for and
also for what purposes Exhibit
D was used

Objected to as being irrelevant
because the Exhibits are
only Envelopes and neither
Policies nor Applications

A I have seen them of the Company
D was used for stock of them
was any, in several cases we
have used Exhibit C for
instead of Exhibit D. - C
were used for Mutual
Policies and I myself have
used them as Policy slips
for Stock Policies

97. Explain the term Policy
slips

A It is the Envelope or rather
cover which the Policy is put in
to keep it clean

98 Is it usual or not to fill up
the blanks on the back of these
Policy slips

A It is usual, but I have received
them from the Equitable Mutual
and other Fire Companies
without being filled up as
the slip is no value to the
Policy only to keep it clean

and have also used Policies
and Delivered Policies to
Applicants without the Europe
or Policy slips in both Stock
and Mutual

Q Do you remember whether the
Policies delivered to Mr
Klein had a slip on them
or not? If you do remember
state whether the slips
on them were filled in
or not if you remember that.

A I do not remember whether
they were slips over the Policies
or whether they were filled out
if there were any.

100 Be so kind as to examine
Exhibits F & F' state if you
know, what they are, whether
you have ever seen any of them
before, where you saw them
what uses were made
how they were respectively
used.

A I have seen them at the Office
of the Equitable Mutual Loan
Co. of St. Louis doing business
there and Exhibit F is used
for a one year Policy. F' was
used for a six year Policy.

101 Please state how long ago you
Bernard Kleines Policies in
your possession, after you
received them from the

Office of the Company and before you delivered them to him

A I do not remember any more

102 Did you look at them at all or not, while you had them in your possession.

A I have answered that.

103 Please point out when

A Best of my knowledge I have answered, do not remember the number of the Question in the Deposition.

104 I asked you sir to point out and I want an answer to that Question if you have answered it before point it out.

A As I am not familiar with the different hand writings of the Deposition I appeal to the Notary Public to read the Depositions for me. ^{in compliance} ~~in answer~~ to the request of the Witness the Notary proceeds to read and at the 79 question the Witness says that is the Question.

105 In your answer to the 79th Question you advise your authority for a Contract of Commission. Please you

gumstick rather of those papers
to us at this time.

(Objected to by Defendants Counsel
because that the witness has
not stated in answer to
Question 7 that said contract
or commission was ~~set~~ embodied
in writing or papers.

A I don't remember or know that
at present I possess the contract
and commission in writing from
the company. I may possess it
yet amongst some of the old
papers which I have, but it
would fully take me a
couple of days to find them
if they are not lost.

106 Please state whether or not
you have been summoned as a
witness at any time previous
to this occasion in any cause
touching the notes of Bernard
Kleins.

(Objected to by Defendants
Counsel because if there
was a summons it must be
in writing.

A I have been called upon by
the President in person to go
down to Kinswick off
county Mr

to be a witness for the Company
in a case of the Equitable
Mutual Insurance Co against
Bernard Klein, was not
summoned through writing to
the best of my knowledge

107 How long ago

A I don't remember

108 Did you go or not

A I did.

109 On that occasion did you see
the papers on which the suit
was based or not

A I did not see the Papers.

Cross Examination —

11

Plaintiff having closed his
Examination in Chief. H. J. Akroy,
Defendant's Counsel commences
his Cross Examination.

1 State whether or not the
Application filed for an
Insurance in the Equitable
Mutual Insurance Co; a
Blank form of which is contained
in Exhibit A, is to contain
the Period for which an
Insurance is to be affected.
Objected to on the ground
that the Application speaks

for itself it being an authority
or Power or both

A It does not.

Q State whether after you delivered
the Policies to Bernard Klein
you had a conversation with
him about the fact that the
Policies did not correspond
with the actual agreements
and if so how long after the
delivery of the Policies and
whether or not Bernard
Klein gave you any
directions in said conversation
objected to as Involuntary
and incriminatory, and an
effort to introduce the
Declarations of Defendants in
his behalf when Plaintiff
was ^{not} present.

A To the best of my knowledge
about a couple of weeks or
one month after the Policy
had been delivered to Mr
Bernard Klein he met me
on 5th Street in a Buggy
and remember the date or
place and told me that
he wanted his Policy cancelled
in presence of Dr Hartman
on account of Henry Pilkington

as President of that Co., he did not want to have anything to do with him, there is other words which he used and directions he gave to be released from the Co. which I don't remember. This, that I told him that he had better let the Policy run for all the money he had paid was a loss to him and cannot recover any more of it. I do not remember any more of the conversation.

Q Were you at the time this conversation took place still in any official position with the said Co. and what.

A By contract and commission which I held for the Equitable Mutual Insurance Co. in writing and signed by its Officers was general Agent of that Company at the time referred to.

Answered Objection to by Ravello's Counsel because the Contract as stated by Witness was in writing and must speak for itself

4 When you at the time of said
Conversation state the Acting
Agent or General Agent of the
Plaintiff (that means the Co.)
and did the Defendant know
you to be such and were
you in general known and
recognised as such.

A I was general Agent of the Co.
at the time speaking to Mr
Klein and was known as such
and recognised and Mr
Klein knew that I was the
General Agent.

5 When have stated in the
examination in chief that there
was a Ball at Defendants house
when you took the Application,
state now how Mr Klein
was connected with said Ball
and whether Mr Klein paid
full attention or closely examining
the Application delivered
to him for signature.
Object to —

A When was a Ball at this house
at the time taking the Application
he was then Bar keeper, master
and was waiting upon the
people and he in the
front and rear part of the

building I asked him to
swear that I wanted to
make out the application
for Insurance on his property
as I was going to go off
with the first train going
to St. Louis. He then said
make out the application
as I had not time to sw
ear as I am too busy,
when you are through with
them I will sign them
as I believe you'd transact my
business fairly and other
words similar to that effect
which I don't remember

Rescued and taken

1 Thomas St. Hartman

He is my family physician
at the time, but has left
town for over 12 months
I do not know his present
residence or where he
could be found. His name
is E. H. [unclear]

J. W. Bill

Subscribed and sworn to before
me, on the day, at the place

and within the hours first afore-
said, as witness my hand and
seal,



Samuel G. Pilkington,
Notary Public,

St. Louis, Co. Mo.

Not being able to complete the taking of these
depositions by reason that, no further witnesses
appearing, and by common consent of the parties,
by their respective counsel, I adjourn the fur-
ther taking of the same till to-morrow, then to
be continued at the same place, and between
the same hours mentioned in the annexed
notice

Samuel G. Pilkington,
Notary Public,

St. Louis, Co. Mo.

February 6th 1871

Pursuant to adjournment,
as above stated, on the seventh day of Feb-
ruary A.D. 1871, between the hours of
eight o'clock in the forenoon and six
o'clock in the afternoon, at the office
of John Decker, Attorney at Law, at
No. 318 Market Street in the City and
County of St. Louis and State of Missouri
I continued the taking of said deposi-
tions, as follows, viz:

Michael J. Ryne of lawful
age, being produced, sworn and ex-
amined on the part of the Plaintiff
deposeth and saith

Q 1 Please Sir give your full name, age, residence and occupation.

A Michael J. Ryne, age forty nine residence No. 411 Gratiot- Street- and place of business No 225 Chesnut- Street- occupation Real Estate Agent

Q 2 Do you know the Equitable Mutual Insurance Company of St. Louis, if so

* When did you first- become acquainted with it- how long you were acquainted with it- if you were ever connected with it in any capacity, state what that capacity was- and when it- ceased if you remember- and if after it- ceased, you were in any ^{other} way connected- state in what it was

A I did know the Equitable Mutual Insurance Company of St. Louis, some time before I became concerned in it, I became Secretary of that Company- some time in the fore part of 1866 and continued for very nearly two years. After I ceased to be Secretary, I remained in the office some time, transacting my business as Real Estate agent, and some times acting for the Secretary, in his absence

Q 3 On the 10th day of August- 1868

where did you have your office - if you remember -

A I had my office, in the office of the Equitable Mutual Insurance Company No. 5-15 Pine Street.

Q4 Now will you be kind enough to look at this book - and state what it is.

A Yes Sir I know it - to be the Policy Record of the Equitable Mutual Insurance Company and the only one.

Q5 Please turn to Policy No. 947 - and also Policy No. 948 and state, if you know, by whom the blanks in these Policies were filled up

A No 947 of Bernhard Klein of Rimowick Mo. was filled up by me - and is all in my hand writing

No. 948 was also filled up by me - and is in my hand writing.

Q6 Please Mr. Kline, place upon the face of these two papers, in this book, some mark whereby, in case you are not present at the trial, they can be identified by others, as the papers of which you now speak.

A I have written my ^{name} across the face of each page

Q7 From what data did you fill

those Policies.

A I filled them from the application brought into my office, the office of the Equitable Insurance Company,

Q8 Brought by whom.

A As far as I can recollect Mr Brill brought in the applications, He was the then acting Agent of the Company.

Q9 Please look at the papers, which I now hand you, and marked Exhibit-"A"- the other Exhibit-"G". State whether or not, you ever saw such papers before, if yes, how they were used, and their respective uses.

A I have seen these papers frequently. Exhibit-"A" is the application for Insurance on the Mutual principle. Exhibit G. is the application for the Insurance on the Stock principle, that is, ~~actual~~ ~~payment~~ when a man insures in the office, he pays all his insurance cash, when he is insured and gives no notes

10 State if you please which form of these applications were brought on by Mr Brill at the time you speak of.

A Exhibit A is the only form that goes into this Book.

11 Can you remember whether the applications brought by Mr Brill were received by you or not

A The best of my recollection they were received by me and he asked me to get the Book and make the policies out for him.

12 Can you or not remember who filled up the notes and state also if you remember whether or not the notes were signed when you received the applications from Mr Brill.

A That was the usual way - but I can not say whether I filled the notes ^{unless} ~~without~~ seeing them

13 Exhibit A being handed to you ~~for~~ a request for an Insurance state the modus operandi to be pursued, until the Policy is finished and ready for Delivery.

A A party who wants to insure he gives the amount he wants Insured, the percentage on that amount is agreed to; the

Agent asks all those questions that is in the Margin of this Application according as each proposition is answered he writes it down in the body of the Application, when that is done he dates the application, the party signs it and the Agent takes it along. When I was taking them I always had the note filled at the time of taking them - Don't know what any body else does. The Agent takes that Application to the Office or that Application we issue the Policy.

- 14 Look among the papers lying before you and if such a paper as there as you would issue as a Policy based upon the Application marked as Exhibit A please select such paper from the file before you and state how it is marked if at all.

A On that Application, I find her a copy of the Policy here which would be issued on that Application marked Exhibit A, and this copy of the Policy is marked Exhibit F.

15 Please explain how the outside face of exhibit I would be filled up.

A This number of the Policy corresponds with the number of the Note, the name of the Insured was noted on the face of it. The date it expired the amount Insured, The amount of the Premium note, and the amount which it called for of the ten per cent on the Premium Note. The Amount of the Policy was also charged.

16 When you say the Mutual principle, say how long the Policy would run on that principle.

A Six years was the term that the Equitable Mutual Insurance Co. have.

17 If a Policy on the stock plan would show on its outside face any of the points exhibited on the Mutual, please state what such points would be.

A ~~The same~~ Question as before.

18 If the outside face of a Stock Policy differs from the outside face of a Mutual, state the Difference.

A The difference is that Premium
is collected on the whole amount
Insured and expires at one year
from that date.

19 After you have completed the
Policy and endorsed it as de-
scribed in your answer to
Question 15. What way if further
was done with it.

A We had two kinds of Endorses
This Exhibit C was used for
Mutual Policies.

20 And the blanks in Exhibit
C how would they be filled

A The times Precisely as in
the Policy

21 Have you ever had any
conversation with Bernard
Klein touching these two
Policies No 947. & 948. if so
state what it was, when
& where.

A Can't recollect.

22 Have you ever had any conversation
with him

Object to by Defendants Council
as being to General

A I can't recollect.

Cross Examination by
Defendants Council

1 Do you now know or recollect any thing concerning the application of the Defendant for Insurance except that you have seen the Copies of the Policies, which you have marked in the Book and that as you say they are in your handwriting.

A I never wrote ^a Policy without having the ^{identical} Application before me with the mans signature to it.

2 If the copies of the Policy in the Book referred to did not contain your handwriting would you now have any personal recollection or knowledge that the Defendant Bernard Klein ever made application for Insurance in the Equitable Mutual Insurance Co of St Louis. Mo

A Before I had written the Policy and copied into the Record I was told to make out a Policy for Bernard Klein

Q How do you recollect this?

A Well, I can't say that I recollect this by any circumstance - by the name I only recollect - and I think I would know the name too -

M. J. Ryan
L. A.

12

Subscribed and sworn to before me
on the day, at the place, and within
the hours last aforesaid, as witness
my hand & Seal.

Sam'l G. Pilkington,
Notary Public.

St Louis Co Mo

I Sam'l G. Pilkington, a Notary Public, within and for
the County of St Louis, in the State of Missouri, do
certify, that in pursuance of the annexed notice,
came before me, at the Office of John
Decker, Esq, No 318. Market Street, St Louis, in the
County and State last aforesaid. William M.
Brill, and Michael J. Ryne, who were by me
severally sworn to testify the whole truth of
their knowledge touching the matter in con-
troversy aforesaid; that they were examined,
and their examination reduced to writing,
and Subscribed by them, respectively, in my
presence, on the day, between the hours, at the place
in that behalf first aforesaid, and their said Depo-
sitions are now herewith returned.

Given at Office St Louis, in the County of
St Louis, and State of Missouri this seventh
day of February, A.D. 1871, as witness my
Hand and Seal Notarial.

Sam'l G. Pilkington,
Notary Public,

St Louis, Co Mo

Notary Fee Due	\$18.50	
Witness Brill	3.00	
" Ryne	1.00	
Subpoena, Due Notary	2.70	
Cost of Depositions	2.00	
	\$25.20	pd by Notary.

No.

In the Circuit Court of
Jefferson County Mo

Equitable Trustees and Co. Plaintiffs

vs.

Bernhard, et al., Defendants.

Replevin for Plaintiff.

Received for hands
of Atlanta Corp.

of the same

of the same

of the same

of the same

St Louis Mo Feb 17/71

It is hereby agreed by and between
the Attorneys for Plaintiff & Defendant
that these Depositions shall
be continued untill Feb 22nd
1871 at One O'clock P. M. Which
said agreement is hereby made
Exhibit B.

John Decker:

Atty for plff.
Henry F. Ahlborn,
Atty for defendant.

EQUITABLE MUTUAL
INSURANCE COMPANY,
Of St. Louis.

No.

Exhibit

C

Expires..... 18

Amount Insured..... \$

Amount Premium Note..... \$

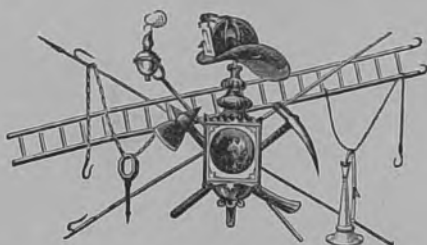
Paid 10 per cent. on same..... \$

Paid for Policy and Stamp.

☐ In communicating with this office, send number of your Policy.

P. M. PINKARD, PRINTER, 78 AND 80 PINE STREET.

EQUITABLE MUTUAL



Insurance Co.

OF ST. LOUIS, MO.

FIRE POLICY

Nº

Exhibit
D

Fees, _____

\$ _____

Expires, _____ 186

Pinckard, Pr., 510 Pine Street.

EQUITABLE MUTUAL INSURANCE CO.



OF ST. LOUIS, MO.

By this Policy of Insurance, The Equitable Mutual Insurance Company,

In consideration of _____ Dollars,

To them paid by the assured hereinafter named, the receipt whereof is hereby acknowledged,

Do Insure

AGAINST LOSS OR DAMAGE BY FIRE, TO THE AMOUNT OF

Exhibit E

Reference being had to _____ Application of even number herewith, filed in the Office of the Company, for a more particular description, and as forming a part of this Policy.

AND THE SAID COMPANY do hereby promise and agree to make good unto the said assured, _____ executors, administrators and assigns, all such immediate loss or damage, not exceeding in amount the sum insured, as shall happen by Fire to the property as above specified, from the _____ day of _____ one thousand eight hundred and sixty- _____ at twelve o'clock at noon, unto the _____ day of _____ one thousand eight hundred and sixty- _____ at twelve o'clock at noon, the said loss or damage to be estimated according to the true and actual value of the property at the time the same shall happen, and to be paid within ninety days after notice and proof thereof made by the assured, in conformity to the conditions annexed to this Policy.

PROVIDED, ALWAYS, AND IT IS HEREBY DECLARED, That this Company shall not be liable to make good any loss by theft, or any loss or damage by fire, which may happen or take place by means of any invasion, insurrection, riot, mob, or civil commotion, or of any military or usurped power.

AND PROVIDED, FURTHER, That in case the assured shall have already any other insurance against loss by fire on the property hereby insured, not notified to this Company and mentioned in or indorsed upon this Policy, then this insurance shall be void and of no effect. And if the said assured, or _____ assigns, shall hereafter make any other insurance on the same property, and shall not, with all reasonable diligence, give notice thereof to this Company, and have the same indorsed on this instrument, or otherwise acknowledged by them in writing, this Policy shall cease and be of no further effect. And if any subsequent insurance shall be made upon the property hereby insured, which, with the sum or sums already insured, should, in the opinion of the said Equitable Mutual Insurance Company, amount to an over insurance, said Company reserve to themselves the right of cancelling this Policy, by paying to the insured the unexpired premium *pro rata*. And in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this Policy, the assured shall not, in case of loss or damage, be entitled to demand or recover of this Company any greater portion of the loss or damage sustained than the amount hereby insured shall bear to the whole amount insured on the said property.

AND IT IS AGREED AND DECLARED to be the true intent and meaning of the parties hereto, that in case the above-mentioned _____ shall, at any time after the making, and during the continuance of this insurance, be appropriated, applied, or used to or for the purpose of carrying on, or exercising, therein any trade, business or vocation, denominated *hazardous* or *extra hazardous*, or specified in the memorandum of special rates, in the terms and conditions annexed to this Policy, or for the purpose of keeping or storing therein any of the articles, goods or merchandise, in the same terms or conditions denominated *hazardous* or *extra hazardous*, or included in the memorandum of special rates, unless herein otherwise specially provided for, or hereafter agreed by this Company, in writing, and added to or indorsed upon this Policy, then and from thenceforth, so long as the same shall be so appropriated, applied, used or occupied, these presents shall cease and be of no force or effect.

AND IT IS MOREOVER DECLARED, That this insurance is not intended to apply to, or cover any books of account, written securities, deeds or other evidences of title to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money, bullion, jewels, watches, plate, medals, paintings, stationery, musical instruments, and curiosities, are not deemed to be included in any insurance, unless specified in the Policy. And that this Policy is made and accepted in reference to the Conditions hereto annexed, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto, in all cases not herein otherwise specially provided for.

IN WITNESS WHEREOF, The said Equitable Mutual Insurance Company have caused these presents to be signed by their President and attested by their Secretary, at their Office, in the City of St. Louis, State of Missouri, this _____ day of _____ 18 _____

President.

ATTEST:

Secretary.

CONDITIONS OF INSURANCE,

Referred to in the Body of the Foregoing Policy.

I. GOODS not hazardous are such as are usually kept in Dry Goods Stores, including Coffee, Flour, Household Furniture and Linen, Indigo, Rice, Spices, Sugar, Teas and other articles not combustible.

II. The following trades and occupations, goods, wares and merchandise are denominated hazardous, viz.: Alcohol, Basket Sellers, Brush Makers' Stock, Cabinet Furniture, China, Earthen or Glass Ware, or Plated Glass in boxes, crates or casks, Copper Plate Printers, Cotton in bales, Hat Finishers (without use of fire except for heating their irons), Hard Ware and Cutlery, Jewelers' Stock, Liquor in glass, unpacked, Looking Glasses in boxes, Manilla Grass in bales, Paints ground in oil, Paper Hangings, Porter Houses, Potash, Pocket-Book Makers' Stock, Printers of Newspapers, Rags in packages, Sall Makers, Ship Chandlers, Spirituous Liquors, Cigar Makers, Stationers' Stock, Snuff Makers, Threshed Grain, Tin or Sheet Iron Workers, Victualing Houses, Watchmakers' Stock and Tools, Wine in glass in packages, Window or Plate Glass in packages.

III. The following trades and occupations, goods, wares and merchandise are denominated extra hazardous, viz.: Basket Makers and Straw Bleachers, Booksellers' Stock, Blacksmiths, Boat Builders, Brass Founders, China, Earthen or Glassware, or Looking Glasses unpacked, Cotton unpacked, Coopers, Coppersmiths, Druggists and Apothecaries, Fur Dressers, Flax in bales, Fringe Makers, Gun Makers or Smiths, Grate Makers, Hay pressed in bundles, Hemp in bales, Ink Makers, Lamp Manufacturers, Lamp Sellers' Stock, Lithographers, Milliners' Stock, Morocco Manufacturers, Optical and Mathematical Instrument Makers, Painters' Stock, Perfumers' Stock, Phosphorus, Pictures and Prints, Printers of Books and Jobbing, Plate or Plated Ware Manufacturers, Pocket-Book Makers, Plumbers and Pewterers, Saltpetre, Silversmiths, Stables (private), Spirits of Turpentine, Stove Manufacturers, Toy Keepers' Stock, Type or Stereotype Manufactories, Varnish, Window and Plate Glass unpacked, Tobacco Manufactories.

MEM.—Bakers, Bark Mills, Blind Makers, Breweries, Brimstone Works, Bookbinders, Blacksmiths, Boat Builders, Cabinet Makers, Carpenters, Joiners, Coopers, Chair or Coach Makers' Workshops, Chemists, Cotton Mills, Distilleries, Dyers, Forges, Fences, Flax Mills, Frame Makers, Furriers, Fulling Mills, Gunpowder, Grist Mills, Hat Manufactories, House Building or Repairing, Ink or Ivory Black or Lampblack Manufactories, Livery Stables, Lumber or Mahogany Yards, Malt Houses, Metal and other Mills of all kinds, Musical Instrument Makers, Oil-Boiling Houses, Oil Makers, Oakum Factories, Pump and Block Makers' Shops, Paper Mills, Piazzas and Privies of Wood, Printers of Books and Jobbing, Rope Makers, Sash Makers, Saw or Snuff Mills, Ship Builders' Stock in the yard; Ships or other vessels in port, or their cargoes, or when building or repairing; Steam Engines or Boats, Sugar Refiners, Tallow Melters or Chandlers, Tar-Boiling Houses, Theatres or other places of public exhibition, Timber Yards, Turpentine Manufactories, Varnish Makers, Wooden Mills, and generally all manufacturing establishments and all trades requiring the use of fire, heat or steam power, not before enumerated, will be insured at special rates of premium.

IV. If, after insurance is effected upon any buildings or goods in this office, either by the original policy or by the renewal thereof, the risk shall be increased by any means whatsoever within the control of the assured, or if such buildings or premises shall, with the assent of the assured, be occupied in any way so as to render the risk more hazardous than at the time of insuring, such insurance shall be void and of no effect. If, during the insurance, the risk be increased by the erection of buildings, or by the use or occupation of neighboring premises, or otherwise, or for any other cause the Company shall so elect, it shall be optional with the Company to terminate the insurance, after notice given to the assured or his representative of their intention to do so, in which case the Company will refund a ratable portion of the premium note.

V. Notice of all previous insurance upon property insured by this Company shall be given to them and indorsed on this policy, or otherwise acknowledged by the Company in writing at or before the time of their making insurance thereon; otherwise, the policy subscribed by this Company shall be of no effect. And in case of subsequent insurance on property insured by this Company, notice thereof must also, with all reasonable diligence, be given to them, to the end that such subsequent insurance may be indorsed on the policy subscribed by this Company, or otherwise acknowledged in writing; in default whereof, such policy shall thenceforth cease and be of no effect. And in all cases of insurance this Company shall be liable for such ratable proportion, or of the loss or damage happening to the subject insured, as the amount insured by this Company shall bear to the whole amount insured thereon, without reference to the dates of the different policies.

VI. Goods held in trust, or on commission, are to be insured as such; otherwise, the policy will not cover such property; and, in case of loss, the names of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interests therein, certified by them. *Goods on Storage must be separately and specifically insured.* If the interest in the property to be insured be a *leasehold* interest, or other interest not *absolute*, it must be so stated in the policy, otherwise the same shall be void.

VII. Policies of insurance, subscribed by this Company, shall not be assignable without the consent of the Company, expressed by indorsement made thereon. In case of assignment without such consent, whether of the whole policy or of any interest in it, the liability of the Company, in virtue of such policy, shall thenceforth cease. And in case of any sale, transfer or change of title in the property insured by this Company, such insurance shall be void and cease.

VIII. This company will not be liable for damage to property by lightning, aside from fire, nor from any loss or damage occasioned by the explosion of steam boilers or gunpowder, or loss or damage by fire happening by means of an invasion, insurrection, riot or civil commotion, or of any military or usurped power, or of an earthquake or hurricane, or from any accident arising from the use of camphene, spirit gas or burning fluid.

IX. This Company shall not be liable for any losses by fire, in consequence of neglect or violation of laws or regulations of police, existing and in force at the date of this policy, made to prevent accidents from fire, where laws and regulations upon this subject exist.

X. Not exceeding twenty-five pounds of powder, and that to be kept in a tin or other metallic canister, not covered with wood, shall be placed in any building insured by this Company, or in any building where property is covered by this Company; and all friction matches in any such building shall be kept in metallic vessels—a violation of either of these provisions vitiates this policy. Friction matches may also be kept by wholesale merchants in a close, wooden box, containing not less than a gross. Nor will this Company be answerable for any loss arising from the use of fires in a building unprovided with a good and substantial stone or brick chimney.

XI. Where property insured by this Company is damaged by removal from a building in which it is exposed to loss by fire, said damages shall be borne by the insured and insurers—*pro rata*—in the proportion that the whole sum insured bears to the whole value of the property insured; of which proof in due form shall be made by the claimant.

XII. In all cases of loss or damage on goods, wares or merchandise insured by this Company, they reserve the right of paying to the assured the actual cash value of said goods, wares and merchandise, at the time when such fire shall occur.

XIII. In case of fire, or of loss or damage thereby, or exposure to loss or damage thereby, it shall be the duty of the insured to use all possible diligence in saving and preserving the property; and if they shall fail to do so, this Company shall not be held answerable to make good the loss and damages sustained in consequence of such neglect, and it is mutually understood that there can be no abatement to the insurers of the subject insured.

XIV. All persons insured by this Company, and sustaining loss or damage by fire, are forthwith to give notice thereof to the Company; and as soon after as possible to deliver in a particular account of such loss or damage, signed with their own hands, and verified by their oath or affirmation; they shall also declare on oath whether any and what other insurance has been made on the same property; what was the whole value of the subject insured; what was their interest therein; in what general manner (as to trade, manufactory, merchandise or otherwise) the building insured, or containing the subject insured, and the several parts thereof, were occupied at time of loss, and who were the occupants of such building; and when and how the fire originated, so far as they know or believe; and procure a certificate under the hand of a magistrate or notary public (most contiguous to the place of the fire, and not concerned in the loss as a creditor or otherwise, or related to the insured or sufferers), that he is acquainted with the character and circumstances of the person or persons injured, and has made diligent inquiry into the facts set forth in their statements, and knows, or verily believes, that he, she, or they, really and by misfortune, and without fraud or evil practice, hath or have sustained by such fire, loss or damage to the amount therein mentioned; and, also, if required, shall produce their books of account and other proper vouchers; and shall, also, if required, submit to an examination under oath, by the Agent or Attorney of the Company, and answer all questions touching his, her or their knowledge of any thing relating to such loss or damage, or to their claim thereupon, and subscribe such examination, the same being reduced to writing; and until such proofs, declarations and certificates are produced, and examination (if required), the loss shall not be deemed payable; also, if there appear any fraud or false swearing, the assured shall forfeit all claim under this policy. Damage to buildings, not totally destroyed, shall be appraised by disinterested men, mutually agreed upon by the insured and the Office or its Agents; and where merchandise or other personal property is partially damaged, the insured shall forthwith cause it to be put in as good order as the nature of the case will admit, assorting and arranging the various articles according to their kinds; and shall cause a list or inventory of the whole to be made, naming the quantity and cost of each kind. The damage shall then be ascertained by the examination and appraisal of said damage on each article, by disinterested appraisers, mutually agreed upon, whose detailed report in writing shall form a part of the proofs required to be furnished by the claimant—one-half of the appraisers' fee to be paid by the insurers.

XV. Payment of losses shall be made in ninety days after the loss shall have been ascertained, proved and adjusted, and the proof received at the office; and in case difference shall arise touching any loss or damage, after proof thereof has been received in due form, it may be submitted to the judgment of arbitrators, indifferently chosen, whose award in writing shall be binding on the parties. In case of any loss on, or damage to, the property insured, it shall be optional with the Company to replace the article lost or damaged with others of the same kind and equal goodness; and to rebuild or repair the building or buildings within a reasonable time; giving notice of their intention so to do, within thirty days after having received the proofs of loss required by the fourteenth article of these conditions.

XVI. It is hereby expressly provided, that no suit or action of any kind against said Company, for the recovery of any claim upon, under or by virtue of this policy, shall be sustainable in any court of law or chancery, unless such suit or action shall be commenced at the next term of court, to be holden in, and for, the county of St. Louis, State of Missouri, and not afterwards, unless said court shall be holden within sixty days after refusal to pay the demand; but if said term of court be not held within that time, then at the next term of the court holden in said county thereafter; unless suit is brought as above, all claim shall be forfeited under this policy.

It is agreed by the assured and the Company, and is a part of this policy, that in case of suits by or against said Company, any member thereof shall be a competent witness, except in suits in which he or she shall be directly a party; provided, that such persons shall not be otherwise disqualified. It is also agreed that the records of said Company, or copies thereof, duly authenticated by the signature of the President and Secretary, shall be competent evidence in any suit in which said Company may be a party.

EQUITABLE

Mutual Insurance Company,

OF ST. LOUIS.

No.

Exhibit

F

Amount Insured, - \$.....

Premium on same, at -

Policy and Stamp, -

\$.....

Expenses..... 18

Expenses..... 18

Expenses..... 18

Expenses..... 18

Exhibit

EQUITABLE MUTUAL INSURANCE CO.

OF ST. LOUIS, MO.,

OFFICE, NO. 515 PINE STREET, BETWEEN FIFTH AND SIXTH.

The estimated Cash value of Personal Property, and of each building to be insured, and the sum to be insured on each, must be stated separately. When Personal Property is situated in two or more buildings, the value and amount to be insured on each must be stated separately—three-fourths only of the value to be insured. When insurance is wanted on Personal Property, the same description should be given of the building containing the property as when insurance is wanted upon a building.

Application of _____ of _____
County of _____ State of _____ for Insurance
against loss or damage by fire, by the EQUITABLE MUTUAL INSURANCE COMPANY, in the sum of _____
Dollars, for the
term of _____ commencing the _____ day of _____ 18____
at noon, on the property specified, to-wit:

	Sum to be Insured.	Valuation	Rate per cent.
On _____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	_____
_____	\$ _____	\$ _____	_____

No insurance made by this Company on buildings or their contents in which ashes are kept in wooden vessels, in or near the premises, will be considered valid.

The said Applicant makes the following statements, and gives the following answers to interrogatories here put, relating to the Risk:

1. Where is the property situated—street and number?
2. Of what material is the building constructed; age, size, height and condition; and for what purpose occupied, and by whom?
3. What is the roof covered with? Is there a scuttle and stairs to it?
4. State the distance to other buildings, of what construction, and how are the nearest buildings occupied? Be particular.
5. Are the stoves, furnaces, funnels, flues, and apparatus for heating or using fire, properly secured, and will you engage to keep them so?
6. What is used for lighting?
7. Will you engage that the ashes and matches in and around your building shall be kept in a safe place?
8. Is the property now insured? If so, at what office, for what amount, and at what rate?
9. Is it encumbered by mortgage or otherwise? If so, for what sum? Is there any insurance by mortgage?
10. Have you ever suffered loss of property by fire? If so, were you insured, and in what office?
11. How near to the building to be insured, or containing property to be insured, can a building be erected without your consent?
12. Is there any other fact or circumstance affecting the risk?
13. What are the facilities for extinguishing fires? And is there a good engine and well-organized Fire Company in town?
14. Make a diagram of the risk and exposure on the back of this sheet?

AND THE SAID APPLICANT hereby covenants and agrees, to and with the said Company, that the foregoing is a just, full and true exposition of all the facts and circumstances in regard to the condition, situation, value and risk of property to be insured, so far as the same are known to the applicant, and are material to the risk; and further covenants and agrees, that if the situation or circumstance affecting the risk shall be so altered or changed during the time of any policy of insurance, which may be fixed upon the application, or any renewal of said policy, as to render the risk more hazardous, he will notify the Secretary of said Company forthwith of such alteration.

Agent.

Applicant

Equitable Mutual Insurance
Company of St. Louis, Missouri,
against
Bernard Klein, Defendant.

On the last-
cent, court
of Jefferson
Co. Mo.
March Term 1871.

Now on this day came the parties in the above entitled case, and for the settlement of the two causes of action, contained in the petition of plaintiff, make the following compromise.

Plaintiff in consideration of the agreement of defendant, hereinafter mentioned, relinquishes all its rights under and upon the policies and two promissory Notes described in plaintiff's petition, and delivers the notes up to defendant, and dismisses the suit, and in consideration of the agreement on the part of plaintiff defendant executes and delivers to Henry Pilkington, President of the Equitable Mutual Insurance Company of St. Louis, ~~two~~ a promissory Note, dated this day, payable to said Henry Pilkington, President of the Equitable Mutual Insurance Company, at order, thirty days after date for value received for the sum of fifty dollars.

The defendant pays the costs of suit, except the costs of taking the depositions of Wm. Brill,

which the plaintiff agrees to
pay.

This 27th day of March A.D. 1871.

On the part of plaintiff,

Henry Pitt Kingston Pres.

John Decker for R. L. Boush

with Thomas Bro. Atty of Record

On the part of defendant

Henry F. Ahlren, Atty of
Record

Bernhard Klein

Comitia Proutie
~~and Company~~
of St. Louis, Mo.
petty.

31,

Bernard

Hein,

Lebel,

Company
of said

Dec 27 1871

Wm. B. B. B.