

all of which defendants aver was an attempt by the plaintiffs to defraud the defendants in the premises, and is contrary to the terms of said policies."

That comes, evidently, if true, under one of these provisions of the policy which the party has selected, to-wit: "Any fraud or attempted fraud by false swearing, etc., shall cause the forfeiture of the policy and be a complete bar." That is set up under that provision, I suppose.

The fourth defence is that the fire was caused by the plaintiffs themselves.

The only question raised by the demurrer is whether, in an action of this character, these conditions, precedent and subsequent, may be pleaded in gross.

The statute, as I interpret it, is this: You may put in a general denial as to each allegation on which the plaintiffs' right of recovery depends, instead of putting, as heretofore, a specific denial of each *seriatim*; but when you come to affirmative matters you must then specify each matter of defence according to the rules of pleading pertaining thereto. The demurrer is sustained.

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#### HATHAWAY and others v. ST. PAUL FIRE & MARINE INS. CO.

(Circuit Court, E. D. Missouri. ———, 1880.)

MARINE INSURANCE—GOVERNMENT VESSEL—UNLICENSED PILOT—SEAWORTHINESS.—The mere fact that the officers navigating a government vessel are not licensed pilots, does not *prima facie* render a vessel unseaworthy under the warranties of marine insurance.

*J. Chandler* and *J. P. Ellis*, for plaintiffs.

*Lee, Marshal & Barclay*, for defendant.

Motion of defendant for new trial.

TREAT, J., (*orally*.) Concerning this case we have had very full conference, and I am now authorized by Brother Krekel to announce that we have reached the same conclusion—that the motion for a new trial must be sustained. The character of the action was this: Certain army officers, being ordered from one post to another, proceeded, under an order from the war

department, and shipped their private effects on a government vessel, going up the river. They took out insurance on those effects, the agent of the underwriter knowing that the property was to be shipped on this government vessel. Hence the contention seems to have been, at an early stage of the trial, whether the rules and laws that require vessels to have licensed pilots are applicable to government vessels.

Testimony was received as to the unlicensed pilots navigating the vessel on which the disaster occurred, in order to ascertain whether the vessel was seaworthy, under the warranties of marine insurance. Judge Krekel *originally* held that the mere fact of the officers being unlicensed did not *prima facie* render the vessel unseaworthy, but it was a matter of fact to be determined by the jury. But in the course of the trial and after various arguments the doctrine of contributory loss, and general and particular average, was urged to show that inasmuch as the government or a government vessel could not be compelled to contribute if there had been a jettison, for illustration, therefore the whole case was taken out of the body of the law of insurance as to seaworthiness. But this was not a case involving any such propositions. Yet his instructions were based on that theory. This contract was not between the government and the shipper, nor between the government and the underwriter, but between the shipper and the underwriter; and all the warranties that follow with regard to seaworthiness obtain. Whether the vessel was a government or any other vessel, yet the mere fact that the government vessel does not have a licensed pilot, and is not bound to have one, does not raise presumptions one way or another; it becomes a simple matter of fact, and must be left to the jury. I want to remark that under the motion for a new trial one of the grounds was newly discovered evidence, and that this new trial is not granted on that matter. If that had been all, the motion would have been overruled; but it simply rests upon the point already stated. I am instructed to say, by Judge Krekel, that for these reasons the motion must be sustained.

## DOWNTON v. YAEGER MILLING CO.

(Circuit Court, E. D. Missouri. — 1880.)

PATENT—MILLING PROCESS—USE OF ROLLS.—A patent for the manufacture of middlings flour by passing the middlings, after their discharge from a purifier, through or between rolls, is void for want of novelty and uncertainty, when such rolls are inadequate to produce the result described.

*W. G. Rainey and George Harding*, for plaintiff.

*G. M. Stewart and F. W. Cotzhausen*, for defendant.

TREAT, J., (*orally*.) I am prepared to announce my conclusion in the case of *Downton v. The Yaeger Milling Company*. This case was presented at great length last spring, and it was announced to counsel at that time that if the court was compelled, as matters then stood, to decide the case, it would have to decide it in a certain way, but it would be more satisfactory if on certain points it could be more fully presented. That has been done, and very ably. One of the points as to which the court was troubled was whether, under the existing state of the art, this being a process patent, there was any novelty in it. Second, was the patent itself sufficiently specific in its terms to make it practicable, or, in other words, patentable in the form pursued.

It is not proposed this morning to go through the milling literature with regard to these matters, as the various stages of all the matters involved were fully considered at the time of the hearing of the milling cases before Judges Dillon, Nelson and myself. We were then very fully instructed as to this new process, and also as to the state of the art when the new process arose, and the conclusions announced in that case are very familiar to the counsel in this case, and to the milling public generally, by this time.

Now the mills using this new process interject rolls at various stages in connection with grinding, and, after purifying, regrinding the purified middlings. Counsel were asked whether they construed this particular patent as covering *any* use of rolls on purified middlings at any stage of the successive grindings, or whether, under their construction of the