

2. SAME—CONDITIONS—VACANT AND UNOCCUPIED PREMISES.

A policy of insurance provided that if the building insured became vacant and unoccupied without the knowledge and consent of the company the policy should be void. Defendant, a manufacturing company, temporarily stopped work, and repaired its machinery; the night and day watchmen were on duty and the employes were at and about the factory from its closing until it burned. *Held*, that the building was in no sense vacant and unoccupied; following *Brighton Manuf'g Co. v. Reading Fire Ins. Co.*, *ante*, 232.

3. SAME—CONDITIONS—CESSATION OF BUSINESS.

A manufacturing company which closes temporarily and repairs its machinery, and is burned down in eight days, cannot be said to have ceased operating so as to avoid a policy of insurance.

At Law. Suit to recover on policy of insurance.

The Brighton Manufacturing Company sued the Fire Association of Philadelphia, to recover for a loss by fire.

E. W. Russell, for plaintiff.

Gary, Cody & Gary and *Fred'k Ullman*, for defendant.

BLODGETT, J. This is a suit upon a policy by the defendant upon the same property as that covered by the policy in the preceding case; and the facts in the cases are essentially the same. The defenses set up are: (1) That the risk was increased by a change in the occupation of the building, with the knowledge of the assured; (2) that the building was allowed by the plaintiff to become vacant and unoccupied; (3) that, being a manufacturing establishment, it ceased to be operated.

I have sufficiently considered the first two objections in the former case; and will only say in regard to the third and last, that I do not think, under the facts in this case, the factory can be said not to have been operated during the time manufacturing was suspended for eight days preceding the fire; but, if I am wrong in my view as to the meaning and force of the term "ceased to be operated," the plaintiffs certainly had the right to stop temporarily for repairs. There will therefore be a finding for the plaintiff.

BRIGHTON MANUF'G CO. v. RELIANCE INS. CO.

(Circuit Court, N. D. Illinois. July 25, 1887.)

At Law. Suit to recover on a policy of insurance.

Action by the Brighton Manufacturing Company against the Reliance Insurance Company on a policy of insurance.

E. W. Russell, for plaintiff.

Gary, Cody & Gary and *Fred'k Ullman*, for defendant.

BLODGETT, J. The facts in this case are the same as in the preceding case; and the defenses set up that the risk was increased with the knowledge of the assured, of which no notice was given to the defendant; that the assured allowed the building to become vacant and unoccupied, without notice to the

defendant; and that, being a manufacturing establishment, it ceased to be operated without the consent of the defendant. I have already passed upon these defenses in the preceding case, and therefore the finding will be for the plaintiff.

BRIGHTON MANUF'G CO. v. FIRE INS. CO. OF PENNSYLVANIA.

(Circuit Court, N. D. Illinois. July 25, 1887.)

At Law. Suit to recover on a fire insurance policy.

Action by the Brighton Manufacturing Company against the Fire Insurance Company of the state of Pennsylvania on a policy of insurance.

E. W. Russell, for plaintiff.

Gary, Cody & Gary and *Fred'k Ullman*, for defendant.

BLODGETT, J. The facts in this case are the same as in the preceding case; and the only defense set up is the increase of risk by the stoppage of manufacturing. I have already passed upon this defense, and the finding will therefore be for the plaintiff

WESTERN LAND & CATTLE CO. v. HALL.

(Circuit Court, W. D. Missouri. January 7, 1888.)

1. TROVER AND CONVERSION—RETURN OF GOODS CONVERTED—EFFECT TO BAR ACTION.

The subsequent recovery or return of property wrongfully taken does not extinguish the right of action for the original wrongful taking; it only goes to the mitigation of whatever damages might otherwise be recovered, and demurrer on that ground will not lie.

2. SAME—DAMAGES—DEPRECIATION IN VALUE—EXPENSES OF RECOVERY.

It was shown that between the time of the wrongful taking of certain cattle and their return, they had depreciated in value in the sum of \$3,000; and further that plaintiff was compelled to pay bills, being necessary expenses in recovering the same, aggregating \$2,500. *Held*, both these items were proper elements in the measure of plaintiff's damages.

At Law. Action in trover.

This was an action in trover by plaintiff, the Western Land & Cattle Company, against Simeon F. Hall, for the conversion of certain cattle. The declaration averred in substance that plaintiff was the owner of a herd of cattle valued at \$15,000, and that, on or about December 27, 1884, the defendant wrongfully took and carried away 300 head thereof, with intent to convert the same to his own use. There was no prayer for the recovery of the market value of the property, but the declaration stated that plaintiff, in recovering and attempting to recover the cattle, was compelled to pay freight, feeding, and other charges thereon to the amount of \$2,000; that it had been compelled to pay traveling and other expenses of its officers in the sum of \$500; that it had been compelled