son, 31 Vt. 300. The plaintiff falls within the description, and is entitled to judgment in her favor upon this declaration. The betterments are found to enhance the value of the land to the amount of $1,300. Final judgment in the action of ejectment has not yet been entered, but withheld to preserve the right of the plaintiff there to have the value of the land ascertained by commissioners according to further provision of the statute. Section 1269 *et seq.* Final judgment will now be entered for the seizin and possession of the premises, with six dollars damages, and costs, and judgment for the plaintiff on the declaration for betterments for $1,300, value of betterments.

Executions stayed according to section 1266, Rev. Laws Vt.

AMSDEN *v.* STEAM STONE CUTTER CO.

(*Circuit Court, D. Vermont.* May 29, 1884.)

VENDOR AND VENDEE — RIGHT TO RECOVER FOR IMPROVEMENTS — EJECTMENT — NOTICE OF INCUMBRANCE.

George v. *Steam Stone Cutter Co.*, *ante*, 478, distinguished.

At Law.

William Batchelder, for plaintiff.

Aldace F. Walker, for defendant.

WHEELER, J. This case differs from that of *George* v. *Steam Stone Cutter Co.*, *ante*, 478, in this: George E. Chase purchased the land of Jones, Lamson & Co., supposing the title to be good in fee, made betterments upon it, and conveyed the property to this plaintiff, who knew of the attachment. The statute expressly covers this difference by providing for a recovery by a defendant in ejectment for betterments made by those under whom he claims, if they purchased the lands supposing the title to be good in fee and made the betterments. Rev. Laws Vt. § 1260. The increase in value in consequence of such betterments is found to be $2,000. Final judgment for seizin and possession of the premises, with $30 damages, is now to be entered in the action of ejectment; and judgment for the plaintiff on the declarations for betterments for $2,000, value of betterments.

Execution stayed according to section 1266, Rev. Laws Vt.

PEORIA SUGAR REFINERY *v.* SUSQUEHANNA MUT. FIRE INS. CO.[1]

(Circuit Court, E. D. Pennsylvania. February 6, 1884.)

1. FIRE INSURANCE—WAIVER OF EXPRESS PROVISIONS IN POLICY—CUSTOM.
   Waiver of an express provision in a policy of fire insurance cannot be proved by parol testimony showing that the general custom among insurance companies and brokers is otherwise than as stated in the provision, when there is another clause in the policy providing that there shall be no waiver, except by the authority of the company expressed in writing.
2. SAME—PAROL EVIDENCE.
   But such a waiver can be proved by parol testimony showing the course of business of the company which issued the policy in its dealings with the broker who procured the policy.
3. SAME—PAYMENT OF PREMIUMS—AGENCY.
   A policy of insurance on the plaintiff's factory provided that the company should not be liable "until the cash premium be actually paid to the company, or an agent of the company;" that any broker, or other person than the assured who had procured the policy, should be "deemed the agent of the assured, and not of the company;" that no person should be considered the agent of the company, unless he held the commission of the company; that there should be no waiver by the company of any term in the policy, except by express authority in writing. The insured, owning a large factory, placed their insurance in the hands of H. & Co., insurance brokers in New York; H. & Co. applied to B. & Co., insurance brokers in Jersey City, who obtained the policy and delivered it to H. & Co. B. & Co. had previously placed a few risks with the defendant, but was not, in fact, their agent. H. & Co. sent the premium to B. & Co., who kept it for several days, and until the property insured was burnt, when they sent it to the defendant, who refused to accept it. *Held*, that B. & Co. were not the agents of the company to receive payment of this premium for the company, and that the plaintiff could not recover.

Sur Motion to take off Compulsory Nonsuit.

This was an action of *assumpsit* on a policy of insurance for $1,500, dated August 25, 1881. At the trial, before BUTLER, J., November 13, 1883, the plaintiffs offered in evidence the policy, proved the total destruction of the property insured on October 27, 1881, and their compliance with all the requirements of the policy as to furnishing proofs of loss, etc. The policy contained the following clauses:

"(1) This company shall not be liable by virtue of this policy, or any renewal thereof, until the cash premium be actually paid to the company, or to an agent of the company.

"(2) If any broker, or other person than the assured, have procured this policy, or any renewal thereof, or any indorsement thereon, he shall be deemed to be the *agent of the assured*, and not of this company, in any transaction relating to the insurance.

"(3) Only such persons as shall hold the commission of this company shall be considered as its agents in any transactions relating to the insurance, or any renewal thereof, or the payment of premium to the company. Any other person shall be deemed to be the agent of the assured, and payment of the premium to such person shall be at the sole risk of the assured."

"(6) The use of general terms, nor anything less than a distinct agreement, clearly expressed and indorsed by this company on this policy, shall be construed to be a waiver of any printed or written term, condition, or restriction

[1] Reported by Albert B. Guilbert, Esq., of the Philadelphia bar.