present case. Upon questions of that character the federal courts administering justice in Iowa have equal and co-ordinate jurisdiction with the courts of that state, although they will "lean towards an agreement of views with the state court if the question seem to them balanced with doubt."

Our attention is called to the closing portion of the decision in Shoe Co. v. Mercer, as extracted above, as being a qualification of the general principle in such extract stated, and as justifying, under that opinion, the contention that the supreme court of Iowa would hold the bill herein as permissible under such opinion. It is not deemed necessary to determine this contention, which, however, has much of force, for, under the views hereinbefore expressed, we are compelled to overrule the first plea, as presented by defendant Barnes.

2. As to the second plea,—that this bill cannot be sustained because of the pendency of the action at law, wherein are raised, as between the parties hereto, the same issues which are tendered by this bill,—an order must be entered overruling this plea. The present action must be conceded to be eminently proper, if indeed it be not the only method whereby the deed of assignment can be attacked. In the Mercer Case, supra, the supreme court of Iowa expressly hold that such an assignment cannot be collaterally attacked. And the doctrine of that case would forbid, in the state courts, such an attack by a reply to the answer of the garnishee. In the Ryan Case, supra, Judge Shiras, while declining to rule on this point, as not essential to the determination of the question then before him for determination, indicates his views to be in accordance with the rule laid down in the Mercer Case, and which is abundantly sustained by authority, state and federal. The bill herein appears to be an ancillary or dependent bill, so far as it relates to the action at law, within the opinion in Krippendorf v. Hyde, supra. And, being such, it may properly now be presented, and the validity of the chattel mortgages and the deed of assignment here determined. Besides, only by such a bill can the chattel mortgagees be brought in, and the whole matter thus determined. Let an order be entered overruling the pleas in abatement tendered, by defendant Barnes, to which defendant excepts. And defendant is given until next February rule day to plead further herein.

SUMMERFIELD v. PHOENIX ASSUR. CO.

(Circuit Court, W. D. Virginia. December 21, 1894.)

1. FIRE INSURANCE—PROOFS OF LOSS—BUILDER'S CERTIFICATE.
A policy of fire insurance contained a clause requiring the insured, within 30 days after a fire, to furnish preliminary proofs of loss, containing certain information about the risk, and another clause requiring, if the claim of loss was for a building, that the insured should procure and attach to the preliminary proofs of loss a duly verified certificate of a builder as to the actual cash value of the building immediately before the fire. *Held*, that this requirement was sufficiently complied with by the insured procuring from a responsible firm of builders an itemized estimate of the cost of rebuilding the burned building, signed by them as

architects and builders, but not sworn to, and attached to the preliminary proofs of loss more than 30 days after the fire.

2. SAME—WORKING OF CARPENTERS.

The policy also contained a clause that the working of carpenters in building, altering or repairing the premises, would vitiate the policy. *Held*, that the policy was not avoided, under this clause, by the fact that, on the day before the fire, a carpenter, under instructions to make certain alterations, had gone upon the premises and removed two small pieces of stair rail, no actual connection appearing between the fire and the carpenter's presence or work.

This was an action by Rebecca Summerfield against the Phoenix Assurance Company upon a policy of insurance. The case was, by agreement, heard by the court without a jury.

On the 23d day of February, 1893, the plaintiff took out a policy of fire insurance from the defendant upon a large building in the city of Danville, composed, in the principal story, of three storerooms entered severally from the street, and of three upper stories and an attic, containing numerous rooms arranged for the purposes of a hotel. Two of the storerooms on the principal floor, on a level with the pavement, were occupied for mercantile purposes. All the upper stories of the building were used as a hotel, and so, also, was the third storeroom below, which was used as a hall, office, and entrance room to the hotel above, from which a staircase ascended to the upper stories. The building insured was leased, at the time of the issuance of this policy, to three different tenants, the hotel to one tenant, and the two storerooms to as many other tenants; but the policy was single and entire, covering the building as a whole. The amount for which the policy which is the subject of this suit was issued was $3,000. Other risks were taken out by the plaintiff on this building to the amount of $19,500, the total insurance being $22,500. The proofs show that the value of the whole building insured much exceeded the total amount of the policies upon it, the estimates of different witnesses varying from $30,000 to $50,000. The insurance policy on which this suit is brought was for the year ending on the 23d February, 1894. Soon after this policy was taken out the lessee of the hotel gave up the lease, and vacated the parts of the building which he had occupied, but the two storerooms remained in the occupancy of their respective lessees. On the hotel keeper moving out, the plaintiff employed a carpenter to remove the staircase from the office room below, which has been mentioned, intending in the future to lease that room separately. Nothing was actually done towards removing the staircase, except that a workman took off one or two joints of the hand railing. The hotel apartments being then vacant, the carpenter was intrusted with the key of the lower room, in which the staircase was. There seems from the evidence to have been another entrance to the hotel apartments, of the key to which this carpenter had not the custody. A few nights after the lessee of the hotel had vacated the building, and on the night after the pieces of hand railing had been taken off the staircase,—that is to say, on the night of the 7th March, 1893,—a disastrous fire broke out in the upper part of the hotel, and completely destroyed the entire building; the loss being total, one witness stating that the value of all the débris was not as much as $1,000. After the fire the usual steps were taken, prescribed for such an event by the policy, looking to an adjustment and payment of the loss. These proved to be unsatisfactory to the insurance company, who finally denied all liability for the loss, and this suit is brought to enforce payment.

Among the provisions of the policy were the following, which I shall recite and number:

(1) One clause provides as follows: "Persons sustaining loss by fire shall forthwith give notice of said loss to the company, and shall within thirty days render a particular account of such loss, signed and sworn to by them, stating whether any and what other insurance has been made on the same property, giving copies of the written portions of all policies thereon; also the actual cash value of the property, and their interest therein; for what pur-

pose and by whom the building insured, or containing the property insured, and the several parts thereof, were used at the time of the loss; when and how the fire originated; and shall also produce a certificate, under the hand and seal of a notary public, * * * stating that he has examined the circumstances attending the loss, knows the character and circumstances of the assured, and verily believes that the assured has, without fraud, sustained loss on the property insured to the amount which such magistrate or notary shall certify." It was not contended at the trial that there had been a failure to comply with this provision of the policy, except in a matter claimed by the defense to have been incidental to this 30-days requirement, under a clause of the policy following the one just given.

(2) That clause was, in part, as follows: "As a part of the preliminary proofs of loss, the assured shall, if the claim be for building destroyed by fire, procure the duly-verified certificate of some reliable and responsible builder as to the actual cash value of it immediately before said fire, which shall be attached to and form a part of such proofs, and, if required so to do, shall furnish the company with plans and specifications of the building destroyed, which shall be duly verified by the oath of the assured."

(3) Another clause of the policy provided that the cash value of the property insured shall not be estimated at a greater amount than the cost of replacing it anew, reduced by a fair allowance for depreciation from the use it had sustained.

(4) The policy also contained a clause under the caption of "Builder's Risk," providing that "the working of carpenters * * * in building, altering, or repairing the premises will vitiate this policy," unless permission be indorsed in writing, etc.

(5) Still another clause of the policy declared that "if the premises shall be occupied or used so as to increase the risk, or become vacant or unoccupied, and so remain, without notice to and consent of this company in writing, or the risk be increased * * * by any means whatever within the control of the assured, without the assent of the company indorsed hereon, then * * * this policy shall be void."

Notice of the fire was promptly given to the agent of the defendant company in Danville, and preliminary proofs of loss were furnished on the 28th of March, the fire having occurred on the 7th of that month. Objection was made on 26th April by the defendant that a builder's certificate of the cash value of the premises at the time of the fire had not been included in the proofs, as required by the policy. Thereupon a paper which the plaintiff claims to have been such a one as the policy required was furnished on the same day on which the objection was received. This paper was an estimate in detail made by a builder of the cost of rebuilding the premises, omitting any deduction for deterioration from the use which the building had undergone. It purported to be an estimate, it was signed by the builder, and was not sworn to by him or by the assured. This paper was afterwards, to wit, on the 12th of June, coupled with and made a part of the supplemental proofs of loss furnished by the plaintiff, and was sworn to by the plaintiff herself on the 13th of June. It is marked "Exhibit 1, Graham," in the record. The language of the caption is: "Estimate of Cost to Rebuild the Summerfield Building on Present Foundation as Before the Fire"; and at the bottom are the following inscriptions: "April 24th, 1893. Graham Bros., Architects & Builders, Danville, Va."

Peatross & Harris and Green & Miller, for plaintiff.

Berkeley & Harrison, Withers & Withers, and Staples & Munford, for defendant.

HUGHES, District Judge (after stating the facts). This is a case of total loss. The property burned was completely destroyed. It had been insured for a total sum of $22,500, and it was worth, at minimum valuation, $30,000. In such a case, and in the absence of any charge of perjury, fraud, or incendiarism, the policy itself would