the contract. In Riddlesbarger v. Insurance Co., 7 Wall. 386, the condition read "that no suit or action of any kind against said company for the recovery of any claim, under, upon, or by virtue of the said policy shall be sustainable in any court of law or chancery, unless such suit or action shall be commenced within the term of twelve months next after the loss or damage has occurred; and, in case any suit or action shall be commenced against said company after the expiration of twelve months next after such loss or damage shall have occurred, the lapse of time shall be taken and deemed as conclusive evidence against the validity of the claim thereby so attempted to be enforced." In Arthur v. Insurance Co., 78 N. Y. 462, the condition was expressed in the same terms. There is a material difference between a condition providing that no suit or action against the company for the recovery of any claim under the policy shall be sustainable, unless commenced within 12 months, and one providing that "all claims under this policy shall be void, unless prosecuted by suit at law within a year." The former reaches the particular action brought upon the claim. Wilson v. Insurance Co., 27 Vt. 99. Unless it is commenced within the year, the imperative terms of the contract prevent a recovery, and it is wholly immaterial that the claim may have been sued upon previously. The latter reaches the claim, but not necessarily the action which has not been prosecuted within the year. It declares the claims void that have not been prosecuted within the year, but touches no other claims. As it does not refer to the time within which the action must be brought, if the claim is not void, the time would seem to be immaterial. If the claim upon which it is brought has been prosecuted within the year, its terms are literally satisfied. Any ambiguity in the condition is to be resolved against the company, and it should receive the interpretation most favorable to the assured. First Nat. Bank of Kansas City v. Hartford Fire Ins. Co., 95 U. S. 673. The purpose of conditions like that in the present case would seem to be to require the assured to give the insurance company an opportunity to contest the claim while it is fresh, and before the evidence may have become lost or impaired. That opportunity was afforded to the company here; but it preferred not to avail itself of it. In substance, the present action is a mere continuation of the former. We agree with the court below that the condition is "satisfied by the commencement and prosecution of a suit in good faith against the company" within the designated period. The decree is affirmed, with costs.

LACOMBE, Circuit Judge, concurs.

AMERICAN CREDIT INDEMNITY CO. v. CARROLLTON FURNITURE MFG. CO.

(Circuit Court of Appeals, Second Circuit. May 25, 1899.)

No. 144.

1. INSURANCE—STATEMENTS IN APPLICATION—EXPRESS WARRANTIES.
When there is a distinct agreement that an application for insurance is a part of the contract, and the statements in the application are expressly declared to be warranties, they are to be treated as such, and not merely as representations, and must be strictly true, or the policy will not take effect.

2. SAME—CONSTRUCTION OF CONTRACT—WHAT LAW GOVERNS.
The fact that an application for a policy of insurance against business losses by the insolvency of debtors was made out in the state where the applicant resided does not render the contract subject to the statutes of that state, where the application was forwarded to the company in another state, where the policy was issued, and, so far as appears, where a loss thereunder is payable. Such a policy is a commercial instrument, and governed by the general principles of commercial law, unless the statutes of the state where the contract was made control its construction.[1]

3. SAME—NOTICE OF LOSS—WAIVER.
Mere silence, by failure to reply to a letter regarding a loss, is not a waiver of a positive requirement of the policy as to notice of the loss, when the policy expressly provides that it shall not be held a waiver, and that changes in the conditions of the policy must be in writing, signed by the president or secretary of the company.

4. SAME.
A policy of insurance against business losses by reason of insolvency of debtors contained definitions of insolvency, among which was the return unsatisfied of an execution in favor of the insured. It also required the insured to give notice, within 10 days after learning of the insolvency of a debtor, on blanks furnished by the company, and in the manner prescribed by it. Such blanks contained no reference to insolvency, but required the insured to answer questions as to the "failure" of a debtor, date, nature, etc. *Held*, that the word "failure" was used in its commercial sense, and that confessions of judgments by a debtor who was in business, and a seizure of his stock by the sheriff, causing a suspension of his business, was a "failure" in a commercial sense, and that a report of such failure by the insured within 10 days, with the questions in the company's blanks fully answered, fulfilled the requirements as to notice, and a second notice after the return of an execution unsatisfied was not required.

In Error to the Circuit Court of the United States for the Southern District of New York.

This is a writ of error to review a judgment of the circuit court for the Southern district of New York, in favor of the Carrollton Furniture Manufacturing Company, a Kentucky corporation, against the American Credit Indemnity Company, a New York corporation, upon a policy of insurance, dated July 2, 1895, which insured the plaintiff against business losses from the insolvency of debtors on sales and deliveries of goods to be made between July 1, 1895, and July 31, 1896. A rider, subsequently attached to the policy, provided that losses of the kind included in the policy, occurring after the payment of the premium, on sales and shipments made from July 1, 1894, to July 1, 1895, could be proven under the policy in accordance with its terms. The question upon the trial to the jury in regard to the amount of losses related to the loss suffered by the plaintiff in its sales to a firm under the name of Elliott & Cougle, of the city of New York. The jury returned a verdict for

[1] As to credit insurance, see note to Indemnity Co. v. Wood, 19 C. C. A. 271, and note to American Credit Indemnity Co. v. Athens Woolen Mills, 34 C. C. A. 165.