the pursuer, which are material on this point, for your consideration; and you will observe, that, though the first seems to be suspending his judgment, the second differs from it, and seems as if he would acquiesce in what was done by the others.

Verdict—"For the defenders."

An exception was taken to the direction, holding that the interlocutor of the Court of Session was conclusive, and that it was unnecessary to decide the point raised at the Bar. But the exception has not been followed out.

Jeffrey, *Skene*, and *More*, for the Pursuer.
Moncreiff and *Buchanan*, for the Defender.
(Agents, *Campbell* and *Mack*, W.S. *John Young*.)

PRESENT,

FOUR LORDS COMMISSIONERS—LORD MACKENZIE ABSENT.

JOHNSTON v. WEST OF SCOTLAND INSURANCE COMPANY.

1827. March 16.

Query, Whether an Insurance office is liable to pay for damage done by pulling down the wall of a house consumed by fire?

AN action on a policy of insurance to recover the value of certain goods and furniture.

DEFENCE.—The damage was not done by or

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during the fire, but by the pulling down the wall of a house some days after.

ISSUE.

" It being admitted that the policy of insu-
" rance in process, dated February 11, 1824,
" was in force on the 25th February 1825 :
" Whether, between the 22d and 26th of
" February 1825, the property of the pursuer
" in Strichen's Close, in Edinburgh, suffered
" such loss or damage as the defenders, by the
" said policy, undertook and promised to pay ;
" and to what amount ?"

Jeffrey, for the pursuer, stated the facts, and argued that the damage did fall under the policy. It was not caused by ignition ; but a great part of the damage for which the offices are liable is occasioned by the water used to extinguish the fire, the falling of beams, &c.

The terms of a policy must be largely interpreted ; and at one time in sea policies capture was held a peril of the sea, though now greater accuracy is introduced. But the terms in fire policies are still general.

Marshall on Ins. p. 304
Park on Ins. 49.
4 Taunton, 126.
Hodgson *v.* Malcom, 2 Bos. and Pull. N. R. 336. Hagedorn *v.* Whitmore, 157, 1 Starkie.
5 Barn. and Ald. 107.
3 Dowling and Ryland, 193.

This is not consequential damage. The proper definition of which is a second damage founded on the first. This is a direct damage done by the fire.

Hope, Sol.-Gen., for the defenders.—We have all along been anxious to admit the facts in this case, as the question turns on a point of law; and we now submit to the Court and the other party a note of what we admit.

LORD CHIEF COMMISSIONER.—The Court do not wish to throw any difficulty in the way of this arrangement; but the facts to constitute a special verdict should be *finite*; that is, facts from which there is no conclusion to be drawn as to their import by the jury, but which only raise matter of law to be decided by the Court. If the facts are of this nature, they are proper for a special verdict. But if they leave any conclusion to be drawn by the jury, they are not. When the case was before me at chambers, my opinion was, that, after all the trouble taken in discussing the question, it might be found that the facts stated are not conclusive.

Ignition of the articles is not necessary to constitute the loss a loss under the policy; but the loss must be attributable to the fire.

A special verdict was taken.

Jeffrey and *More*, for the Pursuer.
Hope, Sol.-Gen., and *D. M'Neill*, for the Defenders.
(Agents, *James Johnston*, *John Elder*, W. S.)