

No. 11801

Supreme Court of Illinois

Major

vs.

Farmers Ins. Co.

71641  7

United States of America

STATE OF ILLINOIS, COUNTY OF COOK, S. S.

Pleas, before the Honorable George Manion

Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the

third Monday, (being the fifteenth day) of

November in the year of our Lord one thousand eight hundred and

seventy eight and of the Independence of the said United States the

eighty third

Present, Honorable George Manion Judge of the 7th Judicial Circuit of the State of Illinois.

Charles Haven States Attorney.

John S. Wilson Sheriff of Cook County.

Attest: Wm L. Church Clerk.


I

Be it remembered that heretofore, to wit, on the Fourth day of February, in the year of our Lord, One thousand, eight hundred and fifty eight, John W. Major, who sues for the use of John E. Barber, Plaintiff, by C. Clarkson and Tree, his attorneys, sued out of the office of the Clerk of said Court, the People's certain Writ of Summons, directed to the Sheriff of Cook County, to execute, and clothed in the words and figures following, to wit—

State of Illinois, }
Cook County } p.

The People of the State of Illinois, to the Sheriff of said County—Greeting—

We command you that you summon the Farmer's Union Insurance Company, if it shall be found in your county, personally to be and appear before the Circuit Court of Cook County, on the first day of the next term thereof, to be holden at the Court House, in Chicago, in said County, on the First Monday of March next, to answer unto John W. Major, who sues for the use of John E. Barber, in a plea of trespass on the case on promises—to the damage of the said Plaintiff as is said, in the sum of Four thousand dollars—And have you then and there, this writ, with an endorsement thereon, in what manner you shall have executed the same—

Witness, William L. Church, Clerk of our said Court, and the seal thereof, at Chicago aforesaid, this 4th day of February, A. D. 1858. 

Wm. L. Church Clerk

And afterwards, to wit, on the 5th day of February in

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the year last aforesaid, said writ was returned into the Court aforesaid, by said Sheriff, endorsed as follows, to wit— Served this writ on John Blockley, Agent of the within named Insurance Company, by delivering a copy hereof to him, the 5th day of February, 1858.

Fees— 1 Service, 50— 1 Copy, 50— 1 mile, 8— 1 Return, 10
\$1.18— John L. Wilson, Sheriff

Atty— By John H. Dart— Deputy—

And afterwards to wit, on the 12th day of April, in the year last aforesaid, said Plaintiff by his said attorney, filed in the office of the Clerk of said Court, his certain declaration in said Cause, in the words and figures following, to wit—

Cook County Circuit Court
March Vacation Term, A.D., 1858.

Cook County) ss.

John W. Major, who sues for the use of John E. Barber, Plaintiff in this suit, by Clarkson and Tree his attorneys, complains of The Farmer's Union Insurance Company, an incorporation under the laws of the State of Pennsylvania, Defendants in this suit, who were summoned to answer &c. in a plea of trespass on the case upon promises— For that whereas the said defendants heretofore, to wit, on the second day of May, in the year of our Lord, one thousand, eight hundred and fifty seven, at Athens to wit, at Cook County aforesaid, made a certain instrument in writing, and agreement, to and with the said plaintiff, known as a Policy of Insurance, and then and there delivered the

same to the said plaintiff, a copy of which said Policy of Insurance hereto next follows, to wit—

No 6460.

The Farmers

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Union Insurance Company—

Athens, Bradford County, Pa.

Capital, Two Hundred Thousand Dollars—

By this Policy of Insurance,

The Farmer's Union Insurance Company,

In consideration of one hundred and fifty dollars, to them paid by the Assured hereinafter named, the receipt whereof is hereby acknowledged, Do Insure

John W. Major, against Loss or Damage by Fire to the Amount of Twenty-five hundred Dollars—

\$800 on the East seventy feet of the one story frame Building situate on Lots 4, 5 and 6 on Block 2 Canal addition to Chicago, Illinois, and known as Barber's Shingle Mill, and used for the Manufacture of Shingles, by steam power—

\$800 on his one half of Engine and Boiler contained in said Building—

\$600 on Shingle Mill, and

\$300 on Machinery and Belting all contained in the above described building

\$1500 other Ins. in Western Valley Ins. Co. Chicago—

And the said Company do hereby promise and agree to make good unto the said Insured, His Executors, Administrators and Assigns, all such loss or damage, not exceeding in amount the sum insured, as shall happen by fire to the property as above specified, during one

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year, to wit - from the second day of May, one thousand, eight hundred and fifty seven, (at 12 o'clock at noon) until the second day of May, one thousand, eight hundred and fifty eight, (at 12 o'clock at noon) the said loss or damage to be estimated according to the true and actual cash value of the said property at the time the same shall happen - and to be paid within sixty days after due notice and proof thereof, made by the insured, in conformity to the conditions annexed to this policy - Provided always, and it is hereby declared, that this Corporation shall not be liable to make good any loss or damage by fire, which may happen or take place by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, or for any theft or property stolen - And Provided further, that in case the insured shall have already any other insurance against loss by fire, on the property hereby insured, not notified to this Corporation, and mentioned in or endorsed upon this Policy, then this Insurance shall be void and of no effect - And if the said insured, or his assigns, shall hereafter make any other insurance on the said property, and shall not with all reasonable diligence give notice thereof to this Corporation, and have the same indorsed on this instrument, or otherwise by them acknowledged in writing, this Policy shall cease and be of no further effect - And, in case of any other insurance upon the property hereby insured, whether prior or subsequent to the date of this Policy, the insured shall not, in case of loss or damage, be entitled to

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demand or recover on this Policy, any greater portion of the loss or damage sustained, than the amount hereby insured shall bear to the whole amount insured on the said property—Gunpowder, Camphere and Spirit Gas, are expressly prohibited from being deposited, stored, or kept in any building insured, or containing any goods or merchandise insured by this Policy, unless by special consent in writing—And it is agreed and declared, to be the true intent and meaning of the parties hereto, that in case the above mentioned property, or any part thereof, shall, at any time, after the making and during the time this Policy would otherwise continue in force, be appropriated, applied, or used to or for the purpose of carrying on or exercising therein, any trade, business or vocation denominated hazardous or extra-hazardous, or specified in the memorandum of special rates in the terms and conditions annexed to this Policy, or for the purpose either of storing or keeping therein any of the articles, goods or merchandise, in the same terms and conditions denominated hazardous or extra-hazardous, or included in the memorandum of special rates, except as herein especially provided for, or hereafter agreed to by this Corporation, in writing, to be added to or indorsed upon this Policy, then and from thenceforth, so long as the same shall be appropriated, applied, or used, these presents shall cease, and be of no force or effect—And it is moreover declared, that this Insurance is not intended to apply to or cover any books of account, written securities, deeds, or other evidences of

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title to lands, nor to bonds, bills, notes, or other evidences of debt, nor to money nor bullion— And that this Policy is made and accepted in reference to the terms and conditions hereto annexed— which are to be used and resorted to in order to explain the rights and obligations of the parties hereto, in all cases not herein otherwise specially provided for— And the assured hereby covenants and engages that the representation given in the application for this insurance is a warranty on the part of the assured, and contains a just, full and true exposition of all the facts and circumstances in regard to the condition, situation, and value of the property insured— and whenever this Company shall pay any loss or damage, the assured agrees to assign over all his right to recover satisfaction therefor, from any other person or persons, town or other corporation, or to prosecute therefor, at the charge and for account of the Company, if requested—

N.B.— It is hereby mutually and specially agreed and understood, that this Company will not be liable for any loss or damage from, or caused by the bursting of any Steam Boiler, or Flues of any Steam Engine, in or on the above named premises, or used by any occupant thereof—

This Insurance (the risk not being changed) may be continued for such further term as shall be agreed on— Provided the premium therefor is paid and indorsed on this Policy, or a receipt given for the same—

The interest of the insured in this Policy is not assignable, unless by consent of this Corporation, manifested in

writing—and in case of any transfer or termination of the interest of the insured, either by sale or otherwise, without such consent, this Policy shall from thenceforth be void and of no effect—

In witness whereof The Farmers Union Insurance Company have caused these presents to be signed, by their President, and attested by their Secretary, at Athens, Pa, this second day of May, in the year of our Lord, one thousand, eight hundred and fifty seven,—

But the same shall not be valid until countersigned by Wm D. Smith, Agent of this Company, at Chicago, Illinois—
Francis Tyler, President—



Attest

J. E. Canfield, Secretary—

Wm D. Smith—Agent—

The Farmers

Union Insurance Company—

Capital

\$200,000

Directors—

Francis Tyler—Athens— H. W. Patrick—Athens— Wm. Elwell—Towanda
Lacyville
George A. Perkins " C. N. Shipman " Gen. Bradley Wakeman
Hafate Pa.
J. T. D. Myer " C. H. Welles Jun. " Michael Meyler
N. C. Harris " J. E. Canfield "

Francis Tyler, President— J. E. Canfield Secretary— C. N. Shipman vice President—

Proposals for Insuring

Houses, Manufactories, Buildings, Machinery, Goods, Merchandise, Chattels, and Personal Estate, Ships, Vessels and Cargoes (in port only) and Ships building, against Loss

or Damage by Fire—

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In all cases where the Policy is to be assigned, the assignor must sign the assignment made out on the back of the Policy, and send to the Secretary, or a true copy thereof (with Fifty cents recording fees) to be approved by the Secretary and recorded on the Policy, also on the Books of the Company—

Classes of Hazards—

Not Hazardous—

Staple foreign Dry Goods in packages, and Staple Domestic Dry Goods in stores, where no hazardous merchandise is kept, and Household Furniture, in dwelling-houses, may be insured at 5 cents per \$100, in addition to the rate of the building—

Hazardous—

The following trades and occupations, goods, wares and merchandise, are considered Hazardous, and are charged 10 cents per \$100 in addition to the premium, viz—
Basket sellers, block and pump makers, copper smiths, china or earthen, or glass ware, or plate glass in packages, boxes or casks, flax, grocers with any hazardous articles, gun makers, or smiths, hat finishers, hay pressed in bundles, hemp, looking-glasses in packages or boxes, manilla grass, milliners stock, oil, paper in reams, paper hangings, pitch, porter houses, rags in packages, sail makers, cigar makers, spirituous liquors, sulphur, tallow, tar, taverns, turpentine, victualing shops, window glass in boxes, and wooden ware sellers, hardware and cutlery, coffee in bags, flour, household furniture and linens, indigo, paints ground in oil, potash, rice, sugars, teas, spices, threshed grain and other

articles not combustible -

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Extra Hazardous

The following trades and occupations, goods, wares and merchandise, are deemed Extra Hazardous, and will be charged 20 cents per \$100 in addition to the premium viz Alcohol, apothecaries, aquafortis, basket bleachers or makers, blacksmiths, boat-builders, book-sellers stock, brass founders, brush makers, cabinet-makers stock, carvers, china or earthen or glass ware, or looking-glasses unpacked, and buildings in which the same are packed or unpacked, chocolate makers, colourmen's stock, ^{explosives} confectioners, or their stock, coopers, druggists, ether, founders, grate makers, hats of chip or grass, or straw bleaching, jewelers' stock, lamp manufactories, lime unslacked, mathematical, musical, or optical instrument sellers, perfumers' stock, morocco manufactories, pictures, platers or plated-ware manufactories, prints, printers of newspapers, rag stoes, ship chandlers, silversmiths' or stationers' stock, soap makers, spirits of turpentine, stove manufactories, tin or sheet iron workers, tobacco manufactories, turners, upholstery manufactories, varnish, watch-makers stock, tools &c. window or plate glass unpacked, fire crackers and other fire works, fur dressers, paper hangings, pocket-book makers' stock, liquor bottling cellars, wine in glass, unpacked, cotton in bales -

Special -

Mem - Bakers, bark mills, blind makers, brewers, brimstone works, book-binders, cabinet-makers or carpenters or coach makers, or chair makers' workshops, chemists, cotton

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mills, distilleries, dyers, fences, flax-mills, frame-makers, fulling-mills, grist-mills, gunpowder, hat manufactories, houses building or repairing, ink or ivory or lamp black manufactories, livery stables, lumber, mahogany yards, malt houses, metal and other mills of all kinds, musical instrument makers, oil-mills, oil-boiling houses, paper mills, piazzas and privies of wood, printers of books and jobbing, rope makers, sash makers, saw or snuff mills, ship-builders stock in the yard, ships or other vessels in port, or their cargoes, or when building or repairing, stables, steam-engines, or boats, sugar refiners, tallow melters or chandlers, tanners, tar-boiling houses, theatres or other places of public exhibition, timber yards, turpentine manufactories, varnish makers, wood-mills, and generally all manufacturing establishments, and all trades and occupations requiring the use of fire-heat, not before mentioned. Saltpetre, gunpowder and cotton, are expressly prohibited from being deposited or stored in any building insured, or containing any goods or merchandise insured by this policy, unless by special consent in writing, on the policy. Privilege, however, allowed to keep drugs and medicines, to the amount of Fifty Dollars - and also 25 lbs of gunpowder, in close tin canisters, may be kept for retailing -

Camphene or Spirit Gas, when used as a light, subjects the property to an additional charge of 10 cents per \$100 - and permission for such use must be endorsed in writing on the Policy -

Country Houses -

N. B. Country Houses, standing detached from other buildings, will be insured at 50 to 75 cents per \$100. Barns and Stables in the country, 85 cents and upwards. Ships in port, and Ships building or repairing, may be insured against Fire—

Conditions of Insurance—

All Policies, except in the Cities of New York and Philadelphia, must be made and issued upon a survey and description of the property insured, which survey and description shall constitute the application of the assured. Such application must specify the construction and materials of the buildings to be insured, or containing the property to be insured—by whom occupied—whether as a private dwelling, or how otherwise—its situation with respect to contiguous buildings and their construction, use, and materials—whether any manufactory is carried on within or about it, and shall also contain a just, full and ^{true} ~~fact~~ exposition of all the facts and circumstances in regard to the condition and value of the property insured, so far as the same are known to the assured, and are material to the risk. And such application shall be taken and deemed a part of the policy issued in pursuance thereof, and shall be deemed a warranty on the part of the assured, that the facts therein stated, constitute the true condition in all respects of the subject matter of such insurance—

If any person insuring any building or goods in this office, shall make any misrepresentation or concealment

or if after the expiration of a policy of insurance and before renewal thereof, the risk of the building shall be increased by any means whatsoever, or if after insurance effected, either by the original policy or by the renewal thereof, the risk shall be increased by any means whatever within the control of the assured or his assignee, or if such buildings or premises shall be occupied in any way so as to render the risk more hazardous than at the time of insuring, ~~shall~~ such insurance shall be void and of no effect.

If during the insurance the risk be increased by the erection of buildings, or by the use or occupation of neighboring premises, or otherwise, or if for any other cause, the Company shall so elect, it shall be optional with the Company to terminate the insurance, after notice given to the assured, or his representative, of their intention to do so, in which case the Company will refund a ratable portion of the premium—

2. No insurance, whether original or continued, shall be considered as binding until the actual payment of the premium— and a delivery of the policy by the agent, without such payment, shall be considered a conditional delivery, and not binding upon the Company—

3. Property held in trust, or on commission, must be insured as such— otherwise the Policy will not cover such property— and in case of loss, the names of the respective owners shall be set forth in the preliminary proofs of such loss, together with their respective interests therein.

Goods on storage must be separately and specifically insured. If the interest in the property to be insured, be a leasehold or other interest, not absolute, it must be so stated in the Policy, otherwise the Policy shall be void.

Or if the property herein insured, or any part of it, shall be transferred by any contract or any change of partnership or ownership, then this Policy shall be void, unless the consent of the Secretary thereto be indorsed on this Policy.

4- The interest of the assured in this Policy is assignable, provided the consent of the Company be first obtained to the transfer. Notice of such assignment shall be given before any loss shall have happened, and this Company when so notified, shall have power to elect either to continue the insurance, and express the same by indorsement on this policy, or refund a ratable proportion of the premium, for the time of the risk unexpired, and cancel the Policy.

5- Notice of all previous insurance upon property insured by this Company, shall be given to the Secretary, and indorsed on this policy, or otherwise acknowledged by him in writing. otherwise the Policy subscribed by this Company, shall be of no effect. And in case of subsequent insurance of property insured by this Company, notice thereof must be immediately given to the Secretary, to the end that such subsequent insurance may be indorsed on the Policy subscribed by this Company, or otherwise acknowledged in writing. in default whereof, such policy shall thenceforth cease, and be of no

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effect. And in all cases of insurance, this Company shall be liable only for such ratable proportion of the loss or damage happening to the subject insured, as the amount insured by this Company shall bear to the whole amount insured thereon, without reference to the dates or validity of the different Policies, or the solvency of the different Companies insuring.

6. In case of fire or losses or damage thereby, or of exposure to loss or damage thereby, it shall be the duty of the insured to use their best endeavors for saving and preserving the property. And it is mutually understood, that there can be no abandonment to the insurers, of the subject insured. This Company will be liable for losses on property burned by lightning, but not for any loss or damage by fire happening by means of any invasion, insurrection, riot, or civil commotion, or of any military or usurped power, nor for any robbery, or goods lost and stolen. — and claims under this Policy are barred, unless prosecuted within one year from date of loss. — nor will this Company be liable for any losses by fire occasioned by the use of Camphene or Spirit Gas, unless permission for such use is indorsed in writing on this Policy.

7. The Company will not be answerable for any loss or damage arising from the use of fires in buildings unprovided with good and substantial stone or brick chimneys, or in consequence of neglect or deviations from the laws or regulations of Police made to prevent accidents from fire in places where laws and regulations

on this subject exist, or for any damage caused by fire originating from depositing ashes, or embers in wooden vessels, or from any damage caused by stove-pipe passing out at roof or side of building—

8— Books of account, written securities, or evidences of debt, title deeds, writings, money, or Bullion, are not deemed objects of insurance—

9— Jewels, jewelry, precious stones, watches, plate, medals, musical and scientific instruments, paintings, prints, engravings, statuary, sculptures, and curiosities, are not included in any insurance unless particularly specified in the Policy—

10— Persons sustaining loss or damage by fire, shall forthwith give notice thereof in writing to the Company— and as soon after as possible, they shall deliver as particular an account of their loss and damage, as the nature of the case will admit, signed with their own hands— And they shall accompany the same with their oath, or affirmation, declaring the said account to be true and just— Showing also, whether any and what other insurances have been made on the same property— what was the whole value of the subject insured— in what general manner (as to trade, manufactory, merchandise, or otherwise) the building insured or containing the subject insured, and the several parts thereof, were occupied at the time of the loss, and who were the occupants of such building— and when and how the fire originated, so far as they know or believe— They shall also produce a certificate

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under the hand and seal of a magistrate or notary public, most contiguous to the place of the fire, and not concerned in the loss, stating that he has examined the circumstances attending the fire, loss, or damage alleged, and that he is acquainted with the character and circumstances of the insured or claimant, and that he verily believes that he, she, or they have, by misfortune, and without fraud or evil practice, sustained, loss or damage on the subject insured, to the amount which the magistrate or notary public shall certify—

When merchandise or any other personal property is partially damaged, the insured shall forthwith cause it to be put in as good order, as the nature of the case will admit, assorting and arranging the various articles according to their kinds—and shall cause a list or inventory of the whole to be made, naming the quality and cost of each kind. The amount of damage shall then be ascertained by the examination and appraisal of each article, by disinterested appraisers, mutually agreed upon, and certified to, by them under oath—and whenever required in writing, the insured, or person claiming, shall produce and exhibit his books of account and other vouchers, to the insurers or their agent, at the office of this Company, in support of his claims, and permit extracts and copies thereof, to be made, and also to exhibit to any person named by the Company, and permit to be examined by them, any property damaged on

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which any loss is claimed, or any property saved, which was insured by this Policy - and shall also, if required, submit to an examination under oath, by the agent or attorney of the Company, and answer all questions touching his, her, or their knowledge relating to, or connected with such loss or damage, or to their claim therefor, and subscribe such examination, the same being reduced to writing - And until such proofs, declarations, and certificates are produced, and such exhibitions of property are permitted by the claimant, when required as above, the loss shall not be payable.

All fraud or false swearing shall cause a forfeiture of all claims on the insurers, and shall be a full bar to all remedies against the insurer on his policy.

11. In case of any loss on, or damage to the property insured, it shall be optional with the Company to replace or repair the article lost or damaged, with others of the same kind and equal goodness, and to rebuild or repair the building or buildings, within a reasonable time - giving notice of their intention so to do, within twenty days after having received preliminary proofs of loss, required by the 9th article of these conditions -

In case differences shall arise, concerning any loss or damage by fire, the matter may, at the written request of either party, be submitted to the judgment of arbitrators, indifferently chosen, whose award in writing, as to the amount of such loss and damage,

shall be binding on the parties—

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12. Payment of losses shall be made in sixty days after the losses shall have been ascertained and proved, without any deduction whatever—

13—Insurances once made, may be continued for such further time as may be agreed on, the premium required therefor, being paid and endorsed on the Policy, or a receipt given for the same—and all insurances, original or renewed, shall be considered as made under the original representation, in so far as it may not be varied by a new representation in writing, which in all cases it shall be incumbent on the party insured to make, when the risk has been changed, either within itself, or by the surrounding or adjacent buildings—

x And thereupon, then and there, at the county aforesaid, in consideration that the said plaintiff, at the special instance and request of the said defendant, had then and there paid to the said defendant, the sum of one hundred and fifty dollars, of lawful money, as a premium for the Insurance of the sum of Twenty-five hundred Dollars, of and upon the said Building, Engine and Boiler, Shingle Mills, Machinery and Belting, in the said Policy of Insurance mentioned, and had then and there undertaken and faithfully promised the said defendant, to perform and fulfill all things in the said Policy of Insurance contained, on his part to be performed and fulfilled, they, the said defendant undertook, and then and there faithfully promised

the said Plaintiff, that they would become and be insurers to the said Plaintiff, of the said sum of Twenty-five hundred dollars, upon the said Building, Engine and Boiler, Shingle Mills, Machinery and Belting, in the said Policy of Insurance mentioned, in manner as therein mentioned, for the period and term in said policy mentioned, and would perform and fulfill all things in the said Policy of Insurance mentioned, on their part and behalf to be performed and fulfilled as such insurers of the said sum of Twenty-five Hundred Dollars, and the said Defendants then and there became and were insurers to the said plaintiff, and then and there by Francis Tyler, their President, and J. E. Canfield, their Secretary, subscribed the said Policy of Insurance, as such insurers upon the said Building Engine and Boiler, Shingle Mills, Machinery and Belting, of the said sum of Twenty-five Hundred Dollars, to wit, at Cook County aforesaid -

And the said plaintiff further says that he, the said plaintiff was then and there, and from thence continually afterwards, until and at the time of the loss hereinafter mentioned, the sole owner of the said Building, Engine and Boiler, Shingle Mills, Machinery and Belting, as in the said Policy of Insurance mentioned, of great value, to wit, of the value of Six thousand Dollars, to wit, at Cook County aforesaid -

And the said plaintiff in fact further saith that afterwards, and during the continuance of the risk in the said Policy of Insurance mentioned, to wit, on

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the twenty sixth day of September, in the year one thousand, eight hundred and fifty seven, the said Building in said Policy of Insurance mentioned, was accidentally and by misfortune, and without any fault or fraud of the said plaintiff, wholly burnt and consumed by fire at Chicago, to wit, at Cook County aforesaid, and the said Engine and Boiler, Shingle Mills, Machinery and Belting therein contained, and specified in the said Policy of Insurance, were then and there burnt, injured, and damaged with and by fire, and were then and there wholly lost to the said plaintiff, to wit, at Chicago aforesaid, in the County aforesaid.

Of all of which said several premises, the said defendants afterward to wit, on the day and year last aforesaid, ^{at Chicago aforesaid} in the County aforesaid had notice. And the said plaintiff further avers that as soon as possible thereafter, to wit, on the twenty ninth day of October, in the year one thousand, eight hundred and fifty seven, at Chicago aforesaid, the said plaintiff, by George B. Armstrong, his lawfully constituted attorney in fact, delivered to the said defendants, a particular account of his said loss and damage, signed by his said attorney in fact, and verified by the oath of the said George B. Armstrong, declaring the said account to be true and just, and stating that the said Building, Engine and Boiler, Shingle Mills, Machinery and Belting, in the said Policy of Insurance mentioned, were also insured in the Western Valley

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Fire and Marine Insurance Company of Chicago, Illinois, to the amount and sum of Fifteen hundred Dollars, and in no other amount in that or any other Company, and that the said Property, Building, Engine and Boiler, Machinery and Belting, in the said Policy mentioned, were of the value of Six thousand Dollars, and that the said Building in said Policy of Insurance mentioned, was occupied by the said plaintiff, and George B. Harleston, as a shingle factory - and that so far as the said George B. Armstrong knew or believed, the said fire was the work of an incendiary - And the said plaintiff did on the day and year last aforesaid, procure a certificate under the hand and seal of John W. Magill, a Notary Public in and for Cook County, aforesaid, who was not concerned in said loss, which said certificate stated that he, the said Magill, had examined the circumstances attending the said fire, loss and damage, and that he was acquainted with the character and circumstances of the said George B. Armstrong, the said attorney in fact of the said plaintiff, and that he, the said Magill, believed that the said plaintiff had by misfortune, and without fraud or evil practice, sustained loss and damage on the said Building, Engine and Boiler, Shingle Mills, Machinery and Belting, in the said Policy of Insurance mentioned, to the amount of _____ Dollars, being an amount more and greater than the whole sum of twenty-five hundred dollars, so by the said defendants

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insured thereon as aforesaid, and the said plaintiff did, on the day and year last aforesaid, produce and deliver the said certificate, to the said defendants— Yet the said defendants, although often requested so to do, and although more than sixty days had elapsed between the date and day of the delivery by the ~~said~~ said plaintiff to them, of the said statement and proof and the said certificate, and the day of the commencement of this suit, have not paid to the said plaintiff the said sum of Twenty five hundred dollars, nor any part thereof, so by them insured as aforesaid, but have hitherto wholly neglected and refused so to do, to wit, at Chicago aforesaid, in the county aforesaid—

And whereas also, the said defendants, afterwards to wit, on the first day of February, A. D. 1858. at the place aforesaid, were indebted to the said plaintiff, in the further sum of Four Thousand Dollars, of like lawful money as aforesaid, for money before that time lent and advanced by the said plaintiff to the said defendants, and at the like request of the said defendants— And in the like sum for other money by the said plaintiff before that time paid, laid out and expended for the said defendants, and at the like request of the said defendants— And in the like sum for other money by the said defendants before that time had and received to and for the use of the said plaintiff— And in the like sum for other money before that time and then due and

owing the said plaintiff, for interest upon, and for the forbearance of divers other sums of money before that time, and then due and owing from said defendants to said plaintiff. And in the like sum for the price and value of work then done, and material for the same provided by the plaintiff, for the defendants, and at the like request of the defendants. And being so indebted, the said defendants, in consideration thereof, afterwards to wit, on the same day and year, and at the place aforesaid, undertook, and then and there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff, the several sums of money in this count mentioned, when the said defendants should be there unto afterwards requested. And, whereas also, the said defendants, afterwards, to wit, on the same day and year, and at the place aforesaid, accounted together with the said plaintiff, of and concerning divers other sums of money, before that time due and owing from the said defendants to the said plaintiff, and then and there being in arrear and unpaid, and upon such accounting, the said defendants then and there were found to be in arrear, and indebted to the said plaintiff in the further sum of Four thousand dollars, of like lawful money as aforesaid. And being so found in arrear, and indebted to the said plaintiff, the said defendants in consideration thereof, afterwards, to wit, on the same day and year, and at the place aforesaid, undertook, and then and

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there faithfully promised the said plaintiff, well and truly to pay unto the said plaintiff, the said sum of money last mentioned, when the said defendants should be thereunto afterwards requested. Nevertheless, the said defendants (although often requested &c) have not yet paid the several sums of money above mentioned, or any or either of them, or any part thereof, to the said plaintiff, but to pay the same or any part thereof, to the said plaintiff, the said defendants have hitherto altogether refused and still do refuse, to the damage of the said plaintiff, of Four Thousand Dollars, and therefore the said Plaintiff brings suit &c.

Clarkson and Tree, Plaintiffs Attorneys

And afterwards, to wit, on the day and year aforesaid the said defendant by its attorneys, filed in the office of the clerk of the court aforesaid, its certain pleas &c. in the words and figures following, to wit-

Farmer's Union
 Insurance Co
 ad
 John W. Major, who
 sues for the use of John E. Barber

Circuit Court of Cook
 County, of the March
 Term, A. D. 1858.

And the said defendant by its attorneys Clements and Hoarner, comes and defends the wrong and injury, when &c. and saith that it did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against it, and of this it puts itself

upon the country &c.

Clements & Hoamer

D. Stuart, Counsel

Atty for deft

XXV

The plaintiff will take notice that the above named defendant, on the trial of this cause, will give in evidence and insist that after the making of the said contract of insurance in the plaintiff's declaration alleged, and after the making and issuing of the policy in the said declaration mentioned, there was a material alteration made, without any notice to the defendant, and without its consent, in the state of the insured property, which alteration was authorized and permitted by the said plaintiff or caused by means which the said plaintiff might have controlled, whereby the danger of destruction by fire was greatly increased. That after said insurance was effected, one or more shingle mills, in addition to those mentioned in said policy, and enumerated in the plaintiff's application for insurance, were set up and used by the plaintiff in the insured premises without the knowledge or consent of the defendant, whereby the premises insured became more hazardous, that the westerly portion of the building insured, being the portion of said building west of the east seventy feet mentioned in the said policy, and immediately connected therewith, which was vacant and unoccupied at the time of the ^{issuing} ~~making~~ of said policy, was afterwards, to wit,

XXV

on or about the fifth day of August, A. D. 1857, with-
out the knowledge or consent of the defendant,
fitted up and used as a carpenter's shop, or a shop
for the manufacture of boxes, by the authority or
with the assent of the said plaintiff, and by means
which he might have controlled, and that the
fire which caused the destruction of the said in-
sured premises originated in said shop - that at the
time of the issuing of the said policy, the premises
and property insured were encumbered by a mort-
gage given by the said plaintiff and one George B.
Armstrong to J. E. Barber, to secure the payment of
twenty eight hundred dollars - and that after the is-
suing of said policy, to wit, on or about the 23rd day
of July 1857, the said premises and property insured
were further encumbered by a mortgage given by
the said plaintiff to one Matthias Snyder to secure
the payment of twenty five hundred dollars - that
the said mortgage first above mentioned was not
set forth and disclosed in the said plaintiff's ap-
plication for insurance, and that the defendant
had no knowledge of the existence of such incum-
brance at the time of issuing said policy - that after
the issuing of said policy, the said plaintiff suffer-
ed the property insured to be encumbered to an a-
mount sufficient to reduce the interest of the ins-
ured in the same, and gave no notice thereof to this
defendant, and did not have the same endorsed
on said policy, or otherwise acknowledged by this

defendant in writing, whereby the said policy by its terms was rendered null and void -

Clements & Hosmer

Attys for deft.

XXVII

And afterwards, to wit, at the May term of said Court, to wit, on the 3rd day of June A.D. 1858. the following, among other proceedings in said Court, were had and entered of record in said cause to wit: John W. Major, who sues for the use of John E. Barber

12218

vs

The Farmer's Union Insurance Company

} Assumpsit

This day comes the said plaintiff, by Clements & Hosmer his attorneys, and the said defendant by Clarkson & Tree, its attorneys, also comes, and issue being joined herein, it is ordered that a jury come, whereupon come the jurors of a jury of good and lawful men to wit, C. C. Newton, A. G. Shoop, W. Cochran, Wm. Haban, Philip Beaubien, B. Johnson, C. C. Pickett, C. V. Cally, H. W. Boyden, Chauncey Lewis, A. Tripp, & M. Vincent, who being each duly elected, tried and sworn, well and truly to try the issues joined herein aforesaid, and after hearing a part of the testimony, and the hour of adjournment having arrived, it is ordered that said jury have leave to separate to meet the Court on tomorrow morning at nine o'clock -

And afterwards, to wit, at the same term of said

XXVIII

Court last aforesaid, to wit on the 4th day of June in the year aforesaid, the following proceedings among others, were had and entered of record in said Court, to wit-

12218

John W. Major, who sues for
the use of John E. Barber

vs

The Farmer's Union
Insurance Company

Assumpsit-

This day again come the said parties by their aforesaid Counsel, and the jurors of the Jury aforesaid also come, and they having heard further testimony introduced in this cause, and the hour of adjournment having arrived, it is ordered that the said Jury have leave to again separate to meet the Court on tomorrow morning at 9 o'clock-

And afterwards, to wit, at the same term of said Court last aforesaid, to wit, on the 5th day of the month and year last aforesaid, the following further proceedings among others in said Court, were had and entered of record in said cause, to wit-

12218

John W. Major, who sues for
the use of John E. Barber

vs

The Farmer's Union
Insurance Company

Assumpsit-

This day again come the said parties by their aforesaid Counsel, and

XXVII

~~XXIX~~

the Jurors of the Jury aforesaid also come, and the testimony in this cause having been closed, and the said Jury having heard the arguments of counsel as well on the part of the said plaintiff as of the said defendants, and the instructions of the Court, retire to consider of their verdict, under the charge of a sworn officer of the Court, and afterwards come into Court and say, We, the Jury find the issues herein, for the plaintiff, and assess their damages at one thousand, nine hundred and thirty four dollars and seventy cents, whereupon the said defendants counsel move the Court for a new trial of this cause, and in arrest of judgment -

And afterwards to wit, at the November term of said Court, to wit, on the 24th day of November, in the year aforesaid, the following among other proceedings in said Court, were had and entered of record in said cause to wit -

John W. Major, who sues for
the use of John E. Barber

vs

The Farmer's Union
Insurance Company

} Assumpsit -

12 2 18

This day come again the said parties by their respective attorneys, and the Court having heard arguments of Counsel, on the motion of said defendant for a new trial, and in arrest of judgment herein, and being fully

advised in the premises, now overrules each of said motions—

XXX

Therefore it is considered that the said plaintiff for the use aforesaid, do have and recover of the said defendant, his damages of one thousand \$1934, 70 nine hundred and thirty four dollars and seventy cents in form aforesaid, by the jury aforesaid assessed, together with his costs and charges by him about his suit in this behalf expended, and have execution therefor—

And afterwards, to wit, at the September term of said court, to wit, on the seventh day of September, A. D. 1859. a certain stipulation was filed in said court, in the words and figures following to wit—

John W. Major, who sues &c. }
 vs }
 Farmer's Union }
 Insurance Company }

Cook County Circuit Court—

It is hereby stipulated and agreed that the prayer for an appeal may be entered, and appeal bond and bill of exception filed *hunc Pro tunc* in the above cause

Clarkson & Tree, Plff's attys

And afterwards, to wit, on the same day and year last aforesaid, and at the same term of said Court last aforesaid, the following proceedings among others were had and entered of record

XXIV

in said cause to wit-

John W. Major who sues &c.

vs

Harmer's Union Insurance
Company

Motion

12218

XXXI

And now comes the

said defendant by Stuart and Clements its at-
torney, and moves the Court to set aside and
quash the Execution issued upon the judgment
of this Court in said cause for reasons filed with
its said motion-

And afterwards to wit, at the same term of said
Court last aforesaid, to wit, on the 24th day of
September, in the year last aforesaid, the follow-
ing proceedings among others, were had and en-
tered of record in said Court, to wit-

John W. Major who sues &c.

vs

Harmer's Union Insurance
Company

Motion

This cause coming on
to be heard upon the motion to quash the exe-
cution issued therein and counsel having been
heard, and the Court being fully advised in the
premises - it is ordered and adjudged that the
said motion be, and the same is hereby overruled

State of Illinois, }
COUNTY OF COOK. } S. S.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the original writ, pleadings, stipulations & records proceeding in a certain cause atty pending in said Court on the Common Law side thereof, wherein John H. Major who sues vs. was plaintiff and Union Insurance Company was defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this 4th day of October A. D. 1859

Fee for Record \$8⁰⁰

Wm L Church
Clerk.

Assignment of Errors.

First The declaration does not aver the performance of any one of the conditions and covenants - stipulated and agreed to be performed by the plaintiff, in the policy of insurance

Second It does not aver that there was no other insurance on the property therein mentioned, at the time said policy was issued.

Third It does not aver that the premises insured, were not used for a business denominated hazardous or extra hazardous, nor for the purpose of storing or keeping therein any of the articles, goods or merchandise denominated hazardous or extra hazardous, or included in the memorandum of special rates annexed to the said policy of insurance, at the time of the pretended loss.

Fourth It contains no averment that the loss therein mentioned was not occasioned by Riot, Fire, Infection, or Invasion, Civil Commotion or

Fifth It does not aver that the loss was

Statement made by the plaintiff at the time of his application for insurance were true. Nor does it aver that any application in writing was made or any expense for its not being done.

Sixth

It does not aver that the "risk" to said premises was not increased after said insurance was effected

Seventh

It does not aver that the plaintiff or his agent made any effort to save the premises, as is required by the Sixth condition of said policy.

Eighth

It does not aver that the fire mentioned did not arise from neglect or dereliction from Police Regulations

Ninth

It does not aver that the risk to the premises was not increased by any means, either within itself, or by the surrounding or adjacent buildings.

Tenth,

The Court erred in overruling the motion to quash the specification.

John T. Clement

attorney for Plaintiff
in error

Farmers Union Insurance
Company
Plaintiff in Error

3
John W. Major
who does &
defendant in Error

Record and assign-
ment of Errors

11801

Know all Men by these Presents, That we *The Farmers Union Insurance Company*, in *Charles W. Shipman*, President and *Charles S. Russell*, Secretary of *the State of Pennsylvania* and *John W. Major* of the County of Cook and State of Illinois, are held and firmly bound unto *John W. Stafford* also of the same County and State, in the penal sum of *Three thousand* Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly, by these presents.

Witness our hands and seals, this *fifth* day of *October* A. D. 1859

The Condition of the above Obligation is such, That whereas, the said *John W. Major* did, on the *22th* day of *November* A. D. 1858 in the Circuit Court, in and for the County and State aforesaid, and of the *November* Term thereof, A. D. 1858 recover a judgment against the above bounden *Farmers Union Insurance Company* for the sum of *Nineteen Hundred and Thirty four* Dollars and *Seventy* cents, besides costs of suit; from which said judgment of the said Circuit Court, the said *Farmers Union Insurance Company* has prayed for, and obtained an appeal to the Supreme Court of said State.

NOW, THEREFORE, if the said *Farmers Union Insurance Company* shall duly prosecute *its* said appeal with effect, and moreover, pay the amount of the judgment, costs, interest and damages rendered, and to be rendered, against *it* in case the said judgment shall be affirmed in the said Supreme Court, then the above obligation to be void; otherwise to remain in full force and virtue.

Taken and entered into before me, at my office in Chicago, this day of *October* A. D. 1859

CLERK.

C. N. Shipman Pres. (SEAL)
C. S. Russell Secy. (SEAL)
J. W. Major (SEAL)
John W. Stafford (SEAL)

John W. Stafford being duly sworn says that he is worth the sum of *three thousand* dollars over and above all his just debts and liabilities

Subscribed and sworn to before me this *6th* Oct 1859
Geo. B. Whitey
 Notary Public

G. D. No. _____

CIRCUIT COURT OF COOK COUNTY.

John W. Major
vs

Farmers Union Ind Company

APPEAL BOND.

Filed this _____ day of _____ A.D. 1857
CLERK.

John W. Major
vs
Farmers Union
Insurance Com:
pany.

Bond

[Faint handwritten notes and signatures, possibly including a date like 'July 20 1857' and a signature 'John W. Major']

Chicago Oct 6 1859
L. Leland Esq
Attorne

Dear Sir.

I enclose record to
Judge Eaton - for Superseeder in re
Hammers Union Insurance Co in Mass.
I will thank you to hand the same
to him immediately & urge his immediate
attention thereto. If the Superseeder is allowed
telegraph me. The execution in the
Case expires on the 9th of this month -
thence the urgency of the case.

Do not docket the case unless
the Superseeder is allowed -

Enclosed please find \$5. docket
fee.

Yours truly
John W. Bennett

Chicago Oct 6. 1859
Hon John A. Eaton
Ottawa
Ill }

Dear Sir

I take the liberty of
enclosing (direct to you) a record in re
Yarnes Union Insurance Company - Plaintiff,
in Error - vs

John W. Major &c.

I beg to ask your immediate attention
thereto, and request that in case you find
error in the same that a Superedeas
may be allowed. I also enclose
the bond of the parties.

An execution has been issued & will
be returnable on the 9th inst.

Yours Very Respectfully
John J. Clement

I also enclose a 'brief' upon the points assigned
for error.

Ordered That a diploma
from the Law School
of the University of Chicago
shall be deemed ~~sufficient~~ ^{satisfactory}
evidence that the graduate
is sufficiently learned in
the law to entitle him to
admission to the bar of
this court.

Amicus of Plaintiff in Error.

John H. Mayo who sues } Appellants Brief
as } on motion in
James Union Insurance Company } arrest of
Judgement

1 The Court will notice that ~~eight~~ ^{nine} causes ~~are~~ ^{are} assigned ~~in the Court below for arrest of~~ ^{for error} judgment. In fact they all depend upon one question - viz

Whether they are conditions precedent the performance of which, or any excuse for their non-performance was necessary for the Plaintiffs below to aver and prove in order to entitle him to recover in this action.

1 Are the causes as assigned conditions precedent?

What are conditions precedent?

As a general rule they may be defined to be such as require the doing or the omission of a particular act, before an estate can vest or the obligation be performed.

In 2^d Hall's Rep they are defined as conditions which must be performed before the estate can vest, or before the obligation is to be performed

See also 1 Phillips Ins § 869
Ansell on Insurance § 366

2 All the several causes assigned for
arrest of judgement within the definition
vide - The several Covenants and Conditions
of the policy of Insurance, Record, Page
IV. V. VI. XI. XIV. XV &c.

2^d Being Conditions precedent was it
necessary that the performance or any
excuse for the non-performance of them
should have been averred in the P^lffs
declaration?

It was. Angell on Insurance § 366
1 Chetys Pldg 325-6

When the rule is stated to be "that when
the matter to be performed is a condition
precedent the performance of that
matter must be shown". for the reason
that whatever is necessary to be proved
in an action on a special Contract
must be averred.

6 Term Rep 710-719. was an action
on a fire policy which required that
the minister &c. should certify as to the
plaintiffs character. It was held that
such a certificate by those persons
was indispensable and a condition
precedent to the right of recovery.

And see also 1 Saund Pldg & Con
202 1 Saund Rep 320 (a) (b)

7 Cooke Rep 10 (a)

1 Term " 638.

It is a general rule that whenever a plea is bad on general demurrer, it will be equally bad on a motion in arrest of judgment.

It is not to be doubted but that the declaration in the present case for the reason above assigned would have been held bad on such a demurrer.

If it was necessary that the Plaintiff should have alleged in his declaration the performance of the several matters assigned ~~for~~ ~~arrest~~ of ^{error} judgment, or an excuse for the non-performance of them, then the declaration is fatally defective and ~~the~~ motion in arrest of judgment should have been allowed in the Court below unless the defects or ~~material~~ matters assigned for ~~cause of arrest~~ of ^{error} judgment are cured by the verdict.

This brings us to consider the third and most important question arising upon the ^{Record} ~~motion~~ viz

Has the verdict cured the defects of the declaration?

We think not. The present is not a case where the averments in the declaration are only defective

or inaccurately stated, but is one
where the Plaintiff has utterly failed
to state or make any averment whatever
of the several matters objected
to and hence brings the case at
bar precisely within the rule so well
and so long established and recog-
nized by the Courts "That nothing is
to be presumed after verdict but
what is expressly stated in the declara-
tion or necessarily implied from
the facts which are stated.

1 Saund. 228- (1)
1 Dumfries & Co. 145
7 521
2 Fidds Bac 919

The several causes assigned in
~~account of~~ ^{error} the judgment are entirely
omitted. no attempt to cover their
performance or to excuse their non
performance is made & therefore
the Court cannot presume that the
defect is cured by the verdict
because there is nothing averred
for the verdict to cure.

Jackson vs. Pecked 1 M & S 234
Newt vs. Wallace 3 Term Rep 25
Norton vs. Mason 3 Burrows 1725

A verdict will cure a defective
averment but it can never aid
cure or supply an averment omitted
to the right of recovery which has
been totally omitted

Stephens Pldg 149-50
3 Pursons 1728

Or in other words it will cure a
defective statement but will not
supply one

II

The Court Erred in overruling
the motion to quash the execution

The Stipulation filed made it in-
cumbent upon the plaintiff to move
a dismissal after the case in the
Supreme Court, for want of prose-
cution. Failing to do that - it was
not lawful for them to issue their
execution.

The Court should enforce the
written Stipulation of the parties.

Ans W Mayson who was
for the use of

02

F. W. Casarum & Company

Appellants Brief
on motion ~~in~~ ^{for} ~~and~~ of
judgment.

Suspended

McComa, Clements
per W. H. [Signature] (C. W. [Signature])