No. 8843

Supreme Court of Illinois

Thomas P. Ayers

vs.

Wm. M.Grider

71641 7

CHARTER

OF THE

ILLINOIS MUTUAL FIRE INSURANCE COMPANY.

APPROVED: FEBRUARY 23, 1839.

AN ACT TO INCORPORATE THE ILLINOIS MUTUAL FIRE INSURANCE COMPANY.

§ 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That Benj. F. Long, Elias Hibbard, Moses G. Atwood, Alfred Dow, Robert Smith, Wm. H. Carlin, Norman H. Purple, John F. Rague, J. H. Woodworth, and all other persons who may hereafter become members of said Company, in the manner herein prescribed, be, and they hereby are, incorporated and made a body politic, for the term of twenty years, from the passage of this act, by the name of the "Illinois Mutual Fire Insurance Company," for the purpose of insuring their respective dwelling-houses, stores, shops and other buildings, household furniture and merchandise, against loss or damage by fire, whether the same shall happen by accident, lightning, or any other means, excepting that of design in the assured, or by the invasion of an enemy, or insurrection of the citizens of this or of any of the United States: and by that name may sue and be sued, plead and be impleaded, appear, prosecute, and defend, in any court of record, or other place whatever; may have and use a common seal; may purchase and hold such real and personal estate as may be necessary to effect the object of their association, and the same may sell and convey at pleasure, provided such real estate shall not exceed one hundred and sixty acres; may make, establish, and put into execution such by-laws, ordinances, and resolutions, not being contrary to the laws of this State, or of the United States, as may seem necessary or convenient for their regulation and government, and for the management of their affairs; and do and execute all such acts and things as may be necessary to carry into full effect the purposes intended by the charter.

§ 2. That all and every person and persons who shall at any time become interested in said company, by insuring therein, and also their respective heirs, executors, administrators and assigns, continuing to be insured therein, as hereinafter provided, shall be deemed and taken to be members thereof, for and during the term specified in their respective policies, and no longer, and shall at all times be concluded and bound by the provisions of this act.

§ 3. There shall be a meeting of said company at Alton, in the county of Madison, on the first Wednesday of January, annually, or on such other day as the said company may hereafter determine; at which first annual meeting shall be chosen, by a major vote of the members present, and by proxy, a board of directors, consisting of not more than fifteen nor less than nine members, who shall continue in office until others have been chosen, and accepted the trust in their stead. In all vacancies happening in said board, whether by removing from the State, dying, or refusing or neglecting to act for and during the space of three months successively, then and in every such case, another director shall be chosen in the place of each director so removing, dying, or refusing or neglecting to act as aforesaid, by a majority of the directors present at any monthly meeting, which director so chosen shall remain in office until the next general election of directors; and a majority of the whole board shall constitue a quorum for the transaction of business. At their first regular meeting the board of directors shall class themselves, by lot, into three classes of an equal number each, the terms of whose service shall respectively expire as follows: the first class in one year, the second class in two years, and the third class in three years. Special meetings of the company may be called by order of the directors, or whenever the owners of one-tenth part of the property insured in said company shall apply to the directors, setting forth in writing the purposes for which a meeting is desired.

§ 4. The board of directors shall superintend the concerns of said company, and shall have the management of the funds and property thereof, and of all matters and things thereunto relating, not otherwise provided for by said company. They shall have power, from time to time, to appoint a secretary, treasurer, and such other officers, agents and assistants, as to them may seem necessary; and prescribe their duties, fix their compensation, and take such security from them as they may deem necessary for the faithful performance of their respective duties. They shall determine the rates of insurance, the sum to be insured on any building, not exceeding two-thirds of its value, nor one-half the value of personal property, and the sum to be deposited for the insurance thereof. They shall order and direct the making any issuing of all policies of insurance; the providing of books, stationery, and other things needful for the office of said company, and for carrying on the affairs thereof; and may draw upon the treasurer for the payment of all losses which may have happened, and for expenses incurred in transacting the concerns of said company. They shall elect one of their own number to act as president, and may hold their meetings monthly, and oftener if necessary, for transacting the business of the company; and shall keep a record of their proceedings: and any director disagreeing with a majority of the board at any meeting, may enter his dissent, with his reasons therefor, on record.

§ 5. It shall be the duty of the directors of said company, whenever the premium notes thereof shall amount to the sum of one hundred thousand dollars, to build, or cause to be built, or procure for the use of said company, a fire-proof building, suitable for the transaction of business, and for the preservation of the funds and other property belonging to said company from destruction by reason or means of fire. And for the purpose of providing said building, the directors may assess any sum not exceeding five per cent. of the amount of premium notes aforesaid in any one year; and it shall be the duty of the directors to keep said building in proper repair, and to renew the same in whole or in part as they may think necessary and expedient.

§ 6. The directors shall extend the insurance of said company to every part of this State, on all the real and personal property within the same, with the exceptions and provisions hereinafter enacted, not exceeding the sum of ten thousand dollars in any one risk, at such rate or rates as said directors may, in view of the equity of the case and the interest of the company, determine. Insurances shall be made, in all cases, upon the representation of the assured, contained in his application therefor, and signed by him or his attorney; which representation shall, in fairness and good faith, state all the material circumstances within his knowledge which may affect the risk: Provided, That in case of any loss or damage by fire, the valuation of the property at the time of such loss or damage shall be determined by the award of impartial men, as hereinafter provided.

§ 7. Books of accounts, written securities or evidences of debt, title deeds, manuscripts or writings of any description, money or bullion, shall not be deemed nor taken to be objects of insurance in said company. Curiosities, jewels, medals, musical instruments, plate, paintings, sculpture, statuary, watches, gold or silver ware of any kind, shall not be deemed to be included in any policy of insurance, unless those articles, or any of them, form part of the usual and regular stock in trade of the assured, or are particularly specified in the policy. Breweries, chimical estsblishments, bleaching houses, oil mills, or the contents of either of them, alcohol, aquafortis, gunpowder, spirituous liquors, tar, turpentine, varnish, or any other trades, wares or merchandise, which may hereafter be excluded by said company at any annual meeting, shall never be deemed insurable by the directors of said company, nor any policy issued thereon.

§ 8. Every person who shall become a member of said company by effecting insurance therein, shall, before he receives his policy, deposit his promissory note for such sum or sums of money as shall be determined by the directors; a part, not exceeding ten per cent., of which note shall be immediately paid, for the purpose of discharging the incidental expenses of the institution, and the remainder of said deposit note shall be made payable in part or the whole at any time when the directors shall deem the same requisite for the payment of losses or other expenses: and at the expiration of the term of insurance, the said note, or such part of the same as shall remain upaid, after deducting all losses and expenses occurring during said term, shall be relinquished and given up to the signer thereof.

§ 9. Every member of said company shall be, and hereby is, bound to pay his proportion of all losses and expenses happening or accruing in and to said company; and all buildings insured by and with said company, together with the right, title and interest, of the assured, to the lands on which they stand, shall be pledged to said company; and the said company shall have a lien thereon against the assured, during the continuance of his, her, or their policies.

§ 10. In cases of any loss or damage by fire, happening to any member upon property insured in and with said company, the said member shall give notice thereof in writing, to the directors, or some one of them, or to the secretary of said company, within thirty days from the time such loss or damage may have happened; and the directors, upon a view of the same, or in such other way as they may deem proper, shall ascertain and determine the amount of said loss or damage: and if the party suffering is not satisfied with the determination of the directors, the question may be submitted to referees, or the said party may bring an action against said company for said loss or damage, at the next court to be holden in and for the county of Madison, and not afterwards, unless said court shall be holden within sixty days after said determination; but if holden within that time, then at the next court holden in said county thereafter: and if upon trial of said action a greater sum shall be recovered than the amount determined upon by the directors, the party suffering shall have judgment therefor against said company, with interest thereon from the time said loss or damage happened, and costs of suit; but if no more shall be recovered than the amount aforesaid, the said party shall become nonsuit, and the said company shall recover their costs: Provided, however, That the judgment last mentioned shall in no wise affect the claim of said suffering party to the amount of loss or damage as determined by the directors aforesaid: And provided also, That execution shall not issue on any judgment against said company until after the expiration of three months from the rendition thereof.

§ 11. The directors shall, after receiving notice of any loss or damage by fire sustained by any member, and ascertaining the same, or after the rendition of any judgment as aforesaid, against said company, for such loss or damage, settle and determine the sums to be paid by the several members thereof, as their respective proportion of such loss, and publish the same in such manner as they shall see fit, or as the by-laws may have prescribed; and the sum to be paid by each member shall always be in proportion to the original amount of his premium note or notes, and shall be paid to the treasurer within thirty days next after the publication of said notice. And if any member shall, for the space of thirty days after such notice, neglect or refuse to pay the sum assessed upon him, her, or them, as his, her, or their proportions of any loss as aforesaid, in such case the directors may sue for and recover the whole amount of his, her, or their deposit note or notes, with costs of suit; and the money thus collected shall remain in the treasury of said company, subject to the payment of such losses and expenses as have or may thereafter accrue; and the balance, if any remain, shall be returned to the party from whom it was collected, on demand, after thirty days from the term for which insurance was made.

§ 12. If it shall ever so happen that the whole amount of deposit notes [illegible]e insufficient to pay the loss occasioned by any one fire, in such c[illegible]e sufferers insured by said company shall receive, towards making good their respective losses, a proportionate dividend of the whole amount of said notes, according to the sums by them respectively insured; and, in addition thereto, a sum to be assessed on all the members of said company, not exceeding fifty cents on every hundred dollars by them respectively insured: and the said member shall never be required to pay for any loss occasioned by fire, at one time, more than fifty cents on each hundred dollars insured in said company, in addition to the amount of his deposit note, nor more than that amount for any such loss after his said note shall have been paid in and expended; but any member, upon payment of the whole of his deposit note, and surrendering his policy, before any subsequent loss or expense has occurred, may be discharged from said company.

§ 13. Said company may make insurance for any term not exceeding ten years: and any policy of insurance, issued by said company, signed by the president and countersigned by the secretary, shall be deemed valid and binding on said company, in all cases where the assured has a title in fee simple, unincumbered, to the building or buildings insured, and to the land covered by the same; but if the assured have a less estate therein, or if the premises be incumbered, the policy shall be void, unless the true title of the assured, and the incumbrances on the premises, be expressed therein.

§ 14. The directors shall settle and pay all losses within three months after they shall have been notified as aforesaid, unless they shall judge it proper, within that time, to rebuild the house or houses destroyed, or repair the damages sustained, which they are empowered to do, in convenient time: Provided, They do not lay out and expend in such building or repairs more than the sum insured on the premises; but no allowance is to be made, in estimating damages, in any case, for gilding, historical, or landscape painting, stucco or carved work; nor are the same to be replaced if destroyed by fire.

§ 15. When any house or other building shall be alienated by sale or otherwise, the policy thereupon shall be void, and be surrendered to the directors of said company, to be cancelled; and upon such surrender the assured shall be entitled to receive his, her, or their deposit note, upon the payment of his, her, or their proportion of all losses and expenses that have accrued prior to such surrender: Provided, however, That the grantee or alienee, having the policy assigned to him, may have the same ratified and confirmed to him, her, or them, for his, her, or their own proper use and benefit, upon application to the directors, and with their consent, within thirty days next after such alienation, on giving proper security, to the satisfaction of the said directors, for such portion of the deposit or premium note as shall remain upaid; and by such ratification and confirmation, the party causing the same shall be entitled to all the rights and privileges, and subject to all the liabilites, to which the original insured was entitled and subjected under this act.

§ 16. If any alteration should be made in any house or building, by the proprietor thereof, after insurance has been made thereon, with said company, whereby it may be exposed to greater risk or hazard from fire than it was at the time it was insured, then, and in every such case, the insurance made upon such house or building shall be void, unless an additional premium and deposit, after such alteration, be settled with and paid to the directors; but no alteration or repairs in buildings, not increasing such risk or hazard, shall in any wise affect the insurance previously made thereon.

§ 17. In case any building or buildings, situated upon leased lands, and insured by said company, be destroyed by fire, and the owner or owners thereof shall prefer to receive the amount of such loss in money, in such case the directors may retain the amount of the premium note given for the insurance thereof until the time for which insurance was made, shall have expired; and at the expiration thereof, the assured shall have the right to demand and receive such part of said retained sum or sums as has not been expended in losses and assessments.

§ 18. If insurance on any house or building shall be and subsist in said company, and in any other office, or from and by any other person or persons, at the same time, the insurance made in and by said company shall be deemed and become void, unless such double insurance subsist by and with the consent of the directors, signified by indorsement on the back of the policy, signed by the president and secretary.

§ 19. The company hereby created, shall not be concerned in any trade or other business except the insurance of property against loss or damage by fire; nor shall said company, by any possible construction of the powers granted in this act, exercise any banking privileges whatever: but this act shall be deemed and taken to be a public act, and shall be liberally construed to effect the ends and purposes hereby intended and contemplated.

§ 20. The directors of said company shall not make more than one assessment for losses in any one year; and in order that such assessment may be made payable at the annual meeting of the company, the directors are authorized, in case of any loss or damage by fire, to borrow such sum or sums of money as may be required to pay such loss or damage: and in making the annual assessment, the interest accruing on money borrowed, and also all necessary incidental expenses, shall be included in such assessment.

§ 21. Each and every member of said company shall be entitled to and allowed an examination of the books, papers and general transactions of said company, upon application therefor to the secretary.

§ 22. It shall be the duty of the directors to make an annual report of the condition, progress and affairs of said company, a copy of which report shall be furnished to the General Assembly.

§ 23. The individuals named in the first section of this act shall be, and they hereby are, constituted a board of directors for said company, to serve as such until the first annual election of directors therein provided for. They shall have power, if they think fit, to make up their number to fifteen, as allowed in the third section of this act, from among the members of said company; and all vacancies which may occur in said board, by death, resignation, removal, or refusal to serve, may be filled by the remaining members of said board, and a majority of their number at any time, shall constitute a quorum for the transaction of business. They may call the first meeting of the members of said company at any suitable time and place, in Alton aforesaid, by advertisement in the several newspapers printed in said town, giving at least ten days' notice of the place, time, and design of the meeting. They may make and establish by-laws for the government of said company until the first annual meeting thereof, and may transact any business necessary and proper to carry into effect the provisions and intentions of this act: Provided, however, That no policy shall be issued by said company, until his Excellency, the Governor of the State, shall have made proclamation that application has been made for insurance in said company on fifty thousand dollars at least, of which notice shall be given him by the directors.

§ 24. This act shall take effect from and after its passage.

Approved: February 23, 1839.

AMENDMENTS TO THE CHARTER

OF THE

ILLINOIS MUTUAL FIRE INSURANCE COMPANY.

APPROVED: MARCH 4, 1843---FEBRUARY 13, 1847.

AN ACT TO AMEND THE ACT ENTITLED "AN ACT TO INCORPORATE THE ILLINOIS MUTUAL FIRE INSURANCE COMPANY," APPROVED FEB. 23, 1839.

§ 1. Be it enacted by the people of the State of Illinois, represented in the General Assembly, That the directors of said company be, and they are hereby, authorized to settle and pay all losses at only one uniform period in each year subsequent to the annual assessment: Provided, That members sustaining loss or damage by fire shall be allowed interest thereon from the time due notice has been given of such loss until payment is made. And so much of the fourteenth section of said act as is inconsistent with the provisions of this act, be, and the same is, hereby repealed.

§ 2. In all suits by or against said company, any member of said company shall be a competent witness except in suits in which he or she shall be directly a party: Provided, That such person shall not be otherwise disqualified.

§ 3. The records of said company, or copies thereof duly authenticated by the signatures of the president and secretary, shall be competent evidence in any suit in which said company may be a party.

§ 4. In case it shall become necessary to resort to the lien on the property insured, the treasurer shall demand payment of the insured, or his legal representative, and of the tenant in possession; and in case of nonpayment, said company may sustain an action on the deposit note, and their execution may be levied on the insured premises, and the officer making the levy may sell the whole or any part of the estate at auction, giving notice and proceeding in the same manner as is required in sales under execution, or may proceed in equity, at the option of the company.

§ 5. That if any person or persons, who are or shall become members of said company by effecting insurance therein, their heirs, executors, administrators or assigns, shall neglect or refuse the payment of any assessment or assessments duly ordered by the directors of said company, for the term of thirty days after the same shall have become payable, agreeable to public notice by the treasurer, the party so in default shall be excluded and debarred, and shall lose all benefit and advantage of his, her, or their insurance or insurances respectively, for and during the term of such default or non-payment; and notwithstanding shall be liable and obliged to pay all assessments that shall be made during the continuance of his, her, or their policies of insurance, pursuant to the provisions of the act to which this is an amendment.

§ 6. That in all cases where real or personal property insured by said company, shall become alienated by sale, by change in partnership, or ownership, or otherwise, the policies issued theron shall be void, and shall be surrendered to said company to be cancelled; and said company shall not be liable for any loss and damage which may happen to any property aft[illegible] such alienation as aforesaid, unless the policies issued thereon sha[illegible]ave been duly assigned or confirmed, by the consent of the directors, to the actual owner or owners thereof, previous to such loss and damage [illegible]d no policy, issued by said company, shall be deemed to have been duly assigned or confirmed, unless the consent of the directors to such assignment o[illegible] confirmation is certified [illegible] such policy by the secretary of said compa[illegible].

§ 7. That so much of [illegible]e act, to which this [illegible] an amendment, as is inconsistent with this act, [illegible], and the same is [illegible]reby repealed.

§ 8. This act shall not affect the rights of any person or persons, who have become members b[illegible]ore the passage of this act, unless such persons assent to the provisions o[illegible] the same, by themselves or proxies, at the next annual meeting of said c[illegible]pany, or signify their assent in writing, directed to the board of direct[illegible]s.

Approved: March [illegible] 1843.

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AN ACT TO AMEND [illegible]E ACT ENTITLED "AN ACT TO INCORPORATE THE ILLIN[illegible]S MUTUAL FIRE INSURANCE COMPANY," APPROVED FEB. 23, [illegible]839.

§ 1. Be it enacted by [illegible]e people of the State of Illinois, represented in the General Assembly, That the President of the board of directors of the Illinois Mutual Fire Insurance Company, and his successor in office, is hereby authorized and empowered to administer oaths to the directors and other officers of said company, for the faithful performance of their respective duties.

§ 2. This act to take effect from and after its passage.

Approved: February 13, 1847.

BY--LAWS

OF THE

ILLINOIS MUTUAL FIRE INSURANCE COMPANY.

ARTICLE I.

§ 1. The annual meeting* of the company shall be holden on the first Thursday of April, at 2 o'clock in the afternoon, at such place in Alton, in the county of Madison, as the directors for the time being may order; and shall be notified by advertisement, signed by the secretary, and published twice at least in one or more of the newspapers printed in said Alton, the second publication of which shall not be less than ten days before the time of holding said meeting.

§ 2. At every meeting of the company, the president, if present, shall preside, and in his absence, the secretary or treasurer shall call to order, and preside until a chairman be chosen. The election of directors shall be by ballot, each member having one vote; and absent members voting by proxy, must authorize such proxy or proxies in writing, signed by the person represented; which shall be filed with the secretary. All other questions may be determined by voting in such way as the majority present may deem proper.

ARTICLE II.

§ 1. The president shall attend as often as it becomes necessary, at the office of the company: he shall examine alone, or jointly with any director, all applications for insurance; shall fix the sum or sums to be taken on each, and the rates of insurance, and shall approve the same by indorsement upon the back of the application; and jointly with any two directors, shall adjust and pay all losses sustained by the company. The president shall sign all checks and orders for the payment of money, and the same shall be countersigned by the secretary. He shall have general supervision of the affairs of the company, and shall see that the funds and other property belonging thereto be safely kept; and he shall exhibit to the directors, at each monthly meeting, a statement of the affairs of the company. In the event of the temporary absence or indisposition of the president, the examination and approval of applications for insurance may be made by any two of the directors, whom the secretary shall designate.

§ 2. The secretary shall keep the books and accounts, fill up and record all policies of insurance, countersign policies and checks, notify and attend all meetings of the directors and company, and perform all such other duties in the office as the president may require. He shall be, ex-officio, a director; and shall hold his office during good behavior, and shall be sworn to the faithful discharge of his duties.

ARTICLE III.

§ 1. Notice of assessments shall be given by the treasurer, and published in one or more of the newspapers printed in Alton, three weeks successively, the last publication of which shall not be less than thirty days prior to the time fixed for the payment; and in such other newspaper or newspapers as the directors may deem necessary or expedient. The directors may also cause such notice to be published in handbills, posted up at such places as they may direct.†

ARTICLE IV.

§ 1. The company will make insurance for the term of six years; and the amount of the premium note, or sum to be deposited for the insurance of any building, shall be according to the hazard of such building, or the danger to which it may be exposed to loss or injury by fire, taking into consideration the materials of which it is composed, the manner of its construction, the purposes for which it is used, its situation as to other buildings, and all other circumstances affecting its risk.

§ 2. Buildings are divided into the following classes: and the amount of the premium notes required for their insurance, will be the aggregate amount of the yearly premiums for six years, agreeably to the rates following, to wit:

FIRST CLASS.—Houses or stores of stone or brick, with roofs of wood, unconnected with and not exposed by other buildings, four per cent. of the value at which they are insured.

SECOND CLASS.—Like buildings, when connected with or exposed to fire from other buildings, from five to twelve per cent.

THIRD CLASS.—Houses or stores, with brick or stone sides or ends, in which the fire-places are constructed, standing alone, and not exposed by other buildings, from four to four and a half per cent.

FOURTH CLASS.—Like buildings, connected with or exposed by other buildings, from six to fifteen per cent.

FIFTH CLASS.—Houses or stores, built wholly of wood, standing alone, and not exposed by other buildings, from four to five per cent.

SIXTH CLASS.—Like buildings, connected with or exposed by other buildings, from six to twenty per cent.

SEVENTH CLASS.—Buildings of any of the foregoing descriptions, when occupied as taverns, from one to two per cent. in addition to the foregoing rates.

EIGHTH CLASS.—Barns and stables, from four to twenty per cent.

NINTH CLASS.—School-houses and meeting-houses, from six to twelve per cent.

TENTH CLASS.—On all buildings warmed by stoves, where the pipes pass nearer than four inches of any wood work, an addition of from one to two per cent. higher than the foregoing rates may be charged.

§ 3. Furniture and goods, not deemed hazardous, will be insured at the same rates with the buildings in which they are contained.

§ 4. The following trades and merchandise are deemed hazardous, and additional premium will be charged upon their insurance, to wit: Bakers', blacksmiths' and joiners' shops, bookbinders, books and stationery, apothecaries, cabinet-makers, china, earthen or glass ware, confectionary, woolen and cotton mills, saw-mills, steam engine manufactories, type founders, and such other trades and merchandise as the directors may determine.

§ 5. In case of fire, or of loss 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 company of the subject insured.

§ 6. Policies of insurance shall take effect at 12 o'clock, noon, on the day of the approval of the application at the office of the company, and shall be binding thereafter.*

§ 7. Five per cent. of the premium note shall be paid in all cases, and indorsed thereon, at the time of receiving a policy, by the assured. One dollar shall be paid for each policy, and record of the same, by the person receiving it; and fifty cents shall be allowed to agents for each application taken by them, to be paid out of the five per cent. fund.†

§ 8. Insurance shall not be made to a greater amount than TEN THOUSAND DOLLARS* on any one risk.

§ 9. In case where no permament lien can be created, as on household furniture, merchandise, or other personal property, or in case of mortgage, the directors may require an indemnity in lieu thereof, by an approved surety on the premium notes.

§ 10. Whenever required in writing, the assured, or person claiming, shall produce and exhibit his books of account and other vouchers, to the directors, or their duly appointed agent, in support of his claim, and permit extracts and copies thereof to be made.

At the annual meeting in April, 1845, the following classes of risks were added to the second section in the fourth artice of the by-laws, and so much of the fourth section, as was inconsistent therewith, repealed:

ELEVENTH CLASS.—Water mills, packing, slaughtering, and lard houses, lumber yards, bakers, blacksmiths, tanneries, book binders, books and stationery, apothecaries, china, earthen or glass ware, and confectionary, from twelve to fifty per cent.

TWELFTH CLASS.—Woolen, cotton and grist mills, driven by steam, steam engine manufactories, furnaces, and soap and candle factories, carriage makers' and joiners' shops, and cabinet makers, from twenty to one hundred per cent.

The seventh section of the by-laws was also amended as follows:

One dollar shall be allowed to agents, for each application taken by them, when the sum taken on such application shall amount to one thousand dollars or more; fifty cents only shall be allowed on every other application taken by them, as heretofore provided in section seven of the by-laws.

The following resolution was adopted at the annual meeting, in 1845:

RESOLVED, That in towns, or settlements, where there are no laws in existence regulating the keeping of gunpowder, members of this company be permitted to keep for sale any quantity not exceeding twenty-five pounds: PROVIDED, it be kept in tin or copper canisters, and kept at all times standing in a conspicuous place, easily accessible to any one on entering the room.

The following resolution was adopted at the annual meeting in 1848:

RESOLVED, That hereafter all persons whose property may be insured in this company, shall give notice to the secretary, or an authorized agent of the company, of all buildings which may be erected after such insurance, within one hundred feet of the building insured; and also of all changes made in the business carried on in such buildings so insured, by which the risk may be rendered more hazardous than at the time of insurance. And in all such cases, where it is determined that the risk has been increased, the policy thereon shall be void, unless an additional premium and deposit be settled with and paid to the directors.

~~At the annual meeting in 1850, it was~~

~~VOTED, That steam saw mills be added to the list of property, not deemed insurable by this company, as specified in section seven of the charter.~~

~~☞ It is understood by the directors of the Illinois Mutual Fire Insurance Company, in all cases where credit is given to additional insurance by another company, that, in case of loss by fire, the company holds itself liable only for two thirds of the valuation of the buildings, and one half the valuation of personal property, over and above the amount covered by such additional insurance, at the time such loss occurs.~~

~~☞ Tippling shops are not insurable by this company.~~

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*By a vote of the company, at the annual meeting in 1843, the time of holding the same was changed to the fourth Thursday in April.

†It is the duty of the treasurer, immediately after any assessment is ordered, to give general notice of the same, agreeably to the mode prescribed in the by-laws, and also to instruct the secretary to forward to each individual assessed, a separate notice, stating the amount of his assessment, and the day on which it will become due.

~~*In explanation of this section, it is proper to state that the signature of the applicant must be attached to the blank note accompanying his application, to make the Policy binding on the company. It is also understood, that the applicant, when required, shall make a deposit with the agent, at the time of making the application, of a sum sufficient to cover the fee for the Policy, and the expenses attending the same.~~

~~†The following resolution was adopted at the meeting in 1850:~~

~~RESOLVED, That a fee of fifty cents shall be charged for each indorsement made on any policy; or for each assignment upon policies issued for less than one thousand dollars; and for each assignment upon policies issued for one thousand dollars, and upwards, a fee of one dollar shall be charged; except in cases where there is an assignment upon a sale, and upon a mortgage made at the same time; then a fee of one dollar only shall be charged for both assignments.~~

~~☞ All fees go into the treasury.~~

*By a subsequent vote of the board, no one risk can exceed $5000.

ILLINOIS MUTUAL FIRE INSURANCE COMPANY.

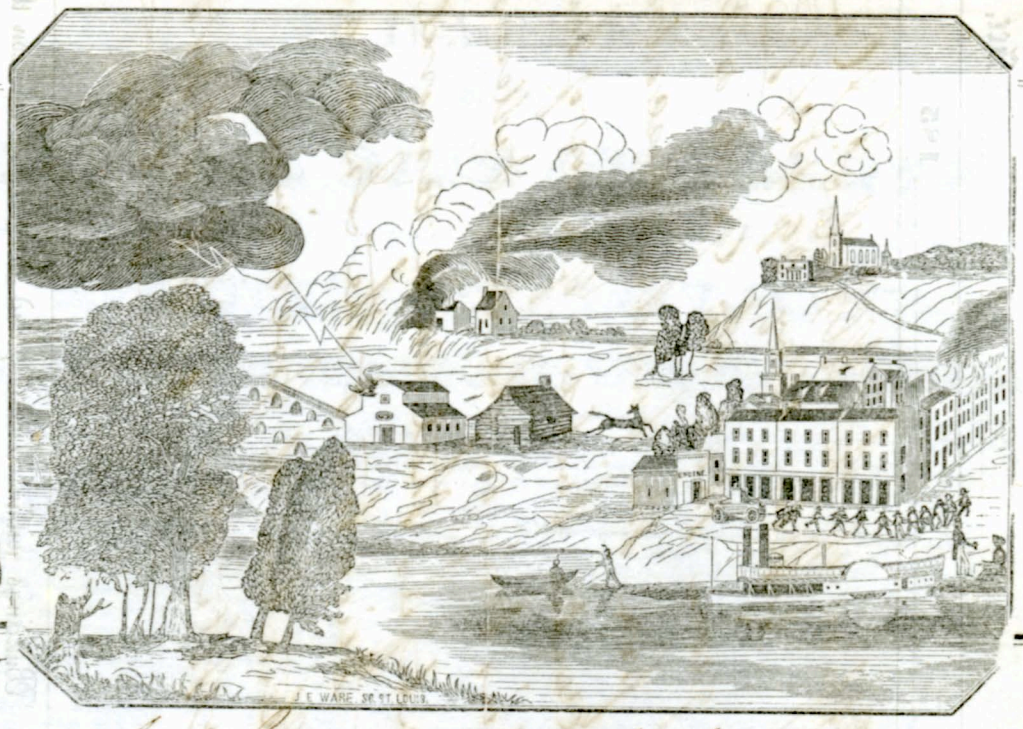
CHARTERED:
FEBRUARY 23d, A. D., 1839.

ORGANIZED:
APRIL 4th, A. D., 1839.

No. 3613

Sum Insured: $1900.00

Rate per Cent.: $1.00



Premium Note: $171.00

5 per Cent. paid: $8.55

Policy: $1.00

THIS POLICY WITNESSETH:

That Whereas, John O'Neill has become a Member of the **Illinois Mutual Fire Insurance Company,** and bound and obliged himself, his heirs, executors, and administrators, to pay all such sum or sums of money as may be assessed by the Directors thereof, pursuant to the Act Incorporating said Company---**And** also secured to said Company, the sum of One Hundred and Seventy-One Dollars, being the amount of the Deposit or Premium, for Insuring the sum of Nineteen Hundred Dollars, unto him, his heirs, executors, administrators, and assigns, on the following Property, to wit:

On Stock in Trade, Consisting of Goods, Wares & Mdse, usually kept in County Store, $1900.00

Situated in the town of Chester, Randolph County,

Reference being had to his Application, of even No. herewith, filed in the Office of the Company, for a more particular description, and as forming a part of this POLICY, during the term of SIX YEARS, commencing at noon, on the Fifteenth day of May, Eighteen Hundred and Forty-eight, and ending at noon, on the same day of the same month, Eighteen Hundred and Fifty-four.

Now be it Known, That We, the Members of said *Company*, for and in consideration of the premises, do hereby certify, that the said John O'Neill is insured in and by said *Company* upon the property aforesaid, in the sum of Nineteen Hundred Dollars. *And We do therefore Promise,* According to the provisions of said Act, to pay or satisfy him, his heirs, executors, administrators or assigns, the said sum insured, within *Three months* next after the said property shall be burnt, destroyed, or demolished by, or by reason or means of FIRE, and notice thereof given as required by the Act aforesaid, during the time this POLICY shall remain in force; unless the Directors shall, within the said three months, determine to rebuild or replace the property destroyed. *And We do further Promise,* That when and so often as the property aforesaid, or any part thereof, or any other of equal value, built or supplied in the room thereof, shall happen to be injured by means of FIRE, such damage shall be made good, according to the estimate thereof, or repaired and put in as good condition as the same was before such FIRE happened.*

Provided, That if it should happen that the whole Stock and Contribution of the said Company should ever be insufficient to pay and satisfy all the losses sustained by the Members of said Company, in such a case a just average shall be made, and the payment to be demanded in virtue of this POLICY, shall be a dividend of the said Stock and Contribution in proportion to the sum insured, agreeably to the tenor and true intent of the Act aforesaid.

In Witness Whereof, The President of said Company has signed this Policy, and the Secretary thereof has countersigned the same at **Alton,** the Fifteenth day of May, in the year of our Lord, One Thousand Eight Hundred and ~~Fifty~~ Forty-eight.

Moses G. Atwood, *Secretary.* Benj. L. Lopp, *President.*

*In estimating damages for Furniture injured or destroyed, no allowance is made for musical instruments of any kind, nor for family paintings, nor for articles of plate or plated ware—nor is any allowance to be made for books, maps, or pictures of any kind, unless specially mentioned in the Policy.—INSURANCE is in no case made on more than TWO-THIRDS of the value of any building, nor more than ONE-HALF of the value of furniture, or ONE-HALF of the average amount of stock in trade: and in case of a total loss, the Company is not liable to pay more than TWO-THIRDS of the actual value of the building at the time of its loss, nor more than ONE-HALF of the value of personal property. Partial losses are paid in full, not exceeding the amount insured.—GUNPOWDER is not insurable, and in case a greater quantity is kept, or in a manner different from that required by law, the Policy covering the store in which such powder is kept, or the stock therein, is void.

[2002]

Illinois Mutual Fire Insurance

COMPANY.

No. 3613.

John C. Wells,

Owner.

Expires No. D. 1854.

Issued on $ 1000

In communicating with this Office, send No. of your Policy.

"TELEGRAPH" PRINT, ALTON.

Having Sold and Conveyed the Buildings within Insured, and the Land whereon they stand, to _____ hereby assign to _____ the within Policy, to hold the same, subject to all the liabilities, and entitled to all the rights and privileges, to which _____ _____ liable and entitled, by virtue hereof.

THE DIRECTORS CONSENT:

Dated _____ 185

Attest:

_____ Sec.

Approved and Recorded, _____ **185**

Office of the Illinois F. I. Co.
Alton, Illy 29 1849.

Notice having been given that the Goods within insured have been removed from the building described in the Application, to the Centre building of a row of buildings three stories high, Mr. Perkins being on the side & Messrs. Lakeman & the other, this certifies that said removal has been assented to by the Directors & the Insurance continued without alteration of premium.

Attest:— M. G. Atwood, Sec.

Having Mortgaged the Buildings within Insured, and the Land whereon they stand, to _____ hereby assign to _____ the within written Policy, to hold as Collateral Security, for the performance of the condition of said Mortgage.

THE DIRECTORS CONSENT:

Dated _____ 185

Attest:

_____ Sec.

Approved and Recorded, _____ **185**

State of Illinois } Pleas had before the Hon
Williamson County } W A Denning in the Williamson
Circuit Court at the April Term
AD 1852 towit

Be it remembered that heretofore towit on the twenty eighth day of January in the year of our lord one thousand eight hundred and fifty ~~two~~ one William M Grider the Plaintiff filed in the Circuit Clerks office in the County of Williamson and state of Illinois his declaration in the words and figures following towit

State of Illinois }
Williamson County } ss

William M Grider the Plaintiff in this suit Complains by Corder and Nelson his Attorneys of Thomas P Ayres Who has been summoned to answer him the said Plaintiff of a plea of Trespass on the case to his damage of one thousand Dollars as he says for that whereas the said Defendant Contriving and wickedly and maliciously intending to injure the said Plaintiff in his good name fame and Credit and to bring him into public scandal infamy & disgrace with and amongst all his neighbors and other good and worthy Citizens of this state and to Cause it to be believed and suspected by those neighbors & Citizens that he the said Plaintiff had been and was guilty of the Crime of Larceny as hereafter stated to have been charged to have been imputed to him and to subject him to the pains and penalties by the laws of this state made and provided against and inflicted upon persons guilty thereof and to vex harass oppress impoverish and wholly ruin him heretofore towit on the 1st day of January AD 1850 at the County aforesaid in a certain discourse which the said defendant then & there had with him the said Plaintiff of and Concerning

[8840-1]

the said Plaintiff in the presence and hearing of divers good and worthy Citizens of this state and then and there in the presence and hearing of those last mentioned Citizens falsely and maliciously spoke and published of and concerning the said Plaintiff the false scandalous malicious and defamatory words following that is to say you (meaning the Plaintiff) stole my money you (meaning the Plaintiff stole my knife you (meaning the Plaintiff) took my money you (meaning the Plaintiff) took my knife you (meaning the Plaintiff stole my money and my knife you (meaning the Plaintiff) took my money and my knife out of my pocket and the Plaintiff avers that the said defendant by each and every of the foregoing words and expressions did then and there mean and intend to charge him the said Plaintiff and to impute to him the said Plaintiff the crime of larceny and that it is was so understood by those who heard the foregoing words and expressions so uttered by him the said Defendant at the time of speaking and publishing thereof to wit at the County aforesaid And afterwards to wit on the day and year aforesaid at the County aforesaid in a certain other discourse which he the said Defendant then and there had and held of and concerning him the said Plaintiff in the presence and hearing of divers other good and worthy Citizens of this state the said defendant further contriving and intending as aforesaid then and there in the presence of the last mentioned Citizens

falsely and maliciously spoke of and concerning the said Plaintiff the false scandalous malicious and defamatory words following towit) That is to say he meaning the Plaintiff stole my money he meaning the Plaintiff stole my knife he meaning the Plaintiff took my money he meaning the Plaintiff took my knife he meaning the Plaintiff stole my money and my knife he meaning the Plaintiff took my money and my knife out of my pocket and the said Plaintiff avers that by each and every of the expressions in this count mentioned he the said defendant then and there did then and there mean and intend to charge him the Plaintiff with and to impute to him the Crime of larceny and that it was so understood by those that heard the words and expressions in this count mentioned at the time they were uttered and published by him the said defendant towit at the county aforesaid by means of which said grievances in the said several counts in this declaration mentioned he the said Plaintiff hath been and is greatly damaged in his fair fame character and reputation and hath by means and in consequence thereof hath sustained damage to the amount of one thousand dollars and therefore he brings this suit

Borden & Nelson Attys
for Plff

[2843-2]

and afterwards Court on the same day January the 28th 1851 the following summons issued from the Circuit Clerks office directed to the Sheriff of Williamson County to executed returnable to the next term of the Circuit Court of said County

Summons

The People of the State of Illinois To the Sheriff of Williamson County Greeting We command you that you summon Thomas P Ayres if he shall be found in your County to be and appear before the Judge of our Circuit Court in and for the County of Williamson on the first day of the next term thereof to be commenced and holden at the Court House in the Town of Marion in said County on the first monday of April next to answer unto Williams M Grider in a Plea of Trespass on the case to his damage one thousand dollars as he says and have you then there this writ

Witness John T London Clerk of our ~~Circuit~~ said Court at his office in Marion this 28th day of January in the year of our lord one thousand eight hundred and fifty one and the seal of said Court affixed

John T London
Clk

And afterwards to wit on the same day the said summons was returned to the said Clerks office by John Goodall Sheriff of Williamson County Illinois with the following indorsement thereon (to wit)

I return the within by reading the same to J P Ayres Jan 28th 1851

John Goodall
Sheriff

Which said summons was marked filed Jan 28th 1851

And afterwards again to wit on the 30th day of April 1851 it being the 5d of the Term Come the Defendant J P Ayres by Dougherty & Allen his attorneys and with the Clerk in this case the following Plea to wit

J P Ayres
ads
Wm M Guider } 5 day April Term 1851
case

And the said defendant Thomas P Ayres by Dougherty & Allen his attys Comes & defends the wrong and injury when &c and Says that he is not guilty in manner and form as the said Pltff hath thereof Complained against him and of this he puts himself upon the Country &c

Dougherty & Allen for
Defendant J P Ayres

& the Pltff the like
Corder & Nelson for Pltff

And afterwards towit on the 29th day of April 1852 at the Term first herein mentioned this cause came on to be tried by a Jury and issue being joined upon the Defendants Plea of not guilty filed herein. The Jury after hearing the evidence and the arguments of Counsel and being instructed by the Court retired to consider of their verdict and having agreed returned into Court the following verdict towit. We the Jury find the Defendant guilty and assess the Plaintiffs damages at one hundred dollars.

Thereupon the Defendants Counsel moves the Court for a new trial for the following reasons viz

1st Because the verdict is against the law

2d Because the verdict is against the evidence

3d Because the Court refused to give proper instructions asked by the defendant

And during the pendency of the trial the Plaintiffs Counsel asked the Court for the following instructions towit.

1st The Court instructs the Jury that the words Charged in the declaration are actionable in themselves

given

2 If the Plaintiff has proven the words Charged in the declaration as charged under the issue formed the Jury must find for the Plaintiff

given

And also during the trial of this cause the Deft. Counsel asked the Court for the following instructions towit

1st That if the Jury believe from the evidence that Ayres at the time he spoke the words proven did not intend to impute felony to him Gridier you will find for the defendant

given

2d That if the words were used by Ayres in heat of passion and he did not intend to impute felony to the Plaintiff they must find the defendant not guilty

given

3d That the question of malice is a question of fact for the Jury, upon consideration of all the facts and conversations

given

4th That if the words proven to have been spoken by Deft of the Plaintiff were spoken about & in relation to a known act and that act in law is not a felony, which is known to the by standers they will find the defendant not guilty. — —

(Which last instruction was refused by the Court

And afterwards towit on the 1st day of May 1852 it being the 6th day of the Term the Court over ruled the Defendants motion for new trial and pronounced ~~a verdict~~ Judgement according to the verdict of the Jury

Defendant thereupon prayed an appeal to the supreme Court of this State. Which appeal was granted if ~~taken~~ Defendant entered into Bond in 30 days with Scott Clark James P Thom George Felts or either of them Conditioned as the law directs

And afterwards to wit on the same day the 1st day of May 1852 the Defendant by his Counsel filed the following attached Bill of exceptions

William Grider
vs
Thomas T Ayers } Case for Slander

Be it remembered that on the trial of this cause the following witnesses were introduced and sworn on the part of and in behalf of the plaintiff viz.

1st He Fowler, being duly sworn deposes that, at Tully's Store in Marion witness heard Defendant, ~~to plaintiff~~ say that, to Plaintiff Grider, you stole my knife and my money.

Being cross examined stated that, when Ayers first came into the store of Tully. he said to Grider go now and take up those men in the public square. Grider said he would not, Defendant said you shall, for you took me up and stole my knife and my money. Grider said I ~~gave you back your money and~~ handed Tully ~~Fowler~~ your knife, ~~witness understood the words~~ Ayers then said I will cowhide you that. Defendant then had a cow hide in his hands Grider said do it if you dare. Witness understood the charge of stealing to relate to an arrest, and ~~words~~ of Defendant, which Plaintiff as I am learn stated, of Marion, had made a few days before

The Plaintiff then introduced Phillip Low who stated that he was present in Pully's store in the Town of Marion, and heard Plaintiff and Defendant quarrelling. That Defendant said to Plaintiff "when I was in your custody as a prisoner you took my knife and my money from me". Witness then stated that the language used by Defendant to Plaintiff was "when I was in your custody as a prisoner you stole my knife and ~~money~~. and my money purse three Dollars in money" That a day or two before that, he witness was working on a House in Marion Defendant, when speaking of his arrest by plaintiff said that he at the time stole his knife & money (three dollars in his purse) & he defendant intended to induce plaintiff for it & wanted to entrap him into a fight that was the Consultations which Defendant had in his witnesses hearing and of which witness has deposed he understood the defendant to be speaking of the ~~search~~ ~~ing of~~ Defendant and taking his money & knife from him as Town Constable in the Town of Marion when arrested for an alleged breach of the Corporation laws of said Town he ~~witness~~ Deft called it stealing his money and his knife.

Here rests

This was all the evidence which was introduced in this Cause both by plaintiff and defendant,

The Defendant before the jury retired asked the Court then & there to instruct the Jury in this Cause as follows to wit

"That if the words proven, to have been spoken by Deft, of the plaintiff were spoken aloud, and in relation to a known act, and that act in law is not a felony, which is known to the bystanders they will find the defendant, Not Guilty.

Which instructions the Court then and there refused to give the jury to which refusal of the Court so to instruct the jury the defendant then and there excepted, but did not except until a motion was made for a new trial

And the jury having retired to consider of their verdict, returned into Court a verdict ~~of guilty~~ that the defendant was guilty in manner & form as

This was all the evidence introduced by the plaintiff.

The Defendant then introduced James Tully on his part and behalf who stated that he was present in his store in Marion and heard a quarrel between Plaintiff and the Defendant the Defendant said ~~[illegible]~~ Jan. to walk by Rutsey and Rufus then to walk as the Plaintiff ~~that~~ he had arrested him ~~and taken his knife & money from him~~ and to walk by Rufus ~~Plaintiff answer~~ that Jacob Carstatt and that he wanted ~~it back~~ Plaintiff told Defendant that he had given the ~~money back to him~~ ~~and that~~ the knife was given to Witness to be returned to Defendant, that ~~this is the same general in Witness's store house spoken of by Witness Hand & Law~~. That all that conversation of Defendant was in relation to the arrest ~~and the means of arrest~~ by Plaintiff of the Defendant and ~~the [illegible] of~~ taking his knife from him Defendant by plaintiff ~~and it was so understood by the witness as far as he knew~~, he ~~[illegible]~~ as he understood it.

in plaintiffs Declaration and assess the plaintiffs damages to one hundred dollars

Thereupon the Defendant moved the Court for a new trial for the following reasons to wit, 1st Because the verdict is contrary to law 2nd Because the verdict is contrary to the evidence 3rd Because the Court refused proper instructions to the jury asked for by the Defendant,
Which motion for a new trial the Court then and there overruled and entered judgment for the plaintiff to which opinion of the Court in overruling said motion of the Defendant for a new trial and the refusal to give the instructions to the jury asked by him & the rendition of said judgment in favor of the said plaintiff the Defendant by his attorneys excepts and prays that this his bill of exceptions may be signed sealed and made a part of the record in this cause all of which is accordingly done &c

M. Deming (seal)

State of Illinois }
Williamson County }

I John T Loudon Clerk of the Circuit Court in and for the County and State aforesaid do hereby certify that the foregoing contains a true and perfect ~~Copy~~ statement of the proceedings had in the case of William M Grider against Thomas P Ayers for slander decided at the April Term of the Williamson County Circuit Court AD 1852 as will fully appear by reference to the Records and files of my office

Given under my hand and official seal at office in Marion this 8th day of November 1852

John T Loudon
Clk

And the said T. T. Ayers by his Atty comes and says that in the record and proceedings of this cause there is manifest error ~~this to wit~~ and assigns the same for cause of error viz

1 The declaration is not sufficient in law
2 The Court erred in refusing to give the instruction asked by plff
3 The Court erred in overruling defts motion for a new trial

And for these & other causes appearing in the record & proceedings the plff in error prays that the judgment be reversed

T. T. Ayers plff in error
~~Pro~~ defdt in error

Filed the 12th day of November A.D. 1852
R. D. Preston, Clk
Paid by collector

Filed the 12th day of May 1852
John T. Loudon
Clk

Thomas P. Ayers & Wm. M. Grider

The words charged are that Grider stole pl'ffs knife and money and purse — that he took his knife and money and purse, and that these words were spoken in a slanderous sense imputing theft, & were so understood by the hearers

By the proofs it appears that Grider was town constable in Marion and as such, had a few days before, arrested Ayers in the public square for a breach of the town ordinances, and took away his knife — which he afterwards gave to one Pelley. Grider was in Pelley's store when Ayers came in and said to him, go & take up these men in the public square, he replied he would not — Ayers rejoined you shall, for you took me up, and stole my knife and my money — Grider said I handed Pelley your knife, and the charge of stealing was understood by the hearers to relate to the arrest. The quarrel continued by Ayers threatening to Cowhide Grider &c

The court refused to instruct the jury "that if the words proven to have been spoken by the defendant of the plaintiff, were spoken about, and in relation to a known act, and that act in law is not a felony, which is known to the by-standers, they will find the defendant not guilty" and also refused a new trial

The bill of exceptions, presents an uncertainty that makes it difficult to determine whether we are to look at this instruction as a part of the record here. In giving a history of the trial, the proofs are set out, and the instructions asked, and given or refused — it then proceeds "which instructions the Court then and there refused to give the jury, to which refusal of the Court, so to instruct the jury, the defendant

[R943-B]

then and there excepted — but did not except until a motion was made for a new trial. If it was then and there excepted to at the trial as stated we must treat it as a part of the record — if not until the motion for a new trial was made — then it is not a part of the record, and we cannot examine it as it should have been taken "during the progress" of the trial Rev. L. 1845 p. 416 sec 21.

The instruction asked is clearly sustained by decisions laying down the rule contained in it — and should have been given by the Court, as the proofs clearly presented a case for its application

Thompson v Bernard 1 Camp R 48

Bite v Gill ~~Kentucky~~ Monroe R ~~vol~~ 6 p ~~130~~ 130 Gill v Bite vol 6. 7. Kentucky R 130. Van Rensselaer v Dole 1 John Cas 279.

Edie v Brooks 2 Wharton Dig 598 sec 36.

Christie v Cowell Peake N.P.C 4

Snag v Gee 2 Cole R 300 2d 1826. Jackson v Adams 29 Eng Com L R — 371. — 2 Bing N.C. 402.

This Court in the case of McKee v Ingalls 4 Scam R 32 held principles which embrace the reason of the instruction. Actionable words import malice — and that is the gist of the action — it is a question of intention therefore, sufficiently evidenced by the use of actionable words, unaccompanied by explanatory words or circumstances. These however may show the intention to have been innocent, the presumption of malice wanting, and no foundation for the action to exist

In this light we regard the proofs in this case, and so it seems to have been understood by all the witnesses who heard the Charge. Ayers called the taking of his knife, money & purse from him when he was arrested by Grider as constable, stealing. It might constitute a trespass, but, not a felony. It is true that an officer can steal from his prisoner as well as

(2043-4)

from another — but the taking should be accompanied by other evidences of the *animo furandi* — then openly and it may be forcible disarming the prisoner of his weapons — and with them his money or other valuables He could not commit a theft of his prisoner by any open despoliation of his goods in his presence. He could commit both trespass and Robbery — but not larceny The witnesses all understood this charge of stealing to have reference to a taking, at the time of the arrest and in the public square of the town. Under these circumstances no larceny could be committed — as such a taking could at most only amount to a trespass — and therefore, being spoken in reference to such a transaction and to be understood by the hearers, they were not actionable — and the court should have granted a new trial

Judgt reversed & cause remanded for venire de novo

(8843-10)

12

Ayres v. Lyndes.

Opinion.

Seaties.

1832

8843