

COURT OF ERRORS AND APPEALS.

THE NORTHAMPTON MUTUAL
LIVE STOCK INSURANCE
COMPANY,

Plaintiffs in Error,

vs.

SAMUEL STEWART,

Defendant in Error.

*Writ of
Error to
Supreme
Court.*

Brief and Points for Plaintiffs.

I.

The contract of insurance between the parties in this suit was made in the State of Pennsylvania, and not in New Jersey.

The validity of the contract is governed by the "*lex loci*." Story's Conflict of Laws, § 242.

Id., § 327.

The plaintiff is a foreign corporation; chartered by the laws of Pennsylvania, is located, has its office and does its business at the borough of Easton, Northampton county, in that state.

See Appendix, Exhibit 1, page 21.

Acts of the Legislature of Pennsylvania for 1867, pages 44 and 45.

Whatever objection may be urged against the regularity of its charter or organization, nothing of that kind can come from the defendant, as a member thereof, in an action brought against him to recover an assessment made against him by the company during the life of his policy.

Eaton et al. v. Aspenwall, 19 N. Y. Rep. 119.

Traders' Mut. Fire Ins. Co. v. Stone, 9 Allen 483.

Citizens' Mut. Fire Ins. Co. v. Sortwell, 8 Allen 217.

Sands v. Hill, 42 Barb. Rep. 651.

Bliss on Life Insurance, § 463.

May on Insurance, § 552.

A defect in the proceedings to organize a corporation, is no defence to a stockholder sued to enforce his individual liability, who has participated in its acts of user as a corporation, "*de facto*," and appeared as a shareholder upon its books when the debt for which he is sued was contracted.

Eaton et al. v. Aspenwall, 19 N. Y. Rep. 119.

Snow v. Peacock, 2 Car. & P. Rep. 215.

Dutchess Manufacturing Co. v. Davis, 14 Johns. 238.

U. S. Bank v. Sterns, 15 Wend. 315.

McFarland v. Triton Ins. Co., 4 Denio 292 and 297.

Even under a plea of *nul tiel* record, held that it was enough for plaintiffs to prove a charter and a user under it.
4 Denio 297.

Every person insured in a mutual company thereby becomes a member of it, is bound to know its rules, and is bound by them, though not recited in the policy.

Bliss on Ins., § 463.

May on Ins., § 552.

Angell on Corp., § 10.

Belville Ins. Co. v. Vanwinkle, 1 Beas. 342.

Susquehanna Fire Ins. Co. v. Perrine, 7 W. & S. 348.

Mitchell v. Lycoming Mut. Ins. Co., 51 Penn. St. 402.

The record and books of the company are then his, and are evidence for or against him.

Diehl v. Adams County Mut. Ins. Co., 58 Penn. 443.

May on Ins., § 553.

Bliss on Life Ins., § 463.

And the doings of the officers within the scope of their authority are binding on him.

Hackney v. Alleghany County Mut. Ins. Co., 4 Penn. St. 185.

The application of the defendant to the company to become insured in the company was made in writing, was signed in New Jersey. *but was not approved there*

Case, page 10, lines 34 to 37, inclusive.

“ 12, “ 11 and 12.

“ 13, “ 12 to 21.

Exhibit 2, Appendix, pages 28 and 29.

The application was made to the company at Easton, Northampton county, Pennsylvania.

Case, Exhibit 2, pages 28 and 29.

Its date is April 11th, 1872. The defendant petitions to be insured for one year from that date on the stock named in the petition.

The person receiving the petition was a non-resident of this state, and had no office here, but did reside in the State of Pennsylvania, and was a director of the company there.

Case, page 11, lines 29 to 37.

“ 12, “ 1 to 11 and lines 19 and 20.

“ 13, “ 9 and 10.

“ 21, Exhibit No. 1, lines 29 to 33, inclusive.

“ 22, lines 1 to 10, more particularly lines 9 and 24 and lines 25 to 30.

Case, page 25, line 10.

“ 40 and 41.

Though Kocker was agent of the company, he was quite as much the agent of the defendant. He was agent of both parties.

Bliss on Life Ins., § 463.

29 Penn. St. Rep. 31

Western v. Genesee Ins. Co., 12 New York 261.

50 Penn. St. Rep. 331.

When the application was signed, it did not bind anybody until it was acted on by the company. Kocker had no power to effect an insurance for the defendant; his approval of the application, if made by him, amounted to nothing; neither could he issue a policy to bind the company. He could only receive the application and carry it to the company in Pennsylvania. That was all he did. The defendant sent it by him, as his agent, to them. The defendant had the right to go there himself and carry his application to them, and submit it to the executive committee for approval, and get his policy of the company himself, if he saw fit; and if he did so, where would the contract, in the eyes of the law, have been made? Would it not be a Pennsylvania contract? Clearly so.

So, then, if Kocker was Stewart's agent, as I have shown he was, from the authority cited from Bliss on Insurance, § 463, and 12 N. Y. 261, was it not precisely the same thing whether the application was carried to the company by his agent, as if the defendant had done it himself?

" Qui facit per alium, facit per se."

It was the intention of the defendant, when he signed the application, to send it to Pennsylvania to the company there. Their office was there; their business was there; and the defendant, as an old member of it, knew it.

They could not execute any insurance in New Jersey; they kept no office here; they had no agents residing here, and Stewart knew that. This application was for a renewal.

Case, page 11, line 10.

Kocker did not offer to insure. Stewart knew he could not insure, nor did he know if any insurance would be made by the company upon that application. The application had to pass the ordeal of the executive committee, and to receive their approval, before any policy could issue at all.

It was the duty of the executive committee to examine all applications, and if they were correct, to approve them.

This committee was composed of Kocker, John A. Seitz, the president of the company, and Charles Seitz.

Case, page 12, lines 6 to 10.

Every one of them, including Kocker, who took the defendant's application, resided in Easton, Pa. This is a clearly proven fact.

Case, page 11, lines 33 and 34.

Exhibit - 1793
 " 12, " 13, 16 and 24.
 " 24, " 38. *lines 18 13 16 24 25 29*

" 25, " 2 and 10.

" 29 " 22 to 26, inclusive.

" 40 and 41.

The application was carried by Kocker to the executive committee.

Case, page 12, lines 11 to 16.

The committee, on the 23d day of April, 1872, twelve days after the application was signed and sent to them, approved of it.

Case, page 12, lines 12 and 13.

" 21, " 21 to 28.

By the application, if approved, and as approved, the policy issued was to expire April 11th, 1873, one year thereafter.

Case, page 29, line 21.

Until the application was approved, it was no more than so much blank paper. It did not even bind Stewart, for he could recall it. The endorsement printed on the back of the application showed that it would have to pass the executive committee of the company.

Case, page 29, line 23.

The approval of the committee put life in it, and where did that committee approve that application? At Easton, Pennsylvania, certainly. *When they received & when they signed it*

After approval by the committee, the defendant was entitled to have a policy from the company, agreeably to the prayer of the petition, and upon the terms set forth in the petition; certainly not before that.

The approval, application and policy made the contract between the parties.

So we find that, on the 6th day of May, 1872, a policy was executed from the company, by its president, to Stewart, and by the terms of which, the policy would expire on the 11th of April, 1873.

Case, page 32, Exhibit 3, lines 18 to bottom of page.

The policy was signed and issued by the president of the company, John A. Seitz, and sent from his office in Easton, Pa., by mail, to defendant, at his post office in Phillipsburg, N. J.

Case, page 12, lines 15, 16 and 17.

“ 11, “ 31, 32 and 33.

“ 13, “ 21 and 22.

It is perfectly clear that this policy of insurance and contract between these parties was not procured, issued or made in New Jersey at all, but was a Pennsylvania contract in every part of it, and was so understood and intended by the parties to it.

Such being the fact, neither the supplementary act of February 15th, 1846, or that of May 5th, 1850, (*Nix. Dig.* 430, 431.) have anything whatever to do with this contract. The New Jersey insurance laws, as they stood at the time when this contract was made, did not affect or invalidate a contract of insurance made in Pennsylvania upon property in this state.

The second section of the supplement of 1846 applies only to resident agents of foreign companies, in ~~being~~^{being} by their agent in this state residing there, with authority to contract here on behalf of such company.

The same line of remarks applies to the third section.

The fifth section provides a penalty against the agent mentioned in the second and third sections violating the provisions of the act.

The supplement of 1850 does not change the laws in that respect—the whole act is to be taken in “*pari materia.*”

It has no reference to a non-resident or transient agent of the company, with no authority to do anything else than receive an application to be carried to a company doing all its business in another state, with no office or resident agent in this state, and who make all their contracts and do all their business in another state.

Thornton v. Western Reserve Ins. Co., 1 Grant's Cas. 472.

The fact that application was signed here, does not make the contract a New Jersey contract.

The question whether this is a contract in a foreign state is settled by the following cases, almost identical with this, and fully sustain my position.

Hyde, Receiver, v. Goodnow, 3 N. Y. Rep. (3 Comstock) 266.

This case, in all its features, (except one, namely, that the agent resided in the State of Ohio when he took the application,) like the case now before the court.

Western v. The Genesee Mut. Ins. Co., 12 N. Y. Rep. (2 Kernan) 258.

32 Barb. Rep. 626.

Thornton v. Western Reserve Ins. Co., 1 Grant's Cas. 472.

Kinyon v. Columbia Ins. Co, 8 Vroom 33.

The insurance laws of this state, as they stood at the time this contract was made, did not invalidate the contract even when the contract was actually made in this state.

They certainly do not anywhere say the contract shall be void; they only provide a penalty to be paid under certain contingencies. If the legislature had intended to annul or avoid the contract they could easily have said so, and should, in so important a matter.

I know that the courts hold generally that an attempt to contravene a public statute, though the statute contains no express prohibition of such attempt, the contract is void.

But there are exceptions to that rule, and this statute is an exception. There are reasons for this, viz.:

1. There is no necessity for the rule here.
2. To hold such a contract void, might, as it undoubtedly would, annul large numbers of policies and destroy a large amount of insurance.
3. The penalty could be collected as well if the contract is held good as if it is annulled.
4. The legislature had these matters in view and purposely omitted to declare such contracts void.

It will not do to say that insured is not liable, but that insurer is. Insurer would tell insured that if they could not collect they are not liable to pay.

The following cases show that there are exceptions to the rule:

- Johnson et al. v. Hudson, 11 East. 180.
 Foster v. Taylor, 3 Nev. & Man. 244.
 The later case, commentary on 11 East. 180.
 Biron v. Duncan, 10 B. & C. 93.
 Wetherell v. Jones, 3 B. & Ad. 221.
 Hodgson v. Temple, 5 Taunt. Rep. 181.
 Smith et al. v. Manhood, 14 M. & W. 261-2 and 3.
 French v. Gudley, 25 Wend. 471.
 Thornton v. Western Reserve Ins. Co., 1 Grant's Cas. 472.

II.

It does appear that the losses, to pay a proportion of which the defendant below was assessed, occurred during the life of the defendant's policy.

By the State of Demand Case, pages 5 and 6, contains the state of demand filed in the case; alleges that, April 11th, 1872, defendant owned certain stock therein specified.

That on that day, he applied to the plaintiffs to insure it for \$960; that the application was dated that day, and was in writing, and wanted insurance on it for one year from that date.

It alleges that the plaintiffs did insure the stock for \$960.

for one year, from April 11th, 1872, to April 11th, 1873, and delivered the policy to the defendant.

That was a contract for one year. The life of the policy was therefore from April 11th, 1872, to April 11th, 1873.

Now, the state of demand shows that it was between April 11th, 1872, and the 14th of January, 1873, that the losses occurred.

That to pay these losses, \$4.00 on the \$100 was assessed on all policies of the company then unexpired, January 14th, 1873.

It cannot be possible that it is necessary to use the phrase, "within the life of the policy;" any other words used in the state of demand, which, in substance, allege or show that the assessment was made within the life of the policy, for losses sustained within the same period, are sufficient.

The state of demand is not, perhaps, artistically drawn ^{as it might have} it might have alleged some other matters, perhaps, with injury.

But No exception was ever taken to it, either before the justice or before the Common Pleas, except that the defendant excepted, before the justice, to it, because it did not show the amount of losses sustained by the company.

Application was made to amend it, and it was amended accordingly by plaintiff, and \$11,000 inserted as the amount of losses. *Can papers times 10 to 15 inclusive*

No other exception was taken, and it is too late to take exceptions now, and too late when the cause was taken to the Supreme Court by *certiorari*.

Opinion of Justice Depue, *Stewart v. Sears*, 7 Vroom 173.

A party shall not be heard in an appellate court upon a point not taken, or a matter not raised or considered in the court below.

Del., L. & W. R. R. Co. v. Daily 8 Vroom.

That is the rule both of the Supreme Court and also of this court, as these cases show. For all the purposes of this suit, it sufficiently appears, so far as the state of demand is concerned, what this defendant is sued for.

~~It appears by the evidence, also, not only that the plaintiffs are an incorporated company of the State of Pennsylvania, and are located and do their business at Easton, Northampton county, Pa., but that all the officers of the company reside in that state.~~

~~Case, page 21, Exhibit 3.~~

~~Laws of Penn., 1867, pages 44 and 45.~~

~~Case, page 11, lines 29 to 36.~~

~~" 12, " 1 to 20, inclusive.~~

See evidence on Application of defendant for insurance, case, page 10, lines 34 to 39.

Case, pages 28 and 29.

" 12, lines 11, 12, 13 and 14.

" 12, " 6 to 10.

" 29, " 23 to 27, inclusive.

When Policy issued. *see Terms*

Case, page 12, lines 13, 15, 16 and 17.

Exhibit 3, page 30.

Losses—when they occurred. *-Lys 5.6 + 7 + 24 Pa 23*

Case, page 12, lines 17, 18 and 19.

" 13, " 26 to bottom of page.

" 14, " 1 to 10.

Amount of losses.

Case, page 12, line 36 to bottom of page.

" 13, " 1 and 2, 38 and 39.

See Exhibits 5, 6 and 7.

Case, page 14, lines 5, 6 and 7. *also 24 Pa 38*

For evidence of the officers of the company, see—

Case, pages 40 and 41.

Also, Exhibit 1.

For constitution and by-laws, see—

Page 40 to the end of book.

This case, both before the justice of the peace and before the Court of Common Pleas, was tried without a jury. The Common Pleas Judges heard the evidence of the witnesses and the proofs.

Whether this company is a foreign company; whether the insurance was made in Pennsylvania; whether its office was not at Easton, Pa., and its officers resided there, and whether they did their business there; whether the application was approved there; policy issued there, and sent from the office of the company there; whether the losses occurred during the life of the policy; what those losses were; whether the assessment was made there, and the defendant properly assessed and notified of it—were all questions of fact, and not of law.

The finding of that court, of the matters of fact, was final and conclusive. *upon all questions of fact*

Not reviewable by the Supreme Court.

Even if the Supreme Court would have arrived at a different conclusion, they could not legally review the finding of the Court of Common Pleas.

These facts were all found in favor of the plaintiff by the Judges of the Court of Common Pleas, who gave judgment for the plaintiff on them, and rightly.

On *certiorari*, the Supreme Court could only review the action of the Common Pleas on the questions of law.

This is the well settled rule of the law.

But the Supreme Court have illegally undertaken to review the whole case—^{more particularly the} facts ~~and~~ and reverse the finding of the Common Pleas both upon the facts and upon the law. Their action was illegal and their opinion erroneous, therefore the plaintiffs have brought this *Writ of Error*

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WILLIAM S. SHARP, Printer, 86 Warren St., Trenton, N. J.

NEW JERSEY SUPREME COURT.

SAMUEL J. STEWART

vs.

THE NORTHAMPTON MU-
TUAL LIVE STOCK IN-
SURANCE COMPANY.

} *On Certiorari.*

Order.

The Court having heard the arguments of counsel and inspected the judgment removed by the writ in the cause, and duly considered the reasons filed, it is ordered that said judgment be reversed, set aside, made void and for nothing holden, with costs to the prosecutor.

On motion of
B. C. FROST, *Attorney.*

Entered November 6th, 1876.

I, Benj. F. Lee, clerk of the Supreme Court of the State of 10
New Jersey, do hereby certify that the foregoing is a true
copy of an order made in the above-stated cause by said
court, and entered in the minutes thereof.

In testimony whereof, I have hereto set my hand and the
seal of said court, at Trenton, this 10th day of January, A. D.
1877.

[L. s.]

BENJ. F. LEE, *Clerk.*

Writ of Error.

[Filed January 10, 1877.]

New Jersey, to wit: The State of New Jersey to our Justices
of our Supreme Court, greeting:

Because in the record and proceedings, and also in the
giving of the judgment, in a plaintiff which was in our
[r. s.] said Supreme Court before you, between the State
of New Jersey, Samuel J. Stewart being the prosec-
utor, and the "Northampton Mutual Live Stock Insurance
10 Company," defendants, on a *certiorari* issued out of our said
Supreme Court to the Court of Common Pleas of the county
of Warren, as it is said, manifest error has intervened, to the
great damage of the said Northampton Mutual Live Stock
Insurance Company, as by their complaint we are informed.
We being willing that the error, if any there be, should in
due manner be corrected, and full and speedy justice done to
the parties aforesaid in this behalf, do command you, that if
judgment be thereupon given, you distinctly and openly send
to us, under your seal, the record and proceedings and plaintiff
20 aforesaid, with all things touching and concerning the same,
together with this writ, to our Court of Errors and Appeals,
at Trenton, on the seventh day of November next, that the
record and proceedings aforesaid being inspected, we may
cause to be further done thereupon, for correcting that error,
what of right and according to law ought to be done.

Witness Theodore Runyon, Esquire, our Chancellor, and
President Judge of our said Court of Errors and Appeals, at
Trenton aforesaid, this twentieth day of October, in the year
of our Lord one thousand eight hundred and seventy-six.

30

HENRY C. KELSEY, *Clerk*.J. F. DUMONT, *Attorney*.

The answer of Mercer Beasley, Chief Justice within named:
The record and proceedings whereof mention is within
made, with all things touching the same, to the Court of
Errors and Appeals in the last resort, I certify in a certain
schedule to this writ annexed, as within I am commanded.

State of New Jersey, Warren county, ss.—One of the justices of the peace in and for said county to any constable of any township of said county: Summon Samuel J. Stewart to appear before me, at my office in the town of Phillipsburg, in the said county, on Wednesday, the twelfth day of March instant, at two o'clock p. m. of that day, to answer unto Northampton Mutual Live Stock Insurance Co., in a plea of debt for thirty-eight and fifty-hundredths dollars; and this you are not to omit.

Witness my hand and seal this fourth day of March, in the 10 year of our Lord one thousand eight hundred and seventy-three.

[L. s.]

W. SMITH,
Justice of the Peace, Phillipsburg.

Endorsed—Northampton Mutual Live Stock Insurance Co. vs. Samuel J. Stewart. Summons in debt.

Demand.....	\$38 50
Cost.....	1 80
	18

Phillipsburg.

20

Served the within summons on the defendant by reading it to him and giving him justice's copy.

March 5th, 1873.

WM. SHERIDAN,
Constable,

Warren county, ss.—Court for the trial of small causes, before William Smith, justice of the peace.

Northampton Mutual Live Stock Insurance Company vs. Samuel J. Stewart. In debt. Demand, \$38.50.

March 4th, 1873, issued summons in this case, returnable 30 before me on the 12th of March, instant, at 2 o'clock p. m.

March 8th, constable returned the summons endorsed as follows:

Served the within summons on the defendant by reading it to him, and giving him the justice's copy, March 5th, 1873.

WM. SHERIDAN,
Constable.

March 12th parties appeared, J. F. Dumont, Esq., for plaintiff, and B. C. Frost, Esq., for defendant. Plaintiffs filed their state of demand. I adjourned the case over to March 27th, inst., at 9 o'clock A. M.

March 24th, 1873, issued subpoena for Samuel J. Stewart, and to bring policy of insurance No. 1789, issued by the plaintiff to defendant, and gave the same to Wm. Sheridan, constable, to serve.

March 27th, 1873, parties appeared. Dumont for plaintiff, 10 Frost for defendant. Entered into trial. Defendant objected to state of demand as insufficient, because it does not state the amount of losses sustained, on which assessment was made and suit brought to recover. Plaintiff asked to amend state of demand, by inserting the amount covering losses, which was allowed.

William S. Kooker was sworn on the part of the plaintiff, and gave in his evidence.

Plaintiff also offered in evidence the charter of the company, (marked *Exhibit A*;) the application for insurance, (marked 20 *Exhibit C*;) No. 1789, signed by the defendant; the policy of insurance given by plaintiff to defendant, (No. 1789;) the minute book of the association, (marked *Exhibit E*;) and the laws of Pennsylvania, 1867, pages 44 and 45, (marked *F*;) all of which were objected to by defendant, but admitted by the court.

Samuel J. Stewart was sworn on the part of the defendant, and gave in his evidence.

Defendant also offered in evidence a July statement, so-called, and the auditor's report of the business of the company 30 for the year 1872, and a paper said to be a copy of the constitution of the company, all of which were objected to by the plaintiff. The July statement was rejected. The auditor's report, marked *Exhibit No. 1*, and so-called copy of the constitution, marked *Exhibit No. 2*, were admitted, and I gave judgment in favor of the plaintiff and against defendant, for thirty-eight dollars and sixty-eight cents debt, and five dollars and sixty-one cents costs.

The plaintiff, a corporation duly incorporated under the laws of the State of Pennsylvania, demand of the defendant the sum of thirty-eight dollars and ninety cents for this, viz.: That the said defendant, on the eleventh day of April, 1872, was the legal owner of certain horses and cattle, viz.: Frank, Tom, Fan, Nance, Nell, Ned, Whitey, High, Low and White Nose, of the aggregate value of nine hundred and sixty dollars, and being such owner as aforesaid the said defendant afterwards, to wit, on the day and year aforesaid, did make
 10 application in writing, signed by the said defendant, to the said plaintiff, for insurance upon the said stock against loss by death for the sum of \$960 for the term of one year from the said 11th day of April, 1872, the said defendant then and there, at the said time of the said application, in and by the said application agreed with and promised the said plaintiff, in consideration that the said plaintiff would make the said insurance upon the said stock for the said period of time, that he, the said defendant, would pay to the said plaintiff all taxes that might be levied by the said plaintiff upon him, the said
 20 defendant, for the purpose of paying losses sustained by the said plaintiff; and the said plaintiff in fact further saith that they, the said plaintiffs, in consideration thereof and the further consideration of one dollar by the said defendant then and there paid to the said plaintiff, the said plaintiff did then and there make and execute in due and legal form a certain policy of insurance, bearing date on the day and year last aforesaid, in and by which said policy the said plaintiff did insure the stock of the said defendant in the amount of nine hundred and
 30 one year from the date of the said policy, that is to say:

	1 Bay Horse, called Frank, in the sum of	\$168 75
	1 Bay Horse, " Tom, "	112 50
	1 Bay Mare, " Fan, "	112 50
	1 Sorrel Mare, " Nance, "	93 75
	1 Bay Mare, " Nell, "	112 50
	1 Sorrel Horse Colt, called Ned, at the sum of	75 00
	1 White Cow, " Whitey, "	45 00
	1 " " " High, "	41 25
	1 Red " " Low, "	41 25
40	1 " " " Wheelhorse, "	30 00

1 Yellow Cow, at the sum of	\$30 00
1 Spotted “ “	18 75
1 Speckled “ “	48 75
1 Red “ “	30 00
	<hr/>
	\$960 00

Which said sum of \$960, being the said aggregate aforesaid. And the said plaintiff in fact further says, “after the delivery of the said policy of insurance to the said defendant in manner aforesaid, and before the commencement of this suit, to wit, on the fourteenth day of January, A. D. 1873, the said North- 10
ampton Mutual Live Stock Insurance Company, the plaintiff aforesaid, having sustained large and heavy losses, to wit: eleven thousand dollars, by death of stock insured in the said company, at a regular meeting of the officers of the said company, held at Easton, in the State of Pennsylvania, in order to enable the said company to pay the said losses so as aforesaid incurred, concluded to make and did make an assessment of the sum of four dollars on the hundred dollars upon all sums for which there were unexpired policies of insurance in the hands of said company, and did then and there, after 20
ascertaining the indebtedness of the said company in the premises, pass and ordain a certain resolution, to wit, “that the secretary of said company levy a tax of four dollars on the hundred dollars, payable on or before the fourteenth day of February then next following (on all unexpired policies), at the office of the treasurer of said company,” which said resolution was then and there entered and recorded by said company in the minutes and proceedings of the said company, of which said resolution and assessment for the purposes afore- 30
said, the said defendant aforesaid, and before commence-
ment of this suit, had notice, whereby the said defendant became and was and is indebted and liable to pay to the said plaintiff the said sum of thirty-eight dollars and seventy cents agreeably to his said promise and agreement in his said application made, and therefore the plaintiffs bring suit and pray judgment for the same.

Filed April 22d, 1873.

JOHN SIMERSON, *Clerk.*

Know all men by these presents that we, Samuel J. Stewart, of Greenwich township, and Josiah Stewart, of Phillipsburg, in the county of Warren and State of New Jersey, are held and firmly bound unto the Northampton Mutual Live Stock Insurance Company, of Northampton county, in the State of Pennsylvania, in the sum of ninety-two dollars, good and lawful money of the United States, to be paid to the said Northampton Mutual Live Stock Insurance Company or to their certain attorney, successors or assigns, to which payment well
 10 and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the twenty-seventh day of March, in the year one thousand eight hundred and seventy three.

The condition of this obligation is such that, whereas, the above bounden Samuel J. Stewart has appealed from the judgment of William Smith, a justice of the peace in and for the county of Warren, rendered before the said justice in a suit wherein the said Northampton Mutual Live Stock Insurance Company are plaintiffs, and the said Samuel J. Stewart
 20 is defendant in a plea of debt :

Now, therefore, if the said Samuel J. Stewart shall appear and prosecute the said appeal in the Court of Common Pleas in and for the county of Warren, shall stand to and abide the judgment of said court, and pay such further costs as shall be taxed, if the judgment be affirmed, then this obligation to be void, otherwise to remain in full force and virtue.

SAMUEL J. STEWART. [L. S.]

JOSIAH STEWART. [L. S.]

30 Sealed and delivered in the presence of (words "heirs," "executors," "administrators" obliterated on 10th line and "successors" written and interlined in place thereof, before signing.)

B. C. FROST.

Warren Common Pleas—Samuel J. Stewart, appellant, and Northampton Mutual Live Stock Insurance Company, appellees.

1874, June 10th. Witnesses for appellees.

1. Charter.
2. Samuel J. Stewart.
3. Dr. Wm. S. Kooker.

This appeal being called in its regular order, and the appellants having moved their appeal and the court having heard the evidence and argument of counsel, adjourned the further consideration of the cause June 11th, 1874. 10

July 7th, 1874, the court did reverse the judgment below and give a new judgement for appellees and against the appellant, of forty-two dollars and twenty-one cents, with costs of suit to be taxed.

To the Honorable Justices of the Supreme Court of Judicature of the State of New Jersey:

I, John Simerson, clerk of the county of Warren, in obedience to the command of the within writ, to me directed, do hereby certify and send to you the said Justices, the appointment, award, entries, determination and proceedings, with all things touching and concerning the same, as fully as within I am commanded, which appears, &c. 20

In witness whereof, I have hereunto set my hand and seal of office this 16th day of January, A. D. 1875.

[L. s.]

JOHN SIMERSON, *Clerk.*

Judgment.

This case was an appeal tried in the Court of Common Pleas of Warren county, June 11th, 1874, before judges of said court, Samuel Sherrerd, Robert Rusling and Jesse Stewart, upon the pleadings and evidence in the said cause, (*pro ut* the same,) 30

and judgment by said court rendered July 7th, 1874, in favor of the above-named Northampton Mutual Live Stock Insurance Company, who were appellees, and against the above-named Samuel J. Stewart, who was appellant. Said appeal was taken from the judgment of Wm. Smith, a justice of the peace of said county of Warren, in the court for the trial of small causes, began by summons in action of defendant against said Stewart in favor of said company, returnable March 12th, 1873, tried before the said justice, March 27th, 1873, and
 10 judgment rendered in favor of the company for \$38.68 debt and \$5.61 costs. Same day said Stewart appealed case to Warren Common Pleas and tried as above. Suit brought on policy of insurance issued by the said company, who claimed to be a corporation incorporated under a general law of Pennsylvania, to recover the amount of an assessment against said Stewart to pay losses, &c.

[The company offer charter of incorporation in evidence, filed January 26th, 1869 and granted April 28th, 1869. (See appendix, *Exhibit 1* on part of appellees, and refer to *Pamphlet Laws of Pennsylvania* for 1867, pp. 44 and 45.)
 20 objected to by Mr. Frost.

Because there is no evidence before the court that the matter set forth in the transcript should be a matter of record or a judicial proceeding, and that therefore it could not be certified under the act of congress. The company must show by some act of the legislature that proceedings of this kind shall be made a matter of record in the prothonotary's office or any other office, and the court here cannot receive it until the law is shown allowing it to be certified.

30 The paper presented is the original one, and therefore cannot be a record.

Objection overruled and paper admitted.]

Samuel J. Stewart, sworn for company—

I lived in Greenwich township, in this county, in April, 1872. [Shown paper purporting to be an application to the company.] (See *Exhibit 2*—Appellees for Insurance.)

This is my signature to the paper.

Cross examined—

I resided in Greenwich township when I signed the application ; Dr. Kooker brought it to me ; I signed it at the solicitation of the company ; he came twice to me and said I had better get my stock insured ; all my neighbors had theirs insured ; did not cost much ; came but once a year ; would not cost him more than \$2 per year on the hundred.

In chief—

I had been a member of the company before ; it was an application for renewal. [Shown Policy No. 1789.] (*Exhibit 3*— 10 appellees.)

I received this policy from the company ; it insures the same stock that was included in my application. [Shown paper purporting to be "Notice of Assessment."] I received this paper. (See *Exhibit 4*—appellees)

[Appellees offer in evidence application, policy and notice. Objected to and admitted.]

Cross-examined—

I think I received a receipt in writing from Kooker at time of making the application ; at the time I received the notice, I received another paper. 20

In chief—

At the time I received the notice, I received a money order for \$30 for a yellow cow. [Objected to and admitted.]

Cross-examined—

I received a paper—cannot tell whether it was with policy or with notice ; at the time I signed the application, I paid \$2 to Dr. Kooker.

Dr. Wm. S. Kooker, sworn—

In 1873, and prior to that time, from the time of its organization to June 14th, 1874, I was connected with the company ; it is located at Easton, Pa., and doing business there ; the first directors were John A. Seitz, Martin F. Lawall, Samuel Heil, Charles Seitz, John Best, Wm. S. Kooker, Joseph Woodring, Martin F. Young and Daniel Rohn ; it was organized May 7th, 30

1869; corporators all resided in Northampton county, Pa.; John A. Seitz was president; I was secretary; Charles Seitz was treasurer; I remained secretary till June 14th, 1874; Chas. Seitz remained treasurer two or three years; Stephen Deshler was next treasurer for one year, and Wm. Edelman afterwards; John A. Seitz, Chas. Seitz and myself were executive committee, whose duty it was to examine all applications, and if they were correct, to approve them; when the policy issued, I first had the blank application (*Exhibit 2—*
 10 appellees.) in my hands as secretary.

After it was filled up, I saw it in the hands of Mr. Stewart in New Jersey; took it to the executive committee; it was approved by them, and policy was issued; the one now in evidence. (*Exhibit 3—appellees.*)

I am acquainted with the signature of the president; it is genuine; it was sent to Mr. Stewart by mail from the office of the president in Easton; during the period for which the policy ran, the company sustained heavy losses from the epidemic; the book of minutes was kept by me as secretary at Easton;
 20 referring to meeting of directors January 14th, 1873, page 51 of minute book, the following resolution was passed:

Resolved, That the secretary levy a tax of \$4 on the \$100, payable on or before the 14th day of February next, on all unexpired policies, at the office of the treasurer.

Notices were issued to that effect to the parties holding policies; the book contains minutes of proceedings of board of directors, and of the annual meetings of stockholders. [Shown notice.] (*Exhibit 4—appellee.*)

This is one of the notices sent by mail to the parties from
 30 the office in Pennsylvania; this notice was sent to Mr. Stewart to Phillipsburg P. O.; the constitution and by-laws of the company are in the book; the company continued to do business at their office in Easton from their organization till I went out of office; the losses the company had sustained, made it necessary to levy the assessment; I was a director as well as secretary all the time; the actual losses at time assessment was made, were between \$11,000 and \$12,000; the amount of insurance in force at that time was \$277,280.65 up to January
 40 1st, 1873; the losses up to time assessment was actually made were about \$12,000, money due and for which they had bor-

rowed money to pay; the assessment was made on the insurance that was actually in force on the 14th of January; I do not recollect that I told Mr. Stewart that the assessment would be \$2; he paid me \$1 for making out the application; he had been a member of the company before; the charge on new application is \$1 for first annual, and ten cents on each other annual.

Cross-examined—

I was one of the original corporators; almost all the original corporators are now members; Jacob Odenwelder, John Best, 10 Martin Young, Daniel Rohn and Wm. H. Armstrong are not now members; all the rest are members; I filled out the application at Mr. Stewart's residence in Greenwich township; I was one of the directors, and authorized to receive applications for insurance, as were all the directors; I told him that his insurance would expire soon, and wanted to know if he would stay with us; I do not think I asked him to renew; I was there only once; never went second time unless I was sent for; saw him sign the application; he paid me \$1; no, \$2; the money belonged to me and not to the company; as one of 20 the executive committee I approved of the policy, and signed the back; Seitz also signed it April 23d, 1873; I recognize both signatures; at the time the policy issued I think there were about 700 members; book says 797 members, including charter members, between January 1st and January 14th, 1873; can't tell the number of losses of company during the life of this policy; between April 11th, 1872, and April 11th, 1873, the company did not borrow money to pay losses that had accrued prior to April 11th, 1872; company made an assessment in July, 1872, to cover losses; it was \$2 on the \$100, 30 and covered losses prior to that time; probably some had accrued prior to April 11th, 1872; I cannot tell whether the assessment made in July covered all losses that had accrued up to that time; I cannot tell whether the assessment of January 14th, 1873, covered all losses that had accrued prior to July, 1872; it may have covered some little; may not have covered any.

The losses from April 11th, 1872, to April 11th, 1873, were over \$11,000; we may have borrowed \$4,000 in 1872; I do

not think it was to pay losses that had accrued before April 11th, 1872; there were two assessments made during the life of this policy; one of \$2 in July, and one of \$4 in January; I supposed the assessment in July covered some losses that had accrued previously to April 11th, 1872; the book shows the amount of losses, and when orders were drawn for payment; it will not show the actual date of loss; there was no assessment on Stewart's policy after that of January, 1873.

10 In chief—

The assessment of January, 1873, was to pay losses that had accrued previously to that time; it might have included losses before April 11th, 1872.

[The minute book of company offered in evidence.] (*Exhibits* 5, 6, 7—appellees.)

20 [Objected to, because it does not sufficiently prove the losses after April 11th, 1872, to January 14th, 1873, nor does it show the losses for which this assessment was laid, nor does it disclose that this assessment was properly laid; that it authorizes the secretary to levy the assessment of \$4 on \$100, and does not show that the assessment was laid to cover losses that had accrued during the life of the policy; that the book was not offered until the witness had testified to the matter in full, and been cross-examined thereon.]

[Book admitted—*Exhibits* 5, 6, 7.]

Cross-examined—

The book contains minutes of all the transactions of the company, and all the resolutions.

Appellees rest.

Appellants (defendants) move for non-suit:

30 1st. It does not appear by the evidence that the plaintiffs had any legal right to recover on the action.

2d. It does not appear that there was any legal tax laid, for the recovery of which this suit was brought.

3d. Because it appears this suit was instituted without the

authority of the company. It appears that they did not authorize it by the book and by the evidence of Dr. Kooker.

4th. Because the defendant was a member of the company. It appears that the defendant was a member, and that the suit was brought while he was a member.

5th. The assessment is illegal, and that the amount is more than they had a right to levy and collect, and that the defendant did not agree to pay any such assessment.

Motion denied.

[Samuel J. Stewart shown paper purporting to be constitution and by-laws of the company.] (See Appendix, *Exhibit A*, on part of the appellant.)

I received this from the company; am not certain whether I received it with the policy or with the application.

Cross-examined.

I am not positive whether I got this paper when I got a policy a year before or at the time this policy was issued.

[Paper admitted.]

Dr. Wm. S. Kooker—I do not know that the company has received a certificate of license from the Secretary of State of New Jersey; I had no license or certificate from the Secretary of State of New Jersey to take or effect insurance in New Jersey for the company.

Appellant rested.

And moved for a judgment of no cause of action upon the five reasons that a non-suit was moved as hereinbefore mentioned, and because the contract of insurance was taken and effected (as appellant claims by the evidence) in New Jersey, and contrary to its laws, by what appellees claim to be a foreign insurance company, which motion was refused and judgment given for appellees.

B. C. FROST,

Attorney of Plaintiff in Certiorari.

March 17th, 1875.

Warren County, *ss.*—The State of New Jersey to the Court of Common Pleas of the County of Warren, greeting:

We being willing for certain reasons to be certified of a certain plaint, and judgment thereon in our Court [L. s.] of Common Pleas of the County of Warren, before judges thereof, held against Samuel J. Stewart, appellant, and "Northampton Mutual Live Stock Insurance Company," appellees, in a certain action of debt tried before said court, rendered upon appeal from the judgment of one
 10 William Smith, a justice of the peace of said county.

We command you that the plaint and judgment aforesaid, as fully and entirely with all things touching and concerning the same, as it remains before you, by whatever names the said Samuel J. Stewart and the "Northampton Mutual Live Stock Insurance Company" may be called in the same, to our Judges of the Supreme Court of Judicature of the State of New Jersey, to be holden at Trenton, in and for the State of New Jersey, on the fourth Tuesday of February (1875) next, you certify and send, together with this writ, that therein may
 20 be done what of right and according to the constitution and laws of this state ought to be done.

Witness Mercer Beasley, Esquire, Chief Justice of the Supreme Court of New Jersey, at Trenton aforesaid, the fourth day of November, 1874.

BENJAMIN F. LEE, *Clerk.*

B. C. FROST, *Attorney.*

Indorsed—New Jersey Supreme Court, Warren County. *Certiorari.* Samuel J. Stewart *vs.* Northampton Mutual Live Stock Insurance Company. To Clerk of Common Pleas of
 30 Warren County. Returnable fourth Tuesday of February (February term), 1875. B. C. Frost, attorney. Allowed—M. Beasley, Chief Justice.

Reasons for Setting Aside Judgment.

[Filed March 19, 1875.]

To the Supreme Court:

The plaintiff asks to have the judgment of the Court of Common Pleas set aside for the following reasons:

1. Because the Northampton Mutual Live Stock Insurance Company, claiming to be a body corporate under the general laws of the State of Pennsylvania, had no right or capacity to sue in any court; were not a legal corporation under the laws, and had no legal existence. 10

2. Because the paper said to be the charter of the company was improperly admitted by the court on the trial of the appeal to prove them a body corporate upon the certificate of prothonotary of Northampton county, Pa., and the attestation of the president judge. As records and judicial proceedings of other states are proven under the act of congress of May 26th, 1790, when it was neither a judicial act or record of another state, and when the chartering of this company under the laws of Pennsylvania was neither a judicial proceeding, nor was the act of chartering a matter of record, that the incorporation or charter could not be proved by certificate of prothonotary and attestation of president judge (and there was no other proof.) Nor did the company show by any law of Pennsylvania that the charter produced certified as above should be taken in evidence in any court, or that the acts of incorporation should be matter of record in any office of record in Pennsylvania, and the court on the trial could not receive the charter as certified, unless they showed some law of Pennsylvania authorizing prothonotary's certificate to the charter, evidence of incorporation, and the charter could not be certified and proven under the act of congress of May 26th, 1790, as a record from another state. 20 30

3. Because the act of congress could not be proven by the prothonotary's certificate and the attestation of the president judge.

4. Because prothonotary had no right to certify to it to

make it evidence, nor did his certificate make it evidence with the attestation of the president judge.

5. Because of the insufficiency of the state of demand, in not alleging the amount of losses of the company, and its indebtedness and the amount of insurance, for the payment of which the assessment claims to have been laid upon the stockholders. Because the state of demand does not allege, nor was there any proof of the amount of insurance of the company, on which this assessment was laid. Because it is not
10 set out or alleged in the demand that the amount of losses or indebtedness, and amount of insurance were embraced in any resolution of the company ordering the assessment, nor does the demand set out the losses and amount of insurance during the life of this policy, on which this assessment claims to have been laid, nor does the demand state the amount of the insurances of the unexpired policies.

6. Because the court improperly admitted minute book of the company to prove losses, when it did not disclose those losses of the company, nor the amount of insurance that ac-
20 crued and existed during the life of this plaintiff's policy.

7. Because the court did not require the company to prove the amount of their losses and insurance during the life of the policy.

8. Because the state of demand does not set out and allege that the assessments for which company have sued are to pay losses happening during the life of plaintiff's policy.

9. Because there was no proof of any legal assessment laid, nor was there proof that the company had the power to lay any assessment upon the members or stockholders, or upon
30 plaintiff in *certiorari*.

10. Because insurance was taken and effected in New Jersey by William S. Kooker, secretary of the company, who had no license to take insurance in New Jersey, nor had the company a license.

11. Because the contract of insurance was entered into in New Jersey, and was effected by the laws of New Jersey, and was rendered void by the laws of New Jersey.

12. Because the company, not being incorporated under the laws of New Jersey, had no right to effect, take, cause or
40 procure the insurance which was taken in New Jersey, with-

out a certificate of authority from the secretary of state of New Jersey, which they did not have or take out, and by law the company had no right to recover in the cause, because they did not take out, produce and prove on the trial of this appeal, a certificate of authority to take and effect such insurance.

13. Because no allegation in the demand nor proof on the trial of the appeal that the sum demanded was assessed and demanded according to the terms of the contract.

14. Because the sum or amount of insurance is not in the 10 state of demand, nor was there any proof on the trial on which the assessment was laid. Because the state of demand did not allege that the amount assessed was less, greater, or precisely equal to the amount of losses, nor did the resolution of the company, directing the assessment to be laid at \$4 on the \$100 contain the losses, expenses or amount of insurance on which the \$4 on the \$100 was laid, nor whether the sum assessed was equal to the losses, or greater or less, or the precise amount, and because there was no proof that the \$4 on the \$100 was less, greater, or precisely the amount of 20 losses.

15. Because no allegation in the demand, nor proof on the trial, of the indebtedness of the company when the assessment was laid, nor does the resolution contain the company's indebtedness.

16. Because no allegation in demand or proof on the trial that the indebtedness of the company or the losses of the company accrued while said Samuel J. Stewart's policy was alive, and while he was a member of the company.

17. Because the company had no right to make the assess- 30 ment.

18. Because the said Samuel J. Stewart was not liable to pay the assessment, because it was no legal assessment.

19. Because the contract of insurance was void by the laws of New Jersey.

20. Because the insurance was effected contrary to law and because the insurance was void.

21. Because the state of demand does not allege when the losses were sustained, nor was there any proof when the losses were sustained.

22. Because the state of demand does not show that all the losses accrued during the life of this policy, nor did the proof show it.

23. Because the resolution does not show that the assessment was laid to cover all losses of the company accruing during the life of this policy, nor to pay indebtedness of the company. Because the resolution ordering the assessment to be laid by the secretary does not state for what purpose the assessment was laid, and on what amount of insurance it was
10 laid, and what sum was required to be assessed and raised.

24. Because the state of demand does not show that the assessment was laid to pay losses and expenses of the company accruing during the life of this policy.

25. Because no allegation in the state of demand nor proof on the trial, what was the amount of insurance or the amount of the insurances of all unexpired policies upon which the assessment was laid.

26. That the judgment of the Court of Common Pleas is for more than the sum demanded in the summons or state
20 of demand. The sum demanded in the summons issued by William Smith, justice of the peace, was \$38.50. State of demand claimed that amount. The judgment of the Court of Common Pleas, rendered July 7th, 1874, was in favor of the company and against plaintiff in *certiorari* for the sum of \$42.21, with costs of suit.

27. Because the proceedings and judgment of said Court of Common Pleas are in divers other particulars erroneous and illegal, and ought to be set aside.

B. C. FROST,

30

Attorney of Plaintiff in Certiorari.

March 17th, 1875.

 APPENDIX.

 EXHIBIT 1 FOR APPELLEES.

*To the Honorable, the Judges of the Court of Common Pleas
of Northampton Co.:*

The petition of the undersigned respectfully represents—

That they are citizens of the Commonwealth of Pennsylvania, associated together for the purpose of insurance of live stock, under the title of "Northampton Mutual Live Stock Insurance Company," and are desirous to acquire and enjoy the powers and immunities of a corporation or body politic in law, to be situated and have its principal business transacted in the county of Northampton. That they have prepared an instrument in writing, therein specifying the objects, articles, conditions and name, style and title, under which they have associated, and herewith exhibit and present the same to this court. They therefore pray the court to peruse and examine said instrument, and if the objects, articles and conditions therein set forth and contained shall appear lawful and not injurious to the community, that the court will make such order with regard to the same as is directed by the act of assembly in such case made and provided, and if no sufficient reason be shown to the contrary, that the court will decree and declare that the petitioners shall, according to the articles and conditions of said instrument set forth and contained, become and be a corporation or body politic, and have continuance by the name, style and title in said instrument provided and declared.

And they will ever pray, &c.

Charles Seitz, Easton, Pa.

W. H. Armstrong, Easton, Pa.

Jacob B. Odenwelder, Palmer Township.

John A. Seitz, Easton, Pa.
 John Best, Williams Township.
 Martin F. Lawall, Bethlehem Township.
 Martin Young, Forks Township.
 Daniel Rohn, Lower Nazareth Township.
 Samuel Hill, Lower Mt. Bethel “
 S. E. McFall, Upper “ “
 Joseph Wooding, Williams “
 Dr. W. S. Kooker, Easton.

- 10 We, the undersigned, hereby agree to join in an application for a charter for a Mutual Live Stock Insurance Company, to be located in Northampton county :

Chas. Seitz, Easton, Pa.
 W. H. Armstrong, Easton, Pa.
 Jacob B. Odenwelder, Palmer Township.
 John A. Seitz, Easton.
 John Best, Williams Township.
 Martin L. Lawall, Bethlehem Township.
 Martin Young, Forks Township.
 20 Daniel Rohn, Lower Nazareth Township.
 Samuel Hill, Lower Mt. Bethel “
 S. E. McFall, Upper “ “
 Joseph Woodring, Williams “
 W. S. Kooker, Easton.

Northampton County, *ss.*—Dr. William Kooker, one of the petitioners within named, being duly sworn, deposes and says, that the facts set forth in the foregoing petition are correct and true to the best of his knowledge and belief.

DR. W. S. KOOKER.

- 30 Sworn and subscribed this 25th day of January, A. D. 1869, before me, a justice of the peace.

AARON SERFASS, *J. P.*

Petition for charter of incorporation of “Northampton Mutual Live Stock Company,” in the county of Northampton.

And now, to wit, this 26th day of January, A. D. 1869, on presentation of petition the court order and direct publication

of the within application for three weeks in two newspapers in the county of Northampton.

A. B. LONGAKER, *President Judge.*

HENRY W. SCOTT, *Attorney.*

ARTICLES OF ASSOCIATION OF THE NORTHAMPTON MUTUAL LIVE STOCK ASSOCIATION.

The subscribers, citizens of the Commonwealth of Pennsylvania, have agreed to associate themselves for the purpose set forth in the following articles, and are desirous of acquiring and enjoying the powers and immunities of a corporation or body politic in law, for the furtherance of such purposes.

We do, therefore, hereby associate ourselves for the objects and under the articles, conditions and name specified in the following articles :

Article First. This corporation shall be known by the name of the "Northampton Mutual Live Stock Insurance Company," and shall have full power and authority to make, have and use a common seal, with such device and inscription as they may deem proper, and the same to break, alter and renew at their pleasure ; and by the name, style and title aforesaid, shall be able and capable in law to sue and be sued, plead and be impleaded, in any court or courts, before any judge or judges, justice or justices, in any manner of suits, complaints, pleas, causes, matters or demands whatsoever, and all and every matter or thing to do in as full and effectual a manner as any other person or persons, bodies politic and corporate, within this commonwealth may or can do ; and to make rules, by-laws and ordinances, and to do everything needful for the good government and support of the affairs of the said corporation ; provided always, that the said by-laws, rules and ordinances, or any of them, be not repugnant to the constitution and laws of the United States, to the constitution and laws of this commonwealth, or to this charter.

And the managers and their successors shall be able and capable in law to take and receive, hold and employ all and all manner of lands, tenements, rents, annuities, franchises

and hereditaments, and any sum and sums of money, and any manner and portion of goods and chattels, given or bequeathed to them, to be employed and disposed of according to the objects, articles and conditions hereof, or according to articles and by-laws of this corporation, or according to the will and intention of the donors; provided always, that the clear yearly income or value of the real estate held by this corporation shall not at any time exceed the sum of twenty thousand dollars, and the yearly income of the corporation, 10 other than from real estate, shall in no case exceed the limit fixed by the court, agreeably to the act of assembly in such case made and provided.

Article Second. The object of this association is to insure live stock, and it shall have power to purchase land, erect or build or rent buildings, and perform such other acts as may be necessary to this object.

Article Third. The organization of this association shall be vested in a president, vice-president, secretary and treasurer, and also a board of five directors, to be elected by the 20 members of the association on the first Saturday of October in each year, to serve one year and until others are chosen.

And every person who shall have insured his live stock in this association, and shall have paid his subscription one year before the election, and is not in arrears at that time, shall be entitled to vote at said election.

No loss or impediment to corporate powers shall take place by reason of any omission to elect at the time specified, but the same managers shall continue to enjoy and exercise all the powers vested in them until an election shall duly be held on 30 a succeeding anniversary of the said day.

Article Fourth. The board of directors shall make a report once in every year, showing the cash account, statement of the funds, progress, situation, and prospects of the association, and submit the same to the members at the annual election, at which time and for one week previous, persons entitled to vote, as well as all insurers, shall have access to all books and papers of the board of directors.

Charles Seitz, Easton, Pa.

W. H. Armstrong, Easton, Pa.

Jacob B. Odenwelder, Palmer.

John A. Seitz, Easton.

John Best, Williams.

Martin F. Lawall, Bethlehem.

Martin Young, Forks.

Daniel Rohn, Lower Nazareth.

Samuel Hill, Lower Mt. Bethel.

S. E. McFall, Upper Mt. Bethel.

Joseph Woodring, Williams.

Dr. Wm. S. Kooker, Easton.

10

Articles of association of "Northampton Mutual Live Stock Insurance Company."

And now, to wit, this 26th day of January, A. D. 1869, the within articles of association approved by the court. It appears that there is nothing therein contained contrary to the constitution of this state and of the United States.

A. B. LONGAKER, *President Judge.*

HENRY W. SCOTT, *Attorney.*

IN RE APPLICATION FOR CHARTER OF INCORPORATION OF "NORTH-AMPTON MUTUAL LIVE STOCK INSURANCE COMPANY." 20

In the Court of Common Pleas of Northampton County.

NOTICE.—In re application of the Northampton Mutual Live Stock Company, for charter of incorporation. Notice is hereby given, in pursuance of an order of court, made January 26th, 1869, that an application has been made to the Court of Common Pleas of Northampton county, for a charter of incorporation of the "Northampton Mutual Live Stock Company," and if no sufficient reason be shown to the contrary on or before the first day of next term of said court, the said court will, at the said next term, grant the charter as 30 prayed for.

URIAH SANDT, *Prothonotary.*

mar11-w3t

Be it known, that I, Uriah Sandt, prothonotary of the Court of Common Pleas of the county of Northampton, being duly

sworn according to law, depose and say, that I did cause the advertisement of the above application to be inserted in two newspapers published within said county for three weeks, agreeably to the decree of the said court in the premises.

URIAH SANDT, *Prothonotary*.

Sworn and subscribed before me this 28th day of April, A. D. 1869.

JOSEPH LAUBACH, *A. Judge*.

IN THE COURT OF COMMON PLEAS OF THE COUNTY OF NORTHAMPTON.

- 10 And now, to wit: this 26th day of April, A. D. 1869, the articles of incorporation of the "Northampton Mutual Live Stock Insurance Company," having been heretofore, viz., 26th day of January, A. D. 1869, filed in the office of the prothonotary of said court, and due notice having been inserted in two newspapers printed in said county, therefore, on motion of Henry W. Scott, it is declared and decreed that the persons so associated under said articles, shall, according to the articles and conditions in said instrument set forth and contained, become and be a corporation or body politic in law.
- 20 And it is further ordered and directed, that said charter of incorporation shall be recorded in the office for recording of deeds in and for said county, and that it shall be registered in the office of the auditor general of the State of Pennsylvania, in due conformity to law.

And on said instrument being so recorded and registered, the persons so associated or meaning to associate shall, according to the objects, articles and conditions in said instrument set forth and contained, become and be a corporation or body politic in law and in fact, and have continuance by the name, style and title in said instrument provided and declared.

A. B. LONGAKER, *President Judge*.

Northampton county, ss.—Recorded in the office for recording of deeds, &c., at Easton, in and for said county, in book

of miscellaneous, No. 15, page 46, &c. Entered March 4th,
A. D. 1873.

Witness my hand and seal of said office.

[L. s.]

JNO. H. ODENWELDER, *Recorder*

State of Pennsylvania, Northampton county, ss.—I, J. J. Cope, prothonotary of the Court of Common Pleas for the county of Northampton, in said state, do hereby certify that the above and foregoing sixteen pages contain all the papers and full records of the proceedings had for the charter of incorporation of the “Northampton Mutual Live Stock Insurance Company,” in the Court of Common Pleas of Northampton county, in said state, so full and entire as the same remains of record in my office. 10

In testimony whereof I have hereunto set my hand and affixed the seal of the said court, at Easton, this 24th day of March, A. D. 1873.

[L. s.]

JAMES J. COPE, *Prothonotary*.

State of Pennsylvania, county of Northampton, ss.—I, A. B. Longaker, president judge of the Court of Common Pleas for the county of Northampton, in said state, do hereby certify 20 that the above named J. J. Cope, by whom the foregoing attestation was made, was at the time of so making the same, and is now the clerk of the said court, duly commissioned and qualified, to all whose acts as such full faith and credit are and ought to be given, as well in courts of judicature as elsewhere; that the seal thereto annexed is the seal of the said court, and that the said attestation so made by him is in due form.

In testimony whereof I have hereunto set my hand this 24th day of March, A. D. 1873.

A. B. LONGAKER, *President Judge*. 10

EXHIBIT 2 FOR APPELLEES.

Application of Samuel J. Stewart, of the township of Greenwich, county of Warren, State of New Jersey, for insurance against loss by death by the Northampton Mutual Live Stock Insurance Company, of Northampton county, Pa., for the sum of \$967.50, for the term of one year from the 11th day of April, 1872, to wit:

ANIMALS.

No.	Color.	Sex.	Age.	Hight	Make.	SPECIAL MARKS.	Val.	Sum Ins. Death.	Prem.
1	Bay	h	5	15 3	heavy	Frank, one foot & star white	\$225	\$168 75	\$1 00
2	Bay	h	11	15 3	heavy	Tom, one eye.....	150	112 50	
3	Bay	m	11	15 2	heavy	Fan, hind feet and star white	150	112 50	
4	Sorrel	m	13	15 2	heavy	Nance, do do do do ..	125	93 75	
5	Bay	m	2		stylish	Nell.....	150	112 50	
6	Sorrel	h	Colt			Ned.....	100	75 00	
7	White	Cow	5			Whitey.....	60	45 00	
8	White	Cow	7			Hughs.....	55	41 25	
9	Red	Cow	4			Boss.....	75	56 25	
10	Red	Cow	7			Low.....	55	41 25	
11	Red	Cow	5			White Nose.....	40	30 00	
12	Yellow	Cow	11				40	30 00	
13	Red	heif	2				25	19 75	
14	Spotted	heif	1				65	48 75	
15	Speckled	Cow	6			Quick.....	40	30 00	
16	Red	Cow	11			Young.....			
Total.....							\$1290	\$967 50	\$1 00

- 10 1. Is this a true and correct valuation of the above described animals? Yes.
2. Are you the legal owner of the above described animals? Yes.
3. For what purpose are they used? Farm.
4. Is there any other insurance on the same property? If so, how much, and in what company? Fire.
5. Are the above animals sound and free from disease at this time? Yes.
6. Will you guarantee that every precaution shall be taken to preserve the life and health of the above animals while
20 under this insurance? Yes.
7. Are the above described animals subject to any disease? If so, what is it? No.
8. Did you give the correct age of the animals above described? *Yes.

9. Do you agree to pay all taxes that may be levied for the purpose of paying losses? Yes.

And I, the said applicant, do covenant and agree with the said company that the above is a true and correct statement, and that it shall be considered a present and continued warranty upon which the contract of the assurance shall depend.

SAMUEL J. STEWART, *Applicant.*

[Endorsed.]

NORTHAMPTON MUTUAL LIVE STOCK INSURANCE COMPANY, OF 10
NORTHAMPTON COUNTY, PA.

No. 1789.

APPLICATION.

App. name, Samuel J. Stewart.

Post office, Phillipsburg.

County of Warren.

No. of animals, 14.

Amount insured—death, \$960

Policy fee..... 1

Total..... \$1

Expires, April 11th, 1873.

20

Approved April 23d, 1872.

W. S. KOOKER, *Agent.*

By JOHN A. SEITZ,

W. S. KOOKER,

CHAS. SEITZ,

Ex. Committee.

EXHIBIT 3 FOR APPELLEES.

No. 1789.

\$967.50.

NORTHAMPTON MUTUAL LIVE STOCK INSURANCE COMPANY,
NORTHAMPTON COUNTY, PENNSYLVANIA.

By this policy of insurance, in consideration of one ¹⁰⁰ dollars, and a compliance on the part of the assured with the annexed conditions, do insure Samuel J. Stewart, of Greenwich Township, county of Warren, State of New Jersey, against loss by death, to the amount of nine hundred sixty-
10 seven ⁵⁰/₁₀₀ dollars, on the following animals, viz., Nos. 9 and 13 out and Nos. 15 and 16 added, September 30.

SPECIAL MARKS.

No.		Sum Ins'd. Death.
1	Bay Horse, Frank, 5 years old,	\$168 75
2	" " Tom, 11 "	112 50
3	" Mare, Fan, 11 "	112 50
4	Sorrel " Nance, 13 "	93 75
5	Bay " Nell, 2 "	112 50
6	Sorrel h. Colt, Ned,	75 00
2) 7	White Cow, Whitey, 5 "	45 00
8	" " Hughes, 7 "	41 25
9	Red " Boss, 4 "	56 25
10	" " Low, 7 "	41 25
11	" " White Nose, 5 years old,	30 00
12	Yellow " 11 "	30 00
13	Red Heifer, 2 "	30 00
14	Spotted " 1 "	18 75
15	Speckled Cow, Quick, 6 "	48 75
16	Red " Young, 11 "	30 00

30 For a more particular description of said animals (said description to form a part of this policy, and the assured to be bound by the same), reference is had to application No. 1789,

on file in the office of this company; the said company hereby agreeing to make good unto the said assured, his heirs, executors or administrators, all such loss, not exceeding three-fourths of the value of such animal or animals, as may die for the said assured.

Provided, always, That said company shall not be liable for loss by reason of invasion, insurrection, military or usurped power, or design in the assured, nor for loss by fire where said loss is paid, or agreed to be paid, by fire insurance companies.

10

CONDITIONS ABOVE REFERRED TO AND ON WHICH THIS POLICY IS GRANTED.

SEC. 1. In case of loss by death, from accident or disease, the assured shall, within ten days from such loss, give notice to the company of the same, with number of policy and the number of animals in policy; also, giving a particular account of such loss, sworn to and signed by assured, setting forth a description of the animal or animals, the date and cause of the death, and how long each of them was sick, and all particulars in regard to same; said certificate shall be sworn to before a person duly qualified to administer an oath, and shall bear the certificate of two neighbors not related to assured or interested as creditors in the loss, stating that they have examined into the circumstances of the assured, and verily believe he has, without fraud or evil practice, sustained loss on the property insured to the amount they shall so certify. And in case this company desire further proof, the secretary of the company, or other designated person, shall have the right to examine assured before a person duly qualified to administer an oath, concerning the matters and things connected with said loss.

20

30

SEC. 2. All claims for loss by death shall be due and payable within ninety days from the receipt of proofs in relation thereto, so executed as aforesaid: *provided, always,* in loss from any cause the company shall be satisfied of the good faith of the assured in the premises; nor shall any suit or action be maintained against this company for the recovery of any claim arising under this policy, unless such suit or action be commenced within six months from the date of loss; also,

that this policy is made and accepted upon the above express condition.

SEC. 3. The company will not be responsible for the death or damage of a stallion in any way resulting from castration.

SEC. 4. This company reserves the right of cancellation when, for any cause, it shall elect so to do, by paying the assured the unearned premium for the unexpired term of this policy; nor is it responsible for insurance against death of animals diseased or damaged at the time of insuring, if not
10 made known in application.

SEC. 5. The company will not be responsible for losses arising from uncalled for and needless exposure and abuse.

SEC. 6. In case of injury or sickness to any animal insured, the assured shall, at the time of the accident or sickness, employ a skillful veterinary surgeon, if one can be procured, and use all other reasonable means to restore and relieve said animal.

SEC. 7. This policy to be in effect as long as the requirements of said contract shall be strictly adhered to, and no
20 longer.

The term of this policy to be for one year, commencing at noon on the 11th day of April, 1872, and terminating at noon on the 11th day of April, 1873.

In witness whereof, the Northampton Mutual Live Stock Insurance Company has caused these presents to be sealed and signed by its president. Attested by its secretary this 6th day of May, 1872.

[L. s.]

JOHN A. SEITZ, *President.*
W. S. KOCKER, *Secretary.*

[Endorsed.]

NORTHAMPTON MUTUAL LIVE STOCK INSURANCE COMPANY, OF
NORTHAMPTON COUNTY, PA.

POLICY.

No. 1789.

Name, Samuel J. Stewart.

Post Office, Phillipsburg.

County of Warren.

Amount Insured—\$967.50.

Amount paid, \$1.

10

Issued, May 6th, 1872.

Expires, April 11th, 1873.

[Rev. stamp.]

W. S. KOOKER, *Inspector.*

EXHIBIT 4 FOR APPELLEES.


OFFICE NORTHAMPTON MUTUAL LIVE STOCK }
INSURANCE COMPANY, }
EASTON, PA., January 14, 1873. }

WHEREAS, This company has sustained heavy losses during the past year, owing to the late epidemic, &c.; therefore the directors, by resolution passed this day, have fixed the rate of 20 tax for paying the same at \$4.00 on the hundred dollars. Your tax, amounting to \$38.40, must be paid to the treasurer, at his office, second floor, corner 4th and Northampton streets

(opposite Whitesell's Hotel), on or before the fourteenth day of February next, agreeably to the provisions of the constitution and by-laws of this company.

Very respectfully, yours, &c.,

WILLIAM C. EDELMAN, *Treasurer.*

 Please bring this notice with you.

To Samuel J. Stewart, *Esq.*

ARTICLE XIV. OF THE BY-LAWS.

Whenever a tax shall be levied on the members, and any 10 person shall neglect or refuse to pay his tax for thirty days from the day public notice shall be given, he shall forfeit his insurance, and he shall, nevertheless, be liable for the aforesaid payments, and the company may sue for and recover the same, with interest and costs of suit.

Received

A. D. 1873, the above tax.

\$

Treasurer.

EXHIBIT 5 FOR APPELLEES.

EASTON, PA., July 2, 1872.

Present—Samuel Hile, in the Chair; C. Seitz, William B. 20 Shimer, J. B. Thatcher, Joseph Woodring, M. F. Lawall and William S. Kooker.

Minutes read and adopted.

Treasurer's report examined and found correct.

The following proofs of losses were read, and, on motion, it was resolved to issue orders for their respective amounts, viz.:

George W. Fulper, loss of mare.....	\$120 00
Cincinnati Baumgard, loss of red cow.....	37 50

George V. Metz, loss of black mare.....	\$225	00
John Fangboner, loss of bay mare.....	93	75
Henry A. Sage, loss of bay mare.....	225	00
George Sowders, loss of bay horse.....	150	00
Asa K. Rush, loss of bay colt.....	56	25
William Schuler, loss of roan cow.....	37	50
Christopher Haskey, loss of black horse.....	150	00
Robert Craig, loss of bay mare.....	37	50
Cornelius Newman, loss of red heifer.....	18	75
George Sowders, loss of white heifer.....	12	00 10
George T. West, loss of spotted cow.....	37	50
Jacob F. Shurts, loss of red cow.....	37	50
John Hamlin, loss of black mare.....	75	00
Theodore P. Worman, loss of red heifer.....	22	50
Henry Whitesell, loss of black roan bull.....	22	50
Adam Teel, loss of bay horse.....	168	75
Lawrence Metz, loss of red heifer.....	18	75
Barney Elzea, loss of red cow.....	30	00
Henry Gardner, Jr., loss of bay horse.....	150	00
C. V. Weller, loss of black horse.....	60	00 20
Charles Paulus, loss of brown mare.....	37	30

The following bills being found correct, orders were drawn for their respective amounts :

Easton post office, stamped envelopes.....	\$ 23	60
W. S. Kooker, secretary's fees.....	160	50
Mrs. Anna M. Noll, interest on note for six months..	120	00
James K. Dawes, printing.....	65	00
M. J. Reigel, revenue stamps, stationery, &c.....	81	97

The tax question being next in order, after some discussion it was

30

Resolved, That a tax of two dollars on the one hundred dollars insured be levied, payable on or before the first day of September next, at the treasurer's office.

On motion, the executive committee were instructed to have a statement of losses and expenses of the company printed, to send with the tax notice of each member.

On motion,

Resolved, That the executive committee renew the note in

bank until there is sufficient tax collected to *sufficient tax collected to pay same.*

Adjournment being next in order, it was

Resolved, To adjourn to meet at the secretary's office on the first Tuesday of October, 1872.

W. S. KOOKER, *Secretary.*

EXHIBIT 6 FOR APPELLEES.

EASTON, October 1st, 1872.

Present—Samuel Hile, in the chair ; Lawall, Charles Seitz,
10 Thatcher, Woodring, Shimer and Kooker.

Minutes of previous meeting read and approved.

The executive committee reported having issued an order in favor of George W. Odenwelder for amount of note, with interest in full.

On motion, the action of the executive committee be approved in issuing the above order.

The following proofs of losses were approved, viz. :

	George W. Correll, loss of black horse.....	\$ 45 00
	Seitz Brothers, loss of black horse.....	105 00
20	Theodore F. Johnson, loss of bay horse.....	135 00
	Joseph Walter, loss of red cow.....	37 50
	Thomas Zearfoss, loss of brindle cow.....	45 00
	William C. Rush, loss of gray mare.....	60 00
	Robert Craig, loss of bay colt.....	75 00
	J. K. Barber, loss of gray mare.....	150 00
	C. Baumgard, loss of black mare.....	75 00
	Adam Teel, loss of dun colt.....	48 75
	Joseph Warne, loss of red cow.....	60 00
	M. F. Lawall, loss of bay horse.....	150 00
30	George Kane, loss of red cow.....	45 00

J. B. Thatcher, loss of roan mare.....	\$ 93 75	
Peter J. Engler, loss of red cow.....	30 00	
John Baker, loss of gray mare.....	60 00	
Jacob Silvert, loss of brindle cow.....	30 00	
Newman & Brother, loss of bay colt.....	45 00	
Dr. M. L. Yost, loss of brown mare.....	90 00	
John Nolf, Jr., loss of bay mare.....	102 00	
F. Bowman, loss of roan horse.....	150 00	
William Kline, loss of brown mare.....	105 00	
Richard Hison.....	30 00	10
Plato Stout, loss of red cow.....	37 50	
Plato Stout, loss of spotted cow.....	30 00	
Eilenberger & Smith, loss of bay horse.....	75 00	
H. H. Burwell, loss of bay horse.....	225 00	
Seitz Brothers, loss of bay horse.....	105 00	
P. M. Correll, loss of gray horse.....	105 00	
B. F. Lerch, loss of red cow.....	22 50	
Tilman Seip, loss of spotted cow.....	52 50	
Mrs. Catharine Fair, loss of red cow.....	56 25	

The proof of loss of Francis Sandt having an omission in 20
 it, it was resolved the executive committee ascertain the facts,
 and, if correct, issue an order for same.

Stephen Brotzman appeared before the board, claiming pay
 to the amount of fifty-two dollars and fifty cents (\$52.50) for
 the loss of a cow upon which the insurance had expired. The
 fact that he had not the opportunity to renew being satisfac-
 torily accounted for to the board, they ordered an order to be
 drawn in his favor to the full amount of insurance.

The following bills were presented for payment :

W. S. Kooker, secretary's fees, revenue stamps and postage stamps.....	\$111 76	30
D. H. Neiman, printing.....	15 00	
Cole, Morwitz & Co.....	3 50	
Edward C. Seitz, interest on note for one year.....	41 20	

On motion, it was

Resolved, That orders be drawn for the respective amounts.

On motion, it was

Resolved, That the executive committee procure sufficient

money (to pay all orders) from the First National bank on ninety days.

On motion, adjourned to meet at secretary's office on Tuesday, January 14th, at 9 o'clock A. M.

W. S. KOOKER, *Secretary.*

EXHIBIT 7 FOR APPELLEES.

EASTON, January 14th, 1873.

Present—Hile, J. B. Thatcher, William B. Shimer, Charles Seitz, M. F. Lawall, Kooker, and John A. Seitz, in the chair.

10 The minutes of last meeting read and adopted.

The following proofs of losses were read, and orders drawn for respective amounts, viz.:

	Alfred Petty, red cow.....	\$ 56 25
	Irwin J. Dech, yellow cow.....	37 50
	David Bauer, dun horse.....	45 00
	M. T. Warne, bay horse.....	375 00
	Rosetta Stonebach, bay horse.....	45 00
	Burrows Reilley, bay horse.....	45 00
	Reese & Meyers, sorrel horse.....	112 50
20	Herman J. Edelman, gray horse.....	60 00
	James Vangordon, bay horse.....	150 00
	Jeremiah Hawley, spotted cow.....	45 00
	Sebastian Merwerth, spotted cow.....	56 55
	Levi Freeman, black cow.....	26 25
	Smith & Brother, brown mare.....	67 50
	William Young, black horse.....	75 00
	Jacob Heck, bay horse.....	150 00
	L. V. Williams, red cow.....	37 50
	William H. Gwinner, black horse.....	90 00
30	John J. Rush, spotted steer.....	26 25
	Seitz Brothers, brown mare.....	112 50

Charles Schwartz, bay horse.....	\$150 00
Benjamin F. Lerch, red cow.....	45 00
Henry Hoover, horse.....	168 75
John Wolff, bay mare.....	112 50
Thomas S. Reigel, spotted cow.....	30 00
George Sowders, bay mare.....	112 50
Mrs. Mary Smith, red cow.....	41 25
Winda Steel, red cow.....	33 75
Amandus Wotring, bay horse.....	131 25
William Fitzer, roan heifer.....	33 75 10
Dr. C. C. Field, black horse.....	262 50
Amandus Worting, bay horse.....	150 00
Joseph W. Reihl, bay mare.....	168 75
J. M. Andrews, red cow.....	52 50
Andrew Aten, dark brown mare.....	60 00
Abrm. McMurtrie, brown mare.....	45 00
Samuel Kocker, black mare.....	112 50
Ed. J. Keifer, black mare.....	45 00
Samuel J. Stewart, yellow cow.....	30 00
Jacob Fitzer, red cow.....	30 00 20
Joseph Walter, bay horse.....	150 00
John Hetzel, black mare.....	105 00
Abrm. McMurtrie, black horse.....	150 00
Wm. B. Titman.....	262 50

The proof of loss of Daniel Miller not satisfying the board, J. B. Thatcher was appointed a committee to take evidence and report to the executive committee, who, if satisfied, will issue an order.

The proof of loss of Martin L. Yost being objected to by D. and A. Luckenbach, by resolution Levin J. Krause was appointed to investigate said loss and report as above.

The proof of loss of Herman Grube not being approved, J. J. Ealer was appointed a committee to take evidence and report as above.

The following bills were presented, to wit:

Free Press, printing.....	\$ 28 75
Bal. of costs of W. H. Hildebrand.....	4 70
W. S. Kooker, secretary's fees and postage.....	41 05
S. J. Deshler, salary as treasurer and check stamps..	102 98

Ealer, Merrill and Edelman, auditors. \$30 00

Being examined and found correct, it was resolved to draw orders for their respective amounts.

After some discussion, it was

Resolved, That Art. XIV. be amended so as to read thirty days, instead of sixty days.

The directors, after adding up the indebtedness of the company, passed the following resolution :

10 *Resolved*, That the secretary levy a tax of four dollars (\$4.00) on the hundred dollars, payable on or before the fourteenth day of February next (on all unexpired policies,) at the office of the treasurer.

On motion, adjourned *sine die*.

W. S. KOOKER, *Secretary*.

EXHIBIT A FOR APPELLANTS.

THE NORTHAMPTON MUTUAL LIVE STOCK INSURANCE COMPANY.

President,

John A. Seitz, Easton.

Vice President,

20 Samuel Hile, Lower Mt. Bethel.

Secretary,

W. S. Kooker, Easton.

Treasurer,

Charles Seitz, Easton.

Executive Committee,

John A. Seitz,

W. S. Kooker,

Charles Seitz.

Directors,

30 A. S. Hull, Martin's Creek,
Martin F. Lawall, Bethlehem township,

Joseph Woodring, Williams township,
 John A. Seitz, Easton,
 Samuel Hile, Lower Mt. Bethel,
 Jesse B. Thatcher, Stewartsville, N. J.,
 W. S. Kooker, Easton,
 Wm. B. Shimer, Phillipsburg, N. J.,
 Charles Seitz, Easton.

A HISTORY AND STATEMENT OF THE NORTHAMPTON MUTUAL LIVE
 STOCK INSURANCE COMPANY.

The petition for a charter was presented to the court of 10 Northampton county at the April Sessions, 1869, which was granted.

The petitioners held a meeting immediately after receiving the charter, and adopted a constitution and by-laws, and completed their organization by the election of the following officers:

President—John A. Seitz, Easton.

Vice President—Samuel Hile, L. Mt. Bethel.

Secretary and Inspector—W. S. Kooker, Easton.

Treasurer—Charles Seitz, Easton.

20

Directors—John A. Seitz, Easton; Samuel Hile, Lower Mt. Bethel; Joseph Woodring, Williams township; John Best, Glendon; Daniel Rohn, Lower Nazareth; W. S. Kooker, Easton; Martin Young, Forks township; Charles Seitz, Easton, and Martin F. Lawall, Bethlehem township.

The company began with a membership of thirty, and insured horses and cattle on the mutual plan. At the annual meeting of members, held January 11th, at Burnett's hotel, Easton, it was unanimously resolved that the business of the company be conducted on a purely mutual principle, and any 30 person signing an application, and paying the policy fee of \$1.00, should be a member; provided such person comply with the constitution and by-laws of the company. Under the mutual plan, the membership of the company increased rapidly, as may be seen by the auditor's report, hereafter given.

The first tax levied under the mutual plan was on the first day of July, 1870, when ninety (90) cents was assessed on each hundred dollars insured on farm and family stock, and one dollar and twenty cents (\$1.20) on each hundred dollars insured on other stock.

The losses of the company, since its organization, have shown conclusively that more deaths and losses occur among farm and family stock than among road and team stock.

Therefore, at the last meeting of the company, it was unanimously resolved to tax all stock alike.

The following are the constitution and by-laws of the company.

CONSTITUTION.

SEC. 1. This association shall be known by the name, style and title of "The Northampton Mutual Live Stock Insurance Company," and by that name shall have perpetual succession; to have and enjoy all the rights, powers and privileges and be subject to the limitations and restrictions provided in the charter of incorporation. The business to be conducted on the mutual principle, with power to insure the lives of domestic animals from disease and accident. The company may charge such premiums as to insure a sufficient fund at command for the payment of expenses and losses; but no dividends or surplus shall be declared or divided. The company shall have the privilege of fixing the number of directors, and the time and manner of holding the election and publishing its accounts.

SEC. 2. Said company shall be able to sue and be sued, implead and be impleaded in all courts of record and elsewhere, and to make and to have a common seal, and the same to break, alter and renew at pleasure; and also to ordain, establish and put in execution such by-laws, ordinances and regulations as shall be necessary and convenient for the government of said corporation, not being contrary to the constitution or laws of the United States, or of this commonwealth, and generally to do all and singular the matters which to them it shall lawfully appertain to do for the well-being of the said corporation, and the management of the affairs thereof.

SEC. 3. The affairs of said company shall be managed by a body of nine directors, three of whom shall be elected annually, to serve for a term of three years. The directors shall appoint a president, and vice president, secretary and treasurer of the company, and such other officers and agents as they may deem necessary for conducting the business of the corporation, who shall perform the duties of their respective office until they shall be re-elected, removed from office, or their successors shall be chosen; and in case of the death or resignation of a director, the vacancy occasioned thereby shall 10
be filled by the remaining directors.

SEC. 4. It shall and may be lawful for said company to employ and invest their capital stock, and other moneys of said company in bonds and mortgages on real estate, stock or loans of the United States, and state of Pennsylvania, and in stock or loans of any borough, city, or institution incorporated by the laws of this state and in other securities, and to sell and transfer the same, and to re-invest the proceeds of such sale or transfers in other such loans, stocks, or securities, or in real estate; provided such real estate does not exceed the value of twenty 20
thousand dollars.

SEC. 5. In execution of the several powers conferred on said company, it is hereby empowered to make, executed and perfect such contracts, bargains, agreements, policies and other instruments as shall or may be necessary, and as the nature of the case may require; and every such contract, bargain, policy and other agreement shall be in writing or print under the corporate seal, and signed by the president, or in his absence or inability to serve, by the vice president or other officer in that event designated by the by-laws, and shall be 30
duly attested by the secretary, or other proper officer of said company, who may be in like manner designated.

SEC. 6. All persons insuring with, and continuing to be insured in said company shall thereby become members during the period they shall remain so insured, and no longer, and shall pay such rates as shall be determined by the board of directors, and be liable to all losses and expenses of said company, to the amount of the premiums paid, by said members respectively.

SEC. 7. If any director or officer of said company shall 40

fraudulently embezzle or appropriate to his own use, or to the use of any other person or persons, any money or other property belonging to the said institution, or left with or held by the said company, in trust as a special deposit or otherwise, he or they, on conviction thereof, shall be fined in a sum not less than the amount so appropriated or embezzled, and sentenced to undergo an imprisonment in the penitentiary in separate and solitary confinement, at labor, for any term not exceeding five years, at the discretion of the court; provided, 10 that this shall not prevent any person aggrieved from pursuing his, her, or their civil remedy against such person or persons.

BY-LAWS.

ARTICLE I.

The annual meeting of the members and the election of officers shall be held at Easton, on the second Tuesday of January, between the hours of one and three o'clock P. M. There shall be four stated meetings of the board of directors, to be held every three months. Special meetings may be called by 20 the directors, executive committee, or by the president and secretary. It shall be the duty of the secretary to publish notice of the time and place of annual meeting and election, or of a special meeting, by at least two insertions in two weekly newspapers of the county, issued immediately preceding each meeting.

ARTICLE II.

Election.

The board of directors shall consist of nine members, (three of whom shall be elected annually, to serve for three years,) 30 who shall be chosen by ballot from among the members of the company, by a plurality of the votes cast; each member shall be entitled to one vote, but no proxy vote shall be given. The election shall be held under the inspection of the president, secretary, and treasurer, who shall certify the result thereof.

ARTICLE III.

Power of Directors, &c.

The company may, at its annual or a special meeting, ordain and establish by-laws, ordinances and regulations, and repeal or amend the same; but the directors shall have power to adopt or amend such as they may think the interests of the company urgently demand, in the intervals between the meetings of the company, subject to revision by the company. The directors may make rules and regulations for the government of themselves and their officers and agents, and fix salaries or compensation of all the officers. And the directors shall have full power and authority, on behalf of the company, to make insurances on such live stock, and at such rates as they may think proper under the regulations of the company, and to attend to the business and interests of the company, generally and in detail; and they may also appoint an executive committee of their number to act in their behalf when the board is not in session.

10

ARTICLE IV.

Membership.

Any person having stock insured in this company, and complying with the constitution and by-laws, shall be considered a member; provided he shall not be in arrears on the books of the company for more than sixty days, after which time he is not a member, nor the company responsible for losses sustained by such person.

20

ARTICLE V.

Voting.

Any person having been a member of this organization for the term of six months, and is not in arrears on the books, shall be entitled to a vote at its annual or a special meeting.

20

ARTICLE VI.

Applications.

The applicant shall state age, health, and kind of service to which his stock is subject, and any circumstance increasing

risk; also be bound to abide by the constitution and by-laws, ordinances and regulations of the company, and to pay all premiums and taxes that may be charged or assessed under the regulations of the company. Such premiums and charges as the rules of the company require to be paid at the time of insuring, shall then be paid, and the agent of the company shall give him a receipt for the same, and his insurance shall take effect from that time; provided, the application is approved by the board of directors, or its executive committee, 10 after which, the policy will be issued; and if not approved, the money to be refunded; but no insurance will be held valid unless all the requirements of the constitution, by-laws, ordinances and regulations of the company shall be carried out and performed in good faith by the party procuring the insurance.

ARTICLE VII.

Valuation.

All the stock insured must be valued at its cash value. Insurance will not be granted for more than three-fourths of the 20 value of any animal. No valuation to exceed five hundred dollars.

ARTICLE VIII.

This company will insure no stock that is insured in other companies, except stock insured against loss by fire, in which case this company will pay no losses paid or agreed to be paid by fire insurance companies.

ARTICLE IX.

Duties in cases of sickness.

It shall be the duty of the insured, in cases of sickness or 30 accident, to procure the services of a veterinary surgeon, and use every necessary means to save the life of his animal or animals.

ARTICLE X.

Losses.

In case of death by disease or accident of any animal insured, the owner shall give immediate notice, in writing, to

the secretary. The secretary shall notify one or more of the directors, nearest to the loser, whose duty it will be to report the facts to the board of directors. The loser shall provide the board with a statement, showing the nature of the disease, duration of sickness and time of death, duly qualified or sworn to before a justice of the peace; also, a certificate from the attending surgeon. He shall state also the amount of his loss.

ARTICLE XI.

Losses not resulting in death.

When an animal becomes injured by accident or disease, so 10 that there is no probability of its living, or has become entirely worthless, and is likely to remain so, or has some very dangerous contagious disease, the insured may report the case to the secretary, who will notify the executive committee, whose duty it shall be to investigate the case, and if they shall be satisfied, they may direct the owner to kill the animal, and the company to pay the insurance.

ARTICLE XII.

Payment of losses.

When a loss shall be decided as provided in either of the 20 preceding articles, if a certain sum is to be paid, the board of directors shall, by resolution, appropriate the amount. The resolution, with the order, shall be presented to the treasurer, who shall pay the same and take a receipt therefor.

ARTICLE XIII.

Taxes.

If it should happen that the funds on hand be insufficient to pay all losses and expenses, the directors shall, by resolution, levy a tax on the members of the company, as their 30 policies stand unexpired on the books of the company, said tax to be levied on the amount insured, and they shall publish such levying tax in two newspapers of the county; and all persons insured at the time of such levying of tax, shall pay his amount of tax to the treasurer, or his order, within sixty days from the day of such public notice.

ARTICLE XIV.

Non-Payment of Taxes.

Whenever a tax shall be levied on the members, and any person shall neglect or refuse to pay his tax for sixty days from the day public notice shall be given, he shall forfeit his insurance, and he shall, nevertheless, be liable for the aforesaid payments, and the company may sue for and recover the same, with interests and costs of suit. But whenever he pays all arrearages his insurance shall be restored; provided, he
10 pays up before any loss happens to his stock.

ARTICLE XV.

Any person exchanging or purchasing stock, can have them entered on their policies by notifying the secretary, and paying the sum of fifty cents.

ARTICLE XVI.

A policy expiring for any member of this company having a sick animal at the time of such expiration, shall have such animal renewed at the price of said animal in previous policy.

Opinion.

DAIRIMPLE, J. The plaintiffs, a mutual insurance company of the State of Pennsylvania, brought their action below, and received judgment against the defendant, one of their members, for taxes or assessments levied by the company against him as one of the persons insured.

The judgment must be reversed for the following reasons—

First. Because it appears that the plaintiffs below are a foreign corporation, and effected in this state, through an agent, the insurance in question, when the agent had not complied with the statute of this state relative to foreign insurance companies. *Nix. Dig.* 436, §§ 73, 74; *Ib.* 431, § 40; *Kinyon v. Columbia Fire Insurance Company*, 8 *Vr.* 33. 10

Second. Because it does not appear that the losses, to pay a proportion of which the defendant below was assessed, occurred during the life of the defendant's policy.

For these reasons, the judgment below must be reversed, and it is not necessary to express an opinion upon the other reasons filed.

Justice REED concurred.

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Assignment of Errors.

[Filed November 18, 1876.]

Afterwards, that is to say, on the seventeenth day of November, A. D. eighteen hundred and seventy-six, comes the said The Northampton Mutual Live Stock Insurance Company, the plaintiffs in error, in the Court of Errors and Appeals, by John F. Dumont, their attorney, and say—That in the record and proceedings aforesaid, and in the judgment aforesaid there is manifest error in this, to wit, that the said plaintiffs in error are a foreign corporation, and effected in this state, through 30

an agent, the insurance in question, when the agent had not complied with the statutes of this state, relative to foreign insurance companies; whereas, in truth and in fact, the said plaintiffs did not effect, through an agent in this state, the insurance in question, when the agent had not complied with the statutes of this state relative to foreign insurance companies.

There is error also in this—That the said court decided that it does not appear that the losses, to pay a proportion of
 10 which the defendant below was assessed to pay, occurred during the life of defendant's policy; whereas, in truth, and in fact, it does appear that the losses, to pay a proportion of which the defendant below was assessed, did occur during the life of defendant's policy. Therefore in this there is manifest error.

There is also error in this—That the said Supreme Court gave judgment for the defendant below; whereas, in truth and in fact, the said Supreme Court should have given judgment for the plaintiffs below. There is manifest error in this.

20 Therefore, the said The Northampton Mutual Live Stock Insurance Company prays that the judgment aforesaid, by reason of the errors aforesaid, may be reversed, annulled, and for nothing holden; that the plaintiffs in error may be restored to all things they have lost, and that the judgment of the Court of Common Pleas may be affirmed.

J. F. DUMONT,

Attorney of Plaintiffs in Error.

Joinder in Error.

[Filed December 9, 1876.]

30 And hereupon, afterwards, to wit, on the day of December, eighteen hundred and seventy-six, the said Samuel J. Stewart, by B. C. Frost, his attorney, comes into

court and saith—That there is no error either in the record or proceedings aforesaid, or in giving the judgment aforesaid, and he prays here that the court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

B. C. FROST,

Attorney and of Counsel with Defendant.

...that there was no error either in the finding of
 fact or in the judgment, or in giving the judgment, as
 stated, and that the court below was not to be
 reversed, and accordingly affirmed in the matter above
 stated, and that the judgment therein be affirmed, do.

B. C. FROST,

Attorney General of the State of New Jersey.

