

N. J. Court of Errors and Appeals,

IN THE LAST RESORT, ETC.

JAMES L. APPERSON,  
*Deft. in Error.*

*ads.*

THE MUTUAL BENEFIT LIFE  
INSURANCE COMPANY,  
*Plff. in Error.*

*In Error.*

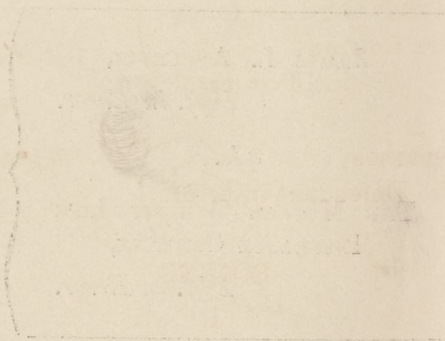
**POINTS FOR DEFENDANT IN ERROR.**

The questions involved have been settled in this Court, and that in a cause wherein this plaintiff in error was fully heard. *Stare decisis, &c.*

The Mutual Benefit Life Insurance Company *vs.* Hillyard *et al.* 8 *Vroom*, p. 444.

Affirming same case in Supreme Court. 6 *Vroom*, p. 415.

U. S. Court of Errors and Appeals



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NEW JERSEY

Court of Errors and Appeals.

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THE MUTUAL BENEFIT LIFE INSUR-  
ANCE COMPANY,  
Plaintiffs in error,  
v.  
JAMES L. APPERSON,  
Defendant in error.

*In Error*  
to the  
*Supreme Court.*

POINTS.

I.

It appears, by inspection of the record of the judgment in this case, that the plaintiff below demanded judgment for the full amount of the policy of life insurance sued upon (\$5,000) and interest, less a premium of one hundred and sixty dollars and interest thereon, and that judgment was rendered for the whole amount claimed with interest (\$7,486.50) with costs, whereas judgment should have been given for a less amount, viz: the equitable value of said policy with interest from the close of the war, being the amount of premiums paid (\$1,440) and interest, subject to a deduction for the value of the assurance enjoyed by the plaintiff below whilst the policy was in existence. *New York Life Ins. Co. v. Statham & al.* 3d Otto, 34.

F. H. TEESE,  
Attorney for and Counsel with Plaintiff in Error.



NEW JERSEY  
 Court of Errors and Appeals.

THE MUTUAL BENEFIT LIFE INSURANCE COMPANY, Plaintiffs in error, and JAMES L. APPERSON, Defendant in error.	}	In Error to the Supreme Court.
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F. H. TEESE, Att'y for Plaintiffs in Error.

GILBERT COLLINS, Att'y for Defendant in Error.

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NEW JERSEY SUPREME COURT.

JAMES L. APPERSON, vs. THE MUTUAL BENEFIT LIFE INSURANCE COMPANY.	}	In Case. On Postea, and R. to S. C. GILBERT COLLINS, Attorney.
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*As yet of the Term of November, A. D. Eighteen hundred and seventy-five.*

Witness, MERCER BEASELY, ESQUIRE, Chief Justice.

BENJAMIN F. LEE, Clerk.

ESSEX COUNTY, ss :

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The Mutual Benefit Life Insurance Company, a body corporate, of New Jersey, being the defendant herein, was summoned to answer unto James L. Apperson, the plaintiff

herein, of a plea of trespass on the case upon promises, to his damage of twelve thousand dollars, and thereupon the said Plaintiff, by Dixon and Collins, his attorneys, complains: For that whereas, heretofore, to wit: on the first day of December, A. D. eighteen hundred and fifty-two, at Newark, in the County of Essex and State of New Jersey, one David B. Franklin, did make and enter into a certain agreement, commonly called a policy of insurance, with the said defendant, and the said defendant did make and enter into the said  
10 agreement with the said David B. Franklin, which agreement, in writing signed by the President and Secretary of the said defendant, the said plaintiff now brings here into court, the same bearing date, to wit, the day and year last aforesaid, in and by which agreement it is recited that the said defendants, in consideration of the sum of one hundred and sixty dollars, to them in hand paid by the said David B. Franklin, and of the annual premium of one hundred and sixty dollars, to be paid on or before twelve o'clock, M., on the first day of Dec-  
20 ember in every year during the continuance of that policy, did assure the life of the said David B. Franklin, of Richmond, in the County of Henrico and State of Virginia, in the amount of five thousand dollars, for the term of life, and that the said defendant did thereby promise and agree to and with the said David B. Franklin, his executors, administrators and assigns, well and truly to pay or cause to be paid to the said David B. Franklin, his executors, administrators or assigns, within ninety days after due notice and proof of death of the said David B. Franklin, the said sum of five thousand dol-  
30 lars, after deducting therefrom all indebtedness of the assured to the said defendant—provided always, and it was thereby declared to be the true intent and meaning of that policy, and that the same was accepted by the assured upon the express conditions, that in case the said David B. Franklin should die upon the seas, or pass beyond the settled limits of the United States, without the consent of the defendant previously obtained and endorsed upon said policy, (excepting into the

settled limits of the British provinces of Canada, Nova Scotia or New Brunswick) or should, without such previous consent there endorsed, visit those parts of the United States which lie south of the southern line of North Carolina and Tennessee, or west of the Mississippi river, except in the settled regions of the states of Iowa and Missouri, north of the 38th degree of north latitude, between the first day of July and the first day of November, or should, without such previous consent thus endorsed, enter into any military or naval service whatsoever (the militia not in active service excepted), 10  
 or in case he should die by his own hand, in, or in consequence of a duel, or by reason of intemperance from the use of intoxicating liquors, or by the hands of justice, or in the known violation of any law of these states or of the United States, or of the said Provinces, or of any other country which he might be permitted under that policy to visit or reside in, that policy should be void, null and of no effect; and that it was also understood and agreed to be the true intent and meaning thereof, that if the declaration made by the said David B. Franklin, and bearing date the first day of Decem- 20  
 ber, A. D. eighteen hundred and fifty-two, and upon the faith of which that agreement was alleged to be made, should be found in any respect untrue, then and in such case that policy should be null and void; or in case the said David B. Franklin should not pay the said annual premiums on or before the several days therein before mentioned for the payment thereof, then, and in every such case, the said Defendant should not be liable to the payment of the sum insured, or any part thereof, and that policy should cease and determine; and it was thereby further agreed, that in every case where 30  
 that policy should cease or become or be null or void, all previous payments made thereon and all profits, should be forfeited to the said defendant;

And whereas, also the said David B. Franklin did pay or cause to be paid to the said defendant, the said annual premium of one hundred and sixty dollars, on or before twelve

o'clock, M., on the first day of December, in every year up to and until the year eighteen hundred and sixty-one, to wit, at Newark, aforesaid;

And whereas, also the said David B. Franklin did heretofore, to wit, on the twenty-ninth day of March, A. D. eighteen hundred and fifty-eight, to wit, at Newark, aforesaid, for valuable consideration, by writing, under the hand of said David B. Franklin, assign, transfer and set over unto the plaintiff, the said policy of insurance, and all sum or sums of  
 10 money, interest, benefit and advantage whatsoever, then due or thereafter to arise or to be had or made by virtue thereof, of which assignment the said defendant then and there had notice, and to which assignment, subject to the conditions of said policy, the said defendant did then and there consent;

And whereas, also during the whole of the year one thousand eight hundred and sixty-one, and for a long time to wit: one year next prior to said year, and for a long time to wit: six months next after said year, the said David B. Franklin and the said plaintiff were inhabitants and citizens  
 20 of the State of Virginia, in the United States of America, and the said defendant was an inhabitant and citizen of New Jersey, another of the said United States;

And whereas, before the first day of December, A. D. eighteen hundred and sixty-one, upon which day an annual premium would have become due and payable under said policy, to wit: on the first day of August, A. D. eighteen hundred and sixty-one, the President of the United States of America, by virtue of the power and authority in him vested, and according to the statute in such case made and  
 30 provided, had, by his proclamation, bearing date a certain day and year therein mentioned, to wit: the day and year last aforesaid, declared that the inhabitants of the State of Virginia so as aforesaid, then inhabited by the said David B. Franklin and the said plaintiff, and the section or part of said State so inhabited by them, were in a state of insurrection against the United States aforesaid; and whereas,

the said proclamation did remain in force, and the state of insurrection and condition of hostility therein declared to exist, did continue for a long space of time, to wit: one year after the date thereof, by reason whereof all commercial intercourse by and between the said David B. Franklin and the said plaintiff, or either of them, on the one part, and the said defendant on the other part, ceased and became, and for a long time, to wit: all the time last aforesaid continued to be unlawful and impossible, and for that and no other reason the said David B. Franklin and the said 10 Plaintiff were, and each of them was necessarily prevented and hindered from paying to the said defendant, and the said defendant was necessarily prevented and hindered from receiving the said annual premium last aforesaid, on the first day of December, A. D. eighteen hundred and sixty-one, and for so long a time as the said proclamation remained in force and the said condition of hostility continued;

And whereas, the said proclamation remained in force and the said condition of hostility continued, and after the first 20 day of December, A. D. eighteen hundred and sixty-one, and before the first day of December, A. D. eighteen hundred and sixty-two, to wit: on the fourth day of June, A. D. eighteen hundred and sixty-two, the said David B. Franklin died at Richmond, in the State of Virginia aforesaid, of which the said defendant forthwith thereafter, to wit; on the day last aforesaid, at Newark aforesaid, had due notice and proof;

And whereas, afterwards to wit: and as soon as the said condition of hostility ceased, to wit, on the first day of 30 November, A. D. eighteen hundred and sixty-two, the said plaintiff tendered and offered to pay unto the said defendant the said annual premium, which, but for said proclamation and condition of hostility, would have become due on the first day of December, A. D. eighteen hundred and sixty-one, and lawful interest thereon, and also then tendered and

offered to said defendant, and requested of the said defendant that the said defendant should deduct the amount of said premium and interest from the said sum insured, to wit, at Newark, aforesaid; and the said defendant then and there refused to receive the same, and also refused to deduct the same as aforesaid, and the said plaintiff has ever since been, and now is ready and willing to pay the same to the said defendant, and also to allow the said defendant to deduct the same from the said sum insured, and the said  
 10 defendant has ever since been unwilling and refused, and still is unwilling and refuses to receive the same, or to deduct the same, as aforesaid;

And whereas, the said David B. Franklin did not violate any of the terms or conditions aforesaid of the said agreement or policy of insurance, and the said David B. Franklin and the said plaintiff have fully performed all the conditions precedent to be performed by them, or either of them, under said agreement, to wit, at Newark aforesaid,  
 20 of all which, and of all the premises the said defendant had notice, to wit, at Newark aforesaid, and by means of the premises the said defendant, ninety days after the notice and proof of death as aforesaid, to wit, on the first day of November aforesaid, at Newark aforesaid, became indebted to the said plaintiff in the said sum of five thousand dollars, and being so indebted then and there undertook, and faithfully promised the said plaintiff to pay him the said sum of money when thereunto afterwards requested. Yet the said defendant not regarding its said promise has not as  
 30 yet paid the said sum of money or any part thereof to the said plaintiff, but to do so has hitherto wholly refused, and still does refuse, to the damage of the plaintiff of twelve thousand dollars, and therefore he brings his suit.

And the said defendants, by Frederick H. Teese, their attorney, come and defend the wrong and injury, when, &c., and say that they did not undertake or promise in manner and form as the said plaintiff hath above thereof complained

against them, and of this they put themselves upon the country, &c.

And for a further plea in this behalf, the said defendants by like leave of the Court here for this purpose first had and obtained according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them because they say they did not have due notice and proof of the death of the said David B. Franklin ninety days before the commencement of this suit as in the declaration alleged, 10 and of this the defendants put themselves upon the country, &c.

And for a further plea in this behalf, the said defendants by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the plaintiff did not as soon as the said condition of hostility in the declaration mentioned ceased, or at any other time since then, tender and offer to pay unto the defendants the said annual premium which the said declaration alleges would, but for said proclamation therein mentioned and condition of hostility have become due and payable 20 on the first day of December, A. D. eighteen hundred and sixty-one, and lawful interest thereon, or any part of said premium or interest, nor did the plaintiff at any time before the commencement of this suit, or since ever tender or offer or request that the defendants should deduct the amount of said premium and interest from the said sum insured, nor did the defendant refuse to receive the same or refuse any such 30 alleged offer or alleged tender or request as in the declaration alleged, but said premium remains wholly unpaid and untendered, and of this the defendants put themselves upon the country, &c.

And for a further plea in this behalf, the said defendants by like leave of the court, here for this purpose first had and obtained according to the form of the statute in such case

made and provided, say that the plaintiff before and at the time of the commencement of this suit was, and from thence hitherto hath been and still is indebted to the defendants in twelve thousand dollars for life insurance premiums due from the plaintiff to the defendants, and for money by the defendants before that time lent and advanced to and paid, laid out and expended for the plaintiff at his request; and for money by the plaintiff before that time had and received—for—the use of the defendant; and for interest for the forbearance by the defend-

10 ants to the plaintiff at his request, of money due and owing from the plaintiff to the defendants, and for money due and owing from the plaintiff to the defendants upon an account stated between them; which said sum of money so due to the defendants exceeds the damages sustained by the plaintiff by reason of the alleged nonperformance of the supposed promises in the declaration mentioned and out of which said sum of money so due to the defendants, they, the defendants, are ready and willing and hereby offer to set off and allow to

20 owing from the plaintiff to the defendants against any demand of the plaintiff to be proved on the trial of this suit as will be sufficient to satisfy and discharge such demand according to the form of the statute in such case made and provided.

And this the defendants are ready to verify. Wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action against them, &c.

And the said plaintiff as to the said pleas of the said defendants by it, firstly, thirdly and fourthly above pleaded, (the plea by it secondly above pleaded having been heretofore

30 stricken out) and whereof it hath put itself upon the country, doth the like.

And the said plaintiff as to the said plea of the said defendant by it fifthly above pleaded, says that the said plaintiff by reason of anything by the said defendant in that plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against the said defendant, be-

cause, he says that he, the said plaintiff, before and at the time of the commencement of this suit was not and is not now indebted to the said defendant, in the said several sums of money in said plea mentioned, or any or either of them, or any part thereof, in manner and form as the said defendant has above thereof in the said plea alleged, and this he, the said plaintiff, prays may be inquired of by the country, and the said defendant doth the like.

Therefore, let a jury thereupon come before the Chief Justice, or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Newark, in and for the County of Essex, on the first Tuesday of December, in the year of our Lord, one thousand eight hundred and seventy-five, by whom, &c.; and the same day is given to the parties aforesaid, there, &c. 16

And now, at this day, to wit, the twenty-third day of February, A. D. eighteen hundred and seventy-six, before our said Supreme Court at Trenton, comes the said plaintiff, by his Attorney aforesaid, and the Justice before whom, &c. having sent hither his record, had before him in these words, 20  
to wit:

"Afterwards, to wit, at a Circuit Court holden at the City of Newark, in and for the County of Essex, on the first Tuesday of December, A. D. 1875, by the Honorable David A. Depue, one of the Justices of the Supreme Court of the State of New Jersey, according to the form of the statute in such case made and provided, came as well the said plaintiff as the said defendant, by their respective attorneys within mentioned, and the jurors of the jury, between the parties aforesaid, in the plea aforesaid, being summoned also comes, 30  
who to speak the truth of the matters and things within contained, being chosen, tried and sworn, say upon their oath, that the said defendant, the Mutual Benefit Life Insurance Company, did undertake and promise, in manner and form as the said plaintiff, James L. Apperson, has above in his said declaration thereof complained against it, and they

assess the damages of the said plaintiff,—by reason of the non-performance by the said defendant of the said promises and undertakings, over and above the costs and charges by the said plaintiff, about his suit in that behalf expended,—at the sum of seven thousand, four hundred and eighty-six dollars and fifty cents, and for those costs and charges six cents.”

10 But because our said Court, now here, are not yet advised what judgment to give of and upon the premises, a day is therefore given to the parties aforesaid, until the first Tuesday of November, A. D. eighteen hundred and seventy-six, to hear the judgment of the said Court, thereupon. At which day, before our said Court at Trenton aforesaid, came the parties aforesaid, by their attorneys aforesaid. Whereupon, all and singular, the premises being seen and by the Court now here fully understood, and mature deliberation being thereupon had; therefore, it is considered that the said plaintiff do recover against the said defendant his said damages by the the jurors in form aforesaid found, to  
20 seven thousand, four hundred and eighty-six dollars and fifty cents, and also seventy-three dollars and twenty-one cents for his costs and charges aforesaid, by the Court now here adjudged to the said plaintiff; and with his assent, which said damages, costs and charges in the whole amount to seven thousand, five hundred and fifty-nine dollars and seventy-one cents.

Judgment signed this thirteenth day of November, A. D. eighteen hundred and seventy-six.

M. BEASLEY,

*Ch. Jus.*

30

I, BENJ. F. LEE, Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment in above stated cause, as the same remains of record in my office.



policy set out in the said declaration upon the first day of December, eighteen hundred and sixty-one, mentioned in said declaration, to recover which only said suit could lawfully be brought.

*Third.* There was error in that the said Supreme Court delivered judgment in favor of the plaintiff and against the defendant for a sum largely in excess of the equitable value of said policy set forth in said declaration, or of any lawful right of said plaintiff.

10 *Fourth.* Because the Supreme Court decided that the assessment of damages should be on the basis of five thousand dollars, the full face value of the policy, and the interest from the 12th September, 1865, with an abatement of the amount of the premium due 1st December, 1861, of \$161, with interest from that date, and also the balance of \$443.00 due on his note with interest from December 1, 1860.

20 *Fifth.* Because the Supreme Court ordered judgment for the full face value of the policy with interest from 12th September, 1865, with an abatement of the amount of the premium which became due 1st December, 1861, with interest from that date, and also the balance due on his note with interest from December 1, 1860, when they ought to have ordered judgment for the equitable value of the policy arising from the premiums paid at the time the said policy became forfeited by the failure to pay the annual premium in December, 1861, together with interest thereon from the close of the war.

*Sixth.* Because the said judgment is in other respects erroneous and illegal.

F. H. TEESE,

*Att'y for and of Council with Pltff. in Error.*

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