

Court of Errors and Appeals of New Jersey.

GEORGE S. DURYEE, COMMIS-
SIONER OF INSURANCE, &C.,
Plaintiff in Error.
vs.
ROBERT TAYLOR,
Def. in Error.

ON ERROR.

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BRIEF.

The writ in this case brings up the judgment entered at the Essex County Circuit Court on the advisory opinion of the Supreme Court.

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The case briefly stated is as follows: The defendant, Robert Taylor, is (or was) a member of a beneficial association known as "The Commonwealth Beneficial Association," incorporated under an act entitled "An act to incorporate Benevolent and Charitable Associations," approved April 9, 1875, rev., page 79, with powers, including the power of appointing as many officers as the association might require, &c., under section 1 of said act, which certificate of incorporation was filed August 19, 1885, for the objects named in the fifth section of said act, to wit: "The relief or support of such of the members thereof as shall by sickness, casualty or any other cause, be rendered incapable from attending their usual occupation or calling. * * * * * And also to promote the decent interment of deceased members." The defendant

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was a member of said association, and as appears by the charter of said association and the certificate of membership given by the said Robert Taylor to the said John H. Robbins, was acting in furtherance of the purposes and objects for which the said association was incorporated and authorized by the said act respecting benevolent associations. It is sought by these proceedings against the defendant, Robert Taylor, to recover a penalty for a violation of the act entitled "An act to provide for the Regulation and Incorporation of Insurance Companies," approved April 9, 1875. By the ninth section of the last mentioned act, the party violating is liable to a penalty of five hundred dollars, to be recovered in the name of the State by the Prosecutor of the Pleas of the county in which the violation occurred (amended P. L., 1892, page 275, authorizing Commissioners to bring suit. Form of authorization questioned). By an amendment to the said act providing for the incorporation and regulation of insurance companies, approved April 4, 1889, P. L., 1889, page 174, what shall constitute the violation of the said act are more fully particularized. It is under the last mentioned act and supplements that defendant is being prosecuted.

The assignment presents three grounds of error :

1st. That an association incorporated under the Benevolent Association act does not come within the prohibition of the insurance laws, so long as it confines its agreements to the payment of sick benefits and burial expenses.

2nd. That the contract made by the Commonwealth Benevolent Association with John H. Robbins was not a contract of insurance within the meaning of the Insurance act of March 4, 1889.

3rd. That judgment should be given in favor of the defendant.

Counsel for the defendant in error insists that the judg-

ment of the Court below should be affirmed for the following reasons, to wit:—

1st. For the reason that, the defendant, acting within the strictest interpretation of the act respecting benevolent associations, is justified by the powers and authority given by the said act.

2nd. For the reason that, the defendant, acting within the provisions of an act passed simultaneously with or subsequent to another act, will be protected in the power or authority given him under the subsequent act, if it conflict with the former act, although not containing an express repealer.

3rd. For the reason that the act of the defendant cannot be found to be in violation of the insurance laws if both acts are to be operative; in other words, to authorize the finding the defendant guilty would be to find that the defendant, who was doing precisely what the fifth section of the act respecting benevolent associations authorized, was violating the insurance laws of the State of New Jersey.

4th. For that under a construction of the two laws a distinction must be made between the contracts authorized by the beneficial act and by the insurance acts.

5th. For that the defendant is not liable unless guilty of some violation of the insurance laws technically construed.

The Court's attention is asked to a brief consideration of the above propositions:

1st. As to the first proposition it is to be observed that the defendant was one of the officers of the Commonwealth Beneficial Association, which he, in common with the other members, was privileged to be. As a member of the Association, it was his privilege and a fraternal duty that he invite other persons to become members. This authority was contemplated by the act, otherwise, the act would be purposeless, and if the defendant was doing no

more than what was authorized and contemplated by the act, he cannot be said to be guilty of the violation of some other act that does not expressly or by implication repeal the act under which he acts.

2nd. As to the second objection there remains but this to be added, that the beneficial and insurance acts were both approved on the same day, and the intendment of the Legislature must be taken to have been that they were both to be operative and distinct.

10 3rd. As to the third and fourth propositions, a distinction must be made between the contracts authorized by the beneficial act and those styled insurance contracts and authorized by the insurance act. The learned Judge in the case of *Holland vs. Chosen Friends*, 25 Atlantic Rep. 369, says: "The contract of the association, with its beneficary members, as made up of the application of such membership; the certificate issued, which is an acceptance of the application, and the charter, constitution and by-laws of the society, and in its construction and effect does
20 not differ essentially from an ordinary policy of insurance." This is substantially what constitutes a complete contract of insurance when an individual deals with an insurance company. *Hallock vs. Insurance Co.*, 2 Dutcher, 268. This form of proposition and acceptance, however, does not constitute every such act, between every two parties thereto, an insurance contract.

If the language of the learned Judge above quoted in case of *Holland vs. Chosen Friends* is to be construed to mean that the payment of sick benefits, the cost of decent
30 interment and other undertakings set out in the fifth section of the act respecting beneficial associations is a contractual relation, and therefore, an insurance contract, then I take exception to that law.

A society formed for the purpose of rendering assistance to members or their families in case of sickness, and to in-

sure the payment of a certain sum to the widow or dependents of a member at death, is not an insurance company. A beneficial organization usually provides social advantages to its membership, and this is one of the peculiar features of the organization from those whose purposes are similar but in which the pecuniary benefits are received by the officers or managers alone.

In case of *Chosen Friends vs. Fairman*, 62 How. Prac. New York 386, Westbrook, J.—Held, “that the plaintiff, is not amenable to the laws of 1881, and not to the general 10 insurance statutes of the state, among the objects of the plaintiff’s organization is the establishment of “a relief fund from which the members of this association who have complied with all its rules and regulations may receive a benefit or a sum not exceeding three thousand dollars, which shall be paid either when a member reaches the age of seventy-five years, or when, by reason of disease or accident such member becomes permanently disabled, or upon his death.”

In case of *Commonwealth vs. National Mutual Aid 20 Association*, 94 Penna st. 488, Per curiam, Held, “this is an attempt to impose a penalty on the defendant for an alleged violation of the laws regulating insurance companies in this commonwealth. It is a corporation created by the laws of the state of Ohio. Although it possesses some of the features of an insurance company, see, *State vs. Mutual Protection Society*, 26 Ohio state, 19. It is substantially a beneficial or mutual aid association. It has no fixed capital. It is not bound to pay any fixed sum on death of a member, but so much only as may voluntarily 30 be paid to surviving members.”

An association intended only to benefit widows, orphans, heirs and devisees of deceased members and no annual dues or premiums are required, and its members receive no

money as profit or otherwise, is clearly distinguishable from insurance companies.

The Commercial League Association of Am. vs. The People. 90 Ills. 166.

The general object or purpose of an insurance company is to indemnify or secure the insured against loss. Its engagement is not founded in any philanthropic, benevolent or charitable principle. It is merely a business venture, in which one for a stipulated consideration, termed a
 10 premium, engages to make up in whole or in part, or in a certain agreed amount, any specific loss which another
 01 may sustain. It may apply to the loss of property, to personal injury, or to the loss of life. To grant indemnity or security against loss for a consideration is not only the design and purpose of an insurance company, but is also the dominant and characteristic feature of the contract of insurance. What is known as a beneficial association, however, it has a wholly different object and purpose in
 20 view. The purpose of the organization is not to secure against loss, but to secure a fund from which to give aid and relief in case of sickness, injury or death, and that while the same is secured by contract and to that extent simulates the nature of a contract of insurance are not to be so considered. Such societies are to be considered more in the nature of philanthropic or charitable associations. Their features as a beneficial association may be narrow and restricted, and the purposes of the members to some extent selfish, but the principle upon which they rest are founded on the benevolent consideration mentioned. The
 30 fund out of which the benefits are paid to the members consists wholly of contributions made by them for the purpose, and are clearly distinguishable from the funds out of which losses on insurance contracts are paid. It would seem necessary to construe the contracts made under the laws of New Jersey, with the defendant Robert Taylor,

after the manner above suggested, as the only method reconciling the independent contemporaneous operation of the two acts.

5th. As to the fifth proposition, it is its own argument, "The defendant is not liable unless guilty of some violation of the insurance laws strictly construed."

It is respectfully submitted that the judgment of the court below should be affirmed.

JOHN W. WARTMAN,
Attorney for Defendant in error.

THE
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OF

NEW JERSEY COURT OF ERRORS.

~~Essex Circuit Court.~~

THE STATE

vs.

ROBERT TAYLOR.

In debt.

BRIEF FOR PLAINTIFF.

Two questions are involved in this case.

First. Is the contract made by the Commonwealth Benefit Association with Robert Taylor a "contract of insurance of any kind * * * or certificate of membership, * * * on the life, health or safety of any person"; and did the defendant transact the business of insurance? (P. L., 1889, p. 174.)

Second. Does an association incorporated under the Benevolent Associations Act (Revision, p. 79), come within the prohibition of the Insurance Laws?

I.

~~The first question is *res adjudicata* in this Court. In the case of *State vs. Brown*, decided in this Court at the September Term, 1892, your Honor charged the jury that the Progressive Benefit Order was transacting the business of insurance. The Progressive Benefit Order was a foreign corporation in the nature of a fraternity, organized with lodges and memberships. Under its by laws, members were entitled to weekly sums in case of sickness and a payment was to be made to the representative of a deceased member on his death. That case was therefore precisely similar to the present one.~~
Under the authorities the first question must be answered in the affirmative.

~~All the authorities bear out the law as laid down by your Honor in that case.~~

Farmer vs. The State, 59 Texas, 561.

Bolten vs. Bolten, 73 Maine, 299.

State vs. Citizens' Association, 6 Mo. App., 163.

State vs. Merchants' Association, 72 Mo., 146.

Commonwealth vs. Wetherbee, 105 Mass., 149.

II.

The Benevolent Associations Act was first passed in 1844 (P. L., 1844, p. 197). It was re-enacted in the Revision of 1846 (Rev. Stat., p. 127). It was re-enacted with slight changes in 1853 (P. L., 1853, p. 355), and changed in particulars unimportant in this case, and re-enacted in the present Revision (Revision, p. 79). The fifth section permits the support of members who, by sickness, are rendered incapable of attending their usual occupation or calling, and also the payment of a sum for the burial of a deceased member.

In 1876 a supplement to the act was passed (P. L., 1876, p. 86) which provides that any association whose object is to "extend benevolent and charitable assistance and relief" to persons not members thereof, that shall be incorporated under the act, shall be lawful corporations and entitled to all the privileges conferred by the act. In 1883 (P. L., 1883, p. 57), a supplement was passed that enables corporations incorporated under the act to make a contract with a member for the payment of death benefits to certain relations or the representative of the member, and gives the beneficiary the right to sue therefor at law or equity. This supplement was amended (P. L., 1886, p. 221), by additions to the list of relatives who may be beneficiaries. Section 5 of the original act was again amended in 1886 (P. L., 1886, p. 99), but the changes are unimportant, the general purposes of the corporations organized under the act remaining the same; the provision as to non-members that first appears in the supplement of 1876 is incorporated in this amended section.

The Commonwealth Association is incorporated under that act, and, as appears from Articles I. and V. of the by-laws, professes to operate under the fifth section.

Two questions now arise :

(A). Has the fifth section of the Benevolent Associations Act been repealed by the insurance laws (P. L., 1877, p. 100, Sec. 6 as amended by P. L., 1889, p. 174)?

(B) Does the employment of a canvasser to solicit insurance take the association out of the Benevolent Associations Act?

A.

The history of insurance legislation, so far as it affects this question, is as follows :

The first general insurance law was passed in 1852 (P. L., 1852, p. 159). It is the foundation of the present act. It provides for the incorporation of insurance companies and imposes restrictions in those so incorporated, but does not apply to companies not incorporated under the act. No penalty is provided for carrying on insurance business without legal authority.

The next statute was that of April 9, 1867 (P. L., 1867, p. 776). It applies exclusively to insurance companies of other States, and provides that under certain circumstances the Secretary of State may authorize them to do business in the State. By Sections 8 and 9 a penalty is provided for a company doing insurance business without such authority. It is to be collected by the Prosecutor of the Pleas. The next act, March 19, 1874 (P. L., 1874, p. 49), is a supplement to the act of 1867. It compels domestic corporations to make reports in the same manner as foreign corporations. Section 6 extends the penalty of the former act to brokers procuring insurance for others in foreign companies not authorized to do business in the State. Section 7 forbids domestic companies thereafter organized from issuing policies until the Secretary of State shall have authorized them to begin business. And it would seem that the last clause of Section 5 provides a penalty for a violation of that provi-

sion. This is the first legislation imposing a penalty on a domestic corporation doing an insurance business illegally. On April 9, 1875 the insurance laws were collated and re-enacted as a General Insurance law in the Revision (Revision, p. 507). Section 9 increased to \$500, the penalty of the ninth section of the act of 1867. So much of the act of 1874 as applies to domestic companies is re-enacted with amendments under the heading, "As to the insurance companies of this State." (Sections 41, 47, 48, 51 and 54.) Section 5 became Section 51; Section 6, Section 54, and Section 7, Section 52. The only amendment to Sections 5 and 6 is a reference to Section 9 as fixing the penalty for violations. Section 7 is unchanged. An act passed the same day, entitled a supplement to the act of 1867 (P. L., 1875, p. 108; Revision, p. 518), imposes a penalty on a foreign company that does insurance in this State without authority, although the business is done with citizens of other States. The next act, passed April 21, 1876, is found in P. L., 1876, p. 301; Revision, p. 517. It is a supplement to the General Insurance Law. Section 5 provides "That it shall not be lawful for any person within this State to negotiate any insurance, or deliver any policy or certificate of renewal thereof, or receive any premium thereon, on any property or thing, or on the life of any person in this State, in any company that has not complied with the requirements of this act and the act to which this is a supplement, under a penalty of five hundred dollars for each offence."

The next act is a supplement to the General Insurance Law passed March 8, 1877 (P. L., 1877, p. 100). Section 6 imposes a penalty on foreign companies and their agents that shall without authority maintain an office or in any manner transact any business of insurance, in this State, or negotiate a contract of insurance, deliver a policy or renewal, or receive a premium, on any property or the life of any person. Section 7 fixes the penalty at \$500, to be collected by the Prosecutor of the Pleas. The act contains a general repealer of all inconsistent legislation. These two sections

were amended by the act of April 4th, 1889 (P. L., 1889, p. 174). Section 6, as amended, is as follows :

“ 6. *And be it enacted*, That it shall be unlawful for any company, corporation or association of any kind whatsoever, incorporated or organized under the laws of this State, or of any other State or nation, itself, or by its agents, solicitors, surveyors, canvassers or other representatives of whatever designation, or for any such agent, solicitor, surveyor, canvasser or other representative, or any individual or firm, whether on behalf of any such company, corporation or association or not, to solicit or negotiate any contract of insurance of any kind, or sign, deliver or transmit, by mail or otherwise, any policy, certificate of membership or certificate of renewal thereof, or receive any premium, commission, fee or other payment thereon, on any property or thing, or on the life, health or safety of any person, or in any manner, directly or indirectly, to transact the business of insurance of any kind whatsoever, within this State, unless such company, corporation or association, individual or firm, shall be authorized to transact business in this State under the provisions of the act to which this is a supplement, and the supplements thereto.”

The change in Section 6 to be noted is that the delivery of a “certificate of membership” is prohibited, as is also insurance on the “health or safety of any person.” The amendment to Section 7 provides that the suit shall be brought by the Secretary of State. This act also contains a general repealer. Section 7 of the supplement of March 8, 1877, was again amended (P. L., 1892, p. 275), and the suit for the penalty is directed to be brought by the Insurance Commissioner.

From a review of the foregoing legislation it would seem that the effect of the act of 1876 was, as to death benefits, to repeal, *pro tanto*, the fifth section of the Benevolent Association Act. It may be claimed that the supplement of

1883 to the Benevolent Associations Act practically, to that extent, repealed that repealer. But, however that may be, the act of April 4, 1889 unquestionably repeals so much of that section as permits agreements to be made with members for the payment of sick and death benefits, and also repeals the act of 1883.

The sweeping language of the act, and the specific mention of certificates of membership necessarily lead to the conclusion that the legislature intended that the so called "fraternal" insurance shall be carried on only by companies that have the qualifications required by the General Insurance Law, and that are subject to the oversight and regulation of the insurance department. The wisdom of this is obvious. The amount of life and health insurance now done in this State by organizations of that character is greater than that done by those of any other kind, and the assured are, as a rule, of the class that through their moderate means and lack of business knowledge most need the protection of stringent legislation.

This construction of the insurance laws will not prevent the formation of companies to do the kind of business now done by the Commonwealth Association. Section 21 of the insurance act provides for them and they are recognized by P. L., 1880, p. 84.

B.

The act contemplates only the incorporation of persons associated for benevolent and charitable purposes.

All the lawful objects as set out in Section 5 are of that character. The relief of sickness, the discouraging of intemperance, the promotion of religion; those are the objects allowed. The supplement that enables contracts to be made with members is a long step away from the original purposes of the act, if it is not entirely inconsistent with them. It may be considered that fixing the sum which shall be used for relief on a member's death, and making it proportionate to the amount of his contributions to help others, is a benevolent or charitable purpose. But when

the association goes further and solicits such contracts through paid agents, the charitable and benevolent element is gone, it becomes engaged in business, and is no longer a benevolent, but a business, association. Permitting this company to continue will have the effect of encouraging fraudulent companies which are organized to make money for the officers of the company at the expense of the insured. The amount of benefits, and the length of time during which they are to be paid, are so graduated that no capital is needed at first. The first risks are all healthy persons; the dues, as fast as they are received are absorbed by the officers as salaries; a few benefits are paid as advertisements, and when losses or applications for sick benefits to any large amount come in, there is no money to pay them and the association is dissolved. It would be hard to find a grosser fraud on legislation of so praiseworthy a character.

HAYES & LAMBERT,
Attorneys of Plaintiff.

EDWARD H. DURYEE,
Of Counsel.

The present year has been a very successful one for the
company and we are pleased to announce that the
profits have increased in comparison with the
previous year. This is due to the fact that the
company has been able to secure a larger
amount of business and to increase its
output. The management of the company has
been very efficient and has been able to
keep the company on a sound financial
basis. The company has also been able to
expand its operations and to enter new
markets. This has resulted in a
steady increase in sales and profits.
The company is now in a position to
take on a larger amount of business
and to increase its production. The
management of the company is confident
that the future is bright and that the
company will continue to grow and
prosper.

Yours faithfully,
[Signature]
[Name]
[Address]

DECLARATION.

Essex Circuit Court of the twenty-third day of
February, Eighteen hundred and ninety-three.

ESSEX COUNTY ss.

Robert Taylor, the defendant in this suit is summoned to answer unto the State of New Jersey, the plaintiff therein, on the complaint of George S. Duryee, Commissioner of Banking and Insurance, of the State of New Jersey, of a plea that he render unto the said plaintiff the sum of one thousand dollars, which to it he owes and from it unjustly detains. For that whereas the said defendant heretofore, to wit, on the ninth day of October, eighteen hundred and ninety-two, was the agent, solicitor and canvasser of the Commonwealth Beneficial Association, a corporation organized under the laws of the State of New Jersey, neither the said corporation nor the said defendant being then authorized to transact business in the State of New Jersey, under the provisions of an Act of the Legislature of the State of New Jersey, entitled, "An act to provide for the incorporation and regulation of insurance companies," approved April ninth, one thousand eight hundred and seventy-five, or the supplements thereto, and then and there as such agent, solicitor and canvasser as aforesaid, did, for and on behalf of the said corporation, in violation of the provisions of an act of the Legislature of the State of New Jersey, entitled "A supplement to an act entitled 'An Act to provide for the incorporation and regulation of insurance companies' approved April ninth, one thousand eight hundred and seventy-five," approved March eighth, eighteen hundred and seventy-seven, negotiate a contract of insurance with, and deliver and transmit to, one John H. Robbins, a Certificate of Membership in the said The Commonwealth Beneficial Association, on the life and health of him, the said John H. Robbins, by which certificate of

membership, in consideration of the agreements and statements of said John H. Robbins made to the said corporation in his application and the payment by the said John H. Robbins to the said corporation of such dues as thereafter should become due and payable, the said corporation covenanted and agreed to pay the said John H. Robbins the sum of three dollars per week for every week the said John H. Robbins should be confined to bed with a well defined disease during the first two years of his said membership, and after the first two years of his membership, the sum of two and one-half dollars per week in case he should not be confined to bed, but should be, through sickness, unable to pursue his usual avocations, and upon the death of the said John H. Robbins to pay a member of his family the sum of thirty-three dollars and thirty-three cents if the said John H. Robbins should die within one year after the date of said certificate, and the sum of one hundred dollars if he should die after one year from the date thereof (a copy of which certificate of membership and the By-laws of the said The Commonwealth Beneficial Association are annexed to this declaration and made part hereof); contrary to the form of said last mentioned statute in such case made and provided. Wherefore an action has accrued to the said plaintiff to have and demand, of and from, the said defendant the sum of five hundred dollars parcel of the sum above demanded.

And for that whereas the said defendant heretofore, to-wit, on the ninth day of October, eighteen hundred and ninety-two, was the agent, solicitor and canvasser of The Commonwealth Beneficial Association, a corporation organized under the laws of the State of New Jersey, neither the said corporation nor the said defendant being then authorized to transact business in the State of New Jersey under the provisions of an act of the Legislature of the State of New Jersey entitled, "An Act to provide for the incorporation and regulation of insurance companies," approved April ninth, one thousand eight hundred and seventy-five, or the supplements thereto, and then and there as such agent, solicitor and canvasser as aforesaid, did, for and on

behalf of the said corporation, in violation of the provisions of an act of the Legislature of the State of New Jersey entitled, "A supplement to an act entitled 'An Act to provide for the incorporation and regulation of insurance companies,' approved April ninth, one thousand eight hundred and seventy-five," approved March eighth, eighteen hundred and seventy-seven, transact, within the State of New Jersey, the business of insurance on the life and health of persons in said state, contrary to the form of the said last mentioned statute in such case made and provided.

Wherefore, an action has accrued to said plaintiff to have and demand of and from the said defendant the sum of Five Hundred Dollars parcel of the sum above demanded.

Yet the said defendant (although often requested so to do), hath not as yet paid the said sum of One thousand dollars above demanded, nor any part thereof, to the said plaintiff; but to do this wholly refused and still doth refuse; to the damage of the plaintiff five hundred dollars, and therefore it brings its suit, &c.

HAYES & LAMBERT,
Attorneys of Plaintiff.

PLEA.

And the defendant, Robert Taylor, by John W. Wartman, his attorney, comes and defends the wrongs and injuries when, &c., and says that he is not indebted to the plaintiff in manner and form in the sum of five hundred dollars, or any other sum as the plaintiff alleges against him, and of this he puts himself upon the country, &c.

JOHN W. WARTMAN,
Attorney of Defendant.

AGREED STATE OF FACTS.

ESSEX CIRCUIT COURT.

THE STATE OF NEW JERSEY, &C.,

vs.

ROBERT TAYLOR.

In Debt.
Agreed state of
facts.

First. The Commonwealth Beneficial Association is a corporation organized under the laws of the State of New Jersey; a copy of its charter, Constitution and By-Laws are hereto annexed.

Second. Robert Taylor was, on October 9, 1892, and for thirty days before that time, the agent, solicitor and canvasser of the said Association under an agreement with the corporation by which he received from it compensation for getting persons to become members of the said corporation, and as such agent, solicitor and canvasser, at that time and for thirty days previously thereto, in the State of New Jersey, did continually solicit persons, resident in said state, to become members thereof.

Third. On October 9, 1892, at Newark, in the state of New Jersey, the said Taylor acting as agent, solicitor and canvasser, as aforesaid, induced one John Robbins, a resident of said city of Newark, to join said Association representing to him that if he would become a member thereof and pay one dollar and twenty-eight cents a month, he would get five dollars every week he was sick and that one hundred dollars would be paid to his family on his death.

The said Taylor thereupon collected from the said Robbins the sum of one dollar and twenty-eight cents as dues for such membership, and gave him a certificate and a book, copies of which are hereto annexed, and did at several

subsequent times collect from the said Robbins certain sums, as appears from the entries in said book.

Fourth. The said Robert Taylor was, on the ninth day of October, 1892, and during the said time he acted as agent, solicitor and canvasser of said corporation, a member thereof.

Fifth. Neither the said Commonwealth Beneficial Association nor Robert Taylor were on the ninth day of October, 1892, or at any time previous thereto, authorized by the Secretary of State of New Jersey or the Commissioner of Banking and Insurance of New Jersey to transact the business of insurance in the State of New Jersey.

The foregoing are agreed upon by counsel as a statement of facts upon which the issue joined in the above cause is to be tried before the Court without a jury, a trial by jury being hereby waived.

HAYES & LAMBERT,
Attorneys of Plaintiff.
JOHN W. WARTMAN,
Attorney of Defendant.

CERTIFICATE.

THE COMMONWEALTH
No. 27005.

NUNQUAM NON PARATUS.

Sick Benefit.
\$5.00

Funeral Benefit.
\$100.00.

BENEFICIAL ASSOCIATION.

Chartered under the Laws of the State of New Jersey.

This is to Certify, That John H. Robbins, of Newark, has by virtue of application, which is made part hereof, become a member of The Commonwealth Beneficial Association, and is entitled to certain benefits therein. Therefore,

in consideration of the agreements and statements of said member made to said Association in said application and the payment of the dues as the same become due and payable hereafter, The Commonwealth Beneficial Association hereby agrees to pay the benefits designated in said application, and in this certificate in accordance with said application, subject to the By-laws of said Association, printed on the back hereof, and upon the following conditions :

First. Weekly sick benefits are payable subject to the provisions and limitations set forth in Article V. of the By-laws to such members as have in their applications for membership desired sick benefits.

Second. If this certificate terminates by the death of the member entitled to benefits, within one year after the date of its issue, it is agreed that the Association shall only pay a sum equal to one-third of its amount, in full payment thereof.

Third. And in the event of non-payment of the dues of the member within seven days after the day on which they shall become due, no benefits shall be payable hereunder; and should the member fail to pay the arrearages in thirty days, then in that case this certificate shall be null and void, and the member shall have no claim whatever upon the Association; and the payment to, or acceptance by the Association of delinquent dues when the member is thirty days in arrears, shall not operate to reinstate the certificate, which shall remain inoperative until reinstated in accordance with section 6, of article V. of the By-Laws.

Fourth. The By-Laws of the Association are hereby made a part of this contract in the same manner and to the same extent as if printed in the body of this certificate. No person has power to make, alter or discharge contracts, waive forfeitures, or grant credit.

Fifth. All dues are payable at the office of the Association, and the collection of the same by a collector shall be deemed a courtesy on the part of the Association. Members shall promptly notify the Association of a change of residence or Post Office address. And notice of any action by the Association forwarded to the last address furnished by such member shall be a sufficient notification of the same.

In Witness Whereof, The Commonwealth Beneficial Association has, by its President and Secretary, signed this certificate this 15th day of October, 1892, and caused the Common Seal of the said Association to be affixed, but the same shall not be binding until delivered during the life time and good health of the member.

This certificate is in full and immediate death benefit.

JAMES CHRISTIAN,
Secretary.

[SEAL.]

JAMES HOLLAND,
President.

BY-LAWS.

ARTICLE I.

SECTION 1. The name, style and title shall be "The Commonwealth Beneficial Association."

SEC. 2. The objects of this Association are :

- 1st.—To provide for its members weekly benefits in the event of sickness or disability.
- 2d.—To provide a funeral benefit in the event of death.

ARTICLE II.

SECTION 1. The principal office of the Association for the State of New Jersey shall be in the City of Trenton.

SEC. 2. Annual meetings of the Association shall be held at Trenton on the second Tuesday in September, at the principal office, at 11 o'clock a. m., at which time and place five directors shall be chosen. Every member of the Association shall be entitled to one vote at every annual, regular or special

meeting of the Association, but in the event of the absence of a member from any annual, regular or special meeting, the board of directors, as a body, shall have the power and right to represent such absent member, and to deposit a ballot or to vote in such absent member's stead and behalf, provided such action be deemed by said board of directors, acting as a body, necessary to preserve the interests and security of this Association, as set forth in the certificate of membership of such absent member.

SEC. 3. Quarterly meetings shall be held at the main office of the Association on the second Tuesdays of March, June and December, at 11 a. m.

ARTICLE III.

SECTION 1. To qualify for membership it is necessary that all persons shall be in good health and approved by the proper officers, subject to the terms of their application and the By-Laws of the Association.

SEC. 2. No application will be received for membership herein when such applicant shall name any person other than a member of his or her family or one who is dependent upon him or her as the recipient of the funeral benefits applied for in such application. Provided, when the member shall not designate the recipient of funeral benefits payable upon his or her decease, the same shall be applied to giving proper burial to such deceased member.

ARTICLE IV.

SECTION 1. At the annual meeting of the board of directors they shall elect from their number a president and executive committee, and shall also elect from either the board or the other members of the Association a secretary, treasurer, general manager and such other officers as they may deem necessary.

SEC. 2. The executive committee shall consist of three members of the board of directors, who shall remain in office until their successors have been duly elected. In the event of decease or resignation of a member thereof, the board of directors shall fill the vacancy.

SEC. 3. The president, secretary and treasurer shall perform such duties as the board of directors shall from time to time designate.

SEC. 4. The moneys of the Association shall be deposited in the name of the treasurer of the Association as treasurer of the Association in such banks and depositories as the board of directors may from time to time designate.

SEC. 5. The board of directors shall hold regular monthly meetings.

SEC. 6. The board of directors may whenever it deems necessary make any change in the dues of the Association, provided such change shall not take effect for one calendar month after the adoption of the same.

ARTICLE V.

SECTION 1. Any member who shall, through sickness or disability become disqualified from attending to his or her usual vocation, and shall be under medical treatment for a period of not less than seven days after notice to the Association, shall be entitled to receive from the Association weekly benefit of such sum as may be specified in certificate of membership, provided such sickness is not occasioned by intemperance, vice or immoral conduct; provided, that such member shall get from the medical attendant (who must be a regular medical practitioner and graduate of a recognized medical college), a certificate of such sickness or disability, and the length of time such member has been under medical treatment, on a blank furnished by the Association, which shall be subject to the approval of the medical examiner or president of the Association, and provided, further, that no member shall be entitled to receive more than two full weeks' benefits during the first six months; and four full weeks and four half weeks during the first year; and in the second, third and fourth years, six full weeks' and four half weeks' benefits during any one year, and in the fifth year and thereafter, eight full weeks' and four half weeks' benefits in any one year. Provided no one member shall be entitled to draw in any

twelve consecutive months more than eight full weeks' and four half weeks' benefits.

SEC. 2. Weekly benefits shall be granted during the first two years of any membership, only when the member applying therefor shall be confined to bed with a well-defined disease. After the first two years, sick members who are not confined to bed, but unable to pursue their usual avocations and still under medical treatment, shall receive half benefits subject to provision of preceding section. And no female member shall be entitled to weekly benefits during child birth or any disease occasioned by pregnant state, or any disease of the genital organs. Members drawing benefits are restricted from attending to any occupation whatever.

SEC. 3. Application for sick benefits must be made in form adopted and furnished by the Association, addressed to the secretary or president at the principal office.

SEC. 4. On receipt of notice of sickness, a blank application will be sent to the member for attending physician to fill up and sign not sooner than seven days after the date of notice. (This should be sent to the office, then the money will be sent to the member, and another blank furnished if the member is still sick). No benefit shall be payable for any sickness or disability previous to the date notice is received by the Association, and no benefit for a fractional part of a week shall at any time be paid.

SEC. 5. If no notice is sent to the office after the first week the member shall be taken off the sick list.

SEC. 6. Members become beneficial three months after issuance of certificate of membership.

Members failing to pay their dues for more than seven days after the same are due, shall stand suspended from benefits of every kind for thirty days after all arrears have been paid; and failing to pay in one month, can only be reinstated at the discretion of the board of directors; and members dying, or becoming sick or disabled while in arrears or under such suspension, cannot become beneficial during said sickness, disability, or death.

SEC. 7. Claims for funeral benefits must be made immediately on a blank furnished by the Association, and addressed to the secretary or president at the principal office.

SEC. 8. Funeral benefits shall be paid after satisfactory proof has been furnished to the Association as follows: If a member dies in the first year of membership one third of the amount of funeral benefit shall be paid in full payment of the claim; after the first year the full amount will be paid.

SEC. 9. The Association shall receive as members, children under the age of twelve years, whose dues shall be payable weekly, provided each application for membership shall be signed by the parent or parents of such child, in its name, and that such membership shall be subject to all the provisions of the 3d, 4th, 5th, 6th, and 7th sections of Article V. which benefits shall be payable in accordance with the graduated table prepared by the board of directors. (The remaining sections of this Article refer solely to membership under Section 9).

ARTICLE VI.

Amendments to the By-laws, may be made by a majority vote at any annual or quarterly meeting of the Association.

BOOK.

(Outside of cover of Book.)

THE COMMONWEALTH

Change of address:

R. Taylor, Mgr., 93 New Street, Newark, N. J.

November 1st, 1892.

BENEFICIAL ASSOCIATION.

Principal Office, 1004 Walnut Street, Philadelphia, Pa.

(Inside of Book.)

NUMBER OF CERTIFICATE, 27005.

INFORMATION.

First. The monthly dues must be paid in advance on the 15th day of every month.

Second. If you should fail to pay the collector, or, if he should fail to call for the money within three days of the date above mentioned, you must either bring or send the amount of your dues immediately to the office of the Association.

Third. The Association will not be responsible for payments made to any person but an authorized collector of the Association, who can show a certificate signed by the president and secretary, with the seal of the Association affixed.

Fourth. Benefits, in case of sickness, will only be paid on application in form adopted by the Association, and no other form of application will be recognized.

Fifth. When a death occurs a beneficiary shall at once notify the secretary of the fact, in accordance with form adopted by the Association.

Blanks for sick and death benefits can be had at the office of the Association.

In communicating with the office give number of certificate and full name and address.

Members are placed on the sick list from date of notice only.

BENEFICIAL ASSOCIATION.

Received of John H. Robbins,

Day of Mo.		Dues.	
		\$	cts.
	Entrance paid	1.28	Collector's name.
Oct. 15		1.28	R. Taylor.
Nov. 15		1.28	R. Taylor.
Dec. 15		1.28	R. Taylor.

CERTIFICATE OF INCORPORATION.

Be it remembered, that on the nineteenth day of August, A. D. eighteen hundred and eighty-five, at a regular meeting of The Commonwealth Beneficial Association, an association of not less than ten persons, held at their usual place of meeting in the city of Camden, the said association did, by a majority vote, elect by ballot, that being the method prescribed by the constitution of said association, the undersigned James Holland to be president, and the undersigned William W. Frick to be secretary, and the undersigned William McFarland to be treasurer of the said association for the term of one year from the date of said election, and the said association did in the same manner, and by like vote, assume as the corporate name of the said association the following, to-wit: "The Commonwealth Beneficial Association;" and they did by like vote direct us, the said James Holland, William W. Frick and William McFarland, to make and file this certificate to the end that the said association may become a body politic and corporate in law by the name aforesaid, under and by virtue of the provisions of an act entitled "An Act to incorporate benevolent and charitable associations," revision approved April 9, 1875, and the several supplements thereto.

And we do further certify and make known, that the sole and exclusive object of the said incorporation is the relief of such of the members thereof as shall by sickness, casualty, or other cause be rendered incapable of attending to their usual occupation or calling.

In testimony whereof, we have hereunto set our hands and seals the nineteenth day of August, eighteen hundred and eighty-five.

JAMES HOLLAND, <i>President.</i>	[L. s.]
WM. W. FRICK, <i>Secretary.</i>	[L. s.]
WM. McFARLAND, <i>Treasurer.</i>	[L. s.]

Signed, sealed and delivered in the presence of John W. Wartman.

STATE OF NEW JERSEY, }
 Camden County. } ss.

Be it remembered, that on the nineteenth day of August, 1885, before John W. Wartman, a Master in Chancery of said state, personally appeared James Holland, William W. Frick and Wm. McFarland, who, I am satisfied, are the persons named in and who executed the within instrument, and I having first made known to them the contents thereof, they acknowledged that they signed, sealed and delivered the same as their voluntary act and deed for the purposes therein expressed.

JOHN W. WARTMAN,
Master in Chancery.

Received and recorded Aug. 19, 1885.

JOS. C. HOLLINSHEAD,
Clerk.

STATE OF NEW JERSEY, }
 County of Camden. }

I, Robert L. Barber, Clerk of the County of Camden, do hereby certify, that the foregoing is a true copy of the Certificate of Incorporation of The Commonwealth Beneficial Association filed August 19, 1885, and recorded in the Clerk's office of the County of Camden, in Book 3 of Corporations, page 40.

In testimony whereof, I have hereunto set my hand and affixed my official seal, at Camden, this twenty-first day of November, A. D. 1892.

ROBT. L. BARBER,
Clerk.

[L. s.]

On the foregoing agreed state of facts the following questions are raised.

1. Was the contract made by the Commonwealth Benefit Association with John H. Robbins a "Contract of insurance of any kind * * or certificate of membership * * on the life, health or safety of any person;" within the meaning of section 6 of the Act of March 8, 1877, as amended by section 1 of the Act of April 4, 1889, (P. L., 1889, page 174); and did the defendant transact the business of insurance within the meaning of that act?

2. Does an association incorporated under the Benevolent Associations Act come within the prohibition of the insurance laws?

3. Should judgment in the case be given in favor of the plaintiff or in favor of the defendant?

The foregoing questions are made and stated as presenting a case of doubt and difficulty, and are hereby certified to the Supreme Court for its advisory opinion.

DAVID A. DEPUE,

J.

OPINION.

This cause was tried before the Circuit Court, a jury having been waived, upon the following agreed state of facts:

First—The Commonwealth Beneficial Association is a corporation organized under the laws of the State of New Jersey; a copy of its charter, constitution and by-laws are hereto annexed.

Second—Robert Taylor was, on October 9, 1892, and for thirty days before that time, the agent, solicitor and canvasser of the said association under an agreement with the

corporation by which he received from it compensation for getting persons to become members of said corporation, and as such agent, solicitor and canvasser, at that time and for thirty day previously thereto, in the State of New Jersey, did continually solicit persons, resident in said State, to become members thereof.

Third—On October 9, 1892, at Newark, in the State of New Jersey, the said Taylor acting as agent, solicitor and canvasser, as aforesaid, induced one John Robbins, a resident of said city of Newark, to join said association, representing to him that if he would become a member thereof and pay one dollar and twenty-eight cents a month, he would get five dollars every week he was sick and that one hundred dollars would be paid to his family on his death.

The said Taylor thereupon collected from the said Robbins the sum of one dollar and twenty-eight cents as dues for such membership, and gave him a certificate and a book, copies of which are hereto annexed, and did at several subsequent times collect from the said Robbins certain sums, as appears from the entries in said book.

Fourth—The said Robert Taylor was, on the ninth day of October, 1892, and during the said time he acted as agent, solicitor and canvasser of said corporation, a member thereof.

Fifth—Neither the said Commonwealth Beneficial Association nor Robert Taylor were on the ninth day of October, 1892, or at any time previously thereto, authorized by the Secretary of State of New Jersey or the Commissioner of Banking and Insurance of New Jersey to transact the business of insurance in the State of New Jersey.

Sixth—The certificate of membership.

Seventh—Copy of by-laws.

On the foregoing agreed state of facts the following questions are raised :

1. Was the contract made by the Commonwealth Benefit Association with John H. Robbins a "Contract of insurance of any kind * * * * * or certificate of membership * * * * * on the life, health or safety of any person;" within the meaning of section 6 of the Act of March 8, 1877, as amended by section 1 of the Act of April 4, 1889, (P. L., 1889, page 174); and did the defendant transact the business of insurance within the meaning of that act?

2. Does an association incorporated under the Benevolent Associations Act come within the prohibitions of the insurance laws?

3. Should judgment in the case be given in favor of the plaintiff or in favor of the defendant?

The foregoing questions are made and stated as presenting a case of doubt and difficulty, and are hereby certified to the Supreme Court for its advisory opinion.

DAVID A. DEPUE,
J.

Argued at June Term, 1893, before Beasley, *C. J.* and Dixon, Magie and Garrison, *JJ.*

Hayes and Lambert, for the plaintiff.

J. W. Wartman, for the defendant.

The opinion of the Court was delivered by Garrison, *J.* An act to incorporate benevolent and charitable associations was originally passed in 1844 (P. L., p. 197). It was re-enacted in the revised statute of 1846 (R. S., p. 127), and again, with unimportant changes, in 1853 (P. L., 355), and in the Revision of 1875 (Rev., p. 79). All of these enactments set forth that "the sole and exclusive object of incorporations" thereunder shall be "the relief or support of such of the members thereof as shall by sickness, casualty or other cause be rendered incapable of attending to their usual occupation or calling * * * * * and also the

decent interment of deceased members, or the widows of deceased members, and other charitable purposes." In 1876 a supplement to the act was passed (P. L., p. 84), extending its provisions to "persons or associations whose object is to give and extend benevolent and charitable relief to persons who are not members or incorporators," and in 1883 (P. L., p. 57), a further supplement provided that "it shall be lawful for associations incorporated under this act to contract with their members to pay death benefits according to the rules or by-laws adopted by such associations and to agree to pay the same to the husband, wife, father, mother, brother, sister or legal representative of such member after his or her death, which contract the beneficiary therein named shall have full legal power to enforce in proceedings at law or in equity." In 1886 (P. L., p. 221), the provision of the preceding supplement was extended so as to include sons and daughters.

It is contended by the plaintiff that by force of these statutes the associations in question were invested with power to insure lives, and hence, that so long as that law is operative the associations in question are legitimate subjects for the supervisory control of the insurance laws of the State. It cannot be denied that if these statutes be efficient to extend the capacity of these associations beyond the objects specified in the act to which they owe their incorporation, the result will be life insurance pure and simple. No insurance company could ask more ample competency. The question is not directly before us upon the facts of the case certified, but it may well be doubted whether such a construction is in any wise permissible.

In a well considered opinion in the Circuit Court, Mr. Justice Depue reviews the legislation upon this subject, reaching the conclusion that "it is clear that none of this legislation empowers these associations to engage in the business of life insurance." This opinion likewise holds that an attempt by these associations by means of by-laws or otherwise to extend their contracts beyond the benevolent purpose of their creation would be in contravention of

their statutory powers and hence nugatory. (*Stewart v. Odd Fellows' Mutual Life Insurance Association*, N. J. Law Journal, Vol. XII., p. 110).

That the exercise of such a power, if it existed, would fall within the prohibition of the insurance laws does not admit of debate. The language of the act of 1889 (P. L., p. 174,) includes in its interdict "any contract of insurance of any kind," and also the transaction of "the business of insurance of any kind whatsoever, save under the provisions of that act." If, therefore, in the case before us the contract made on behalf of the Commonwealth Benevolent Association with John H. Robbins were in the nature of an insurance upon his life it would be within the prohibition of the insurance laws and judgment should be for the plaintiff accordingly. But there is nothing in the facts of the case before us upon which such a contention can rest.

The contract between Robbins and the benevolent association is contained in the by-laws of the association and in his certificate of membership. Article 1 of the by-laws sets forth the objects of the association to be two-fold: First, to provide for its members weekly benefits in the event of sickness and disability; and Second, to provide a funeral benefit in the event of death. While the certificate given to Robbins as his evidence of membership begins by stating in words and figures as follows: "Sick benefits, \$5.00; funeral benefits, \$100," the only conclusion from the only evidence before the Court below is that the contract went no further than the objects declared in the by-laws and specified in the certificate, viz., that the one hundred dollars agreed to be paid in the event of the member's death was the one hundred dollars for funeral expenses mentioned in the latter instrument. It must be borne in mind that this is a suit to enforce a penalty and that the burden is upon the plaintiff to establish by clear preponderance of proof the special circumstances upon which a recovery may rest. It is evident, therefore, that in the present case the plaintiff must fail unless an agreement by a charitable and

benevolent association to pay to a member sick benefits and burial expenses constitutes "the carrying on of the business of insurance" within the meaning of the insurance act above stated. Such a contention cannot, however, be seriously pressed. The legislature has by numerous contemporaneous acts recognized and provided for the distribution of the funds of these benevolent societies among their members for the two purposes above mentioned while enacting, at the same time, laws of increasing stringency for the regulation of the business of insurance in all of its forms. Neither in principle nor in practice can there exist any honest confusion between the two. Mutual associations for the purpose of securing *inter alia* sick benefits and burial expenses are benevolent institutions in the strictest sense of the term, whereas a contract for life insurance is a mere business undertaking entirely divorced from all charitable considerations. In my judgment the one is as plainly outside the purview of the insurance laws as the other is clearly within the scope of their restrictive and supervisory provisions. The view here taken is discussed and elaborated in the opinion of Mr. Justice Depue already referred to.

The Circuit Court should be advised that an association incorporated under the Benevolent Associations Act does not come within the prohibition of the insurance laws so long as it confines its agreements to the payment of sick benefits and burial expenses. Second, that the contract made by the Commonwealth Benevolent Association with John H. Robbins was not a contract of insurance within the meaning of the Insurance Act of March 4, 1889 (P. L., p. 174). Third, that judgment in the case should be given in favor of the defendant.

ADVISORY OPINION OF THE SUPREME COURT.

This cause was certified to this Court from the Essex Circuit Court for its advisory opinion upon the following questions:

(1.) Was the contract made by the Commonwealth Benefit Association with John H. Robbins a contract of insurance of any kind or certificate of membership on the life, health or safety of any person within the meaning of Section 6, of the act of March 8, 1877, as amended by Section 1, of the act of April 4, 1889, (P. L., 1888, page 174,) and did the defendant transact the business of insurance within the meaning of that act?

(2.) Does an association incorporated under the Benevolent Association Act come within the prohibition of the insurance laws?

(3.) Should judgment in this case be given in favor of the plaintiff or in favor of the defendant?

And the Court having heard the argument of counsel and being of opinion that the Circuit Court should be advised that an association incorporated under the Benevolent Association Act does not come within the prohibition of the insurance laws so long as it confines its agreements to the payment of sick benefits and burial expenses.

Second, That the contract made by the Commonwealth Benevolent Association with John H. Robbins was not a contract of insurance within the meaning of the Insurance Act of March 4, 1889, (P. L., page 174.)

Third, That judgment in the case should be given in favor of the defendant. It is ordered that the Essex Circuit Court be and is hereby advised accordingly, and it is further ordered that the defendant do recover the costs of this application.

Entered December 28, 1893, on motion of

JOHN W. WARTMAN,
Attorney.

WRIT OF ERROR.

NEW JERSEY, ss:

*The State of New Jersey to the Judge of the Circuit Court
[L.S.] of the County of Essex, Greeting:*

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said Circuit Court of the county of Essex before you, between the State of New Jersey on the complaint of George S. Duryee, Commissioner of Banking and Insurance of the State of New Jersey, plaintiff, and Robert Taylor, defendant, in an action of debt, manifest error hath intervened to the great damage of the said plaintiff, as is said; 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 and affirmed that you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching the same, to our Judges in our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the twenty-ninth day of January, instant, together with this writ, that the record and proceedings as aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right and according to the law and custom of the State of New Jersey ought to be done.

Witness, our Chancellor and President Judge of our said Court of Errors and Appeals, at Trenton aforesaid, the twentieth day of January, eighteen hundred and ninety-four.

HENRY C. KELSEY, *Clerk.*

HAYES & LAMBERT, *Att'ys.*

The answer of David A. Depue, Judge of the Essex Circuit Court within named:

The records and proceedings of the plea whereof mention is within made, with all things concerning the same, to the Court of Errors and Appeals in the last resort in all

causes herein specified, at the day and place within contained I certify a certain schedule to this writ annexed, as I am within commanded.

DAVID A. DEPUE, *J.*

ASSIGNMENT OF ERRORS.

And now at this day the plaintiff in error assigns the following causes of error in the record and proceedings aforesaid :

First. Because the Supreme Court advised the Circuit Court of the county of Essex that an association incorporated under the Benevolent Associations Act does not come within the prohibition of the insurance laws so long as it confines its agreements to the payment of sick benefits and burial expenses.

Second. Because the Supreme Court advised the Circuit Court of the county of Essex that the contract made by the Commonwealth Benevolent Association with John H. Robbins was not a contract of insurance within the meaning of the insurance act of March 4, 1889, (P. L., p. 174.)

Third. Because the Supreme Court advised the Circuit Court of the county of Essex that judgment should be given in favor of the defendant.

And the said plaintiff prays that the judgment aforesaid may be reversed, annulled and for nothing holden.

HAYES & LAMBERT,
Attorneys of Plaintiff.

HOWARD W. HAYES,
Of Counsel.

JOINDER IN ERROR.

And hereupon afterwards, to wit, on the first Tuesday of February, A.D. 1894, the said Robert Taylor, by John W. Wartman, his attorney, comes into Court and says that there is no error either in the record and proceeding aforesaid, or in giving 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.

JOHN W. WARTMAN,
Attorney for and Counsel with Defendant.



