

NEW JERSEY

COURT OF

ERRORS AND APPEALS

IN THE LAST RESORT IN ALL CAUSES.



IN THE SUPREME COURT OF NEW JERSEY.

DANIEL CATOIR

vs.

THE AMERICAN LIFE INSURANCE AND TRUST COMPANY.

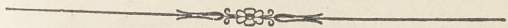
} In Case.

C. PARKER and N. PERRY, JUN.,

For plaintiff.

E. MERCER SHREVE and T. N. McCARTER,

For defendant.



TRENTON:

PRINTED BY HOUGH & GILLESPIE,

Chancery Building, State street.

1868.

V. J. Court of Errors and Appeals.

THE COURT OF ERRORS AND APPEALS, IN THE STATE OF PENNSYLVANIA.

IN SENATE, FEBRUARY 21, 1881.

REPORT OF THE COURT, FOR THE YEAR 1880.

PHILADELPHIA: PUBLISHED BY THE STATE, UNDER THE SUPERVISION OF THE COMMISSIONER OF THE GENERAL LAND OFFICE.

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N. J. Court of Errors and Appeals.

[Filed February 21, 1868.]

NEW JERSEY SUPREME COURT.

The American Life Insurance and Trust Company <i>ads.</i> Daniel Catoir.	} <i>In Case. On Postea, &c.</i> E. MERCER SHREVE, <i>Att'y.</i>
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As yet, of the twenty-ninth day of October, A. D. eighteen hundred and sixty-six.

Witness, MERCER BEASLEY, ESQ., *Chief Justice.*

CHAS. P. SMITH, *Clerk.*

10

Essex county *ss.*—Daniel Catoir, the plaintiff in this suit, puts in his place Parker & Keasbey, his attorneys, against The American Life Insurance and Trust Company, in a plea of trespass on the case upon promises.

Essex county, *ss.*—The American Life Insurance and Trust Company, the defendants in this suit, put in their place E. Mercer Shreve, their attorney, in a plea of trespass on the case upon promises.

✓ Essex county, *ss.*—The American Life Insurance and Trust Company, the defendants in this suit, were summoned 20 to answer unto Daniel Catoir, the plaintiff therein, of a plea of trespass on the case upon promises; and thereupon the said plaintiff, by Parker and Keasbey, his attorneys, complains—for that whereas the said defendants, heretofore, to wit, on the eighth day of March, eighteen hundred and sixty-four, at Philadelphia, in the state of Pennsylvania, to

wit, at Newark, in the county aforesaid, made a certain writing, commonly called a policy of insurance, bearing date the day and year last aforesaid, and caused the same to be signed by the president of the said company, to wit, by A. Whilldin, then being such president, and to be attested by their secretary, to wit, by John S. Wilson, then being such secretary, and then and there delivered the said writing or policy of insurance, so signed and attested, to the said plaintiff, in and by which said policy of insurance, it was contained that the said defendants, in consideration of the payment of eighteen dollars and ninety cents, and of the further premium of eighteen dollars and ninety cents, to be paid quarterly thereafter, to wit, on the eighth day of June, September, December, and March, in each and every year, always in advance, during the continuance of said policy, did insure the life of Anna M. Catoir, of Newark, in the county aforesaid, in the sum of two thousand dollars, for the term of the natural life of said Anna.

And the said defendants did thereby promise and agree, well and truly, to pay or cause to be paid, the said sum insured, to the said plaintiff, husband of the said Anna, his executors, administrators, and assigns, within sixty days after due notice and satisfactory proof of the death of said Anna, after first deducting any unpaid balance on the premium of the then current year then due the defendants; provided always, and it was thereby declared to be the true intent and meaning of said policy, and the same was accepted by the insured upon the express conditions, that in case the said Anna should, without the consent of said defendants, previously obtained and endorsed upon said policy, die upon the seas, or pass beyond the settled limits of the United States, (excepting into the settled limits of the two Canadas, Nova Scotia, or New Brunswick,) or should, without such previous consent, endorsed as aforesaid, visit those parts of the United States lying south of the southern boundary of the states of Virginia and Kentucky, between the first of June and the first of November; or should, without such previous consent, endorsed as aforesaid, pass to or west of the Rocky Mountains; or should, without such previous consent, endorsed as aforesaid, enter into any military or naval service

whatsoever, (the militia not in actual service excepted); or should, without such previous consent, endorsed as aforesaid, be personally employed as an engineer or fireman in running a locomotive or steam engine, or as an officer, or conductor, or brakeman, upon a railroad, or as an officer, hand, or servant of any steam vessel, or as a miner, or hand, or officer, in any coal or other mine, or in the manufacture or transportation of gunpowder, or in case she, the said Anna, should become so far intemperate as to impair her health, or to induce delirium tremens, or in case she, the said Anna, 10 should die by her own hand, whether sane or insane, or in consequence of a duel, or by the hands of justice, or in the known violation of any law of any of the states of the United States, or of the United States, or of any state or country, the said policy should be void and of no effect.

And it was thereby declared and agreed, that if the proposals, answers, and declarations made by the said plaintiff, (the same bearing date the eighth day of March, eighteen hundred and sixty-four, upon full faith of which said policy was issued,) should be found to be fraudulent or untrue in any 20 respect, or that there was any wilful misrepresentation or concealment in said declaration, or in case the said plaintiff should not pay the quarterly premiums aforesaid, on or before the several days aforesaid, specified and appointed in and by the said policy as aforesaid, for the payment of the same, or should fail to pay any assessment made upon said policy by the board of trustees, within thirty days after such assessment should have been made, then the said policy should be void and of no effect, and all payments made, profits, scrip, or bonus, which should have accrued, should be forfeited to said 30 defendants.

And it was also agreed, that said policy and the insurance thereby effected should be subject to the several conditions and regulations printed on the back thereof, so far as the same could be applied, in the same manner as if the same respectively were incorporated in said policy; that no assignment of said policy should be of any force and effect unless approved by the said defendants, and said approval endorsed thereon by the secretary or other authorized officer, within thirty days from the date thereof, otherwise the said 40

premium should be considered sunk for the benefit of said defendants; and that said policy should not be valid until the actual payment of the premium had been made in cash and received for at the bottom of said policy, by one Charles Knopf, the agent of said defendants, for Newark, in the county aforesaid. Unto which said policy of insurance were annexed and subjoined sundry conditions of insurance, in the words and figures stated and set forth in the copy of said policy hereunto annexed, as by the said policy, reference
10 being thereunto had, will more fully appear.

And thereupon the said defendants, in consideration that the said plaintiff and the said Anna, at the request of the defendants, had paid to them, the said defendants, the said sum of eighteen dollars and ninety cents, and other sums, as premiums and reward as aforesaid on said policy, for the assurance of the life of said Anna for the term of her natural life as aforesaid; and had then and there, at the like request of the defendants, undertaken and promised the said defendants that all things in the said policy contained or referred
20 to, to be performed and kept, should be by them performed, kept, and observed; they, the said defendants, then and there undertook and promised the plaintiff that they, the said defendants, would become and be the assurers of and for the life of the said Anna against death for and during the term and space of her natural life, to the amount and in the sum of two thousand dollars; and would perform and fulfil all things in the said policy specified or intended on their part and behalf, as such assurers, to be performed and fulfilled.

30 And the said plaintiff avers, that after the making of said policy, to wit, on the seventh day of April, eighteen hundred and sixty-six, the said Anna, in the said policy mentioned, deceased and departed this life, to wit, at Newark, in the county aforesaid; and that he, the said plaintiff, and the said Anna have, in all things, conformed to, observed, and performed all and singular the stipulations, matters, and things which, on his part or on the part of the said Anna, were to be observed and performed in and by the said policy and the conditions thereunto annexed; by means whereof,
40 and by force and effect of the said policy, and of the promise

and undertaking of the defendants in that behalf, they, the said defendants, as such insurers as aforesaid, became liable to pay to the plaintiff the said sum of two thousand dollars, so by them insured as aforesaid, in sixty days after the aforesaid notice and proof made as aforesaid by the plaintiff, so in conformity with the conditions of insurance aforesaid. And, although sixty days have long since elapsed, after the notice and proof made as aforesaid, yet, the said defendants, not regarding their said promise and undertaking, in form aforesaid made, have not paid to the said plaintiff the said sum 10 of two thousand dollars, or any part thereof; but to pay the same, or any part thereof, the said defendants, although often requested so to do, have hitherto wholly neglected and refused, and still do neglect and refuse to pay the same, to wit, at Newark, in the county aforesaid. To the damage of the plaintiff four thousand dollars, and therefore he brings his suit, &c.

Notice is hereby given, that the following is the copy of the policy of insurance referred to in the foregoing declaration, and upon which the same is founded, viz. 20

✓
AMERICAN LIFE INSURANCE AND TRUST COMPANY,
INCORPORATED APRIL 9, 1850.

No. 8802.

50 ct. U. S. Rev. Stamp.

Quar. Premium,

\$18.90.

Sum Insured,

\$2000.

Office, Walnut and 4th streets, American Buildings, Philadelphia.

This policy of insurance witnesseth, that The American Life Insurance and Trust Company, in consideration of the payment of eighteen dollars and ninety cents, and of the further premium of eighteen dollars and ninety cents to be paid quarterly hereafter, to wit, on the eighth day of June, September, December, and March, in each and every year, always in advance, during the continuance of this policy: Do assure the life of Anna M. Catoir, of Newark, county of Essex, state of New Jersey, in the sum of two thousand
10 dollars, for the term of her natural life.

And the said company do hereby promise and agree, well and truly to pay or cause to be paid, the said sum insured, to Daniel, husband of the said Anna M. Catoir, his executors, administrators, and assigns, within sixty days after due notice and satisfactory proof of the death of the said Anna M. Catoir, first deducting any unpaid balance on the premium of the current year. Provided always, and it is hereby declared to be the true intent and meaning of this policy, and the same is accepted by the insured upon these express con-
20 ditions, that in case the said Anna M. Catoir shall, without the consent of this company previously obtained and endorsed upon this policy, die upon the seas, or pass beyond the settled limits of the United States, (excepting into the settled limits of the two Canadas, Nova Scotia, or New Brunswick,) or shall, without such previous consent thus endorsed, visit those parts of the United States which lie south of the southern boundaries of the states of Virginia and Kentucky, between the first of June and the first of November, or shall, without such previous consent thus endorsed, pass to or west
30 of the Rocky Mountains, or shall, without such previous consent thus endorsed, enter into any military or naval service whatsoever, (the militia not in actual service excepted,) or shall, without such previous consent thus endorsed, be personally employed as an engineer or fireman in running a locomotive or steam engine, or as an officer, or conductor, or brakeman upon a railroad, or as an officer, hand, or servant of any steam vessel, or as a miner, or hand, or officer in any coal or other mine, or in the manufacture or transportation of gunpowder, or in case she shall become so far

intemperate as to impair her health or induce delirium tremens, or shall die by her own hand, whether sane or insane, or in consequence of a duel, or by the hands of justice, or in the known violation of any law of any of these states, or of the United States, or of any state or country, this policy shall be void, null, and of no effect.

And it is hereby declared and agreed, that if the proposals, answers, and declarations made by the said Daniel Catoir, and bearing date the eighth day of March, 1864, upon the full faith of which this policy is issued, shall be found to be 10 fraudulent or untrue in any respect, or that there is any wilful misrepresentation or concealment in said declaration, or in case the said Daniel Catoir shall not pay the quarterly premiums, as herein before mentioned, on or before the several days specified and appointed for the payment of the same, or shall fail to pay any assessment made upon this policy, by the board of trustees, within thirty days after said assessment shall have been made, then this policy shall be void and of no effect; and all payments made, profits, scrip, or bonuses which may have accrued, shall be forfeited to the 20 company.

And it is also agreed that this policy, and the insurance hereby effected, shall be subject to the several conditions and regulations printed on the back hereof, so far as the same can be applicable, in the same manner as if the same respectively were incorporated in this policy.

No assignment of this policy shall be of any force and effect, unless approved by the company and endorsed thereon by the secretary, or other authorized officer, within thirty days from the date thereof; otherwise, the premium shall be 30 considered sunk for the benefit of the company.

This policy shall not be valid until the actual payment of the premium has been made in cash and receipted for at the bottom of this policy, by Charles Knopf, agent for Newark, N. J.

In witness whereof, the president of the said American Life Insurance and Trust Company, on behalf of the board of trustees, has hereunto subscribed his name, attested by

the secretary, at the office in Philadelphia, this eighth day of March, eighteen hundred and sixty-four.

A. WHILLDIN, *President.*

Attest: JOHN S. WILSON, *Secretary.*

Received, Newark, N. J., March 8th, 1864, eighteen dollars and ninety cents—it being the first above named premium.

CHARLES KNOPF, *Agent.*

CONDITIONS.

I. Policies expire at noon on the last day of the period for
10 which payment has been made.

II. If a change takes place in the name or in the residence of the insured, notice of such change must be given to the company.

III. Agents are not authorized to make contracts for the company, nor to write upon the policy, except his signature, when necessary to the first receipt of premium, (see *Condition No. V.*), nor to waive forfeiture of the same.

IV. In case of the assignment of a policy, (whether as
20 security or otherwise,) satisfactory proofs of the amount of the assignee's interest in the insured life, must be furnished with the proof of death.

V. The receipts for the premiums, excepting the first, (to be found on the face of this policy,) will invariably be given on a separate paper, and will not be valid without the seal of the company.

PROOFS OF LOSS REQUIRED.

1. A certificate of the physician who attended the insured
in her last illness, stating particularly the nature of the disease, its duration, and the date and hour of decease; her
30 apparent age, height, complexion, and general appearance.

2. Certificate of a friend, or intimate acquaintance, stating the disease of which the party died, how long she was sick, a knowledge of such death, and how obtained, and the time of death.

3. Certificate of sexton or undertaker who superintended the funeral of insured, and saw her remains interred—stating apparent age, height, complexion, and general appearance.

The said several certificates must be sworn or affirmed to, before some magistrate or public officer empowered to administer an oath, accompanied by a certificate in conformity to the act of congress, of the authority of the officer who administers the oath.

THE NECESSARY RECEIPT ON THE PAYMENT OF THE POLICY.

When it is a policy on the life of a husband, for the benefit of a wife, or the life of a wife for the benefit of a husband, or of a party insuring the life of another, or in case of an assigned policy, a receipt on the policy, from the party legally 10 entitled to the payment, is all that is required. But, when a party insures his own life, in case of death, the insurance must be collected by an executor or administrator legally authorized to settle the estate, and the official certificate of his appointment, by the proper tribunal to that effect, must be presented at the office of the company with the policy duly received by said executor or administrator.

PARKER & KEASBEY,

Attorneys of plaintiff.

And the said defendants, by E. Mercer Shreve, their at- 20 torney, 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 has above thereof complained against them, and of this they put themselves upon the country, &c.; and the plaintiff 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 sixth day of May, A. D. eighteen hundred and sixty-seven, by whom, &c., 30 and the same day is given to the parties aforesaid, there, &c.

And now, at this day, to wit, the fourth day of June, in the year last aforesaid, before the Supreme Court aforesaid, at Trenton, come the parties aforesaid, by their attorneys aforesaid, and the justice before whom, &c., sends here his record had before him, in these words. to wit: "Afterwards, to wit,

on the sixth day of May, in the year of our Lord eighteen hundred and sixty-seven, at a Circuit Court holden at Newark, in and for the county of Essex, before the Honorable David A. Depue, one of the Justices of the Supreme Court of Judicature of the state of New Jersey, according to the statute in such case made and provided, come, as well the within mentioned Daniel Catoir, as the within named The American Life Insurance and Trust Company, by their respective attorneys within mentioned, and the jury, whereof mention is within made, being
 10 summoned, also come, who, to speak the truth of the matter within contained, being chosen, tried, and sworn; and thereupon the said plaintiff having failed to sustain and prove the issues on his part joined. It is ordered that the plaintiff be non suited."

Therefore, it is considered, that the said Daniel Catoir take nothing by his said writ, and that the said The American Life Insurance and Trust Company, do go thereof without day, &c. And it is further considered by our said court here, that the said The American Life Insurance and Trust Com-
 20 pany do recover, against the said Daniel Catoir, the sum of thirty-four dollars and ten cents, for its costs and charges in this behalf expended, by the court now here adjudged to it and with its assent; and that it have execution thereof according, &c.

Judgment signed June 4th, eighteen hundred and sixty-seven, (1867.)

V

M. BEASLEY, *Ch. Just.*

I, Charles P. Smith, clerk of the Supreme Court of the state of New Jersey, do certify that the foregoing is a true
 30 copy of the record of judgment in the above stated cause, as the same remains in my office.

In testimony whereof I hereto set my hand and the seal of said court, at Trenton, this 26th day of November, A. D. 1867.

[L. S.]

CHAS. P. SMITH, *Clerk.*

New Jersey ss. The state of New Jersey to our Justices of our Supreme Court of Judicature of the state of New Jersey, greeting:

Forasmuch as in the record and proceedings, and also in the giving of judgment of a plea which was in our court

before you, between Daniel Catoir and The American Life Insurance and Trust Company, of a plea of trespass on the case upon promises, as it is said, manifest error hath intervened, to the great damage of the said Daniel Catoir, as by his 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 party aforesaid in this behalf, do command you, that without delay, you distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things concerning the same, to our Court 10 of Errors and Appeals in the last resort in all causes, as heretofore, on the twenty-ninth day of November, instant, where-soever they shall be in the said state, together with this writ; that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

Witness Abraham O. Zabriskie, esquire, Chancellor, at Trenton, this twenty-first day of November, in the year of our Lord eighteen hundred and sixty-seven.

H. N. CONGAR, *Clerk.* 20

N. PERRY, jun., *Attorney.*

The answer of the Justices of the Supreme Court, within mentioned: The record and proceedings within mentioned, as fully as they remain before us, we certify and send to the Court of Errors and Appeals within named, in a certain schedule to this writ annexed, as within we are commanded.

M. BEASLEY, *Ch. Just.*

Bill of Exceptions.

Be it remembered, that on the 29th day of October, A. D. 1866, came Daniel Catoir, by Parker and Keasbey, his attorneys, into the said court, and impleaded the said The American Life Insurance and Trust Company, in a certain action on the case, upon promises. And thereupon issue was joined between the said Daniel Catoir and the American Life Insurance and Trust Company, *pro ut* the same. And afterwards, to wit, on the fourth day of May, in the year of our

10 Lord one thousand eight hundred and sixty-seven, the aforesaid issue, so joined between the parties as aforesaid, came on to be tried, before his Honor Justice Depue, one of the justices of the said court. At which day come there as well the said Daniel Catoir as the said The American Life Insurance and Trust Company, by their respective attorneys; and the jurors impannelled to try the said issue, being called, also came, and were then and there duly elected and sworn to try the said issue, and thereupon the following evidence was presented.

20

EVIDENCE ON PLAINTIFF'S BEHALF.

Daniel Catoir, sworn.—I reside at 29 William street, Newark; I am the plaintiff in this case. My wife's name was Anna M. Catoir; she died April 7th, last year; she had a policy on her life; the policy now produced to me is the one; I got the policy from Mr. Knopf; I was insured \$2000 to her, and she was insured to me; Mr. Knopf was the general agent of the company. The receipts now produced are some of the receipts for the premiums I have paid; I got them from Mr. Knopf; I paid the money when I got the receipts; I

30 paid the two first on the day that they were due; the third time, I said to Mr. Knopf, my wife's paid on the 8th, and mine on the 25th; I said, "I have money but want to use it, and if you will do me the favor, I will give you a note for two months for our premiums." Mr. Knopf said, "I will not take the money from you then; I have seen richer people than you short of \$41; you send the money by

your son, Emile, when you have it." From that time I have seen Mr. Knopf, and told him I could not pay to the day, and Mr. Knopf said, "don't be scared if the money is not ready by the day—when you send it down I will give you the receipts." The other payments after that were sometimes a week, sometimes two weeks afterwards, and he always brought the receipts by my son. In June, 1865, I did not go to his place. After he saw my wife, I went to him himself, in his own house. Well, my son was going home, I went down with the money, and I said, "what reason do you refuse the money, and I think you give me the receipts" both. He said, "I cannot do it, because your wife is sick, and I have seen her." I said, "is that the way when you say, always send the money, and now you say my wife is sick;" and he said, "business is business;" I said to him, "Mr. Knopf, I could send money when I would get receipts, and when you come up for money, my wife sent for me in the garden, and you told her never mind." He said, "it is so, but never mind, business is business;" I carried Mr. Bachmeyer's premium with me to Mr. Knopf's at the same time; I called on Mr. Bachmeyer, and he said, "my time is over two or three weeks," and he gave me the money, I took it and offered it to Mr. Knopf; he said, "if you say he is sound and healthy, I will give you receipt." I said, "strange to take Mr. Bachmeyer's, and not take mine;" he said, "well, Mr. Bachmeyer is sound and healthy, and your wife I have seen is sick." After Mrs. Catoir died, I saw Knopf, and said, "if you say I don't take money, I will take good counsel and maybe you will have to pay the money." He said he will write to Philadelphia.

30

Cross-examined by defendant's counsel.—I remember I was in the garden, and as I was coming in my wife said "Mr. Knopf is here." It was due, the pay, at that time. After that I sent the money down, and my son said Mr. Knopf refused it. My premium was \$22.40 and my wife's \$18.90; that was what I sent to him; as soon as my son was sent, I went right away myself; he did not give me a receipt; neither for me, nor for her; I am sure he did not; my wife's was payable on the 8th and mine on the 25th always.

By the judge—It was on the 25th when mine was due that Mr. Knopf was at my house ; I am sure Mr. Knopf did not give me the receipt at that time, because he refused the money ; I guess I did not go again ; I never offered it to him afterwards.

By the plaintiff's counsel—Mr. Knopf said to me, if money refused, and I could not get receipts, I will send Dr. Ward up and he examine her again, and then everything will be all right ; Doctor Ward came ; he examined my wife and
10 me ; got a letter from the company ; they say, Catoir, you all right, but your wife is sick, she cannot be insured in our company any more ; my son and then me went down to offer money for the premium afterwards ; my money was not received ; when I got a letter from Philadelphia, then my money was received ; Mr. Knopf gave me a receipt, not a new policy ; the receipt produced is the one ; that stamp was on it, which reads Charles Knopf, general agent.

Cross-examined.—After I was refused the receipt, Mr. Knopf said, if my wife and myself were examined and found
20 healthy then all would be right again ; I was examined and my wife as well ; he said nothing to me about the examination ; I got a letter afterwards that told me they would renew my policy, but not my wife's—(that was eight or ten days after the examination)—after I received the letter I took the money and he gave a receipt in my own case ; I guess Mr. Knopf's son sent for Dr. Ward ; I am not sure ; Mr. Knopf said, I will send my son.

Sophia Catoir.—This (Daniel Catoir) is my father ; my mother is dead ; we used to live in William street ; I have seen
30 this gentleman (Mr. Knopf) before ; I saw him before my mother died ; I saw him at the house there ; he asked my mother, have you the money ; mother said, my father had \$300 in the safe, but wanted it for wine. My mother was going to send into the garden for my father ; Mr. Knopf said I was not to go, my father was to send the money with my big brother, as she did before ; he asked my mother if she was sick—she had her hand on her heart—my mother said yes ; I don't remember whether that was before Mr. Knopf

said he had come for the money; I do not know what time it was; I do not remember what kind of weather it was; my father was in the garden; I don't remember whether he came in soon.

Cross-examined.—When Mr. Knopf came to our house, my mother was sitting down and I was standing alongside of her; my mother's name is Anna M. Catoir; she was my mother—my stepmother; Mr. Knopf stood by the bar—the window was there—mother was sitting down and I was standing in front of it; I cannot remember how far Mr. Knopf was off 10 my mother; Mr. Knopf saw me; I don't know whether he spoke to me; he asked my mother if she had money; she said, father has \$300 in the safe which he was going to send to Germany for wine; she was going to send me in the garden to call my father; Mr. Knopf said no, she was not to send me; she said it in German—I know German; I don't remember how far I got; Mr. Knopf said I was to come back; I don't know whether he called me little girl or Sophia; she was to send the money down with my big brother, like she did before; I can't remember how far I had got when he 20 said it; I had started for my father—I do not know whether I had got out of the room; I remember what he had said to my mother—I remember that best of all; I don't know why I remember that best; I have thought a good deal about it; I have talked to father about it; I told him he should hear me what I should say; it was before my mother died; it was before she died, because it was before she died; when I said it there to my father, he said it was all right; I thought I might make a mistake—I told him he should hear me; I shall be eleven on the 6th June. 30

Emile Catoir, sworn.—I am the son of Mr. Catoir; I went down to Mr. Knopf in June, 1865, with some money; I took \$42 and some odd cents, and asked for receipts; Mr. Knopf said, I cannot give you receipts, the time is over; he said, why, your mother is sick—I cannot give it to you; I went home and told father, and gave him the money; I had taken money for insurance to Mr. Knopf before; I used to take it on a day when notice overrun; it was overtime sometimes two weeks

over—both my father's and mother's time; it was a couple or three days after Mr. Knopf was up to my mother's when I took the money; my mother told me he was up.

Cross-examined by defendants' counsel.—This was in June—I am certain of that—in summer time; because I know it; because I went down; because Mr. Knopf did not give receipt the last time; Mr. Knopf did not give receipt; this last time was in June.

August L. Erb, sworn.—I live in Newark; I have been insured in the American Life Insurance Company; I was insured by Mr. Knopf; I have been insured five years; my insurance is payable quarterly; I have paid it when due and a week or two afterwards; I always got receipts when paid, whether paid when due or afterwards or before; I am still insured by the company.

Cross-examined by defendants' counsel.—Mr. Knopf would call on me when due; he always left me a notice there; we should receive notice twelve days, I believe, before the premium became due; I should not always pay—two or three times I might have paid after the time; not to my knowledge have I had arrangement with Mr. Knopf to pay the money for me; he has told me that he has sent the money down for me ready; there was no understanding for him to do so; I cannot recollect that it was first and second time; I recollect that he once told me he had paid the money for me.

Gustavus Bachmeyer, sworn.—I was insured with the American Life Insurance Company; I got it before Mr. Knopf was agent; I have paid premiums to him as their agent; I remember sending my premium down by Mr. Catoir; I cannot recollect the day; the premium was overdue; he brought me back the receipt; I used to pay just as I got the money—I paid sometimes before the days when due, and sometimes a few days after due—within the month; he gave me receipt.

Cross-examined by defendants' counsel.—I am well acquainted with Mr. Knopf; there was an agreement between

he and Mr. Knopf that he should pay for me; he told me that he would advance for me if I did not pay in time, and I was to pay him back.

By a juror—The agreement was, if it comes to the 5th, when my premium due, he was to pay on the 5th, and I was to pay before the month was out.

Samuel Weil, sworn.—I am insured by the American Life Insurance Company; Mr. Knopf is the agent; I pay my premium to him; I have been insured pretty near four years; I pay them generally up to day and some afterwards—I wait two or three days and perhaps longer after they are due before I pay; I then get receipt; I have paid lately.

Cross-examined by defendants' counsel.—Sometimes Mr. Knopf said he would advance it for me; he told me if I had not the money ready for the day, he would lay it out for me.

By the plaintiff's counsel—My policy became due on the 27th.

By a juror—I only know that Mr. Knopf had paid the money for me because he said he would.

By the judge—He kept the receipt while I paid the money; he never left the receipt at my house.

By a juror—Mr. Knopf did not name any time; the policy had run out once—he say, the time is over—I am sorry—will pay it in for you—and send to Philadelphia.

Konrad Hollinger, sworn.—I am a newspaper publisher; the ones now produced are some of the issues; Mr. Knopf paid me for those advertisements marked with a cross; he brought me them for insertion—he paid me.

Mr. Umpscheiden.—Translated advertisement. [Copy given in evidence. See appendix.]

30

Konrad Hollinger, cross-examined by defendants' counsel.—Mr. Knopf brought the advertisements in both cases; the copy was signed; I am not sure whether they were signed by the parties themselves; I printed them as they were signed. The plaintiff's counsel produced in evidence—(policies on

lives of Mr. and Mrs. Catoir; two bundles of receipts; newspapers, the following being translations:

NEW JERSEY VOLKSMANN, Sept. 4th, 1865.

I American Life Insurance and Trust Company of Philadelphia.

General Agent for Newark, N. J.—Charles Knopf, 97 Commerce street.

N. J. VOLKSMANN, April 23d, 1866.—EXPRESSION OF THANKS.

II. The undersigned, widow of the late Elias Witzel, who
10 recently died in this city, feels obliged to express her heartfelt thanks to the American Life Insurance Company, of Philadelphia, for the prompt payment of \$2000, amount of insurance; that is to say, after deduction of premiums in arrear and interest for sixty days, the sum of \$1994.10, which amount Mr. Charles Knopf, general agent of this company, has paid to me in full.

The conduct of Mr. Knopf, the general agent, deserves the more to be thanked, because the company might have refused
20 payment, as my husband's age was given three years too low, but Mr. Knopf knew how to put aside this obstacle, and did so.

G. WITZEL, *Widow.*

Whereupon the counsel for the said defendants did then and there insist, before the said justice, that the several matters so produced and given in evidence, were not sufficient to entitle the said plaintiff to have or maintain his aforesaid action against the said defendants, and that the said defendants were entitled to a verdict, and that the said plaintiff should be non-suit and barred of his action aforesaid.

And thereupon the said justice did then and there adjudge,
30 that the said several matters so given in evidence were not sufficient to entitle the said plaintiff to have or maintain his aforesaid action, and that the said plaintiff should be non-suit and barred of his aforesaid action; and the said plaintiff was thereupon, by said justice, ordered to be called and non-suit; to which judgment and decision of the said justice, the said plaintiff, by his said counsel, did then and there except. And because the said exceptions, so offered and made to

the said judgment and decision of the said justice, do not appear upon the record of the said trial, therefore, on the prayer of the said plaintiff, by his said counsel, the said justice hath, to this bill of exceptions, set his seal, according to the statute in such case made and provided.

DAVID A. DEPUE,
Justice Supreme Court.

Joinder in Error.

[Filed March 3, 1868.]

And the said American Life Insurance and Trust Com- 10
pany, by E. Mercer Shreve, their attorney, come here into
court and say, that there is no error either in the proceedings
aforesaid or in giving the judgment aforesaid; and they pray
that the said Court of Errors and Appeals now here, may
proceed to examine as well the record and proceedings afore-
said, as the matters aforesaid above assigned for error, and
that the judgment aforesaid, in form aforesaid given, may be
in all things affirmed.

E. MERCER SHREVE,
Attorney of defendants in error. 20

*Rescissions for the non-suit; the
of the Plaintiff to comply with
the conditions of the policy*

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It is understood and agreed that unless the next Premium shall be paid on or before the day it becomes due, at 12 o'clock, (noon,) the Policy will be forfeited and void.

No. 8802

American Life Insurance and Trust Company,

WALNUT STREET, S. E. Corner of Fourth, Philadelphia.

SUM Insured, \$2000

Received

[L. S.]

Eighteen $\frac{90}{100}$ dollars, it being the Premium for three

months beginning the eighth day of June, one thousand eight hundred and SIXTY-FIVE, on the above named Policy, upon the life of Anna M. Catcir.

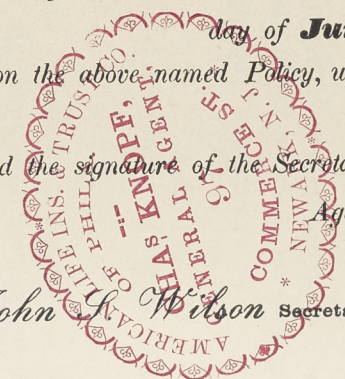
WITNESS the seal of the said Company, and the signature of the Secretary, countersigned by Chas. Knopf Agent.

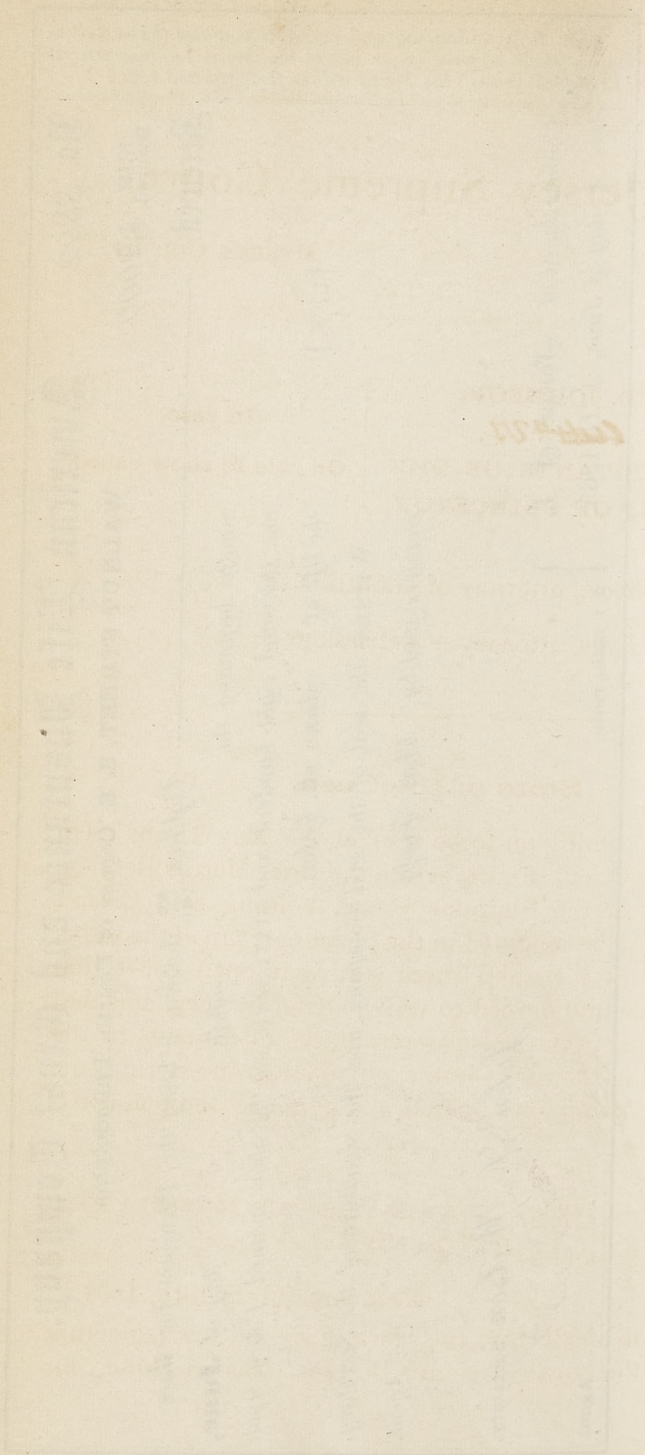
John S. Wilson Secretary.

Countersigned at Newark, N. J., this 8 day of June, A. D. 1865.

W. F. Geddes, Printer.

Agent





1870