

8807

No. _____

Supreme Court of Illinois

Illinois Mutual Fire Ins.Co.

vs.

John O'Neill

State of Illinois }
Madison County }^{ss}

John O'Neil
as
The Illinois Mutual Fire
Insurance Company } Apumpait
Damages \$600.00

Plas of Record in the Circuit Court of Madison
County, in the State of Illinois. William N
Underwood Judge of said Court Presiding -

Be it Remembered that on the first day of August
AD 1857, a Declaration was filed in the above entitled
Cause, in words and figures, as follows, To wit -

State of Illinois } Madison Circuit Court
County of Madison } August Term AD 1857

John O'Neil plaintiff in this suit complains of the Illinois
Mutual Fire Insurance Company defendant in this suit
who has been summoned to answer him of a plea of
Trespas on the case upon promises - For that whereas
the said Plaintiff on the fifteenth day of May in the year of
our Lord Eighteen hundred & forty eight was interested in
a certain stock of goods, wares and Merchandize

situated & being in the Town of Chester, County of Randolph and State of Illinois, of great value To wit: to the value of Five Thousand Dollars & Continued so interested until the destruction of said Stock of goods, wares and Merchandise by fire as hereinafter mentioned - And being so interested the said Plaintiff on the day and year aforesaid at Alton, County of Madison and State of Illinois caused to be made a Policy of Insurance in the office of the Illinois Mutual Fire Insurance Company and did thereby cause himself, as well in his own name, as in the name of all other persons to whom the same did then or might appertain, to be insured, the sum of Nineteen Hundred Dollars upon the said Stock of goods wares and Merchandise - Wherein among other things contained in said Policy of Insurance it is witnessed -

"That whereas John O'Neil having become a Member of the Illinois Mutual Fire Insurance Company, and bound and obliged himself, his heirs, Executors and administrators to pay all such sum or sums of money as may be ascertained by the directors thereof, pursuant to the act incorporating said Company; And also secured to said Company the sum of One Hundred and seventy one Dollars being the amount of the Deposit or premium for insuring the sum of Nineteen Hundred Dollars, unto him, his heirs, his Executors, administrators and assigns an the following property To wit: An Stock in trade, Consisting of goods, wares & Merchandise usually kept in Country Stores, Nineteen Hundred Dollars situated in the Town of Chester, Randolph County, Reference being had to his Application, of even number herewith, filed in the office of the Company for a more particular description and as forming a part of this policy, during the term of six years commencing at noon on the fifteenth day of May Eighteen Hundred and forty eight and ending at noon -

on the same day of the same month, Eighteen
hundred and fifty four. Now be it known
that we the members of said company, for
and in consideration of the premises do here
by certify that the John A. Sted. is insured in
and by said company upon the property afore
said in the sum of Nineteen Hundred dollars
And we do therefore promise, according to
the provisions of said Act, to pay or satisfy
him his heirs, executors, administrators or assigns
the said sum insured, within three months
next after the said property shall be burnt,
destroyed or demolished by or by reason or means
of fire and notice thereof given as required by
the Act afore-said, during this time this Policy
shall remain in force; unless the Directors
shall within the three months determine to
rebuild or replace the property destroyed,
And we do farther promise, that when and
so often as the property afore-said or any part
thereof or any other of equal value, built
or supplied in the room thereof, shall
happen to be injured by means of fire,
Such damage shall be made good according
to the estimate thereof or repaired or put in
as good condition as the same was before
such fire happened - Provided, that if it
should happen that the whole stock and
contribution of the said company should
ever be insufficient to pay and satisfy all
the loss sustained by the members of said

company, in such case a just average shall be made and the payment to be demanded in virtue of this Policy shall be a dividend of the said Stock & Contribution in proportion to the sum insured agreeably to the tenor and true intent of the Act aforesaid: of which said Policy of Insurance as above set forth, the ^{said} Illinois Mutual Fire Insurance Company there afterwards, on the same day had notice and in consideration that the said plaintiff had then and there paid and secured to the said Illinois Mutual Fire Insurance Company the premium of one Hundred & Twenty one dollars according to the tenor of said Policy and promised to perform all things in the writing aforesaid on the said plaintiffs part to be performed the said Illinois Mutual Fire Insurance Company there and there became the insurer of the said stocks of goods, wares & merchandize for the time aforesaid according to the tenor & effect of said Policy for the sum of Ninety Hundred dollars, to be assured by the writing aforesaid being the sum subscribed to said writing, against all such immediate loss or damage as should happen to said stocks of goods wares & merchandize by fire, And the plaintiff avers that afterwards and before the expiration of the time limited in said Policy, to wit on the thirtieth day of April in the Year Eighteen Hundred and fifty, the said Stocks of goods wares and merchandize was accidentally and by misfortune destroyed, consumed & damaged by fire to a large amount, to wit to the amount of Twelve Hundred & Ninety Nine dollars & twenty cents of which loss the

said plaintiff forthwith and within thirty days from
the time thereof, to wit on the day of
A.D. 1850 gave notice in writing and proof thereof to
the said defendants. And although the said plaintiff
has performed all things by virtue of said Policy on
his part to be performed, yet the said Illinois Mutual
Fire Insurance Company though often therunto requir-
ed, and though three months after said notice and
proof of said loss, have elapsed have never paid to,
the plaintiff the said sum of Twelve Hundred & Ninety
nine dollars & twenty cents or any part thereof, nor re-
placed the property destroyed as aforesaid - all of
which to do the said defendant hath refused & still
doth refuse to the damage of the said plaintiff of
Six Hundred dollars and therefore he brings his
suit &c

D. J. & H. L. Baker

Atty for plff

Copy of the Policy of Insurance declared on
Illinois Mutual Fire Insurance Company No 3612
Premium note \$171. Sum Insured \$1200, 6 per cent
paid \$ 8.55, Rate per cent $\frac{2}{100}$ Policy \$1.

This Policy witnesseth that whereas John O'Neil has
become a member of the Illinois Mutual Fire
Insurance Company, and bound & obliged himself,
his heirs executors & administrators, to pay all such
sum or sums of money as may be assessed by the
Directors thereof pursuant to the Act incorporating
said Company; and also secured to said Company,

the sum of One Hundred and Seventy one dollars,
being the amount of the Deposit or Premium for Insuring
the sum of Nineteen Hundred Dollars, unto him, his heirs,
executors, administrators and assigns, the following
Property, to wit —

On Stock in Trade, consisting of goods, wares
& merchandize, usually kept in Country Stores
— \$1900. 00

Situated in the town of Chester, Randolph County
Reference being had to his application of even No here
with, filed in the office of the Company, for a more
particular description and as forming a part of this
Policy, during the term of six Years commencing at
noon on the fifteenth day of May Eighteen Hundred &
Forty Eight and ending at noon on the same day of the
same month Eighteen Hundred & fifty four —

Now be it known, that we the members of said Company,
for and in consideration of the premises do hereby certify
that the said John O'Neil is Insured in and by said
Company upon the property afore said in the sum of Nine
teen Hundred Dollars: And we do therefore promise ac-
cording to the provisions of said Act to pay or satisfy,
him, his heirs, executors, administrators or assigns the
said sum Insured, within three months next after the
said property shall be burnt, destroyed or demolished by
or by means or reasons of fire and notice thereof given as
required by the Act aforesaid, during the time this Policy
shall remain in force, unless the Directors shall within
the said three months, determine to rebuild or replace
the property destroyed — And we do farther promise,
that when and so often as the property afore said or any
part thereof or any other of equal value built or supplied

in the ruin thereof, shall happen to be injured by means of
Fire, such damage shall be made good according to the esti-
mate thereof or repaired, & put in, as good, condition, as the
same was before such, fire, happened— Provided, that
if it should happen that the whole stock and contribution
of the said company should ever be insufficient to pay
and satisfy all the losses sustained by the members of said
company, in such case a just average shall be made
and the payment to be demanded in virtue of this Policy
shall be a dividend of the said, stock, & contribution in
proportion to the sum insured, agreeably to the true
and true intent of the Act aforesaid, In witness whereof
The President of said company has signed this Policy
and the Secretary thereof has countersigned the same,
at Alton the fifteenth day of May in the year of our
Lord One thousand eight hundred and forty eight
Benj. F. Long — President
Moses L. Atwood. Secretary

Madison Circuit Court

John O'Neil

vs

Assumpsit

The Illinois Mutual Fire Damage \$ 600. 00
Insurance Company }

The Clerk will issue Summons
directed to the Sheriff of Madison County in the
above case, returnable to the next Term of said
Court, July 28th A.D. 1857,

D. J. & H. S. Baker.

Attys for plff

And afterwards, to wit - on the 1st day of August A.D. 1850 was issued out of and under the seal of said Circuit Court a summons in said cause in words as follows, to wit
State of Illinois } The people of the State of Illinois }
Madison County } the Sheriff of Madison County - Greeting
We command you, that you summon The Illinois Mutual Fire Insurance Company to appear before the Circuit Court of Madison County, on the first day of the next Term, to be holden at the Court-house in Edwardsville on the third Monday in the month of August A.D. 1850 to answer unto John C. Hill of a plea of Assumpsit to his damage of Six Hundred dollars, as he says And have you there & there this writ

Witness Wm Tyler Brown, Clerk of said Circuit Court and the seal thereof at Edwardsville, this first day of August in the year of our Lord one thousand eight hundred and fifty

Wm T. Brown Clerk

Upon the back of which the Sheriff made his return in words & figures as follows, to wit

I have duly served the within by reading the same to Moses G. Atwood. Secretary of said Insurance Company - August 8th 1850

Sheriff's fee

serving 50

70

Relief 10

130

A Miller Sheriff M. Co.

By C. A. Murray Deputy

Rec^d & filed August 17 1850

Wm T. Brown Clerk

And afterwards, to wit at the August term A.D.
1850 of said Circuit Court, to wit on the 21 day of
August 1850 the defendants in the above entitled
cause filed their plea, herein which plea is in words
and figures as follows, to wit-

Illinois Mutual Ins. Co.	}	Madison Circuit Court August
ads		term A.D. 1850
John O'Neil		

And said Defendant by Davis &
Edwards his attorney comes and defends this wrong
and injury wherein ~~off~~ and saith that they did not
undertake or promise in manner and form as
the said plaintiff hath above thereof complained
against him and of this defendants put themselves
upon the Country &c

Davis, Bellinger & Edwards
Attys

And the said Plaintiff doth the C.R.

D. J. & H. S. Baker.

Att for Plff

And afterwards, to wit at the said August Term
1850 of said Court to wit on the 23^d day of Aug.
1850 an order of Court was entered of record
in above entitled in words & figures as follows
to wit-

John O'Neil	}	On motion & by consent the cause is Continued
vs.		
Illinois Mutual Ins. Co.		

And afterwards, to wit at the March Term 1857 of said Circuit Court to wit on the 1st day of April 1857 an order was made and judgement rendered in the above entitled cause in words and figures to wit

John O'Neil

vs.

Assumpsit

The Illinois Mutual Fire Insurance Company } And now at this day comes the
Plaintiff by Bakus his Attorneys and
the Defendant by Davis & Edwards his Attorneys and the
issue being joined and the parties ready for trial a
jury comes - to wit: C. J. Dancy, Parkman Tindall
William Fruit William Luper Andrew P. Buck.
Alexander B. Seins Benjamin Wood Robert Chism
Alvin O'Leary Fielding Woodbridge Albert G. Wilson
Thomas J. Barnett twelve good and Lawful men
who were elected tried and sworn well and truly to
try the said issue, and after hearing the Evidence
and argument of counsel upon their oaths say, we
the Jury find the issue for the Plaintiffs and assess
their Damages to the sum of Four Hundred and two
Dollars and twenty five cents, where upon the Defendants
move the Court for a New Trial for reasons filed, and
the Court being sufficiently advised of said motion
it is ordered that the same be over ruled, It is therefore
considered by the Court that the Plaintiff have Judg-
ment for and recover of and from the Defendants
the sum of four hundred and Two Dollars and
twenty five cents his Damages, afore said, and also
for his costs, in this behalf expended, and that he
have Execution therefor &c

And afterwards to wit on the 18th day of April
A.D. 1857 Defendants in the above entitled cause filed
their bill of exceptions here in, in words and figures
as follows - to wit

John O'Sullivan	}	In the Madison Circuit
vs		Court
The Illinois Mutual Insurance Co.		

Be it remembered that on the trial of the above entitled
cause the Plaintiff offered and made in evidence to the
jury the policy sued on in this cause.

also the depositions of Albert Taylor, D. Block, John
P. Mann, and Amzi Andrews

State of Illinois }

County of Madison }

Madison Circuit Court

John Astill

vs

Illinois Mutual Fire

Insurance Company deft }

Messrs Davis & Edwards Attys for the above
named defendants

Shis

Take notice that on the 13th day of March next,
before Richard B. Servant Esq a justice of the peace
in and for the County of Randolph, Illinois at his office
in the town of Chester in said County, we shall take
the depositions of Albert Taylor, John P. Mann &
Amzi Andrews of said County as witnesses in the
case above entitled, between the hours of nine o'clock
in the forenoon & nine o'clock in the afternoon of
that day & be continued on the day following, if
necessary; which depositions are to be read in evidence
on behalf of the plaintiff on the trial of the above
entitled cause. Dated Feb. 27th 1857

Yours &c

D. J. & H. S. Baker,

Attys for s^d plaintiff

Depositions of witness produced, sworn and examined
at the office of Richard B. Servant Esq in the town
of Chester, County of Randolph, State of Illinois

before me, a Justice of the Peace, within and for the County of Randolph, aforesaid, in a certain cause now pending in the Madison County Circuit Court, State of Illinois, between John O'Neil, Plaintiff, and the Illinois Mutual Fire Insurance Company, defendant, on the part of the plaintiff.— Albert Taylor— of lawful age, being produced sworn and examined, on the part of the plaintiff, to answer such interrogatories as may be propounded to him on his oath answers as follows:—

1st Are you acquainted with John O'Neil, the plaintiff in this suit; if so, how long have you known him, and what is his business? I know John O'Neil, and have known him since the 1st of November 1849; his business is that of a merchant

2nd Was he doing business as a merchant in the town of Chester, Randolph County, and State of Illinois, on the 15th day of May, 1848; and from that time how long has he continued to do business? I know that he has been doing business in the town of Chester County of Randolph State of Illinois, as a merchant from the 1st of November 1849 to the present time

3rd If doing business as a merchant, state what building said O'Neil occupied as his store, on the 15th day of May 1848, and from that time up to April 13th 1850

He was doing business as a merchant in the center building of a block of brick buildings situated on lot one in Smith's survey of the town of Chester, from the 1st of November 1849 to the 13th of April 1850

4th State what amount of stock, in goods, wares and merchandise the said O'Neil had on hand, and in his store, on the 15th day of May 1848.— I don't know

5th Did, or did not said O'Neil purchase goods in Philadelphia, Pennsylvania, on or about the 1st of June 1849, if so, state what amount? I dont know

6th Did he, or did he not purchase any goods at any other place on or about the first day of June, 1849; and if so, state what amount? I dont know

7th State what amount of goods the said O'Neil had in his said store, on or before the first day of June, 1849, and before making any purchases as aforesaid? I dont know

8th Did or did not a fire occur in the town of Chester, which destroyed the building occupied as a store by the said O'Neil; and if so, state what time the fire occurred? A fire did occur in the town of Chester which destroyed the building occupied by the said O'Neil, on the 13th day of April, 1850

9th State what amount of stock in goods, wares and merchandise the said O'Neil had, at the time the said fire occurred. He had a stock of goods, wares & merchandise, amounting to nine thousand, nine hundred and twenty two dollars
\$ 9922 00

10th State what amount of goods, wares and merchandise belonging to said O'Neil and in his store was destroyed by the said fire? Fourteen hundred and eighty two dollars and six by four cents \$ 1482 60

11th State the whole amount of loss, to said O'Neil in goods, wares and merchandise, including goods destroyed and goods damaged, by the said fire, and which were in his said store at the time of said fire? Two thousand dollars destroyed and damaged

12th Was, or was not the said O'Neil receiving goods from Philadelphia, or from any other place at the time the said fire occurred? He was receiving goods from Philadelphia and Baltimore at that time.

13th State what portion of the goods, wares &c., which the said O'Neil had purchased in Philadelphia or other places, from about the 1st of June, 1848, up to the time of the said fire? From the 1st of November 1848 to the time of said fire he had purchased between nine and ten thousand dollars worth of goods, wares &c. from Philadelphia and other places.

14th Do you, or do you not know if any notice, in writing, was given, by the said O'Neil to the Directors of the Illinois Mutual Fire Insurance Company, or to any one of them, or to the Secretary of said Company within thirty days from the time of said fire, informing the said Directors, or any one of them, or the said Secretary, of the loss which he had sustained on goods, wares &c. insured in said Company, by the said fire? If so, state all and what you know in regard to the same. I have seen and examined a letter from the Secretary of said Company, acknowledging the receipt of a letter from Mr. O'Neil giving notice of the loss by said fire; and that letter is dated office of the Mutual Fire Insurance Company Attn April 22^d 1850 in reply to the notice of Mr. O'Neil of April 18th 1850.

Albert Taylor

David Black. — Of lawful age being produced, sworn and examined, on the part of the plaintiff, to answer such interrogatories as may be propounded to him, on his oath answers as follows: ---

1st Are you acquainted with John O'Neil the plaintiff in this suit; if so, how long have you known him, and what is his business? I know Mr. O'Neil and have known him as a merchant in the town of Chester, for four years immediately preceding this time

2^d Was he doing business as a merchant in the town of Chester, Randolph County, and State of Illinois, on the 15th day of May, 1848; and from that time how long has he continued to do business? He was a merchant in the town of Chester aforesaid, on the 15th day of May 1848; and has continued as such up to the present time

3^d If doing business as a merchant, state what building said O'Neil occupied as his store, on the 15th day of May, 1848; and from that time up to April 18th 1850. From the 15th day of May, 1848, to the 8th day of April 1849 his place of business was in a frame building in Front Street in the town of Chester; and from the last named day in the brick building that was burnt

4th State what amount of stock in goods, wares and merchandize the said O'Neil had on hand and in his store, on the 15th day of May 1848. I don't know

5th Did, or did not said O'Neil purchase goods in Philadelphia, Pennsylvania, on or about the 1st of June, 1849; if so, state what amount? He purchased in March 1849 at Philadelphia between seven and eight thousand dollars worth of goods. \$7 and \$8,000

6th Did he, or did he not purchase any goods at any other place on or about the first day of June, 1849; and if so, state what amount?

He was purchasing goods at other places about that time but I don't know the amount

7th State what amount the said O'Neil had in his ^{said} store on or before the 1st day of June 1848, and before making any purchases as aforesaid? He had between three and four thousand dollars, before making any purchases at the time before named.

8th Did, or did not a fire occur in the town of Chester on the 12th day of April 1850, which destroyed the building occupied as a store, by the said O'Neil; and if so, state what time the fire occurred? A fire did occur in the town of Chester on the 13th day of April 1850, which destroyed the said John O'Neil's store.

9th State what amount of goods, in wares and merchandise the said O'Neil had, at the time the said fire occurred. I don't know

10th State what amount of goods, wares and merchandise belonging to said O'Neil, and in his store, was destroyed by the said fire. I don't know

11th State the whole amount of loss, to said O'Neil, in goods wares and merchandise, including goods destroyed and goods damaged, by the said fire, and which were in his said store at the time of said fire. I don't know

12th Was, or was not the said O'Neil receiving goods from Philadelphia, or from any other place at the time the said fire occurred? He was receiving goods from Philadelphia and other places, at that time

13th State what portion of the goods, wares &c, which the said O'Neil had purchased in Philadelphia, or other places, from about the 1st of June, 1848, up to the time of the said fire. I don't know

14th Do you, or do you not know if any notice, in writing, was given, by the said O'Neil to the Directors of the — Illinois Mutual Fire Insurance Company, or to any one of them, or to the Secretary of said Company, within thirty days from the time of said ^{fire}, informing the said Directors, or any one of them or the said Secretary, of the loss which he had sustained on goods, wares &c. insured in said Company, by the said fire? If so, state all and what you know in regard to the same.
I do not

D Block

John P. Mason Of lawful age, being produced, sworn and examined, on the part of the plaintiff, to answer such interrogatories as may be propounded to him, on his oath answers as follows.

1st Are you acquainted with John O'Neil the plaintiff in this suit; if so, how long have you known him, and what is his business? I know John O'Neil, and have known him as a merchant in the town of Chester for four years immediately preceding this time.

2^d Was he doing business ~~as~~ a merchant, in the town of Chester, Randolph County and State of Illinois, on the 15th day of May, 1848? and from that time how long has he continued to do business? He was doing business as a merchant in said town of Chester, on the 15th day of May, 1848, and has continued as such, up to the present time.

3^d If doing business as a merchant, state what building said O'Neil occupied as his store, on the 15th day of May, 1848, and from that time up to April 13, 1850

He occupied a frame store on Front Street in said town up to the 8th day of April 1848. from that time to the 13th day of April 1850 he occupied the building that was destroyed by fire on that day.

4th State what amount of stock, in goods, wares and merchandise, the said O'Neil had on hand and in his said store, on the 15th day of May, 1848?

I don't know

5th Did, or did not said O'Neil purchase goods in Philadelphia, Pennsylvania, on or about the 1st of June, 1849; if so, state what amount? He did purchase goods in Philadelphia about the 1st of June 1849, to the amount of between five and six thousand dollars \$5 and \$6,000

6th Did, he, or did he not purchase any goods at any other place on or about the 1st day of June, 1849; and if so, state what amount? He purchased goods at other places about the 1st of June 1849, to the amount of between two and three thousand dollars \$2 and \$3,000.

7th State what amount of goods the said O'Neil had in his said store, on or before the 1st day of June, 1849, and before making any purchases as afore said? He had at that time and before making any purchases, between three and four thousand dollars \$3 and \$4,000 on hand

8th Did or did not a fire occur in the town of Chester, which destroyed the building occupied as a store by the said O'Neil; and if so, state what time the fire occurred? A fire did occur on the morning of the 13th day of April 1850 in the town of Chester, which destroyed the building occupied as a store by John O'Neil

9th State what amount of stock in goods, wares and merchandise the said O'Neil had at the time the fire occurred. He had a stock of goods, wares and merchandise at the time of said fire, Nine thousand nine hundred and twenty two dollars \$9,922.00

10th State what amount of goods, wares and merchandise belonging to said O'Neil, and in his store, was destroyed by the said fire. There was destroyed by said fire, goods in said O'Neil's store, and belonging to him, to the amount of One thousand four hundred & eighty two dollars, and sixty four cents \$1482.64/100

11th State the whole amount of loss, to said O'Neil, in goods, wares and merchandise, including goods destroyed and goods damaged, by the said fire, and which were in his said store at the time of said fire. Off goods destroyed in said store and damaged and belonging to the said O'Neil, by the said fire, was Two thousand dollars, \$2000.00

12th Was, or was not the said O'Neil receiving goods from Philadelphia, or from any other place at the time the said fire occurred? He was receiving goods from Philadelphia and other places, at the time said fire occurred.

13th State what portion of the goods, wares &c. which the said O'Neil had purchased in Philadelphia, or other places, from about the 1st of June, 1849, up to the time of the said fire. From the 1st of June 1849 up to the time of the fire, he had purchased about Twelve thousand dollars worth of goods wares and merchandise.

14th Do you, or do you not know if any notice, in writing, was given by the said O'Neil to the Directors of the Illinois Mutual Fire Insurance Company, or to any one of them, or to the Secretary of said Company, within thirty days ^{from the time} of said fire, informing the said Directors, or any one of them, or the said Secretary, of the loss which he had sustained on goods, wares &c. insured in said Company, by the said fire? If so, state all and what you know in regard to the same.

I have seen and examined a letter from the Secretary of the Illinois Mutual Fire Insurance Company dated at the office of the Company (Attoic) April 22^d 1850, acknowledging the receipt of Mr. O'Neil's notice of the loss by the fire of the 13th of April 1850

John P. Mann

Amzi Andrews — Of lawful age, being produced, sworn and examined, on the part of the plaintiff, to answer such interrogatories as may be propounded to him, on his oath answers as follows —

1st Are you acquainted with John O'Neil, the plaintiff in this suit; if so, how long have you known him and what is his business? I know John O'Neil and have known him as a merchant in Chester, since some time during the summer of 1849

2^d Was he doing business as a merchant in the town of Chester, Randolph County and State of Illinois, on the 15th day of May, 1848; and from that time how long has he continued to do business

1 He was doing business as a merchant in the town of Chester on the 15th day of May, 1848; and has continued doing business as a merchant in Chester from that time up to this time

3^d If doing business as a merchant, state what building said O'Neil occupied as his store, on the 15th day of May, 1848; and from that time up to April 13th 1850

He occupied a frame store on Front Street in said town, until some time in the spring of 1848, and from that time until the fire of the 13th of April 1850, he occupied the brick building as a store, which was burned on the morning of that day

4th State what amount of stock, in goods, wares and merchandise the said O'Neil had on hand and in his ^{said} store, on the 15th day of May, 1848;

I dont know

5th Did, or did not said O'Neil purchase goods in Philadelphia, Pennsylvania, on or about the 1st of June, 1848; if so, state what amount? I dont know

6th Did he, or did he not purchase any goods at any other place on or about the first day of June, 1848, ~~and before~~ ~~making any purchases as afore said~~ and if so, state what amount? I dont know

7th State what amount of goods, said O'Neil had in his said store, on or before the 1st day of June, 1848, and before making any purchases as afore said? I dont know

8th Did, or did not a fire occur in the town of Chester, which destroyed the building occupied as a store by the said O'Neil; and if so, state what time the fire occurred? A fire occurred on the 13th day of April, 1850, which destroyed the building occupied as a store in Chester, by Mr. O'Neil

9th State what amount of stock in goods, wares and merchandise the said O'Neil had, at the time the fire occurred. I don't know

10th State what amount of goods, wares and merchandise belonging to said O'Neil, and in his store, was destroyed by the said fire.

I don't know

11th State the whole amount of loss, to said O'Neil in goods, wares and merchandise, including goods destroyed and goods damaged, by the said fire, and which were in his said store, at the time of said fire. I don't know

12th Was, or was not the said O'Neil, moving goods from Philadelphia, or from any other place, at the time the said fire occurred? I don't know

13th State what ^{part} portion of the goods, wares &c. which the said O'Neil had purchased, in Philadelphia or other places, from about the 1st of June 1848, up to the time of the said fire. I don't know

14th Do you, or do you not know if any notice, in writing was given by the said O'Neil, to the Directors of the Illinois Mutual Fire Insurance Company, or to any one of them, or to the Secretary of said Company, within thirty days from

1 He was doing business as a merchant in the town of Chester on the 15th day of May, 1848; and has continued doing business as a merchant in Chester from that time up to this time

3^d If doing business as a merchant, state what building said O'Neil occupied as his store, on the 15th day of May, 1848; and from that time up to April 13th 1850

He occupied a frame store on Front Street in said town, until some time in the spring of 1848, and from that time until the fire of the 13th of April 1850, he occupied the brick building as a store, which was burned on the morning of that day

4th State what amount of stock, in goods, wares and merchandise the said O'Neil had on hand and in his ^{said} store, on the 15th day of May, 1848;

I don't know

5th Did, or did not said O'Neil purchase goods in Philadelphia, Pennsylvania, on or about the 1st of June, 1848; if so, state what amount? I don't know

6th Did he, or did he not purchase any goods at any other place on or about the first day of June, 1848, and before making any purchases as aforesaid and if so, state what amount? I don't know

7th State what amount of goods, said O'Neil had in his said store, on or before the 1st day of June, 1848, and before making any purchases as aforesaid? I don't know

the time of said fire, informing the said Directors, or any one of them, or the said Secretary, of the loss which he had sustained on goods, wares, &c. insured in said Company, by the said fire? If so, state all and what you know in regard to the same. I was agent of the Illinois Mutual Fire Insurance Company, at the time of said fire, and he notice of the loss by ^{said} fire, and communicated the same to the Company; and that Mr. Cestil conversed with him on the subject of having additional insurance, but does not recollect that he said he had obtained additional insurance previous to the fire.

Amzi Andrews

State of Illinois } ss
Randolph County } P. Richard B. Servant, a Justice of the
peace, within and for the County of Randolph aforesaid
do hereby certify that: Albert Taylor, David Black,
John P. Mann and Amzi Andrews, were by in-
sworn to testify the truth, the whole truth, and nothing
but the truth, as witnesses in the above named cause;
and that the foregoing depositions by them subscribed
were reduced to writing by me, and taken at the time
and place in the notice hereto attached specified,
Given under my hand and seal, This 13th day of
March, 1857

Richard B. Servant

Justice of the peace

State of Illinois } ss P. John W. Gilliss, Clerk of the County
Randolph County } Court of said County of Randolph, do
hereby certify that Richard B. Servant, Esq., on the

insurance in another office by giving due notice to this Company, provided always, that he keep an amount at his own risk, equal to that insured in this office, as this Company never insure more than one half the value of personal property.

Yours truly,

W. S. Atwood Sec.

Also the following letter from the said Plaintiff to the said Atwood, dated May 14th 1849

Chester May 14th 1849

July M^{rs}. M. J. Ins. Co.

Sir

Mr. Andrews has just handed me yours of April 28th in reply to a letter he wrote you on the subject of Insurance, herewith I send you two policies, that I have taken at different times, you will please insure on 14,000\$ (the full amount you are willing to insure on) on my stock, I intend taking out an additional Ins. in some other office, and shall advise you as soon as I do, I intend to insure on 10,000\$ Stock & L. house, 25-00\$ The House cost \$3,000, and the Stock will average the 10,000\$ — Mr. A. I understand wrote you fully the location of the house. — The wall that divides A. Perkins and my-self, is 13 inches, running up 14 inches above the roof, on the other side of me is a dry goods store, with same thickness of wall. The front end of my second story, is occupied as a Sailor Shop, the Third Story occupied as a

work as a Temperance Hall, and once a week by
Free Masons, wherever a floor passes through a partition
built is built around it for eighteen inches. You will
please make the alterations and return Policy at your
earliest convenience. The Ins. on my former house
I wish it all cancelled. —

Very Respectfully

John O'Fall

Also the following letter from the said Plaintiff to
the said Atwood dated April 18th 1850.

"St. Louis, April 19, 1850.

Mr. M. G. Atwood,

Secy. I. M. F. Ins. Co. Alt.

Sir On the morning of the
13th inst. my Fine Horse was destroyed by
Fire, and as near as I can arrive at the
loss on goods, amount to \$500 or 300^{ff}.
My object in writing, is to ascertain what
kind of evidence I shall have to produce
to establish my loss. No. of my Policy 3613,
Insured Nineteen Hundred Dollars.

I have Insured in Philadelphia 750^{ff}—
in addition to the amount Insured in your
office; please write me immediately on the sub-
ject. I shall remain in this city a few days.
If you write me here, please direct, Care of
Chas. Tillsman,

Very Respectfully

John O'Fall."

The Defendant then offered to prove by said Atwood that in all cases when property whether real or personal, was insured by said Company, they had always required notice to be given to them of any additional insurance upon the said property as provided in the 18th section of their charter and that this had been the invariable usage of said Company, which testimony the Court refused to allow the Defendants to give, to which refusal of the Court to allow said testimony, the Defendant at the time excepted. This being all the testimony given in the case, the Plaintiff then asked the Court for the following instructions,

The Court is requested by the plaintiff in this case to instruct the jury —

1 That if the jury believe from the evidence in this case that the contract for insurance was entered into by the defendants with the plaintiff as stated in his declaration, and that he has proved his interest in the goods insured & that he has complied with his part of said contract, and has lost said goods or had them

damaged by fire as stated in his declaration, and has given due notice to the Defendants of such loss or damage they will find for the Plaintiff such damages as he shall have proved he has sustained in consequence of such loss or damage by fire. — Although he may not have notified said Defendants of his having subsequently to the making the contract sued on, effected insurance in other Insurance Companies on goods & wares purchased by him and put into his store subsequent to the making of the contract sued on, provided he had at the time of effecting the subsequent insurance goods of value to the amount of all the insurances then on and sufficient to meet and afford aiment for all such Policies of Insurance.

2 That if they believe from the evidence that the Plaintiff has since the making of the contract sued on, effected insurance on his stock of goods therein described in other insurance offices, such subsequent insurance does not avoid or render of no effect the contract sued on in this case: — Although he may not have notified the defendants of such subsequent Insurance.

~~3 That if they believe from the evidence that notice of such insurance subsequently effected to the making of the contract in this case sued on, was duly given to Amos Andrews & that at the time of giving to him such notice, said Andrews was the agent of the Defendants, then such notice to such Agent is equivalent to notice to the Defendants~~

which instructions were given by the Court, to which decision of the Court in giving said instructions the Defendants at the time excepted. The Defendants then asked of the Court for the following instructions

John Corrie.

vs

Illinois Mutual Ins. Co.

The Defendant asks the Court to instruct the jury, that if they believe from the evidence that the Plaintiff has not complied with all the requirements set forth in policy of insurance, and the bye laws thereto attached as he was bound to do, they must find for the Defendants

1. That if the jury believe from the evidence that the Plaintiff was a member of the Illinois Mutual Insurance Company, he was bound to take notice of all the bye laws passed by the Directors of said Company

3 If the jury believe from the evidence that the Plaintiff was notified by the defendants that he must give them notice - before making insurance in other Companies, and bear the consent of the defendants endorsed upon their policy - otherwise the policy issued to him by the defendant would be void - and the jury find that the Plaintiff did make insurance in other companies without obtaining the assent of the Defendant they must find for the Defendant

4 That if the jury believe from the evidence that at the time when the Plaintiffs loss occurred as set forth in the declaration, he did not have an amount of goods at his own risk, equal in value to the amount of goods insured by the Defendants - that then they must find for the Defendants -

The 2^d 3^d & 4th of which said instructions the Court refused, to which opinion of the Court in refusing said instructions the Defendants at the time excepted And the jury having found for the Plaintiff the sum of \$402 ⁹⁸/₁₀₀ the Defendants moved for a new trial, which motion the Court overruled and rendered a judgement in favor of the Plaintiff for the amount so found by the jury, to which opinion and decision of the Court in overruling said motion for a new trial, the Defendants at the time excepted - and the Defendants pray that this their bill of exceptions may be signed and sealed by the Court and made part of the record in this cause -

W. H. Underwood

Seal
ee

State of Illinois }
Madison County } ss

I hereby certify the foregoing Exemplification to contain a full true and correct Copy of the papers filed & Judgment Entered of Record in the above entitled Cause, as the same appear of Record in my office

In Testimony whereof I have
hereunto signed my name &
affixed the Seal of the Circuit
Court of said County at Office
this 31st day of October A.D. 1887
Wm. T. Brown
Clerk

Colm O'Neill

as

M. W. F. Co.

Transcript of Record

— — — — —

The Union Mutual Fire
Insurance Company } Plaintiff in error
John O'Neill } Def^t in error } assignment of error

And the said Plaintiff in error by Davis & Edwards their Attorney, come and say that in the record and proceedings aforesaid and also in giving the judgment aforesaid there is manifest error in this to-wit:

- First. That the judgment aforesaid in form aforesaid was given for the said Defendant in error and against the said Plffs in error, when by the law of the land said judgment ought to have been given for the said Plaintiff in error against the said Defendant in error. -
- Second. The Court below erred in not allowing the testimony which the Plff in error offered to prove by the said Moses G. Atwood. -
- Third. The Court below erred in giving the instructions asked for by the said Defendant in error -
- Fourth. The Court below erred in refusing the 2^d 3^d & 4th instructions asked for by the Plaintiff in error. -
- Fifth. The Court below erred in not granting its motion of the Plaintiff in error for a new trial
- And the said Plaintiff pray that the judgment aforesaid for the error aforesaid, and these errors, may be reversed, annulled and altogether held for nothing &c. -

Davis & Edwards

Attys for Plff in error

And the said defendant in error by David J & Henry S. Baker comes and says that in the proceedings and in the rendition of the judgment aforesaid in the form aforesaid there is no error and he prays that the said judgment may be in all things affirmed &c.

David J & Henry S. Baker
attys for the defendant

In the Supreme Court

The Missouri Mutual
Fire Ins. Company

vs
John Orrell

Erwin & Madison Co.

Filed the 11th day
of November, A. D.
1857.

Henry D. Bastard

Clk

8807

Paid by Mr.
Davis