Boone County Home Mutual Insurance Co. vs. Singleton, Middleton G. Singleton, John G. 1869 Boone Co. 4th Dist. 286/2

Old 106/4

Reversed Recovery includes copy of policy

S owned goods in warehouse insured a/g fire by Co. who refused to pay

Policy states no more than 2/3 can be recovered - policy only for $3000 but fire damage $3859

1

In the Fourth District court of Missouri July Term 1869 — Pleas and Proceedings in said Court in the Matter of M G Singleton vs The Boone County Insurance Company — Present Hon R A DeBott Judge Presiding Hon's E V Wilson and Geo H Bruckhout Judges associated Wm Forbes Marshall and Jno M London Clerk to wit:

On the 22nd day of May 1869 a Transcript in the words and figures following was filed in said District Court to wit:

Wednesday May 27/68

M G Singleton
vs
Boone County Insurance Co } Plaintiff comes by his attorney and files his Petition

Petition filed

In the Circuit Court of Boone County State of Missouri May Term 1868 —

2

Middleton G. Singleton and
John G. Singleton Composing the
Firm of M. G. Singleton & Co. Plaintiffs
vs
Boone County Home Mutual
Fire Insurance Co. Defendant

Petition

Plaintiffs
State that on the 20th day of March 1867
The defendant was and still is a body
Corporate with power of suing and
being sued as such as will more fully
appear by an act of the general assembly
of this state entitled "an act to
incorporate the Boone County Home
Mutual Fire Insurance Company
approved Febry 28th 1857". Plaintiffs
further state that on the 20th day of
March A.D. 1867 they were the owners
and in the lawful possession of a
large stock of goods, wares and
Merchandise situated in a stone
House on Lot No — in the Town
of Centralia Boone County Missouri
of the value of — Dollars and the
Defendant on the day and date
last aforesaid in Consideration of a
premium then paid to said defendant
therefor by the Plaintiffs and also
by a certain Note then and there Executed

3 and delivered by the Plaintiffs to the defendants Made to Plaintiffs her certain Policy of Insurance on said Stock of Goods wares and Merchandise which policy of insurance is hereunto filed whereby the Defendant on the day and date last aforesaid faithfully undertook and promised Plaintiffs for the consideration aforesaid to insure for the space of six years thence next ensuing the said Stock of goods wares and Merchandise in the sum of three thousand Dollars and Pay or satisfy Plaintiffs their heirs Executors administrators or assigns the said sum so insured or such portion as might be payable according to the conditions of said Policy within three months after the said property should be burned destroyed or consumed by fire and Notice thereof legally given during the time said Policy should remain in force or else to replace the property so destroyed.

Plaintiffs further state that afterwards on the 19th day of April AD 1868 and whilst said Policy was in

full free a large portion of said stock of goods wares and Merchandise amounting on hand and of the value of three Thousand Eight hundred and fifty nine Dollars was accidentally or by Misfortune consumed by fire of which loss the plaintiffs within the time prescribed by said policy gave due notice to the defendant and also delivered to Defendant a particular account of the loss signed by them and verified by oath according to the terms of said policy.

Plaintiff further state that Defendant has wholly failed ~~to~~ and refused to pay the said sum so insured as prescribed by the terms of said policy or to replace the property so destroyed to the great damage and injury of Plaintiffs in the sum of thirty five hundred Dollars wherefore Plaintiffs pray judgment against Defendant for the sum of three thousand Dollars being the loss they sustained by said fire on the insurance of

5 said stock of goods wares and Merchandise with interest thereon from the 20th day of April A D 1868 and the Costs of suit.

O Guitar
Atty for Plaintiffs

Wednesday August 18th 1868

M G Singleton Plff
vs
Ans filed Boone Co Ins Co Deft

Deft comes by her attorney and files her answer to Plaintiffs Petition — —

In the Circuit Court of Boone County:

M G and John T Singleton Plffs
vs
Answer The Boone Co M F Ins Co Defts

Defendant answering Plaintiffs Petition says she denies she made the Contract of Insurance stated in Plaintiffs Petition at any time Defendant says she did at the time mentioned in said Petition make a contract of Insurance with

6. Plaintiffs containing many stipulations and conditions not set forth in said petition none of which have been performed by Plaintiffs. Defendant denies that the goods insured belonged to Plaintiffs or that the goods on hand at the time of the burning or those burned were those insured are were of the value of those mentioned in Plaintiffs petition or of any greater value than one thousand Dollars or that she ever agreed to pay more than one half the value of any that should be burned or that they ever gave Defendant any notice of the loss or any particular account of the loss or that Plaintiffs are damaged in mine or are entitled to recover of Defendant any mine whatever

Pruitt
Atty.

February Term 1849

Judgment M. G. Singleton Reff.
Boone Co. Ins. Co. Defts } Now on

7 this day come the Plaintiff by his attorney as likewise doth the Defendant and now the party requiring a Jury the issue herein joined is submitted to the Court by oral Consent in Court entered upon the minutes and the Court doth order and adjudge that Plaintiffs recovery of Defendant ($3000 00/100) for his damages and costs in this behalf expended and that Execution issue therefor — 6 per cent

W. G. Singleton Pltf.
vs
Boone Co Ins Co Deft

Mot for new trial overruled & filed

Defendant having filed his Motion for a New trial and an arrest of Judgment which Motion being overruled by the Court. Defendant files his Motion for an appeal to the District Court of the Fourth District of Missouri an such appeal is now here allowed. Defendant also tendered his bond which is approved and his Bill of

8 Exceptions to the opinions of the Court praying that the same be signed sealed and made part of the record which is now done accordingly

In the Circuit Court
Boone County

W. P. Singleton and
J. S. Singleton Plaintiffs
vs
The Boone County Mutual
Insurance Company Deft

Bill of Ex

Be it Remembered that on this day of February 1869 this cause coming on to be heard Plaintiff offered to read in Evidence the following Policy together with the Charter of the Company granted by the Legislature and the amendments thereto and also the by-laws and conditions of Insurance all of which are printed with and attached to the Policy Defendant admitted the Execution of the Policy but objected to the reading thereof on account of variance

9 The objection was sustained and the Defendant excepted
The Plaintiff thereupon read in Evidence the "Charter Policy by-
Policy laws and Conditions as follows

10

M G Singleton Evidence

The Plaintiff then proved by M G Singleton one of the Plaintiffs that on the Night of the 19th day of April 1868 the goods Insured were destroyed by fire that they had on hand at the time of the burning goods of the value of thirty Eight hundred and fifty nine Dollars That they saved from the burning a Iron Case with some goods in the same which were worth some thirty Dollars and that after the burning they gathered up some tools iron all that had passed through the fire worth some thirty or forty or fifty Dollars More: That he immediately gave the Company Notice and delivered to them a Particular in account of the loss and damage Signed and Sworn to as the Conditions required and that the defendants offered to pay to Plaintiff one half of the value of the goods on hand at the time of the fire which Plaintiff refused = The Record of the Defendant was then produced and read in Evidence

11 showing that the Plaintiffs Proof of loss amounted to thirty Eight hundred and fifty nine Dollars and that the Defendant offered to pay the Plaintiff the sum of Nineteen hundred and twenty nine 50/100 Dollars being one half of the amount of the value of the goods in hand as claimed by Plaintiff which the Plaintiff refused to Receive

The application Made by Plaintiff to be insured was read in Evidence by which it appeared that no minimum or average amount of stock was mentioned in said application or required to be kept on hand by Plaintiff

It is agreed by the parties that a certified copy of said application be made a part of this bill of exceptions.

Said Printed application follows

Application of M. G. Singleton & Co

In the County of Boone, *State of Missouri,*

FOR INSURANCE AGAINST FIRE,

BY THE

BOONE COUNTY HOME MUTUAL FIRE INSURANCE COMPANY,

For the Sum of Three Thousand Dollars, viz.:

	$	cts.		$	cts.
On Dwelling House			Valued at, exclusive of Land		
On Household Furniture therein			Valued at		
On Barn			Valued at, exclusive of Land		
On Hay and Grain therein			Valued at		
On Store			Valued at, exclusive of Land		
On Stock in Trade, consisting of Goods, Wares and Merchandise, usually kept in Stores	$3.000		Varying in amount from $ to $ at no time less than the former sum		

Where situated? Number of lot, block, street, &c., or number of section and quarter, township, range &c.? Situated in the Store House in Centralia Boone County Mo. formerly occupied by J A Bowine & Co

Of what materials?

Dimensions on the ground?

No. of stores and rooms in each?

No. of Chimneys, fire places and stoves? and whether the pipes enter brick chimneys or pass through wooden partitions? and how near the wood work?

Purposes for which occupied?

Distance and direction from each other and from other buildings?

Amount insured by this office on property in the same exposure?

Whether water is near?

What is the title? and whether incumbered by mortgage or otherwise, and to what amount?

How near to the building to be insured, or containing property to be insured, can a building be erected without your consent?

And the said applicant covenants and agrees with said Company that the foregoing is a correct description of the property requested to be insured so far as regards the risk on the same. The Company will be bound by no statement of the Agent, not contained in the application. No lighted lamp or candle is allowed to be carried into a barn or stable, unless protected by a lantern. The ashes (if any) to be kept at all times in a safe deposit.

In Witness Whereof, the signature of the undersigned is hereunto affixed, this 20 day of March 1867

M. G. Singleton & Co

FOR VALUE RECEIVED, *in Policy No. — dated the 20th day of March 1867 issued by the Boone County Home Mutual Fire Insurance Company promise to pay said Company (or their Treasurer for the time being) the sum of Three hundred and sixty Dollars, in such portions, and at such time or times, as the Directors of said Company may, agreeably to their Act of Incorporation, require.*

M. G. Singleton & Co

$360.

No 677

M. G. Singleton & Co

Amt Insured $3.000.

Rate per cent 12

Approved

March 20th 1867.

J B Douglass,

Secretary.

13 This being all the Evidence offered in the Cause on either side Pltff asked the following declarations of law which were given by the Court to the giving of the same Defendant objected and Excepted at the ~~same~~ time

In the Boone Circuit Court

W. G. Singleton and
J. T. Singleton Pltff
vs
The Boone County
Mutual Ins Co Defts

Instruction of Pltff

Plaintiffs asked the Court to declare the law as follows

Pt Plaintiffs are entitled under the policy offered in Evidence to recover the amount insured by Defendant with interest from date of Payment provided in the policy provided the value of the goods ~~insured~~ lost exceeded the amount of such Insurance

Given

2d The Terms Total loss and Partial loss as used in the policy offered in

14 Evidence are to be understood in Construing said Policy in their Natural and usual Meaning and Sense"

Given

The Defendant Thompson asked the following declarations of law:

W. P. Singleton and John T. Singleton Pltffs
vs
The Boone C. Mut Ins Co Defts

Defts Instruction

Defendant asks the Court to declare the law to be:

1st Under the Conditions of the Policy read in Evidence Pltffs Cannot recover for more than one half of the value of goods on hand at the time of the fire and interest thereon from that date

Refused

2nd If the value of the goods burned one half the value of the goods on hand at the time of the fire the Plaintiff Cannot recover for more than one half of the goods on hand at the time of the fire and interest thereon from that date

Refused

16 3d By the Condition of the Policy the Defendant only insured one half of the value of the goods on hand at the time of the fire

Refused

4th The fact that the Plaintiff saved from the burning Thirty or seventy five Dollars worth of the goods on hand does not authorize the Plaintiff to recover more than one half of the goods on hand at the time of the burning

Refused

5th A partial loss in the sense of the condition of this Policy must have been less than one half of the goods on hand at the time of the burning"

Refused

All of which were refused by the Court and to the opinion of the Court so refusing the same Defendant Excepted

The Court thereupon made a Verdict for the Plaintiff for Dollars the whole amount of Insurance upon the original Stock of goods The Defendant ~~thereupon~~ filed

16

A Motion for a new trial as follows

In the Circuit Court
Boone County

Mot for new trial

A. G. Singleton and
John T. Singleton Deft
vs
Boone County Mutual
Fire Ins Co Deft

The Defendant
Moves the Court to set aside the finding of the Court in this cause and grant the Defendant a new trial because

1st The finding of the Court is against the law and evidence
2" The Verdict is Excessive
3d The Court permitted illegal testimony to given by Plaintiff.

4" The Court refused to give proper declarations of the law asked by Deft and gave illegal declarations asked by Plaintiff
5th The Court Erred in declaring the law and finding the Facts

17 6th The Evidence does not support the Plaintiff Petition:

Pruatt
Atty for Deft

which Motion was overruled and to the opinion of the Court overruling the same the Defendant excepted at the time. The Defendant then upon filed a Motion in arrest of Judgment as follows;

In the Circuit Court
Boone County

Motion to arrest Judg

J. G. Singleton and
J. G. Singleton Aff
vs
Boone Co Mutual
Ins Co Defendant

The Defendant Moves the Court to arrest the Judgment in this case.
Because the finding of the court is not sufficient in law
Because the finding is illegal and contrary to law
Because the testimony does not support the Aff Petition

18

and varies therefrom

Because the Action does not contain facts sufficient to constitute a cause of action

Prewitt
Ally for Deft

which Motion the Court overruled and gave Judgment for the Plaintiffs for the amounts found due by the Court. To the opinion of the Court in overruling said Motion and giving Judgment the Defendant at the time objected and Excepted and tenders here the bill of Exceptions which is signed and sealed and Made a Part of the Record

G. H. Burckhart Cnl

Artct State of Missouri
County of Bonne } ss

I Jno M Samuel Clerk of the Circuit Court of Bonne County Missouri do hereby certify that the above and foregoing

19 is a full true and perfect Copy of the Record in this Cause as the same now appears from the original papers now on file and the orders of Record in my said Office

Seal

Witness my hand and seal of said Court hereto affixed Done at Office in Columbia May 20th 1869

Jno M Samuel Clk

Costs

Jno M Samuel Clk $20.42

Said Transcript is Endorsed Recd and filed May 22 1869

H C Bau Clk

over

Afterwards to wit at the July Term 1869 of the Fourth District Court of the State of Missouri the following is of Record in said Cause on the 5th day of said Term it being the 29th day of July to wit;

M G. and John T Singleton Respts
vs
The Boone Co Mut Insco Appts;

Errors assigned & Joinder filed

Now Comes the Appellant by atty and files his assignment of Errors and Respondent by their attorney file their Joinder thereto —

Said assignment of Errors is as follows;

M G Singleton Appellee
vs
The Boone Co Mutual Insurance Co Appellant

Assignment of Error

Now at this day comes the defendant by her attorney Prewitt and says there is manifest Error in the Record

21 and proceedings in this Cause in the Circuit Court and she assigns the following — Errors;

1st The Court erred in admitting illegal testimony;

2d The Court in declaring the law for Plff and refusing to declare the law as asked by Defendant;

3d The Court Erred in Finding the verdict

4th The Court Erred in refusing to set the verdict aside

5th The Court Erred in refusing to arrest the Judgment

6th The Court Erred in giving Judgment for Plaintiff and in the amount thereof

Wherefore for these and other manifest Errors and imperfections in the record and proceedings in this Cause in the Court below the said appellant prays the Court that the same may be set aside and held for Nought and that she be restored to all her rights as they were before said proceeding

22 were had

Chenitt
Atty for Defendt

Joinder Now Comes the appellee by his atty and says there is no Error in the record and proceedings in the above case and asks that the Judgment therein be affirmed

O Pitor
Atty for appellee

Said assignment and Joinder are Endorsed;

Filed July 20th 1869
Jno M London Clk

And afterwards at the same time of said fourth District Court on the day of July 1869 the following Entry is of Record in this Cause to wit;

M G Singleton and
Jno T Singleton Respondents
vs
Judgment The Boone County mutual fire
Insurance Company Appellants } Now

23

Come the parties by atty and this Cause being Called answer ready for trial and having offered their statements of the case and arguments thereon the Cause is submitted to the Court upon the issues made up in the Cause

And the Court being fully advised of and Concerning the facts in the Cause Find that the Judgment of the Boone County Circuit Court herein is in accordance with law and the Evidence before said Court

Whereupon is considered and adjudged by the Court that said Judgment be affirmed and that said Judgment be enforced by proper process from this Court

And afterwards at the said July Term of said District Court on the 24th day of July 1869 and 6th day of Term the following entry is of Record in the proceedings of said Court to wit;

M G Singleton and
John Singleton Respondents
vs
Boone County Mutual Insurance Co Appellant. now

application for appeal & appeal allowed

over

24

comes the appellant by attorney and files his affidavit for an appeal which affidavit is seen and heard by the Court and an appeal granted and the clerk of this Court is ordered to make a full true and complete Transcript of the Record and proceedings in this Cause (Except such part thereof as is printed which latter matter is ordered by the court to be sent up as originally filed) and forward the same under the seal of this Court to the Clerk of the Supreme Court at Jefferson City Missouri without unnecessary delay

M G Singleton Ad Respondents

vs

Affd for an Appeal Boone Co Mutual Insurance Co appellants

In the 4th District Court July Term 1869 —

and the Boone County Mutual Insurance Company the appellant by her attorney comes and prays for an appeal in the above Cause to the Supreme Court and Robert T Prewitt agent and attorney for said appellant

25 being duly sworn makes affidavit and says that such application is not made for vexation or delay but because the affiant believes that the appellant is agrieved by the judgment of this Court.

Robert T Kennedy

Sworn to and subscribed before me July 24th 1869

Jno M London
Clerk

Said affidavit is Endorsed filed July 24/69.

Jno M London Clerk

The opinion of the Court delivered in this Cause (which should have been Entered at Page 23) is in the following words and figures to wit;

Opinion

W G Singleton
vs
Boone Co Ins Co } appeal from Boone Circuit Court.

D E Bolt Judge delivers the opinion of the Court.

This was an

action upon a Policy of Insurance for the sum of Three Thousand Dollars made by defendant on a stock of goods wares and merchandise in the Town of Centralia Boone County Mo Conditions of Insurance and forming a part thereof is the following Clause:

Insurance in no case is made on more than two thirds of the value of the building nor more than one half the value of furniture or one half the average amount of stocks in trade and in case of total loss the company is not liable to pay more than two thirds of the actual value of the building at the time of its loss nor more than one half the value of personal property"

Partial losses are paid in full not exceeding the amount insured provided the insured has on hand the least amount stated in the application. The application upon which this policy was issued states no average amount of stock

27 Nor did it require any specified amount to be kept on hand
On the 19th day of April 1868 the building and the greater part of the goods were destroyed by fire the goods on hand at the time of the burning amounted to three thousand Eight hundred and fifty nine dollars about seventy Dollars worth being saved
Defendant at the trial offered to pay $1989 59/100 one half the amount of the loss which Plaintiff refused to accept. The case was submitted to the Court who found a verdict for Pltf and rendered Judgment for three Thousand Dollars from which Defendant appeals to this Court

The points in the case are fully presented by the instructions asked and given for Plaintiff.

1st Plaintiff was entitled under the policy offered in Evidence to recover the amount insured by defendant with interest from date of payment provided in

the policy. Provided the value of the goods lost Exceeded such Insurance

2" The terms Total loss and partial loss as used in the policy offend in Evidence are to be understood in Construing said Policy in their natural and usual Meaning and sense

This Doctrine is supported by the Case of Lincoln Et al vs Boston Mutual fire Ins Co. 9 Metcalf 215 Trull vs the Roxbury Mutual fire Ins Co. 3d Cushing 263

The Rule seems to be somewhat different in 5th Dinie 326 and 11 Ohio 8t-10 and I adopt the ruling in this Case with Much doubt as to its Correctness but the other members of the Court are satisfied as to its soundness. Therefore let the Judgment of the Circuit Court be affirmed The other Judgments Concur

R A De Bott
Judge

29 Said opinion is Endorsed
Filed Aug 23/1869
Jno M London
Clerk

Cert I Jno M London Clerk of the 4th District Court of Missouri Certify that the foregoing is a full and Complete Copy of the Records and Proceedings in the above Cause as Evidenced by original Papers on file Copies thereof under seal of Boone Circuit Court and Record Entries of said District Court Now in my said Office

Witness my hand as clerk and the Seal of said Court Done at Office in Macon August 29 1869
Jno M London
Clerk

Costs Costs
Jno M Samuel Clk Boone $20 42
Jno M London Clk Dist Court $12.50

Over

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M G Singleton & Co
vs
Born & Ins Co

Record

Fourth Dist Court

Filed Dec. 25th 69
Burch
Clk

Dickfu
Ans & C. Pd

In the Supreme Court
January Term 1870

M. G. Singleton Plaintiff, & ~~appellee~~ Respondant
Vs
Boon County Home Mutual Fire Ins Co. appellant

Appeal from 4 District Court

Now at this day comes the said appellant, The Boon County Home Mutual ~~Insurance~~ Fire Insurance Company and says that there is manifest error in the record and proceedings in this Cause in the District Court and assigns the following errors

1st The said District Court committed error in failing to reverse the Judgment of the Circuit Court

2nd The said Court erred in affirming the Judgment of the Circuit Court

3rd The Court erred in declaring the Law

Pruitt atty for
appellant

And now Comes the Respondent by his atty and says there is no error as Complained of by the appellant herein,

O. Gleeland
atty for Respondent

M. G. Singleton

vs

Boone Co Home
Mutual Ins Co

Errors.

Filed Jany 12/78
Burch
Clk

Meddleton G Singleton Respdt. In the
vs
The Boone County Home Insurance Company appellant

Supreme Court of Missouri at Jeff City
Jany Term 1870

This was an action upon a policy of Insurance made by the defendant on a stock of goods wares and merchandise in the Town of Centralia Boone County Missouri. attached to said policy and under the head of "Conditions of Insurance" and forming a part thereof is the following clause.

"Insurance in no case is made on more
" than two thirds of the value of any build-
" ing. nor more than one half the value
" of furniture. or one half the average
" amount of stock in trade."
" And in case of total loss the Company
" is not liable to pay more than two
" thirds of the actual value of the
" building at the time of its loss
" nor more than one half the value
" of personal property. Partial losses
" are paid in full; not exceeding
" the amount insured; provided the in-
" sured has on hand the lowest amount
" stated in the application.", ~~the applica~~

The application upon which said Policy of insurance was predicated and which "forms a part thereof" stated the average amount of stock and required the amount of stock to be kept on hand.

The stock on hand at the date of the Policy amounting to $15.100 Dollars was insured for the sum of Three Thousand Dollars and on the 19th day of April 1868 the building and greater part of the stock on hand was consumed by fire. The stock on hand at the time of the fire amounted to Thirty Eight hundred and fifty nine Dollars, and there was saved from the stock goods to the value of about Ninety Dollars.

Plaintiff gave the Defendant due Notice of his loss and demanded payment of the Three Thousand Dollars the amount insured which Defendant refused to pay, but offered to pay the sum of Nineteen hundred and twenty nine 50/100 Dollars which Plaintiff refused to accept in settlement of his demand

The above was all the testimony in

the Course as appeared from the State=
ment of the Plaintiffs and from the
policy, application, and record
of the Defendant which were read
in Evidence

Plaintiff thereupon asked
the Court to make the following
declarations of law;
1st — Plaintiffs are entitled under
the policy offered in evidence to recover
the amount insured by defendant
with interest from date of payment pro=
vided in policy; provided the value of
the goods lost & ceded the amount of
such Insurance.
2nd The Terms "Total loss" and
"Partial loss" as used in the policy of=
fered in evidence are to be understood
in Construing said policy in their natu=
ral and usual meaning and sense

The Court gave said declarations of
law; and the Defendant & agted

The Defendant asked the Court
to make the following declarations of
law which the Court refused to do
and Defendant & agted—

First. Under the Conditions of the Policy Read in Evidence Plaintiff Cannot recover for more than one half the value of goods on hand at the time of the fire and interest thereon from that date

Second. If the value of the goods burned Exceed one half of the value of the goods on hand at the time of the fire the Plaintiff Cannot recover for More than one half of the value of the goods on hand at the time of the fire. and interest thereon from that date

Third. By the Condition of the Policy the Defendant only insured one half of the value of the goods on hand at the time of the fire

Fourth. The fact that the Plaintiff saved from the burning Thirty or seventy five dollars worth of the goods on hand does not authorize the Plaintiff to recover more than one half of the value of the goods on hand at the time of the burning

Fifth. A Partial loss in the sense of the Condition of this Policy must have been less than one half the goods on hand

at the time of the burning.

Thereupon the Court sitting as a Jury rendered its verdict and Judgment in favor of the Plaintiff for the amount insured ($3000.00) and interest which defendant moved severally to set aside and arrest and his motions being over-ruled he brings the case here by appeal

Gictar ally for the ~~defendant~~ respondent relies upon the following points and authorities to sustain the Judgment in the above Cause

1st The Terms "Total loss" and "partial loss" used in the policy sued on are to be taken and understood in their natural and ordinary sense. Said terms have no peculiar or technical meaning when applied to fire Insurance (Ellis on Fire & life Ins 136 Note 1)

([illegible] vs [illegible] Ins Co [illegible])

Fescom vs Boston Mutual fire Ins Co 9 Metcalf 205

Trull vs Roxbury Mut fire Ins Co 3 Cushing 267

2d ~~Kent Com 453 Note 1~~) Under hill vs The Azawam Mutual Fire Ins Co 6 Cushing 410,

3d The Terms "total loss" and partial loss have no Constructive or technical meaning except when used in connection with the right of abandonment in the law of Marine Ins and said terms when

when so used do not import Necessarily the destruction or loss of any part of the subject matter insured
See 3 Mutt Com 397 and authorities there cited.

3d. The position assumed by the appellant that the amount insured could not be ascertained until the loss occurred is wholly untenable under the facts of this case. If such was the intention of the parties, and the meaning of the policy, why take the premium rate of the assured for $360.00 being 12 per cent the rate of premium agreed upon, on $3000.00 and why receive and accept $36.00, the amount required and agreed to be paid in hand on said Insurance of $3000.00,

4th Had the company required the assured to state in their application the average, and maximum amount of stock, there would have been no question in this case. The assured not having the average

Amount of Stock on hand at the time of the loss would have been entitled to recover nothing under his policy. The Company attempts by implication to add a new Stipulation to the Contract, by giving a technical and constructive meaning to terms which are to be understood and taken in their natural and obvious sense.

5th The case of The Ashland Mutual Ins Co vs Housinger & Norton 10 Ohio St 10. fully sustains the view taken by the appellee

6th The Amount insured must be paid if it does not exceed the Amount of the loss. Underhill vs Agawam Mutual Ins Co 6th Cushing 410.

19

M G Singleton
vs
Boone Co Ins Co

Statement & Brief

Filed Jany 12th 70
N. C. Burch
Clk

Fee. $18

Books

19

In the Supreme Court
Jany Term 1870

M. G. Singleton & Co appellee
against 3 appeal from 4th District
Boon Co Home Mutual Ins Co appellant

Statement of Case & Brief by Prewitt for appellant

Plaintiffs sued defendant on a policy of Insurance against fire, alleging that defendant was a corporation authorized to take insurance, that on the 20th day of March 1867, the plaintiffs were the owners of a large stock of goods, which defendant insured on that day for six years in the sum of three thousand Dollars for a premium then paid, that on the 19th day of April 1868, there was a large portion of said goods remaining on hand which were of the value of three thousand eight hundred and fifty nine Dollars, and which were then accidentally consumed by fire, that plaintiffs gave notice & delivered to defendant a particular account of loss and that plaintiffs were entitled to recover of defendants 3000 Dollars and interest

Defendant answered denying the

execution of the agreement as set forth in plaintiffs petition, but alleges she insured plaintiffs on an agreement containing many conditions and stipulations not set forth in plaintiffs petition, and none of which had plaintiffs ever performed. Denies that the goods insured or those burned were plaintiffs, or that the goods burned were those which had been insured, or that the goods on hand when at the burning were of greater value than one thousand Dollars, or that defendant ever agreed to pay more than one half the value of the goods on hand at the time of the burning, or that plaintiffs were damaged in any sum.

On the trial (which was before the court) the ~~defendant~~ plaintiffs offered to read in evidence the policy of insurance together with the conditions by laws and charter thereto attached and the application for insurance (all of which are in the record in print and made part thereof by agreement) defendant admitted the execution of the policy but objected to reading it in evidence, because of variance between from the petition, Defendants objection

was overruled, and said papers read in evidence, and defendant excepted. The policy read in evidence declares that the Charter by laws and conditions annexed form part of the policy. (No part of any of them are set forth in the petition.) It also promises to pay such part of the sum insured as is payable according to the conditions annexed. In the latter part of the last clause of the conditions annexed are these, Insurance is in no case made on more than 2/3 of the value of any building nor more than 1/2 the value of personal time or one half of the average amount of stock in trade; and in case of total loss the company is not liable to pay more than (2/3 ths) two thirds the actual value of the building at the time of its loss, nor more than one half of the value of personal property. Partial losses are paid in full not exceeding the amount insured, provided the insured has on hand the lowest amount stated in the application."

Plaintiffs also proved by one of plaintiffs that they had three thousand eight hundred and fifty nine dollars worth

of goods on hand at the time of the burning and that they were all consumed except that they saved a show case with some containing some goods worth 30 dollars, and some tools and iron which had passed through the fire worth some 40 or 50 dollars more, and shewed by defendants books that defendant had offered to pay plaintiffs 1929.$\frac{50}{100}$ dollars one half of amount for which plaintiffs had made proof of loss

The court then gave for plaintiffs the following instructions to the giving of which ~~plaintiff~~ defendant objected and excepted.

1st Plaintiffs are entitled under the policy read in evidence, to recover the amount insured by defendant with interest from date of payment provided in the policy. provided the value of the goods lost exceeded the amount of such insurance.

Given

2nd The terms total loss & partial loss as used in the policy offered in evidence, are to be understood in construing said policy, in their natural and usual meaning and

Given

Dennes.

The defendant asked the following instructions all of which were refused, and to the opinion of the Court in refusing the same the defendant excepted

1st Under the conditions of the policy read in evidence the plaintiffs cannot recover for more than one half of the value of the goods on hand at the time of the fire and interest thereon from that date.

refused

2nd If the value of the goods burned exceeded one half of the value of the goods on hand at the time of the fire, the plaintiffs cannot recover for more than one half of the goods on hand at the time of the fire and interest thereon from that date.

refused

3rd By the conditions of the policy the defendant only insured one half of the value of the goods on hand at the time of the fire

refused

4 The fact that the plaintiff saved from the burning thirty or seventy five Dollars worth of the goods on hand, does not authorize the plaintiffs to recover

more than one half of the value of the goods on hand at the time of the burning.

3th a further loss in the sense of the condition of the policy must have been less than one half of the goods on hand at the time of the burning

The Court thereupon found for the plaintiff the full amount sued for 3000 dollars. The whole sum set down in the policy

The defendant then filed a motion for a new trial, because the court permitted plaintiff to give illegal testimony, & because the court gave illegal declarations of law asked by plaintiff and refused legal instructions asked by defendant & because the verdict was excessive and against law and evidence. which motion was overruled and defendant excepted and then filed a motion in arrest of judgment because the finding of the Court is not sufficient in law, because it is illegal & contrary to law, because the testimony

refused

of plaintiff does not support the petition but varies from it and because the petition does not state facts sufficient to constitute a cause of action.

The motion in arrest was overruled and defendant excepted, and appealed. The district Court affirmed the judgment and Deft appealed to this Court

Points and authorities by Prewitt for Defendant

1st. The Conditions annexed to the policy are a part of the contract of insurance, as much as any other part thereof, and the plaintiffs are equally bound thereby. The policy declares they form part thereof and promises to pay only such portion of the sum set down therein as is payable by the Conditions.

Angel Fire Ins Page 52. §14. Jennings v Chenango M. Ins Co 2 Denio 75 8 Metcalf 114. 2 Comstock 210

2nd The object of the Company is to compel every member to insure one third of his real estate and one half of his personal property. The 4th section of the Charter forbids the company to insure more than 2/3 of real Estate and 1/2 of the value of personal property; the first clause of the condition referred to declares that, "Insurance is in no case made on more than 2/3rd the value of a building, 1/2 the value of furniture and 1/2 the average amount of stock in trade" thereby in all cases compelling the insured to take part of the risk at the time of insurance. But the Company may insure for as long a time as ten years by the Charter section (6) six, and by the 1st section of the Article of the By laws they agree to insure for six years, during that time real Estate may decrease in value more than a third, or personal property (the stock in trade) more than one half, or stock in trade fall below the average, so that unless a further provision was made, the insured would be paid from any

part of the risk, and the whole of it be upon the Company. To obviate this and compel the Insured to continue to undergo the risk he took upon himself at the first the second clause ~~is~~ added to the said condition as follows "and in case of total loss the Company is not liable to pay more than two thirds of the actual value of the building at the time of the loss, nor more than one half of the value of personal property" — at the time of the loss — must of course be intended. If this were a building ~~estate~~ totally consumed, can there be any question that the Company would ~~be~~ not be bound to pay more than 2/3rds of the value thereof at the time of loss no matter how far that value fell below the sum set down in the policy, & that the other third of the loss would be borne by the Insured? By all the rules of construction, there can be as little doubt, that in case of total loss of personal property, the Company is not liable to pay more than one half of the value thereof at the time

of the loss. And that the Insured continued to bear the risk of the other half. Egan vs Mutual Ins Co of Albany 15 Denio 326. 2 Comstock 310

Post vs Hampshire Mut Ins Co } 12 Metcalf 555

Ashland Mut Ins Co vs Hansinger & Norton } 10 Ohio State R 10

Hukins vs Peoples Mut Ins Co 11 Foster (NH) 238

Atwood vs Union Mut Ins Co 8 Foster 234

Haley vs Dorchester Mut fire Co 12 Gray 545

3rd In this Case the Insurance is on "Stock in trade" and therefore of necessity not on any certain amount then on hand. The amount set down in the policy is regulated by the average of a stock of goods which the Insured proposes to keep on hand during the ~~time of Insurance, they are not valued until the loss occurs. It is impossible they should be~~ + which by the condition shall not exceed one half. The goods time of Insurance, and which by the conditions shall not exceed one half the average. The goods are not valued until the loss

owners. It is impossible they should be. The value of the goods on hand must fluctuate every day, & the insured may keep on hand any amount of goods above or below the supposed average, provided it does not fall below the minimum fixed by the application where one is fixed. In this case none is fixed. The three thousand dollars set down in the policy is therefore not the amt. insured, or the sum to be paid in case of a total loss, but is only the maximum of the Co's liability, no matter how great the value of the goods burned; and the amt insured, & their actual liability must be determined by ascertaining the value of the goods on hand at the time of the loss. The loss being ascertained the question is must the Co pay the whole value of the goods burned, or one half only - not exceeding the three thousand dollars. The condition above declares that in case of total loss the Co is not liable for more than one half

of the value of personal property
So that beyond all controversy
the amount insured is not three
thousand dollars but one half of
the value of the goods on hand
at the time of loss, not exceeding
that sum. and in case of total
loss that is the extent of their
liability.

If we suppose only part of the goods
on hand, or building, ~~as~~ burned, the question
might arise whether the company
is liable for any more than half
the value of that part ~~those~~ burned. To a
void this construction the next
condition declares that "partial
losses are paid in full not ex
ceeding the amount insured"
The total amount insured being ~~one~~
~~half~~ the 2/3rds The value of the building

at the time of the loss.
If a building is insured, or 1/2 the value of personal property at the time of the loss, if personal property is insured, but in either case not to exceed the maximum set down in the policy, a partial loss will be paid in full not exceeding the amount so ascertained, That is a partial loss will be paid in full not exceeding the amount payable if the loss had been total.

Atwood vs The Union Mutual Ins Co 8 Foster 240, 11 Foster
Hutchins vs People's Mut Ins Co, 249. 11 Foster

5th For the further protection of the Company against fraud, in an application for insurance on a stock in trade, the insured ~~in his application~~ ~~application~~ usually sets down a minimum below which he binds himself therein not to permit his stock to fall ~~below~~, (See the applica

tion) If he does so he can recover nothing whether the loss is total or partial. for this is a warranty. Egan vs Mut Ins Co of Albany 5 Denio 326 8 Metcalf 114. 2 Denio 78. 2 Comstock 210. 30 N.Y. 136. The proviso attached to the above mentioned condition, "provided that the assured has on hand the lowest amount stated in the application" refers to that clause in the application. & is not intended to fix the amount to be paid in case of loss, but to ascertain whether any thing is payable. As the lowest amount was left blank in this case the proviso is not in issue.

5th The construction of the policy contended for by plaintiffs either renders the conditions entirely nugatory in case of a total loss or else utterly absurd in case of partial loss. They must in effect contend either that in case

of total loss they are entitled to recover the whole value of the property provided it does not exceed the sum set down in the policy, or else in case of partial loss, that they are entitled to recover more than if it were total. The first instructions given for plaintiffs are therefore clearly erroneous. and the instructions asked by defendant should have been given. for it can not be possible that plaintiffs by saving from the burning any portion of the building or goods insured however small will release plaintiffs from the risk which the policy of the Charter by laws and conditions intends to impose on him, and which if the insured are held to it, will make them careful in avoiding a fire, and diligent, when it does happen, in preserving as much as possible from the burning. Kenn vs Home Mut. Ins Co 42 Mo 38

6th The amount of goods on hand at the time of the fire being $3859.00 the finding of the Court is clearly erroneous

7th The directors having offered to pay plaintiffs $1929.80 one half the above sum plaintiffs should have been nonsuited by Section 9th of the Charter

8th The petition did not set out the contract nor the material portions thereof and the plaintiffs should not have been permitted to read it in evidence 1 Chitty pleading 309 3 Bing 315. Klein vs Home Mut Ins Co 42 Mo p 38. 11 Mo 312

19

Sup. Court.

M. G. Singleton

vs

Boonleo Home Mut
Ins Company
appellant

Brief for ap
pellant, by
Prewitt

Filed Jany 14/70
Burch
clk

In the Supreme Court
Jan'y. Term 1870.

M. G. Singleton & Co.
Resps.
v
Boon County House
Mutual Ins. Co.
Apts.

Appeal from 4th Dist. Court.

Opinion of the court.

This suit was brought to recover the amount alleged to be due the plfs. under a policy of insurance issued to them by the defts. Attached to the policy and made a part of it was the following condition, namely: (1) "Insurance is in no case made on more than two-thirds of the value of any building, nor more than one-half the value of furniture, or one-half of the average amount of stock in trade; (2) and in case of total loss the Company is not liable to pay more than two-thirds of the actual value of the building at the time of its loss, nor more than one-half the value of personal

property. (3) Partial losses are paid in full, not exceeding the amount insured, provided the insured has on hand the lowest amount stated in the application"

The case turns on the construction to be given to the provisions of this condition.

P 1. The first clause ~~of the condition~~ enunciates ~~the~~ a principle which the Company proposed to be governed in granting insurance, prescribing the rule that it would assume the risk of no more than two-thirds the value of buildings, and one-half the value of furniture, and one-half the ~~average~~ average value of merchandise on hand, which might be insured. Half the average of merchandise is taken, since, from the nature of the case the amount on hand would fluctuate according to the exigencies of the business. The principle, however, is the same. The insurer and the insured were to divide the risk ~~equally~~. This was the

declared policy of the Company, and both parties must be ~~taken~~ presumed to have contracted with reference to it. The succeeding clauses are designed to carry out this policy and make it effectual.

2. The second clause relates to the adjustment of losses when the loss is total. It unquestionably provides, in the case of loss of buildings, that the liability of the insurer shall be limited to two-thirds of their actual value "at the time of loss". In case of personal property the liability ~~of the insurer~~ is limited, with equal certainty, to one half its value, but whether at one-half its value at the time of loss, or at some other time, is the point to be settled. It has been contended by the Pltf's counsel that the words, "at the time of loss", ~~are~~ applicable to real property, do not apply

to merchandise on hand at that particular time.

The ground taken is not tenable. The words in question are clearly applicable to "furniture" when there has been a total loss of that class of insured property. That is, no more than one-half the actual value of the furniture on hand at the time of loss could be recovered by the insured in any case. But, as respects the adjustment of the loss, there is no distinction made between furniture and merchandise. Both are ~~classed~~ grouped together and classed as "personal property", so that what applies to one applies equally to both. It is true that the words "at the time of loss," used in connection with the term "buildings", is not repeated when personal property is spoken of, but the evident sense is the same as though they were. If

is manifest from the whole clause that it was the purpose of the company to limit its liability, in case of loss of personal property, whether furniture or merchandise, to one-half the value of the property at the time of loss. This construction accords with the declared policy of the insurers, and is the easy and natural rendering of the provision; while the construction contended for by the plfs. is difficult and rests on a point of mere verbal criticism.

3. But the third and last clause of the provision under examination provides that partial losses shall be "paid in full, not exceeding the amount insured, provided the insured had on hand the lowest amount stated in the application".

In this case the insurance was on merchandise and was for $3000. No maximum, minimum,

or average amount of goods to be kept on hand is stated in the application. The application is simply for so much insurance without any specification of the value, or average value, of the stock to be insured. These results, that is, the minimum or average amounts, are ~~above alluded~~ attempted to be reached in the way of argumentation, and arithmetical calculations, based on the amount actually insured. Nothing is proved in that way. The average being, for instance $3000., the maximum might be $4000. and the minimum $2000, or the maximum might be $5000. and the minimum $1000. The higher the maximum rose, the lower the minimum would fall, the average being preserved. In a word, the parties saw fit to fix neither the maximum or minimum of goods to be kept on hand.

The plaintiffs' ~~total~~ loss

was $3.859, property of the value of some $70. being saved from the wreck, making the total value of the stock on hand at the time of the burning $3.929. As goods to the value of some $70. were saved it is therefore claimed that the loss was "partial", and not "total"; and that the insured is consequently entitled to recover the full amount insured, namely, $2000., under that provision of the policy which stipulates that "partial losses" shall be paid in full not exceeding the amount insured, provided the insured has on hand the lowest amount stated in the application. According to the literal reading of the clause in question the claim is well founded. But the literal reading is evidently not the true one. It does not express the meaning of the parties. If it did, then the insured ~~his loss being partial~~, under the facts stated, his loss being partial, would be entitled to recover fifty per cent. more

damage so than he would, had his loss been ~~in fact~~ total, and ~~the value of a dollar~~ nothing had not been saved from the wreck. Such a result is too unreasonable and absurd to be considered as having been contemplated or intended by the parties. A construction which leads to such consequences is to be avoided ~~if practicable~~.

The words "total loss" and "partial loss," as employed in this policy, are undoubtedly to be understood in their natural and usual sense, subject nevertheless, like other words, to such modification of their ordinary import, as may be necessary to the ascertainment of the actual understanding and intention of the parties. In construing them reference must be had to the subject-matter of the contract, its scope and purpose, and the context surrounding

the particular words. When thus construed it is perfectly clear that the words in question could not have been understood by the parties in the sense which the Plfs. now seek to attach to them. For it is manifest that the contract was made upon the theory of keeping the insured constantly interested in the protection and preservation of his property to the extent of one-half its value; that it was not understood or imagined that circumstances would or could arise under which the Plfs. would be entitled to a heavier recovery in case of a partial, ~~loss~~ than of a total loss; and that, as regards this question, furniture and merchandise were placed in the same category and stood upon the same footing.

I have examined the

case of Ashland Mutual Fire Insurance Co. v. Housinger 10 Ohio St. 10; and Underhill v. Agawam Mutual Fire Insurance Co. 6 Cush. 440. There is nothing in these cases in conflict with the views above expressed.

On the trial of this cause, in the circuit court, the jury were instructed by the court, at the instance of the plfs., upon the theory that, by the terms of the policy, the plfs. were entitled to recover the full amount insured ($3000) although his total loss was but $3.859; and the total amount of goods on hand was only $3.929; and instructions, ~~of a~~ asked by the depts., to the effect that the plfs. could recover only one-half the value of the goods on hand at the time of the fire, were refused. ~~Under~~ This action of the court we consider erroneous. The judgment is therefore reversed and the cause remanded. The other judges concur.

Warren Curiad

19

W. G. Singleton et al.

v

Boon Co. N. M.

Insurance Co

Opinion of the court
Carried

Filed Jany 24" 70
N C Burch
C/K

1624 rule in ap

Reversed & remanded

RG 600
Supreme Court of Missouri
Case Files

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