

CONNECTICUT RIVER MUTUAL FIRE INS. CO. *v.* WAY.

A foreign insurance company may recover in an action upon a premium note given as the consideration for a contract of insurance upon property in this state, made and to be performed in the state where the company is domiciled, although it has not complied with the laws of this state in regard to insurance.

The record of a vote of the directors of a mutual insurance company authorizing an assessment for the payment of losses and expenses, introduced without objection, is sufficient *prima facie* evidence of such losses and expenses in an action to recover such assessment.

The defendant cannot set up as a defence that the subject-matter of the suit has been made the subject of a champertous contract between the plaintiff and a stranger, unless he shows that the contract is in some way injurious to him.

ASSUMPSIT, for assessments on premium notes given by the defendant for insurance upon property in this state in the plaintiff company. Facts found by a referee. The plaintiffs are a foreign corporation, organized under the laws of Vermont, and have not complied with the laws of New Hampshire relating to foreign insurance companies. The defendant was, at the time of the insurance and assessments, and still is, a resident of New Hampshire. He applied to one Hamlin, a resident of this state, for insurance. Hamlin furnished him with blank applications from a supply sent him by the plaintiffs, two of which the defendant filled up, and Hamlin the other. The premiums were paid to Hamlin, and forwarded by him to the plaintiffs with the applications and notes. The contract was a Vermont contract. Under the charter the members are liable to assessment on their deposit notes for the payment of losses and expenses. The by-laws authorize the directors to make assessments at such times as they may deem expedient, but not to be collected oftener than once a year.

There was no evidence of the amount of income, losses, or liabilities, or the amount of the premium notes for any of the years for which assessments were made, unless the statement of the treasurer that he had, previous to the voting of each assessment, calculated the percentage of assessment necessary to be made on the premium notes, based on the losses and liabilities for the year preceding and on the amount of the premium notes, and that he reported the same to the directors, and the record of the vote of the directors making the assessment is such evidence.

One Osgood attended to the collection of assessments against New Hampshire persons, under a contract made in Vermont, which is as follows:

“Bellows Falls, Oct. 7, 1879.

“Rec'd of Geo Slate, Treasurer of the Conn. River Mutual Fire Insurance Company, the within and above described assessment receipts, which I am to collect and pay over to said Slate on demand. And the said Slate agrees to allow me, the said R. C. Osgood, 40 per cent. of whatever I may collect of the same. And the said R. C. Osgood agrees to bear all the expenses in and about the collection of said assessments. Said assessments amount to eight hundred and twenty-eight dollars and thirty-seven cents (\$828.37).

“R. C. Osgood
Geo. Slate, Treasurer.”

Against the defendant's objection, Osgood was allowed to testify that subsequently to the above contract he was authorized by Slate to bring suits, and that there was no agreement as to who should pay the expense of the litigation. This suit was brought by Osgood's direction. The defendant contended that the written contract included this suit, is champertous, and for that as well as other reasons the suit cannot be maintained. If the suit can be maintained, the plaintiffs are entitled to recover \$51.50, including interest to the time of the filing of the report. Both parties moved for judgment.

G. R. Brown, for the plaintiffs.

H. Holt, for the defendant.

SMITH, J. The plaintiffs are entitled to judgment. The contract for insurance was made in Vermont, to be performed in Vermont, and is not shown to be invalid under the laws of that state. *Insurance Company v. Whipple*, 61 N. H. 61. The result would be the same if the contract was to be performed in New Hampshire, although the plaintiffs, a Vermont corporation, have not complied with the laws of the state in regard to insurance. *Insurance Company v. Smart*, 60 N. H. 458; G. L., c. 171, s. 10; Laws 1870, c. 1, ss. 3, 13.

The record of the directors' vote authorizing the assessments, introduced without objection, was *prima facie* evidence of the assessments and losses. *Insurance Company v. Allen*, 10 Gray 297; *Insurance Company v. Harvey*, 45 N. H. 292. If the evidence was not competent, objection should have been made at the hearing, so that the plaintiffs might have produced other evidence if they had it. They may have omitted to do so because of the defendant's neglect to object to that which was offered.

Champerty being an offence at common law (*Christie v. Sawyer*, 44 N. H. 298) is presumed to be against the law of another state, the contrary not appearing. *Thurston v. Percival*, 1 Pick. 415.

But whether the contract between the plaintiffs' treasurer and Osgood is champertous is a question that does not arise. It was not within the scope of the treasurer's duties to make such a contract. The contract upon its face is the contract of Slate and not of the company. Perhaps there is enough stated in the report to lead to the inference that Osgood and Slate both supposed the latter was contracting on behalf of the company. Although this suit was brought by Osgood's direction, it is not shown that he is the plaintiff in interest, or that the suit is prosecuted by him. The company appear by their attorney. There is no presumption that he appears without authority, or, in the absence of evidence to the contrary, for a party other than that of record. *Bank v. Fellows*, 28 N. H. 302; *Leavitt v. Wallace*, 12 N. H. 490; *Stevens v. Fuller*, 55 N. H. 443. This is not a suit by Osgood against the company to recover compensation rendered under a champertous contract. The defendant cannot set up as a defence that the subject-matter of the suit has been made the subject of a champertous contract between the plaintiff and a stranger, unless he shows that the contract is in some way injurious to him. *Taylor v. Gilman*, 58 N. H. 417.

No reason has been assigned why Osgood's testimony was not competent, and none is perceived.

Case discharged.

ALLEN J., did not sit: the others concurred.

WAKEFIELD v. NEWPORT.

A town is not liable to a traveller injured by the negligence of persons employed by the selectmen in repairing a highway.

CASE, for injuries from the falling of a flag-staff in a public highway, reported in 60 N. H. 374. The amended declaration alleged, and the evidence tended to show, that the plaintiff, while travelling in a highway in Newport, was injured by the negligence of persons employed by the defendants' selectmen in the removal of a flag-staff which stood near the highway, and which, by decay, had become dangerous to travellers. The court ordered a nonsuit, and the plaintiff excepted.

H. W. Parker and *L. W. Barton*, for the plaintiff.

A. S. Wait and *I. Colby*, for the defendants.

SMITH, J. A town is not liable to a traveller injured by the negligence of a highway surveyor engaged in repairing a highway.

62	624
67	457
67	554

62	624
69	618

62	624
71	369