

necessary to a recovery when death results from injuries committed by a person while in a state of intoxication from the use of liquor unlawfully sold or furnished him, and however it may be as matter of fact, it cannot be properly held as matter of law that the plaintiff has suffered no actionable loss or damage in consequence of the death of his dependent wife. The language of the statute is clear and explicit, that all loss or damage may be recovered in such a case, and its intent to make the party unlawfully selling or furnishing the liquor responsible for all injuries resulting therefrom is beyond reasonable doubt; and assuredly there is no occasion to narrow the construction of the statute, or to fritter it away upon metaphysical niceties, to aid its admitted violators "in their attempt to escape the civil consequences imposed by the legislature upon their unlawful act." They should receive the benefit of their just legal rights, but nothing more.

*Demurrer overruled.*

All concurred.

67	462
s67	597
67	462
70	629

ESTES & a. v. HOME MANUFACTURERS AND TRADERS MUTUAL INSURANCE COMPANY.

SAME v. AMERICAN MANUFACTURERS MUTUAL INSURANCE COMPANY.

SAME v. ÆTNA MUTUAL FIRE INSURANCE COMPANY.

Provisions in an insurance policy that any broker procuring it shall be deemed the agent of the insured and not of the insurers, and that the payment of a premium to any one except the insurers or their agent shall be at the risk of the insured, are not conclusive on the question of such agency.

The insurers' waiver of a forfeiture of a policy for non-payment of a premium may be inferred from conduct inconsistent with a purpose to insist thereon, and from their practice of not insisting on such forfeitures of other policies.

ASSUMPSIT, on insurance policies upon the plaintiffs' stock of goods in their store in New York city. Facts agreed. The plaintiffs applied to Abraham Barker, an insurance broker in New York city, for the insurance, and he sent the application to Morrill & Danforth, of Concord, N. H. Morrill of this firm was the secretary of the defendant corporations, Danforth was the treasurer, and the firm were their agents. They wrote the policies under date of May 16, 1890, and sent them to Barker, and charged the premiums to him on their books. They had previously issued policies upon similar applications from Barker, and charged them to him; but they had no claim against him unless he collected the

premiums from the insured. The policies were not in the New Hampshire standard form, but were such as were issued by the defendants upon property located outside the state. They contained the following provisions: "If the premium hereon is not paid to this company within thirty days from date of this policy, it shall be null and void. . . . If any broker or other person than the assured have procured this policy, or any renewal thereof, or any endorsement thereon, he shall be deemed to be the agent of the assured, and not of the company, in any transaction relating to the insurance; and the payment of the premium to any person or persons other than to the company or its duly authorized agent shall be at the risk of the assured."

The plaintiffs paid the premiums to Barker, September 5, 1890, but he did not forward them to Morrill & Danforth, nor notify them of the payment. November 10, 1890, Morrill, as secretary of the defendant corporations, wrote Barker as follows: "We are just in receipt of H. W. Johnson policies in the Home, Ætna, and American, and we enclose herewith account with credits for the same thereon. We notice that policies issued in April, May, and August, as per bill, have not been paid. We cannot understand why you should allow policies written so long ago to remain unpaid so long. We must now insist upon immediate payment of premiums on these policies; and unless we receive our pay more promptly, we shall decline to issue any more policies for you." In a postscript he said, "If above collections are not now made promptly, we shall notify parties." The account enclosed was,—

"Abraham Barker To Morrill & Danforth Dr.  
To premiums of insurance as follows:

Date.	Name of Company.	No. of Policy.	
1890			
Apr.	Home	55,421	\$ 5.00
"	Ætna	47,995	5.00
May	Home	55,477	12.50
"	Ætna	48,043	12.50
"	American	34,567	12.50
			<u>\$47.50</u>
	Cr.		
Nov.	Home	55,368	\$5.25
"	Ætna	47,931	5.25
"	American	34,472	5.25
			<u>15.75</u>
			<u>\$31.75</u>
		Coms.	4.76
			<u>\$26.99</u>
		15 per cent. on \$7 error in remittance of Aug. 20th	1.05
			<u>\$28.04"</u>

Policies numbered 55,477, 48,043, 34,567 were those in suit. Barker received the letter November 12, and on that day mailed to Morrill & Danforth a check for \$28.04 with the account to be receipted. The property insured was damaged by fire on the same day, between four and five o'clock in the afternoon. Morrill & Danforth received the check November 13, and, before hearing of the fire, receipted and mailed the account to Barker, and deposited the check in a bank to their credit. Upon hearing of the fire, they withdrew the check from the bank and returned it to Barker, refusing to receive payment for the policies. The defendants had frequently accepted premiums upon policies sent to Barker after the expiration of thirty days from their dates, and waived an avoidance of the policies for non-payment of premiums within the thirty days; but they never did this after there was a loss of the property insured, or a change in the nature of the risk. The defendants claim that the policies are void because the premiums were not seasonably paid.

*Calvin Page*, for the plaintiffs.

*Streeter, Walker & Chase*, for the defendants.

CHASE, J. The premiums were paid to Barker before the loss occurred, but not until after the expiration of thirty days from the date of the policies. Whether Barker was the defendants' "duly authorized agent" to receive them, and whether the defendants by their dealings with him in relation to these and other policies waived their right to avoid the policies for the non-payment of premiums within the thirty-days limit, are questions of fact. There is evidence from which a jury can properly find in favor of the plaintiffs upon both questions. *Gaysville Manufacturing Company v. Insurance Company*, ante, p. 457.

*Case discharged.*

All concurred.

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CONCORD & MONTREAL RAILROAD v. BOSTON AND MAINE  
RAILROAD & a.

The supreme court has common-law power to determine the location of a union passenger depot, which the public good requires.

PETITION, for the location of a union station at Manchester. All the parties desire the erection of such a station, which, it is conceded, the public good requires; but they are unable to agree upon a location. The defendants claim that the court has no jurisdiction.