

NON-SUIT NOT STRICKEN OFF

JUDGE EDWARDS BELIEVES IT WAS PROPERLY GRANTED.

His Opinion in the Case of Mary Ann Ryan Against the Delaware, Lackawanna and Western Mutual Aid Association—Mrs. Flora Kohler and Others Bring Suit to Recover \$3,000 Damages for Injury Done to Their Property by Floods—Clifford Released on Bail.

The opinion handed down by Judge Edwards, refusing to strike off the non-suit in the case of Mary Ann Ryan against the Delaware, Lackawanna and Western Mutual Aid association, is as follows:

The only important question to be considered in the disposition of this rule relates to the construction of sections two and three of Article XIV of the constitution of the association, and the regularity of the assessment and the fact that the deceased, Edward Ryan, was in arrears more than forty-five days, were established by evidence that is not reasonably disputed. Nor was the alleged tender supported by any such testimony as would justify in submitting the question of tender to the jury. Therefore, the whole case rests on the view taken of the by-law referred to.

A part of section two of Article XIV, of the by-laws, is as follows: 'A printed notice and every assessment shall be posted on the several bulletin boards of the Delaware, Lackawanna and Western Railroad Company. Such notice shall bear date and notify members interested within forty-five days from the date of such notice. Should payment not be made by any member on or before the forty-fifth day from the date of such notice, then to a collector or to the secretary at Scranton, such failure to pay suspends the member from the association and does not require a notice of suspension from the secretary. Forty-five days is hereby declared the limit within which such payments may be made in order to retain membership in the association.'

Section three reads thus: 'At each regular meeting of the association the financial secretary shall report the names of all delinquent members and shall declare such delinquencies suspended and debarred from any benefits whatsoever from the association. A proper record of such declaration shall be made upon the records of the association.'

It is impossible to misunderstand or misconstrue the language of the part of section three above quoted. It is clear and unequivocal. Of the many by-laws of beneficial associations that have been under consideration, we have not seen any containing less unambiguous language than that of section three in this case. A failure to pay an assessment within forty-five days 'suspends the member from the association, and does not require a notice of suspension from the secretary.' So far as the delinquent member is concerned he is suspended from the association by the express language of the by-law, without further notice. The by-law is therefore self-executing in the fullest sense of the term.

It is claimed on the part of the plaintiff that section two of this by-law is modified by section three and is not operative until the notice has been given by the secretary at a meeting of the association. We think this contention is untenable. We look upon section three as a provision intended to authorize the secretary to keep a record of delinquent members. The financial secretary 'reports the names of all delinquents' and the president 'declares suspended' the delinquents reported by the secretary. The delinquency already exists by the terms of section two, and the association for its own convenience and for the purpose of keeping a correct record makes the declaration provided in section three. There is nothing in this section which would lead in any way to the conclusion that the notice, suspending provision of section two is suspended or postponed until any meeting or any declaration of the association. The relation of the delinquent member as a beneficiary of the association is governed entirely by the terms of section two. Any other construction of the by-law would tend to confusion and uncertainty.

Our attention has been called to the case of Wheeler vs. Lackawanna Accidental fund, 5 Lack. L. News, 97, and Thule vs. the Diamond Accidental fund, 101, both cases decided in our own court. The first case is cited as authority for the defendant. The two cases are easily distinguished. It was decided in both that a member of a beneficial association may under certain circumstances, Mrs. Mollie Allen, of South Fork, Ky., says she has prevented attacks of cholera morbus by taking Chamberlain's Stomach and Liver Tablets when she felt an attack coming on. Such attacks are usually caused by indigestion and these Tablets are just what is needed to cleanse the stomach and ward off the approaching attack. Attacks of bilious colic may be prevented in the same way. For sale by all druggists.

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CHICAGO GRAIN & PROVISIONS. Open High Low Close. September 70 69 68 68. December 67 66 65 65. CORN. September 62 61 60 60. December 58 57 56 56. OATS. September 38 37 36 36. December 35 34 33 33. RYE. September 48 47 46 46. December 45 44 43 43. SUGAR. September 10 9 8 8. December 8 7 6 6. LARD. September 10.37 10.37 10.30 10.30. NEW YORK COTTON MARKET. August 8.20 8.18 8.15 8.15. September 7.98 7.96 7.93 7.93. October 7.81 7.78 7.75 7.75. December 7.42 7.39 7.36 7.36.

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