

Atkinson v. Mutual Assurance Society.

annihilation of the contract ; on the contrary, it is express in declaring that, upon a re-valuation being made, the party shall continue insured, by virtue of his former policy. We, therefore, consider this suspension of his security merely as a penalty imposed upon the member, for neglecting to conform to a rule of the society. And it is certainly much more reasonable, that he should be subject to a loss or inconvenience for his own neglect, than that he should be released from his liability to the society, in consequence of it.

As to what is contended to be a material alteration in their charter, we consider it merely as a new arrangement or distribution of their funds ; and whether just or unjust, reasonable or unreasonable, beneficial or otherwise, to all concerned, was certainly a mere matter of speculation, proper for the consideration of the society, and which no individual is at liberty to complain of, as he is bound to consider it as his own individual act. Every member, in fact, stands in the peculiar situation of being party of both sides, insurer and insured. Certainly, the general submission which they have signed will cover their liability to submit to this alteration.

\*202] The view which we have taken of this subject affords an answer to the fifth ground, and, in a great measure, to the fourth. We consider the insured, upon every re-valuation, as in under his former right of membership, and, of consequence, that the plaintiffs come under the description of persons who had insured before 1804 ; and, for the same reason, the representation of Scot (could any effect at all be given to the circumstances to which he testifies) was true, as to the membership of the plaintiffs, and as to their liability in that capacity. They must have known it was a question of law, on which Scot possessed no power to commit the society, and on which the plaintiffs themselves ought to have been as well informed as any other individual.

Judgment affirmed.

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ATKINSON v. MUTUAL ASSURANCE SOCIETY against Fire on Buildings, of the State of Virginia.

*Mutual insurance company.*

The additional premium upon a re-valuation, under the rules of the society, is only upon the excess.

THIS case differed from the case of *Korn & Wisemiller v. The Mutual Assurance Society* ; that being for a half quota, and this for the additional premium upon a re-valuation, under the 7th section of the act of 1805. (See Virginia Laws, vol. 2, App. 81.)

The question (which was submitted without argument) was, whether the additional premium should be charged on the whole sum at which the buildings were re-valued, or only on the excess between the old and new valuation.

JOHNSON, J.—The court is of opinion, that the rule on the subject of premium imposes the additional premium only on the excess of the re-valuation beyond the former valuation.

Judgment reversed.