

Opinion of the Court.

Insurance Co., 111 Mass. 92, 110; *Brink v. Hanover Fire Insurance Co.*, 80 N. Y. 108; *May on Insurance*, §§ 468, 469.

The preliminary proof of loss or death required by a policy is intended for the security of the insurers in paying the amount insured. If they refuse to pay at all, and base their refusal upon some distinct ground without reference to the want of defect of the preliminary proof, the occasion for it ceases, and it will be deemed to be waived. And this can work no prejudice to the insurers, for in an action on the policy the plaintiff would be obliged to prove the death of the person whose life was insured, whether the preliminary proofs were exhibited or not.

The judgment of the Circuit Court is reversed, and the cause remanded with directions to award a new trial.

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POWER & Another *v.* BAKER & Another.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

Submitted November 21, 1884.—Decided December 15, 1884.

Motions to vacate a supersedeas, and other motions of that kind, made before the record is printed, must be accompanied by a statement of the facts on which they rest, agreed to by the parties, or supported by printed copies of so much of the record as will enable the court to act understandingly, without reference to the transcript on file.

This was a motion to vacate a supersedeas.

Mr. J. H. Davidson for the motion.

Mr. Edward G. Rogers opposing.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

Neither the record in this case, nor the part thereof on which this motion depends, has been printed, and the appellees have neglected to state in their motion papers the facts as presented by the transcript on which they rely. An affidavit has been filed to the effect that the appellees were not served with a

Counsel for Parties.

citation, nor with a notice of an application for the allowance of an appeal, until after the expiration of sixty days, Sundays exclusive, from the time of the rendition of the decree appealed from. In the same affidavit it is stated, however, that the proctor of the appellees was informed that an appeal bond had been presented to the Circuit Court for approval within the sixty days. It is also stated that on the 10th of January, 1884, an order allowing an appeal was entered *nunc pro tunc* as of the date of the presentation of the bond. An affidavit filed by the appellants shows, that, on the day the bond was presented to the Circuit Court, it was approved, allowed and filed in the cause. As upon this motion it rests upon the appellees to show that the bond was not accepted in time, and that has not been done, the motion to vacate the supersedeas is denied.

In this connection we take occasion to say, that motions of this kind, made before the record is printed, must be accompanied by a statement of the facts on which they rest, agreed to by the parties, or supported by printed copies of so much of the record as will enable us to act understandingly, without reference to the transcript on file.

Motion denied.

SCHARFF & Another *v.* LEVY & Another.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE
EASTERN DISTRICT OF MISSOURI.

Submitted November 24, 1884.—Decided December 15, 1884.

A case cannot be removed from a State court under the act of March 3, 1875, 18 Stat. 470, after hearing on a demurrer to a complaint because it did not state facts sufficient to constitute a cause of action. *Alley v. Nott*, 111 U. S. 472, affirmed.

The facts are stated in the opinion of the court.

Mr. John W. Noble and *John C. Orrick* for plaintiff in error.

Mr. John P. Ellis and *Mr. Jeff. Chandler* for defendant in error.