way. And when we find it witholding from its own courts, the exercise of this controlling power over its ministerial officers, employed in the appropriation of its lands, the inference clearly is, that all violations of private right, resulting from the acts of such officers, should be the subject of actions for damages, or to recover the specific property (according to circumstances), in courts of competent jurisdiction. That is, that parties should be referred to the ordinary mode of obtaining justice, instead of resorting to the extraordinary and unprecedented mode of trying such questions on a motion for a *mandamus.*

Judgment.—This cause came on to be heard, on the transcript of the record of the supreme court of the state of Ohio, for Muskingum county, and was argued by counsel : On consideration whereof, it is adjudged and ordered, that the judgment of the said supreme court of the state of Ohio, be and the same is hereby affirmed, with costs ; it being the opinion of this court, that the said supreme court of the state of Ohio had no authority to issue a *mandamus* in this case.

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*Mutual Assurance Society *v.* Faxon *et al.* [*606

Mutual insurance.

Under the laws in relation to the Mutual Assurance Society of Virginia, property offered for insurance, on which the premium has not been paid, and which is sold, without notice, is not liable for the premium, in the hands of the vendee.

Appeal from the Circuit Court for the district of Columbia.

March 16th, 1821. Johnson, Justice, delivered the opinion of the court. —This case first came up on a difference of opinion certified from the circuit court of Alexandria, but the writ of error was dismissed, because that court could not, in law, or the nature of things, certify such a difference to this court.[1] It has since passed to a final decree, and although the sum on the record is small, a special permission to appeal has been granted, on cause shown ; it being a case affecting many others similarly situated.

The question is, whether property offered for insurance, on which the premium has not been paid, and which has been sold, without notice, remains liable for the premium, in the hands of the vendee? The case of the *Mutual Assurance Society* v. *Executors of Watts*, decided in February 1816 (1 Wheat. 279), in this court, is relied on as authority for maintaining the affirmative. It is to be regreted, that the case referred to had *not been more fully reported. As it is not preceded by any statement of [*607] facts, abstracts of the history and laws of this society, or the arguments of counsel, the insulated unexplained opinion of the court, as it is printed, must be very unintelligible to all descriptions of readers, except those whose professional duties lead them to the study of the novel and extensive institution whose interests are involved in it.

But there is enough exhibited, to show that it affords no precedent for the claim set up in this case. It is true, that the court occasionally uses the term premium, when speaking of the *quota ;* but in every instance, it will

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[1] Ross *v.* Triplett, 3 Wheat. 600.

be found to be used when reasoning upon the *quota* as the purchase-money, in part of the right of the insured to compensation, which, by analogy to other cases of insurance, is, in that sense, denominated a premium.

But there exists no analogy, under the laws of the company, between the liability of property insured for a premium and a *quota*. The first is the sum paid down before the contract is entered into ; the second, the occasional contribution, exacted of individuals, to make up the losses from time to time sustained. The 6th section of the act of December 22d, 1794, gives an express lien for the *quota*, and takes no notice of the premium, but as the rule for graduating the respective *quotas*. In the case alluded to, it was decided, that the lien thus created, had its origin in contract, although enforced by statute, and continued a mortgage on the premises, until vacated according to the provisions of the several laws which regulate the company.

*608] *But the very reasons upon which that decision was placed, are fatal to the pretensions set up in this. There is no express lien created in any of the laws of the company, and there are no provisions in any of those laws, from which it could be inferred (if it were possible ever to infer a lien), but those which authorize a sale of land to satisfy a premium. But a right to sell the land is completely satisfied, by subjecting it to such sale, while in the hands of the first holder, and there are two of the by-laws of the company, which expressly negative every pretence for carrying it any further. The first is the 8th section, 4th article, of the act of January 29th, 1805, which requires immediate payment of the premium, upon the acceptance of the declaration, and the second is, the 6th section of the 5th article, which declares, that insurance shall not commence until the premium be paid.

Decree affirmed.