

defendants had been in the actual, continuous, and adverse possession of the land, claiming and using it as a public park. Such possession vested the title to the park in the township, and was an effectual bar to the plaintiff's action, whether the township did or did not acquire a right to the park under the act of the legislature repealing the act incorporating the city of Quindaro, about which we express no opinion. The ground upon which the court excluded this evidence is not disclosed by the record. In this court the counsel for the defendant in error seeks to support the ruling upon the ground that the claim of title to the land set up by the township, and its open and notorious use and occupation of the lands as a public park for the village and township of Quindaro, do not constitute such an adverse possession as would start the statute of limitation in favor of the township. This contention is not sound. It is well settled that to constitute adverse possession there need not be a fence, a building, or other improvement made on the land. It is sufficient for this purpose that visible and notorious acts of ownership are exercised over the premises in controversy, under claim of title, for the period required by the statute to bar the action. *Erving v. Burnet*, 11 Pet. 41. The open and notorious use of this land as a public park, under claim of title, constituted a possession as effectual to bar the plaintiff's action as if it had been inclosed by a stone wall. The boundaries of the park were distinctly marked on the plat of the town which dedicated it to the public use as a park. The only possession of which it was susceptible was a possession consistent with its use as a park, and its open, public, and notorious use for that purpose was all the possession requisite to support the defendants' plea. The court erred in excluding the evidence offered; and for this error the judgment must be reversed, and the case remanded for a new trial.

WESTERN REFRIGERATOR CO. v. AMERICAN CASUALTY INS. & SEC. CO.
OF BALTIMORE.

(Circuit Court, N. D. Illinois. November 10, 1891.)

INSURANCE—ACTION ON POLICY—DECLARATION.

An insurance company issued a policy, one item of which was "against all direct loss or damage [excepting all losses caused directly or indirectly by fire or lightning] to the property" of the insured. *Held*, that a declaration attempting to state a cause of action under said item, without stating that the loss was not caused, directly or indirectly, by fire, was demurrable.

At Law. On demurrer. *Assumpsit* by the Western Refrigerator Company against the American Casualty Insurance & Security Company of Baltimore.

Fry & Babb and *Thomas Bates*, for complainant.

W. B. Keep, for defendant.

BLODGETT, District Judge. Defendant demurs to the 2d, 4th, 6th, and 8th counts of the declaration. These counts state a cause of action

under the fifth item of the policy of insurance sued upon. This item is in the following words:

"(5) Against all direct loss or damage [excepting all losses caused, directly or indirectly, by fire or lightning] to the property, real or personal, of the assured, situate upon the above-described premises, caused by any accident to or by the boilers, engines, elevators, [enumerated in the application for this policy,] steam pipes, shafting, belting, hangers, and pulleys, situated on the premises above described, and against loss or damage resulting from such accident to the property of others for which the assured may be liable."

In construing this policy it must be borne in mind that it is a policy strictly against accidents, and not a fire policy. The whole tenor of the instrument shows clearly that it was intended only as an accident policy, and not as an insurance against fire. The true meaning of the fifth item of the policy would, I think, be more clearly expressed if the clause in brackets, excepting loss by fire, had been omitted, and there had been written at the end of the paragraph a proviso saying that "this policy is not to cover any losses caused directly or indirectly by fire or lightning." In other words, it is not a policy against fire, even if fire is the result or immediate consequence of the accident. With this view of the true construction of the policy I think the demurrer is well taken to these counts, because the pleader has not stated that the loss was not caused directly or indirectly by fire. The demurrer is therefore sustained as to the second and third counts.

EASUN v. BUCKEYE BREWING Co. et al.

(Circuit Court, N. D. Ohio, W. D. July 21, 1892.)

CORPORATIONS—CONTRACTS—ULTRA VIRES.

A contract by a corporation created under the laws of Ohio, while solvent and engaged in a profitable business, to sell its plant and assets for a consideration, the greater part of which is stock and bonds of another corporation to be organized to carry on the business, no exigency making such sale necessary for the protection of stockholders, is *ultra vires*, as, under the state laws, one corporation cannot become the owner of stock in another unless authority to do so is clearly conferred by statute.

At Law. Action by Harry William Easun against the Buckeye Brewing Company and others. On demurrer to petition. Demurrer sustained.

Hurd & Scribner and *E. W. Tollerton*, for plaintiff.

R. Waite and Doyle, Scott & Lewis, for defendants.

Before TAFT, Circuit Judge, and RICKS, District Judge.

RICKS, District Judge. This is an action instituted by the plaintiff to recover \$250,000 damages for the failure of the defendants to comply with the provisions of a contract for the sale of the defendants' property to the plaintiff, which contract was made between the parties on the 27th