I find it impossible to sustain the view, contended for on behalf of the defendant in error, and by the court below conveyed in one of its instructions to the jury, that he was the sole and unconditional owner of the hay. Bulson never sold his interest therein, or any part thereof, to the defendant in error. He consented that the latter should, for his security, receive the hay into his exclusive possession, should sell it, and handle the proceeds; but this agreement fell far short of devesting the entire interest of Bulson. With the burning of the hay, the security of the defendant in error for the advances he had made on account of Bulson disappeared; but not so Bulson's obligation to repay those advances. That debt remained, and is asserted by the defendant in error in his testimony in this case. The defendant in error lost his security, but he did not sustain the entire loss, for Bulson also lost his interest by the destruction of the property. He still owes the amount of the advances. Suppose he had paid those advances just before the fire occurred; would not the right of the defendant in error to appropriate any part of Bulson's one-third of the proceeds of the hay to his own use have thereupon ceased? Undoubtedly so; and, if so, we do not understand how it can be seriously contended that, when the policy in suit was applied for and issued, the defendant in error was the sole and unconditional owner of the hay.

"To be 'unconditional and sole,'" said the court of appeals of Maryland, "the interest must be completely vested in the assured, not divided or conditional, but of such a nature that the insured must sustain the entire loss if the property is destroyed; and this is so whether the title is legal or equitable." Insurance Co. v. Keating, 38 Atl. 29, 31.

The policy in question was taken by the assured, as has been seen, upon "his 600 tons of hay," and provides, among other things, that if the assured be other than the entire, unconditional, and sole owner thereof, the policy shall be void and of no effect. The provision in question is common in such policies, is plain in its terms, and is inserted for good and substantial reasons.

"They rest," said the circuit court of appeals for the Eighth circuit, in Insurance Co. v. Bohn, 12 C. C. A. 536, 65 Fed. 170, "upon a sound policy of the business of insurance,—a policy founded in reason, and in accord with an enlightened public policy,—the policy of reducing the moral hazard to which the underwriter is exposed. 'Moral hazard,' in insurance, is but another name for a pecuniary interest in the insured to permit the property to burn. Statistics, experience, and observation all teach that the moral hazard is least when the pecuniary interest of the insured in the protection of the property against fire is greatest, and that the moral hazard is greatest when the insured may gain most by the burning of the property."

In Insurance Co. v. Lawrence, 2 Pet. 25, 49, Chief Justice Marshall, speaking for the supreme court, said:

"The contract for insurance is one in which the underwriters generally act on the representation of the assured, and that representation ought consequently to be fair, and to omit nothing which it is material for the underwriters to know. * * * Generally speaking, insurances against fire are made in the confidence that the assured will use all the precautions to avoid the calamity insured against which would be suggested by his interest. The extent of this interest must always influence the underwriter in taking

or rejecting the risk, and in estimating the premium. So far as it may influence him in these respects, it ought to be communicated to him. Underwriters do not rely so much upon the principles as on the interest of the assured; and it would seem, therefore, to be always material that they should know how far this interest is engaged in guarding the property from loss."

In the present case, as has been shown, the assured only owned an undivided two-thirds of the hay; the other undivided one-third being owned by Bulson, subject to Abrams' right of possession of the whole, and his right to sell the whole, and repay his advances out of Bulson's share of the proceeds. Bulson's interest might or might not have greatly exceeded those advances; but his interest existed and was, according to the record, insured by Bulson in another company. There can be no doubt that his interest was an insurable one; and, if so, it necessarily follows that Abrams did not have the entire beneficial interest in the hay. Yet he represented the entire 600 tons to be "his," and, indeed, still so insists in his testimony in this case, in which respect he was sustained by the court below in at least one instruction given to the jury, and in its action in refusing certain instructions requested by the defendant. In these respects, error was, in my opinion, committed, as well as in the refusal of the court below to instruct the jury to return a verdict for the defendant, as requested by the defendant's attorney. I think the judgment should be reversed, and the cause remanded, with instructions to award a new trial.

SUPREME COUNCIL AMERICAN LEGION OF HONOR v. GOOTEE.

(Circuit Court of Appeals, Fourth Circuit. November 1, 1898.)

No. 263.

BENEFIT INSURANCE — NONPAYMENT OF ASSESSMENT — REINSTATEMENT — CONSTRUCTION OF BY-LAWS.

The by-laws of a beneficial association required all assessments to be paid on or before the last day of the calendar month in which they were made, in default of which payment a member should stand suspended; also that a suspended member, to become reinstated, must pay all sums called for before the date of reinstatement "within 60 days from the date of suspension." *Held*, that a member was not suspended for nonpayment of an assessment until the 1st day of the month succeeding that in which it was made, and that he had 60 days, excluding that day, within which to become reinstated; and hence a member, who failed to pay an assessment made in August, by paying all arrearages on the 31st day of October following, became reinstated.

In Error to the Circuit Court of the United States for the District of Maryland.

This was an action by Rachel S. W. Gootee against the Supreme Council American Legion of Honor to recover on a benefit certificate. From a verdict and judgment in favor of the plaintiff, defendant brings error.

Alfred J. Carr and Olin Bryan, for plaintiff in error.