

LAW OFFICES OF  
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FARGO N.D.

May 6, 1915

Boston Piano & Music Company,  
Iowa City, Iowa.

Gentlemen:-

Your letter of the 1st inst. with the enclosed order, copy of the letter to the S. & C. people of this city, as well as your pamphlets on "Assurance Doubly Sure", and brief of Prof. Otto, received.

I have read over your communications very thoroughly and I have gone over the pamphlet which I may, say parenthetically, that it is very convincing indeed and is a nice expose' of a true economic principle; that its reasoning set forth is based upon what I would call the indemnity plan. It works out equally to the mutual interest of the Boston Piano & Music Company and to those that signed the order. I have also read a number of cases cited by Prof. Otto in his brief and find that a very large portion of them bring out the general principles. Take for example the case of OAKLEY VS MORTON, 11 N.Y. 25, which he quotes in his brief and which I have looked up and can say that the Court states the general principle in the following language:

"A condition precedent must be strictly performed to entitle the party to recover."

This rule laid down by the New York Court of Appeals, is fundamental in its nature and of universal legal application. I might state that this rule is carried out by all state Courts unequivocally.

In looking up the 1913 Code of the Compiled Laws of the State of North Dakota, I find a statute explaining conditions precedent, in the following language:

"A condition precedent, is one which is to be performed before some right dependent thereon accrues, or some act dependent thereon is performed."

The definition just quoted, in Section 5771 of our Code and Section 5774 under the heading of Prerequisites to enforce obligations, is as follows:

"Before any party to an obligation can require another party to perform any act under it, he must fulfill all conditions precedent thereto imposed upon himself; and must be able and offer to fulfill all conditions concurrent, so imposed upon him on the like fulfillment."

I might also state that there is some equity in those principles just quoted in this, that he who comes into equity, so to speak, who wants justice done, must first, last and all the time do justice himself; and he must come into court with clean hands and fulfillment of all conditions imposed upon him, in the obligation which he entered into, which in your case is the contract. That no doubt was the intent of both parties. Take for example one or two decisions from the Supreme Court of my State, that of North Dakota, on the constructions of written contracts and conditions there contained.

In the case of BENNETT VS GLASPELL, 15 N.D. 239 or 107, N.W. 45, Judge Young in speaking for the Supreme Court in the syllabus of that case said.