APPEAL FROM ORIGINAL CIVIL.

Before Rankin C. J. and C. C. Ghose J.

1932

July 13.

RAM SINGH

v.

CENTURY INSURANCE CO., LTD.*

Fire Insurance—Construction of policy—Renewal of policy—Effect of renewal—Fresh contract—Continuing contract—Acceptance of renewal after loss by fire—Ignorance of fire at the time of acceptance—Period of risk covered.

The renewal of a fire policy is not a continuing contract relating back to the original policy but a fresh contract and, even if antedated to the date of expiry of the former policy, will not cover the risk of fire occurring before the acceptance of the renewal.

By fire insurance the policy-holder usually guards against a risk in the future and the subject matter must exist before a renewal of the policy could be effected.

Where, after a fire policy had expired, the insured sent a sum of money for its renewal in terms of the policy and the insurer accepted it and sent a receipt in ignorance of the fire which had occurred in the meantime, destroying the property,

held that the insured could not recover the loss by fire, under the policy.

APPEAL by the plaintiff.

The relevant facts of the case and principles of law are set out in the judgment of Buckland J., dated 15th January, 1932, which was as follows:—

BUCKLAND J. The plaintiff in this suit claims to recover the sum of Rs. 20,000 together with interest and costs under a policy of insurance against loss by fire, being No. 1260486, issued by the defendant company, on the 26th November, 1927, in respect of building No. 57, Abbotabad Cantonment, which was destroyed on the 20th November, 1928.

The policy, as stated, was issued on the 26th November, 1927, and insured the plaintiff in the sum of Rs. 20,000 against fire in respect of the building owned by him at Abbotabad for one year from the 3rd November, 1927, to 3rd November, 1928, upon which date the policy is stated to be renewable. On the 20th November, 1928, the premises insured were completely destroyed by fire, but, on the 18th, the plaintiff had posted to the defendant company a cheque for Rs. 85 on account of the renewal premium. Actually

*Appeal from Original Decree, No. 30 of 1932, in suit No. 417 of 1929.

the amount of the renewal premium was Rs. 100, but he was allowed a discount amounting to Rs. 15, by reason of which the company, on receipt of the cheque on the 26th November, 1928, sent him two receipts one for Rs. 85 and another for Rs. 100 formally renewing the policy.

At that time, the company had no knowledge of the fire, and a letter informing them as to the fire was despatched on the 22nd and received on the 28th November. This appears from a letter written by the company bearing the latter date, in which they confirmed as follows a telegram to the plaintiff on the same day :—

" Renewal receipt number eighty-eight under policy number 1260486 for rupees twenty thousand covering building fifty-seven Cantonment hereby withdrawn and cancelled. Premium of rupees eighty-five being returned to you. Our letter of twenty-sixth November and enclosures are also hereby withdrawn and cancelled. Letter follows :"

Summarising the position, the insured sent his cheque in renewal of the policy before the fire ; the company formally renewed the policy in ignorance of the fire ; subsequently, on learning of the fire, they purported to withdraw and cancel the renewal receipt.

For the present purpose, it is not suggested that the plaintiff ought to have informed the company of the fire before the company could post the renewal receipt, nor for the present purpose has it been suggested that everything was otherwise than perfectly *bona fide*. I say " for the present purpose ", because, though three issues were submitted and accepted, I have been invited by learned counsel on both sides first to try the first issue as it may determine the whole suit.

The first issue is as follows :—

(1) Was the policy in force on the 20th November by reason of the payment and acceptance of the renewal premium on the 26th November ?

Before considering the question to be determined I should state that neither side wished to call any oral evidence, nor has the evidence taken on commission been referred to and I gave every opportunity to tender any documentary evidence which it was desired to use. I have been informed that all material documentary evidence has been exhibited and it consists exclusively of the very few documents to which I shall have to refer. I further wish to draw attention to the letter of the 28th November, 1928, from the company to the plaintiff which says : " As the fire is stated to have taken place on the 20th instant, we are not liable as we had clearly intimated to you in our letter of the 14th idem, that we would not cover the risk until we receive your further instructions which did not reach us until the 26th instant." On my drawing Mr. Banerjee's attention to this passage, he said that nothing turned upon it, and he did not desire to go into any question which that paragraph might be considered to have foreshadowed.

The contention advanced on behalf of the plaintiff, which purports to be expressed in the first issue and to which no objection has been taken, even if the point has not been expressly pleaded, is that actually there was no renewal ; that the word " renewal " is really misused in the policies, that under the policy itself the plaintiff was continuously insured until and by reason of the renewal. This is based upon the clause of the policy which runs as follows :—

" The company hereby agrees with the insured (but subject to the conditions printed on the back of this policy, and to any other conditions thereon otherwise expressed) that if, after payment of the premium, the property above described or any part thereof, shall be destroyed or

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damaged by fire or lightning at any time between the 3rd November, 1927, and four o'clock in the afternoon of the 3rd November, 1928, or during any subsequent period for which the insured shall pay to the company, and the company shall accept the sum required for the renewal of this policy, the company will pay or make good all such loss or damage, *etc.*, *etc.*"

It is submitted that though the policy might lapse, and indeed would have lapsed and come to an end on the 3rd November, 1928, if either the insured had declined to renew or the company had refused to accept his premium, nevertheless it continued to have effect until the matter of the renewal was determined one way or another and that, in that view the policy, was for a year or a "subsequent period". If that is the correct construction of the document, it is contended that the plaintiff was insured at the time of the fire, and that it was not open to the defendant company, on learning of the fire after the policy had been renewed, to withdraw and to return the premium.

On the other side, it has been argued for the company that the policy was for one year, but that it could be revived upon payment and acceptance of the renewal premium, which must be taken to be subject to the continued existence of the subject-matter of the policy, and that the company was entitled to withdraw and cancel the renewal, the property having been destroyed before it received the premium and issued the receipt. I have been referred to passages in several text books including Lord Halsbury's Laws of England, Vol. 17, p. 526, in which the learned author sets out the following passage :—

"When the policy provides that there shall be no insurance until the renewal premium has been accepted by the insurance office, and a loss accrues during the 15 days and before payment of the premium, it seems that, in the absence of any condition so framed as to show a contrary intention, the assured is not entitled to recover."

The policy with which this suit is concerned does not provide *totis in verbis* that there shall be no insurance until the renewal premium has been accepted by the insurance office, as Mr. Pugh has been careful to point out, for such a provision would cut the ground from beneath his feet. But it is a matter for consideration whether the terms of this policy do not come to the same thing, in that the word "or" being used disjunctively, the clause contemplates not a continuing period indefinite in length, but two periods of which the first ends on the 3rd November, 1928, after which the next period begins during which the policy-holder will not be insured until the renewal premium has been paid and accepted.

Two cases are referred to under the passage quoted and indeed a considerable number are cited in the text books quoted. I have invited learned counsel for the company to cite the authorities themselves, but he has assured me that, after having read them all, none would furnish any assistance except one to which I shall refer presently.

I am also referred to a well-known authority on the law of fire insurance (Bunyon's Law of Fire Insurance, 6th Edition, 241) where the following occurs :—

"If the premium is not paid within the 15 days and a fire occurs, the acceptance of the premium by the office in ignorance of the disaster, will not revive the policy. If neither party were aware of the fire, unless there was an express agreement that the insurance should date back, by the insertion of some words equivalent to 'lost or not lost', it would be open to the office to contend that the acceptance of the premium, being for the renewal of the insurance, assumed that the subject of the insurance continued to exist."

Passages have also been read from a recent edition of the well-known book on fire insurance by Welford & Otter Barry, 3rd Edition, 181, where, among others, occurs the following :—

"The effect of the revival is not to continue the contract formerly existing, but to establish an entirely new one. If, therefore, a loss has already happened without the knowledge either of the assured or of the insurers, the revived policy will not, even if antedated to the date at which the former policy expired, be treated as applying to such loss, unless it is clearly the intention of the parties that it shall do so."

I observe that earlier the learned author discusses two opposite views expressed as to the renewal of a policy, whether it is a fresh contract or whether it is a continuing contract relating back to the original policy, and not a fresh one, and writes that the view to the renewal of a fire policy being a fresh contract appears to be correct, and if this is so, it should dispose of Mr. Pugh's point, but obviously the terms of the policy should be considered in each case.

I will now consider *Pritchard* v. *The Merchant's and Tradesman's Mutual Life Assurance Society* (1), the only authority cited in the course of the argument and one, to which constant reference is to be found in the text books. That was a life insurance case and by the policy the premium had to be paid on or before the 13th October in every year during the life insured. It was provided that the policy should be void if the premium was not paid within 30 days after it became due, but it might be revived within three calendar months on satisfactory proof of the health of the insured. It appears that the person whose life was insured died on the 12th November, 1855, and on the 15th November, 1855, that is more than 30 days from the due date for payment of the premium, but within three months, the annual premium was paid and the company gave a renewal receipt, neither the plaintiff nor the defendant being aware of the fact that the person insured was already dead. The question was whether, in such circumstances, the sum assured was recoverable from the insurance company. The learned Judges all agreed that the plaintiff was not entitled to recover. Williams J. observed that the payment was void and ineffectual, as it was made and received on the implied understanding on both sides that the insured was then alive. Crowder J. said that the premium was accepted under mistake and the transaction was altogether void. It is contended that the case is materially different, because the policy was to be void if the premiums were not paid by the due date, though it could be revived within a certain period, whereas, in this particular case, the policy continued to be operative. That appears to me to beg the question. If the policy does run on, as Mr. Pugh expressed it, then the matter is not open to further argument, but it appears to me the more correct to say that the renewal of a policy is a fresh contract dating back to the date of the expiry of the original contract. *Pritchard* v. *The Merchant's and Tradesman's Life Assurance Society* (1) is not on all fours with the case, but it appears to me that there are principles underlying it which make it applicable. The passage which makes most appeal to me is that to be found at the conclusion of the judgment of Crowder J., where he observes that "the commonsense of the matter is entirely in favour of the defendant. They accepted the premium under a mistake, and the transaction is altogether void." There is no question in this case of mistake in the technical sense, but the commonsense of the matter must be that the company would not have accepted the premium had they known that the loss had already occurred. They would have been entitled to decline it in any case, and can it, therefore, be said that,

(1) (1858) 27 L. J. C. P. 169 ; 3 C. B. (N. S.) 622 ; 140 E. R. 885.

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having accepted it in ignorance of the fire, they are bound by the terms of the policy to pay on a loss which had already occurred when they accepted it ?

I find it impossible to accept this view on any reasonable basis and for the reasons stated, it appears to me that the contention of the defendant company is correct, and that the suit must be dismissed with costs.

Pugh and *Sikhar Basu* for the appellant.

S. N. Banerjee and *J. C. Sett* for the respondents.

RANKIN C. J. This is an appeal from the judgment and decree of my learned brother Mr. Justice Buckland, who dismissed the suit of the plaintiff, whereby he claimed Rs. 20,000 upon an insurance policy issued by the defendant company against risk of fire in respect of certain premises of the plaintiff, No. 57, Abbotabad Cantonment in the North-Western Provinces.

The policy was originally issued on the 3rd November, 1927. The number of the particular policy, with which we are concerned, is 1260486. We have been referred to the terms of the policy which, for the present purposes, are as follows :—

> The company hereby agrees with the insured that if, after payment of the premium, the property above described, shall be destroyed or damaged by fire or lightning at any time between the 3rd November, 1927, and 4 o'clock in the afternoon of the 3rd November, 1928, or during any subsequent period for which the insured shall pay to the company and the company shall accept the sum required for the renewal of the policy, the company shall pay or make good all such loss or damage.

The policy extends, to begin with, till 4 o'clock on the 3rd November, 1928, and, unless some thing had been done by that time, the effect of the policy had been expended. On the 27th of October, accordingly—some time before the 3rd November—the company issued a reminder asking for its premium. There was correspondence upon the question whether or not on this and certain other policies the plaintiff could get 15 per cent. commission. The company was minded to allow 15 per cent. commission. By its letter of the 31st October, it wrote to the plaintiff, asking him to send a remittance for the renewal premium less 15 per cent. discount

when the necessary renewal receipt would be issued. The company pointed out to the plaintiff that, as the policy had already expired, they had wired him accepting his terms as to discount. On the 8th of November, the plaintiff sent a cheque for premiums on two other policies and asked the company to renew them. With reference to the policy now in question, he said "as regards the renewal of "the policy No. 1260486 for Rs. 20,000, we beg to say "that we will get it renewed during next month." On the 14th of November, the company wrote to the plaintiff to say "you state in the last paragraph of "your letter that you wish to renew the policy "sometime next month, *i.e.*, December. In this "connection I have to inform you the policy in question "has already expired on the 3rd instant and you are, "therefore, not covered in the meantime. Should "you desire to take out a fresh policy at any later "date, please let us know when we shall hold the risk "covered." It is reasonably clear, therefore, that, until the company received the request and had an opportunity to decide upon the matter, the plaintiff was not covered at all. On the 18th of November, the plaintiff sent a cheque for Rs. 85 in payment of the renewal premium for the above policy and said "Kindly send us the renewal receipt and oblige." It was quite open to the plaintiff,—particularly in view of the language of the company's letter of the 14th of November— to write to the company to say "We "want some sort of credit for the time since the 3rd of "November until the time when you receive this letter, "because we never pay money for nothing," and I dare say that had they so done, the company would have been equally pleased to give them a new policy altogether dating from the date of the receipt of plaintiff's letter or to extend the period for a corresponding number of days in November, 1929. The plaintiff asked for nothing of the sort. He knew that until his letter reached the company he would not be covered. He did not think it necessary, apparently to haggle about the short period during which, as he

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knew, he was not being covered. He did not make any particular stipulation for any concession of that kind. It may be that such a matter was not worth troubling about.

The letter, having been sent with the premium on the 18th of November, a fire occurred on the 20th. The plaintiff's letter was not received in Calcutta at the branch to which it was addressed until the 26th. It is quite true that the plaintiff had, in the meantime, namely, on the 22nd, written to the company to say that the fire had occurred and making a claim. What would have happened if he had telegraphed to the company to say that a fire had occurred, we may imagine for ourselves; but he sent a letter which did not arrive in Calcutta until the 28th. The company immediately repudiated their liability and withdrew their acceptance of the premium. The question is whether, in these circumstances, when this fire occurred on the 20th of November, 1928, the plaintiff was or was not covered. It is not contended that mere posting of the letter of the 18th of November effected an insurance in itself. It is not contended that the company, on the 26th of November, when they accepted the policy, had any knowledge of the fire; but it is said that, as a matter of the construction of the clause, which I have read from the policy, the company, when it accepted the premium in ignorance of the fire on the 26th of November, entered into a contract to the effect that if, between the 3rd of November and the 26th, a fire had occurred, they would indemnify the plaintiff in respect thereof. Mr. Pugh has put this contention in two ways—in one way, as a matter of construction of the contract; and in view of the terms of the renewal of the receipt—he says that the plaintiff with retrospective effect became on the 26th of November covered as from the 3rd. Another way he puts it is that the plaintiff at least became covered from the date when he despatched the money, namely, the 18th of November.

In my judgment, both the contentions are equally unfounded. It is not usual when stipulating for fire insurance to stipulate with reference to the past. The risk to be guarded against is a risk in the future. The language of this policy is plain and intelligible enough if that primary condition be considered. Speaking of the future, it is sensible enough to say that the plaintiff will be covered during the year or during any subsequent period for which he should pay the premium to the company and the company accepts it. The idea is that the ordinary course of business will be that the insurance for the year will be fixed up before that year begins. The language of the policy which is not a matter for any wonder is adapted to the ordinary condition. We are to consider whether it is the intention of this language to put a case in which the company is accepting the insurance premium in respect of a fire taking place in a house on the footing that the fire may or may not have taken place and that if it has taken place the company is going to pay for the damage. If that is so, we will have found something unusual in the way of fire insurance contracts. I see in the clause no foundation for an argument that such an unusual contract is contemplated by the clause.

Mr. Pugh argues that if the defendant company can say that they are not liable for any risk that eventuated before the 26th, then they have taken some of his money for nothing; that they have no business to take his money for the period between the 3rd and the 26th and that, for this reason, we must hold that when the insurance company accepts the renewal of the policy out of time, it takes the risk of an accident having happened in the meantime unknown to itself.

In my judgment, the position is very clear. The plaintiff might quite well have stipulated for a reduction in his premium of a few rupees or he might quite well have stipulated that the year

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should be reckoned to run from the 26th. He did nothing of the sort. He asked for the policy to be renewed. He did not, in any way, put himself to the trouble of taking care that he lost no sum of money, however trivial. That does not mean that the company, when it accepted the premium on the 26th, had undertaken to insure a building which might or might not have been consumed by fire at the time.

It appears to me that the judgment of the learned Judge has very fully and carefully examined the relevant principles and that the learned Judge has arrived at a conclusion which is entirely correct. The appeal fails and must be dismissed with costs.

C. C. GHOSE J. I agree.

Appeal dismissed.

G. K. D.