

APPELLATE CIVIL

Before Justice Sir Lal Gopal Mukerji and Mr. Justice
Niamat-ullah

1933
December, 11

MUHAMMAD SULTAN (PLAINTIFF) v. CLIVE INSURANCE COMPANY AND ANOTHER (DEFENDANTS)*

Insurance—Burglary insurance—Cover note—Policy not issued—Burglary happening after the period covered by the cover note—Unqualified and unequivocal acceptance of proposal implied by cover note.

On the 7th of November, 1928, a proposal was made for burglary insurance for the period of one year, and the full premium was paid. On the 22nd of November, 1928, the Insurance Company issued a cover note in the following terms: "Muhammad Sultan . . . having made a proposal for insurance of burglary, etc., and having paid the sum of Rs.95, being the amount of premium thereon, the risk is hereby held insured, subject to the terms and conditions of the company's usual form of policy, for a period of 30 days from date, within which period the policy will be issued." No policy was actually issued. A burglary occurred on the 15th of January, 1929.

Held, that the Insurance Company was liable to pay for the loss. The language of the cover note implied that the company definitely undertook to issue a policy within the 30 days; so it implied that the company had unconditionally and unequivocally accepted the proposal. The acceptance being absolute and unequivocal the company was bound, and the non-issue of the policy was immaterial.

Mr. Akhtar Husain Khan, for the appellant.

The respondents were not represented.

MUKERJI and NIAMAT-ULLAH, JJ.:—This is a plaintiff's appeal and arises out of a contract of insurance alleged to have been entered into between the plaintiff and defendant No. 1 with the defendant No. 2 as the general manager of defendant No. 1.

The facts briefly are these. The plaintiff was approached by one Mr. Dungal, a canvasser for the Insurance Company, to insure against burglary his (the plaintiff's) goods and furniture with the defendant

*First Appeal No. 331 of 1930, from a decree of Ram Saran Das, Subordinate Judge of Meerut, dated the 5th of March, 1930.

No. 1. On the 7th of November, 1928, a proposal form was filled in and signed by the plaintiff. When the plaintiff signed the proposal form, he also paid a sum of Rs.95, being the amount of premium. The insurance was to be in force for one year, and the sum of Rs.95 was the entire premium for that year.

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On the 22nd of November, 1928, the plaintiff received a document, which has been described as a "cover note" and runs as follows: "Muhammad Sultan (plaintiff) . . . having made a proposal for insurance of burglary, etc., and having paid the sum of Rs.95, being the amount of premium thereon, the risk is hereby held insured, subject to the terms and conditions of the company's usual form of policy, for a period of 30 days from date, within which period (provided the premium is paid) *the policy will be issued.*" Below this cover note appear brief particulars of the property insured. This is signed by somebody on behalf of Messrs. Gillanders Arbuthnot & Co.

As a matter of fact, no policy was issued to the plaintiff. A theft took place at his house in the night between the 15th and 16th of January, 1929. The plaintiff made a report of this theft to the defendants; but they repudiated all liability to recompense the plaintiff for his loss, on the ground that no policy had been issued by them and the proposal had never been accepted by them. Thereupon the plaintiff instituted the suit out of which this appeal has arisen. He claimed a sum of Rs.8,164 principal amount, being the value of the goods lost, and future interest.

Both the defendants contested the suit. They contended that there was never any acceptance of the proposal on behalf of the company. They further contended that the plaintiff was guilty of concealment of certain facts from the defendants and was, therefore, not entitled to recover anything. They denied that there was any theft at the plaintiff's house and put him to the proof of his loss.

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The learned Judge of the court below framed eight issues and found that there had been a theft in the plaintiff's house, and that the plaintiff was not guilty of any material concealment. He estimated the plaintiff's loss at a figure nearly equal to the figure claimed by the plaintiff, but he held that, as the insurance covered other goods, the plaintiff was entitled to recover Rs.5,700, if the other issues were decided in his favour. On the question whether the defendants accepted the plaintiff's proposal, the learned Judge came to the conclusion that they did not, and accordingly dismissed the suit.

We are somewhat handicapped in the decision of this case, which involves a decision of questions of fact and also of a question of law, by the reason of the respondents being not represented in this Court. We have, however, done our best to go through the record.

At the outset we may say that we have no reason to disagree with the findings of fact arrived at by the court below on a consideration of the whole evidence before it. We hold that there was a theft at the plaintiff's house, that there was no material concealment on the plaintiff's part of any facts which the defendants wanted to know before accepting the proposal, and that the plaintiff's loss and the defendants' liabilities have been rightly estimated by the court below.

There remains then the most important question to be decided in this appeal, namely whether the proposal of the plaintiff was accepted by the defendants and whether the defendants are liable. The decision of this question depends on the correct interpretation of the letter which we have already reproduced. The language of the document implies, to our minds, this and nothing else: The company had received the premium and the proposal; they were prepared to issue a policy of insurance; but as that was likely to take some time, to cover the period which the issue of a policy might take, estimated at 30 days, the cover note

of the 22nd of November, 1928, was issued. It appears that Messrs. Gillanders Arbuthnot & Co. have an office at Cawnpore, and this document was issued from their Cawnpore office.

If the meaning which we put on this document be correct, it implies that the *defendants definitely undertook to issue a policy within the 30 days*. The cover note was not to the effect that a policy would be issued only if on a further consideration the proposal for insurance was accepted, and not otherwise. The fact that they promised unequivocally to issue a policy within 30 days of the 22nd of November, 1928, implies that they had made up their mind, that they had accepted the proposal and all that remained to do was to issue a formal policy.

On the record there is what has been called a written argument placed before the court below on behalf of the defendants. In the absence of counsel for the respondents we went through it and found that one of the arguments advanced there was that Messrs. Gillanders Arbuthnot & Co. were not authorised to issue a policy on behalf of the defendant No. 1. But no such plea was taken in the written statement. On the other hand, in reply to paragraph 2 of the plaint, where the plaintiff said that defendant No. 2 was the general manager of defendant No. 1 and had full authority of defendant No. 1 to do insurance business on behalf of defendant No. 1, the defendants admitted this statement in paragraph 1 of the written statement. In the circumstances, the argument that Messrs. Gillanders Arbuthnot & Co. were not entitled to say definitely on behalf of defendant No. 1 that a policy was going to issue would not have been accepted by us if it had been advanced before us. If Messrs. Gillanders Arbuthnot & Co. were authorised to bind the defendant No. 1 for 30 days, we do not see how Messrs. Gillanders Arbuthnot & Co. were not authorised to say that a policy was going to issue.

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In our opinion there was a clear acceptance of the proposal on behalf of the defendants. We have considered, although no arguments were addressed to us on the point, section 7 of the Contract Act. We find that the acceptance is absolute and unequivocal, and has been expressed in the usual and reasonable manner, inasmuch as it is contained in a cover note. It is true that the policy did not arrive before the burglary took place; but that fact cannot be relied on by the defendants where the acceptance of the proposal is complete and has been communicated to the plaintiff.

The result is that we allow the appeal with proportionate costs in both the courts and decree the claim for recovery of Rs.5,700, which will carry interest from the date of the institution of the suit till recovery at 6 per cent. per annum.

REVISIONAL CRIMINAL

Before Mr. Justice King and Mr. Justice Bajpai

EMPEROR v. SIDHESHWAR NATH*

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Evidence Act (I of 1872), sections 21, 26—Confession made to a Magistrate by an accused person whilst in police custody—Admissibility in evidence—Whether such confession must be recorded in writing by the Magistrate—Admissibility of oral evidence of the Magistrate to prove the confession—Evidence Act (I of 1872), section 91—Criminal Procedure Code, sections 164, 364, 533.

A confession made by an accused person in police custody to a Magistrate himself is obviously made "in the immediate presence" of a Magistrate within the meaning of section 26 of the Evidence Act and is not excluded from evidence by that section.

So far as statements of accused persons taken under section 364 of the Criminal Procedure Code in the course of inquiries or trials are concerned, it is clear that such statements must be recorded in writing. But as regards statements or confessions made to a Magistrate in the course of an investigation prior to the commencement of the inquiry or trial, under

*Criminal Revision No. 524 of 1933, from an order of Ali Muhammad, Sessions Judge of Agra, dated the 21st of July, 1933.