APPELLATE CIVIL.

Before Sir Sydney Robinson, Kt., Chief Justice, and Mr. Justice May Oung.

1924

Feb. 19

KWA HAI

v.

THE NORTHERN ASSURANCE CO., LTD.*

Insurance—Principal and agent—Authority of an agent employed to introduce business to the insurers—Receipt by the principal of the premium paid through the agent—Necessity to settle the premium

Held, that an agent employed merely to introduce business to insurers had no authority by accepting the proposal form for insurance and the premium, to bind the insurers and that the granting to him by the insurers of a bundle of proposal forms did not in any way imply the grant of any particular authority to him.

Held further, that the acceptance of the premium by the insurers did not of itself show that they have accepted the offer.

Held further, that one essential condition for due acceptance of the offer to insure is that the premium payable should have been settled and agreed upon between the parties.

Held also, that in the absence of proof of special authority to the agent acceptance by him of a wrong premium did not bind the insurers.

Christie v. North British Insurance Company, (1825) 3 Shaw (Ct. of Sess.), 519; *Lindford v. The Provincial Horse and Cattle Insurance Company*, (1905) 55 English Reports, 647—*followed*.

Chari—for the Appellant.

Paget—for the Respondents.

ROBINSON, C.J., and MAY OUNG, J.—The Northern Assurance Company, Limited (incorporated in Great Britain), had as their Burma Agents Messrs. V. Zollikofer & Co. of Rangoon. The latter, whom we will refer to later on in this judgment as the Agents, employed one of their clerks, Maung So Hlaing, who has no experience whatever of insurance business, to go out and canvass for proposals. They gave him a bundle of proposal forms and a book of ordinary receipt forms, as their method of business was only

* Civil First Appeal No. 65 of 1923 from the District Court of Pegu in Civil Suit No. 19 of 1922.

to consider proposals covered by premia. They also gave him a visiting card containing the name of the Assurance Company, and underneath "Agency, V. Zollikofer & Co." with the Rangoon address, and in the corner "Represented by Maung So Hline."

On the 19th January 1922 So Hlaing went to Daiku, and there he got six proposals. The plaintiff's proposal was filled up by him, but, as it appears, incorrectly. He gave plaintiff a receipt for Rs. 200, the sum that he received as the premium. He had been given a book containing the ordinary rates charged to study and he specified to the proposers the premium they will have to pay based on his recollection of the rates specified in this book. After the words "dwelling-house" in the proposal form, Exhibit 1, the agents have added "with retail shop (hazardous)," and, after the description of the materials of the building, they have added "surrounded by houses of same risk."

On his return So Hlaing gave them the proposal, and they questioned him with reference to it, and learning that the plaintiff carried on a shop in this building and sold such things as kerosene oil, they made this addition to the proposal. The result was that the rate of premium that had to be charged for this insurance was double that specified by So Hlaing.

So Hlaing was sent back to Daiku, and told to inform the plaintiff of this which amounts to a counter offer by the Agents to the plaintiff, which offer had to be accepted by the plaintiff before there could be any binding contract between them.

So Hlaing did return to Daiku, and was there on the 24th or 25th January. We see no reason to doubt the evidence that he went to the plaintiff's house and saw one of his sons, a young man of 22. He was told that plaintiff was seriously ill and that

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he could not see him. But he informed the son of the facts, and was told that the son could not decide such an important matter, and he apparently left, telling him to communicate with him when they had considered whether they would accept the increased premium.

Nothing was heard from the plaintiff, and on the 27th January his house was burnt down. The fire originated in another house further off, and spread to plaintiff's house. There is no question of liability had there been a completed contract of insurance.

The lower Court has dismissed plaintiff's suit and it is now urged on appeal that So Hlaing was held out by the Agents as having authority provisionally to accept the proposal, and that the result of that fact, coupled with the acceptance of the money as premium or part thereof, is that the Agents must be taken to have promised that the proposer should be deemed to be insured until such time as they reject his proposal or issue a policy. In short the argument is that the position is the same as if the Agents had issued an interim protection note.

It is further argued that So Hlaing informed the proposer that, having paid the premium demanded, his property would be insured as from that date.

The first point for consideration is what was the authority of So Hlaing.

The authority of any particular agent varies according to circumstances. An agent employed merely to introduce business to the insurers is not in any real sense of the word their agent. His business is merely to obtain proposals and transmit them to the insurers. That is the whole extent of his authority. He can neither accept any proposal nor issue a cover note, and, in so far as he filled up the

proposal form for the proposer, he is to be regarded as the agent of the proposer, and not the agent o the agents. The granting to him of a bundle of proposal forms does not in any way imply the grant of any particular authority to him. The grant of a book of receipt forms, not specially worded, does not give rise to any implied authority. He signed the receipt that was given to the plaintiff in his own name, under which he wrote "V. Zollikofer & Co." He was receiving ths money to take it on behalf of the proposer and pay it to V. Zollikofer & Co., who had sent him out, and the addition of the agent's name underneath his own gives rise to no implied authority, nor does the visiting card which is only to indicate that he may be trusted to submit the proposals and any money deposited to the Agents.

The question is whether the proposal has been to any degree accepted by the Agents. Acceptance by them may be shown in various ways. The acceptance of the premium does not of *itself* show that they have accepted the offer. There must be circumstances, besides the mere acceptance of the premium, pointing to such an acceptance. What facts will constitute an acceptance on the part of the insurers will depend upon the circumstances of a particular case. It is, however, essential that the premium should have been fixed, as, until it is fixed, it is impossible to hold that there is a completed contract.

In *Christie* v. *North British Insurance Company* (a Scotch case (1), it was said—"It is impossible to assent to the doctrine that without a delivered policy there is no insurance. If the premium in this case had been agreed on, the insurance

(1) (1825), 3 Shaw (Ct. of Sess.), 519.

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would have been effected, although no policy was delivered; but the premises here cannot be held to have been insured, the premium never having been determined on, and never having been fixed by the Phœnix Office."

Now the facts of this particular case show that, owing to the statement by the proposer in the proposal, the wrong premium was presumed and that the company cannot be held to be bound by a completed contract since they must be taken to have said—"We cannot accept this proposal on a premium of Rs. 200, but we are prepared to insure your house if you will agree to pay a premium of Rs. 400. In other words, the matter was still in the stage of negotiation. The deposit of Rs. 200 cannot compel the Agents to a contract, nor can the action of an agent, occupying no higher position than So Hlaing occupied, make them liable to the plaintiff.

In *Lindford* v. *The Provincial Horse and Cattle Insurance Company* (2), an ordinary local agent received the plaintiff's proposal. He retained the annual premium, misapplied the money, and never forwarded the proposal to the company. It was held "in the absence of proof of special authority to the agent, that the company were not bound to grant the policy."

There is no proof of any special authority to So Hlaing in this case, and the acceptance of the so-called premium by him cannot bind the Company. Had the plaintiff accepted the agent's offer, they would, no doubt, have given him an interim protection note until the policy was prepared. But there is nothing in this case to show that, in the absence of this special contract for interim protec-

(2) (1905), 55 English Report., 647.

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tion, there was any contract at all between the parties on which plaintiff could recover damages. So Hlaing's statement to the plaintiff that if he paid Rs. 200 his property would be insured as from that date was made absolutely without authority.

The sole question therefore in this case is whether there was any completed contract to insure or to insure for a limited period. We are unable to find any ground for holding that there was

The decree of the Court below will be confirmed, and appeal dismissed with costs throughout.

ORIGINAL CIVIL.

Before Mr. Justice Beasley

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Feb. 22.

ELLEN MA NOO
v.
WILLIAM PO THIT.*

Judicial separation and permanent alimony, decree for—Effect of subsequent cohabitation.

Held, that a decree for judicial separation and for permanent alimony granted to a wife is annulled by subsequent cohabitation of the parties and does not revive on subsequent separation.

Haddon v. *Haddon*, (1887) 18 Q.B.D., 778—*followed.*

Rattigan's Law of Divorce in India—*referred to.*

Having obtained against her husband, the respondent in Civil Regular No. 178 of 1903, a decree for judicial separation and permanent alimony, the petitioner sought in these execution proceedings to execute the decree for alimony. The somewhat strange circumstances out of which these proceedings arose, appear for purposes of this report very clearly in order of the Court reported below.

Leach—for the Petitioner.

Cowasjee—for the Respondent.

* Civil Execution No. 348 of 1923.