

MRS. HENRY E. HARDING AND HER HUSBAND, PLAINTIFFS AND APPELLEES, VS. COMMERCIAL UNION ASSURANCE COMPANY, DEFENDANT AND APPELLANT.

G.R.No. 12707. August 10, 1918

Ponente: FISHER, J.

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FISHER, J.:

This was an action by plaintiffs to recover from defendant the sum of P3,000 and interest, alleged to be due under the terms of a policy of insurance. The trial court gave plaintiffs judgment for the amount demanded, with interest and costs, and from that decision the defendant appeals.

"The court below stated the issues made by the pleadings in this case, and its findings of fact, as follows:

"It is alleged by plaintiffs and admitted by defendant that plaintiffs are husband and wife and residents of the city of Manila; that the defendant is a foreign corporation organized and existing under and by virtue of the laws of Great Britain and duly registered in the Philippine Islands, and Smith, Bell & Co. (limited), a corporation organized and existing under the laws of the Philippine Islands, with its principal domicile in the city of Manila, is the agent in the Philippine Islands of said defendant.

"The plaintiffs alleged that on February 16, 1916, the plaintiff Mrs. Henry E. Harding was the owner of a Studebaker automobile, registered number 2063, in the city of Manila; that on said date, in consideration of the payment to the defendant of the premium of P150, by said plaintiff, Mrs. Henry E. Harding, with the consent of her husband, the defendant by its duly authorized agent, Smith, Bell & Company (limited), made its policy of insurance in writing upon said automobile in the sum of P3,000 and that the value of said automobile was set forth in said policy (Exhibit A) to be P3,000; that on March 24, 1916, said automobile was totally destroyed by fire; that the loss thereby to plaintiffs was the sum of P3,000; that thereafter, within the period mentioned in the said policy of insurance, the plaintiff, Mrs. Henry E. Harding, furnished the defendant the proofs of her said loss and interest, and otherwise performed all the conditions of said policy on her part, and that the defendant has not paid said loss nor any part thereof, although due demand was made upon defendant therefor.

"The defendant, by its answer, admitted the allegations of the residence and status of the parties and denied all the other allegation of the said complaint, and for a separate and affirmative defense alleged (1) that on February 17, 1916, at the city of Manila, P. I., the defendant upon request of plaintiff, Mrs. Henry E. Harding, issued to the said plaintiff the policy of insurance on an automobile alleged by the said plaintiff to be her property; that the said request for the issuance of said policy of insurance was made by means of a proposal in writing signed and delivered by said plaintiff to the defendant, guaranteeing the truth of the statements contained therein which said proposal is referred to in the said policy of insurance and made a part thereof; (2) that certain of the statements and representations contained in said proposal and warranted by said plaintiff to be true, to wit: (a) the price paid by the proposer for the said automobile; (b) the value of said automobile at the time of the execution and delivery of the said proposal and (c) the ownership of said automobile, were false and known to be false by the said

plaintiff at the time of signing and delivering the said proposal and were made for the purpose of misleading and deceiving the defendant, and inducing the defendant to issue the said policy of insurance; (3) that the defendant, relying upon the warranties, statements, and representations contained in the said proposal and believing the same to be true, issued the said policy of insurance.

"The defendant prays that judgment be entered declaring the said policy of insurance to be null and void, and that plaintiffs take nothing by this action; and for such further relief as to the court may seem just and equitable.

"The evidence in this case shows that some time in the year 1913 Levy Hermanos, the Manila agents for the Studebaker automobile, sold the automobile No. 2063 to John Ganson for P3,200 (testimony of Mr. Diehl) ; that under date of October 14, 1914, John Canson sold the said automobile to Henry Harding for the sum of P1,500 (Exhibit 2); that under date of November 19, 1914, the said Henry Harding sold the said automobile No. 2063 to J. Brannigan, of Los Banos, Province of Laguna, P. I., for the sum of P2,000 (Exhibit 3) ; that under date of December 20, 1915, J. C. Graham of Los Banos, Province of Laguna, P. I., sold the said automobile No. 2063 to Henry Harding of the city of Manila for the sum of P2,800 (Exhibit 4 and testimony of J. C. Graham); that on or about January 1, 1916, the said Henry Harding gave the said automobile to his wife, Mrs. Henry E. Harding, one of the plaintiffs, as a present; that said automobile was repaired and repainted at the Luneta Garage at a cost of some P900 (testimony of Mr. Server); that while the said automobile was at the Lufleta Garage, the said Luneta Garage, acting as agent for Smith, Bell & Company (limited), solicited of the plaintiff Mrs. Harding the insurance of said automobile by the defendant Company (testimony of Mrs. Harding and Mr. Server); that a proposal was filled out by the said agent and signed by the plaintiff Mrs. Henry E. Harding, and in said proposal under the heading 'Price paid by proposer' is the amount of '3,500' and under another heading "Present value" is the amount of '3,000' (Exhibit 1).

"The evidence tends to show that after the said proposal was made a representative of the Manila agent of defendant went to the Luneta Garage and examined said automobile No. 2063 and Mr. Server, the General Manager of the Luneta Garage, an experienced automobile mechanic, testified that at the time this automobile was insured it was worth about P3,000, and the defendant, by and through its said agent Smith, Bell & Company (limited), thereafter issued a policy of insurance upon said proposal, in which policy the said automobile was described as of the 'present value' of P3,000, and the said defendant charged the said plaintiff Mrs. Henry E. Harding as premium on said policy the sum of P150, or 5 per cent of the then estimated value of P3,000 (Exhibit A).

"The 'Schedule' in said policy of insurance describes the automobile here in question, and provides in part as follows:

" 'Now it is hereby agreed as follows:

" 'That during the period above set forth and during any period for which the company may agree to renew this policy the company will subject to the exception and conditions contained herein or endorsed hereon indemnify the insured against loss of or damage to any motor car described in the schedule hereto' (including accessories) by whatever cause such loss or damage may be occasioned and will further indemnify the insured up to the value of the car or P3,000 whichever is the greater against any claim at common law made by any person (not being a person in the said motor car nor in the insured's service) for loss of life or for accidental bodily injury or damage to property caused by the said motor car including law costs payable in connection with such claim when incurred with the consent of the company.'

"The evidence further shows that on March 24, 1916, the said automobile was totally destroyed by fire, and that the iron and steel portions of said automobile which did not burn were taken into the possession of the defendant

by and through its agent Smith, Bell & Company (limited), and sold by it for a small sum, which had never been tendered to the plaintiff prior to the trial of this case, but in open court during the trial the sum of P10 as the proceeds of such sale was tendered to plaintiff and refused."

Upon the facts so found, which we hold are supported by the evidence, the trial judge decided that there was no proof of fraud on the part of plaintiff in her statement of the value of the automobile, or with respect to its ownership; that she had an insurable interest therein; and that defendant, having agreed to the estimated value, P3,000 and having, insured their automobile for that amount, upon the basis of which the premium was paid, is bound by it and must pay the loss in accordance with the stipulated insured value. The assignments of error made on behalf of appellant put in issue the correctness of those conclusions of law, and some others of minor importance relating to the exclusion of evidence. Disposing of the minor objections first, as we have reached the conclusion that the trial court was right in holding that the defendant is bound by the estimated value of the automobile upon which the policy was issued, and that the plaintiff was not guilty of fraud in regard thereto, the exclusion of the testimony of the witness Diehl is without importance. It merely tended to show the alleged actual value of the automobile, and in the view we take of the case such evidence was irrelevant.

Appellant contends that Mrs. Harding was not the owner of the automobile at the time of the issuance of the policy, and, therefore, had no insurable interest in it. The court below found that the automobile was given to plaintiff by her husband shortly, before the issuance of the policy here in question. Appellant does not dispute the correctness of this finding, but contends that the gift was void, citing article 1334 of the Civil Code which provides that "All gifts between spouses during the marriage shall be void. Moderate gifts which the spouses bestow on each other on festive days of the family are not included in this rule."

We are of the opinion that this contention is without merit. In the case of *Cook vs. McMicking* (27 Phil. Rep., 10), this court said:

"It is claimed by the appellants that the so-called transfer from plaintiff's husband to her was completely void under article 1458 of the Civil Code and that, therefore, the property still remains the property of Edward Cook and subject to levy under execution against him.

In our opinion the position taken by appellants is untenable. They are not in a position to challenge the validity of the transfer, if it may be called such. They bore absolutely no relation to the parties to the transfer at the time it occurred and had no rights or interests inchoate, present, remote, or otherwise, in the property in question at the time the transfer occurred. Although certain transfers from husband to wife or from wife to husband are prohibited in the article referred to, such prohibition can be taken advantage of only by persons who bear such a relation to the parties making the transfer or to the property itself that such transfer interferes with their rights or interests. Unless such a relationship appears the transfer cannot be attacked."

Even assuming that defendant might have invoked article 1334 as a defense, the burden would be upon it to show that the gift in question does not fall within the exception therein established. We cannot say, as a matter of law, that the gift of an automobile by a husband to his wife is not a moderate one. Whether it is or is not would depend upon the circumstances of the parties, as to which nothing is disclosed by the record.

Defendant contends that the statement regarding the cost of the automobile was a warranty, that the statement was false, and that, therefore, the policy never attached to the risk. We are of the opinion that it has not been shown by the evidence that the statement was false—on the contrary we believe that it shows that the automobile had in fact cost more than the amount mentioned. The court below found, and the evidence shows, that the automobile was bought by plaintiff's husband a few weeks before the issuance of the policy in question for the sum of P2,800, and that between that time and the issuance of the policy some P900 was spent upon it in repairs and repainting. The

witness Server, an expert automobile mechanic, testified that the automobile was practically as good as new at the time the insurance was effected. The form of proposal upon which the policy was issued does not call for a statement regarding the value of the automobile at the time of its acquisition by the applicant for the insurance, but merely a statement of its cost. The amount stated was less than the actual outlay which the automobile represented to Mr. Harding, including repairs, when the insurance policy was issued. It is true that the printed form calls for a statement of the "price paid by the proposer," but we are of the opinion that it would be unfair to hold the policy void simply because the outlay represented by the automobile was made by the plaintiff's husband and not by his wife, to whom he had given the automobile. It cannot be assumed that defendant should not have issued the policy unless it were strictly true that the price representing the cost of the machine had been paid by the insured and by no other person—that it would in no event insure an automobile acquired by gift, inheritance, exchange, or any other title not requiring the owner to make a specific cash outlay for its acquisition.

Furthermore, the court below found and the evidence shows, without dispute, that the proposal upon which the policy in question was issued was made out by defendant's agent, by whom the insurance was solicited, and that appellee simply signed the same. It also appears that an examiner employed by the defendant made an inspection of the automobile before the acceptance of the, risk, and that the sum of P3,000 was fixed as the "present value" of the automobile after this examination. The trial court found that Mrs. Harding, in fixing the value of the automobile at P3,000, acted upon information given her by her husband and by Mr. Server, the manager of the Luneta Garage. The Luneta Garage, it will be remembered, was the agent of the defendant corporation in the solicitation of the insurance. Mrs. Harding did not state of her own knowledge that the automobile originally cost P3,000, or that its value at the time of the insurance was P3,000. She merely repeated the information which had been given her by her husband, and at the same time disclosed to defendant's agent the source of her information. There is no evidence to sustain the contention that this communication was made in bad faith. It appears that the statements in the proposal as to the price paid for the automobile and as to its value were written by Mr. Quimby who solicited the insurance on behalf of defendant, in his capacity as an employee of the Luneta Garage, and wrote out the proposal for Mrs. Harding to sign. Under these circumstances, we do not think that the facts stated in the proposal can be held as a warranty of the insured, even if it should have been shown that they were incorrect in the absence of proof of willful misstatement. Under such circumstance, the proposal is to be regarded as the act of the insurer and not of the insured. This question was considered in the case of the Union Insurance Company vs. Wilkinson (13 Wall., 222; 20 L. ed., 617), in which the Supreme Court of the United States said:

"This question has been decided differently by courts of the highest respectability in cases precisely analogous to the present. It is not to be denied that the application, logically considered, is the work of the assured, and if left to himself or to such assistance as he might select, the person so selected would be his agent, and he alone would be responsible. On the other hand, it is well known, so well that no court would be justified in shutting its eyes to it, that insurance companies organized under the laws of one State, and having in that State their principal business office, send these agents all over the land, with directions to solicit and procure applications for policies furnishing them with printed arguments in favor of the value and necessity of life insurance, and of the special advantages of the corporation which the agent represents. They pay these agents large commissions on the premiums thus obtained, and the policies are delivered at their hands to the assured. The agents are stimulated by letters and instructions to activity in procuring contracts, and the party who is in this manner induced to take out a policy, rarely sees or knows anything about the company or its officers by whom it is issued, but looks to and relies upon the agent who has persuaded him to effect insurance as the full and complete representative of the company, in all that is said or done in making the contract. Has he not a right to so regard him? It is quite true that the reports of judicial decisions are filled with the efforts of these companies, by their counsel, to establish the doctrine that they can do all this and yet limit their responsibility for the acts of these agents to the simple receipt

of the premium and delivery of the policy, the argument being that, as to all other acts of the agent, he is the agent of the assured. This proposition is not without support in some of the earlier decision on the subject; and, at a time when insurance companies waited for parties to come to them to seek assurance, or to forward applications on their own motion, the doctrine had a reasonable foundation to rest upon. But to apply such a doctrine, in its full force, to the system of selling policies through agents, which we have described, would be a snare and a delusion, leading, as it has done in numerous instances, to the grossest frauds, of which the insurance corporations receive the benefits, and the parties supposing themselves insured are the victims. The tendency of the modern decisions in this country is steadily in the opposite direction. The powers of the agent are, prima facie, coextensive with the business intrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals. (*Bebee vs. Ins. Co.*, 25 Conn., 51; *Lycoming Ins. Co. vs. Schoolenberger*, 44 Pa., 259; *Beal vs. Ins. Co.*, 16 Wis., 241; *Davenport vs. Ins. Co.*, 17 Iowa, 276.) An insurance company, establishing a local agency, must be held responsible to the parties with whom they transact business, for the acts and declarations of the agent, within the scope of his employment, as if they proceeded from the principal. (*Sav. Bk. vs. Ins. Co.*, 31 Conn., 517; *Hortwite vs. Ins. Co.*, 40 Mo., 557; *Ayres vs. Ins. Co.*, 17 Iowa, 176; *Howard Ins. Co. vs. Bruner*, 23 Pa., 50.)

"In the fifth edition of *American Leading Cases*, 917, after a full consideration of the authorities, it is said:

" 'By the interested or officious zeal of the agents employed by the insurance companies in the wish to outbid each other and procure customers, they not unfrequently mislead the insured, by a false or erroneous statement of what the application should contain; or, taking the preparation of it into their own hands, procure his signature by an assurance that it is properly drawn, and will meet the requirements of the policy. The better opinion seems to be that, when this course is pursued, the description of the risk should, though nominally proceeding from the insured, be regarded as the act of the insurers.' (*Rowley vs. Empire Ins. Co.*, 36 N. Y., 550.)

"The modern decisions fully sustain this proposition, and they seem to us founded on reason and justice, and meet our entire approval. This principle does not admit oral testimony to vary or contradict that which is in writing, but it goes upon the idea that the writing offered in evidence was not the instrument of the party whose name is signed to it; that it was procured under such circumstances by the other side as estops that side from using it or relying on its contents; not that it may be contradicted by oral testimony, but that it may be shown by such testimony that it cannot be lawfully used against the party whose name is signed to it." (See also *Am. Life Ins. Co. vs. Mahone*, 21 Wallace, 152.)

The defendant, upon the information given by plaintiff, and after an inspection of the automobile by its examiner, having agreed that it was worth P3,000, is bound by this valuation in the absence of fraud on the part of the insured. All statements of value are, of necessity, to a large extent matters of opinion, and it would be outrageous to hold that the validity of all valued policies must depend upon the absolute correctness of such estimated value. As was said by the Supreme Court of the United States in the case of the *First National Bank vs. Hartford Fire Insurance Co.* (5 Otto, 673; 24 L. ed., 563), at p. 565 of the Lawyer's Edition:

"The ordinary test of the value of property is the price it will command in the market if offered for sale. But that test cannot, in the very nature of the case, be applied at the time application is made for insurance. Men may honestly differ about the value of property, or as to what it will bring in the market; and such differences are often very marked among those whose special business it is to buy and sell property of all kinds. The assured could do no more than estimate such value; and that, it seems, was all that he was required to do in this case. His duty was to deal fairly with the Company in making such estimate. The special finding shows that he discharged that duty and observed good faith. We shall not presume that the Company, after requiring the assured in his application to give the 'estimated value,' and then to covenant that he had stated all material facts in regard to such value, so far as known to him, and after carrying that covenant, by express words, into the written contract, intended to

abandon the theory upon which it sought the contract, and make the absolute correctness of such estimated value a condition precedent to any insurance whatever. The application, with its covenant and stipulations, having been made a part of the policy, that presumption cannot be indulged without imputing to the .Company a purpose; by studied intricacy or an ingenious framing of the policy, to entrap the assured into incurring obligations which, perhaps, he had no thought of assuming."

Section 163 of the Insurance Law (Act No. 2427) provides that "the effect of a valuation in a policy of fire insurance is the same as in a policy of marine insurance."

By the terms of section 149 of the Act cited, the valuation in a policy of marine insurance is conclusive if the insured had an insurable interest and was not guilty of fraud.

We are, therefore, of the opinion and hold that plaintiff was the owner of the automobile in question and had an insurable interest therein; that there was no fraud on her part in procuring the insurance; that the valuation of the automobile, for the purposes of the insurance, is binding upon the defendant corporation, and that the judgment of the court below is, therefore, correct and must be affirmed, with interest, the costs of this appeal to be paid by the appellant. So ordered.

Arellano, C. J., Torres, Street, Malcolm, and Avanceña, JJ., concur.

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