

UNION LIFE INSURANCE COMPANY v. PRITCHETT.

4-7773

190 S. W. 2d 968

Opinion delivered December 10, 1945.

APPEAL AND ERROR.—The jury's finding on a disputed question of fact relative to the condition of insured's health at time policy was issued and delivered to her is binding on appeal.

Appeal from Sebastian Circuit Court, Fort Smith District; *J. Sam Wood*, Judge; affirmed.

*E. M. Arnold*, for appellant.

*David L. Ford*, for appellee.

ROBINS, J. Appellant challenges the correctness of trial jury's finding that appellant had failed to establish its defense to appellee's suit for amount of insurance policy on the life of Mrs. Rena Pritchett, deceased wife of appellee. Appellant denied liability on the ground that Mrs. Pritchett was not in sound health when she applied for and when she received from appellant a policy of life insurance for \$300, payable at her death to appellee.

There was testimony by lay witnesses and also by a physician tending to establish that Mrs. Pritchett was in good health when she applied for the insurance and when the policy was delivered to her. This testimony was to some extent contradicted by evidence offered by appellant; but the case was submitted to a jury, on instructions not complained of here, and the jury's finding in favor of appellee on the disputed fact question is conclusive and binding on us. *Houch v. Lynch*, 17 Ark. 478; *Smith v. Van Gilder*, 27 Ark. 592; *Cogswell v. McKeogh*, 46 Ark. 524; *W. T. Rawleigh Co. v. Thurman*, 131 Ark. 593, 197 S. W. 1154; *Collier Commission Company v.*

*Wright*, 165 Ark. 338, 264 S. W. 942; *American Equitable Assurance Company of New York v. Showers*, 195 Ark. 521, 113 S. W. 2d 91; *The Sovereign Camp W. O. W. v. Sams*, 194 Ark. 557, 108 S. W. 2d 1089.

The judgment of the lower court is affirmed.

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