

PROVIDENCE WASHINGTON INSURANCE COMPANY v.  
EAGLE MILLING COMPANY, INC.  
4-8803 219 S. W. 2d 233

Opinion delivered March 21, 1949.

Rehearing denied April 25, 1949.

1. APPEAL AND ERROR.—Ordinarily the finding of a jury on a disputed question of fact is conclusive on appeal.
2. APPEAL AND ERROR.—In appraising the sufficiency of the testimony to support the verdict of the jury the appellate court must give it the strongest probative force that it will reasonably bear in favor of the successful party in the lower court; but the finding of the jury must be based on substantial testimony and it must not be contrary to admitted physical facts.
3. INSURANCE.—Where appellee, a poultry raiser, procured an insurance policy from appellant covering a flock of chickens reading: "This policy does not insure against loss or damage due to failure or faulty operation of heating stoves unless fire outside of stoves ensues," *held* that the evidence was insufficient to show that the loss occurred from fire originating outside the stoves in the poultry plant.
4. APPEAL AND ERROR.—Since the chickens were not killed by a fire such as was insured against under the terms of the policy, the

lower court erred in not granting appellant's motion for a directed verdict.

Appeal from Benton Circuit Court; *Maupin Cummings*, Judge; reversed.

*Vol T. Lindsey*, for appellant.

*Clayton N. Little* and *William H. Enfield*, for appellee.

ROBINS, J. The question posed herein is whether 504 broiler chickens, owned by appellee Curtis E. James, were killed by such fire as rendered appellant liable for their value under its insurance policy. The jury by its verdict found that the chickens were so destroyed and the lower court rendered judgment against appellant accordingly. This appeal followed.

Appellee James, a chicken raiser, was buying his feed on credit from appellee Eagle Milling Company, and his poultry was covered by a "floater" policy issued by appellant to the Company. This policy insured, among other things, chickens in which the Company had an interest, against direct loss or damage by fire, but it contained this provision, from which the controversy arises: "This policy does not insure against loss or damage: . . . due to failure or faulty operation of heating stoves, unless fire outside of stoves ensues, and then for loss caused by such ensuing fire only; From any consequential loss except as is specifically insured hereby."

The chickens involved herein were being kept in a brooder house owned by appellee James. This brooder house was a one-room frame structure sixteen by eighteen feet. In the center of the room was a coal stove 63 inches in diameter with a large circular metal "hover" or canopy over it. The stove was controlled by thermostats which ordinarily regulated the heat, but on account of the cold weather the thermostats were "screwed down" to where they would hardly close. The floor of the room was covered with a litter, which had been there since the chickens were put in the room. The chickens were eleven weeks old at the time they were killed.

