MECHANICS' INSURANCE COMPANY v. INTER-SOUTHERN LIFE INSURANCE COMPANY.

Opinion delivered November 9, 1931.

1. INSURANCE—FALSE STATEMENTS IN PROOF OF LOSS.—Under a fire policy insuring the crop of a landowner and share cropper, the latter's false statements in the proof of loss did not bar the landowner's recovery.

2. INSURANCE—KNOWLEDGE OF AGENT.—Knowledge of the agent who issued policies of fire insurance of the relationship between a landowner and share cropper, to whom the fire policies were issued jointly will be imputed to the insurers.
3. INSURANCE—PROOF OF LOSS.—In absence of specific inquiry, the insured need not state his exact interest in the proof of loss, which need not be described in a fire policy.
4. INSURANCE—CHANGE OF OWNERSHIP.—There may be a shifting of interest of parties jointly insured against fire without affecting rights under the policy.
5. INSURANCE—CONSTRUCTION OF POLICIES.—The terms and conditions of policies are always to be construed most strongly against the insurer.
6. INSURANCE—WAIVER OF PROOF OF LOSS.—An insurer's denial of liability under a fire policy dispensed with the necessity of making proof of loss.
7. INSURANCE—RECORD WARRANTY CLAUSE.—The record warranty clause in a policy insuring a rice crop requiring a set of books or records showing "the kind and quantity of rice deposited or removed from the warehouse" *held* inapplicable where the rice was temporarily stored in a dwelling house on the farm where grown and was burned within a short time thereafter.
8. INSURANCE—FORFEITURE—WAIVER.—Acceptance of payment of premiums after a loss occurs operates as a waiver of insured's failure to keep a record as required in the record warranty clause.

Appeal from Poinsett Circuit Court; *G. E. Keck*, Judge; affirmed.

STATEMENT BY THE COURT.

This appeal is prosecuted by the fire insurance companies from judgments against them on policies of insurance issued to appellee for the crop of rice destroyed by a fire after it was stored temporarily in an old dwelling house on the premises.

The appellee life insurance company, owner of a rice farm in Poinsett County near Weiner, made a contract in the spring of 1929 leasing it to Simmons for that year under an agreement to furnish seed, fuel oil, pumping machinery, and to advance Simmons $2,000 as the crop progressed, Simmons to furnish all labor and other equipment, plant, water and harvest the crop, each party to receive one-half of the crop produced. A little later a supplemental contract was entered into between them under which an additional 120 acres was to be planted by

Simmons, who was to be furnished and advanced by the insurance company an additional $1,000. Difficulties during the growing season were encountered in procuring water, and 100 acres of the crop was abandoned on that account, the rice on 180 acres of the land only being cultivated.

Pittinger, of Jonesboro, represented the insurance company in looking after the farm and its operation. He had been in the rice growing business and had known Simpson, whom he had employed while he cultivated rice, for a long time. Arrangements were made with McGlocklin to use his machine in threshing the rice. The threshing began on October 23d, the machine being taken to the farm where 104 bags of rice of 4 bushels each were threshed the few hours the machine was operated that day.

J. D. Richardson operated the thresher during the rest of the time. There were two old dwelling houses on the farm about 50 or 75 yards apart, and after it was finally decided not to put the rice in the government warehouse operated by Brown at Weiner, it was put in one of the old dwelling houses for convenience.

The testimony is in conflict about the size of the dwelling house in which the rice was stored, some was to the effect that the house was 28x38, some 32x42, and others stated it was 40x42 outside measurements. There were four rooms in the house originally, and a lean-to was added on one side 10 or 12 feet in width the entire length of the building.

They finished threshing the rice on November 5th, the actual period of threshing being 7 or 8 days, there being some time intervening when no threshing was done on account of the rain. The insurance policies were issued by the Jonesboro Insurance Company agency, one October 25 for $2,500, by Mechanics' Insurance Company, one by Continental Insurance Company for the same amount on October 26th, one by Merchants' Insurance Company for same amount on November 5th, and one by Rochester American Insurance Company for $2,000 on

November 7th. All the policies were issued jointly to the appellee life insurance company and O. A. Simmons, at the request of C. W. Pittinger, who represented the appellee life insurance company in taking out the insurance, covering the rice in the storehouse on the farm. Rogers, of the Jonesboro Insurance Company agency, issuing the policies, knew that the farm on which the rice was to be grown was owned by the appellee insurance company, and that Pittinger was acting in its behalf in procuring the issuance of the policies. He also made a statement of the account made by him on December 1, 1929, for premiums aggregating $141.75 on the various insurance policies in controversy. The life insurance company's letter of December 17, 1929, showing payment by said company of $3 as a balance in full of the total premiums, was introduced.

Pittinger, who was qualified, being familiar with the prevailing market price of rice at the time, stated that it was between 90 cents and $1 per bushel. He also stated they were 10 or 11 days threshing the rice on the farm, and that the house in which it was stored on the premises was set on brick pillars. Shortly after the threshing was finished, both houses and the three straw stacks situated about a quarter of a mile from them, burned during the night without any appearance of a connecting fire between the stacks in the fields and the storage building or houses. The loss was reported to the life insurance company and by them to the fire insurance companies. Simmons claimed there were 9,600 bushels of rice destroyed. One of the adjusters for three of the companies went out immediately and looked the site of the storehouse over. Stepped around it and reported his conclusion that there could not have been as much rice destroyed in the building as was claimed. It was also discovered that 342 bags of rice had been hauled to the government warehouse at Weiner, for which a receipt had been issued to the Planters' Mercantile Company at McCrory, which was later issued to McGlocklin and finally turned over to appellee company.

Simmons and Richardson were indicted for arson and left for parts unknown and were out of the country when these suits were brought. The adjusters asked for a record of the rice threshed and stored, and Simmons claimed 2,400 four bushel sacks of rice had been threshed. That Richardson operated the threshing machine and kept a record of the rice threshed in a book. On February 5, 1930, proof of loss was furnished each of the companies, being made by Simmons, who stated it was filed in his own behalf and the life insurance company, which was interested in it by reason of the money loaned and on account of rents due. He stated the building was destroyed on or about November 8, 1930, containing 9,500 bushels of rice of the value of $9,025. That affiant did not know the origin of the fire, but that it did not occur by any act done or suffered by him in violation of any of the provisions of the policies. Proof was made by Simmons at the request of Pittinger acting for the life insurance company and was subscribed and sworn to before him.

The insurance companies admitted the issuance of the policies; denied that 8,380 bushels of rice were destroyed; denied that they had notice of the relationship set out in the lease contract with Simmons; and all set up failure of the insured to comply with the record warranty clause. They alleged Simmons had removed the greater portion of the rice from the building and set fire to it, and, on account of his having sworn falsely in the proof of loss and burned the property himself, they all denied liability under their policies.

The complaint alleged that all insurance companies had notice and actual knowledge of the relationship set out by the terms of the leases, copies of which were exhibited with the complaint; that Simmons was but a tenant; and that, under the terms of the leases and the agreement of the parties, the life insurance company became and was at the time of the fire the owner of all the rice and entitled to the proceeds of the insurance for its destruction.

The clause of each policy providing insurance against loss by fire of the rice in sacks or in bulk while contained in the one-story frame building situated on the premises, describing it, was introduced.

The record warranty clause was also introduced requiring an itemized inventory, a set of books or records showing the exact kind and quantity of rice deposited or removed from the warehouse, to be kept securely locked in a fireproof safe at night, or kept in a place not exposed to a fire which might destroy the premises; and it also provides that, in event of a failure to produce the books or record for inspection by the company, the policy shall be void, and such failure shall constitute a bar to any recovery thereon. It also provides that any fraudulent or false swearing by the insured touching any matter relative to the insurance, whether before or after the loss, shall avoid it.

Much testimony was introduced as to the kind, character and amount of rice produced on the farm and stored in the house, as well as about the size of the house and the amount of rice stored therein, the market price also being shown.

Negotiations for settlement were carried on for some time and additional proofs of loss were demanded and furnished; and the fire insurance companies accepted payment of the premiums after being notified of the loss.

The court instructed the jury, and from the judgment on their verdicts this appeal is prosecuted.

M. P. Watkins and *Verne McMillen,* for appellants.

Arthur L. Adams, for appellee.

KIRBY, J., (after stating the facts). Appellant contends that the contract of lease between the life insurance company and Simmons constituted them partners in the production of the rice, and that, because of the alleged conduct of Simmons in making the proof of loss, etc., the life insurance company is barred of all right to recover its losses under the policies issued to it and Simmons jointly. This contention, however, is unwarranted, since under said lease or contract Simmons was

but a share cropper, the whole of the crop produced belonging to the landlord until payment of Simmons' debts for supplies, etc., out of the part that would otherwise have come to him; and the undisputed testimony shows that there was nothing due Simmons out of the crop at the time it was stored in the house and insured. *Gardenshire* v. *Smith,* 39 Ark. 280; *Hammock* v. *Creekmore,* 48 Ark. 264, 3 S. W. 180; *Hardiman* v. *Arthurs,* 144 Ark. 289, 222 S. W. 20; *Fenton* v. *Price,* 145 Ark. 116, 223 S. W. 364; *Barnhardt* v. *State,* 169 Ark. 567, 275 S. W. 909; *Harnwell* v. *Rice Growers' Assn.,* 169 Ark. 622, 276 S. W. 371.

Rogers, the agent issuing the policies, also knew of the relationship existing between the landlord insurance company and Simmons at the time the policies were issued, and this knowledge is imputed to the insurance companies. *Nat. Life Ins. Co.* v. *Jackson,* 161 Ark. 597, 256 S. W. 378; *Nat. Union Fire Ins. Co.* v. *Crabtree,* 151 Ark. 561, 237 S. W. 97; *Same* v. *Wright,* 163 Ark. 43, 257 S. W. 753; *Firemen's Ins. Co.* v. *Rye,* 160 Ark. 212, 254 S. W. 465.

It is not necessary, in the absence of specific inquiry, for insured to state the exact nature of his interest, which was not necessary to be described in the policy. Cooley's Briefs on Insurance, 2 Ed. pgs. 2123, 2164; 14 R. C. L., p. 1051.

There may even be a shifting of interest of parties jointly insured without affecting the rights under the policy. 38 A. L. R. 325; see also 45 A. L. R. 856 and notes, p. 863; *Fire Ins. Co.* v. *Larey,* 125 Ark. 93, 188 S. W. 7, L. R. A. 1917A, 29, Ann. Cas. 1918B, 1225.

There was no attempt to show nor any showing made that appellee life insurance company was in any way connected with or had any knowledge that Simmons, the agent, had made any fraudulent or false statement in the proof of loss or that his conduct in so doing was known to such insurance company, and its right to recover would not be affected by such conduct on Simmons' part if it had been proved. 14 R. C. L., § 403, p. 1223 and

cases cited; 26 C. J., p. 348; *Beavers* v. *Security Mutual Ins. Co.,* 76 Ark. 595, 90 S. W. 13, 6 Ann. Cas. 585. Cooley's Briefs on Ins., (2 ed.), pp. 1253, 4941.

The terms and conditions of insurance policies are always to be construed most strongly against the insurer, and this principle is recognized and fixed by our statute. Section 6148, Crawford & Moses' Digest.

The insurer denied liability under the policies, dispensing with the necessity for making proof of loss, but such proof and supplemental proofs were afterwards demanded by the insurers and furnished by appellee, and any question on that account passes out of the case. *Commercial Union Fire Ins. Co.* v. *King,* 108 Ark. 130, 133, 156 S. W. 445; *Woodmen of the World* v. *Hall,* 104 Ark. 538, 148 S. W. 526, 41 L. R. A. (N. S.) 517; *Dodge* v. *Thompson,* 94 Ark. 21, 125 S. W. 648.

The undisputed testimony also shows that the adjusters representing all the companies met after the loss and investigated the fire with a view to settlement, there being an extended investigation for the purpose as shown by Martin for trying to settle with the appellee insurance company, designated by him as an innocent victim.

The jury's finding of the amount of rice destroyed by the fire is a sufficient answer to any contention about an unintentional overstatement of the loss which could work no forfeiture. 20 A. L. R. 1164; *Fidelity-Phoenix Fire Ins. Co.* v. *Freedman,* 117 Ark. 71, 174 S. W. 215.

It was also manifest, reading the clause of the policies, that the record warranty clause had no application to the property stored in this old dwelling house, which was in no sense a warehouse. *Camden Fire Ins. Assn.* v. *Meloy,* 174 Ark. 84, 294 S. W. 378; *Queen of Ark. Ins. Co.* v. *Dillard,* 96 Ark. 378, 131 S. W. 946.

Acceptance of the payment of premiums after the loss occurred would in any event have operated as a waiver of the failure of insured to keep the record as required in the record warranty clause. *National Liberty Ins. Co.* v. *Spharler,* 172 Ark. 715, 290 S. W. 594.

We do not find it necessary to discuss any of the other assignments, and, finding no prejudicial error in the record, the judgment must be affirmed. It is so ordered.