

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Farran.

THE ORIENTAL GOVERNMENT SECURITY LIFE ASSURANCE COMPANY, LIMITED (ORIGINAL DEFENDANTS), APPELLANTS, v. SARAT CHANDRA CHATTERJI AND ANOTHER (ORIGINAL PLAINTIFFS), RESPONDENTS.*

1895.
February
1 and 15.

Insurance—Life insurance—Age of assured—Proof of age—Onus of proof—Mistake in statement of age—Fraud.

A. insured his life with the defendant company. By the terms of the policy the declaration of the assured as to his age was made the basis of the contract, and the policy was issued subject to the express condition that, in case any statement contained in the declaration were untrue, the policy should be void. The assurance was also expressly made subject to the regulations and conditions contained in the prospectus of the company. The prospectus contained the following provision with regard to the age of parties insured:—"Age admitted in the company's policies in all cases where proof is given satisfactory to the directors. Proof of age can be furnished at any time; if not furnished, it will be necessary on settlement of claim;" and after stating the nature of the "evidence as to age" which the company would accept, the prospectus continued:—"The directors recommend applicants to furnish any of the above as soon as possible and get the age admitted in the policy, as it is required by all soundly conducted companies on settlement of claim if not previously produced." A. died, and his administrators claimed the amount of the policy.

Held, that the above condition contained in the prospectus, which must be read into the policy, impose on the assured, or his representatives, the obligation of giving proof of age before the company could be called upon to pay. If the evidence had been given in the lifetime of the assured, and an admission of age was attached to the policy, no further proof would be needed, and the *onus* of disputing the age would be thrown on the company; but, in the absence of such evidence and of such admission, it lay upon those claiming upon the policy by reasonable proof to satisfy the Court as to the age of the assured.

The prospectus of the company contained a further provision that "policies held by parties on their own lives are indisputable on any ground whatever except fraud."

Held, that this provision did not relieve those claiming upon the policy from the burden of giving proof of age, but it covered a misstatement as to age as well as other misstatements, provided they were not fraudulent. It relieved the assured from the legal effect which an innocent misrepresentation as to age would otherwise have had under the strict terms of the contract. The result, therefore, was that the plaintiffs should give proof of the age of the assured, but, if such proof disclosed nothing more than an innocent mistake as to age on the part of the assured, the policy would not be vitiated. Subject to the above terms of the prospectus, any untruth in the declaration as to the age of the assured would vitiate the contract. The state-

* Suit No. 375 of 1892; Appeal No. 835.

1895.

THE
ORIENTAL
GOVERNMENT
SECURITY
LIFE
ASSURANCE
COMPANY,
LIMITED,
v.
SARAT
CHANDRA
CHATTERJI.

ment as to the age of the assured amounts to a warranty, and the warranty being broken the risk under the policy would not attach.

APPEAL from Parsons, J.

The plaintiffs (respondents) as sons and administrators of the estate of A'nandprasád Chatterji sued the defendant company (appellants) to recover Rs. 8,000, with interest from the 3rd September, 1889, as moneys due on certain policies of insurance, dated the 27th June, 1889, whereby the said A'nandprasád Chatterji insured his life for a total sum of Rs. 8,000.

On the 31st July, 1889, the said A'nandprasád Chatterji died. The plaintiffs obtained a certificate under the Succession Certificate Act (VII of 1889), and now sued to recover Rs. 8,000.

The defendants pleaded that the execution of the policies sued on was obtained by fraud and misrepresentation; that some person had personated A'nandprasád Chatterji, who was at the date of the policies in a dying condition and entirely unfit to be insured; that A'nandprasád was represented to be only fifty-two years of age, whereas he was over seventy years old; and they further alleged that "this proposal of insurance was accepted upon the promise contained in the proposal paper submitted to them that proof of age of the proposer would be furnished later on. No such proof was furnished to the defendants."

The case was tried by Parsons, J., who found a verdict for the plaintiffs, and passed a decree for Rs. 8,000. He held that the policies had not been obtained by fraud and misrepresentation. The third issue was "whether any proper proof of the age of the said A'nandprasád had ever been forwarded to the defendants?" As to this issue His Lordship said:—

"As to the third issue, it was almost useless to give proof of age when the defendants had repudiated the policies and brought the charge of fraud. A declaration of age, however, was sent in, and I do not see why it should not have been accepted as reasonable proof. They had the report of their own medical man as to the age of the proposed insurer; they knew he thought it was probably near fifty-five than fifty-two, and they granted the policies with that knowledge. It is proved now that this is correct. Ananda was between fifty-two and fifty-five at the time. It is hardly to be expected that a native would be much more accurate than that. On issue 4 I find that the plaintiffs are entitled to the amount claimed, and I pass a decree as asked for in para. (a) of the prayer of the plaint."

The defendants appealed.

Iang (Advocate General) and *B. Tyabji* for the appellants (defendants):—They cited Porter on Life Insurance, p. 139; *Westropp v. Bruce*⁽¹⁾; *London Assurance v. Mansel*⁽²⁾; *Macdonald v. Law Union Insurance Company*⁽³⁾; *Anderson v. Fitzgerald*⁽⁴⁾; *Thomson v. Weems*⁽⁵⁾.

Macpherson and *Russell* for respondents.

The judgment of the appeal Court was delivered by

FARRAN, J. (His Lordship discussed the evidence as to fraud, misrepresentation and personation, and agreed with the findings of the lower Court. He then proceeded:—) These were the issues upon which the company substantially rested their case in the Court below. It has, however, been contended before us that the plaintiffs have not proved that the assured was under the age of fifty-two years when the policies were effected, and on that ground are not entitled to recover.

Now by the terms of the policies the declarations of the assured as to his age, as well as the other declarations in his personal statement, are made the basis of the contract, and the policies are issued subject to the express condition that, in case any statement contained in the declaration be untrue, the policies shall be void. The assurance is also expressly made subject to the regulations and conditions contained in the prospectus of the company. It cannot, we think, be doubted that, subject to the further term in the prospectus to which we shall presently refer, any untruth in the declaration as to the age of the assured would vitiate the contract. The statement as to the age of the assured amounts to a warranty, and that warranty being broken, the risk under the policies would not attach. This was so held in the case of a similarly worded policy by the House of Lords in *Thompson v. Weems*⁽⁵⁾. See, too, *Macdonald v. Law Union Insurance Company*⁽³⁾ and *London Assurance v. Mansel*⁽²⁾. The burden of proving that the warranty had been broken was there thrown upon the insurers, and in the opinion of Lord Blackburn

(1) Batty's Reports, 155.

(3) L. R., 9 Q. B., 328.

(2) 11 Ch. D., 363, at p. 368.

(4) 4 H. L. Ca., 484.

(5) 9 Ap. Ca., 671.

1895.

THE
ORIENTAL
GOVERNMENT
SECURITY
LIFE
ASSURANCE
COMPANY,
LIMITED,
v.
SARAT
CHANDRA
CHATTERJI

rightly so (p. 684), and this no doubt is the general law in such cases. The prospectus, however, in the present case contains these provisions: "Age admitted in the company's policies in all cases where proof is given satisfactory to the directors. Proof of age can be furnished at any time. If not furnished, it will be necessary on settlement of claim." And at p. 43, after stating the nature of the "evidence as to age," which the company will accept, there follows this clause: "The directors recommend applicants to furnish any of the above as soon as possible, and get the age admitted in the policy, as it is required by all soundly conducted companies on settlement of claim if not previously produced." These conditions, which must be read into the policies, impose, we think, upon the assured, or his representatives, the obligation of giving proof of age before the company can be called upon to pay. The stipulations as to evidence of age contained in the prospectus would otherwise be meaningless, and the provision that such evidence can be given at any time shows that it was not the intention of the parties that, if not given before the issuing of the policies, it should be treated as waived by the company. If the evidence has been given in the lifetime of the assured, and an admission of age is attached to the policy, no further proof will be needed, and the *onus* of disputing the age will be thrown on the company; but, in the absence of such evidence and of such admission, it lies, we think, upon those claiming upon the policy by reasonable proof to satisfy the Court as to the age of the assured.

We have not noticed, in this connection, the answer of the assured contained in the proposal in reply to the question as to what proof of age he could furnish—"evidence of my age will follow afterwards"—because, as we intimated at the hearing, the answer appears to us to have reference to the time before the acceptance of the proposal; and we think that though the company might have called for the proof before acceptance, yet when they finally accepted the proposal, which they did on the 1st July, by their letter of that date, they waived compliance by the assured with this promise, and when the policies were issued, they were granted upon the terms and conditions upon which the company's policies are ordinarily issued.

The plaintiffs rely upon the further term in the prospectus, to which we have alluded, that "policies held by parties on their own lives are indisputable on any ground whatever except fraud," to which the judgment of the Court in *Wood v. Dwarries*⁽¹⁾ shows that full effect should be given as though it were a proviso contained in the policy. This term does not, however, appear to us to relieve those claiming upon the policies from the burden of giving proof of age which the assured, as we have said, undertook to do before claiming under the policies; but yet we see no reason for thinking that it does not cover a misstatement as to age as well as other misstatements, provided they are not fraudulent. It relieves the assured from the legal effect which an innocent misrepresentation as to age would otherwise have under the strict terms of the contract. The result, therefore, is that the plaintiffs must give proof of the age of the assured; but, if such proof discloses nothing more than an innocent mistake as to age on the part of the assured, the policies will not be vitiated. The plaintiffs, in proof of the age of the assured, have tendered in evidence a declaration made by their uncle Otal soon after the death of A'nandprasad. We do not doubt the genuineness of this declaration, or think that it was not duly declared by Otal before the Magistrate, before whom it purports to have been affirmed; and though it may not be legal evidence of the age of the assured within the provisions of the Evidence Act, yet it is a document of the class which the parties by their contract have made proof of age. On that ground we think that it is admissible in evidence, and ought to have been received at the hearing. That it was not forwarded to the defendants at the time when the claim was made, was due, we cannot doubt, to the absolute repudiation, by the defendants, of all liability under the policies. The plaintiff Sarat swears that he gave it to his solicitors at that time, and we see no reason to doubt his statement. The parties, we think, ought to be in the same position as if the document had been sent to the defendants, and they had refused to act upon it.

We have then to consider what the age of the assured really was. The defendants have given no reliable evidence upon this point. The plaintiffs' witnesses agree in stating that he was a man

1895.

THE
ORIENTAL
GOVERNMENT
SECURITY
LIFE
ASSURANCE
COMPANY,
LIMITED,
v.
SARAT
CHANDRA
CHATTERJI.

(1) L. R., 11 Ex., 493.

1895.

THE
ORIENTAL
GOVERNMENT
SECURITY
LIFE
ASSURANCE
COMPANY,
LIMITED,
v.
SABAT
CHANDRA
CHATTERJI.

who appeared to be between fifty and fifty-five, his hair half gray half black, and his general appearance betokening that age. Dr. Ferdinand thought that he looked fifty-five. In this state of the evidence, we think that it is quite impossible for the Court to say that the age of the assured was not that given in the declaration of Otal, or that it is proved that the assured fraudulently understated it.

The Advocate General has objected to the award of interest. It should run at six per cent. from the date of the plaint. To that extent the decree will be varied. In all other respects, it will stand confirmed with costs. The defendants will be allowed in reduction of the amount of decree the premia for one year less the premium already paid.

Attorneys for the appellants:—Messrs. *Ardesir, Hormusji and Dinsha.*

Attorneys for the respondents:—Messrs. *Mulji and Raghaoji.*

ORIGINAL CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Bayley.

CURSANDA'S NA'THA' AND ANOTHER, PLAINTIFFS, v. LA'DKA VAHOO AND OTHERS, DEFENDANTS.*

Limitation—Limitation Act (XV of 1877), Secs. 5 and 14—Guardian and minor—Decree against minor—Neglect of guardian to appeal—Leave to appeal granted to minor after attaining majority—Practice—Procedure.

One Kessowji Jádhowji died in 1836 and by his will directed his daughter-in-law Ládkáhoo to adopt Karamsey Mádhowji, his nephew's son, and "to this lad as his inheritance" he gave the residue of his property. In a suit filed to have the will construed, a decree was passed on 1st October, 1887, declaring (*inter alia*) that until his adoption by Ládkáhoo, Karamsey Mádhowji was not entitled to any part of the estate. Karamsey Mádhowji was then a minor and was represented in the suit by his father and guardian. No appeal was made against the decree, but the guardian and Ládkáhoo began to negotiate with each other as to the sum of money which each should receive out of the testator's residuary estate as the price of giving and receiving the boy in adoption. These negotiations continued until 1890, when Ládkáhoo died, and the adoption directed by the will thus became impossible. In December, 1894, Karamsey Mádhowji, alleging that he had only attained majority on the 14th of that month, applied for a review of judgment, but his application was rejected⁽¹⁾. In

* Suit No. 185 of 1887.

(1) See I. L. R., 19 Bom., 571.

1895.

April 5.