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*Oct. 5, 6, 7.
*Nov. 3.

THE METROPOLITAN LIFE INSURANCE COMPANY (DEFENDANTS) ..... APPELLANTS;

AND

THE MONTREAL COAL AND TOWING COMPANY (PLAINTIFFS) ..... RESPONDENTS.

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Evidence—Verdict—New trial—Life insurance—Conditions of contract—Misrepresentation—Non-disclosure—Accident policies—Warranties—Words and terms—Rule of interpretation.

Unless the evidence so strongly predominates against the verdict as to lead to the conclusion that the jury have either wilfully disregarded the evidence or failed to understand or appreciate it, a new trial ought not to be granted.

On an application for life insurance, the applicant stated, in reply to questions as to insurances on his life then in force, that he carried policies in several life insurance companies named, but did not mention two policies which he had in accident insurance companies insuring him against death or injury from accidents. The questions so answered did not specially refer to accident insurance, but the policy provided that the statements in the application should constitute warranties and form part of the contract.

Held, affirming the judgment appealed from, the Chief Justice dissenting, that "accident insurance" is not insurance of the character embraced in the term "insurance on life" contained in the application and, consequently, that the questions had been sufficiently and truthfully answered according to the natural and ordinary meaning of the words used, and, even if the words used were capable of interpretation as having another or different meaning, then the language was ambiguous and the construction as to its meaning must be against the company by which the questions were framed. *Confederation Life Association* v. *Miller*,

*PRESENT:—Sir Elzéar Taschereau C.J. and Sedgewick, Girouard, Davies and Nesbitt JJ.

(14 Can. S.C.R. 330) followed. *Mutual Reserve Life Insurance Co.* v. *Foster*, (20 Times L R 715) referred to.

APPEAL from the judgment of the Court of King's Bench, appeal side, affirming the judgment of the Superior Court, sitting in review, at Montreal (1), which ordered judgment to be entered in favour of the plaintiffs, upon the verdict of the jury at the trial, with costs.

The questions at issue on this appeal are stated in the judgments now reported.

R. C. Smith K.C. and *Claxton* for the appellants, cited Arts. 2485, 2490, 2587 C. C.; *McKay* v. *Glasgow & London Ins. Co.* (2); *McCollum* v. *Mutual Life Ins. Co.* (3); *Anderson* v. *Fitzgerald* (4); *Venner* v. *Sun Life Ins. Co.* (5); *Shannon* v. *Gore District Mutual Fire Ins. Co.* (6); *Cornwall* v. *Halifax Banking Co.* (7); Porter on Insurance, p. 484.

Atwater K.C. and *Duclos K.C.* for the respondents referred to the Century Dictionary *vo.* "Insurance," and the definitions of insurance in Chambers Encyclopedia, Standard Dictionary, Encyclopedia Britannica; May on Insurance, ch. 1; 19 Am. & Eng. Encycl. (2 ed.) p. 42; Insurance Act, R. S. C. ch. 124 ss. 4, 49; 62 & 63 Vict. ch. 13, sec. 2 (*b*); Porter on Insurance (2 ed.) pp. 18 and 34; *Anderson* v. *Fitzgerald* (4) per Lord St. Leonards at p. 513; *Notman* v. *Anchor Assurance Co.* (8) at p. 481; *Stanley* v. *Western Ins. Co.* (9), at p. 75 per Kelly C. B: and at p. 76 per Martin B.; *Confederation Life Association* v. *Miller* (10) per Gynne J. at page 344; *Mutual Reserve Fund Life Association* v. *Foster* (11).

(1) Q. R. 24 S. C. 399.
(2) 32 L. C. Jur. 125.
(3) 55 Hun 103; 124 N. Y. 612.
(4) 4 H. L. Cas. 484.
(5) 17 Can. S. C. R. 394.
(6) 2 Ont. App. R. 396.
(7) 32 Can. S. C. R. 442.
(8) 4 C. B. N. S. 476.
(9) 37 L. J. Ex. 73.
(10) 14 Can. S. C. R. 330.
(11) 20 Times L. R. 715.

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THE CHIEF JUSTICE (dissenting):—I would allow this appeal and dismiss respondents' action.

By the express terms of the policy, the answers and statements contained in the written and printed application for it are made warranties and part of the contract. In the application it is stipulated that any false, incorrect or untrue answer, *any suppression or concealment of facts in any of the answers* * * shall render the policy *null and void* and forfeit all payments made thereon.

Now Muir, by not mentioning the two accident policies on his life when asked what was the amount of insurance he then carried on his life, told a half truth equivalent to a falsehood. And when being further asked if there was any other insurance in force on his life (besides the six he had previously mentioned) he answered "No." That answer was not true. There was no ambiguity in the questions. And whatever popular notions may be on the meaning of the words "life insurance," whatever classifications encyclopedias or books of any kind may think proper on the subject, the indisputable fact remains that these answers did not disclose all the truth.

I fail to understand how the respondents can reasonably contend that Muir's life was not insured by these two companies when they have to admit that Mrs. Muir might have got $20,000 from them because his life was covered by their policies. They were conditional insurances, certainly, but so are all life policies more or less. No amount of reasoning, or of cases or of books, can convince me that Muir told the truth when he said that his life was insured in only six companies and in no other.

SEDGEWICK and GIROUARD JJ. concurred in the judgment dismissing the appeal with costs, provided

that the judgment below be reduced by the amount of the unpaid half-yearly premium.

DAVIES J.—Ever since the argument of this appeal I have entertained the gravest doubts as to the decision which should be rendered. Subsequent reflection upon the arguments and consideration of the cases which seemed more or less to bear upon the issues have not removed these doubts. Under these circumstances I will acquiesce in the judgment of the majority of the court dismissing the appeal.

So far as the question of setting aside the verdict and granting a new trial on the ground that the verdict was contrary to evidence is concerned I should have been disposed to allow the appeal. It did appear to me from the evidence that the verdict was not one which reasonable men could under the circumstances fairly find. I understand, however, that my brethern do not concur in this view.

With respect to the legal question whether the deceased had truthfully or untruthfully answered the question put to him at the time he made his application for insurance as to the amount of insurance he then carried on his life, I have had very grave doubts. The untruth alleged was withholding the existence of the two accident policies carried by the deceased. These two policies became payable on his death from the gun-shot wounds unless they were intentionally inflicted, and that they were not so has been disposed of by the verdict of the jury which the courts have refused to disturb. The two accident policies were carried by the deceased at the time he made his application, and one of them at least has been paid to his wife, the beneficiary. Did the withholding of them n the answer to the question as to the amount of insurance then carried on his life amount to an untruth-

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ful answer? I quite concede that as the answer was made a warranty and the basis of the contract it must be true in point of fact and not true simply according to the declarant's sincere conviction or belief. As Lord Fitzgerald tersely put the point in *Thomson* v. *Weems* (1), it must be

> true in fact without any qualification of judgment opinion or belief.

But then again as Lord Watson says in the same case at p. 687:

> The question must be interpreted according to the ordinary and natural meaning of the words used if that meaning be plain and unequivocal and there be nothing in the context to qualify it. On the other hand if the words used are ambiguous they must be construed *contra proferentes* and in favour of the assured.

I have not been able to satisfy myself that the words used are so plain and un-ambiguous as to justify me in dissenting from the opinion of a majority of my brethren and reversing the judgment of the court below. I therefore acquiesce.

NESBITT J.—This action was brought to recover $8,500 on a policy of insurance on the life of one Muir, and two questions are involved in the appeal, namely: (1) whether Muir died by his own act, by shooting himself, on the 14th November, 1902, and; (2) that Muir omitted to inform the company that he carried, on his life, insurance for $10,000 in the Travellers' Life and Accident Company and $10,000 in the Ocean Accident and Guarantee Company.

The case was tried by a jury and a verdict was found by ten of the jurymen against the defence of suicide, which verdict has been sustained by the Court of Review and the Court of King's Bench. Notwithstanding the very able argument addressed to us by the appellants' counsel in favour of an order for a new

(1) 9 App. Cas. 671 at p. 697.

trial, I do not think it is a case where that power should be exercised, as it is not a case where the evidence so strongly preponderates against the verdict as to lead to the conclusion that the jury have either wilfully disregarded the evidence or failed to understand or appreciate it.

On the second ground the defence is based upon a question and answer in the application worded as follows:

E. State amount of insurance you now carry on your life, with name of company or association, by whom granted and the year of issue? (Enumerate each).

Canada Life, $1,000, paid up; Manufacturers Life, $5,000, 1901; Standard Life, $3,000, 1901-2; Imperial Life, $3,000, 1902; New York Life, $5,000, 1902; British Empire, $8,500, 1902.

The canon of construction to be applied in considering such a question and answer is of course that the language is to be read in its plain, ordinary and natural signification and that if there is any ambiguity, such ambiguity is to be resolved against the company who framed the question and in favour of the applicant. See *Mutual Reserve Fund Life Association* v. *Foster* (1). I think reference may usefully be had to two other questions in the application, namely, 6 A and 7 C.

6 A. Have you ever applied to any company, order or association for insurance on your life without receiving the exact kind and amount of insurance applied for? (If yes, give particulars). Ans. No.

7 C. State whether any company has refused to restore a lapsed policy on your life? (If yes, give particulars). Ans. No.

Light is thrown upon the meaning of the words "insurance on your life" by reference to the Insurance Act, R. S. C. (1886), ch. 124, sect. 4, which provides that

no company or person except as hereinafter provided, shall accept any risk or issue any policy of fire or inland marine insurance or policy of

(1) 20 Times L. R. 715.

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life insurance, or grant any annuity on a life or lives or receive any premium or carry on any business of life or fire or inland marine insurance in Canada, without first obtaining a license from the minister.

And section 49 provides that

in the case of any policy other than life, fire or inland marine policy, permission to carry on such business shall be obtained from the minister with the approval of the Governor in Council, who shall determine in each case the terms upon which such permission is to be granted.

And section 10, in the case of life insurance, provides, amongst other things, that the deposit in the hands of the minister shall be a sum sufficient to cover all liabilities to policy holders in Canada, and the full reserve or re-insurance value of outstanding policies. By the amending Act, 1889, 62 & 63 Vict. ch. 13, sec. 2, ss. *b*, "accident insurance" is defined to mean insurance against bodily injury and death by accident, including the liability of employers for injuries to persons in their employment, shewing that statutory recognition is given to the view that a policy of life insurance is not an insurance for a single year with a privilege of renewal from year to year by paying the annual premium, but is an entire contract of insurance for life, subject to discontinuance and forfeiture for non-payment of any of the stipulated premiums, etc.

I find in a recent leading work, Lefort "Contrat d'assurance sur la vie" 1893, vol. 3, on pages 18-19, that author stating as follows :

La prime étant le prix de l'assurance, son taux devrait varier chaque année ; il tombe sous le sens qu'au fur et à mesure qu'une personne vieillit ses chances de mortalité vont en augmentant. Néanmoins et à juste titre, car dans les dernières années le chiffre aurait pu être excessif, il a paru plus pratique et plus rational de ne pas tenir comte des différences qui se produisent d'année en année et de rendre la prime uniforme. On reporte sur les premières années une partie de ce qui serait à payer pour les dernières, en prenant la moyenne des

chiffres donnés par toutes les primes prévues pour l'assurance vie entière et indiquées par les tables de mortalité. Ce chiffre de la prime uniformisée comprend deux parties; l'une correspond à la prime simple d'assurance pour l'année, l'autre est destinée à parfaire l'insuffisance des primes futures, c'est qui constitue la réserve.

So that the legislature and the text writers apparently concur in viewing "insurance on life" as of the character embraced in the answer excluding accident insurance.

I have already drawn attention to the form of questions 6 A, and 7 C., in the application as indicating that the framers of the application took (if I may so describe it) the popular view of the meaning of "insurance on life". I refer particularly to the language of 7 C., which seems to me to be inconsistent with any other than the view that the framer of the application had in mind the ordinary life insurance policy of the character I have above described which had lapsed. I draw attention also to the language in the question E., in dispute, which speaks of "year of issue" indicating the same idea.

Suppose a person bargained with another that in consideration of a loan of $10,000 he would carry "insurance on his life" to the extent of $10,000, it would scarcely be argued that if he tendered an accident policy for $10,000 he was fulfilling his contract, as the accident policy merely insures his life in case certain contingencies happen.

To my mind the answer to the question in this case is correctly given, but in any event if the meaning of the question is that contended for by the appellant, the language used is certainly ambiguous, and as I have said the dispute must be resolved against it. I adopt the language of Mr. Justice Gwynne in *Confederation Life Association* v. *Miller* (1), where on page 341 he says:

(1) 14 Can. S. C. R. 330.

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The rule of construction is that the language of the warranty being framed by the defendants themselves the warranty must be read in the sense in which the person who was required to sign it should reasonably have understood it.

It follows that the appeal should be dismissed with costs, with the provision, however, that $113.99, the half yearly premium, should be deducted.

Appeal dismissed with costs.

Solicitor for the appellants: *A. G. Brooke Claxton.*

Solicitors for the respondents: *Atwater, Duclos & Chauvin*