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Commercial Law: Insurance

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Commercial Law

INSURANCE

*J. Denson Smith**

Insurance companies fared very well before the court during the last term. They won two and lost one of the cases herein noted and both cases in which they prevailed involved problems of interpretation of policy provisions. In a case of first impression the court rejected a claim for $5,000.00 under a policy of automobile liability and collision insurance containing an endorsement providing for the payment of the amount claimed for the accidental death of the "insured."[1] The named insured was the plaintiff in the case and the claim was based on the death of his minor daughter resulting from an accident involving the automobile covered by the policy. His position was that his daughter was an "insured" within the meaning of the endorsement. The court found that the language of the endorsement was sufficiently explicit to limit its application to the named insured and denied the claim of ambiguity.

In *Monteleone v. American Employers' Insurance Co.*[2] the court was invited to find an ambiguity in a money and securities policy which provided coverage "for loss of money and securities by the actual destruction, disappearance or wrongful abstraction thereof outside the premises while being conveyed by a messenger." The loss had resulted from a burglary of plaintiff's home. The money had been brought there from his business establishment by the plaintiff the night before and he intended to take it to the bank later in the day. The court refused to find the provision ambiguous and thereby aligned itself with similar cases in other jurisdictions. While at the plaintiff's home it was not being "conveyed by a messenger."

After an exhaustive review of a voluminous record the court concluded, in *Wells v. Twin City Fire Ins. Co.*,[3] that the defendants had failed to establish by convincing proof that a fire which destroyed plaintiff's home and automobile was of incendiary

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1. Holmes v. Southern Farm Bureau Casualty Ins. Co., 240 La. 153, 121 So.2d 726 (1960).

2. 239 La. 773, 120 So.2d 70 (1960).

3. 239 La. 662, 119 So.2d 501 (1960).

origin and that it was caused by the plaintiff insured. Evidence that the fire was of incendiary origin was lacking and proof of motive was weak, although the circumstances were very suspicious.

NEGOTIABLE INSTRUMENTS

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The problem of "connexity" between a finance company and the dealer as relates to the protection afforded the holder in due course of a negotiable instrument was before the court in *Universal C.I.T. Credit Corp. v. Alker*,[1] in an interesting factual setting. The defendants, Alker and Duvic, affixed their signatures to a note and chattel mortgage using a form furnished by the finance company to the vendor, Orleans Motor Company. The note and chattel mortgage when executed were on one sheet of paper, the note being detachable by means of perforations. On the face of the chattel mortgage there was a space designated under the printed heading "Customer" and this blank had been filled in to show J'Alkard Enterprises, Inc. This corporation was newly formed and insolvent at the time of the suit. The two defendants were officers of the corporation and were sued individually on the note. Consideration for the note was a ranch wagon purchased for the corporation. The chattel mortgage security could not be enforced because the vehicle, after its purchase, had been sent by the corporation to Mexico on business and had not been returned. The signatures of the two defendants appeared on both the note and the chattel mortgage without any designation of capacity other than as individuals. There was nothing in the note to indicate that the defendants were signing in a representative capacity. The defense was (1) that defendants subscribed the note solely for and on behalf of the corporation in their representative capacity as officers without intent to be personally bound thereon; and (2) that the payee motor company was agent or representative of the plaintiff finance company or was so identified with the payee that knowledge of the limited purpose for which defendants were alleged to have signed were imputed to the finance company under the doctrine of *Commercial Credit Co. v. Childs*[2] and *C.I.T. Corp. v. Emmons*.[3]

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1. 239 La. 1057, 121 So.2d 78 (1960).
2. 199 Ark. 1073, 137 S.W.2d 260, 128 A.L.R. 726 (1940).
3. 197 So. 662 (La. App. 1940).