

MUTUAL BENEFIT LIFE INS. CO. v.
CHARLES.

[4 Ins. Law J. 265.]

Circuit Court, N. D. Illinois.

Feb. 27, 1875.

PRINCIPAL AND AGENT—INSURANCE AGENCY
CONTRACT—CONTINUING INTEREST.

The defendant, an agent of the company, purchased the business of two local agents, with the acquiescence of the company, and continued to collect the premiums and reserve his commissions. He was subsequently appointed general agent for the state. The warrant appointing him to this position provided that "no commission can be claimed by any person whose agency has been discontinued;" also, "the right to discontinue any agent or agency at any and all times is reserved." In a memorandum bearing even date and evidently intended to be part of the contract, it is provided that "business obtained previously to date hereof shall stand on same basis as heretofore." The testimony tended to show that the basis of such previous contracts were the same as the present, except as to the rate of commission. Afterward the company abolished its state agency and proposed to allow the defendant to appoint local agents, and make his own bargains with them for the transfer of his interest. The defendant claimed that by an understanding with the company, he was entitled to a life interest in the business which he had purchased, and that which he had worked up, which the company denied. *Held*, that the agent had no continuing interest in the business after the discontinuance of the agency. In the absence of proof of such continuing interest in the business previously purchased, the memorandum must be construed as referring simply to the rate of commissions during the existence of the agency. The offer to treat with him on the basis of a continuing interest was of the nature of an amicable settlement, not the concession of a right. No such continuing right can be raised by implication or usage. The defendant is ordered to account for and pay over to defendant all money in his hands as agent, and surrender all books and papers.

At law.

Hitchcock & Dupee, for complainant.

Thomas J. Turner and F. W. S. Brawley, for defendant.

OPINION OF THE COURT. The bill in this case charges in substance that on the 1st of April, 1870, complainant appointed the defendant, William Charles, its agent for the state of Illinois, and that said Charles continued to act as such agent in the management and prosecution of the business of the complainant in this state until the 13th day of Sept, 1873, when he was removed from such agency. Demand was made on Charles to account for and pay over to the company all money in his hands as such agent. At the time of being so removed Charles had in his hands the sum of \$16,000 belonging to the company, which he refused to pay over to them. To this bill defendant filed an answer, and also a crossbill in both of which he alleged in substance that he went into the employment of the complainant as an agent in 1863, acting in a general way all over the state; that in 1868 he bought the interest of one Oviatt, a local agent in the business of the company, for which he paid \$7,000, with the consent and knowledge of the company, which sum, he avers, he was induced to pay from an understanding between himself and the company that he was thereby securing to himself a life interest in the business of said company in the hands of Oviatt, which was the collection of renewed premiums on policies which had been placed by Oviatt. In like manner he afterward paid to G. R. Clarke, the agent of said company at Chicago, the sum of \$4,000 for Clarke's interest in the business of the company, and on the 1st day of April, 1870, he was appointed the general agent of the company for the entire state of Illinois. He continued to act as such agent until some time in the spring of 1873, when the company changed its plan of doing business, and adopted a system of appointing local agents, each reporting to the home office instead of to the general

agent for the state. He was dissatisfied with this change, and refused to act as special agent, and a difficulty then arose between himself and the company in regard to the amount he was entitled to claim from them; he insisting that he was entitled to the commuted value of all the business he had himself worked up, as well as that he had purchased from Oviatt and Clarke—that is to say the right to collect during his life the renewal premiums on the business which he had organized and purchased, and retain his commissions therefrom. The complainant, by its answer to the cross-bill, denies that it ever made any contract with Charles entitling him to any commissions except so long as he should continue to be the agent of the company, and insisting that by the terms of the contract appointing Charles its agent the right of removal was reserved. His agency had ceased, and his right to commissions had therefore ceased, so that there was no interest to commute or settle.

The warrant or letter appointing Mr. 1074 Charles the agent of the company for this state, provides (section 11): “You will be allowed 10 per cent, commission on the cash paid on the first year’s premiums on all policies procured by you; 5 per cent, commission on cash collected and remitted for renewal premiums on such policies. No commission is allowed on premium loans or interest collected, or on dividends or losses paid. No premium can be collected and no commission can be claimed by any person whose agency has been discontinued.” Section 16 provides, “The right to discontinue any agent or agency at any and all times is reserved.” And by a memorandum signed by the president of the company, bearing date the same day as his appointment, and evidently intended to be part of the contract it is stipulated among other things, that “business obtained previously to date hereof shall stand on same basis as heretofore.” What were the specific terms of the

former contracts by which Charles acted as agent of the company prior to April 1, 1870, is not shown by the proof,—Charles insisting that his copies were destroyed in the fire of Oct. 9, 1871,—but what testimony there is tends to show that the contract was substantially the same as that of 1870, with the exception that the commissions were somewhat higher.

It is conceded that after Mr. Charles purchased the interest of Oviatt and Clarke, he continued to collect the renewal premiums on the policies placed by them respectively, and to retain his commissions therefor. It is also conceded that, when the company decided to discontinue the state agency, the officers proposed to allow Charles to name the local agents, and to make such bargains as he could with them for the transfer of his interest in the business for their respective localities.

Upon this testimony the question is, does it appear that Mr. Charles had any continuing interest in the business of the company originated or purchased by him after he ceased to be the company's agent? In other words, was he entitled either to continue to collect the renewal premiums on his old business, and retain his commissions for so doing, or if the company withdrew those collections from him, was he entitled to the commuted value of the business? The contract in unambiguous terms says: "No premiums can be collected and no commission can be claimed by any person whose agency has been discontinued," and the right to discontinue any agent or agency is at all times reserved by the company. Clearly, then, there is no right in Charles to continue to collect the renewal premiums. Much stress is laid on the memorandum made at the same time with the appointment which provides, that "all business obtained previously shall stand on the same basis as heretofore," and, if the proofs showed that there was a continuing life right to commissions or renewals on the business "previously

obtained,” this memorandum would show that this right continued. But I think that the fair construction of this memorandum is that it applies to the rate of commissions on such business during the time Charles remained agent. Manifestly the legal effect of the contract of April 1, 1870, is to give the company the right of removal of any agent at pleasure, and to prohibit his collection of premiums after such removal, and, to my mind, the memorandum or supplementary contract does not change any original contract in that regard. It does appear that after the decision to vacate the state agency had been arrived at, negotiations were had between Mr. Charles and the company with a view of adjusting and settling his interest in the business, and that at least one of the officers—Chancellor Dodd—seemed to treat with him on the basis that he had a continuing interest, but I think that was done more for the purpose of obtaining an amicable settlement than as a concession that his contract gave him such right. The company naturally wished to avoid an open rupture with an agent, so influential and active as Mr. Charles was and had been, and probably considered the propriety of allowing something of his claim to avoid difficulty, and also was willing to concede something to him from the fact that his salary had in a certain sense terminated without fault of his, but solely from a change of policy on the part of the company. The case of *Partridge v. Insurance Co.*, 15 Wall. [82 U. S.] 513, is in point on the question that there can be no continuing right in the business raised by implication or usage. The cross-bill is therefore dismissed, and the defendant ordered to account for and pay over to complainant the money in his hands and surrender all books and papers.

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