JEFFRIES, ADM'R, *v.* UNION MUT. LIFE INS. CO.

Circuit Court, E. D. Missouri. January 26, 1880.

LIFE INSURANCE—WARRANTY—AVERMENT OF APPLICANT THAT HE IS A SINGLE MAN.—The averment of a married man, in an application for life insurance, that he is a single man, amounts to an absolute warranty.

ATTORNEY AT LAW—COMPROMISE OF SUIT—EXPRESS AUTHORITY—SATISFACTION OF JUDGMENT.—The entry of the satisfaction of judgment on the record of the court will not be set aside, where such satisfaction was entered, pending a writ of error to the supreme court in behalf of the defendant, upon part payment of the judgment, under a compromise with the duly authorized attorneys of the plaintiff, although such entry of satisfaction was not made in open court, and the original plaintiff had died pending such compromise, and the authority of the attorneys had not been ratified by the administrator *de bonis non.*

Motion to set aside entry of satisfaction of judgment.

Waldo P. *Johnson* and *John Flournoy,* for plaintiff.

John R. Shepley, for defendant.

TREAT, J., (*orally.*). I have had under consideration a matter concerning which there are a great many incidents. I am not disposed to go into those matters at any considerable 451 length. A suit was brought in this court, by an administrator named Jeffries, on a life insurance policy. The case went from this court to the supreme court of the United States, and the supreme court reversed this court on this proposition. The averment made in the application by the insured was that he was a single man and not a married man.

This court held, in the light of the authorities as they were then supposed to exist, that that question should not be held as an absolute warranty, but, connected with the facts, to be submitted to the jury, whether it was a matter material to the case. The

supreme court held the sharp doctrine that it was a warranty, and if he represented himself as single and was married, there could be no recovery. The case came back for trial and evidence was produced to show that the representation of the plaintiff was written down as an answer by the agent of the underwriter, he, the agent, supposing that to be the man's condition, without relying upon his statement or paying any attention to it. The matter came up for trial and the jury found for plaintiff, and the court set aside the verdict, as it did not think the testimony sufficient to establish the fact. A second trial was had—a fuller trial—and a verdict was again rendered for the plaintiff, and the case was taken by the insurance company to the supreme court of the United States. In the ordinary course of decisions there this case would not have been reached, possibly, for some years. The counsel for the insured then, after correspondence with the insurance company, agreed to take what was about two-thirds of the amount of the judgment, in round numbers. The proposition being accepted, thereupon counsel did receive the sum of money pursuant to the compromise, to-wit, the two-thirds, and entered satisfaction of the judgment.

The question presented to the court is upon a motion to set aside that entry of satisfaction, first, because a counsel employed to prosecute a case has no right to compromise it. Such is the view of the supreme court of the state of Missouri; but the rulings are largely in conflict. But this case has another aspect: the original plaintiff entered into a specific 452 contract—which I certainly do not think commendable—whereby these attorneys, (two in number,) should prosecute this extremely doubtful claim; they to receive a certain portion of the proceeds, with full power to compromise as they should please. And they prosecuted under these doubtful circumstances, and finally compromised, and, having

compromised, the defendant company has paid this money. It is contended that the attorneys thus compromising did an act which is void in itself, and that without the money paid being returned, to-wit, about $9,000, the compromise may be declared void, and execution be issued for the whole amount of the judgment.

I am not disposed to go into an examination of the authorities, but merely state, for the purposes of the determination of this motion, that here *express authority* was given with regard to the matter; that this claim was very doubtful, and that in my judgment the compromise was rightly made. I heard the case three times, and in my opinion plaintiff would not have gotten a sixpence before the supreme court. I think that the attorney acted, so far as money considerations are concerned, very wisely. Should this entry be now set aside? On what ground? That the entry was made during a term of court on the record instead of in open court? It so happens that there is no express statute of the United States as to entering satisfaction; but it is claimed that by analogy we might follow the state statute, and if we follow that practice, this entering of satisfaction may be made in open court or in vacation, on the margin of the record. But if, on the facts stated, this entry is found to be void, the court would permit the party to appear in open court at this moment, merely to cure a technical error.

Now, the difficulty arises on the face of the contract. Under the old common law such a contract would not have been permitted. I think it would be better if the old common law was retained with regard to it; but such is not the law, unfortunately. Parties, at their own expense, may pursue a doubtful demand, and, when the result is accomplished, the contract is upheld. But it is said again, that the original plaintiff 453 died pending the proceedings, and a revivorship was had in the name of the administrator *de bonis*

non; that this new plaintiff did not enter into any contract or ratify the old one; and that, therefore, the power given to the attorney to compromise could not be considered as applicable to matters as they stood on final hearing. Now, I suppose, when a contract is made by a party he who succeeds in interest to him is bound by the original contract.

But this motion is against a defendant that has paid between $9,000 and $10,000, to declare all the proceedings had under the circumstances void, and hold that company liable to execution for the whole amount of the original judgment; a part of the agreement to compromise being that the defendant insurance company should dismiss its writ of error in the supreme court of the United States, which it has done. How can you put this company into its original position? It must lose this amount of money; is out of the supreme court, and is remediless by the fault of the original plaintiff, and the contract which he chose to enter into. Such would be neither justice nor right, without going into the extreme proposition as to whether an attorney employed in the case has a right to compromise it. In this case there was a specific contract, and I overrule the motion.