

FINK *v.* QUEEN INS. CO.¹

Circuit Court, E. D. Louisiana. January 24, 1885.

FIRE INSURANCE—REFORMATION OF POLICY.

Where it appears that an insurance policy against loss by fire was issued to secure a mortgage of the insured property, but by mistake was made in the name of the owner of the property, instead of the mortgagee, who was the contracting party for the insurance, and the property was destroyed by fire during the term of the policy, it is against equity to permit the insurance company to set up its mistake and the actions of the owner to defeat the claim of insurance under the contract, and the contract was reformed and judgment given against the insurance company in favor of the mortgagee for the amount of his mortgage.

In Chancery.

B. R. Forman, for complainant.

J. Ad. Rozier, for defendant.

PARDEE, J. This cause came on to be heard upon the bill, answer, exhibits, and evidence, and was argued; and, it appearing to the court that the complainant, Peter Fink, owned a debt secured by mortgage, and had paid taxes on the property insured, and described in the bill, exceeding in the aggregate \$700, and did make a contract of insurance of said mortgage interest with the defendant for said amount of \$700, and that the policy, by mistake, was made in the name of Mrs. A. S. Lacey, the owner, as the assured, instead of in the name of said Peter Fink, the real contracting party, and whose mortgage interest was intended to be assured; and it appearing that the mortgaged property was destroyed by fire during the term of the policy, to the loss of the said mortgagee of over \$700; and that it is against equity to permit the defendant to set up its mistake and the actions of Mrs. A. S. Lacey, who was no party to the contract, to 319 defeat the claim of insurance under

said contract,—it is thereupon and therefore ordered, adjudged, and decreed by the court that the policy of insurance dated twentieth of April, 1881, issued by the defendant to Peter Fink, be reformed, so as to read as follows in its substantive parts, to-wit:

“The Queen Insurance Company, of Liverpool and London, England, in consideration of twelve 50–100 dollars paid to it by Peter Fink, do hereby insure said Peter Fink to the amount of seven hundred dollars against loss or damage by fire on the one-story frame shingled dwelling-house, \$625, fences, \$45, cistern, \$30, situated on east corner Chestnut and Homer streets, in New Orleans, to secure and protect his claims secured by mortgage lien and privilege upon the said property to the amount of seven hundred dollars, within and for the term of one year from the twentieth of April, 1881.”

And it is further ordered, adjudged, and decreed that the defendant, the Queen Insurance Company, of Liverpool and London, England, do pay to the said plaintiff, the said sum of \$700, with 5 per cent. per annum interest from the twentieth of January, 1882, until paid, and the cost of this suit, to be taxed by the clerk of the court.

¹ Reported by Joseph P. Hornor, Esq., of the New Orleans bar.

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