

WEINFELD v. MUTUAL RESERVE FUND LIFE ASS'N.

(Circuit Court, E. D. Tennessee, S. D. December 3, 1892.)

LIFE INSURANCE—CONDITION OF POLICY—WHEN BECOMES BINDING.

An applicant for insurance in a mutual life company paid the admission fee, and took a receipt therefor, which expressly provided that the policy should not go into effect until the application had been accepted and approved. The warranty paragraph in the application provided that the policy should not be in force until the actual payment to and acceptance of the annual dues, and the actual delivery of the policy to the applicant. The application was not accepted, nor were the annual dues paid. *Held*, that no binding contract was created.

In Equity. Bill by Rosa Weinfeld against the Mutual Reserve Fund Life Association. Dismissed.

Andrews & Barton, for complainant.

Richmond, Chambers & Head, for defendant.

KEY, District Judge. On the 20th of December, 1889, John Weinfeld made application for insurance with the defendant in the sum of \$3,000, for the benefit of his wife, Rosa Weinfeld. He paid \$15 as an admission fee. No policy ever issued, and he died March 12, 1890, in an insane asylum, and the bill is filed to recover the insurance.

Complainant insists that by the terms of the receipt for the admission fee the contract for insurance was complete, and was in force, until the company should notify the assured that the application had been rejected; and it is insisted that no such notice was given. I do not believe that the position of complainant's counsel can be maintained successfully under this record. The receipt is as follows:

"Received of John Weinfeld, of Chattanooga, Tennessee, fifteen dollars for the admission fee upon an application to the Mutual Reserve Fund Life Association, for a policy of insurance for \$3,000.00, subject to its provisions and the constitution or by-laws, rules, and regulations of the association. It is hereby expressly understood and agreed that, if the application be not approved and accepted by the officers at the home office of the association, in the city of New York, it shall be held that no benefits have ever been created or acquired under this receipt, and the amount paid hereon will be refunded by me on return of this receipt."

Certainly, language could hardly be used which would more clearly stipulate that the insurance should not go into effect until the application had been accepted and approved by the home office. This receipt refers to the provisions of the application as being a part of the contract, and let us see what these are. In the warranty paragraph of the application it is stipulated thus:

"And the applicant further agrees that under no circumstances shall the certificate or policy hereby applied for be in force until the actual payment to, and acceptance of the annual dues by, the association, and actual delivery of the certificate or policy to the applicant, with a receipt for the payment of the first annual dues, signed by the president, secretary, or treasurer of the association, during the lifetime and good health of the applicant."

The application shows that \$3 annually on each \$1,000, payable in advance, is to be paid as annual dues, and, in the warranty paragraph referred to, the applicant agrees "to pay dues annually, in advance, at

the rate of \$3.00 per thousand." The annual dues on \$3,000 are \$9. It is not claimed that anything was paid except the admission fee of \$15, and the annual dues necessary to the life of the policy were never paid, nor the policy delivered. It was not to be delivered until these dues were paid, and receipted for by the president, secretary, or treasurer of the association. Again, upon the second page of the application, we have these words by the applicant: "Should this application for membership be accepted, I do thereupon constitute and appoint Edward B. Harper my attorney," etc.

The receipt for admission fees and the application for insurance are parts of the same transaction, and show clearly and distinctly that the application was a mere proposition for insurance, submitted to the home office for its action and determination, and has never been accepted by it. The minds of the parties never met, and no contract was made. This view of the case is sustained by the following decisions: *Kohen v. Association*, 28 Fed. Rep. 705; *Misselhorn v. Same*, 30 Fed. Rep. 545; *Wood v. Insurance Co.*, 32 N. Y. 619; *Baker v. Insurance Co.*, 43 N. Y. 284.

Bacon on Benefit Societies and Life Insurance (section 272) says:

"If the application provides that the policy shall not be in force until it is delivered to the applicant, the contract of insurance will not become binding upon the company until delivered."

See, also, *Giddings v. Insurance Co.*, 102 U. S. 110-112. It is ordered that the bill be dismissed, at complainant's cost.

MOLONY v. MASSACHUSETTS BEN. ASS'N et al.

(Circuit Court, E. D. Pennsylvania. November 22, 1892.)

INJUNCTION—PROCEEDINGS IN STATE COURTS.

Where a bill prays, among other things, for an injunction to stay proceedings in a state court, and the purpose of the suit can only be attained by granting the same, the bill will be dismissed, for such an injunction is expressly forbidden by Rev. St. § 720.

In Equity. Suit by Bridget Molony, as administratrix of Michael Molony, deceased, against the Massachusetts Benefit Association and Benjamin F. Fisher, Receiver of the Spring Garden National Bank, Bill dismissed.

Benjamin Alexander, Frederick J. Geiger, and William W. Porter, for complainant.

D. H. Stone, for defendant B. F. Fisher.

M. V. Simpson, for defendant Massachusetts Benefit Association.

DALLAS, Circuit Judge. There are 11 reasons assigned in support of this demurrer; and there are grounds upon which, perhaps, the demurrer should be sustained, other than that which, being alone sufficient to require that the bill should be dismissed, will alone be considered. The third prayer of the bill is for an injunction to restrain proceedings in a suit at law in a court of common pleas of the state of Pennsylvania. There are other prayers; but they, and the matters upon which they are founded, are necessarily involved

with the third prayer. It embodies the main object of the suit, which is to prevent an adjudication in the state court prior to the conclusion of this suit in this court. In complainant's brief it is said: "The complainant requires a writ of injunction against both defendants, in order to maintain the status quo until the rights of the parties are determined, only obtainable in equity." As said in *Hitchcock v. Galveston*, *infra*, "Without this, all else is of no account. Any other remedy would be unavailing." Such an injunction is, however, expressly forbidden by Rev. St. § 720. *Haines v. Carpenter*, 91 U. S. 256; *Hitchcock v. Galveston*, 96 U. S. 341. As the purpose of this suit could be attained only by the doing of that by this court which the law has distinctly provided that it shall not do, the bill is dismissed.

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POLLITZ v. FARMERS' LOAN & TRUST CO. et al

SOUTHERN PAC. CO. et al. v. POLLITZ.

(Circuit Court, S. D. New York. December 12, 1892.)

1. RAILROAD BONDS—TRUSTEES—AUTHORITY TO REPRESENT BONDHOLDERS IN LITIGATION.

The trustees of railroad mortgage bondholders represent such bondholders in any litigation relating to the trust, and, where the purpose of the suit is substantially the same as a foreclosure of the mortgage, the fact that the trustee is a party defendant instead of plaintiff is immaterial, and the bondholders are bound by the decree, although they are not parties to the suit.

2. SAME—REORGANIZATION DECREE.

In a suit to collect certain railroad bonds according to the terms of the original mortgage, it appeared that all of the company's bonds, except plaintiff's, had been surrendered and exchanged pursuant to a reorganization agreement which he refused to accept; that by a judgment of the United States circuit court in Oregon the reorganization had been substantially confirmed; that the trustee of the bondholders was a party defendant to the suit, and fairly represented the rights of all; that the interests of 99 per cent. of the bondholders demanded the judgment; that the court, by its decree, fully recognized the rights of the nonconforming bondholders, providing that the company should execute an indemnity bond conditioned for the payment of the bonds of the dissenting holders, and that plaintiff might recover under the decree all that he was entitled to. A cross bill was filed to compel plaintiff to surrender his bonds, and receive new bonds in lieu thereof, according to the reorganization agreement. *Held*, that the decree properly protected plaintiff's interest; that he must surrender his old bonds, and accept the new ones, as provided for in the agreement; but that he was entitled to the same security afforded the majority bondholders.

3. SAME—RIGHTS OF DISSIDENTING BONDHOLDER.

The cross complainant having taken the position throughout the suit that complainant could at any time surrender his bonds and receive new ones in lieu thereof under the Oregon decree, and counsel in their brief having offered to deliver the lieu bonds and cash upon such surrender, the cross complainant was not in a position to insist that complainant had by misconduct forfeited his right to interest.

In Equity. Bill by Carl Pollitz against the Farmers' Loan & Trust Company, the Oregon & California Railroad Company, the Southern Pacific Company, and the Union Trust Company. Cross bill by the Southern Pacific Company and the Oregon & California Railroad