consequence seems inevitable that the defendant, by marrying, simply accepted the fact of such status of the plaintiff as thus fixed; and he was not asked to do anything, and in fact did not do anything, in the nature of ratification, waiver, or estoppel. 2 Bish. Mar., Div. & Sep. § 137. Had the decree of the court of South Dakota been invalid under the laws of that state, then there would have been an opportunity for waiver or ratification on the part of the defendant; but, as it was not, he merely accepted the condition of things as he found them, and therefore he has done no act of waiver or ratification, nor anything else which could lay the basis for any estoppel, or for any other method of prejudicing his rights as they existed before his subsequent marriage. This is undoubtedly the true solution of this case; but, if the subsequent marriage of the defendant can operate, as claimed by the plaintiff, in the way either of waiver, ratification, or estoppel, yet it would seem that, by all the ordinary rules of law, it would operate as such only in favor of the condition of things as it existed when he was married. The defendant did not by his marriage enter an appearance in the court of South Dakota, or give it jurisdiction over him, and all its after decrees affecting his pecuniary interests were as much without jurisdiction against him personally as had been its prior proceedings. The plaintiff has produced to us no well-considered decision, nor proposed to us any principle of law, which would compel us to impose on the defendant an assumption by him, either by waiver, ratification, or estoppel, of the after proceedings of the court in South Dakota, without limitation, and without jurisdiction over his person or property. The law on this point seems so clear against the plaintiff that it is not necessary to enlarge on it further. If the plaintiff desires that we make any special findings of fact, she may prepare them, submit them to the defendant, and pass them to the court, with such suggestions as the defendant may make in reference thereto. Meanwhile we will enter a general finding as follows: The court finds that the decree on which this suit is based is void, and that, therefore, this suit cannot be maintained.

UNITED FIREMEN'S INS. CO. v. THOMAS.

(Circuit Court of Appeals, Seventh Circuit. October 6, 1897.)

No. 404.

INSURANCE — CONDITION AGAINST OTHER INSURANCE—WAIVER—PAROL AGREEMENT.

Knowledge by the agent of an insurance company, at the time of procuring the insurance, that the insured intended to take out other insurance, does not operate as a waiver of a condition in the policy subsequently delivered, forbidding other insurance, except by consent of the insurance company indorsed on the policy. The rule that a prior parol understanding or agreement cannot control a subsequent contract applies, and the waiver, to be effectual, must be subsequent to the written contract, and must be made, not only with knowledge of the other insurance, and with intent to waive the condition, but must be supported by a valuable consideration, or become operative by way of estoppel.

In Error to the Circuit Court of the United States for the Northern District of Illinois.

This action is in assumpsit, and was instituted by the plaintiff in error, John S. Thomas, for the use of Norman H. Camp, receiver, against the United Firemen's Insurance Company, the defendant in error, to recover for a loss by fire under a policy of insurance issued by the plaintiff in error to the amount of $2,500 upon certain household furniture. The policy contained the following provisions: First. "This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has, or shall hereafter make or procure, any other contract of insurance, whether valid or not, on the property covered in whole or in part by this policy." Second. "This policy is made and accepted subject to the foregoing stipulations and conditions, together with such other provisions, agreements, and conditions as may be indorsed hereon or added hereto; and no officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy, except such as by the terms of this policy may be the subject of agreement indorsed hereon or added hereto; and as to such provisions and conditions, no officer, agent, or representative shall have such power, or be deemed or held to have waived such provision or conditions, unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached." The defendant below pleaded the general issue, and also pleaded specially that the plaintiff below obtained a large and unreasonable amount of insurance in other companies, without notice to the defendant, and without its permission, and without written indorsement of other insurance permitted on the policy in suit, by which violation of the contract of insurance the insurance policy issued by the defendant became wholly void. It appeared at the trial that Carlton H. Prindeville, an insurance broker, was employed by Mr. Thomas to procure insurance upon the household furniture in question. He testified that he was not, and never had been, an agent of the plaintiff in error; that his business was that of an insurance broker; that he solicited from owners of property the placing of insurance for them, and that in the absence of instructions he placed the insurance in such companies, and with such agents as he thought proper and desirable, receiving from the agents a certain commission for his service; that Mr. Thomas requested him to procure insurance to the amount of $12,500, which he placed in four different companies. He applied to Hopkins & Hasbrook, the agents in the city of Chicago of the company plaintiff in error, to place $2,500 of this insurance, and signed a written application, which does not disclose that further insurance in other companies had been or was to be procured. In answer to a question by the court whether he stated to Hopkins & Hasbrook the amount of insurance that Mr. Thomas desired on his property, he answered, "So far as I recollect, I did;" but he also stated that he could not recollect what he told them, nor whether he communicated with one of the firm or with a clerk in their service. Mr. Hopkins, of that firm, stated that the application for this insurance was made to him personally by Mr. Prindeville, and the application for the policy was signed at that time; that nothing was said with regard to and that he first knew of other insurance of the property after the fire. Prindeville obtained the four policies of insurance from the different companies, and delivered them to Mr. Thomas, who paid him the premiums, which Prindeville paid to the agents, respectively, representing the several companies, receiving from each agent his proper commission. At the conclusion of the evidence the plaintiff in error requested the court to direct the jury to return a verdict in its favor upon the ground that the defendant was not legally liable upon the policy of insurance, which motion was denied, and the ruling is assigned for error. The court charged the jury that the stipulation of the policy with respect to other insurance was binding and conclusive upon the parties unless that condition has been waived by the defendant, and that, if Prindeville was the agent of the plaintiff, the latter would be chargeable with knowledge of the fact that his agent had procured this policy of insurance that did not permit additional insurance; but if, on the other hand, Prindeville was in fact acting for and as the agent of the defendant company in placing this insurance,