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Recent Trial Court Decisions

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RECENT TRIAL COURT DECISIONS

DISTRICT COURT, DENVER—NO. 110233—*Mary Shivall v. The Prudential Insurance Company of America. E. V. Holland, Judge. Decided November 25, 1930.*

Facts.—Action for reformation of and judgment on an insurance policy issued by defendant. The policy was dated March 21, 1929, and subsequent premiums were due on or before each March 21st. The policy was delivered and the first premium paid April 20, 1929. The insured died on June 4, 1930, without having paid the second premium.

The policy provided that if the policy was in force one full year from its date and lapsed for nonpayment of premiums, the company would continue the insurance for sixty days from the due date of the premium; the policy also provided that the application be made a part of the contract.

Defendant having demurred, plaintiff contended that according to the application the true date of the policy should be the date of delivery and payment of the premium.

Held.—The application controls the date of the policy only when the application is accompanied by the first premium, and is approved by the company. Here the company could date the policy as of the day of its final approval of the application, but the contract so dated became binding on the company only on its delivery, and payment of the first premium. The contract being unambiguous, and there being no fraud or mistake in the making of the contract, plaintiff has no grounds for relief.

Ordered.—Demurrer sustained.

DISTRICT COURT, DENVER—NO. 110208—*In re Estate of Emitt Bryant Jones. E. V. Holland, Judge. Decided November 24, 1930.*

Facts.—Testator during his lifetime took out a war risk insurance policy and named his mother as beneficiary. Testator died in 1925, and his will was admitted to probate. One provision of the will provided: "I give, devise and bequeath to my mother, Rachael Caroline Jones, my United States

Government war risk insurance policy." The mother died in 1928. The government then paid the remaining balance of the policy to the estate of the testator.

Held.—The mother acquired a vested right to the policy, as legatee, under the clear and unambiguous terms of the will. Therefore on her death the right to the unpaid balance went to her heirs, and was not in the testator's estate.

Ordered.—That the fund be paid to the mother's heirs as soon as same are determined.

DISTRICT COURT, DENVER—NO. 109941—*Metro-Goldwyn-Moyerdist, Corp. v. Bi-Metallic Inv. Co.—Frank McDonough, Sr., Judge. Decided December 15, 1930.*

Facts.—Contract provided that all disputes should be submitted to a board of arbitration before either party should resort to any Court. Defendant demurred on ground that plaintiff had not submitted the dispute to the board of arbitration. Defendant also moved to strike as irrelevant that part of the complaint which set out that plaintiff had been enjoined by the United States District Court for the Southern District of New York from enforcing directly or indirectly the arbitration provisions of the contract because that provision as used by plaintiff constituted a violation of the Sherman Anti-Trust Act, and that plaintiff had offered to submit this cause to arbitration under the contract or in any other way, provided the same could be done without violating that injunction.

Held.—While the Supreme Court has held in Ezell v. Rocky Mountain Co., 76 Colo. 409, 413, that where a party contracts to submit certain questions to arbitration, he is bound by the contract, the Supreme Court must have meant that arbitration must be pursued unless recourse to that mode of adjustment has been rendered impossible by conditions beyond control of the party suing. Here, plaintiff's offer to arbitrate in any way which would not violate the injunction of the United States District Court was therefore sufficient to take it out of the ruling of Ezell v. Rocky Mountain Co. Demurrer and motion overruled.