

LIFE INSURANCE COMPANY v. BANGS.

Where there has been no newly discovered evidence, a bill in equity will not lie to cancel a contract or enjoin a judgment thereon, where the complainant, against whom it was rendered, sets up as grounds of relief matters which he had full opportunity to plead in the action at law.

APPEAL from the Circuit Court of the United States for the District of Minnesota.

The facts are stated in the opinion of the court.

Mr. Herbert L. Baker and Mr. William A. Maury for the appellant.

Mr. Mark S. Brewer for the appellee.

MR. JUSTICE FIELD delivered the opinion of the court.

In the case of *Insurance Company v. Bangs*, *supra*, p. 435, we had occasion to mention and comment upon a suit in equity, commenced in March, 1876, by the same company against these defendants, in the Circuit Court of the United States for the District of Michigan, to obtain the cancellation of two policies of insurance, issued in November, 1875, upon the life of James H. Bangs. That case was an action at law upon the policies, to which the company pleaded the decree obtained in the equity suit. This decree was held to be void as against the infant defendant, because rendered by the court without having obtained jurisdiction over him. As all other defences except such as arose upon this decree were withdrawn, judgment was rendered in favor of the plaintiff for the amount claimed.

The present suit is similar in its character and object to the one brought in the Michigan district. It seeks a cancellation of the two policies of insurance obtained by the deceased and an injunction against the enforcement of the judgment recovered in the action at law. The bill avers that the policies were obtained upon representations that the insured was a person of good health and not subject or predisposed to any bodily infirmity; that at the time he applied for the policies he had conceived the design to commit suicide, but first to obtain an

insurance upon his life in favor of his son in order to leave a large amount to him and to his wife ; that in pursuance of this design the policies were obtained, and soon afterwards he committed suicide by taking poison ; and that the wife and son were cognizant of the design of the deceased and conspired with him for its execution.

The bill charges a fraudulent purpose on the part of the insured to rob the insurance company, and then that he committed suicide to carry the purpose into execution. It charges a conspiracy between him and his wife and son to effect this robbery and death,—a conspiracy on the part of the wife to aid in the death of her husband, and on the part of the son to aid in the death of his father. These charges are of such dreadful crimes as to call for the clearest proof before a decree cancelling the policies could be based upon them. Instead of such proofs there is nothing of importance established which is not consistent with the integrity of all the parties,—insured, wife, and son. The main and essential fact averred in the company's case is the contemplated suicide of the insured. The evidence to establish this—and it is stronger than the evidence produced upon any other material averment—is that he had inquired for insurance companies whose policies did not except death by suicide ; that his death occurred not long after the policies were obtained, and was accompanied by convulsions stated to be similar to those attending death by strychnine. There is no evidence that he ever had any strychnine. The only evidence produced was that he was once seen in a druggist's store looking at jars containing various medicines, and among others, one that contained this poison. There was no poison found in his body when submitted to a post-mortem examination. And as to the convulsions at his death, the wife attributed them to injuries which he had received in his back a few days before. That is all. Everything else consisted of mere suspicions growing out of the action of the wife in refusing to consent to a post-mortem examination of the deceased, and her departure from the State, both of which might have been, and, according to her answers to the interrogatories of the bill, were prompted by worthy considerations. The transactions with which she is charged as proof of guilty complicity,

viewed in the light of her explanations and the evidence produced, merely evince a very natural sensitiveness to the imputations cast upon the character of her husband by suspicions thrown out by agents of the insurance company, and a great repugnance to having his remains, after interment, disturbed and subjected to the knife of the surgeon and the analysis of the chemist. It is sufficient to say that no case is presented which would justify any court in holding that a conspiracy existed to defraud the insurance company, the execution of which involved the suicide of the insured, and the assent of wife and son to the death of husband and father.

Aside from this, the judgment in the action at law was a bar to this suit. Its recovery concluded all matters which might have been urged as a defence to the policies. A fraudulent purpose in procuring them, subsequently carried into execution, would have been a good defence. It was in fact originally pleaded and afterwards withdrawn. Its withdrawal did not authorize a suit in another forum for its establishment against the demand of the plaintiff. When an action at law is brought upon a contract, the defendant denying its obligation, either from fraud, payment, or release, or any other matter affecting its original validity or subsequent discharge, must present his defence for consideration. A recovery is an answer to all future assertions of the invalidity of the contract by reason of any admissible matter which might have been offered to defeat the action. The contract is merged in the judgment. *Cromwell v. County of Sac*, 94 U. S. 351.

A suit in equity will not lie to give effect to defences against a claim when they might have been fully set up in an action at law. There must have been some fraud practised upon the court or some unconscientious advantage taken of the defendant without any fault or negligence on his part; or there must be some newly discovered evidence which could not have been obtained at the trial, and which, if produced, would have changed the result, before a court of equity will interfere with the judgment rendered or the contract upon which it was recovered. There is no pretence here that any such fraud was committed or unconscientious advantage taken, or that there is any newly discovered matter not known when the trial took

place. *Home Insurance Co. v. Stanchfield*, 1 Dill. 424; *Marine Insurance Co. v. Hodgson*, 7 Cranch, 332; *Phœnix Insurance Co. v. Bailey*, 13 Wall. 616.

Decree affirmed.

NATIONAL BANK v. INSURANCE COMPANY.

Where, upon the undisputed facts of the case, the plaintiff is not entitled to recover, the court may instruct the jury to find a verdict for the defendant.

ERROR to the Circuit Court of the United States for the Southern District of New York.

The facts are stated in the opinion of the court.

Mr. George Bliss for the plaintiff in error.

Mr. Joseph Larocque, contra.

MR. CHIEF JUSTICE WAITE delivered the opinion of the court.

The assignment of errors in this case presents the single question, whether on the undisputed facts the court below was right in directing a verdict in favor of the insurance company. The facts were as follows:—

John James Jackson was the agent at Baltimore of the Royal Insurance Company, a British corporation. His appointment was in writing and filed in the office of the insurance commissioner of Maryland, in compliance with the laws of the State. His powers were ample for the issuing of policies, the collection of premiums, and the adjustment and payment of losses. No authority was given him, however, to borrow money on the credit of the company, and he had never in a single instance done so, except by the negotiation of bills drawn by him as agent on the company to pay losses. He was at the same time the agent of other insurance companies and of a number of private persons. He was introduced to the Central National Bank of Baltimore, in 1870 or 1871, as the agent of the Royal Insurance Company, and opened an account in the name of