Appeal allowed. Order appealed from discharged. Respondents other than the King to pay costs in Supreme Court and of this appeal.

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PORTER v. THE KING; EX PARTE YEE.

Solicitors for the appellant, *Blake & Riggall.*

Solicitors for the respondents, *Gordon H. Castle,* Crown Solicitor for the Commonwealth; *R. I. D. Malam,* Darwin, by *McCay & Thwaites.*

B. L.

[HIGH COURT OF AUSTRALIA.]

JUMNA KHAN . . . . . APPELLANT;
PLAINTIFF,

AND

THE BANKERS AND TRADERS INSURANCE COMPANY LIMITED . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

Fire Insurance—Policy—Untrue answer to question in proposal—Condition for avoidance—Illiterate proposer—Answers filled in by agent of insurer—Agent for proposer or insurer—Warranty.

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SYDNEY, *Nov.* 27.

KNOX C.J., ISAACS, HIGGINS, RICH AND STARKE JJ.

The appellant, who was illiterate, went to the local office of the respondent, an insurance company, to insure his house and furniture against fire, and there, at the request of the agent of the respondent, signed a proposal form, the agent saying that he would fix everything up. The agent, without asking the appellant any questions, filled in the form, and inserted in it an untrue answer to one of the questions. In the policy which was issued upon the proposal it was provided that the insurance should at all times and in all circumstances be subject to the particulars in the proposal (which should in all cases be deemed to be inserted or furnished by the insured), and to the

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conditions and stipulations on the back of the policy, and that the proposal, conditions and stipulations should constitute the basis of the insurance. In an action by the appellant upon the policy,

Held, that under the circumstances the respondent was not prevented from relying upon the untruth of the answer in the proposal.

Decision of the Supreme Court of New South Wales (Full Court): *Bankers and Traders Insurance Co.* v. *Jumma Khan*, (1925) 25 S.R. (N.S.W.) 422, affirmed.

APPEAL from the Supreme Court of New South Wales.

An action was heard in the District Court at Broken Hill whereby Jumna Khan sought to recover from the Bankers and Traders Insurance Co. Ltd. the sum of £350 upon a policy of fire insurance. A proposal for insurance had been signed by the plaintiff which contained the following question and answer :—" Has proponent, or any partner of such proponent interested in this insurance, ever had any property or any property in their custody or control on fire ? If so, state when, whether insured, and name of office.—No." Upon this proposal a policy of insurance was issued by the Company which contained a provision that " this insurance shall at all times and under all circumstances be subject to the particulars in the proposal for this insurance (which shall in all cases be deemed to be inserted or furnished by the assured), and to the conditions and stipulations printed on the back hereof, which proposal, conditions, and stipulations constitute the basis of this insurance, and are to be considered as relevant to and incorporated in and forming part of this policy." In his evidence at the trial, the plaintiff, who could not read or write, except that he could write his name, said, in substance, that he went to the office at Broken Hill of Alexander McGregor, who was the local agent of the Company, for the purpose of insuring his house and furniture against fire ; that McGregor put a proposal form in front of the plaintiff, asked him to sign it and said that he (McGregor) would fix everything up ; that the plaintiff was asked no questions, and that the proposal was not read to him or given to him to read. The plaintiff admitted that once before he had had a fire on his property, which damaged it. The only material defence raised was that the answer made to the question in the proposal was untrue. The jury returned a verdict for the

plaintiff for £350, and found specially that the proposal was signed by the plaintiff in the circumstances stated by him in his evidence. The District Court Judge thereupon directed a verdict to be entered for the plaintiff accordingly. On appeal by the defendant the Full Court of the Supreme Court, holding that the plaintiff was bound by the answer to the question in the proposal, ordered that the verdict for the plaintiff should be set aside, and that a verdict should be entered for the defendant: *Bankers and Traders Insurance Co.* v. *Jumma Khan* (1).

From that decision the plaintiff now appealed to the High Court.

Piddington K.C. (with him *Newell* and *K. A. Ferguson*), for the appellant. McGregor, when he filled up the proposal, was acting not as agent of the appellant but as agent of the Company. His authority to fill up the proposal may be inferred from what he actually did (*Lloyd* v. *Grace, Smith & Co.* (2)). It was his duty, as agent of the Company, to inform persons who wish to insure what steps they should take in order to get a policy issued, and among other things what information they should give to the Company (*Western Australian Insurance Co.* v. *Dayton* (3)). If he gives wrong information as to what is necessary to be done and that information is acted upon by the proponent and a policy is subsequently issued, the Company cannot afterwards set up want of authority on the part of its agent. If an agent has authority to do acts of a certain class and he, in doing those acts, either exceeds his authority or uses it in some wrongful way, his principal is nevertheless bound. [Counsel also referred to *Biggar* v. *Rock Life Assurance Co.* (4); *New York Life Insurance Co.* v. *Fletcher* (5); *Bawden* v. *London, Edinburgh and Glasgow Assurance Co.* (6); *Macauley* v. *Bank of New South Wales* (7); *Giles* v. *Taff Vale Railway Co.* (8); *Dyer* v. *Munday* (9); *Weir* v. *Bell* (10); *Maye* v. *Colonial Mutual Life Assurance Society* (11).]

(1) (1925) 25 S.R. (N.S.W.) 422.
(2) (1912) A.C. 716.
(3) (1924) 35 C.L.R. 355, at pp. 376, 377.
(4) (1902) 1 K.B. 516.
(5) (1886) 117 U.S. 519.
(6) (1892) 2 Q.B. 534.
(7) (1893) 14 N.S.W.L.R. (L.) 269, at p. 273.
(8) (1853) 2 El. & Bl. 822, at pp. 829, 834.
(9) (1895) 1 Q.B. 742.
(10) (1878) 3 Ex. D. 238, at p. 245.
(11) (1924) 35 C.L.R. 14, at p. 35.

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E. M. Mitchell K.C. and *Maxwell*, for the respondent, were not called upon.

KNOX C.J. In this case I think the decision of the Supreme Court was clearly right. I have nothing to add to the reasons given by *Street* C.J.

ISAACS J. I agree that the appeal should be dismissed. To put the matter shortly, there is nothing in the circumstances of the case to alter the ordinary legal effect of the provisions of the contract.

HIGGINS J. I am of the same opinion. The plaintiff cannot succeed unless on the contract to pay. There is no contract to pay in the policy unless it is true that the plaintiff had no previous fire; and he had a previous fire. Prima facie that would be an end of the matter. But it appears that in the proposal the statement that there had been no previous fire was put in, not by the plaintiff, but by the son of the agent for the Company without the knowledge of the plaintiff. What of it? The proposal is a statement of the plaintiff to be put before the directors of the Company, and, if the agent put into it some statement as having been made by the plaintiff which was not made by him, the Company is not responsible for the statement unless the agent was the agent of the Company to make the proposal on behalf of the plaintiff. As is shown by *Biggar* v. *Rock Life Assurance Co.* (1), the agent was agent to receive proposals, not to fill in proposals on behalf of persons desiring to insure. Mr. *Piddington* saw that the only hope of success was something in the nature of an estoppel which prevented the Company from relying on the condition that the truth of the statements in the proposal is the basis of the contract. But the Company is not estopped except by some act of the Company or of some agent acting on its behalf, and the whole question is whether McGregor was the agent of the Company to fill in the proposal. The plaintiff has in fact entrusted his agent to fill in the proposal for him, and the agent has not fulfilled his trust. It is a hard case, but it may be that the plaintiff has a cause of action against his agent who filled up the proposal.

(1) (1902) 1 K.B. 516.

RICH J. I agree that the appeal should be dismissed.

STARKE J. I also agree that the appeal should be dismissed.

Appeal dismissed with costs.

Solicitor for the appellant, *W. P. Blackmore*, Broken Hill, by *A. G. Young & Blackmore.*

Solicitors for the respondent, *A. J. McLachlan, Westgarth & Co.*

B.L.

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JUMNA KHAN v. BANKERS AND TRADERS INSURANCE CO. LTD.

[HIGH COURT OF AUSTRALIA.]

MATHEWS AND ANOTHER . . . . APPELLANTS;

AND

FOGGITT JONES LIMITED . . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

Abattoirs — Meat inspection — Bringing "carcase or any portion of carcase" into certain area — Whether sausages portion of carcase — Newcastle District Abattoir and Sale-yards Act 1912 (*N.S.W.*) (*No.* 49), *sec.* 19.

Sec. 19 of the *Newcastle District Abattoir and Sale-yards Act* 1912 (N.S.W.) provides that "the carcase or any portion of the carcase" of any animal slaughtered outside a certain area shall not be brought into that area except under certain conditions.

Held, by *Knox* C.J. and *Gavan Duffy* J. (*Isaacs* J. dissenting), that the fact that sausages, the composition of which was unknown except that they were manufactured from either pork or beef or both from animals slaughtered outside the area, had been brought into the area without compliance with the conditions stated in the section, did not constitute the offence of bringing into the area portion of a carcase or carcases without compliance with those conditions.

Decision of the Supreme Court of New South Wales (*Campbell* J.): *Ex parte Foggitt Jones Ltd.*, (1925) 43 N.S.W.W.N. 8, affirmed.

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SYDNEY, *Mar.* 30.

MELBOURNE, *May* 27.

KNOX C.J., ISAACS AND GAVAN DUFFY JJ.