1881

GEORGE VÉZINA.....APPELLANT;

*May 4.
*June 10.

AND

THE NEW YORK LIFE INSURANCE COMPANY..... } RESPONDENTS.

ON APPEAL FROM THE COURT OF QUEEN'S BENCH FOR LOWER CANADA (APPEAL SIDE).

Life Insurance—Insurable Interest—Transfer—Wager Policy—Payment of Premiums.

G. applied to respondents' agent at *Quebec* for an insurance on his life, and having undergone medical examination, and signed and procured the usual papers, which were forwarded to the head office at *New York*, a policy was returned to the agent at *Quebec* for delivery. *G.* was unable to pay the premium for some time, but *L.*, at the request of the agent at *Quebec*, who had been entrusted with a blank executed assignment of the policy, paid the premium and took the assignment to himself. Subse-

*PRESENT—Sir W. J. Ritchie, Knight, C.J.; and Strong, Fournier, Henry and Gwynne, J.J.

quently, *L.* assigned the policy, and the premiums were thenceforth paid by the assignee. Prior to *G.'s* death, the general agent of the company inquired into the circumstances, and authorized the agent at *Quebec* to continue to receive the premiums from the assignee.

Held (*Gwynne*, J., dissenting,)—That at the time the policy was executed for *G.*, he intended to affect a *bonâ fide* insurance for his own benefit, and as the contract was valid in its inception, the payment of the premium when made related back to the date of the policy, and the mere circumstance that the assignee, who did not collude with *G.* for the issue of the policy, had paid the premium and obtained an assignment, did not make it a wagering policy.

APPEAL from a judgment of the Court of Queen's Bench for *Lower Canada* (appeal side) of the 17th September, 1880, confirming a judgment of the Superior Court at *Montreal* of the 30th April, 1878, which dismissed the appellant's action.

The action was brought to recover the amount of a life policy, granted by the respondents on the 5th of November, 1873, for $2,000 on the life of one *Hector Gendron*, who died on the 16th of September, 1875.

The appellant sued as the assignee of one *Langlois*, under a deed of transfer executed on the 3rd of November, 1875, and *Langlois* was alleged in the declaration to have obtained an assignment of the policy from *Gendron* on the 26th of December, 1873.

The company pleaded *inter alia:*

That in the application *Gendron* falsely declared that he was born on the 5th December, 1812, but in fact, as the company had recently discovered, he was born on the 5th December, 1811.

He falsely declared that no proposal to insure his life had ever been declined by any company, whereas the company had recently discovered that his life had been insured with the *Ætna Insurance Company of Hartford*, in June, 1872, by two policies in favor of *Vennor* and *Vallière* respectively, which had been cancelled on

1881

VÉZINA v. THE NEW YORK LIFE INS. CO.

the ground of falsehood and fraud, and the absence of an insurable interest.

That *Gendron* merely lent his name without ever having any interest in the policy or paying any premium. That *Langlois* knowing that it would be illegal to take it in his own name, procured *Gendron* to apply for the policy from whom he got an assignment, the whole to defraud the company.

The contract or policy sued upon was initiated in *Quebec*, by application made to the respondents' agent, at that place, on the 27th October, 1873, by *Hector Gendron*, a resident of *Quebec*, on his own life, for the sum of $2,000, for the benefit of his legal representatives and assigns. *Michaud*, the respondents' agent, filled up the printed form of application used by the respondents, with the answers of the applicant, *Gendron*, to the enquiries contained therein; and then forwarded it to the respondents, in *New York*,—where the respondents accepted the application and issued the policy on the 5th November, 1873. The policy contains an acknowledgment that the first premium had been paid by *Gendron;* but the premium was only paid on the delivery of the policy, on the 26th December, 1873, contemporaneously with the assignment made of the policy by *Gendron* to *Langlois*.

The assignment was effected by a document approved of by the respondents' agent, and by the delivery of the policy, on the 26th December, 1873; which assignment was transmitted to the *Montreal* office, and duly acknowledged by the officers at the head office.

A year later *Burke*, the general agent of the Company, went to *Quebec* and cancelled several policies, and in his evidence stated that he tried to see *Langlois* to demand back the policy, and state to him what the consequence would be if he did not do so, but never

succeeded in seeing him,—and in the meantime *Gendron* died.

Michaud, on the contrary, stated that two years after the assignment, as *Langlois* was his friend, *Burke* being at his office at *Quebec*, annulling some policies, he spoke to him of the policy in question in this cause, and asked him to annul it if the transaction was not correct. *Burke* then asked *Michaud* if *Gendron* was a good risk; *Michaud* told him: "Yes." He then replied: "Let them pay their money." Mr. *Langlois* was informed of that fact.

After the death of *Gendron*, *Langlois* transferred and made over to the appellant his claim and right of action against the respondents.

Mr. *Doutre*, Q. C., for appellant:

The principal ground of defence set up by the company is that neither *Gendron* nor *Langlois*, who assigned for value to appellant, ever had any legal interest in the policy, and that *Langlois* had no insurable interest in the life of *Gendron*; that the insurance was obtained through a fraudulent confederacy between *Gendron* and *Langlois*; and that in effect the insurance was a wager policy, and as such absolutely void and incapable of being enforced in a court of justice.

The question is therefore narrowed down to a question of fact rather than of law, viz.: whether there was any fraud between *Langlois* and *Gendron*, or whether the agent and *Langlois* confederated together to make *Gendron* get a policy for *Langlois*. Now, it is clear that the first time *Langlois* ever knew of this insurance was in December, a long time after *Gendron* had made his application, and when his risk had been accepted no confederacy was proved.

I accept it as an elementary principle of life insurance that every individual, man or woman, has an

1881

VÉZINA v. THE NEW YORK LIFE INS. CO.

insurable interest in his or her own life (1). Every man is presumed to possess an insurable interest in his own life, since by insuring it he can protect his estate from that loss of his fortune, gains, or savings, which might be the result of his premature death, and as that cannot be limited, neither can the amount for which he may insure. The insured must have an insurable interest in the life upon which the insurance is effected. The extent of his interest is measured by the contract,—within reason,—that is, at a large or a small sum, as may be agreed upon between the parties interested.

Gendron was possessed of this interest, and having once insured his life it was his own property to dispose of to whomsoever he pleased, and for what consideration he pleased, even by gift, and in doing so he defrauded no one, especially not the company who had agreed with him as to the terms on which his life should be insured.

In *St. John* v. *The American Life Insurance Co.* (2), it was settled by the decision of the court of last resort, in the state of *New York*, that " It is only when a person insures the life of another, that the question of interest in the life can arise." That a policy of insurance effected by a person on his own life is assignable like an ordinary chose in action, and the assignee is entitled on the death of the party whose life is insured to recover the full sum insured, without reference to the consideration paid by him.

Now, when the premium was paid by *Gendron* himself, or paid by *Langlois* for his acquittal to the company, it related back to the time when the policy was issued, and at that time it cannot be said that *Langlois* had conspired to get this insurance. If *Gendron* found he had made a valueless bargain for himself, it was

(1) Bunyon Life Ins. 19, No. 14, ed. 1874.

(2) 13 N. Y. 39.

competent for him to part with it, at cost, or even under cost. I also contend that the company, by accepting the premium from *Langlois* and delivering the policy, acknowledged the validity of the policy and of its assignments, and that the receiving of premiums after the correspondence of *Burke*, in March, 1874, and the willingness of the company to receive premiums, after the disclosures to *Burke*, at *Quebec*, in June or July, 1875, was an insuperable estoppel to raising such objections.

Mr. *Strachan Bethune*, Q.C., for respondents:

In addition to the important question upon which the respondent succeeded in the court below, there are two fatal objections to appellants' action on this policy: 1st, this representation of age; and 2nd, that *Gendron* had represented that no proposal to insure his life had ever been declined by any company, whereas in two instances cited, although he had secured insurance on his life, the policies were very soon after cancelled on the ground of falsehood and fraud. In the original application the date of birth is given first, and immediately after the age next birthday was apparently written 62, and then struck out and written 61, no doubt to make this latter statement accord with the actual fact, as ascertained by the date of alleged birth, which was left as originally made.

There was no evidence whether this change was made before signature by *Gendron* or not, but, as the date of the birth was suffered to remain, and as the copy of the application attached to the policy, and produced by the appellant, states the age next birthday as 61, and is therefore conformable to the amendment on the original, the presumption is very strong that the change must have been made before signature.

As to the second point the question put to the appli-

1881

VÉZINA v. THE NEW YORK LIFE INS. CO.

cant was, were you ever refused, and the answer is "no," whereas as a matter of fact it was proved just as we pleaded it, that he had proposed to insure his life, and after being accepted, the risk was cancelled on the ground of falsehood and fraud, in that the said *Hector Gendron* had misrepresented his age and habits, and had merely lent his name to parties who had taken out said policies, as a mere speculation on their part, and without having any insurable interest whatever in the life of said *Hector Gendron*. We contend the warranty extends to this answer.

On the main question raised by the respondent's plea, it was clearly proved that *Gendron*, in applying to have his life insured for $2,000 did not do so for himself and his own benefit (as he falsely alleged in his application), but for the benefit of any third party, who, as a matter of speculation, would pay the premiums on the policy (including the first one), and in the hope that such third party would pay him some trifling sum for thus lending his name for the benefit of such third party. And it would appear from the evidence that he had done the same thing in two former instances with the *Ætna Life Insurance Company*.

As *Gendron* was utterly incapable of paying the premium, the sub-agent at *Quebec* of the respondent's general agent at *Montreal* retained the policy in his hands, and, after a delay of a few weeks, *Langlois* agreed to enter into the desired speculation, paid the required first premium, and obtained delivery of the policy from the sub-agent, and as the policy had been made out in the name of *Gendron*, he took a transfer from him of the policy. There was no evidence that *Langlois* ever paid *Gendron* anything for this transfer.

The transaction as it occurred, therefore, was precisely the same as if *Gendron* had insured his life (on the face of the policy) for the benefit of *Langlois*, who

admits in his evidence that he never had any interest whatever in the life of *Gendron*, and that he paid the premium and took a transfer of the policy as a pure speculation. For, as *Gendron* never had delivery or possession of the policy and had never paid any premium thereunder, he had no legal property in the policy, and the assignment of the policy by him was consequently a mere matter of form, necessitated by the fact that *Gendron* appeared on the face of the policy as the party insured.

The facts being as above stated, it is clear, that *Langlois* could never sue to recover the amount of the policy. Art. 2480 of the Civil Code of *L. C.*, 3rd par.: "Wager or gaming policies, in the object of which the insured has no insurable interest, are illegal." And Art. 2590 of said Civil Code: "The insured must have an insurable interest in the life upon which the insurance is effected."

Mr. Justice *Cross*, who dissented from the other judges of the court of Queen's Bench, remarked: "And it appears that seven or eight months after it (the policy) was effected and transferred to *Langlois*, *Burke*, the general agent of the company, knowing the facts, approved of this and other policies, saying: "*Laisser les payer leur argent*,' (let them pay their money.)"

Now *Michaud*, in the first part of his evidence, says that it was two years after the assignment to *Langlois*, (namely, about the 26th December, 1875), that he explained the transaction to *Burke*, in his (*Michaud's*) office at *Quebec*, and asked him if it was correct, and that *Burke* made the remark "let them pay their money."

The evidence is very unsatisfactory, and on the whole it is quite clear, that if these words were really used by *Burke*, it must have been on the occasion of his visit in June, 1875. And as no premium was paid after that

1881

VÉZINA v. THE NEW YORK LIFE INS. CO.

date, *Gendron* having died on the 16th of September, 1875, and the current year's premium having been paid by *Langlois* in November or December, 1874, the respondent cannot be held to have confirmed the transaction with *Langlois*, even if *Burke* had had power thus to bind the respondent.

It will be seen also, by reference to the 5th condition of the policy that "agents of the company are not authorized to make, alter or discharge contracts, or waive forfeitures."

Mr. *Doutre*, Q. C., in reply.

RITCHIE, C. J.:—

This was an action brought on a policy of insurance on the life of *Hector Gendron*, of which the plaintiff became the assignee through one *Langlois*, to whom it had been transferred. The policy sets forth that:—

> The *New York Life Insurance Company* in consideration of the statements and representations submitted to its officers of the home office in the city of *New York*, and contained in the written application for this policy, &c., and upon the faith of which statements and representations this policy is issued, and of the sum of eighty-five dollars and twenty-four cents to them in hand paid, and of the sum of one hundred and seventy dollars and forty-eight cents to be paid in like manner, and sums as per margin, in every year during the continuance of this policy, doth insure the life of *Hector Gendron*, &c., in the amount of two thousand dollars for the term of his natural life, commencing on the 5th November, 1873, at noon.

The application was made to the agent at *Quebec, P.Q.*, by *Gendron* himself and signed by his own hand. The applicant was personally subjected to a medical examination. The medical examiner's report was presented to the company, and the conditions of the company required the applicant to procure a certificate from a friend. *Gendron* applied to a friend, *Grondin*, who answered the questions proposed to him which were required to be answered by the company. This appli-

1881

VÉZINA v. THE NEW YORK LIFE INS. Co.

Ritchie, C.J.

cation, these medical documents and certificate of friend having been transmitted to the head office in *New York*, the application of *Gendron* was acceded to, and this policy, which is set out in the declaration, was executed on the day it bears date by the proper officers of the company, as a valid instrument of insurance, whereby *Gendron's* application for insurance was accepted and his life was insured from the date of that policy for one twelve-month, upon payment of a certain premium which was by the policy admitted to have been in hand received, and by the payment annually of a certain other premium as marked in the margin of the policy. This policy was transmitted from the head office to the agent in *Quebec*, to whom the application had originally been made, and who had transmitted the application to the head office in *New York*, to be delivered to *Gendron* on payment of the premium. The policy appears to have remained in the agent's hands for some time. The payment of the premium was made by *Langlois* and the policy delivered to him under and by virtue of an assignment, which *Gendron* had signed in blank. The blank assignment which had been left with the agent was filled up by him and the transfer of the policy was made to *Langlois*, who received the policy and held it as the assignee of the insured. Subsequently Mr. *Langlois* assigned this policy to the plaintiff in this case, *George Vézina*, and the premiums on the policy from that time falling due were paid by the assignee up to the time of the death of *Gendron*, which took place about two years after the date of the policy. The material defence (because I think the other points of the defence were satisfactorily disposed of below) was that this was not an insurance by *Gendron* for *Gendron's* own benefit, but that it was a wager policy obtained by *Langlois*, the original assignee, or by *Vézina* and *Michaud* or *Langlois* and *Vézina* combined, and that there was

1881

VÉZINA v. THE NEW YORK LIFE INS. CO.

Ritchie, C.J.

no insurable interest under it, and that the policy was therefore void. Now, to ascertain and determine this question, a pure question of fact, we must see what facts there are in the case that are undisputed. I think it cannot be denied that this policy was applied for at the instance of *Gendron*, by him for his own benefit, that from the time the application was made up to the time the policy was executed in *New York* and returned to *Quebec*, and up to the time of the transfer there was no connection whatever between *Gendron* and *Langlois*, or between *Langlois* and *Vézina* in reference to this policy. *Gendron* appears to have been a man in poor circumstances, and he was under the impression that if he could obtain an insurance on his life, he would be able so to deal with that insurance as to realize money therefrom. The evidence upon this point is uncontradicted. The agent of the *Ætna Company*, Mr. *Grondin* to whom application was first made, says that he knows the parties:—

> Before making the said application the said *Hector Gendron* came to me at my office. * * * He said then that he wished to effect an insurance on his life, so as to get some money, that is to say, on the policy. Then I sent him to Mr. *Michaud*, the defendants' agent, telling him that I thought that this was the only company which would take a risk to be assigned in his case.

Thus in the inception of this transaction there was no combination or confederacy between *Michaud*, the agent of the defendants, and *Gendron* the party desiring to be insured. The former says:—

> I do not know whether or not he had the means of paying his premium, but one day he came to my office to insure himself; he was accompanied by *Joseph Grondin*, agent of the *Ætna*. This was the first time that I saw *Gendron*. I filled in the blanks which were in the application myself after the answers of *Gendron*, and it was on this application that the said policy was issued.

From this it appears that this man made a *bonâ fide* application. Being in poor circumstances and wishing,

for his own benefit, without any connection with any third party whatever, to insure his life, he applies first to the agent of the *Ætna*, which company not being willing to take the risk, its agent introduces him to the agent of defendants, who accedes to his wishes. It cannot be denied that *Gendron* had an insurable interest in his own life, and had a right to effect an insurance thereon, and to use that policy for his own benefit, whether for the purpose of raising a loan through its instrumentality, or by convincing others that the policy upon his life was of value, and so be enabled to transfer it for a consideration. As his application was *bonâ fide* for his own benefit and the company accepted the risk and granted him the policy, he had a right to do with it what he pleased; the transaction between him and the company being a *bonâ fide* insurance of his life for his own benefit, nothing he did subsequently with the policy could make it a wagering policy.

Then, the policy being in the hands of Mr. *Michaud* to be delivered on payment of the premium, and *Gendron* having left a blank transfer with *Michaud*, he induced Mr. *Langlois* to pay the premium. In doing this *Michaud* states that he did it on behalf of Mr. *Gendron*. Mr. *Grondin*, the friend of Mr. *Gendron*, says that he knew *Michaud* was acting as the plaintiff's agent. Therefore, we have the fact that as the plaintiff's agent he took this policy, and having been entrusted with a blank assignment for the purpose of enabling an assignment to be made in the event of his disposing of the policy on behalf of Mr. *Gendron*, he fills it up in *Langlois'* name and receives the premium as defendant's agent. It is true, the evidence does not show that Mr. *Gendron* received any consideration for that transfer, but the evidence does show that Mr. *Gendron* was dissatisfied that he had not, and wrote to the head office in *New York* complaining of the conduct of Mr. *Michaud*

1881

VÉZINA v. THE NEW YORK LIFE INS. CO.

Ritchie, C.J.

with reference to that transfer, and that it was in consequence of that letter, as the manager says, that the present difficulty arose with reference to their acknowledging the validity of the policy as a subsisting and binding contract on their part. With this difficulty between *Gendron*, the principal, and *Michaud*, his agent, in the transfer of this policy, the company has nothing to do, and whether *Gendron* received or did not receive the consideration he expected, or was entitled to, is a matter between the principal and agent, and which cannot render the policy, valid in its inception, void by reason of any misconduct on the part of the agent of *Gendron* in disposing of the policy at his instance.

There is also evidence to show that after this the manager was informed of all the circumstances connected with this policy, that he acquiesced in the propriety of what was done, and in the validity of the insurance, directed the money to be taken, and in consequence thereof the company subsequently received the premiums which accrued due until and up to the death of *Gendron*.

It is not disputed that a party insuring upon a life must have an interest in the life insured, in other words, that if this is a wagering policy the plaintiff cannot recover, but it is alleged that the contract was made by the defendants with the party whose life was insured, and that the insurance being thus effected by a person having at the time an interest in the life insured, the contract was valid in its inception, and could not become a wager policy by any subsequent transfers.

When was this policy effected? Was it not, as between the company and the holder, on the day it bears date? and at that time the party effecting the insurance was the party whose life was insured, no other person being in any way interested in or a party to the trans-

action. Can it be said that the evidence conclusively shows that this insurance was not effected by the deceased for his own benefit? To enable the defendants to succeed, I think they must show that this policy was void from the beginning. If *Gendron* had obtained from *Langlois* the money to pay the premium and had not assigned the policy, could it be contended that the company would not be liable to pay the amount insured to *Gendron's* representatives, why then should not *Gendron's* assignee stand in the same position as his personal representatives would have done if no assignment had been made?

No doubt a party cannot procure one, in whose life he has no legal interest, to insure it with his money and for his benefit, still if there is an interest at the time of the policy, it is not a wagering policy, and where a life policy, effected by one who has an interest, is assigned, it is not necessary that the assignee should have any interest, or even that he should have paid any consideration; for it has been decided that he stands on the rights of the party who effected the insurance. The want of interest applies to the original parties to the policy, not to their assignees. When this insurance was effected, it was not at the instance of and for the benefit of the first assignee or the present holder, the plaintiff, nor was there any arrangement between them or any of them that the insurance was to be for the sole benefit of any one other than the assured.

The premium in the second condition of the policy clearly refers to the premium of $170.48 to be paid as per margin in every year during the continuance of this policy, and not to the $85.24, which by the policy the defendants admitted, at any rate for the purposes of the policy, had been "to them in hand paid." Therefore, so soon as the premium was paid and policy delivered, the original contract as contained in the policy

1881

VÉZINA v. THE NEW YORK LIFE INS. CO.

Ritchie, C.J.

was complete, and it is wholly immaterial whether the premium was paid by and the policy delivered to the assignee of the assured or by the assured himself and delivered to the assignee. The insured had a right to effect an insurance on his life for the benefit of whom he chose, and in this case having applied for this insurance for his own benefit, and his application having been accepted and policy issued, to be delivered on payment of the premium, it was a matter that could not affect the contract where the money came from, so that the premium was paid on the contract and the policy delivered on the contract to the assured or his assignee, or nominee, on which being done a valid contract was effected between the party whose life was insured and the defendants. When the premium was paid it had relation back to the date of the policy, the contract was, as between the parties, on the day of the date of the policy, being the day it was executed and sent from *New York* to *Quebec*, and then only remained in the agent's hand awaiting the payment of the premium for the insurance for a year from the date, which being made the policy took effect as from its date.

If the evidence in this case had shown that the insurance was effected by the party nominally insured at the instance of and for the benefit of *Langlois*, or the present holder, who were to pay the premiums in pursuance of an agreement between them, in which either of the latter secured the sole benefit of the insurance by assignment or otherwise, it would be clear that the interest in the policy was not in the party nominally insured, but really in the third party, at whose instance the insurance was effected, and so the policy would be void; but where the insurance was effected by the party assured at his own instance without the knowledge of or any connection with the party who subsequently paid the premium, I do not think

that the mere circumstance that such other party pays the premium and obtains an assignment of the policy is sufficient evidence to warrant the conclusion that the interest in the policy at its date and when agreed to and executed by the company was not in the assured.

STRONG, J.:—

I entirely concur in the reasons and conclusions which have been expressed by the Chief Justice. I shall content myself with expressing a simple concurrence with his judgment, that the appeal should be allowed with costs.

FOURNIER, J.:—

I agree with the views expressed by the learned Chief Justice, and I think that the appeal should be allowed with costs.

HENRY, J.:—

I am of the same opinion. I did not prepare a judgment in writing, but I may just state my views in a few words. The only tangible defence set up is that this is a wager policy. Every lawyer knows what the meaning of a wager policy is. The amount of it is the assertion that *Langlois* was in collusion with *Gendron* to insure the latter's life for his own benefit, and therefore he having no interest, the policy would be void. If the evidence established that position, of course this appeal ought to be dismissed, but in my view the evidence does not sustain any such position. I am of the opinion that the policy was a contract between the original parties. It is not shown that *Langlois* even knew anything about it, and this contract, as far as the policy is concerned, was actually in being a month before the man *Langlois* knew that *Gendron* had made an application. He could not, therefore, have been

1881

VÉZINA v. THE NEW YORK LIFE INS. CO.

Henry, J.

in collusion with the insured to obtain a policy for his benefit. I concur in the views expressed by the learned Chief Justice in reference to the validity of the policy, and think it a matter of indifference whether the money was already paid by the insured or whether it was paid by some person on his behalf and with his assent. The whole matter was referred to the manager of the company, and with a full knowledge of all the facts, he authorized the agent, *Michaud*, to receive the money and deliver the policy. It is too late, under these circumstances I think, even if it were a wager policy, for the company to set up their defence, because, if they took the risk knowing it was a wager policy, they would be prohibited from setting up such a defence. I think there is not the slightest evidence to show it was a wager policy. The party had a right to insure his life, and we have no right to enquire what his object was, whether it was to sell the policy or make a present of it if he chose. Under the circumstances I agree that the appeal should be allowed with costs.

GWYNNE, J. :—

The question arising in this case is simply as to the proper view to take of the evidence upon matters of fact. In such a case, as I have before taken occasion to observe, a Court of Appeal should not, in my judgment, reverse the judgment of the court of first instance, and *à fortiori* the concurring judgments of two courts, unless under a thorough conviction that in such judgments there is taken a view of the facts which is plainly erroneous. This principle I have never heard questioned, but, on the contrary, have heard approved in this court, although I fear that in this case, the judgment of the Court does not conform to it. I must say that, so far from seeing anything wrong, I entirely concur in the view taken by the courts below, and in the reasons

given by the Chief Justice of the Court of Queen's Bench, *Montreal*, in appeal.

It appears that one *Gendron*, who was a person of no means, and not able to pay the premium upon an insurance on his life for any amount, was in the habit of raising small sums of money by selling his name to others to use in effecting through him, and in his name, but for their benefit, policies upon his life. Two such policies had been effected with the *Ætna Insurance Co.*, the one for the benefit of one *Vennor*, and the other for the benefit of one *Vallière*, for which *Gendron* had received $20 each. The *Ætna Insurance Co.*, having discovered these facts about 18 months after the execution of the policies, insisted upon their being, and they were accordingly, given up and cancelled. Afterwards *Gendron* being still in embarrassed circumstances applied to one *Grondin*, an insurance agent, with the view of effecting through him, with an insurance company for which he was agent, a policy of insurance under like circumstances and for the like purpose as in the case of *Vennor* and *Vallière*. *Grondin* declined to enter into such a transaction, and informed him that Mr. *Michaud*, who represented the *New York Life Ins. Co.* was the only one through whom *Gendron* could procure an insurance upon such a risk as that proposed by him. *Gendron* accordingly went to *Michaud*,—there an application to the defendant's company was filled up by *Michaud* for *Gendron* to sign, and was signed by *Gendron* and forwarded by *Michaud* to the head office of the defendants at *New York*. The defendants by the form of the applications which it requires to be signed by any applicant, and one which was so signed by *Gendron* (which applications by the form of the policies the defendants incorporate into and make part of the policies), take the precaution, *ex majori cautelâ* of protecting themselves by a provision therein that "under no cir-

1881

VÉZINA v. THE NEW YORK LIFE INS. CO.

Gwynne, J.

cumstances shall the policy be in force until actual payment to, and acceptance of the premium by, an authorized agent of the company." The defendants, in reply to the application of *Gendron* forwarded by *Michaud*, transmitted to him an instrument or paper writing, dated the 5th November, 1873, with the seal of the company attached thereto purporting to be a policy of insurance for $2,000 upon the life of *Gendron* and in favor of *Gendron*, payable to his legal personal representatives, but which paper writing, by reason of the above provision incorporated with and made part of it, expressly provided that notwithstanding such execution thereof the same should not come into, or have, any existence as a policy of insurance unless nor until the premium thereon, viz., $85.24, should be paid to and accepted by *Michaud*, the defendants' agent in the matter.

Upon the receipt of this document by *Michaud*, *Gendron* continued to be, as he always was, unable to pay the premium, and the document remained an imperfect instrument and the property of the defendants in the hands of *Michaud*, who, it is plain, would lose his commission on the transaction unless he could contrive in some way to obtain payment of the premium, so as to enable him to issue the policy as an instrument to all appearance, at least, binding upon his principals. Accordingly *Michaud*, acting, as he says, as *Gendron's* agent, but while in possession of the imperfect document, as the property of the defendants, looked about to find some person who would pay the premium and take the policy. For this purpose he applied to *Langlois*, who had no interest whatever in *Gendron's* life, and offers the policy to him as a good speculation if he would pay the premium necessary to give it vitality. *Langlois* at first declined, but at length, satisfied, as it would seem, by *Michaud*, that the speculation would be a good one,

consents. Now, at this stage it may be observed that, as the document had not yet acquired the character of an existing policy, *Gendron* had no interest in it and could not therefore authorize *Michaud* to issue it to any one. *Michaud* could issue the policy, that is to say, could only bring it into existence as the agent of the defendants. *Michaud* therefore, while he professes to have been acting as *Gendron's* agent in offering to give the policy to *Langlois*, if he would pay the premium, must be also regarded as the agent of the company, defendants, to give vitality to the document by issuing it, which had not yet been done. To carry out this transaction with *Langlois*, so proposed to him by *Michaud*, acting in the two-fold delicate capacity of agent for *Gendron*, who had as yet acquired no interest in the document, and as agents of the defendants, whose property wholly it still was, and as whose agent only *Michaud* could issue it, he procured *Gendron* to execute in blank a paper endorsed upon or annexed to the still imperfect document, the execution of which by *Gendron* is witnessed by *Michaud*, and the still imperfect policy, with the assignment in blank so signed by *Gendron*, still remains in *Michaud's* hands, and still as the property of the defendants, for, as the premium had not yet been paid, the document executed by the defendants had not as yet acquired vitality or existence, and *Gendron* had no interest, and not having any he had not anything to assign at the time he signed the paper purporting to be the assignment of the policy not yet in existence, nor was there then any person even named in it as assignee; that assignment was therefore invalid, and the paper upon which it was, as well as the document of which it purported to be an assignment, still remained in *Michaud's* hands as the property of the defendants, not having yet acquired any existence as a policy of insurance. While matters are in this condi-

1881

VÉZINA v. THE NEW YORK LIFE INS. CO.

Gwynne, J.

tion, *Michaud*, having arranged with *Langlois*, inserts in the blank assignment his name, and *Langlois*, at a time when *Gendron* had not, as he never had had, any interest in the document as a policy, pays the premium to *Michaud*, who accepts it, and then for the first time issues it as the act and deed of the defendants, into the hands of *Langlois* for his benefit, although he had no interest whatever in the life of *Gendron*. If this policy ever had existence it came into existence then and for the sole benefit of *Langlois*, and *Gendron*, upon whose life it purports to be effected, never had any interest whatever in it.

It is said, however, that being so issued it enures back to its date, and that the company is estopped from arguing that *Gendron* had not had an interest in it; but that is not so, for it is an express provision of any contract contained in it that none shall be deemed to come into existence until the actual payment of the premium, and surely, if *Gendron* had died after signing the document called an assignment of the policy, and before the payment of the premium by *Langlois*, it cannot be contended that the policy would be enforcable—indeed, the only estoppel in the case is one binding on the plaintiff by which he, as claiming under *Langlois*, is estopped from asserting any existence in the policy until it was issued by *Michaud*, the defendants' agent, to and for the benefit of *Langlois*, and having been, when first issued, issued to *Langlois*, who had no interest in *Gendron's* life, the infirmity attached to the policy in its issue must continue to be attached to it whatever date it may appear to bear.

The above is the position in which the evidence very clearly presents the case to my mind, and to a policy so issued I can attribute no other character than that of one contrived in fraud of the defendants by their own agent, acting also in the character

of agent of *Gendron*, to procure a policy to be effected in the interest of *Langlois* upon *Gendron's* life, in whose life *Langlois* had no interest, and apparently upon behalf of *Gendron*, who, in truth, had never any interest in the policy. In my judgment the allegation in the plea, "that the said *Hector Gendron* never had any legal interest whatever in said policy, and did not pay any portion of the premium on said policy mentioned, and merely lent his name to said *Edouard Langlois* in the matter of the said application and declaration," is sufficiently proved by the evidence which establishes that *Michaud* as *Gendron's* agent, as he says, offered to issue the policy to *Langlois* if he would pay the premium to procure it to be issued. If this proposition was made by *Michaud* as *Gendron's* agent, it is the same as if *Gendron* had said to *Langlois* "there is a document which I can not procure to be issued. I have no means—it on its face purports to be for my benefit, but I cannot give it vitality or obtain its issue—go and pay the premium and procure it to be issued to you and for your benefit, although on my life —you can have it, and I, although having no interest in it, have, to cover appearances, executed an instrument purporting to be an assignment of it to you, so that the Company's agent may give it existence by issuing it to you, and appearances will protect him also." I must say that the transaction appears to my mind so plainly fraudulent that it should not be allowed to prevail in a court of justice.

Appeal allowed with costs.

Solicitors for appellants: *Doutre & Joseph.*

Solicitors for respondents: *Bethune & Bethune.*