Opinion No. 383

Insurance — States — State Lands — Contracts

HELD: In the absence of contract the state has no right upon which to

base a claim to any part of the proceeds of an insurance policy under which a lessee of state lands has been indemnified for the loss by fire of his residence, built upon such lands.

November 10, 1933

According to your letter to us of the 21st ult., one C. J. Hansin bought 320 acres of land in Golden Valley County from the State of Montana in the year 1917 and received a certificate of purchase thereof from the proper state officers. On July 15, 1924, the certificate of purchase was, on his application, converted into an amortization certificate. At that time he owed the State of Montana $4,800.00 under his contract. The certificate was cancelled in the year 1928 because of his failure to pay the installment of $300 for the preceding year. On February 28, 1933, he leased the land from the state. In the interim nothing was done about selling or leasing it. Some time before the cancellation occurred Hanson built a residence on the land, insured it in his own name against fire and kept up the insurance until it was destroyed by that element about two months ago. Your letter concludes with the request that we give you an opinion as to whether or not the state is, under the circumstances, entitled to any part of the proceeds of the insurance policy.

The general rule is that, as between insurer and insured, a policy of fire insurance is a purely personal contract, by which the former agrees to indemnify the latter against any loss he may sustain by the destruction of his interest in the propery insured. The contract does not attach to or run with the insured property. (Fireman's Fund Ins. Co. v. Smith, 16 Pac. (2d) 202; Appleton Electric Co. v. Rogers, 228 N. W. 505; Shadgett v. Phillips & Crew Co. 31 South. 20; Newark F. Ins. Co. v. Turk, 6 Fed. (2d) 533; 26 C. J. 17, 434; 14 R. C. L. 1365).

In the absence of contract, therefore, neither the vendor nor the purchaser is entitled to the benefit of the insurance taken by the other in his own behalf, but each is entitled to the proceeds only of his own insurance. The same rule applies to persons occupying the relation of landlord and tenant. (Goodin & Barney Coal Co. v. Southern Elkhorn Coal Co., 294 S. W. 792; Appleton Electric Co. v Rogers, supra; Miller v. Gold Beach Packing Co., 282 Pac. 764; 26 C. J. 436.,

So far as the policy of insurance here is concerned there was no privity of contract between the insurer and the State of Montana or between the insured and the State of Montana. The State of Montana has no interest in the policy, can claim no advantage from the rights, if any, accruing thereunder to the insured in obtaining the proceeds of the insurance. (See opinion No. 101, this volume.)