

another line of its road, twelve motor cars were in use, in which the wheels did not extend above the floor of the car, as they did in the car in question, and that for that reason they would not carry or pull under the car one whose feet happened to reach over the side of the car. The evidence was not introduced to prove a custom of railroad companies to use cars of that construction, as argued by the defendant, but to prove the knowledge of the defendant that the car the plaintiffs were employed to use was not a reasonably safe car, and that the defendant was negligent in this respect. The competency of the evidence cannot be doubted. *Warburton v. Company*, 75 N. H. 592.

Other exceptions to the evidence are without merit and do not require extended consideration.

*Exceptions overruled: judgment on the verdicts.*

All concurred.

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Hillsborough, }  
June 29, 1918. }

LOUISE BARRETTE, *Adm'x*, v. CASUALTY COMPANY OF AMERICA  
& a.

An employers' liability company, whose general agent had informed the assured that the company would insure him against liability to his employees for all injuries they might sustain, is liable to him on a policy subsequently issued and excepting a particular risk, there being no evidence that the insurer notified the assured of such exception and the assured having reasonably relied upon the agent's representation that the policy protected him from all liability.

BILL IN EQUITY. Hearing by the court. Decrees for the plaintiff and for the defendant Dubray. The plaintiff's intestate, one of Dubray's employees, was killed October 2, 1915, by the fall of a hoist or elevator on which he was riding. His administratrix recovered a judgment against Dubray which she is seeking to enforce against the defendant company in this proceeding. Dubray applied to the company for insurance against liability to his employees in April, 1915, but the policy which was issued a month later excepted from its operation risks like the one in question. The court found the company was estopped to deny that the policy

covered this risk and the company excepted. Transferred by *Allen, J.*, from the May term, 1917, of the superior court. The evidence sufficiently appears from the opinion.

*Taggart, Wyman, McLane & Starr* (*Mr. Wyman* orally), for the plaintiff.

*Streeter, Demond, Woodworth & Sulloway* and *Cyprian J. Belanger* (*Mr. Jonathan Piper* orally), for the defendants.

YOUNG, J. Dubray, who had contracted to take down an old building and erect a new one, applied to the defendant company's local agent for insurance against liability to his employees while doing this work. The local agent transmitted his application to the company's general agent who informed him (the local agent) that the company would "cover" Dubray. By that was intended that the company would protect Dubray or insure him against liability to his employees for all injuries they might sustain which were caused by the usual and ordinary risks of the business named in the application unless and until the company notified him (Dubray) that it declined to underwrite them. The court has found that the general agent had authority to make this agreement and that the risk incident to using a material-hoist is one of the usual and ordinary risks of the business. Dubray, therefore, was insured against liability for accidents to his employees for a time at least. Whether this insurance had terminated at the time of the accident in question depends on whether the delivery of the policy was notice to Dubray that the company declined to underwrite the risk incident to his employees' riding on a material-hoist, for no one contends that the company did anything else to notify him of that fact and the court has found that he did not read the policy until after the accident. The test to determine whether the delivery of the policy was such notice is to inquire whether he was in fault for not reading it. In other words, the questions of law raised by the company's exceptions to the court's finding that it is estopped to deny it insured Dubray against liability for the accident in question are whether there is any evidence to warrant the court's findings (1) that the company was in fault for not notifying him that it would not underwrite the risk in question, and (2) that he was not in fault for not ascertaining it. The evidence relevant to the first issue tends to the conclusion that the company did absolutely nothing to notify

Dubray. The evidence relevant to the second issue tends to the conclusion that when the company's local agent delivered the policy he gave Dubray to understand that it protected him from all liability to his employees while he was doing the work in question. It cannot be said that Dubray was in fault for relying on the agent's representation or that the ordinary man in his situation would have read the policy to ascertain whether it evidenced the contract he made with the company; and there is no rule of law, written or unwritten, which provides either in terms or by reasonable implication that one who buys insurance is bound by the terms of a policy the company subsequently delivers to him, both when it does and when it does not evidence the contract he made with it. In other words, the evidence warrants the findings that the company was, and that Dubray was not in fault for his not knowing of the exception in the policy and these findings warrant the further finding that the company is estopped to deny that it insured Dubray against liability to the plaintiff for the death of her intestate.

*Exception overruled.*

All concurred.

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Hillsborough, }  
June 29, 1918. }

ALBERT J. LAPOINT *v.* MONADNOCK PAPER MILL.

A mill-operator who has not accepted the provisions of Laws 1911, c. 163 is liable for an injury to an employee caused by the negligence of his fellow-servant; and in such case an employee who performs his work in a method authorized by the foreman does not assume the risk of his omission to require the work to be done either with more men or by some appliance.

In such case, the questions whether a foreman who saw and participated in the plaintiff's method of doing the work thereby endorsed the method, and whether the foreman, by reason of his authority and superior knowledge, should have forbidden the use of such method, are for the jury.

CASE, for negligence, brought under Laws 1911, c. 163. Trial by jury and verdict for the plaintiff. Transferred from the September term, 1917, of the superior court by *Marble, J.*, upon the defendant's exceptions to the denial of its motion for a directed verdict and to a portion of the charge to the jury. The facts are sufficiently stated in the opinion.