

ELECTRIC GIN CO. V. FIREMEN'S FUND INS. CO., 1935-NMSC-001, 39 N.M. 73, 39 P.2d 1024 (S. Ct. 1935)

**ELECTRIC GIN CO.
vs.
FIREMEN'S FUND INS. CO.**

No. 3977

SUPREME COURT OF NEW MEXICO

1935-NMSC-001, 39 N.M. 73, 39 P.2d 1024

January 08, 1935

Error to District Court, Dona Ana County; Frenger, Judge.

Action by the Electric Gin Company against the Firemen's Fund Insurance Company. Judgment for the defendant, and the plaintiff brings error.

COUNSEL

Sam B. Gillett, of El Paso, Texas, for plaintiff in error.

W. C. Whatley, of Las Cruces, for defendant in error.

JUDGES

Watson, Justice. Sadler, C. J., and Hudspeth, Bickley, and Zinn, JJ., concur.

AUTHOR: WATSON

OPINION

{*73} {1} This action on a policy of fire insurance failed in the district court because barred by a policy provision that no such suit should be sustainable unless commenced within twelve months next after loss.

{2} Appellant here contends that that stipulation is void as against the public policy of this state, as represented by the general six-year limitation upon suits on written contracts. Its reliance is on Union Central Life Insurance Co. v. Spinks, 119 Ky. 261, 83 S.W. 615, 616, 84 S. W. 1160, 26 Ky. Law Rep. 1205, 69 L. R. A. 264, 7 Ann. Cas. 913, a case well in point, and which cites some supporting authority, though admitting that such a stipulation "is upheld by many courts, including the United States Supreme Court

{*74} (Riddlesbarger v. Hartford F. Ins. Co., 74 U.S. 386, 7 Wall. 386, 19 L. Ed. 257), and is approved by text writers."

{3} As might be inferred, this decision is found to be opposed by a decided weight of authority. Cf. 7 Cooley's Briefs on Insurance, p. 6800, 14 R. C. L. 1417, 33 C. J. 76, and these annotations: 25 Am. Rep. 104; 25 Am. St. Rep. 485; 7 Ann. Cas. 918.

{4} We are persuaded that we may best adhere to the prevailing view.

{5} Other matters are discussed by counsel but all yield to this conclusion.

{6} The judgment will be affirmed, and the cause remanded. It is so ordered.