ORIGINAL CIVIL.

Before Mr. Justice Broughton.

1881
Aug. 30.

RAJNARAIN BOSE AND OTHERS *v.* THE UNIVERSAL LIFE ASSURANCE CO.

Life Policy—Assignment—Death of Assignee—Death of Assured—Notice by Assignee to Company—Payment of Premia by Executors of Assignee—Absence of Legal Personal Representative of Assured—Refusal to pay over—Interest—Act XXXII of 1839—*Estoppel—Act I of* 1872, *s.* 15.

A, having insured his life in a certain Life Insurance Co., assigned his rights under the policy to *B*, the assignment on the face of it expressing no consideration whatever. The fact of the assignment was notified to the Company. *B*, after paying all premia due, died, appointing *C* and *D* his executors, who took out probate of his will and paid all subsequent premia on the policy. *A* died, and *C* and *D* then demanded payment of the policy-money. The Company, however, refused payment unless *C* and *D* first obtained the concurrence of the legal representative of *A* to the payment.

Held, that the Company were justified in refusing to pay the money in the absence of the legal representative of *A*.

Interest is given under Act XXXII of 1839 by way of damages on the ground that a debtor has wrongfully refused to pay; but where there is no hand to receive payment, and to give a complete discharge, there can be no wrongful refusal.

Section 115 of the Evidence Act, which contemplates a person "by his declaration, act, or omission intentionally causing or permitting another person to believe a thing to be true and to act on that belief," in which case he cannot "deny the truth of the thing" refers to the belief in a fact and not in a proposition of law.

ON the 22nd March 1848, one Frederick John Woodhouse insured his life for Rs. 25,000 in the Universal Life Assurance Company. The Company, in such policy, covenanted to pay to the executors, administrators, and assigns of the insured Rs. 25,000 two months after his decease, provided that all premia due under the policy were duly paid. Subsequent to the payment of the first premium, and on the 28th March 1848, F. J. Woodhouse assigned his rights under the policy, by endorsement, to one Hurrish Chunder Bose. The assignment was

unstamped, and ran as follows:—"I do hereby assign all my right, title, and interest of the within to Babu Hurrish Chunder Bose." It appeared on the face of the endorsement that notice of the assignment had been given to the agents of the Company.

Hurrish Chunder Bose, after paying all premia due since the date of the assignment, died on the 7th December 1857, appointing by his will Rajnarain and Debnarain Bose his executors. They took out probate, and continued to pay the premium on the policy as it became due.

On the death of F. J. Woodhouse in 1879, Rajnarain and Debnarain Bose demanded payment of the amount due under the policy. But the Insurance Company, stating that they were ignorant of the terms upon which the endorsement had been made, and whether or no any consideration had passed, refused to pay the claim, unless the executors obtained the authority or concurrence of the representatives of F. J. Woodhouse.

The executors thereupon brought this suit to recover the amount due under the policy.

Mr. *Bonnerjee* and Mr. *J. G. Apcar* for the plaintiffs.

[Mr. *Jackson* for the defendant Company took a preliminary objection that the assignment required a stamp.]

Mr. *Bonnerjee.*—The 13th Geo. III, c. 63, ss. 36 and 37 empowered the Governor-General to issue rules and regulations for the government of the Settlement of Fort William in Bengal and all places subordinate thereto; such regulation to be invalid unless registered in the Supreme Court of Judicature; and under that Act of Parliament, the Governor-General passed Reg. X of 1829, which provides for the stamping of policies; but that Regulation, I submit, does not apply to the High Court, inasmuch as it was not recognized and registered by the Supreme Court. [BROUGHTON, J.—Inasmuch as Reg. X of 1829 was not recognized by the Supreme Court, I hold that policies before 1860 do not require a stamp.] In the case of *Matthew* v. *The Northern Assurance Co.* (1), the Company

(1) L. R., 9 Chan. Div., 80.

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raised the same defence to an action brought against them as the defendants in this present case have done, but they paid the claim into Court, which the present defendants have not done. Notice of the assignment was given in both cases, and the Company were held bound to pay over the money, they being held to be debtors and the assignee a creditor.

Mr. *Jackson* (with him Mr. *Sale*) for the defendant Company. —We contend that, without making Mr. Woodhouse's legal representative a party to the suit, the plaintiffs are *not* entitled to succeed. The consent of the legal representative is necessary before we can safely pay over. It is also necessary, before the plaintiffs can succeed, to show that valuable consideration was given for the assignment—*Ashley* v. *Ashley* (1). This they have not done. An assignment of a possibility in equity will only be allowed for valuable consideration—*Wright* v. *Wright* (2). As to assignment of debts and choses in action, where the assignor has given notice, the debtor, if he disputes the debt, can call upon the assignee to interplead: Judicature Act, s. 25, sub-sect. 6. *Webster* v. *British Empire Mutual Life Assurance Co.* (3) was decided under the Judicature Act, and it is submitted, that the assignment there under the English law put it beyond doubt that the plaintiffs had a complete title. But, apart from legislative enactment, there is no authority to show that choses in action could be assigned without consideration. Under 30 and 31 Vict., c. 144, which is an Act to enable assignees of policies of life assurance to sue thereon in their own names, the schedule to the Act clearly shows that consideration must be stated in the assignment. The case of *Crossley* v. *The City of Glasgow Life Assurance Co.* (4) shows, that where there is no agreement for an assignment, and no consideration stated, there can be no equitable assignment, and in such case the Company are entitled to a legal discharge; see also the judgment of James, L. J., in *Webster* v. *British Empire Mutual Life Assurance Co.* (3). Moreover, the present suit is bad, it is brought by the executors of Rajnarain Bose, and it cannot

(1) 3 Sim., 149.
(2) 1 Ves., Sen., 409.
(3) L. R., 15 Chan. Div., 169.
(4) L. R., 4 Chan. Div., 421.

be maintained. The executor of a Hindu does not possess any of the rights which the executor of an English testator possesses. Under Hindu law, there is no distinction between moveable and immoveable property. We have further received notice telling us to pay a one-fifth share over to another claimant. [BROUGHTON, J.—Why did you not inform the plaintiffs of this.] That would not affect the suit, the Company are entitled to call on the claimant to prove his title. There is no presumption arising as to the payment of consideration except in the cases of bills of exchange. As to the position of the executor of a Hindu, see *Sreemutty Dossee* v. *Tarrachurn Coondoo* (1), *Brajanath Dey Sirkar* v. *S. M. Anandamayi Dasi* (2), and *Kadumbinee Dossee* v. *Koylash Kaminee Dossee* (3).

Mr. *Bonnerjee* in reply.— Section 18 of Act XX of 1860 repeals Act XX of 1841, Act VIII of 1842, Act X of 1851, and Act VIII of 1854, and gives the same effect to a Hindu probate as to any other probate. As to the position and powers of a Hindu executor, see *Treepoora Soondery Dossee* v. *Debendronath Tagore* (4) and the cases therein cited. It is not necessary that we should show consideration for the assignment to enable us to bring the suit in our name. The case of *Ashley* v. *Ashley* (5) does not apply, as the Insurance Co. was not a party to the suit. Neither does *Webster* v. *British Empire Mutual Life Assurance Co.* (6) apply, as there was no written assignment of the policy, no recognition of it by the Company, and no notice was given to the Company. The defendants have brought themselves within the 115th section of the Evidence Act, and they are estopped from saying that we ought to show consideration, and that we ought to show the consent of Woodhouse's representatives, as they noted the assignment in their books and received premia from the assignee and his executors after the death of Woodhouse, and by thus acting they led us to believe that we were entitled to the sum due under the policy when it fell in. As to the case of *Crossley* v. *The City*

(1) Bourke's Rep., part vii, p. 48.
(2) 8 B. L. R., 208.
(3) I. L. R., 2 Calc., 433.
(4) I. L. R., 2 Calc., 46.
(5) 3 Sim., 149.
(6) L. R., 15 Chan. Div., 169.

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of Glasgow Life Assurance Co. (1), there had been in that case no assignment of the policy either in law or in equity. The covenant in our case was an express covenant between the Company and the assignee, as the covenant with Woodhouse ran "his heirs, executors, administrators, and assigns." We claim interest under the Interest Act, as we expressly gave them notice by a letter, at and from the date of our demand for payment of the claim.

BROUGHTON, J.—The plaintiffs, executors of the will of Hurrish Chunder Bose (their father) seek to recover Rs. 25,000 upon a life policy which was assigned to their testator. They also seek to recover interest at the rate of 12 per centum per annum from the 27th May 1881.

The defendants state in their written statement that they are willing to pay the amount secured by the policy to any one having a valid title and capable of giving them a sufficient discharge, but they contend that the plaintiffs are bound to obtain the concurrence of the representative of the assured. They submit that such representative is a necessary party to this suit, and state that they are ready to pay, but they have not paid, the money into Court.

The circumstances of the case are as follows:—

The policy was effected by Frederick Woodhouse, now deceased, on the 22nd March 1848, and Rs. 675 were paid by him as premium from March 23rd for six months.

By this policy it is witnessed that "whilst the aforesaid premium shall be duly and continually paid to the said Society . . . . the capital, stock, and funds of the said Society shall be subject and liable according to the conditions of the said Society's deed of settlement . . . . to pay and satisfy the executors, administrators, and assigns of the said Frederick Woodhouse in Calcutta, within three calendar months after his decease shall have been proved to the reasonable satisfaction of the Directors of the said Society, the full sum of Company's Rs. 25,000."

The policy is signed by three Directors of the Indian Branch of the Society.

(1) L. R., 4 Chan. Div., 421.

The following endorsement appears upon the back of the policy:—

"I do hereby assign all my right, title, and interest in the within to Baboo Hurrish Chunder Bose.

(Sd.) FK. WOOHOUSE.

Calcutta, 28th March 1848."

And below this: "Endorsement noted, Calcutta, 29th March 1848. (Signed) Bagshaw and Co., Agents and Secretaries, U. L. A. S."

The defendants, in their written statement, say, that they believe the policy was endorsed in favor of Hurrish Chunder Bose, and the said endorsement was noted, &c.; but they say they were not informed, nor *were*, nor *are*, aware of the terms on which such endorsement was made, nor whether the same was made for consideration or not. There is no question about the endorsement or the noting, but the plaintiffs decline to go into evidence of consideration.

The defendants admit that Hurrish Chunder Bose, and after his death the plaintiffs, or some other person on account of his estate, paid the premia due from time to time in respect of the policy.

Hurrish Chunder Bose died on the 7th of December 1857, leaving a will, appointing the plaintiffs, with Surjo Kumar Bose and S. M. Russick Money Dassee, both since dead, his executors, &c. The plaintiffs and Surjo Kumar Bose obtained probate in December 1857.

Frederick Woodhouse died in 1879, and the fact of his decease was proved to the satisfaction of the defendants. On the 24th February 1880, the policy was adjusted by order of the *Directors*, and it was then returned to the plaintiffs with a letter from Messrs. Gisborne and Co., the agents for the Society, stating that it was duly adjusted for Rs. 25,000 payable *with the consent of the legal representatives, on the 23rd May next.*"

The plaintiffs represented to Mr. Moseley, of the firm of Messrs. Gisborne and Co., that they did not consider they were bound to obtain the consent of any party. Mr. Moseley, who

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is now dead, told Rajnarian Bose in a friendly way that he might write to Mrs. Woodhouse, and she might give her consent.

If the consent of the representatives was necessary, the consent of Mrs. Woodhouse would not alter the case, unless she proved her husband's will, if he left one, or, if he died intestate, took out letters of administration to his estate. It does not appear that Mrs. Woodhouse has done either. The plaintiff Rajnarian Bose says, no further reasons were given by Mr. Moseley for his refusal, and nothing occurred until the 22nd of May 1880, when Rajnarain Bose obtained from the Agents the following certificate :—

" UNIVERSAL LIFE ASSURANCE SOCIETY,
40 *Strand, Calcutta,* 22*nd May* 1880.

" We hereby certify that policy No. 286, for Rs. 25,000, dated 23rd March 1848, on the life of F. Woodhouse, was assigned over to Hurrish Chunder Bose on the 28th March 1848, and that premiums amounting to Rs. 27,177-12-0 have been paid by the said assignee or his estate.

(Sd.) GISBORNE & CO.,
Agents and Secretaries."

On the 27th May 1880 the plaintiffs wrote as follows :—

" *Calcutta,* 27*th May* 1880.

MESSRS. GISBORNE & CO.,
Agents and Secretaries,
Universal Life Assurance Society.

DEAR SIRS,—Subject to your refusing payment to us, as heirs of the late Baboo Hurrish Chunder Bose, of Rs. 25,000 due on the policy on the life of the late Mr. Frederick Woodhouse, and for which we made a demand to you on the 22nd instant, our solicitors say that they do not see the necessity of our asking for or even requiring the consent of the heirs of the deceased. The transfer of the policy to our late father has been duly registered by the Universal Office, and it has recognized our rights by accepting the premium from us and granting

us receipts personally. We have administered to our father's estate, and are prepared to show you letters of administration. Should you yet insist on asking for the consent of the heirs of Mr. Woodhouse, please state your reasons.

Please note that we shall charge interest on the amount due to us, Rs. 25,000, at the rate of 12 per cent. per annum from this date till we are paid. Your early attention to this is requested.

We are, dear Sirs,

Yours faithfully,

RAJNARAIN BOSE,

DEBNARAIN BOSE."

To this the following reply was sent :—

" UNIVERSAL LIFE ASSURANCE SOCIETY,

10, *Strand, Calcutta*, 28*th May* 1880.

BABOOS RAJNARAIN BOSE and DEBNARAIN BOSE,

Calcutta.

DEAR SIRS,

Pol. No. 2086. *Rs.* 25,000. *F. Woodhouse, deceased.*

Your letter of the 27th instant was placed before our committee at their monthly meeting this morning, and we are instructed to inform you that a payment of the above policy cannot be made to your late father's estate without the concurrence of the legal representative of the late life assured.

We have already explained the informality of the assignment, and, whilst regretting any delay in the settlement, the Society cannot entertain the question of interest, but, if necessary, will be prepared to pay the Rs. 25,000 into Court.

We trust, however, you will avoid this course, and act upon the suggestion made to Baboo Rajnarain on the occasion of his last call.

Yours faithfully,

(Sd.) GISBORNE & CO.,

Agents and Secretaries."

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The plaintiff Rajnarain Bose says, that no explanation was given to him, and what occurred on the occasion of his last call does not appear.

It appears, however, that a claim to a fifth share of the money was made by a sister of the plaintiffs, and was preferred by Messrs. Watkins and Watkins acting on her behalf. Their letter of the 17th May to the Agents, per power-of-attorney, and some subsequent correspondence, have been put in evidence, but no question arising on this demand was raised by the defendants by way of objection to the plaintiffs' claim until the trial of this cause. The subject is not even alluded to in the written statement filed on the 21st March 1881, a month and eleven days after the plaint was filed.

It appears, however, from the evidence of Mr. Watkins, that the defendants refused to recognize the claim of his client.

These letters and the power, &c., were put in evidence, subject to an objection to their relevancy raised by Mr. Bonnerjee, counsel for the plaintiffs; and an argument was founded upon them to the effect, that the executor of a Hindu, who obtained probate prior to the passing of the Hindu Wills Act in 1870 and the recent Act V of 1880, does not completely represent the estate of his testator, and that it would be necessary for the security of the defendants to obtain the consent of all the heirs. It is shown that Hurrish Chunder Bose left other heirs besides the plaintiffs.

This question cannot arise where a Hindu will has been proved under the Hindu Wills Act, XXI of 1870, or Act V of 1880; for, under each of those Acts, the executor or administrator, as the case may be, of a deceased person is his legal representative for all purposes, and all the property of the deceased vests in him as such; see Act XXI of 1870, s. 2, applying Act X of 1865, s. 179, and Act V of 1880, s. 4.

Several cases were cited in support of the contention that other heirs are interested, but I am of opinion that Mr. Bonnerjee rightly contends that the evidence ought not to be admitted, and for this reason, the objection, as it seems to me, comes too late. It is in reality another objection for want of parties distinct from the objection raised in the written statement, and

it should have been made at the earliest opportunity. Such an objection must be made in all cases before the first hearing, otherwise, under s. 34 of the Code of Civil Procedure, it must be deemed to have been waived by the defendants. Had this objection been made in time, the plaintiffs might have taken steps to join the other heirs either as co-plaintiffs or co-defendants.

It is not, in my opinion, necessary for the Court, of its own motion, to add these parties under s. 32 at this stage of the suit in order to effectually adjudicate. The plaintiffs, on recovering the money, would hold it only in their representative character, as is shown in the case of *Brojanath Dey Sirkar* (1), cited by Mr. Jackson.

There is, then, the chief defence which was put forward in the written statement,—namely, that the estate of Mr. Woodhouse should be represented in this suit, and that the defendants are not bound to pay the sum secured by this policy without the concurrence of his representatives. The law and practice was to require the assignee to sue in the name of the assignor, which in this case would require the presence of the personal representative. By Statute 30 and 31 Vict., c. 144, by the Judicature Act 1873, s. 25, sub-sec. 6; and in India by s. 15 of Act V of 1866, the assignee can sue in his own name under certain conditions. But the English Acts have no application to a suit instituted in a Court in India, and the Indian Act is only applicable to Marine and Fire policies. It was apparently expressly intended, when the Indian Act was passed, to exclude *life* policies, and it is to be observed that the English Act, 30 and 31 Vict., c. 144, which was passed in the following year, 1867, as already stated, has not been extended to this country. Not only so, but Act VI of 1854, which amended the practice of the Supreme Courts on the Equity Side, and which contained a section (23) corresponding to s. 44 of 15 and 16 Vict., c. 86 (Chancery amendment) was repealed the year afterwards by Act VI of 1868, and has not been re-enacted. That repealed clause enabled the Court to dispense with the personal representatives. Had that clause been now in force, I should have considered this a case in which it certainly should have been

(1) 8 B. L. R., 208.

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applied, for this case is far stronger in favor of the plaintiffs, than the case of *Crossley* v. *The City of Glasgow Insurance Co.* (1) and *Webster* v. *The British Empire Mutual Insurance Co.* (2), in which the appearance of the representative was dispensed with. In those cases there had been no formal assignment. Here there has been an assignment, and no claim has been put forward by Mr. Woodhouse's representatives. But then, had I been able to dispense with the representative, although the plaintiffs would have been entitled to recover the principal sum, they could not have recovered interest: *Webster* v. *The British Empire Mutual Insurance Co.*, which was a case decided with reference to the Interest Act, 3 and 4 Will. IV, c. 32, corresponding to the Indian Act, XXXII of 1839; for interest is given under those Acts by way of damages, on the ground that the debtor has wrongfully refused to pay, and there can be no wrongful refusal if there is no hand to receive payment and to give a complete discharge.

There remains the question of estoppel under s. 115 of the Evidence Act, which contemplates a person "by his declarations, act, or omission, intentionally causing or permitting another person to believe a thing to be true and to act on that belief," in which case he cannot "deny the truth of the thing."

This enactment seems to me to refer to the belief in a fact, not in a proposition of law, and the illustration confirms me in the opinion.

The defendants in this case do not seek to deny that the policy was assigned by Mr. Woodhouse, nor that they recognized the assignment, nor do they say now that it has not, or ought not to have, its full operation according to law.

There is, it seems to me, no estoppel.

I feel bound, therefore, to hold that the defendants were justified in asking that the personal representative of Mr. Woodhouse should concur in giving them a discharge.

The suit must be dismissed with costs on scale No. 2.

Attorneys for the plaintiffs: *W. C. Bonnerjee and Co.*

Attorneys for the defendant: *Roberts, Morgan, and Co.*

(1) L. R., 4 Chan. Div., 421. (2) L. R., 15 Chan. Div., 169.