enhanced punishment by the Sub-Magistrate and the Sessions Judge consider that the way in which the Sub-Magistrate dealt with the case was quite improper. There was a considerable body of evidence against this accused, and the Sub-Magistrate should have properly committed him to the Sessions, and not taken upon himself to discredit the case against him, on the ground of alibi, by giving him "the benefit of the doubt," as he did.

The order of committal by the Sessions Judge will therefore be confirmed, subject to section 147, Indian Penal Code, being struck out of it.

N.R.

APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar and Mr. Justice Moore.

THE TANJORE LIFE ASSURANCE COMPANY, LIMITED (DEFENDANT), APPELLANT,

v.

S. KUPPANNA RAU (PLAINTIFF), RESPONDENT.*

1919, September, 18 and 25.

Life Insurance Company—Policy-holder—Alteration of rules—Effect on policy effected before alteration—Refund of premia paid.

A policy-holder in a Life Insurance Company is not bound by any alterations in the rules made after the contract between himself and the company had become concluded.

If a policy-holder, who is permitted by the rules of an Insurance Company to discontinue payment of premia after a stipulated period, does so after that period, the policy does not lapse and the Company is liable to refund the sums actually paid.

SECOND APPEAL against the decree of V. S. KRISHNA AYYAR, the Additional Temporary Subordinate Judge of Tanjore, in Appeal Suit No. 79 of 1918, preferred against the decree of K. S. VENKATACHALA AYYAR, the District Munsif of Tanjore, in Original Suit No. 218 of 1917.

The plaintiff's mother was a policy-holder in the defendant company, and plaintiff was the assignee. By the terms of the policy, Exhibit A, she had to pay a monthly premium of Re. 1 for a period of 15 years from the date of assurance or until death. Clause (1) of the conditions, on the back of Exhibit A, was as follows:—

"(1) Fifty per cent of the total premium invested in the Bank . . . shall be equally distributed among assignees or

* Second Appeal No. 2086 of 1918.

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heirs of the deceased policy-holder in every year subject to the following conditions." These conditions related to the maximum amounts payable in accordance with the period for which the holder had been assured. According to clause (1) (*a*),

"if the heirs of a policy-holder who has paid the premium of more than Rs. 50 gets in the distribution a sum less than twice the premium paid, the Company will pay the deficiency."

Rule 33, in force at the time when the contract was entered into, provided that

"(*a*) the policy-holders who are living after 64 months when the admission fee and the monthly premium have been paid for the entire 64 months, need not pay premium, etc. But only after their life-time, the assurance money will be paid to their heir or assignee.

(*b*) The policy-holders mentioned above who have been making payments duly in that manner, will be paid interest at Rs. 6 per annum. It is only after the death of the policy-holder aforesaid, that the life assurance amount will be determined.

(*c*) If the present policy-holders so desire, they may pay the entire amount for 60 months and stop paying the monthly premium."

Plaintiff's mother paid 60 monthly premia and then discontinued payment. But prior to that at an extraordinary general meeting a rule (Rule 70) was passed, providing that 'premia shall be payable until day of death.'

Plaintiff sued for the recovery of twice the premia paid together with interest from the date of notification to the Company of his mother's death. The District Munsif dismissed the suit on the ground that the policy had lapsed by non-payment until death as required by the amended rules. On appeal plaintiff gave up his claim for interest but claimed a bonus of 25 per cent, and claimed only the premia paid. The Subordinate Judge held that the plaintiff was entitled to a refund of the premia paid by his mother and decreed the amount with costs. From this decree and judgment the defendant Company preferred this second appeal. Further material facts and rules are to be found in the judgment.

T. L. Venkatarama Ayyar for the appellant.

T. K. Rangaswami for the respondent.

SESHAGIRI AYYAR, J.

SESHAGIRI AYYAR, J.—Both the junior members of the bar who appeared in this case argued their case very ably. The

facts are not in dispute. A policy was effected on the life of one Nagammal on 29th May 1906. The premia were payable monthly. The assured made 61 payments, and then discontinued the payment. She died on 6th April 1914 and the present suit was instituted on 11th April 1917. The District Munsif dismissed the suit. In Appeal the Subordinate Judge gave a decree for the amount of premia paid by the deceased. I agree with the conclusion of the lower Appellate Court though not for the reasons given by it.

When the insurance was effected the rule of the company stood thus; [see Exhibit E, clauses (*b*) and (*c*)]:

"(*b*) The policy-holders mentioned above who have been making payments duly in that manner, will be paid interest at the rate of Rs. 6 per annum. It is only after the death of the policy-holder that the life assurance amount will be determined. (*c*) If the present policy-holders desire, they may pay the entire amount for 60 months and stop (paying) the monthly premium."

It was under this last clause that Nagammal paid for 60 months and then stopped payments. That she was justified in discontinuing payment is clear from two Exhibits C and C$_1$, which were letters written by the Secretary of the Company to the assured. In these letters it is pointed out that as she has discontinued payments she is not entitled to interest. There is no suggestion that the policy had lapsed owing to non-payment of the premium.

In or about January 1911, the share-holders held an extraordinary meeting at which they passed resolutions, to the effect that the premia should be continued to be paid till the death of the assured. Rule 70 is:

"Premium shall be payable until the death of a policy-holder."

It is common ground that no notice was given to the assured about this extraordinary meeting. The contention on behalf of the Company is that as under the new rules the premia ought to have been continued till the death of Nagammal, she forfeited her right even for the payment of the amount paid by her as the policy had lapsed by non-payment. The Subordinate Judge has not discussed the real question for decision, apparently as the arguments in the Court below were not directed to it. He has referred to section 65 of the Contract Act and has held that as

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the contract has become void, the promisee is entitled to the refund of the moneys paid under it. There can be no doubt that if there has been a failure to pay the stipulated premia the assured is not entitled to a refund of the sums actually paid. The principle is stated very succinctly in Crawley's book on Insurance, as to when and under what circumstances the premium will be repaid. Roughly speaking, in three classes of cases the assured can claim refund. Where there has been fraud on the part of the company in inducing the assured to insure in the Company, or where the policy has become void ab initio, or where no risk has been incurred by the insurer. Macgillivray quoted by Mr. Venkatarama Ayyar, for the appellant, states the law thus:

"The general rule applicable to claims for the return of the premium is that if the insurers have never been on the risk they have not earned the premium and ought to return it. Thus, if a contract of insurance is set aside on the ground of misrepresentation or mistake or for some other reason the policy is held to have been void ab initio, or to have been avoided before the risk began to run, the assured is, in the absence of any express condition to the contrary, entitled to claim repayment of any premium which he may have paid".

Bermon v. *Woodbridge*(1), *Anderson* v. *Fitzgerald*(2), *Goldstein* v. *Salvation Army Assurance Society*(3), *Moses and another* v. *Pratt*(4), *Pritchard* v. *The Merchants' and Tradesman's Mutual Life Assurance Society*(5), all bear out this statement of law.

The next question is, when is the risk run by the Company? In *Canning* v. *Farquhar*(6), it was stated that, in the absence of a provision to the contrary, the risk commences at the time when a binding contract of insurance is concluded. Applying this principle, the risk commenced against the defendant Company on the execution of Exhibit A, the policy of insurance, on the 29th May 1906, and if the assured is bound by the new rules passed by the Company at its extraordinary meeting there can be no doubt on the principles of the decisions already quoted by me, the heirs of the assured will not be entitled to claim the return of the premium.

(1) (1781) 2 Doug. (K.B.), 781.
(2) (1853) 4 H.L.Cas., 484.
(3) [1917] 2 K.B., 291.
(4) (1816) 4 Camp., 257.
(5) (1858) 3 C.B. (N.S.), 622.
(6) (1886) 16 Q.B.D., 727.

Now comes the question, which has been raised by the learned vakil for the respondent, whether the new rules were binding upon Nagammal. The right principle is, that ordinarily a concluded contract cannot be reopened by one of the parties to it making a change in regard to the terms of the contract. That principle is well illustrated by *Allen* v. *Gold Reefs of West Africa, Limited*(1). Lord Justice ROMER put this question to the counsel: "Can you alter articles so as to affect past transactions"? The answer was: We do not propose to alter the relation of debtor and creditor."

In the same judgment LINDLEY, M.R., says, at page 672:

"But then comes the question whether this can be done so as to impose a lien or restriction in respect of a debt contracted before and existing at the time when the articles are altered. Again, speaking generally, I am of opinion that the articles can be so altered, and that if they are altered bona fide for the benefit of the company, they will be valid and binding as altered on the existing holders of paid-up shares, whether such holders are indebted or not indebted to the company when the alteration is made. But, it will be seen presently, it does not by any means follow that the altered article may not be inapplicable to some particular fully paid-up shareholder. He may have special rights against the Company, which do not invalidate the resolution to alter the articles, but which may exempt him from the operation of the articles so altered."

And then at the end of page 673 the learned Lord Justice says:

"A company cannot break its contracts by altering its articles but, when dealing with contracts referring to revocable articles and specially with contracts between a member of the company and the company respecting its shares, care must be taken not to assume that the contract involves as one of its terms an article which is not to be altered."

VAUGHAN WILLIAMS, L.J., who differed from the majority of the bench, says:—

"A resolution may alter the regulations of a company but cannot retrospectively affect existing rights."

Lord Justice ROMER also said that if there was a concluded contract the company will not be justified in altering its terms by subsequent resolution. The case before the Court of appeal was one affecting a shareholder.

(1) [1900] 1 Ch., 656, at p. 663.

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A shareholder would usually have no notice of the proposed change in the articles of association ; he would have an opportunity of contesting the proposal to change the rule. His case is therefore not in *pari materia* with that of a stranger who is a policy-holder and who is not given notice of meetings of the company. Therefore, while the observations contained in this decision are certainly in favour of the view that a concluded contract should not be altered to the prejudice of the promisee by anything done behind his back and to which he had not submitted himself, the suggestion of the learned vakil for the appellant that a policy-holder is as much bound as a shareholder by any change that may be made in the rules is not borne out by this judgment. He, however, relied upon the decision of the House of Lords in *British Equitable Assurance Company, Limited* v. *Baily*(1). That was undoubtedly a case of a policy-holder, and the question there was whether he was affected by a new rule passed at an extraordinary meeting of the company. The reservations contained in the judgment of the noble Lords support the view taken in *Allen* v. *Gold Reefs of West Africa, Limited*(2). In that case the facts were these: "The assured entered into a contract which contained these terms:—

"I agree to conform to and abide by the deed of settlement and by-laws, rules and regulations of the company in all respects."

Another provision to which he submitted was this:

"I shall pay, all such other sums, if any, as the company by their directors ordered to be added to such an amount by way of bonus or otherwise, according to their practice for the time being."

What was done at the extraordinary meeting was to set apart a certain amount of the profits for a reserve fund. The assured contended that, as the prospectus on the faith of which he assured his life did not provide allocating portion of the profits to the reserve fund, the action of the company was not binding on him. Lord MACNAGHTEN at the very outset of his judgment quotes these observations of COZENS HARDY, L.J.:—

"A company cannot by altering its articles justify a breach of contract,"

and then proceeds:

"No one, I should think, would be inclined to dispute the proposition thus asserted."

(1) [1906] A.C., 35. (2) [1900] 1 Ch., 656.

The noble Lord then refers to the fact that the assured had bound himself to abide by any changes that may be made by the company and then says:—

"It will be observed that the prospectus does not purport to give an assurance of any sort that the allocations of profits would never be altered."

Finally he concludes:—

"I am at a loss to understand how the Court of appeal came to the conclusion that the statements in this prospectus constituted a collateral contract or ought to be treated as incorporated in the contract of insurance."

Lord ROBERTSON used similar language. Lord LINDLEY who took part in the decision in *Allen* v. *Gold Reefs of West Africa, Limited*(1) says at the bottom of page 42:—

"A by-law to the effect that no creditor or policy-holder should be paid what was due to him would, in my opinion, be clearly void as an illegal exercise of power."

The noble Lord, like Lord MACNAGHTEN, points out that the prospectus on the faith of which the policy-holder entered into the contract was not part of the contract and therefore as the assured had bound himself to abide by any changes that may be made regarding the distribution of profits, he should not be heard to say that the company had no power to change its rules. Now applying these principles to the present case, it is clear in the first place, that Nagammal did not bind herself to abide by any alterations that may be made by the company in future. Mr. Venkatarama Ayyar referred to this sentence in Exhibit A:

"The company shall be subject and liable to pay . . . to the assured or her assignee S. Kuppanna Rau, son or heirs or to whomsoever he assigns such sums that shall become due and payable by virtue of the rules contained on the back hereof agreeable to the regulations of the company."

That only related to the amount that may be found due. The assured did not submit herself to any changes that may be made by the company in its rule. Moreover, the contract between Nagammal and the company had become concluded, and it was not open to the company to change any of its terms by its one-sided action. It seems to me, therefore, that the action of the company so far as assurances which were completed before they passed new rules were concerned was ultra vires, and could not

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bind the policy-holders. In this view, in my opinion, the decision of the Subordinate Judge is right, and this appeal should be dismissed with costs.

MOORE, J.—The facts in the case are simple and may be shortly stated. Plaintiff's mother took out a policy in the Tanjore Life Assurance Company on 29th May 1906. The policy provided that, if the assured paid the future premium at one rupee per mensem until 20th May 1921 or till her death the company would be liable to pay her or her assignee the (plaintiff) "such sum as shall become due and payable by virtue of the rules contained on the back hereof agreeable to the regulations of the company on the completion of 15 years' premium or on satisfaction of proof of death and title of the assured." It is not disputed that plaintiff's mother paid the premia for 60 months, that is, till May 1911, that she made no further payments and that she died on 6th April 1914. The suit was brought to recover the amount which might be found due on taking accounts with interest thereon from 15th April 1914 and the claim was valued at Rs. 143-12-0 namely, twice the amount of the premia paid plus interest.

The District Munsif dismissed the suit, on the ground that the policy had lapsed on account of the non-payment of premia. In appeal, plaintiff gave up a portion of his claim. The Subordinate Judge reversed the decree of the District Munsif and held that plaintiff was entitled to recover Rs. 60, the amount of the premia paid. The principal question for decision in this appeal is whether plaintiff is entitled to claim a refund of the premia paid by his mother. Under the rules of the company which were in force when the policy was issued, policy-holders had the option of discontinuing the payment of the monthly premium after they had paid for 60 months. See rule 33 (*c*), which provided that if the present policy-holders so desired they might pay the entire amount for 60 months and stop paying the monthly premia. An extraordinary general meeting of the Directors was held on 29th December 1910, and it was resolved to alter the existing rules in view of the unsatisfactory financial position of the company. Another extraordinary general meeting was held on 15th January 1911 and it was resolved that the amended rules be confirmed, and adopted agreeably to the special resolution framed on 29th December 1910 which was

confirmed. See Exhibit D. The resolution of 29th December 1910 was communicated to the Registrar of the Joint Stock Societies and recorded by him. Rule 49 of the new rules provided that if premiums be not paid for four successive months on a policy the policy would lapse without any notice being given by the Company to the defaulter, but a lapsed policy might be renewed within six months from the date of the lapse, on payment of a fee for renewal and arrears of premia—rule 50. Rule 70, says that premium shall be payable till the death of a policy-holder. Rule 33 (*c*) of the old rules was not altered by any express rule in Exhibit D, but I doubt whether the Subordinate Judge is right in saying that Rule 49 applies only in the case of those policy-holders who have not paid premia for 60 months, and that rule 70 in Exhibit D must be read with the old rule 33 (*c*). The Subordinate Judge goes on to say :

"a lapsed policy means a void policy. The insurance Company must be ready to refund the premia paid in the case of a lapsed policy on the date of the death of the policy-holder . . . In the absence of an express stipulation for the forfeitnre of the premia on avoidance of the policy, it seems that in order to obtain cancellation the insurer must at least in the absence of fraud be ready to return the premia."

The Subordinate Judge has, I think, misunderstood the law on the subject, and it appears to be clear from the authorities to which the learned vakil for the appellant has referred us, that when a policy lapses owing to non-payment of the premium the assured is not ordinarily entitled to claim a return of the premium paid.

"When the policy is void *ab initio*, or in any case where a premium has been paid but the risk has not been run, whether this has been owing to the fault, pleasure or will of the assured or to any other cause, the premium shall be returned by the insurers, but, if the risk has once commenced there shall be no apportionment or return of the premia afterwards."

Bunyan on Life Assurance, 5th Edition, page 109, and *Bermon* v. *Woodbridge*(1).

The law as to the right of an assured to claim a return of the premium in the case of the policy being or

(1) (1781) 2 Doug. (K.B.), 781.

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becoming void is the same in life assurance as in marine insurance. Halsbury's Laws of England, Vol. XVII, at page 557:

"Where a policy which is not illegal is void *ab initio* and no risk is run, the assured is entitled to a return of the premium he has paid, but if the risk has once commenced the premium cannot, in the absence of fraud, be reclaimed. On the other hand, if the assured is entitled to have the policy cancelled on the ground of his having been induced to enter into the contract of insurance by the fraud of the insurers, he is entitled to recover the premiums he has paid."

The Subordinate Judge was of opinion that plaintiff was entitled, under section 65 of the Contract Act, to a refund of the premiums paid by his mother, but section 65 applies only to cases where the agreement is discovered to be void or the contract becomes void at law for any of the reasons specified in the Contract Act; *Oriental Government Security Life Assurance Company, Limited*, v. *Narasimha Chari*(1).

It remains, however, to consider the question whether the new rules of the Society infringed the rights of the policy-holder, and are binding on the plaintiff's mother. Rule 70 which required policy-holders to continue making payments until death undoubtedly introduced an important change in the rules. The contract between the parties is contained in the policy of insurance, and plaintiff's mother did not take out the policy subject to the rules then existing as well as to the rules which might be framed or altered afterwards. The words in the policy are

"The company shall be liable to pay . . . to the assured such sums as shall become due or payable by virtue of the rules contained on the back hereof agreeable to the regulations of the company on the completion of the payment of 15 years' premiums."

It is significant that the letters, Exhibits (C) and (C_1) from the Secretary, merely say that as plaintiff's mother had discontinued payments she would not be entitled to interest, thereby implying that she was justified in discontinuing the payments. As regards the extent to which a Company can affect the rights

(1) (1902) I.L.R., 25 Mad., 183, at p. 214.

of members by an alteration in the articles I may refer to Lindley on Companies, Vol. I, 6th Edition, at page 463:

"When considering contracts referring to revokable articles it must not be assumed that the contract involves as one of its terms that the articles shall not be altered and the terms of the contract thereby varied. If there be such an agreement these rights cannot be altered by an alteration of the articles. If there is no such agreement they can be altered, provided the alteration does not affect rights which have ripend into claims for something done under the contract in its original form".

See *Allen* v. *Gold Reefs of West Africa, Limited*(1). *British Equitable Assurance Company, Limited*, v. *Baily*(2) was strongly relied on by the learned vakil for the appellant. The House of Lords decided, in the case of a Life Assurance Company, that the Company could alter its bye-laws and alter its practice in the distribution of the profits, and thereby vary its contract with a policy-holder, but it appears to be clear from the judgments of the learned Lords that the decision of the case turned on the question whether the prospectus formed part of the contract. Lord Lindley says at page 41:

"The prospectuses not being referred to in the Policies cannot, in my opinion, be legitimately referred to in order to construe the contract into which the policy-holders have been induced to enter. These contracts are to be found in the policies themselves."

Lord Macnaghten did not dissent from the proposition stated by Cozens Hardy, M. R., that a Company cannot by altering its articles justify a breach of contract. For the foregoing reasons I agree with my learned brother that the Insurance Company by altering its rules had no power to affect the rights of policy-holders whose contracts were concluded, and that the appeal should be dismissed with costs.

K. R.

(1) [1900] 1 Ch., 656. (2) [1906] A.C., 35.