APPELLATE CIVIL.

Before Mr. Justice Venkatasubba Rao.

1933, January 17.

THE NATIONAL INDIAN LIFE INSURANCE CO., LTD., REPRESENTED BY J. A. N. ALSTON, RESIDENT MANAGER, CALCUTTA (DEFENDANT), APPELLANT,

v.

MAHADEVAN AND THREE OTHERS (PLAINTIFFS), RESPONDENTS.*

Insurance policy—Construction of—"One year's premium"—Surrender value of policy sufficient to cover—Application of, in payment of instalments of premium due, and no forfeiture of policy in case of—Provision in policy as to—"One year's premium"—Meaning of—Amount paid by assured for the year if to be taken into account in ascertaining.

The material portion of a clause in a policy of insurance ran as follows:—

"A policy which has acquired a surrender value sufficient to pay at least one year's premium is not forfeited immediately by non-payment of the premium within the days of grace; such surrender value being automatically applied in payment of instalments of premium and interest thereon to keep the policy in force for so long a term as such surrender value will cover."

Held that the expression "one year's premium" in the clause of the policy did not mean a calendar year's premium or a full year's premium in the abstract, without reference to the amount actually due for any particular year.

In a case in which the annual premium was Rs. 150-12-0, payable in four quarterly instalments, three instalments amounting to Rs. 113-1-0 were duly paid, and there was a default in the payment of the fourth instalment, which amounted to Rs. 37-11-0. The surrender value of the policy on the date of default was admittedly Rs. 86-3-0.

Held that the surrender value was sufficient to pay the year's premium within the meaning of the clause in the policy

* Second Appeal No. 199 of 1929.

and that the default in question did not therefore lead to a forfeiture of the policy.

APPEAL against the decree of the Court of the Subordinate Judge of Trichinopoly in Appeal Suit No. 110 of 1928 (Appeal Suit No. 214 of 1927, District Court) preferred against the decree of the Court of the District Munsif of Trichinopoly in Original Suit No. 175 of 1924.

S. Rajamanickam for appellant.

K. V. Krishnaswami Ayyar for respondents.

JUDGMENT.

A question of some interest has been raised in this appeal. The lower Courts have held that no forfeiture was incurred and in my opinion rightly.

It is unnecessary to quote the relevant clauses of the policy, which have been set forth in the careful and well-considered judgment of the learned District Munsif. The short point in the case is, What is the true construction of the words "sufficient to pay at least one year's premium"? Before attempting to construe these words, I shall briefly state the facts. The year with which we are concerned is 2nd April 1920 to 1st April 1921. The annual premium was Rs. 150-12-0, payable in four quarterly instalments. Three instalments amounting to Rs. 113-1-0 were duly paid, and the fourth instalment, which amounts to Rs. 37-11-0, became payable on 2nd January 1921. The default that occurred was in respect of that instalment. The point to decide is, whether that default led to a forfeiture of the policy. The material portion of the clause runs as follows :—

"A policy which has acquired a surrender value sufficient to pay at least one year's premium is not forfeited immediately by non-payment of the premium within the days of grace; such surrender value being automatically applied in payment of

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instalments of premium and interest thereon to keep the policy in force for so long a term as such surrender value will cover."

What is the intention to be gathered from this clause? The surrender value is treated as the money belonging to the assured, and, so long as the company has in its hands a sum sufficient to pay at least a year's premium, the parties stipulate that the policy shall not lapse. This is a provision distinctly intended for the benefit of the assured and, bearing that in mind, can the construction suggested for the insurance company be accepted? As I have said, the balance due against the annual premium was only Rs. 37-11-0, but the surrender value of the policy on the date of default was admittedly Rs. 86-3-0. Was that amount sufficient or not to pay the year's premium? What then was the year's premium? Out of the premium payable for the year in question, Rs. 113-1-0 had already been paid; thus a balance of Rs. 37-11-0 only was left. In considering whether the surrender value was sufficient to pay the year's premium or not, we cannot overlook that a portion of the year's premium had already been paid. To ignore this circumstance would be not only unreasonable but be opposed to the clear intention of the parties. This is the view taken by the lower Courts, and in my opinion it is both reasonable and sound. Mr. Rajamanickam, the learned Counsel for the Company, has referred me to *Haughton* v. *Empire Marine Insurance Company*(1), where CHANNELL B. observes:—

"A policy of insurance is to be construed by the same rules as other contracts, the duty of the Court being to collect the meaning of the parties by taking the language employed in a plain and ordinary sense and not to speculate on some supposed meaning which they have not expressed."

(1) (1866) L.R. 1 Exch. 206.

Surely, I am not departing from this well-known rule of construction; but what is more to the point is, that it is equally well settled that the Courts will, far from favouring a forfeiture, lean against it: see Porter's Law of Insurance, seventh edition, pages 79 and 80, and Woodfall on Landlord and Tenant, twenty-second edition, page 397. What the Company suggests is that a year's premium means a calendar year's premium, in other words, a full year's premium in the abstract, without reference to the amount actually due for any particular year. This could not have been the intention of the parties. The words "such surrender value being automatically applied in payment of instalments of premium . . . for so long a term as such surrender value will cover" clearly negative the contention put forward for the insurance company I underline the two words in that clause, namely, "automatically" and "instalments".

In the result, the second appeal fails and is dismissed with costs.

Solicitors for appellant: *Messrs. Short, Bewes & Co.*

A.S.V.