ORIGINAL CIVIL.

Before Mr. Justice Sale.

IN THE MATTER OF AN AGREEMENT BETWEEN THE UNIVERSAL LIFE ASSURANCE SOCIETY AND M. C. STERNDALE.

1895
December 16.

Insurance—Premiums on Policy—Condition of Prepayment of Premium—Waiver—Sterling premiums—Case stated under Chapter XXXVIII, Code of Civil Procedure.

An Insurance Company, in order to carry out an agreement with the assured to convert a rupee policy into a policy of sterling value, made an endorsement of the conversion on his policy, it being stated that such conversion was in consideration of all future premiums being paid in sterling. The policy so endorsed was re-delivered to the assured without any demand for the pre-payment of the first sterling premium. Subsequently, and before the first sterling premium became due, the assured died.

Held, that the prepayment of the sterling premium as a condition precedent to the right to the sterling assurance had been waived, and that the representatives of the assured were entitled to payment of the full amount of the sterling policy.

Canning v. *Farquhar* (1) distinguished.

THIS was a case stated by agreement of the parties for the opinion of the Court under the provisions of Chapter XXXVIII of the Code of Civil Procedure.

On the 7th September 1868, Colonel Sterndale took out a policy with the Universal Life Assurance Society for the sum of Rs. 12,000, and continued to pay the premiums regularly from that date ; the last premium paid being one on 1st September 1894 through the London and Delhi Bank. This premium, according to the terms of the policy, covered the risk from 1st September 1894 up to the 1st March 1895. Negotiations had, however, been going on in the meantime for the conversion of this rupee policy into a sterling one of £1,200, and the Company, on 30th October 1894, endorsed on the policy a statement to the following effect: "It is hereby declared and agreed that the within assurance of Rs. 12,000 is converted into one of £1,200 in consideration of all the future premiums being paid in sterling, £28-4 per quarter, the force, spirit, and intention of the policy remaining otherwise unaltered."

(1) L. R., 16 Q. B. D., 727.

1895

IN THE MATTER OF AN AGREEMENT BETWEEN THE UNIVERSAL LIFE ASSURANCE SOCIETY AND STERNDALE.

On the 12th February 1895 the assured died without having paid, or having been called upon to pay, any sterling premiums on the policy. The representative of the deceased now claimed payment of the amount of the policy in sterling, namely, £1,200.

Mr. *Pugh* and Mr. *Knight* for M. C. Sterndale.

Mr. *O'Kinealy* for the Universal Life Assurance Co., Ld.

Mr. *Pugh*.—It is not possible to read into the agreement for the conversion of this policy, a statement that it shall take effect from some later date, unless it is specially stated to do so. It is necessary to construe the reading of this agreement according to its grammatical meaning, and, if there is any doubt, it should be construed against the Insurance Company. Broom's Legal Maxims, pp. 551, 552. *Muir* v. *City of Glasgow Bank* (1), *Fitton* v. *Accidental Death Insurance Company* (2), *Anderson* v. *Fitzgerald* (3), *Towkes* v. *Manchester and London Life Assurance and Loan Association* (4), Broom's Legal Maxims, p. 548. If the words have not a clear meaning, then they might be void for uncertainty; but it is impossible to say that, in this case, they are void for uncertainty. If that is so, it must be taken in my favour.

On the 16th October we wrote to Messrs. K. Hamilton making a suggestion, and on 17th October Messrs. Hamilton say: "We beg to inform you we have received advice to convert into sterling policy." On 28th September the head office of the defendants had agreed to convert and instructed the office here to do so. It was clearly the intention of all parties at that time that the policy should be converted as and from that date. I submit that is the only construction to be put upon the agreement.

Mr. *O'Kinealy* (*contra*).—The question is, whether this policy must be taken to have been converted during the lifetime of Sterndale, or not until the subsequent premiums became due.

The policy becomes alive on the payment of the first premium, which only lasts for six months, and what the parties say is this: that if the premium is paid when due, another six months will be given to the life of this policy. It is also clear that, in the majority of the cases, provisions as to the conversion of rupee policies into

(1) L. R., 4 App. Cas., 337. (2) 17 C. B., N. S., 123 (135.)
(3) 4 H. L. C., 484 (507.) (4) 32 L. J., Q. B., 153, 157.

1895

IN THE MATTER OF AN AGREEMENT BETWEEN THE UNIVERSAL LIFE ASSURANCE SOCIETY AND STERNDALE.

sterling ones are intended for persons wishing to spend their lives in England. All that the defendants state in the policy is that, if the premium of Rs. 135 is paid, then they will pay the policy.

If the policy is converted in this way, is it not only on the payment of the premium that the conversion takes place? With regard to what was actually done, if the endorsement was perfect, there would be no necessity for coming here. In order to come to a right conclusion as to what the parties did, the Court must consider the words of the original contract. The whole of the sentence must be read together. The agreement in the policy was to convert into sterling and to receive the premiums in sterling. We must take it that, when converting, they are making no change in the nature of the policy itself and the form of the policy; supposing a new policy had been taken out, would it not remain the same until the new premiums were paid?

I submit that it was the intention of the parties that the premium should first be paid in sterling in order that the right to the sterling policy should arise. *Muir* v. *City of Glasgow Bank* (1) does not apply.

SALE, J.—This is a case stated by agreement of the parties for the opinion of the Court under the provisions of Chapter XXXVIII of the Civil Procedure Code. The circumstances under which the point for determination has arisen are fully set forth in the case. The material facts determining the conclusion at which I have arrived are these: The assured, Mr. R. A. Sterndale, some time previous to 28th September 1894, proposed to the Company to convert his policy, which was then in full force and effect, into a sterling policy; the policy was issued in the year 1865, and all premiums had been duly paid, the last of such payments having been made on the 1st of September 1894.

The Company, on the 21st September, definitely accepted the proposal for conversion. Subsequently, with the object of carrying into effect the agreement arrived at to convert the policy, the Company requested Mr. Sterndale's agents to send them the policy to enable them to make the necessary endorsement.

(1) L. R., 4 App. Cas., 337.

1895

IN THE MATTER OF AN AGREEMENT BETWEEN THE UNIVERSAL LIFE ASSURANCE SOCIETY AND STERNDALE.

In compliance with this request, the agents sent in the policy and asked that it might be returned to them "duly endorsed as converted into a sterling assurance."

On the 23rd October 1894, the Company returned the policy to the agents of the assured bearing an endorsement of conversion and accompanied by a letter which referred to the policy as "duly converted into sterling." The endorsement on the policy is to the following effect :—

"Calcutta, this 20th day of October 1894.

"It is hereby declared and agreed that the within assurance of Rs. 12,000 is converted into one of £1,200 in consideration of all future premiums being paid in sterling, £28·4 per quarter, the force, spirit, and intention of the policy remaining otherwise unaltered." The first sterling premium payable under the converted policy would fall due on the 1st March 1895. Previous to that date, however, that is to say, on the 12th February, the assured died without having paid, or having been called on to pay, any sterling premium.

The question now is, whether the representative of the assured is entitled to call on the Company to pay the amount of the converted policy, or whether her claim ought to be limited to Rs. 12,000, the amount of the original assurance, assuming that the effect of the conversion was to render the Company liable on the death of the assured for a larger assurance in consideration of the payment of a higher rate of premium. It may be conceded that it is a general principle of Insurance law that the risk under a life policy does not attach until payment or tender of the fixed premium; but can it be said on the facts of this case that the parties intended or contemplated that there should be no obligation on the part of the Company to pay the sterling assurance until there had been payment of the sterling premium. There is nothing on the face of the policy to throw light on this question. Conditions 8 and 9, which have been referred to, relate to a different state of things. The eighth condition deals with the case of the premium or assurance becoming payable in England. The ninth condition provides for the reduction of Indian rates to English rates. Neither of these conditions relate to the event of the assurance becoming a sterling claim payable in India.

1895

IN THE MATTER OF AN AGREEMENT BETWEEN THE UNIVERSAL LIFE ASSURANCE SOCIETY AND STEENDALE.

If in this case there had been nothing beyond an acceptance by the Company of the proposal for conversion, there would, probably, in accordance with the opinion expressed in the case of *Canning* v. *Farquhar* (1), have been no binding obligation on the part of the Company to pay the sterling assurance, until payment or tender of the sterling premium. It is to be observed, however, that there is not in this case, as there was in that, an express stipulation that the insurance should not take effect, until the premium was paid. But the condition for the prepayment of the premium may be waived.

It has been held by the American Courts that the delivery of the policy without exacting the payment of the premium, raises the presumption that a credit is intended and is a waiver of the condition of prepayment. The waiver may also be inferred from any circumstances fairly showing that the insurers did not intend to insist upon the prepayment of the premium as a condition precedent. May on Insurance, 2nd Ed., p. 526.

Here, with the object and purpose of giving effect to the agreement to convert the policy, the Company made an endorsement of the fact of conversion on the policy, stating that such conversion was made in consideration of all future premiums being paid quarterly in sterling, and the policy so converted was delivered to the assured without any demand for the prepayment of the sterling premium falling due in the following month of March and without any proviso or condition postponing its operation till such payment. There is also the fact that the assured had already paid a large amount by way of premiums in respect of the original policy.

Under these circumstances it is, I think, fair and reasonable to infer that the Company did not intend to insist upon the prepayment of the sterling premium falling due in March as a condition precedent, and that such prepayment was in fact waived.

The result is that, in my opinion, the conversion of the policy was duly and completely effected during the lifetime of the assured, and that the plaintiff is, therefore, entitled in terms of the agreement between the parties to recover from the defendant

(1) L. R., 16 Q. B. D., 727.

1895

IN THE MATTER OF AN AGREEMENT BETWEEN THE UNIVERSAL LIFE ASSURANCE SOCIETY AND STERNDALE.

Company the sum of £1,200 payable at the current rate of exchange at the time of payment. There must be a decree accordingly. The parties will bear their own costs to be taxed on scale No. 2.

Attorneys for the Universal Life Assurance Society: Messrs. *Morgan & Co.*

Attorneys for M. C. Sterndale: Messrs. *Leslie & Sons.*

C. E. G.

APPELLATE CIVIL.

Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Beverley.

ARDHA CHANDRA RAI CHOWDHRY (PETITIONER) *v.* MATANGINI DASSI (OPPOSITE PARTY.)* 1895 *June* 27.

Limitation (Act XV of 1877), sections 5 and 14—Sufficient cause—Civil Procedure Code (Act XIV of 1882), sections 108 and 540—Ex-parte decree.

In a suit for possession of certain lands, after the defendants had filed their written statements, a Commissioner was appointed to hold a local enquiry. The Commissioner having completed his enquiry, a day was fixed for the hearing of the suit, and on that date the pleaders for some of the defendants, having informed the Court that they had no instructions from their clients, and the rest of the defendants having accepted the report of the Commissioner, the suit was decreed in accordance with it on the 13th April 1893. On the 10th May following, one of the defendants, who was not represented at the hearing of the suit, made an application under section 108 of the Code of Civil Procedure to have the decree set aside. The Subordinate Judge, on the 30th November 1893, rejected the application, holding that the petitioner had not only notice of the day of hearing, but he was actually present in Court on that day. The petitioner on the 24th February 1894 filed an appeal to the High Court against that order, and on the 18th January 1895 that appeal was dismissed on the merits. On the 30th March 1895 an appeal was presented against the original decree to the High Court, and it was contended that under section 5 of the Limitation Act sufficient cause was shown for not filing the appeal within time. It was also contended that the time during which the petitioner was prosecuting his application under section 108 of the Code of Civil Procedure should be excluded in computing the period of limitation under section 14 of the Limitation Act. *Held*, that section 14 of the Limitation Act did not apply to appeals. *Held*, also, that this was not a case in which an application could properly be made under section 108 of the Code of Civil Procedure. Even supposing that the decree could be called an *ex-parte* decree, the peti-

* Civil Rule No. 767 of 1895.