

latent, and extrinsic evidence is admissible to explain it. The latency consists in the plaintiff using the words as applying to the premium and the defendant to "examiners' fee" and "money out of pocket."

Leake, on Contracts, says p. 141: "But if it appear upon the extrinsic evidence given of the intention of the parties, that the one party meant one thing and the other party another both equally within the words of the contract there is then a mistake and the agreement as the basis of the contract fails altogether." Again, on p. 217, "extrinsic evidence of the mistake is thus admissible to prevent the contract being enforced against the intention of either party."

It is admitted that the right of the plaintiff to recover for the first half year premium arises solely under 3/F February 10th, my view of that letter is, that the defendant thought he was writing to an officer of the company and he said: "I wish you would not cancel that policy of insurance hold it open for me to pay for up to end of quarter (or March 31st), I cannot pay for it now, but at the end of the quarter I will see if I have any money left. I will tell you then why I have not paid you (meaning the insurance company.) I will make up any loss out of pocket when I see you."

I cannot find an implied promise to pay on defendant's part in the letter at all. Mr. Zwicker very fairly said he construed the letter in connection with a conversation of defendant at the time of the application, but he did not give me the conversation further, than, the defendant said: "he expected to marry the young lady the beneficiary in the policy," and Mr. Zwicker's fair judgment and anxiety to help a friend under such circumstances led him to pay the premium, and then he must fall back on 3/F which does not support him. As to the second premium, I cannot find any promise to pay that as proven at all. The plaintiff's brother very properly says, "my belief is," "I cannot speak positively," "I would not have paid unless the letter authorised me," &c. I can hardly conceive the defendant writing such a letter in face of B/F May 1st. I would like to be able to find in plaintiff's favour as I believe he acted at the time in good faith, but the facts and the law prevent it.

Leake, p. 43: "Accordingly, where a person has voluntarily paid the premiums necessary to keep up a policy of insurance without having any request, contract, or duty or