

The defendants have throughout taken the position that Duffield has not been shewn to be dead. They now take the alternative position that if, on the facts shewn, Duffield is to be presumed to be dead, that presumption arose at the expiry of seven years from his disappearance, that is, in 1910, or 1911, and that this action, brought on the 16th July, 1913, is too late, as it is more than one year and six months from the end of the seven years.

There is not in this case any shadow of doubt as to the bona fides of the claimants. Throughout, there has been a real and earnest desire to ascertain the fate of the insured. There is no room for suspicion or for the feeling that there has been any attempt on the part of those claiming to avoid obtaining information so as to allow the presumption of death to arise. The defendants from the beginning knew of the situation, and all possible information was given to them, and they made their own inquiries, all resulting in confirmation of what was said by Duffield's relatives. Negotiations were on foot looking to the payment of the money, upon a bond being given to indemnify the company against any possible claim that might turn up by reason of any change of beneficiary. This was an entirely imaginary danger, as the policy was payable to the preferred beneficiary, and all those within the class were concurring in the payment, except perhaps the wife, from whom Duffield was separated—and she would, no doubt, have joined if the suggestion had been made. Without any reason that has been disclosed, the defendants suddenly changed their attitude and refused payment; and this action at once followed.

I have come to the conclusion that the provisions of the Insurance Act now found as sec. 165 of ch. 183, R.S.O. 1914, do not afford an answer to this action. The policy is a contract to pay, and it contains no conditions or limitations as to the time to sue. Section 165 gives a time to sue, notwithstanding any agreement or stipulation limiting the time, to be found in the contract. It does not itself purport to limit the time within which an action may be brought; but, in ease of the assured, it gives the time there stipulated, notwithstanding the provisions of the contract.

I am glad to find a way to defeat what appears to me an unconscionable defence, and one which ought not to have been urged by the defendants in this case. Statutes of limitation are generally regarded as a means of protecting the defendant against a stale or unjust claim. To allow the statute to be