

death losses which have to be paid, the premium is essentially a variable one, and unless there is a clause in the contract, or the by-laws of the company, limiting the liability of the member, it is impossible to fix and determine the maximum that each member may be called upon to pay, and if the liability of the member should be limited, it would frequently be impossible to pay the death claims in full, in view of the fact that the mortuary premiums are the only proportionate share of the death claims properly apportioned to each member. It is possible to conceive of a mutual insurance company in which each member would be required to pay an assessment, the amount of which was fixed in accordance with his age of entry, but such is not the system of the defendant company. According to its constitution and by-laws, it is the natural premium system of life insurance that it has adopted as its foundation principle; that is to say, that the mortuary premiums shall increase as the chances of surviving diminish; and the proportionate share in the payments to be made must consequently increase each year, and the member be assessed according to his current age. The respondent in his factum does not pretend that his contract did not justify the directors in demanding from the members the assessments that he refused to pay, but he seeks to have his contract declared null and void *ab initio*, on the ground that it was obtained by fraud, and because it was different from the contract that he was led to believe that he was agreeing to. The policy refers to the application for admission to the Association made by the respondent, to the constitution or by-laws of the company, and it therefore may be said that the contract consists of the agreements set forth in the application of the insured, and in the terms and conditions of the policy, constitution and by-laws taken together. There cannot be the slightest doubt that by the terms of this contract the respondent agreed to pay his share of the amount required to meet the mortuary liabilities no matter what it might amount to, and that the payments to be made in this regard were to be apportioned according to the age of the insured at the time of each assessment. The policy of 1885 reads as follows:

"If at such dates as the Board of Directors of the Association may, from time to time, fix or determine, for making an assessment, the death fund is insufficient to pay existing claims by death, an assessment shall then be made upon every member whose certificate is in force at the date of the last death assessed for, and said assessment shall be made at such rates according to the age of each member."

A similar clause is found in the policy of 1887. One of the articles of the constitution provides:

"On the first week day of the months of February, April, June, August, October and December of each year (or at such other periods as the Board of Directors may from time to time determine) an assessment shall be made upon the entire membership in force at the date at the last death of the audited death claims prior thereto for such a sum as the Executive Com-