

Defendants having, *inter alia*, set up the release as a bar to the action, an order was made for the trial of that issue before the trial of the other issues raised by the defence, and that issue was tried before Street, J., without a jury, and judgment was given in favour of plaintiff (2 O. W. R. 806), which was affirmed by the Court of Appeal (3 O. W. R. 851).

The other defences relied on are: (1) that the policy lapsed and all rights thereunder were forfeited by non-payment of the annuity call No. 10, for \$2.24, within 30 days of 15th April, 1901; (2) that certain material statements and warranties contained in the application for reinstatement by the deceased were untrue, and therefore he never became reinstated, and his certificate was not revived, and remained lapsed, forfeited, and void; (3) that deceased failed to pay the \$1.50 due on 15th May, 1902, being the semi-annual sum payable for expenses, whereby all benefits under the certificate became suspended.

By conditions in the policy, failure to pay the assessments within 30 days from date of notice suspends a member from all benefits, and the beneficiary named will not be entitled to any benefit in case of the decease of the member, and default in payment of the semi-annual dues on 15th May and November also suspends the member and all benefits under the certificate.

I am of opinion that, in the circumstances of this case, the non-payment of the \$2.24 within the 30 days did not operate to suspend or forfeit the mortuary benefits secured by the certificate. All assessments to provide the fund out of which such benefits would be payable were duly paid. That defendants chose to treat the annuity or endowment provision of the certificate as severable from the general mortuary provision, is quite plain from their letters and circulars, and from the fact that they undertook to levy special and separate assessments to provide a separate fund to satisfy that provision.

It is also plain that defendants were desirous of making it clear to the insured that he might abandon this special provision and retain the other benefits under the certificate, and I think the fair inference is, that in making the large call and in the care taken to repeatedly point out the right to abandon the annuity privileges, defendants were anxious that a release of the privileges should be given.