

MAGEE, J.

JUNE 2ND, 1910.

\*SOMERVILLE v. ÆTNA LIFE INSURANCE CO. OF  
HARTFORD.

*Life Insurance—Presumption of Death of Insured—Evidence—Proofs of Death—Insufficiency—Evidence on which Presumption Declared Obtained after Action—Premature Action—Return of Premiums—Pleading—Amendment—Statute of Limitations—Action not Commenced within 18 Months after Death—Ontario Insurance Act.*

Action by Mary J. Somerville, as the declared beneficiary of two policies of insurance issued by the defendants on the life of and effected by her husband, William J. Somerville, who, as she alleged, died before the action was commenced and within a year after the 20th December, 1897, to recover the amounts of the policies and also the amounts paid by the plaintiff for premiums upon the policies since the 20th December, 1898.

Under each policy the insurance money was payable within 90 days after due notice and proof of the death of the insured.

By the Ontario Insurance Act, R. S. O. 1897 ch. 203, sec. 80, the money is payable in 60 days after reasonably sufficient proof.

There was no direct evidence of the death, but the plaintiff rested upon the presumption arising from the fact that the insured had not been heard of since the 20th December, 1897.

To the claim upon the policies the defendants pleaded: (1) that, under the circumstances and upon the evidence offered, the presumption of death did not arise; and (2) that the action was premature, as proper proofs of death had not been furnished before it was commenced. At the trial they also asked leave to plead (3) that the action was not commenced within 18 months after the death, in accordance with R. S. O. 1897 ch. 203, sec. 148, sub-sec. 2, amended by 3 Edw. VII. ch. 15, sec. 5, the policy itself making no stipulation as to the time within which any action should be brought.

To the claim for return of premiums the defendants said: (1) that the death of the insured, before the payment of any one or more of the premiums, was not proved; (2) that, even if proved, the premiums were, in the circumstances, not repayable. At the trial they also asked leave to plead (3) the Statute of Limitations.

The action was commenced on the 23rd March, 1907.

\* This case will be reported in the Ontario Law Reports.