

IN THE FOURTH DIVISION COURT OF
THE COUNTY OF ONTARIO.

PROVINCIAL PROVIDENT INSTITUTION *v.*
TODD.

*Benefit Society—Waiver of forfeiture—Liability
for assessments.*

The forfeiture clause in the benefit certificate being voidable, not void,

Held, that the demand for further assessments after the certificate had become forfeited was a waiver of such forfeiture, and that a member could not withdraw without paying all dues and assessments to the date of the receipt by the Institution of his notice of withdrawal.

[Whitby, March 27.

This action was brought to recover the amount of two assessments, which were claimed to be due by the defendant to the plaintiffs, amounting to \$3.40.

The defendant was a beneficiary in the plaintiff's institution for the sum of \$2,000 so long as he kept up certain payments according to their rules.

On the 15th of November last certain semi-annual dues became due, and should have been paid on that date. On the same date an assessment was made, which the defendant had thirty days to pay, under the condition 7 of the certificate issued to him, and the concluding part of this condition reads: "Default in the payment of assessments in the time and manner specified in this condition shall, *ipso facto*, suspend the member and void this certificate."

The defendant did not pay either the dues or assessments until the 17th day of January, when he forwarded the money due by him up to the 15th of December, 1889, and also his certificate, with notice of withdrawal, and requested to be freed from any further liability. This he did immediately upon the receipt of the notice calling for two further assessments. The plaintiffs' claim that on the 15th day of January two other assessments were called for, that the defendant became liable therefor, and it is for this assessment that they brought this action; they claiming that although they had the right to suspend defendant on the 15th day of December they had not done so.

Condition 9 reads as follows: "That the member may withdraw and be freed from further liability to the Institution at any time or during the thirty days given in said notice of assessment,

or the sixty days given for reinstatement, upon notifying the secretary (by registered letter) of his or her intention to withdraw from the Institution, and paying all assessments and dues, and any or all claim or claims due the Institution at the date of the receipt by the Institution of such registered letter."

DARTNELL, JJ.—If the defendant had remitted the money on the 15th of December which he forwarded on the 17th of January, it is clear that the company would have been forced to accept it and free him from any further liability. There is but little question that if the defendant had died between the 15th day of December and the 15th day of January the plaintiffs would not have been liable to pay the amount of his certificate, as they would probably have claimed that it was void and that he was suspended. The authorities seem to show that although breach of the conditions make the contract void, that it is really only voidable, and the insurers may waive the default and still be liable. It seems to me that in claiming from and notifying the defendant on the 15th of January last, they waived any past forfeiture and still recognized him as a member, and if the defendant died within thirty days thereafter his beneficiary would have an action against the plaintiffs. Under Condition 9 the defendant "could only withdraw and cease to be a member by payment of all assessments and dues, and any or all claim or claims due the Institution at the date of the receipt by the Institution of such registered letter."

The defendant did not *entirely* comply with this condition. He forwarded by registered letter the notice required and money enough to cover the "claim" of the plaintiffs for past assessments and dues, but did not send enough to cover the assessments which had accrued since November, 1889. I think he has failed fully to comply with the terms of the Condition, and is not relieved from the payment of these assessments.

When a death claim arises the plaintiffs make an assessment upon the members sufficient to cover the sum payable, and if a large number of members withdraw without paying up such assessment, the sum payable will fall short, and the continuing members will have to be called upon for an additional sum to make up the deficiency.

The case of *Horton v. Provident*, 16 O.R.,