

FEBRUARY 17TH, 1905.

DIVISIONAL COURT.

TATTERSALL v. PEOPLE'S LIFE INS. CO.

Life Insurance—Assignment of Policy by Beneficiary Subject to Charge — Death of Insured when Renewal Premium Overdue—Right of Beneficiary or Representative of Insured to Tender during Days of Grace—Insurance Act—Conduct of Insurers—Dispensing with Tender—Estoppel.

Appeal by defendants from judgment of IDINGTON, J., upon the findings of a jury, in favour of plaintiff, the widow and administratrix of the estate of Richard Tattersall, for the recovery of \$3,950.50, with interest and costs, in an action upon a policy of insurance on the life of the deceased.

The appeal was heard by BOYD, C., MACMAHON, J., MEREDITH, J.

G. H. Watson, K.C., and J. J. Warren, for defendants.

W. R. Riddell, K.C., and P. D. Crerar, K.C., for plaintiff.

BOYD, C.—The company defend on the following grounds: (1) Fraudulent representations by Tattersall on application for insurance. (2) Denial that plaintiff was assured that the policy was all right, or misled. (3) Statement that plaintiff was told that premium had not been paid. (4) All liability ceased on death of Tattersall with overdue premium unpaid. (5) On his death, not possible to renew or revive policy by tender because no beneficiary who could make tender under the contract. (6) Tattersall having died in default, and no tender made by any one within 30 days from due date of premium, liability ceased on policy.

On the matters of fact the jury have found in favour of plaintiff's contention, and the evidence is sufficient to support such finding as right and proper.

On matters of law it is argued that there was no right to tender after death of assured, and if such right existed, there was no beneficiary in this case to make tender.

The last premium of \$49.50 fell due on 10th April, 1903, and was not paid. The death was on 22nd April, 1903, intestate, and plaintiff is administratrix.