

FLEMING vs. THE LONDON & LANCASHIRE LIFE ASSURANCE CO

The suit brought to recover \$10,000 from the London & Lancashire Life Assurance Company, for amount of two policies on the life of one James Fleming, raises a question which is by no means free from difficulty as a matter of law, clear though it is as regards equity and justice. In November, 1894, Fleming applied to the Company for assurance to extent of \$10,000, and the risk was accepted. No cash was paid, but notes for each of the premiums on two policies of \$5000 were given, one by the insured, the other by his brother. Mr. White, the agent who received these notes, was not authorized to accept payment of premium in this form. They were never submitted to the Company; they were not in the form required by the Company, for notes of this class; they were payable to the agent personally, and he discounted them as a private transaction. The agent sent his personal note to the Company to cover the Fleming premiums. The notes of both the Flemings to White, the agent, and of White to the Company were never paid, and at the end of May, 1895, the policies were cancelled. A few days later one of the Fleming notes was sought to be renewed, but this was not done. In June the insured died of consumption, and his mother, to whom the policies had been assigned, sued the Company to recover their amount. The defence was a plea that, when a note given for payment of a premium is dishonored, the policy on account of which it was given is thereby made void. This is clearly and indisputably equity, for the policy of life insurance in question was a contract binding the company to pay a given sum on the decease of the person insured, on condition that a certain sum had been paid to the insuring company as premium. The note given by the Agent White was not payment of Fleming's premium, and that note was not paid when due. The person insured, James Fleming, knew from the receipts handed him for his notes, and also from the express terms endorsed on the policies, that the policies would be made void if the notes were not paid at maturity. When Fleming assigned the policies to his mother, two days before his death, the Company refused to record the assignment because of their having been cancelled for non-payment of premiums.

Chief Justice Meredith, who tried the case at Toronto, gave judgment in favor of claimant, although he admitted it was one of much difficulty. The whole case was submitted to the most eminent members of the Bar of Ontario. Mr. Christopher Robinson, Q.C., whose opinion and that of Mr. Nesbitt, Q.C., will command the universal respect of their profession. Mr. Robinson, Q.C. advises the London & Lancashire as follows:—

"I have not thought it necessary to investigate the case so thoroughly as to enable me to express any further opinion. It seems to me to be open to doubt whether it has been properly held upon the evidence that White's note, which the defendants said they would 'hold as requested,' was taken in satisfaction and discharge of the premiums. As I understand the facts,

whatever may have taken place between White and the Company, *the insured never paid his premium otherwise than by giving notes for it, which were dishonored*, nor was he ever led by the Company in any way to believe that he had done so or would be treated as if he had. He received nothing apparently but a receipt for the notes, followed by a policy stating that it would be void on non-payment of them.

"I am not satisfied that, under the circumstances, the insured has necessarily been relieved from the forfeiture by non payment of the notes, or that the dealings with them between him and White amounted as against the Company to a payment in cash of the premium."

Acting on the above, the Company has given notice of appeal, and the case will be heard early in the summer.

THE CONFEDERATION LIFE ASSOCIATION.

The 24th Annual Report of the Confederation Life will be found in full on a later page. As the general effect of periods of depression is to induce more thoughtfulness, when the contingencies of danger ahead begin to assume a threatening form, we are satisfied that this apprehension and the caution necessary for avoiding danger are to some extent favorable to life assurance. Some persons no doubt are made more reflective of the future in such times, and they insure their lives, or increase their assurance accordingly. On the other hand hard times diminish the resources of policyholders, and the scarcity of money in some cases leads to those not insured deferring applying for a policy from economic necessity. We regard then the moderate check put upon the advance being made by the life assurance companies in 1894 and 1895 as a very natural result of the depression felt in all lines of business.

The Confederation Life has little to complain of in this respect. The following table gives an exhibit of the business in 1894 and 1895:—

FINANCIAL MOVEMENT.

	1894.	1895.	Increase+ Decrease-
Premiums.....	\$807,735	\$852,874	+ \$45,139
Interest and Rents....	195,580	203,707	+ 8,127
Total Income.....	1,003,315	1,062,641	+ 59,326
Pays to Policy-holders....	435,251	397,073	- 38,178
Expenses and dividends....	215,643	211,410	- 4,233
Total outgo.....	650,895	608,483	- 42,412
Excess of income over outgo.	352,420	454,149	+ 101,729
Total assets.....	4,870,833	5,324,438	+ 453,605
Policy and other reserves....	4,339,215	4,757,451	+ 418,236
Surplus as regards Policy-holders.....	401,673	434,254	+ 32,581
Surplus over all liabilities, including capital stock.....	301,673	334,254	+ 32,581

MOVEMENT OF POLICIES.

No. of new policies taken....	2,248	2,421	+ 173
Sum assured under them....	\$3,528,204	\$3,544,920	+ 16,716
No. in force.....	10,625	17,590	+ 6,965
Sum assured in force.....	\$25,455,342	\$26,611,718	+ 1,156,376

It will be noted that the items indicating increased business, and larger income from investments, are larger