

letter Mr. Newman had become ill. Admissions were made by the parties as to that matter and are as follows:

"The late Mr. Newman took ill on the 14th day of April, 1908, and his illness was, within four or five days, recognized as paralysis. At that time he could move neither his right leg nor arm, but could speak, though imperfectly as to the pronunciation of some words, and his sentences were usually short. After the first three days of the paralysis, he could move his right leg and his right arm to a limited extent, but had not the free use of either. On the 28th day of April, the day the document (loan agreement) was signed, he took the pen in his right hand but was obliged to relinquish it, and he signed the document with his left hand. There was no day during his illness that he could not have signed with his left hand. Sir Frederick Taylor and Dr. James Taylor, two specialists, were called, and also Professor Osler, from Oxford. He remained under the doctors' care continuously, some days feeling better and other days worse. He never recovered, and died on the 30th April. The causes of his death, as certified by the physicians, were cardiac overstrain, cardiac failure, cerebral thrombosis, right-sided hemiplegia and syncope." It was further admitted that the loan agreement with the letter of the 16th April, reached Mr. Newman in England about the 25th April.

The loan agreement in question contains no clause relating to the reinstatement of the policies, but confines itself to such clauses as would refer to the acknowledgment of the loan and the manner of repayment, and the manner in which the policies may be dealt with in case of non-payment of interest. There is a clause that the agreement shall in no way affect or control the conditions of the policy or the forfeiture thereof by reason of the non-payment of premiums. There is a further clause which says that, if any part of the loan shall be unpaid at the time of decease of the party whose life is assured under the policies, or at the maturity of the policies, the company are to receive credit on the final settlement with the party entitled thereto, together with any interest and expenses accrued thereon. There is a memorandum on the bottom of this agreement below the signatures of the parties, which appears to refer to payments to be made as premiums on the defendant's policies. I may say, at once, that I am clearly of opinion that unless the agreement to reinstate the policies in question constituted a complete contract previous to the arrival of the loan agreement in England on the 25th April, 1908, the condition of health of Mr. Newman, at that date, would have the effect of preventing any completion of that agreement by signatures put to this by him, inasmuch as his health at that time was not such as to render it possible for him to proceed with the agreement to insure without notifying the company of the change in condition of his health. With regard to this and the question whether the agreement to reinstate the policies was a complete agreement anterior to the late last-mentioned, the letters which have been cited are to be taken into consideration. It may also be stated at once that the company had, previous to the date in question and at the time of sending off the letter of the 16th April, endorsed upon the policies, which were then

in their possession, the fact of their reinstatement, so that it appears that, as far as the reinstatement of the policies was concerned, no writing of any description remained to be executed between the parties.

In the deed of agreement, as I have stated, there was a clause which saved all the conditions of the policies. One of the conditions upon these policies was as follows: "Thirty days' grace are allowed for payment of premiums, but should the payment due upon a policy or any instalment thereof remain unpaid beyond that time, it may be revived at any period within six months upon evidence being given which shall be satisfactory to the directors that the party or parties continue to lead good assurable lives, and payment of the payments in arrears and a fine, etc."

Then follows provisions for revival of policies on which payment of premiums shall have remained in arrear for a longer period. This provision relating to fines appears to have been waived by the special contract made in this case, although the clause does indicate that the payment of premiums on the days specified was not essential to the keeping of the policy in force.

A test as to whether the contract between the parties for the revival of the insurance was or was not completed by the letters which have already been cited, may, I think, be found in the following illustration: Supposing Newman to have remained in good health but to have changed his mind as to taking up the insurance in question, could the company defendant have, under Newman's letter of March 31st, 1908, sued him for the premiums necessary to restore the policies in question, less the sum of \$2,000, which they had agreed to loan? If they could, it must have been that the contract was complete between them. By the first letter addressed by the company defendant to the plaintiff, there appears to have been an offer made for the revival of all these policies, and no offer of a loan of \$2,000 to aid in paying the premiums in arrears. Newman's letter of March 31st, while it begs an additional loan, absolutely and decisively accepts the proposal of the company with regard to the terms and conditions upon which the policies are to be renewed, and it leaves the question of an additional loan simply to the good will of the company defendant, and its desire to aid as much as possible in facilitating the payments in arrears. Newman says: "Will you please consider this final and proceed to re-instate all the policies." After the receipt of that letter, the company defendant did endorse upon the policies the fact that they were re-instated. It is true that, by the letter of the 16th April, they did include another condition, viz.: the reception of the balance of the premiums and the execution of the loan. But could that interfere with the contract to renew which was already made. It is, of course, plain that the renewal would depend upon the furnishing of the money necessary to pay the balance of the premiums in arrears, and also the execution of the loan, but that was not a necessary part of the contract to renew. It was the execution of the contract to renew, and if those conditions were not fulfilled, within a reasonable time, no doubt the defendant would be relieved from the obligation of its contract to renew. But that question does