

Loreburn, L.J., found that the parties had never been *ad idem* on the subject of the exact premium to be paid, and there was no evidence that the other terms of the policy were ever agreed to by the insured, or that he had ever agreed to take the usual form, whatsoever it might be.

The Supreme Court of Canada dealt with a similar question in *Donovan v. Excelsior Life Insurance Co.* (1916), 31 D.L.R. 113, 53 Can. S.C.R. 539, and held that there was not a completed contract of insurance between the company and the insured at the time of his death, inasmuch as the condition in the policy as to its delivery and surrender of the receipt during the lifetime and continued good health of the insured was not complied with. In this case the application stated the insured's age as 64, and the doctor's report as 65; the premium was paid and the policy written on the basis of the age being 64, and it was sent to the agent with instructions to reconcile the discrepancy. He ascertained that the age should have been 65 and obtained from insured the additional premium; a new policy was prepared and sent to the agent, who did not deliver it on learning that the insured was ill; she died a few days later.

The court distinguished *North American Life Insurance Co. v. Elson* (1903), 33 Can. S.C.R. 383, on the ground that in the *Donovan* case, the policy was sent to the company's agent not for unconditional delivery as in the *Elson* case, but to be delivered only upon the conditions stated in the letter from the company to their agent referring to it.

The facts of the *Elson* case were that the policy provided that it would not be in force until the first premium had been paid and accepted and the receipt delivered; the policy purported to be signed on September 27, 1894, and to cover insured until October 5, 1895; it was sent to the company's agent at Winnipeg on September 27, and forwarded by him to the insured, who received it on October 7; he died on September 30, 1897; it was held that the contract of insurance was completed on September 27, 1894, and that it had been in force 3 full years when insured died.

In the United States we find a case of *McMaster v. New York Life Ins. Co.*, (1901) 183 U.S.R. 25, in which the Circuit Court of Appeals held that the policy was not in force till the date of its execution, December 18, 1893, although it recited that the annual premium was to be paid on December 12 in each succeeding year; it was delivered and the first premium paid on December 26, 1893, and it was held to be still in force on the date of the death of the insured on December 18, 1894.

In the *Donovan* case the Supreme Court also distinguished the ruling in *Roberts v. Security Co.*, [1897] 1 Q.B. 111, where the policy recited that the premium had been paid, and that no insurance would be held to be effected until such payment; it was sealed with the seal of the company and signed by two directors and the secretary and remained in its possession. A loss occurred before payment of the premium, which in fact never was paid; it was held that there was a concluded agreement, and that the company had waived the condition as to payment of the premium.

The House of Lords in *Xenos v. Wickham* (1867), L.R. 2 H.L. 296, dealt with a case where a broker had submitted a slip for marine insurance, and the insurer prepared a policy in accordance; it was tendered to the broker,