

been made till the policy was issued; but before the policy was issued the whole benefit of the transaction had been made over to the pursuer; and, putting aside the paltry sum of £5 which he practically received for lending his name to the transaction, Mr. Fraser never had any interest in the policy whatever. It never was truly his property, because before it was issued he had parted with the right to it, and in respect of his doing so the money for the first premium, which he could never have found himself, had been paid by the pursuer. I think, accordingly, it must be said, in the words of the statute, that the pursuer was the person for whose use, benefit, and on whose account the policy was made and issued, and it is not alleged that the pursuer had any interest in the life of the Reverend Mr. Fraser, whom he says he did not know. I accordingly hold that this was a contract of insurance entered into contrary to the true intent and meaning of the Act quoted.

A second ground on which payment is resisted is that the proposal on which the policy sued on proceeded, and which forms part of the contract, contained false statements, and that, therefore, in accordance with the conditions in the policy, the policy is void. The policy proceeded on the narrative that the assured had lodged with the association a proposal and declaration dated August 8, 1903, and had made a personal statement to a medical officer of the association, and that the said "proposal and declaration and personal statement form the basis of this contract." Among the conditions which the policy is declared to be subject to is that quoted in the third statement of facts for the defenders, and in the proposal for the insurance there occurred the query and answers quoted in statement 2 for the defenders. It is said that the above statements are not true, in respect that the proposer only mentions one former proposal for insurance, whereas there were two, and that he says that his life had never been declined, whereas the defenders say it was declined by the General Life Assurance Company in 1903.

I am of opinion that both these answers are untrue in the particulars specified, for it is untrue in answer to a question whether the life has been already proposed for assurance, and if so at what office of offices, to state that it had only been proposed once for assurance when it had been proposed twice. It is proved by the evidence in the case that early in 1903 Mr. Fraser applied to the General Life Assurance Company, which I shall hereafter call the General, for an insurance on his life, in addition to the two insurances he already held for £250 each. It is also proved that this proposal was declined. It was contended by counsel for the pursuer, solely as far as I can see on the evidence of Mr. Barnes, that there was no declinature of the proposal in the proper sense of the word, because.

as Barnes says, Mr. Barr told him the General had only refused to accept the proposal because they considered they had a large enough sum on the life of a man of the age of 70, and that this does not amount to a declinature in the phraseology of insurance offices. Mr. Barr denies that he said anything of the kind, and the letter from the General to Mr. Mack, of May 18, 1903, seems to make it unlikely that Barnes' story is true, because in that letter they refer to Mr. Fraser's former policies and say that he must be re-examined. Now, if they had been of opinion that a further sum should not be taken on his life on account of his age, they would never have suggested the trouble and expense of a re-examination. It is apparent from the letter of June 9, 1903, that the General wrote to their agent, Mr. Mack, to make special inquiries about the life, and the result was that the life was declined. In support, however, of Mr. Barnes' and Mr. Fraser's *bona fides* it is said that no formal notice of declinature, which it is certainly usual to send out, was ever sent in this case, and that appears to be true; at least, it is not proved that any such was sent out. I cannot, however, but regard it as certain that both Mr. Barnes and Mr. Fraser knew perfectly well that for one reason or another the second proposal to the General in 1903 had been declined. I cannot believe that these gentlemen would have proceeded, in the state of Mr. Fraser's finances, to apply for another insurance of £500 from the defenders unless they had known that the proposal they had made to the General had been declined, and was not to be gone on with. I, therefore, cannot accept as a fact either (1) that they did not know that it had been declined, or (2) that they held themselves entitled to say it had not been declined because the reason of declinature was that the General would not accept a larger sum on so old a life.

I am of opinion in the first place that the declaration of the assured, taken in connection with the policy itself, constitutes an express warranty that the answers made by him to the various questions in the proposal were true; indeed, looking to the observations of Lord Blackburn and Lord Watson in the case of the Standard Life Assurance Company v. Weems, I cannot doubt that this is so; and being of opinion that these answers were not true, I think it follows that the policy must be held to be void.

His Lordship then gave judgment in favour of the defenders and ordered the pursuer to pay the costs of both parties.

CONSOLS.

The somewhat violent fluctuations in the price of consols which have been witnessed in recent years are disconcerting, and can not be regarded with any other feeling than one of dissatisfaction. There are many reasons to which we may attribute the extreme susceptibility of Consols. The fact that London is in a sense the clearing-house of the financial world is a potent factor in rendering this