

CONTRACTS OF LIFE INSURANCE AS AFFECTED  
BY THE LATE CIVIL WAR.

Two articles, somewhat elaborately discussing this subject, have recently appeared in and were apparently endorsed by the influential periodicals containing them. The first in the January number 1877 of the *American Law Review*, the other in the August-September number 1877 of the *Southern Law Review*. The discussion was professedly of the general subject heading this article, but each was in fact but a review and attempted vindication of the decision of the Supreme Court of the United States in the case of *New York Life Insurance Company v. Statham*, rendered at the October Term, A. D. 1876, of that court, and reported in the *American Law Register* of December 1876 (15 Am. Law Reg. N. S. 724). It will be attempted here to show that the essayists of these distinguished reviews, as well as the eminent writer of the opinion, which is the subject of their eulogy, respectively, have either failed to comprehend or that they choose to ignore and slur over the vital and only real issues involved in the case.

I. And first as to the opinion. It construes the contract made by the policy to be "an entire contract of assurance for life, subject to discontinuance and forfeiture for non-payment of any of the stipulated premiums." "Each instalment [to wit, the annual premium] is, in fact, part consideration of the entire insurance for life." \* \* \* "Promptness of payment is essential to the business of life insurance. \* \* \* Forfeiture for non-payment is a necessary means of protecting themselves [the insurance companies] from embarrassment. \* \* \* The case, therefore, is one in which time is material and of the essence of the contract. Non-payment at the day involves absolute forfeiture." \* \* \*

"This is an executory contract in which time is material. In such cases the prevalence of civil war does not excuse the performance of the condition nor prevent forfeiture from ensuing. There is no suspension and revival of the contract as in case of ordinary debts. \* \* \* Besides, the parties do not stand on equal ground in reference to such a revival. It would operate most unjustly against the company." \* \* \* "Therefore an action cannot be maintained for the amount assured on the policy of life insurance, forfeited (like this) by non-payment of the premium, even though the payment was prevented by the existence of the war."

\* \* \* "But the question arises, must the insured lose all the money that has been paid for premiums? It seems manifest that justice requires that they should have some compensation for the money already paid; otherwise the companies would be the gainers by their loss; and that from a cause for which neither party is to blame. \* \* \* So in the present case, whilst the insurance company has a right to insist on the materiality of time in the condition of payment of premiums \* \* \* they cannot with any fairness insist upon the condition as it regards the forfeiture of the premiums already paid. \* \* \* The insured has an equitable right to have this amount restored to him, subject to a deduction for the value of the assurance enjoyed by him whilst the policy was in existence. In other words, he is fairly entitled to have the equitable value of the policy \* \* \* with interest from the close of the war."

Such is this celebrated opinion in outline. Four out of the nine judges dissented from it; Judge STRONG characterizing the "*annuity doctrine*" (which is the base of the opinion), and the "*equitable value*" of a policy held to be forfeited, as being incomprehensible to him; and Judges CLIFFORD and HUNT ignoring the whole doctrine of the opinion and holding the payment of premiums to be a condition subsequent, and that *this condition* was an executory contract subject to be suspended during the existence of war and to revival when peace ensues, *as in the case of any other executory contract*.

The opinion, however, overlooks what was the fact in the case that the policy was not forfeited, for the premium was in fact tendered *ad diem*, in gold coin, to a resident agent of the company in Mississippi, whose agency had not been revoked. So the assumption that the contract of assurance made by the policy is executory and contingent upon the final completion of payment of all the premium instalments *ad diem*, even though as to some of them it may be illegal or impossible so to pay "from a cause for which neither party is to blame," is untenable; for the contract to insure for the term of his natural life in consideration of a certain annual premium is certainly an executed one, subject to be defeated by the failure to meet the subsequent condition of annual payments, without legal excuse, and by the fault of the insured; and the illustrations in support of it are inapposite and irrelevant. The opinion seems to us inconclusive and based upon false assumptions and strained analogies. What then are the real and vital points—or more technically, the legal

issues—involved in the *Statham case* upon the determination of which *only* any satisfactory conclusion can be reached? To ascertain this it is essential that a brief statement of the substantive facts be first made.

On the 8th of December 1851, the New York Life Insurance Company, by its written and printed policy of that date, insured the life of A. D. Statham for \$5000, upon the consideration of the payment of an annual premium of \$208.50. The policy issued in favor of, and the sum insured was to be paid to his wife Lucy B. or her legal representatives and in case of her death before the decease of her husband the sum insured was to be paid to her children, or to their guardian, if under age.

The period of insurance was for the term of his natural life. The annual premiums were duly and regularly paid up to the 8th of December 1861, and *on that day* the premium for the ensuing year was duly tendered *in gold coin* to one Brown, who was then, and from a period antedating the policy had been, the resident agent of said insurance company at Grenada, Mississippi. The agency of Brown was not revoked by the company or otherwise, unless the existence of war operated as a revocation. Subsequently to said tender and during the period for which the annual premium was tendered, to wit, on the 20th July, A. D. 1862, A. D. Statham died. His wife died previously, to wit, in 1856. The suit against the company was by the children and heirs of Lucy B. Statham, the beneficiary in the policy; and was in the nature of a chancery proceeding for relief against the forfeiture of the policy on the ground of excusable non-payment of premium; and some jurisdictional questions were raised by the company, but these are ignored by the Supreme Court in its decision and therefore require no further mention. What is the liability of the company, if anything, under the foregoing state of facts?

It is plain that the questions herein involved are these, and these only:—

1. The construction of the contract of assurance.
2. The effect of war upon it as to mutual obligation.
3. Was the agency revoked by the war? and if not did tender of the premium *ad diem* prevent forfeiture and continue the liability of the company under the policy?

I. *The construction of this contract.*—The contract of life assurance has been well defined to be “that in which one party agrees

to pay a given sum, upon the happening of a particular event, contingent upon the duration of human life, in consideration of the immediate payment of a smaller sum, or certain equivalent periodical payments by another:" Bunyon on Ins. 1; Ellis on Ins. 101; Angell on Ins., sect. 274; Phillips on Ins., sect. 147; 3 Kent's Comm. 439; *Paterson v. Powell*, 9 Bing. (Engl.) 320. From the very definition it appears clearly to be an *executed* contract with subsequent conditions for the non-performance of which, without valid excuse, it is subject to be defeated. The failure or neglect or refusal to perform the conditions—in this case the payment of annual premiums (for no other breach of conditions was alleged)—without valid or legal excuse, may affect the liability of the company on the contract, but does not change its character, nor make it executory. The promise to pay the annual premiums is not executed until they respectively become due; and so also the promise of the company to pay the sum insured, upon the conditions and for the consideration named in the policy, is not executed until the death occurs, that both concur in consummating the agreement that they will. It might as well be claimed that the main contract is executory as to the company, because the insured committed suicide when he had agreed that if he did the policy should be forfeited.

II. If then the contract is an executed one, subject to the performance of certain conditions therein agreed upon, what was the effect of the war upon it as to mutual obligation?

It is not worth while to discuss the question as to whether the contract was abrogated by the war, for although this was weakly held in one or two cases upon supposed *political* considerations, as in *Taig v. N. Y. Life Ins. Co.*, 2 Ins. L. J. 861, yet it has been repeatedly held to the contrary by the courts of several states: *Statham v. N. Y. Life Ins. Co.*, 45 Miss. 592; *Sands v. N. Y. Life Ins. Co.*, 50 N. Y. 626; *Cohen v. N. Y. Mut. Life Ins. Co.*, 50 N. Y. 610; *Manhattan Life Ins. Co. v. Warwick*, 20 Gratt. (Va.) 614; *N. Y. Life Ins. Co. v. Clopton*, 7 Bush (Ky.) 179; and also by the federal courts: *Hamilton v. N. Y. Mut. Life Ins. Co.*, 9 Blatchf. 234; *Semmes v. Hartford Ins. Co.*, 13 Wall. 158; and indeed *in this case* by holding the contract as remaining in force until the time of a default, which time was several months after the existence of war (to wit, December 8th 1861), it is practically decided that there was no dissolution or abrogation of the contract by the intervention of war alone. But as this case also

holds that in *this instance* being (as is said) an executory contract in which time is material, the prevalence of civil war does not excuse the performance of the condition nor prevent forfeiture from ensuing, and that there is no suspension and revival of the contract as in case of ordinary debts, it is probably well enough to say that all the state courts and federal courts above cited have held to the contrary, and even the Supreme Court itself, in a case perfectly analogous in principle: *Semmes v. Hartford Ins. Co.*, 13 Wall. 158. It would seem to be, therefore, beyond reasonable question that the intervention of war neither abrogated nor dissolved the contract, and that there was a suspension of the right to require the absolute performance of the condition and a revival of the right to perform upon the removal of the intervening obstruction by the restoration of peace. And it may well be doubted whether any tender of payment or offer to perform was necessary during the war in order to preserve the contract and liability in full force; or that a payment within a reasonable time after close of war would not be sufficient, if party lived, to continue policy in force: 13 Wall. 158.

III. The effect of the war upon the agency, and of the tender of payment of premium *ad diem* to prevent forfeiture.

Concerning the effect of the war upon the agency and whether the existence of war operates as a revocation, for it is not pretended that it was otherwise revoked in this case, it seems hardly necessary to cite authorities, but it may nevertheless be said that they are uniform to the effect that war does not operate as a revocation of agency *previously existing*, as in this case.

A distinction is made between agencies created *before the beginning of war* and such as are attempted to be constituted *after hostilities have actually commenced*. The doctrine is thus stated by Judge DAVIS (*United States v. Grossmeyer*, 9 Wall. 75): "We are not disposed to deny the doctrine that a resident in the territory of one of the belligerents may have, *in time of war*, an agent residing in the territory of the other, to whom his debtor could pay his debt in money, or deliver to him property in discharge of it; but in such a case the agency must have been created before the war began, for there is no power to appoint an agent for the purpose after hostilities have actually commenced, and to this effect are all the authorities:" *United States v. Grossmeyer*, *supra*; *Ward v. Smith*, 7 Wall. 452, 453; *Hamilton v. N. Y. Mut. Life Ins. Co.*, 9 Blatchf. 234;

*Denneston v. Imbrie*, 3 Wash. C. C. 403; *Conn v. Penn*, 1 Peters C. C. 496.

To the same effect are the following cases in state courts: *Sands v. N. Y. Life Ins. Co.*, 50 N. Y. 626; *Manhattan Life Ins. Co. v. Warwick*, 20 Gratt. 614; *N. Y. Life Ins. Co. v. Clopton*, 7 Bush (Ky.) 179; *Kershaw v. Kelsey*, 100 Mass. 501; *Robinson v. Inter. Life Ins. Co.*, 42 N. Y. 54; *Buchanan v. Curry*, 19 Johns. (N. Y.) 137.

Chief Justice KENT in the last case reviewed all the authorities, and so also was this done by the court in *Kershaw v. Kelsey*, 100 Mass. 501, and the distinction above suggested is clearly made and maintained.

Neither KENT (in his Commentaries) nor Parsons (in his work on Contracts) nor Smith (in his Mercantile Law) nor any text-writer of authority, mention the existence of war as effecting or operating as a revocation of the authority or a termination of the agency.

In one or two recent cases it has been *assumed*, but this without principle or authority to sustain it.

And the agent might lawfully receive premiums on policies *in force before the war*, and such the insured might lawfully pay: *Manhattan Life Ins. Co. v. Warwick*, 20 Grattan (Va.) 614; *Sands v. N. Y. Life Ins. Co.*, 50 N. Y. 626. And a *tender to such an agent* and his refusal to receive the premium \* \* \* would save a forfeiture of the policy: *Hamilton v. Mutual Life Ins. Co.*, 9 Blatchf. 234.

The effect of the tender of payment of the premium *on the day of its being due*, in gold coin, to the company through its agent, whose authority was not revoked either by the act of the company, or by the operation of war, would certainly avail to prevent forfeiture, even under the view taken in the opinion of the Supreme Court that such payment is absolutely required. But the opinion nevertheless assumes that the condition was forfeited, presumably under the idea that payment was illegal. But if the agency continued during the war, as it certainly did, the payment might legally have been tendered and received (20 Grattan 614; 50 N. Y. 626); and this notion of payment being illegal is unsupported by principle or authority.

It thus appears, as we hope we have convincingly shown by this review, that the decision in the Statham case, although by the highest court of the country, is not an authority to guide other courts in