Case No. 7,221.

JARMAN v. ST. LOUIS MUT. LIFE INS. CO.

{1 Flip. 548;[1] 5 Ins. Law J. 504; 22 Int. Rev. Rec. 162; 3 Cent Law J. 303; 1 Cin. Law Bul. 123.}

Circuit Court, W. D. Tennessee. May 8, 1876.

LIFE INSURANCE—FORFEITURE FOR NON-PAYMENT OF INTEREST ON PREMIUM NOTE—DAYS OF GRACE.

1. Premium note, when negotiable, is entitled to grace as other commercial paper.

[Cited in Pendleton v. Knickerbocker Life Ins. Co., 7 Fed. 179.]

2. A tender of interest on the note, within the days of grace, will prevent a forfeiture for non-payment of interest at maturity of note.

Action on a policy of insurance. The contract was made December 19, 1867. It was agreed that for an annual premium of $339.36, to be paid for ten successive years, to insure the life of Robert F. Jarman for the use of plaintiff {Rosanna Jarman}, in the sum of $5,000. This was to be paid to plaintiff on said Robert attaining seventy years, or at his death, should he die before the happening of such event. The policy was subject to the two following provisos: (1) That if default should be made in the payment of any of the annual premiums, such default should not work a forfeiture, but the amount insured should be commuted or reduced to such proportional part of the whole sum insured as the sum of the annual payments should bear to the sum of the ten annual payments agreed to be paid. (2) If the insured should fail to pay annually, in advance, the interest on any unpaid note or loans which might be owing to the company on account of any of the above mentioned premiums, the company should not be liable for the payment of the sum assured, or any part thereof, and the policy should cease and determine. The assured paid the two first annual premiums, and then allowed his policy to be commuted. It was reduced to $1,000, one-half having been paid in cash, the balance by note. The last settlement with the company was had December 19, 1871, when the following note was given: "St. Louis, December 19, 1871. Twelve months after date, for value received, I promise to pay to the St. Louis Mutual Life Insurance Company $291.55, being for part premium due on policy No. 9,378 of said company, on the life of Robert F. Jarman, dated December 19, 1867, which policy and all payments or profits which may become due thereon, are hereby pledged and hypothecated to said company for the payment of this note. (Signed) R. F. Jarman." On the 21st of December, 1872, the insured telegraphed his friends in Washington to tender the company another year's interest upon his note. The tender was made before the close of office

hours, but was refused upon the ground that the policy was lapsed, and that the forfeiture could not he waived without a new examination. The assured died upon the next day, which was Sunday. The parties having waived a forfeiture, the case was argued and submitted to the court upon the facts above stated.

Gantt, Patterson & Lowe, for plaintiff.

Kortrecht & Craft, for defendant.

BROWN, District Judge. The first two annual premiums were paid, one-half in cash and one-half by note. After the policy was commuted, the outstanding notes were consolidated into one, upon which interest was paid annually in advance, and the policy thus kept alive for the reduced sum. There appears also to have been a small credit upon the note, either of cash or dividend. The interest was paid in advance upon the note of December 19, 1871. This note was negotiable, and the maker was entitled to grace. It matured December 21, 1872, the 22d being Sunday. Had the assured elected to pay the note in cash, he might have done so on that day. He could not have been considered in default for failing to pay interest on the 19th; for, as the interest had been paid in advance, it must be presumed to have been paid in full up to the maturity of the note. I understand it to be the universal, custom at the banks, in discounting commercial paper, to reckon interest upon the days of grace as well as upon the sixty or ninety days for which the bill may be discounted. When interest is paid in advance, that is the legal inference, as the paper does not begin to draw interest again until maturity; that is, until the last day of grace. 2 Pars. Notes & B. 398. But a tender of principal and interest on the 21st could have effect only upon the theory that no forfeiture had taken place by non-payment of interest on the 19th; for nothing less than the assent of the company could waive such forfeiture. But if no forfeiture had taken place on the 19th, the tender of interest on the 21st was good.

But the course of dealing had been such as to authorize the insured to infer that the company would not demand payment of the note. The policy expressly provides against a forfeiture for non-payment of the premium, for part of which a note was given, and, as matter of fact, the tender was not objected to upon the ground that it did not include principal as well as interest, but solely because it was not made upon the 19th. As before suggested, I think the maker was entitled to the same time to pay the interest as he would have had to pay the principal, and that defendant was bound to accept the tender. The amount of policy was commuted to 81,000. Deducting the note—$291.55—there remained $708.45, for which amount, with interest from March 22, 1873, or ninety days after notice of proof of death, the plaintiff is entitled to judgment. Judgment accordingly.

NOTE [from original report in 3 Cent. Law J. 303]. This case presents a novel, phase of the question now so frequently occurring in life insurance cases, of attempted forfeiture for non-payment of interest on a premium note. The policy contained the same two provi-

sions, apparently conflicting, which existed in the cases of St. Louis Mut. Life Ins. Co. v. Grigs by [10 Bush, 310]; Russum v. St. Louis Mut. Life Ins. Co. [1 Mo. Ann. 229]; and Yerger v. Same [3 Cent. Law J. 436]. It will be remembered that in the Grigsby Case the Kentucky court of appeals granted equitable relief against the attempted forfeiture, while in The other two cases it was held that in courts of law these two provisions may well stand together, even to the extent of forfeiture of the commuted policy, in case the interest on the premium note remains unpaid. In the case now reported, the same court which in the Yerger Case supported the forfeiture has relieved against it on the ingenious theory that the interest, was not due and payable at the hour arbitrarily fixed by the policy for the payment of premium, but might be paid within the customary days of grace allowed for the payment of the principal; the premium note being negotiable, and therefore entitled to grace. The note in question was not in form negotiable under the law merchant; but it was claimed and conceded at the trial that it was, in fact, made at Memphis, and was therefore governed by the statutes of Tennessee, which make all notes for the payment of money negotiable.

It is difficult to read this opinion without seeing in it another evidence of the inclination of all courts, even those of law, to relieve against forfeitures, when it can be done without disregarding the right of parties to make their own contracts.

[1] [Reported by William Searcy Flippin, Esq., and here reprinted by permission.]