Case No. 10,128.

NETTLETON v. ST. LOUIS LIFE INS. CO.

{7 Biss. 293;[1] 6 Ins. Law J. 426.}

Circuit Court, D. Indiana. Oct., 1876.

CONFLICT BETWEEN DIFFERENT CLAUSES IN LIFE INSURANCE POLICY.

1. Two clauses in such a policy, one "that no failure to pay any premium after the first should work a forfeiture of the entire policy, but the whole sum should be reduced in ratio to the number of premiums paid," and the other, that on failure to pay interest on unpaid policy notes, the policy should cease and determine, are not in conflict.

2. Semble—That equity might relieve.

Action on a policy of insurance issued by the St. Louis Mutual Life Insurance Company, on the 28th of July, 1866, on the life of Thomas A. Nettleton for the benefit of his wife {Louisa A. Nettleton}, the plaintiff. Subsequently the St. Louis Mutual Life Insurance Company was merged into and consolidated with the defendant company, which latter company assumed all the debts and liabilities of the former, and succeeded to all its rights and franchises. The sum insured was $5,000. The first premium of $283.90 was paid when the policy issued, and that was to be followed by nine more annual premiums of a like sum. The policy was on the commutation or non-forfeiting, ten year plan, and provided for the absolute payment of the ratio of the full amount insured, upon payment annually of the premium due, and that no failure to pay any premium after the first should work a forfeiture of the entire policy, but the whole sum should be reduced in ratio to the number of premiums paid. The policy contemplated the half cash and half note system of paying premiums, and gave the company a lien on the amount due the assured for all unpaid notes taken on account of premiums. The policy also contained the

following clause: "In case the said assured shall fail to pay annually in advance the interest or any unpaid notes on loans, which may be owing by said insured to said company on account of any of the above mentioned annual premiums, or any part thereof, then, and in such case the said company shall not be liable to the payment of the sum insured, or any part thereof, and this policy shall cease and determine." On the 31st day of July, 1872, the assured owed the company $737.81, on account of premiums, for which sum he gave his note at twelve months. A clause was inserted in this note pledging and hypothecating the policy for its payment. This note, upon which nothing was ever paid, continued the policy in force until the 31st day of July, 1873. The assured died on the 14th day of May, 1875. To the complaint containing a statement of these facts the company answered, setting up the non-payment of advance interest due on the note on the 31st day of July, 1873, and the 31st day of July, 1874. The plaintiff demurred to the answer.

Hovey & Menzies, for plaintiff.

Denby & Kumler, for defendant.

GRESHAM, District Judge. It was insisted by the plaintiff's counsel that the interest was a mere incident to the note, and a part of it, that the parties could not have intended that the failure to pay interest on the note should forfeit the policy when neglect to pay the principal was not to have that effect; and that the interest forfeiting clause was in conflict with the provision which declared that the policy should be commuted, and not forfeited for failure to pay premiums or the principal of premium notes. 16 I see no conflict in the provisions of this policy. The assured expressly agreed that he would pay interest annually on all notes given on account of premiums, and that a failure so to pay interest should forfeit his policy. In the face of that clear and explicit agreement it will not do to say that the interest was a mere incident to

the note and a part of it, and that by the terms of the policy, a failure to pay premiums or premium notes was not to work a forfeiture. To read this policy as if the interest forfeiting clause were not in it, would he to make a new and substantially different contract for the parties, which courts are not at liberty to do. This company did business on the mutual plan. Premiums were paid, half in cash and half in notes, and it was, of course, indispensable to provide a fund out of which losses arising from death might be promptly paid. To provide such a fund, the company's plan of business contemplated and required the investment of the cash half of its premiums and the prompt annual payment of the interest on these investments, as well as the prompt annual payment of the interest in advance on its premium notes. It is not difficult to see that the success of the company depended largely upon the annual collection of its interest. If one member might let his premium note run without paying the annual interest, all might. The company could not have long existed and paid its current death claims with this wide departure from the plan of its organization.

So far, then, from the interest forfeiting clause being in conflict with any other part of the policy, it was a wise and necessary provision. I have carefully read the opinion of the Kentucky court of appeals in the case of the St. Louis Mut Life Ins. Co. v. Grigsby [73 Ky. 310], upon which counsel relied with apparent confidence. In that case it was held that the policy was hypothecated for the payment of the note and interest, and that the company was amply secured. Although this decision comes from a court of great respectability, for the reasons already given, I can not follow it.

In the case at bar, when the assured died, two years' interest was due and unpaid on the note given for $737.81. It does not appear from the pleadings that the policy was entitled to any dividend in the hands of the company. In the Grigsby case the dividends

due the assured were equal to the interest due on the premium note, less $6.97. I do not say that a court of equity would not be justified in relieving a party from forfeiture under such circumstances.

To have forfeited the policy in that case, when the premium in the hands of the company due the assured was within $6.97 of being enough to pay the interest due on the note, would seem to have been against conscience, but the decision was based upon other grounds. Courts of equity sometimes "relieve against forfeiture when the amount is greatly disproportionate, and the forfeiture is designed as mere security so that full compensation can be made." Story, Eq. Jur. § 1314, 1316.

The demurrer is overruled.

NEUTRALITY LAWS. See Append. Fed. Cas.

[1] {Reported by Josiah H. Bissell, Esq., and here reprinted by permission.}