[HIGH COURT OF AUSTRALIA.]

NEWBON . . . . . APPELLANT;
PLAINTIFF,

AND

CITY MUTUAL LIFE ASSURANCE SOCIETY LIMITED . . . . . RESPONDENT.
DEFENDANT,

ON APPEAL FROM THE SUPREME COURT OF TASMANIA.

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MELBOURNE, *May* 1, 23.

Rich, Starke, Dixon and Evatt JJ.

Life Assurance—Policy—Premiums—Payment—Condition of policy—Default in payment—Policy voidable, not void—Election to determine policy—Reversionary bonus certificates forwarded to assured—Effect—Estoppel—Assurer not estopped from asserting that policy had lapsed.

On 1st November 1928 the respondent Society insured N.'s life for £500 in consideration of the payment of quarterly premiums of £2 10s. The policy provided that if the premiums or any of them were not paid on the due dates or within one calendar month thereafter, then the policy should be void. N. failed to pay a premium falling due on 1st August 1930. The Society wrote informing him that the premium was overdue, and that if he wished to retain the benefit of the policy he must apply for its reinstatement; an application form was enclosed. On 20th December 1930 N. paid the premium, but did not sign the application for reinstatement. On 31st December 1930 the Society wrote acknowledging receipt of the premium and informing N. that a further quarterly premium had fallen due on 1st November, and that on receipt of the premium and a signed application for reinstatement, the question of reinstatement of the policy would be placed before the directors. N. took no steps in response to the letter, and paid no further premiums. Nevertheless the Society sent him every year a reversionary bonus certificate until his death on 1st June 1934.

Held that when a premium remained unpaid for more than a month from its due date, the policy became, not void, but voidable at the election of the

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Society, but that the Society had elected to treat the policy as avoided, and that such election was final when communicated to the assured.

Held, further, that it ought not to be inferred that the deceased had abstained from insuring his life elsewhere because he believed the policy was still in force, and no estoppel arose from the issue of bonus certificates by the Society after the assured's failure to pay premiums as they fell due.

Decision of the Supreme Court of Tasmania (*Crisp* J.) affirmed.

APPEAL from the Supreme Court of Tasmania.

Henry Newbon, as administrator of the estate of Wessen Richard Newbon deceased, brought an action in the Supreme Court of Tasmania against The City Mutual Life Assurance Society Ltd.

The statement of claim was in substance as follows :—1. The plaintiff is the administrator of the estate of Wessen Richard Newbon late of Lucaston in Tasmania deceased. 2. On 1st November 1928 Wessen Richard Newbon insured his life with the defendant company for the sum of £500, and the company granted him a policy No. 405289 dated 16th January 1929 in consideration of the payments made and to be made as therein mentioned. 3. Wessen Richard Newbon died on or about 1st June 1934, while the policy was still in force. 4. The defendant company has repudiated the policy of insurance and denied its existence, and neglected and refused to pay to the plaintiff, as such administrator, the amount of the policy and the bonus additions thereto.

The plaintiff's claim, as such administrator, is for £606 17s. 6d., being £500, the sum assured under the policy of insurance, and £106 17s. 6d., bonus additions thereto, or their present value.

By its defence the defendant admitted pars. 1 and 2 of the statement of claim and admitted that Newbon died on or about 1st June 1934, but denied that the policy of insurance was then in force. It denied that Newbon was at the date of his death a member of the defendant Society, and denied that the bonus additions referred to in the statement of claim were payable to the plaintiff, the deceased not having complied with the conditions of the policy.

By his reply the plaintiff joined issue upon certain paragraphs of the defence, and said, in substance, that the defendant company was estopped from saying that the policy upon which the plaintiff claimed had lapsed, because the defendant company retained in its possession without any explanation the sum of £2 10s. paid by

Wessen Richard Newbon to the company by way of premium on the policy in December 1930, and because the defendant company continuously represented to Newbon deceased that the policy was still in existence, by issuing to the said Newbon the annual bonus certificates of the company in respect of the policy, and by so doing induced the said Newbon to rely upon the policy as being still in existence.

The policy of insurance was in the following terms:—"In pursuance of the proposal for this policy and of the personal statement and declaration made in connection therewith, which are hereby declared to be the bases of and shall be held to form part of this contract, and in consideration of the payment by the member named in the first column of the schedule hereunder of the premium specified in the second column of the said schedule on the days specified in the third column of the said schedule in each year during the life of the said assured, named in the first column of the said schedule, the City Mutual Life Assurance Society Limited (hereinafter called the Society) will (subject to the conditions on the back hereof, which shall be held to form part of this policy) on the death of the said assured pay the sum specified in the fourth column of the said schedule, together with vested bonuses, to the said member or his/her executors, administrators or assigns on production of this policy duly discharged.

The risk under this policy commences from 1st November 1928."

The relevant conditions of the policy were as follows:—1. The amount assured shall not become payable until proof of age, identity, and death of the assured have been furnished to the satisfaction of the directors of the Society. 2. Provided always that if the within mentioned premiums or any one of them be not duly paid on the days within named or within one calendar month thereafter (subject as hereinafter mentioned), or if any information in the within mentioned proposal or personal statement shall be found to be withheld, omitted, or misrepresented, or if the assured shall, whether sane or insane, die by his/her own hands within one year from the commencement of the risk, then, and in any such case, the within policy shall be void and the benefits assured shall be forfeited, and all claims on or interest

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in the assets of the Society shall cease and determine and any premiums paid in respect thereof shall be retained by the Society. 3. Provided further that if the within policy be kept in force for two years from the commencement of the risk, the non-payment of any subsequent premium shall not void the same so long as the surrender value, as fixed by the Board, after deduction of any loan or charge thereon, is sufficient for the payment of any such subsequent premium. The Board may appropriate a sufficient portion of such surrender value towards the payment of any premium due, and any so appropriated shall bear compound interest at such rate as the Board shall determine, and shall be a charge upon the policy, and may be deducted from any moneys payable under the within policy. 4. Provided further that the assets of the Society shall alone be liable under the within policy and that the assurance hereby made shall at all times and under all circumstances be subject to the articles of association of the Society.

On 11th September 1930 the Society, by its manager, wrote to the assured:—"Overdue Notice.—Policy No. 405289 Premium £2 10s. due 1 Aug. 1930.—Dear Sir,—I beg to inform you that the above-mentioned premium not having been paid, is now overdue. If it is your intention to retain the valuable provision secured by the policy it is necessary that an application for reinstatement be made. Application form is enclosed. Kindly sign in the presence of a witness and enclose with remittance for the premium." The application form for reinstatement recited that the policy had lapsed, and required a declaration that the assured was in as good health as when examined previously. It also contained the clause "This declaration shall form the basis of the contract with the said Society for the reinstatement of the said policy."

The receipt dated 20th December 1930 was in the following terms:—"Received from Mr. W. R. Newbon the sum of two pounds ten shillings and.....pence for remittance to the City Mutual Life Assurance Society Ltd. on account of Policy No. 405289 and on the understanding that the issue of this receipt does not bind the Society to accept the amount should the policy not be in force . . . Renewal receipt will be sent direct from the Melbourne office of the Society within seven days provided the policy be in full benefit."

On 31st December 1930 the Society wrote to the assured :—" We duly received through our agent, Mr. Davidson, remittance in payment of the quarterly premium of £2 10s. which fell due on the above policy on the 1st August last, for which we thank you. A further quarterly premium of £2 10s. fell due on 1st November, and we shall be glad to receive remittance for this amount, together with the attached application for reinstatement duly signed by you in the presence of a witness. On receipt of this remittance and the application for reinstatement duly signed, the question of the reinstatement of your policy will be placed before our directors."

Baker, for the appellant. The only issue is the question of estoppel raised in the reply. The assured paid a premium of £2 10s. for which a receipt was given on 20th December 1930. That premium is still retained by the Society. Condition 3 of the policy provided that the policy should not be forfeited for non-payment of premiums, but the surrender value should be attributed to the premiums as far as they will go. The receipt and retention of the premium on 20th December meant that the Society had elected to affirm the policy and that it had been in force for two years, and according to the Society's own statement it did not lapse until August 1931. The plaintiff relies upon an estoppel arising out of the representation that the policy was actually in force. The representations of the Society led the deceased to believe that the policy was actually in force (*Carr* v. *London and North-Western Railway Co.* (1) ; *Seton* v. *Lafone* (2)). The only conclusions to be drawn from sending the bonus certificates are either that they were sent by inadvertence, or else that they were sent knowingly intending the deceased to rely upon them, and expecting him to make an application for reinstatement. The Court is only concerned with the effect the document is likely to have on the mind of the person who received it. On its face the assured would be led to believe that he was insured. The last payment carries the policy up to 30th November 1930. The conduct of the deceased in preserving the certificates is sufficient to support a finding of fact that the policy was still in existence (*Knights* v. *Wiffen* (3)). The assured adopted the line of a man

(1) (1875) 10 C.P. 307, at pp. 316, 318.
(2) (1887) 19 Q.B.D. 68.
(3) (1870) L.R. 5 Q.B. 660, at p. 665.

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whose life is covered by insurance (*Dixon* v. *Kennaway & Co.* (1); *Monarch Motor Car Co.* v. *Pease* (2); *Thompson* v. *Palmer* (3); *Craine* v. *Colonial Mutual Fire Insurance Co.* (4); *Greenwood* v. *Martins Bank Ltd.* (5); *Evans* v. *James Webster & Bros. Ltd.* (6); *The Equitable Life Assurance of the United States* v. *Bogie* (7); *Wing* v. *Harvey* (8); *Silver* v. *Ocean Steamship Co.* (9)).

Sholl, for the respondent. There was no estoppel in this case. There was no conduct on the part of the Society which would lead a reasonable man to alter his conduct or position, and there was no intention on the part of the company which would induce a man to do so. There was no proof of detriment to the assured. A more onerous contract cannot be set up by estoppel than could originally have been set up. In fact the Society wrote determining the contract. The notice to the assured shows a clear election to treat the policy as lapsed. The assured had no reason to think that the policy had been in force for two years. On the construction of the letters there is no statement that the policy lapsed in 1931. The assured was told that the policy had lapsed, and that if he wanted it reinstated he would have to make an application for reinstatement and sign a statement as to his health. The assured cannot be heard to say that he did not read the letters telling him the policy had lapsed (*Handler* v. *Mutual Reserve Fund Life Association* (10)). The true view is that the policy determined upon the happening of this condition. It is void, not voidable (*Quesnel Forks Gold Mining Co.* v. *Ward* (11)).

[STARKE J. referred to *McCormick* v. *National Motor and Accident Insurance Union Ltd.* (12).]

The provision for avoidance here is sufficiently clear to make the policy lapse. There was no satisfactory evidence that the assured was " put to rest " by receiving the bonus certificates. The onus of

(1) (1900) 1 Ch. 833, at pp. 840, 842.
(2) (1903) 19 T.L.R. 148.
(3) (1933) 49 C.L.R. 507, at pp. 521, 527, 528, 549.
(4) (1920) 28 C.L.R. 305.
(5) (1932) 1 K.B. 371.
(6) (1928) 45 T.L.R. 136.
(7) (1905) 3 C.L.R. 878.
(8) (1854) 5 DeG. M. & G. 265; 43 E.R. 872.
(9) (1929) 46 T.L.R. 78, at p. 83.
(10) (1904) 90 L.T. 192.
(11) (1920) A.C. 222.
(12) (1934) 40 Com. Cas. 76, at p. 87.

proving this is upon the assured (*Greenwood* v. *Martins Bank Ltd.* (1); *Thompson* v. *Palmer* (2)). The onus lies on the representee to show actual detriment. It is not sufficient to prove that he has been deprived of a mere chance of doing an act (*Morrison* v. *Universal Marine Insurance Co.* (3); *Spencer Bower* on *Estoppel by Representation* (1923), pp. 142 (*l*), 366 (*b*), 371, 372; *Foster* v. *Tyne Pontoon and Dry Docks Co.* (4); *Compania Naviera Vasconzada* v. *Churchill and Sim*; *The Same* v. *Burton & Co.* (5); *Simm* v. *Anglo-American Telegraph Co.*; *Anglo-American Telegraph Co.* v. *Spurling* (6)). It is not permissible for the assured to seek to acquire a cause of action for the recovery of a sum of money payable for premiums, which, *ex hypothesi*, he has not paid (*Newis* v. *General Accident Fire and Life Assurance Corporation* (7)).

Baker, in reply. The letters do not amount to a clear and unequivocal statement that the policy had lapsed. If the policy had lapsed, the premium should have been returned. The last communication is a request for the payment of a premium as for an existing policy. There is an unequivocal representation that the policy was on foot, and the assured relied upon that. There was a detriment in law to the assured. The test is, did he lose a fair chance of obtaining something, not did he in fact suffer some detriment.

Cur. adv. vult.

May 23.

The following written judgments were delivered:—

RICH, DIXON AND EVATT JJ. In the action out of which this appeal arises the appellant sued as administrator of his son's estate to recover from the respondent Society the amount payable under an insurance policy upon his son's life. The deceased at the age of twenty-three died by drowning on 1st June 1934. He lived at Lucaston, in Tasmania, where he worked upon his father's orchard. Before he was twenty-one, he had effected an insurance upon his life with the respondent Society for £500. The risk took effect on

(1) (1932) 1 K.B. 371.
(2) (1933) 49 C.L.R. 507.
(3) (1873) L.R. 8 Ex. 197.
(4) (1893) 63 L.J. Q.B. 50, at p. 55.
(5) (1906) 1 K.B. 237.
(6) (1879) 5 Q.B.D. 188, at p. 211.
(7) (1910) 11 C.L.R. 620, at pp. 625, 628.

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1st November 1928. The policy expressed an agreement on the part of the Society, in consideration of a quarterly premium of £2 10s., to pay on the assured's death that sum together with vested bonuses. It further provided that, if the policy were kept in force for two years from the commencement of the risk, the non-payment of a subsequent premium should not void it if the surrender value were sufficient for the payment of the premium. It also provided, however, that if any premium was not paid within one month of the due date, the policy should be void and the benefits assured should be forfeited, and all claims on or interest in the assets of the Society should cease and determine, and any premiums paid in respect thereof should be retained by the Society. The deceased paid the first seven quarterly premiums within the prescribed time, but he made default in respect of that payable on 1st August 1930. He received a letter from the Society informing him that the premium was overdue and that, if he intended to retain the benefit of the policy, he must apply for its reinstatement. An application form was enclosed which contained a recital that the policy had lapsed, and a declaration of health and a warranty against death by the assured's own hand within twelve months of reinstatement. The assured did not sign this form, but, on 20th December 1930, he did pay the premium to the Society's Launceston agent, who gave him a receipt containing a statement that the sum was accepted for remittance to the Melbourne office on the understanding that the issue of the receipt did not bind the Society to accept the amount should the policy not be in force.

The Melbourne office sent the assured an acknowledgment for the money, but wrote that another quarterly premium had fallen due on 1st November 1930 on the receipt of which and an application for reinstatement the question of reinstating the policy would be placed before the directors. A form of application was again enclosed. The assured did nothing in response to this letter. Shortly afterwards, an agent of the Society interviewed him and told him the policy had lapsed but could be revived. The assured said a whole life policy was of no use to him, the trouble of scraping together the premiums was too great and it would not be paid until he was dead. He paid no further premiums. Nevertheless he

continued every year until his death to receive from the Society a reversionary bonus certificate in respect of his policy. The last of these bonus certificates was sent to him during the month of May 1934, that is, immediately prior to his death.

No evidence was given on behalf of the Society explaining how this came to be done. But in letters written after the assured's death the Society said that the policy was written off as lapsed in August 1931 owing to non-payment of the premium due on 1st August 1930 and that the premium (which had not been returned) had been held in a suspense account.

Evidence was called on behalf of the appellant that on receipt of the bonus certificates his son had always shown them to him, and that he had compared them with the bonuses his brother was receiving from another society. When he showed his father the last certificate he said: "That looks well, she is mounting up." He preserved all the certificates carefully in a cardboard box which he kept in a drawer in his bedroom.

Upon this evidence *Crisp* J., who tried the action, held that from early in 1931 at least until his death, the deceased had decided not to pay any more premiums, but that despite his continued failure to pay, he was led to believe that the policy was in force. The contents of the bonus certificates were well calculated to produce this impression; that is, if considered apart from the countervailing effect of the other communications he had received from the Society. They set out the amount assured by the policy, stating the policy number, the amount of the previous reversionary bonuses and the amount of the latest bonus, and then gave the "total sum assured thereunder." Upon the back of each certificate a form was provided for the assured to apply, if he should think fit, for the present value of the bonus in cash. Each certificate did, however, bear upon its face a cautionary statement to the effect that the bonus was declared for the policy year ending on the anniversary date in the current year of the date of entry into the Society, and was subject to payment of premiums to that date. Even this warning might be understood by an assured who had not been told otherwise as implying that he had until the next anniversary date to pay his arrears of premiums.

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In support of the claim for payment of the policy moneys, notwithstanding the long continued default of the assured in payment of the premiums, the issue by the Society of bonus certificates to the assured was relied upon in two ways. It was conceded that the Society might have avoided the policy, but it was said that by its actions it had elected not to do so, but to keep it on foot. In the second place, it was said that, even if the policy had been avoided, the Society was precluded from setting up its avoidance, because it had misled the assured into supposing that his life was insured, and that in that belief he had died.

Crisp J. dealt with the case as one of estoppel, but held that one element necessary for the estoppel was lacking, namely, that upon the faith of the representation the assured had altered his position. He appears to have considered that it was impossible to say what the deceased would have done had he been aware of the true position; still less that he suffered detriment as a result of his inaction. He said:—"The matter may be put briefly thus:—By their conduct the defendants induced the assured to believe that the policy was alive; but there is no evidence upon which I can say that the assured was induced to be inactive to his detriment. Indeed even if he had applied for the reinstatement of the policy, he was entirely in the directors' hands: they may or may not have revived it." He accordingly entered judgment for the defendant.

The first question which arises for consideration upon the appeal is whether the policy became voidable only upon the failure to pay the premiums, or was thereby *ipso facto* rendered void. The insurance expressed by the policy is not an annual insurance from year to year in which the cover for each year depends upon the payment of premium. It is a promise to pay upon death without any limitation as to the time in which death must occur. Although, of course, the consideration for that promise upon which it is dependent is the periodical payment of premiums, yet after two years the surrender value of the policy becomes available *pro tanto* to answer the recurring consideration. The condition already quoted, providing that on non-payment the policy shall be void, the benefits forfeited and the premiums retained, confers upon the Society a right the exercise of which may not always be for its

ultimate benefit. It would be consistent with well-recognized principles of interpretation to treat the clause as giving an option, and to read " void " as meaning " voidable " (*New Zealand Shipping Co.* v. *Société des Ateliers et Chantiers de France* (1); *Ewart, Waiver Distributed* (1917), pp. 46-48; cf. *McCormick* v. *National Motor and Accident Insurance Union Ltd.* (2)). In the same clause occur references, which it has not been thought necessary to quote, to the withholding, omission or misrepresentation of information in the proposal. The proviso that the policy shall be void applies in that case as well as in the case of default in payment of premiums. It is scarcely conceivable that the policy is to be void independently of the election of the Society if an omission occurs in the proposal. For these reasons we think that the true interpretation of the policy is that it becomes voidable at the election of the Society, and not void when a premium remains unpaid for more than a month from its due date.

But an election once made by the Society and communicated to the assured is final. If an intention to disaffirm is thus evinced, the insurance is at an end, and its revival or reinstatement involves a new contract. On the other hand, if, after default, an intention to affirm the contract of insurance notwithstanding the default is communicated to him, then, although he remains liable to pay the premium, the insurance cannot be terminated unless and until he commits a new default. No doubt it would be possible to regard the issue of the bonus certificates as a sufficient indication of an intention to affirm the insurance, notwithstanding the default for so long a time in the payment of the premiums. But the two letters or notices to the assured from the Society, relating to the premiums due respectively on 1st August and 1st November 1930, express an intention to treat the policy as avoided by the non-payment of those premiums. The expression in the notice itself—" it is necessary that an application for reinstatement be made "—would itself suffice to show that the policy was regarded as otherwise at an end. But any doubt is removed by the recital in the accompanying form that the policy had lapsed. It is needless to inquire what was the effect of the acceptance and retention of the sum paid for the overdue premium which became payable on 1st August 1930; for the premium

(1) (1919) A.C. 1; (1917) 2 K.B. 717. (2) (1934) 40 Com. Cas., at pp. 81, 87, 92.

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due on 1st November 1930 was never paid, notwithstanding the similar communication made in reference thereto. The intention to avoid the policy thus communicated was confirmed by the interview of the agent, whose evidence apparently was accepted by *Crisp* J. In these circumstances a final election to disaffirm was made which the subsequent issue of the bonus certificates could not affect. After 31st December 1930 the policy was no longer on foot. The appellant, therefore, cannot recover unless he is able to make out an estoppel precluding the Society from asserting that the policy had ceased to be in force before the death of the assured. To establish such an estoppel, it is necessary upon the facts of this case to show as a first step that as a result of the bonus certificates the deceased believed that his life remained insured by the policy. However ignorant and ill-informed he may have been, it is not easy to believe that he could regard his failure to pay no less than fourteen quarterly premiums as consistent with the continuance of the cover. This difficulty is increased by the evidence of the agent and the contents of the two notices, but, perhaps, having regard to the finding of *Crisp* J., it should be assumed that the repeated receipt of the bonus certificates overcame these considerations, and he was led to suppose that the policy remained in force. But, even so, yet another element is required to make out the estoppel. The reason for precluding a party from relying upon an actual state of affairs as the foundation of his rights lies in the injustice of permitting him to depart from some contrary assumption if another party has based his conduct upon it. The injustice of allowing him to disregard the assumption must arise from the circumstances attending its adoption by the other party. There are well recognized grounds for compelling adherence to such an assumption (cf. *Thompson* v. *Palmer* (3)). One such ground is that the assumption has been made because a belief in its correctness has been induced by the representation or the conduct of the party seeking to depart from it. But what makes it unjust to permit the departure from an assumption so induced is that, were it permitted, the party so induced would through making the assumption find himself in a position occasioning material detriment to himself. Without this element

(3) (1933) 49 C.L.R., at p. 547.

there is no estoppel. It must appear that upon the faith of his belief by act or omission he has placed himself in a position which, if his belief proved incorrect, would be productive of loss. In the present case complete inaction on his part is all that can be relied upon. He took no steps towards reviving his policy with the respondent society, and no steps towards obtaining any form of life assurance elsewhere. If it appeared that his supposed belief was a contributing cause of this inaction, sufficient connection between the assumption and the position of detriment would be established. Where inaction is the natural consequence of the assumption, the prima facie inference may be drawn in favour of the causal connection. But, according to the common course of affairs, a young unmarried man working on his father's orchard is not found insuring his life in the absence of some special reason, unless as a result of a canvasser's persuasion. In the present case the deceased, according to the learned Judge's finding, decided not to keep up his life policy. He expressed that determination emphatically to the agent. There is no reason to suppose that his belief, if it existed, that his policy was still on foot contributed in any way to his failure to obtain insurance upon his life. Everything points to the cost of insurance as the cause of that failure. His condition in life was such as to cause him to prefer to be without insurance rather than to incur the necessary periodical expenditure. Any general presumptive connection between inaction and a belief in a state of facts must depend upon probabilities which arise from the common course of affairs, and accordingly must be governed by circumstances. In the circumstances of the present case there is nothing to support an inference or presumption that the deceased's belief contributed to his dying uninsured.

For these reasons the appeal should be dismissed with costs.

STARKE J. The appellant, who is the administrator of the estate of W. R. Newbon deceased, brought an action in the Supreme Court of Tasmania against the respondent Society, claiming £500 and certain bonus additions, upon a policy of life assurance issued by the Society to Newbon. The conditions of the policy provided that if the premiums payable under the policy or any of them " be not

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duly paid on . . . days . . . named" in the policy "or within one calendar month thereafter . . . then, and in any such case, the . . . policy shall be void and the benefits assured shall be forfeited, and all claims on or interest in the assets of the Society shall cease and determine and any premiums paid in respect thereof shall be retained by the Society. Provided . . . that if the policy be kept in force for two years from the commencement of the risk" (namely, the 1st November 1928) "the non-payment of any subsequent premium shall not void the same so long as the surrender value, as fixed by the Board" of the Society "after deduction of any loan or charge thereon, is sufficient for the payment of any such subsequent premium." The assured failed to pay a premium falling due on 1st August 1930. The Society informed him by letter that the premium was overdue, and that if he desired to retain the benefit of the policy it was necessary to make application for a reinstatement thereof. An application form was enclosed. Newbon paid the premium, towards the end of December 1930, to an agent of the Society, but he did not sign the application for the reinstatement of the policy. A receipt was given to him for the premium, which stated that it was for remittance to the Society on account of his policy, and on the understanding that the issue of the receipt did not bind the Society to accept the amount, should the policy not be in force. The Society acknowledged receipt of the premium on 31st December, and notified Newbon that a further premium fell due on 1st November and that on receipt of the remittance and application for reinstatement, the question of the reinstatement of the policy would be placed before the directors. But Newbon did not pay the premium. An agent of the Society informed him that the policy had lapsed, and could only be revived if he signed a reinstatement form. But he said that it was too much trouble scraping the premiums together, and in fact he paid no more.

The reinstatement form is of some importance, for it contains the terms on which the Society was prepared to reinstate the policy. It was as follows:—"I, Wessen Richard Newbon whose life was assured by The City Mutual Life Assurance Society Limited under Policy No. 405289A for £500, and the said policy having lapsed beg to make application for its reinstatement. I hereby declare that

I am in as good health as when examined by the Society's Medical Referee or Advising Officer, and I have not suffered from sickness nor injury nor required medical advice nor been declined nor deferred by any other Life Office since assuring with the said Society. And I make this declaration knowing the same to be true. This declaration shall form the basis of the contract with the said Society for the reinstatement of the said policy, and the policy when reinstated shall be subject to a condition that should I the assured die by my own act within twelve months from date hereof the policy shall be null and void." In the years 1929, 1930, 1931, 1932, 1933 and 1934, the Society forwarded to Newbon reversionary bonus certificates in respect of the policy issued to him. All these certificates were issued subject to correction in the event of error, and subject to or conditional upon all premiums being paid up for the policy year ending on its anniversary of entry date. The Society offered no explanation of the issue of these certificates after default in payment of the premiums on the policy, and without any appropriation of the surrender value of the policy towards their payment. It is probable that some mistake was made in the office of the Society.

Newbon died on 1st June 1934. The appellant, his father and administrator, now contends that the Society has done acts in affirmance of the policy, or else that it is estopped from denying that the policy is on foot.

There is some authority for the position that non-payment of the premium terminated the policy by force of its terms (*McCormick* v. *National Motor and Accident Insurance Union Ltd.* (1)). But the better view appears to be that the policy is capable of being affirmed or rejected at the option of the Society (see *Bunyon* on *Life Assurance*, 5th ed. (1914), p. 99). The acts relied upon by the appellant are the acceptance of the premium which fell due on 1st August 1930, and the issue of bonus certificates in the years 1931, 1932, 1933 and 1934. The receipt of the August premium was always subject to an application for what is called a reinstatement of the policy, on terms which involved a proposal of new insurance. The bonus certificates for the years 1931 to 1934 are called in aid : they are claimed as clear and definite affirmances of the contract of insurance.

(1) (1934) 40 Com. Cas., at p. 87.

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Starke J.

But if the contract were disaffirmed before these certificates were issued, they would not operate to revive it: the election once made would be final and irrevocable. In my opinion, the Society disaffirmed the contract by a letter to the insured of 11th September 1930. The form of application for reinstatement regards the insurance as having lapsed, and the letter itself requires that an application for reinstatement be made. It was never made. When another premium would have fallen due if the policy had been reinstated, Newbon, as already mentioned, did not pay it, and stated that it was too much trouble scraping the premiums together. Incidentally it may be observed that the contract was disaffirmed before the policy had been in force two years; consequently Newbon and his administrator cannot rely upon the stipulation for meeting premiums out of the surrender value of the policy.

But the bonus certificates issued in the years 1931 to 1934 are said to estop the Society from denying that the policy was on foot at the date of Newbon's death. In *Greenwood* v. *Martins Bank* (1) Lord *Tomlin* stated the essential factors giving rise to an estoppel. The representation made must be clear and unambiguous (*Low* v. *Bouverie* (2)); it must be intended to induce a course of conduct on the part of the person to whom it is made, and must result in some act or omission by the person to whom it is made. The bonus certificates in the present case are all conditional upon the premiums having been paid. Newbon knew that they had not been paid, and, indeed, had refused to pay them. It is impossible in these circumstances, to impute to the Society any representation that the policy was on foot, or to conclude that Newbon acted upon any such representation.

The appeal should be dismissed.

Appeal dismissed.

Solicitors for the appellant, *Finlay, Watchorn, Baker & Turner.*
Solicitors for the respondent, *Gatenby, Johnson & Walker.*

H. D. W.

(1) (1933) A.C. 51, at p. 57.

(2) (1891) 3 Ch. 82.