

she should survive that period. It is specially set out that the privileges and conditions set out in the third and fourth pages of the instrument shall form part of the contract.

The question arises on the seventh privilege or condition. It is headed "Loans and Surrender Values," and it is in the following terms:—

"VII. LOANS AND SURRENDER VALUES.

"After this policy has been in force three years the Society will make loans thereon at five per cent. interest per annum, payable in advance, of the respective amounts stated in the following table, upon the due assignment of this policy to the Society as collateral security for such loan.

"This policy shall lapse and together with all premiums paid thereon shall forfeit to the Society on the non-payment of any premium when due, except that provided premiums shall have been paid for one of the periods respectively mentioned in the following table, there will be granted, without action on the part of the Assured, a Paid-up Endowment for the amount fixed in said table; or in lieu thereof, at the option of the Assured, (1) the cash value fixed in said table will be paid to said Assured upon the due surrender of this policy to the Society at any time after its termination; or (2) (provided this policy is surrendered within the days of grace, or, with satisfactory evidence of good health within one year thereafter) a paid-up term policy for the full amount assured under this policy, and if the Assured is living at the expiration of said term policy, the pure endowment indicated in the Table will be paid in cash to the said Assured. The paid-up assurance, cash value and paid-up term policy referred to herein, are based on the number of full year's premiums that have been paid, are granted without participation in profits, and are subject to reduction for any indebtedness to the Society under this contract. In consideration of the premises it is understood and agreed that all right or claim for nonforfeiture or surrender value other than that provided in this contract, is hereby waived and relinquished, whether required by the statutes of any country or state or not."

Then there follows a Table of Loans and Surrender Values as follows:—

TABLE OF LOANS, AND OF SURRENDER VALUES.
Either in Cash, Paid-up Endowment, or Extended Assurance, in accordance with the Provisions of Section VII. above.

At the End of	Loan or Cash Values.	Paid-up Endowment, granted automatically, unless other Settlement selected.	Extended Term Assurance for Face of Policy, from Date of Non-payment of Premium.	
			Assurance extended for	Cash (Pure Endowment) payable to Assured, if living, at Expiration of Extended Assurance.
Years.	£ s. d.	£ s. d.	Years. Months.	£ s. d.
3	47 0 0	120 0 0	7 7
4	74 0 0	160 0 0	12 2
5	107 0 0	200 0 0	16 8
6	131 0 0	240 0 0	19 0	24 0 0
* * * * *				
20	719 0 0	800 0 0	5 0	787 0 0

The Respondent paid the stipulated premiums for five years and then ceased to pay. She claims that in terms of the contract made, she is entitled to a paid-up endowment of 200*l.* The Appellants do not dispute that this is in accordance with the terms of the contract, but say that, their attention having been called to section 64 of the Act of 1908, they could not fulfil their promise, but were bound to consider the policy as still existing in the form of an endowment policy of 1,000*l.*, until the cash value of 107*l.* was eaten up in accordance with section 63 by the premiums necessarily becoming due, and remaining unpaid, after which no further obligation remained on their part.

An originating summons was taken out by the Respondent under the Declaratory Judgments Act, 1908, wherein five questions were put to the Court. Their Lordships will advert to the

answers later. For the present it is enough to say that the Court of Appeal, by a majority of four to one, upheld the contention of the Respondent, and found her entitled to a paid-up endowment of 200*l*.

The question turns on the meaning and effect of section 64 of the Insurance Act of 1908. That section is as follows:—

“No policy shall become void by non-payment of premium so long as the premiums and interest in arrear are not in excess of the surrender value as declared by the company issuing the same, in the answer of such company given to the tenth question of the seventh schedule hereto.”

Section 64 is the first of a fasciculus of sections headed “Protection of Policies.” The other sections which end with section 66 are concerned with the protection of policies from the effects of bankruptcy and the securing that the proceeds of a policy at death shall pass to the representatives of the deceased.

Their Lordships have no doubt that this is a section intended to lay down a rule of public policy, and that it is impossible for either an assured or an assurer to contract himself out of it or to waive its effect. They cannot, therefore, agree with the answers given by the majority of the Court to the questions 4 and 5 as put.

Taking, then, the section as an injunction which cannot be disregarded, what is its meaning? In all cases where something not *ipsâ naturâ* unlawful is prohibited by statute, the words of prohibition must be taken as they stand; they must not be amplified in order to meet a supposed evil, or restricted in order to protect a natural freedom. In other words, the evil that was to be checked can only be considered so far as necessary for the interpretation of the words,

but must not be used for an independent determination of the scope of the remedy.

Now it will be observed, first, that the section is in a negative form—it prohibits, it does not enjoin. And it cannot, in their Lordships' opinion, be turned into a mandatory section by combining it with the provisions of section 63, as is done in part of the argument used by Edwards, J. in the Court below.

Secondly, the only thing struck at is the becoming void of a policy in respect of the non-payment of a premium. This prohibition is universal, *i.e.*, it is equally directed against a special stipulation to that effect and against the common law result in mutual contracts falling within the section when one party fails to perform his part of the bargain or when the liability of one party is expressed to be conditional on the other party performing his part of the bargain. What, then, is the meaning of the term "void"? The word is used in a business sense common in speaking of insurances and not with any legal technicality in the sense of avoidance *ab initio*. The meaning here is that the Company is not to be relieved from its liabilities under the policy by reason of non-payment of premiums. Any clause in a policy which would have this result would be struck at and made non-effective by the statute. It is, however, next to be observed that the prohibition is not absolute, but is conditioned by the words "so long as the premiums and interest thereon in arrear are not in excess of the surrender value as declared by the company issuing the same in the answer of such company given to the tenth question of the seventh schedule hereto." This refers us to the seventh schedule to find out in each case what is the surrender value spoken of in the 64th section.

The seventh schedule is a schedule which, in terms of section 19 of the Act, an insurance company is bound to fill up every five or ten years, as the case may be, and the scope of it is a general statement of the life insurance and annuity business of the Company. Various particulars are required, which it is not necessary to quote, and then comes the tenth question, which is as follows:—

“A table of minimum values (if any) allowed for the surrender of policies for the whole term of life, and for endowments and endowment assurances, or a statement of the method pursued in regulating such surrender values, with instances of its application to policies of different standing and taken out at various interval ages, from the youngest to the oldest.”

It is obvious that the answer to this question made every five or ten years, as the case may be, must be of a general description, but their Lordships do not doubt that the answer, though made in general terms, may be of such a character as to make it right to refer to the particular policy *de quo queritur* in order to see the surrender value under it. As to the meaning of the actual expression “surrender value” there can be no doubt. Surrender value in general means that value or consideration which a company has contracted or is prepared to pay at any particular time during the currency of the contract in consideration of being relieved as from that time of the liability dependent on the continuance of premiums paid. Their Lordships are of opinion that the surrender value referred to in the 10th question is the surrender value, if any, which the Company has contracted to pay. Looking, however, to the terms of section 64 the surrender value there referred to must necessarily be a cash value—for no other consideration could be compared in terms of money with the amount due in respect of the overdue premiums.

Turning now to the facts of the present case. The Society's answer to question 10 in the schedule is set out in the Judgment of Stout, C.J. and need not here be quoted at length. It explains that in respect of Australian policies with the exception of guaranteed cash value policies :—

“ the society has not agreed to give cash surrender values
 “ but it agrees in most of its policies to
 “ give paid-up policies if applied for within a reasonable
 “ period after the lapse, provided three annual premiums
 “ have been paid.”

It then goes on to explain the method of calculation as to amount.

The policy itself, as will be observed from the terms of Condition VII., already quoted, does not exactly follow this description ; because the paid-up endowment which becomes due on the failure to pay after three years premiums have been paid is granted automatically and without special application.

Applying what has been said to the above conditions, their Lordships are of opinion that section 64 has no application to the present case, because the Society does not by the policy contract to pay any cash surrender value. The thing which the Society covenants to give is not cash nor is it to be given in consideration of the assured relieving the Society from any liability under the policy : it is a fully paid endowment to be given if and when the Society's obligation to pay one thousand pounds under the policy has come to an end by reason of the non-payment of premiums. What is called the loan or cash value in the column with that heading is not a payment which the society makes to buy off the liability dependent on the continuance of premiums paid—that is already gone—but a payment to get off the liability under the paid-up endowment.

Their Lordships are therefore of opinion that the conclusion of the majority of the Court was correct. In the argument their Lordships' attention was called to the case of *The Equitable Life Assurance of the United States v. Bogie* (3 C.L.R. 878) decided in the High Court of Australia. There were special circumstances in that case which were sufficient to dispose of it. As regards the general dicta it is enough to say that the policy in that case was essentially different from the present—inasmuch as if the assured failed to apply he might have lost everything—and that in the absence of argument their Lordships do not think it expedient to express any opinion as to what the result in that case would have been if the specialities had been non-existent and it had been necessary to consider that policy in the light of the general remarks which their Lordships have made in this case.

In their Lordships' opinion the proper course will be to declare that the policy in question had no surrender value within the 64th section of the Act, but that the provisions of such section are not capable of being waived by antecedent contract between the parties, and with this declaration to discharge the order appealed from so far as it answers the 3rd, 4th and 5th questions in the summons. Subject to this their Lordships will humbly advise His Majesty that the Appeal should be dismissed, the Appellants to pay the Respondent the costs of the Appeal.



In the Privy Council.

THE EQUITABLE LIFE ASSURANCE
SOCIETY OF THE UNITED STATES

v.

BRENDA BEATRICE REED.

DELIVERED BY LORD DUNEDIN.

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