YETTA WEISS AND MORRIS WEISS, EXECUTRIX AND EXECUTOR OF THE ESTATE OF BARNETT WEISS, DECEASED, AND THE SAID YETTA WEISS (PLAINTIFFS). ..... } APPELLANTS;

AND

THE STATE LIFE INSURANCE COMPANY (DEFENDANT) ..... } RESPONDENT.

1935

*June 10
*June 28

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO

Insurance (Life)—Contract—Payment—Person insured in Ontario by United States company—Policy providing for payment of amount of insurance (expressed in "dollars") at company's head office in United States—Premiums on policy paid in Canadian currency—United States dollars worth more than Canadian dollars at time when insurance became payable—Payment of policy—Sufficiency or insufficiency of payment in Canadian dollars to the number of dollars specified in policy—Provisions of policy—Ontario Insurance Act, R.S.O. 1914, c. 183, s. 155; R.S.O. 1927, c. 222, ss. 119-159.

Respondent, a foreign life insurance company, with head office at Indianapolis, in the State of Indiana, one of the United States of America, and at all material times duly registered in the Province of Ontario and as fully entitled as any domestic insurance company to transact there the business of life insurance, issued, on August 9, 1917, two policies on the life of W., a resident of Toronto, Ontario, and de-

*PRESENT:—Duff C.J. and Cannon, Crocket, and Davis JJ., and Dysart J. *ad hoc*.

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livered the policies to him in Toronto. They were executed by respondent at its head office in Indianapolis, and provided for payment on the insured's death of a certain number of "dollars" "at the Home Office of the Company, Indianapolis, Indiana." They provided that the premiums be paid "at said Home Office or to an agent of the Company." All the premiums were paid in Canadian moneys. W. died on March 10, 1933. At the time the insurance became due and payable, there was a premium on United States money in terms of Canadian money; and appellants claimed that respondent was bound to pay the value of United States dollars to the number of dollars specified in the policies.

Held (Duff C.J. and Davis J. dissenting): Payment in Canadian dollars to the number of dollars specified in the policies, was sufficient to discharge respondent's obligation. Judgment of the Court of Appeal for Ontario, [1934] O.R. 677, affirmed.

Per Cannon J.: Any inference in favour of United States dollars that might be drawn from the naming of Indianapolis as a place of payment is rebuttable, and is rebutted in this case by (1) the provisions of *The Ontario Insurance Act* (R.S.O. 1914, c. 183, s. 155; R.S.O. 1927, c. 222, s. 159) and (2) the interpretation put upon the ambiguous contract by the acts of the parties.

Per Crocket J. and Dysart J. (*ad hoc*): To assume that in entering into the contract the parties directed their attentions solely to the wording and meaning of the policies, and not in any degree to the provisions and effect of the insurance law of the Province, would do violence to the underlying facts and the background of the case. From the circumstances, it might be assumed that the parties realized they were making a contract in Ontario and subject to the laws of Ontario. While it is well settled law that contracts which are to be performed by payment of money in a designated place or country require that payment shall be made in the legal tender or currency of the place set for payment, yet this is only a *prima facie* rule or presumption, and is rebuttable (*Adelaide Electric Supply Co. Ltd.* v. *Prudential Assurance Co. Ltd.*, [1934] A.C. 122, at 151, 152, 155); and the presumption is rebutted in this case by the statute law of the Province relating to payment of the insurance money (*The Ontario Insurance Act*, R.S.O. 1914, c. 183, s. 155; not changed in substance, as affecting said policies, by R.S.O. 1927, c. 222); by the provisions of the policies relating to the payment of premiums; and by the conduct of the parties (in making and accepting payment of premiums throughout in Canadian currency). (Discussion as to the distinction of this case from others in that the term "dollars" is common both to Canada and the United States and represents a unit or denomination of currency of practically the same value when the dollar is accepted at par in the two countries; and as to the use in the policies of the term "dollars" without any epithet or other qualification; reference to the *Adelaide* case, *supra*, at 152, 155, 148).

Per Duff C.J. and Davis J. (dissenting): A contract to pay in a unit of currency *prima facie* means currency according to the meaning of the unit at the place where payment is called for by the contract (the *Adelaide* case, *supra*, at 156). The currency of the place of payment, i.e., Indianapolis, was the currency intended by the contract to govern the payment of the "dollars" stipulated to be paid. On the construction of the contract alone there was no ambiguity—payment was due in United States dollars. The intention of *The Ontario In-*

surance Act (R.S.O. 1914, c. 183, s. 155, in force when the contracts were made; not changed in substance, so far as payment is concerned, by R.S.O. 1927, c. 222, in force when the policies matured), was not to fix the amount to be paid as something different from the amount settled by the contract between the parties, but merely to determine the manner in which the amount already fixed by the parties was to be discharged; to make payable within Ontario in lawful money of Canada whatever was the agreed amount of insurance. The amount of insurance to be paid was the value, in lawful money of Canada, of United States dollars to the number of dollars specified in the policies.

APPEAL by the plaintiffs from the judgment of the Court of Appeal for Ontario (1) allowing the defendant's appeal from the judgment of McEvoy J. (2) in favour of the plaintiffs.

The dispute was with regard to the amount payable by the defendant insurance company, in Canadian money, on two life insurance policies. The defendant had paid the face amount of the policies, $17,400, in Canadian funds. The plaintiffs claimed that the payment should have included the further sum of $3,632.25, as being premium, at the rate of $20\frac{7}{8}$ per cent. as of April 6, 1933, by which the value in Canadian money of said sum of $17,400 in United States money exceeded the said sum in Canadian money.

The determination of the question came before McEvoy J. upon a motion for judgment under Ontario Consolidated Rule 222, on facts stated and admitted in the pleadings.

The admitted facts included the following:

The defendant is a foreign life insurance corporation organized under and in accordance with the laws of the State of Indiana, one of the United States of America, with its head office, or Home Office, in the city of Indianapolis in said State. Defendant is, and during the whole currency of the policies in question has been, under the laws from time to time in force, as fully entitled to transact the business of life insurance in Ontario as any domestic insurance company. On August 9, 1917, it issued two insurance policies (being those in question) on the life of Barnett Weiss, who resided in the city of Toronto, in the Province of Ontario, and the policies were delivered to Weiss in the said city of Toronto.

(1) [1934] O.R. 677; [1934] 4 D.L.R. 469.

(2) [1934] O.R. 677, at 677-679.

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By each of the policies the defendant agreed to pay "a monthly income of Fifty Dollars per month" to Yetta Weiss, wife of the insured, for 240 successive months, and for so many months thereafter as she should live, "at the Home Office of the Company, Indianapolis, Indiana," the first monthly payment to be made immediately upon receipt at such Home Office of due proof of the death of the insured, during the continuance of the policy, and of the interest of the claimant. It was agreed that the insured reserved the right to change the method of payments of the policy as a death claim without the consent of any beneficiary, by filing at the Home Office of the Company a written request therefor, accompanied by the policy for endorsement. By a letter signed by the insured dated 30th October, 1917, he directed that Yetta Weiss, the beneficiary named, "shall at the time of my death have the option of accepting the commuted value stipulated in said policies in lieu of the monthly income payments, provided for in said policies"; and there was a signed endorsement on each of the policies dated November 22, 1917, to the effect that in accordance with said direction the said beneficiary at the time of the insured's death should have the option "of accepting the commuted value of this policy in lieu of the monthly income payments provided for in the policy."

Each of the policies provided:

(*e*) This contract is made in consideration of the application therefor, which is made a part hereof, and a copy of which is hereto attached, and in further consideration of the sum of Three Hundred Ninety-three & 90/100 Dollars, to be paid in advance to the Company on or before the delivery of this Policy, and of the payment of a like sum on or before the Ninth day of August in each year during the continuance of this contract.

(*f*) All premiums are payable in advance at said Home Office, or to an agent of the Company, upon delivery of the receipt therefor signed by the President or Secretary of the Company, and countersigned by the said agent.

(*g*) Canadian Residents. Should this policy be issued in favour of a resident of Canada, any action to enforce the obligations of the same may be validly taken in any court of competent jurisdiction in the Province where the policyholder resides, or last resided prior to his decease.

Attached to each policy was a photostatic copy of an application signed by Barnett Weiss and dated at Toronto, Ontario, on the 24th day of July, 1917, and in the policies the following statement appeared:

In witness Whereof the State Life Insurance Company has caused this policy to be signed by its President and Secretary at its Home Office in the City of Indianapolis, this 9th day of August, 1917.

All of the premiums paid by the insured were paid in Canadian funds.

The insured, the said Barnett Weiss, died at the said city of Toronto on March 10, 1933.

The said Yetta Weiss, after the death of the insured, elected to accept the commuted value of the policies. The commuted value of each policy was $8,700, totalling for the two policies $17,400.

Some years prior to the death of the insured the defendant for convenience in handling its Canadian business had opened a bank account with the Canadian Bank Commerce at Toronto and defendant had continuously kept the said account.

The plaintiffs claimed that the payment under the policies should be in United States funds, which were, at the time the insurance moneys became due and payable, at a premium over Canadian funds. It was agreed that the cheque sent by the defendant for $17,400, which was payable at the Canadian Bank of Commerce, Toronto, might be cashed, without prejudice to the right to demand and recover the additional amount claimed.

Yetta Weiss aforesaid and Morris Weiss, as executrix and executor of the estate of Barnett Weiss, deceased, joined with Yetta Weiss, in bringing the action, for the purpose of endorsing her claim as beneficiary under the policies.

By the judgment now reported, the plaintiffs' appeal to this Court was dismissed with costs, Duff C.J. and Davis J. dissenting.

R. S. Robertson K.C. and *R. M. Fowler* for the appellants.

A. W. Anglin K.C. for the respondent.

CANNON, J.—I agree with Mr. Justice Masten in the court below that any inference in favour of American dollars that might be drawn from the naming of Indianapolis as a place of payment is rebuttable and is, in fact, rebutted in this case, first, by the provisions of the Ontario Insurance Acts in force during the life of and at the date of maturity of the policies, and, secondly, by the interpretation which has

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been put upon the ambiguous contract by the acts of the parties.

This appeal must be dismissed with costs.

The judgment of Crocket J. and Dysart J. *ad hoc* was delivered by

DYSART, J. (*ad hoc*)—With the greatest deference to the members of this Court who take a contrary view, it seems to me that the result arrived at by the Court of Appeal of Ontario is correct and that this appeal ought to be dismissed.

The single point for determination here is whether the policies in question are payable in United States dollars or in Canadian dollars. The practical importance of the question is, that because of the conditions of money exchange on the date on which payment should have been made, United States dollars were at a premium in Ontario, and were worth more in Ontario than a corresponding number of Canadian dollars.

If it be assumed, as I think it should not, that in entering into this contract, the parties directed their attentions solely to the wording and meaning of the policies, and not in any degree to the provisions and effect of the insurance law of the Province, it might be that they contemplated payment in United States dollars. To make such an assumption in this case would, I think, do violence to the underlying facts and the background of the case.

In 1917, when the policies in question were issued, the Insurance Company was registered in Ontario, had offices and agents there with sufficient authority to transact all things necessary or incidental to the business of securing applications for insurance, of delivering policies, and of collecting premiums. At that time, and subsequently, the insured was a resident of the Province. It may, therefore, be assumed that both contracting parties realized that they were making a contract in Ontario and subject to the laws of Ontario; and that if they adverted at all to the meaning of the term " dollars " as used in the policies, they intended to comply with the laws of the Province in that regard. The Insurance Company in par-

ticular should be assumed to have been fully informed of the law governing the issue and discharge of insurance policies in the Province.

The statutory law of the Province in force in 1917 was *The Ontario Insurance Act*, R.S.O. 1914, ch. 183, which provided in section 155 (1), so far as here relevant, that a policy delivered in the Province to a resident therein,

> shall be deemed to evidence a contract made therein, and the contract shall be construed according to the law thereof, and all moneys payable under the contract shall be paid at the office of the chief officer or agent in Ontario of the insuring corporation in lawful money of Canada.

And, (2)

> This section shall have effect notwithstanding any agreement, condition or stipulation to the contrary.

By section 154

> Except where otherwise provided sections 155 to 158 shall apply to every contract of insurance.

Of these four sections, section 155 is alone relevant to the issues of this case.

When the policies matured in 1933, the Act had changed in form, but, so far as affects the policies, not in substance; R.S.O. 1927, c. 222, ss. 121-159 still required the insurance moneys to be paid in the Province "in lawful money of Canada."

The policies themselves were executed by the Insurance Company at its head office (called Home Office) in Indianapolis, and provided for payment on the death of the insured of " * * * Dollars * * * at the Home Office of the Company, Indianapolis, Indiana." The sums so payable consisted of a series of instalments which were subsequently by arrangement of the parties changed to a lump sum of 17,400 "dollars."

It is well settled law that contracts which are to be performed by payment of money in a designated place or country require that payment shall be made in the legal tender or currency of the place set for payment. But this is only a *prima facie* rule or presumption, and of course is rebuttable: *Adelaide Electric Supply Co. Ltd.* v. *Prudential Assurance Co. Ltd.* (1). It seems to me that the presumption is rebutted in this case by the statute law of the Province relating to payment of the insurance money; by the provisions of the policy relating to the

(1) [1934] A.C. 122, at 151, 152 and 155

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payment of premiums; and by the conduct of parties—of the insured in paying, and of the insurer in accepting payment, of premiums in Canadian currency throughout the whole period. (1) The statutory law relating to the point I have already set out, namely, that "all moneys payable under the contract shall be paid * * * in Ontario * * * in lawful money of Canada." Standing by itself this provision means that *all* moneys—both premiums and insurance moneys—shall be paid in Canadian currency. (2) The provisions respecting the payment of premiums as set out in the policy are that they be paid "at said Home Office or to an agent of the Company." This means that the premiums might be paid to an agent in Ontario, in other words, in Canadian currency. And if the premiums were payable in Canadian currency, then the insurance money should be payable in the same currency because, as is well known, insurance business is conducted on a basis of, *inter alia*, a definite relationship or ratio between the amount of the premiums and the amount of the insurance. To disregard this relationship or to assume that the Insurance Company meant to pay the insurance moneys in United States dollars irrespective of the currency in which the premiums were paid, is, I think, to attribute to the contracting parties something that they would probably not have agreed to if their attention had been called to it. (3) The premiums throughout the whole currency of the policies were paid in Ontario in Canadian currency. The conduct of the parties on this point is entitled to some weight as to the meaning of the contract, or at least as to their intentions respecting the medium of payment.

The contracts, however, should be construed upon broad grounds. To say that the parties in making the contract directed their attention only to the written document, and entirely ignored the existence of Provincial statutory law, is hardly consistent with the probabilities; and is surely inconsistent with what the law imputes to them. Apart from the statute, the policy was on its face made in the United States, was issued from the "Home Office," all premiums were to be made there, or to an agent who might be in the United States, and the insurance moneys were eventually to be paid there in United States currency.

Notwithstanding those express terms, the contract is deemed to be an Ontario contract, performable at least in part in Ontario; and this, by virtue of the force of the Insurance Act of Ontario. In other words, the Act has varied some of the express provisions of the contract, or has substituted its own provisions for others. If the Act can go that far, why may it not go further and substitute also the provisions respecting the currency in which the insurance moneys are to be paid?

The confusion or difficulty in this case arises from the fact that the term "dollars" is common both to Canada and the United States, and represents a unit or denomination of currency of practically the same value when the dollar is accepted at par in the two countries. This fact distinguishes this case from others in which the amount of insurance to be paid in a foreign country is stated in denominations of currency of that country not in use in Canada. In such cases, there is no difficulty. The contract in those cases is to be discharged in foreign currency, converted into Canadian currency at the prevailing rates of exchange. If in this case the policy had been payable in "United States dollars," there would have been no difficulty. But the term "dollar" used without any epithet or other qualification leaves us uncertain as to whether United States "dollars" or Canadian "dollars" is meant. As Lord Wright said in *Adelaide Electric Supply Co. Ltd.* (1) *supra,* at page 152,

> where the same denomination is used in the two countries, the result may be that the sum in figures is to be construed as meaning that number of the common unit of account, "pounds" according to its meaning in the currency law of the country where payment is to be made. Thus it will be a question of construction in the absence of express terms whether the word "pound" means what may compendiously be described as an English pound or a Colonial pound.

And again at p. 155:

> Where the denominations of the currency are different, as in the case of the Spanish pesetas (2), it is clear that an exchange operation is necessarily involved. But where the denomination of the unit of account is identical in the two currencies, though the measure of value which is expressed by the unit of account is different, the question is not so concluded.

(1) [1934] A.C. 122.

(2) *Ralli Brothers* v. *Compañia Naviera Sota y Aznar,* [1920] 2 K.B. 287.

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Lord Russell at page 148 of the same case introduces another factor in construction when he says:

> It is not a question what amount of coins or other currency has the debtor contracted to pay. A debt is not incurred in terms of currency, but in terms of units of account. It is a question of discharging a debt incurred in terms of units of account common to more than one country, in the currency which is legal tender in the particular country in which the debt has to be paid.

This language of Lord Russell's is helpful also as suggesting that the intention of the contracting parties here may have been directed to the *number* of "dollars" to be paid under the policies rather than the *currency* in which those dollars were to be found.

Reverting again to section 155 (1) above quoted in part, and bearing in mind that "the contract shall be construed according to the law of Ontario," it may be said that the law of Ontario is that the currency to be used in paying the insurance moneys is the currency of the place of payment, that is the United States. While this is true, it is also the law of Ontario, that the payment in this case was *presumably* to be made in United States dollars, and that the presumption is rebuttable, as I have above indicated.

I desire to be understood as confining my remarks in this judgment to the circumstances and the policies in this case.

For these reasons, most of which were expressed by the learned judges of the Court of Appeal, I think the payment of these policies should be made in Canadian dollars to the number specified in the policies. As payment in fact has been so made, without prejudice to this appeal, the appeal should be dismissed with costs.

The judgment of Duff C.J. and Davis J. (dissenting) was delivered by

DAVIS, J.—There are no facts in dispute in this action but the facts raise a narrow and difficult question of law. The parties agreed to have the action determined upon a motion for judgment on the pleadings under Consolidated Rule 222 of the Ontario Rules of Practice.

The question of law is whether or not the respondent, a life insurance company with head office in the city of Indianapolis in the United States of America, was bound

to pay upon the death of the insured Weiss the proceeds of the life insurance calculated in terms of the value of Canadian or of American dollars. At the time the insurance moneys became due and payable there was a premium of $20\frac{7}{8}$ per cent. on American money in terms of Canadian money. The company paid the full face value of the two policies on the life of the insured to the widow of the deceased, as sole designated beneficiary thereof, in Canadian dollars without prejudice to the question of exchange, it being asserted by the widow that the company was bound to pay in terms of the value of American dollars. This action was brought by the widow and the legal representatives of the deceased insured against the company to recover $3,632.25 (with interest), being the amount of the exchange. Mr. Justice J. A. McEvoy, who heard the motion for judgment in the action, decided in favour of the plaintiffs for that sum. Upon appeal, the Court of Appeal for Ontario set aside that judgment and ordered that the action be dismissed. The plaintiffs now appeal to this Court.

The insured was Barnett Weiss, a business man resident in the city of Toronto who died on March 10, 1933. The appellants are his widow and the executors of his will. The respondent, the State Life Insurance Company, is a foreign life insurance company organized under and in accordance with the laws of the State of Indiana, one of the United States of America, with head office (referred to by the company as its "Home Office") in the city of Indianapolis in the said State. The respondent has at all material times been duly registered in the Province of Ontario as a life insurance company entitled to transact the business of life insurance within the province.

On or about August 9, 1917, the respondent issued two insurance policies on the life of the late Barnett Weiss and delivered the policies to him in Toronto. By the terms of the said policies, identical in form, the respondent insured the life of the said Weiss and agreed upon his death to pay a monthly income of $50 to his wife during 240 successive months and for so many months thereafter as she should live.

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The policies were attested in the following words:

In witness Whereof the State Life Insurance Company has caused this policy to be signed by its President and Secretary at its Home Office in the City of Indianapolis, this 9th day of August, 1917.

Attached to each policy is a photostatic copy of a letter to the respondent signed by the insured at Toronto the 30th day of October, 1917, directing, pursuant to certain provisions of the policies, that his wife as the beneficiary named in the policies shall at the time of his death have the option of accepting the commuted value stipulated in the said policies in lieu of the monthly income payments. And typewritten upon the back of each of the policies appears an endorsement, dated November 22, 1917, signed by the Vice-President of the company stating that

In accordance with the written direction of the insured, dated October 30th, 1917, the beneficiary Yetta Weiss, at the time of the death of the insured shall have the option of accepting the commuted value of this policy in lieu of the monthly income payments provided for in the policy.

It is admitted that proper and sufficient proofs of loss were completed and forwarded by the appellants to the respondent at its home office in Indianapolis and that the appellant Yetta Weiss, the widow of the insured and the sole beneficiary of the policies, elected to accept the commuted value of the policies pursuant to the endorsement upon the policies. A cheque of the respondent for the commuted value of the policies, $17,400, payable at the Canadian Bank of Commerce, Toronto, was delivered by the respondent to the appellants by letter, dated April 6, 1933, sent by the respondent from its home office at Indianapolis. The appellants claimed that the payment under the two policies in question should have been the equivalent in Canadian money of the commuted value of the policies in American money. By arrangement between the parties, the appellants became entitled to cash the cheque without prejudice to the question of exchange. On April 6, 1933, the premium on American moneys is admitted by the parties to have been $20\frac{7}{8}$ per cent. Yetta Weiss, the widow of the insured and the sole named beneficiary under the policies, commenced this action on October 23, 1933, to recover the amount of the premium. The executors of the last will of the deceased joined in the action for the purpose of endorsing the claim of Yetta Weiss as beneficiary under the policies.

The policies in question contained, amongst others, the following clause:

Canadian Residents. Should this policy be issued in favour of a resident of Canada, any action to enforce the obligations of the same may be validly taken in any court of competent jurisdiction in the Province where the policyholder resides, or last resided prior to his decease.

The action against the company was brought in the Province of Ontario.

It is admitted that all the premiums paid by the insured on the said policies were paid in Canadian moneys and that for some years prior to the death of the insured the company for convenience in handling its Canadian business opened a bank account with the Canadian Bank of Commerce at Toronto and that the company has continuously kept the said account from the date of its opening to the present time. No particulars are given as to either the payment or receipt of the premiums from time to time and, apart from the admission that the company was fully entitled to transact the business of life insurance in Ontario, there is nothing to shew the extent to which this power was actually exercised.

The policies expressly state that the company agrees to pay "* * * dollars at the Home Office of the Company, Indianapolis, Indiana." Upon those words of the policies the appellants assert the right to be paid on the basis of the value of American money. With the greatest deference to those of the court below who have expressed the opinion that the language is ambiguous, I cannot see any ambiguity. In the very recent case of *Adelaide Electric Supply Co. Ltd.* v. *Prudential Assurance Co. Ltd.* (1), it was clearly stated in the House of Lords that a contract to pay in a unit of currency *prima facie* means currency according to the meaning of the unit at the place where payment is called for by the contract. At p. 156 Lord Wright says,

The old cases I have cited show, as I think, that in determining what currency is intended, the general rule *prima facie* applies that the law of the place of performance is to govern. As Lord Eldon said in *Cash* v. *Kennion* (2), the debtor is bound to have the money ready at the appointed time and place of payment. It is natural and reasonable that the money he should be bound to have ready should be the legal money of that place, rather than that he should have a foreign currency or should have an amount in his home currency which is not the agreed figure, but a different figure representing an exchange operation by which the agreed figure is converted (in this case) from sterling to currency. Similarly,

(1) [1934] A.C., 122. (2) (1805) 11 Ves. 314, 316.

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if a Frenchman and a Belgian were to agree that francs were to be paid by one to the other in Brussels, it would naturally be inferred in the absence of express terms that the Belgian franc was intended. The currency of the place of payment, i.e., Indianapolis, was the currency intended by the contract to govern the payment of the "dollars" stipulated to be paid. If the contract stood alone I should have no doubt that payment was due in American dollars.

The difficulty, however, is that the provisions of the *Ontario Insurance Act*, both at the date of the issue of the policies and at the date of the death (for it is not contended that there is any substantial difference in the language of the statute at the two dates) are urged upon us as governing these policies.

If the provisions of the *Ontario Insurance Act* apply to the policies in question and to the payment of the proceeds thereof, and it is not in dispute that they do, it seems plain that payment is to be made "in lawful money of Canada" notwithstanding any agreement in the contracts to the contrary.

It is admitted that the company

> during the whole currency of the insurance policies * * * has been, under the laws from time to time in force, as fully entitled to transact the business of life insurance in Ontario as any domestic insurance company. (Par. 2 of the statement of claim)

and that the policies

> were delivered to the insured, Barnett Weiss, in the City of Toronto, County of York, in the Province of Ontario. (Par. 3 of the statement of claim).

The provisions of the Ontario *Insurance Act*, R.S.O. 1927, ch. 222, in operation at the date of the maturity of the policies, relevant to the present case, appear in Part V dealing with "Life Insurance."

> Sec. 119 (2) "Contract" or "contract of insurance" means a contract of life insurance;
>
> (10) "Insurance money" includes all insurance money, benefits, surplus, profits, dividends, bonuses and annuities payable by an insurer under a contract of insurance;
>
> Sec. 120 (2) Unless hereinafter otherwise specifically provided, this Part shall apply to the unmatured obligations of every contract of life insurance made in the Province before the coming into force of this Part.
>
> Sec. 121 A contract is deemed to be made in the Province,
>
> (*a*) If the place of residence of the insured is stated in the application or the policy to be in the Province; or,
>
> (*b*) If neither the application nor the policy contains a statement as to the place of residence of the insured, but the actual place of

residence of the insured is within the Province at the time of the making of the contract.

Sec. 159 (1) Insurance money which is expressed to be payable at the maturity of the contract shall be payable thirty days after reasonably sufficient proof has been furnished to the insurer of the maturity of the contract, of the age of the person whose life is insured, and of the right of the claimant to receive payment.

(2) Insurance money shall be payable in the Province in lawful money of Canada.

The above provisions came into force on January 1st, 1925, and while made applicable to the unmatured obligations of every contract of life insurance made in the Province of Ontario before their coming into force, it is convenient to refer to the relevant provisions of the *Ontario Insurance Act* in force at the time the contracts were made. Such provisions are found in the Revised Statutes of Ontario, 1914, ch. 183:

Sec. 155 (1) Where the subject-matter of a contract of insurance is property or an insurable interest in property within Ontario, or is a person domiciled or resident therein, the contract of insurance, if signed, countersigned, issued or delivered in Ontario or committed to the post office or to any carrier, messenger or agent to be delivered or handed over to the assured, his assign or agent in Ontario, shall be deemed to evidence a contract made therein, and the contract shall be construed according to the law thereof, and all moneys payable under the contract shall be paid at the office of the chief officer or agent in Ontario of the insuring corporation in lawful money of Canada.

(2) This section shall have effect notwithstanding any agreement, condition or stipulation to the contrary.

This section was introduced into Ontario by 60 Vict. (1897), ch. 36, sec. 143, amending 56 Vict. (1893), ch. 32, sec. 10.

It will be seen that no useful argument is available as to whether the statutory provisions in force at the date of the issue of the policies or at the date of the maturity of the policies should govern, because, so far as payment is concerned, the words of the two statutes are substantially the same.

The Court of Appeal for Ontario unanimously decided that the payment of the commuted value of the policies in Canadian dollars was a complete satisfaction of the obligation of the company, having regard to the statutory provisions, and dismissed the action. The appellants in their appeal before us argued that these provisions of the *Ontario Insurance Act* mean that the agreed amount of insurance, whatever it be according to the contract, is to be paid "in the Province of Ontario" and "in lawful money of Canada," but that the statute has not the effect of changing

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the agreed amount of the insurance. The argument is that if the amount of money contracted for in the policies is 17,400 dollars payable at Indianapolis then the value of that sum is to be paid, by reason of the statute, in Ontario in lawful money of Canada, and that this necessarily involves an exchange transaction at the rate of exchange on the day when payment is due.

If there had been no such statutory enactment in Ontario the respondent would have been required to pay the beneficiary at its home office in Indianapolis $17,400 in American currency. That must be the plain effect of the words of the contract. Then, applying the statutory provisions, no difficulty arises as to the place of payment, for it is plain that the company must pay the beneficiary " in Ontario," but the problem is, do the words of the statute " in lawful money of Canada," involve payment of the stipulated number of dollars in Canadian currency or payment in lawful money of Canada of what is at the proper time the equivalent in Canadian currency of the value of the debt in terms of the contract between the parties? The difficulty arises because the word " dollar " has been used in both Canada and the United States to denote a measure of value expressed in the currencies of those countries. Supposing the policy had been issued by an English company, licensed to do business in Ontario, and delivered within Ontario to the insured, a resident of Ontario, and had provided for payment at maturity of " a thousand pounds at the head office of the company in London, England," what would the effect of the statutory provision in Ontario be upon that policy? Counsel for the respondent frankly admits that in that case the beneficiary would be entitled to payment in Canadian money of such a sum as represents the value in English currency of the nominal amount of the policy at the prevailing rate of exchange. But the contracted debt, in this case, being in " dollars," counsel for the respondent argues that the *prima facie* presumption of American dollars arising out of the stated place of payment in the policy, Indianapolis, is dislodged by the statute operating upon the contract and substituting Ontario as the place of payment instead of Indianapolis. That is the crucial point of the case and it depends upon what the effect of the statute is.

Did the legislature have in mind that it would interfere with the contract that the parties had made and change the amount which the parties had agreed upon, or, was the legislature accepting the amount fixed by the contract to be paid and merely providing the manner in which the amount so fixed was to be discharged? It is difficult to attribute to the legislature an intention of intervening between the parties to the contract to protect the insured against any depreciation of foreign currency. It appears more reasonable to attribute to the legislature the intention of bringing the insuring corporation within the jurisdiction of the province by requiring it to have a registered agent upon whom process could be made and of providing the method in which a debt of fixed amount is to be discharged. We are all aware of the difficulties that presented themselves to beneficiaries in the different provinces in Canada in enforcing claims against foreign companies in the courts of their own province because of the absence of any agent of the companies upon whom process could be served, and it seems to me that the real object and intention of the legislature of Ontario when in 1897 it first introduced the provision that

> all moneys payable under the contract shall be paid at the office of the chief officer or agent in Ontario of the insuring corporation, in lawful money of Canada, and this section shall have effect notwithstanding any agreement, condition or stipulation to the contrary

was to overcome the difficulties in enforcing payment in Ontario against foreign insuring companies. If that was the object and intention of the legislature, there was no intention to fix the amount to be paid as something different from the amount settled by the contract between the parties but merely to determine the manner in which the amount already fixed by the parties was to be discharged.

The question is by no means free from doubt. One can quite understand another view being taken. But upon the whole I think that the statute only intended to make payable within Ontario in lawful money of Canada whatever was the agreed amount of insurance. When the parties agreed by their contract that there should be so many thousand dollars payable at the home office of the insuring company in Indianapolis, *prima facie* that meant American dollars, being the currency of the place of payment

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agreed upon. To dislodge that *prima facie* presumption, something more, it seems to me, is necessary than a statutory provision directed toward bringing the insuring corporation within reach of the beneficiary so that it might be sued within the province in which the insured resided and in which the policy was delivered. And to enter suit in the courts of the province it was convenient, if not necessary, to provide that the obligation under the contract should be payable in lawful money of Canada. That interpretation of the statute does not destroy the contract made between the parties as to the amount of insurance to be paid. It would require very clear and precise language to lead to an interpretation which would have the effect of destroying the contract between the parties in so far as the extent of the obligation is concerned.

I would therefore allow the appeal and restore the decision on the motion for judgment on the pleadings, with costs throughout.

Appeal dismissed with costs.

Solicitors for the appellants: *McMaster, Montgomery, Fleury & Co.*

Solicitors for the respondents: *Hunter & Hunter.*