

CORRESPONDENCE.

THE PAMPHLET RECENTLY PUBLISHED BY THE SCOTTISH EQUITABLE SOCIETY.

To the Editor of the Assurance Magazine.

SIR,—The pages of the *Assurance Magazine* are fortunately not often occupied with the discussion of topics relating to particular Companies, and I should not have ventured to ask you to deviate from your usual practice in this respect, by inserting this letter, did I not feel that some notice should be taken of a pamphlet circulated amongst Insurance Offices, purporting to be *A Statement, by the Directors of the Scottish Equitable Life Assurance Society, to the Members of the Society, relative to the Case W. C. Fowler and others v. the Scottish Equitable*. I say the pamphlet purports to be a statement by the Directors, for I can hardly believe that any board of directors would have adopted the questionable practice which the writer of this pamphlet has done, of condemning every person who has the misfortune to differ with him in opinion on the merits of this case.

The Scottish Equitable is one of those Offices which announces that its “policies may, after being of five years’ endurance, be declared indisputable on any ground whatever, and the assured be entitled to travel or reside

beyond the limits of Europe without payment of extra premium for such travelling or residence. Special application must be made to the directors for such privileges however, and satisfactory evidence adduced, that, at the time of his application, the assured has no prospect or intention of going beyond the limits of Europe."

Why a period of five years should be a better limit than any other, would, perhaps, be difficult to explain; but there seems to be no doubt, in the minds of the judges of our courts of law and equity, as to the force of the term "indisputable." Perhaps this was the point of attraction with Messrs. Rees and Co. when they effected this insurance, and they have not been the first to realise the value of the benefit conferred upon the public.

The simple facts of this case appear to be, from the directors' statement (for none other has come under my notice), that the life assured died 180 miles beyond the limits of the policy. At first there seems to have been some doubt whether the policy was voided or not; but, on inquiry being made of one of the "most eminent geographers," the place of death was said to be 350 miles beyond the limits. This "most eminent geographer" was afterwards found to be "out" in his measurement, and the question of avoidance as to distance is ultimately fixed at 180 miles. But the directors say their decision would not have been affected by the distance; the assured had no licence, and hence the Society was absolved from payment. Again: the directors say—"Mr. Fowler being aware of the disinclination of the Equitable Society" (I suppose they mean the "Scottish" Equitable Society) "to enter into a lawsuit, threatened them with proceedings. It does not seem to have occurred to the directors, that, if their licence had been exceeded, they were entitled to an extra premium; but no, "they considered the question at issue to be one of vital importance, and they accordingly adhered to their resolution of declining to pay."

Of vital importance the question undoubtedly is, for it must be borne in mind that this policy was held by an assignee; that of the *bond fide* nature of the assignment no question is raised by the Directors; that it never was in the hands of the life assured, and it was all along held by parties who had no control over his movements. In fact, so ignorant were they about him, that the assignment to Mr. Fowler bears date "a month after Mr. Haire's death."

If, then, what should be a valuable instrument becomes a piece of waste paper, when the contract is taken strictly upon its legal construction, it behoves us to inquire whether this is a specimen of the practice of a particular Office, or if it is generally adopted.

We are told that "the Scottish Equitable, or any other respectable Office, never think of declaring a policy forfeited where the party may have gone beyond the prescribed limits, perhaps by mistake, provided the fact be instantly intimated to them, and the additional premium paid." Somehow or other, there is always an ugly proviso in these Scotch concessions. Here it is *provided* the fact be *instantly* intimated; in the indisputable declaration, the party may go anywhere, *provided* he has no intention of going. But, whatever the Scottish Equitable may do, it must be satisfactory to the public to learn that respectable English Offices adopt a much more liberal course. It is well known that many of the leading English Offices will, when asked to do so, place an endorsement upon their policies, providing, amongst other things, for the contingency which has happened in this particular instance. The endorsement sets forth, that, should the life assured

do any act or thing contrary to the conditions of the policy, the insurance shall not thereby be rendered void, if the interested party make the communication as soon as the fact comes to his knowledge, and pays the additional premium which would have been required if the fact had been known at the time it had occurred.

Such, then, being the London practice, as distinguished from the Edinburgh profession, it may fairly be asked, "Is it just and right to place a policy-holder, who has so much confidence in the Office he insures with as not to ask for such an endorsement to be put upon his policy, in a worse position than one who exhibits a want of confidence by insisting upon having this qualification to the conditions of his policy?" Under any circumstances, the equity of the case would have been met by the payment of an extra premium, but the forfeiture of the policy can only be justified where an attempt at fraud is detected.

The directors take credit for having paid claims that appeared to be more than doubtful. Do they imagine that their Society is the only one that has done the same? Have not many Offices at times good reason to suspect they have been imposed upon? To suspect is one thing; to be able to prove the suspicion to be correct is another. If Offices, in their anxiety to do business, fail to make due inquiries before they enter into contracts, they must expect to pay for their want of caution. According to the theory of an old insurance director, no one ever came to insure his life until he had had a runaway knock. This suspicion led him to regard those who did come to insure as his natural enemies.

Now let us sum up the charges which the directors make against Mr. Fowler and the other parties who appear in this dispute.

That Mr. Fowler "*has printed and circulated a pamphlet in which, by the most unscrupulous assertions, and equally unscrupulous suppressions, he endeavours to make out that the directors have improperly resisted his claim, and that it ought still to be paid.*"

This charge of *suppressio veri* is somewhat strong, and does not seem justified by the subsequent details in the directors' pamphlet. The latter part of the charge the directors appear to have proved for themselves.

Next, Mr. Kœnig, a member (as the directors acknowledge) of a respectable firm in Liverpool, is charged with making "false and calumnious statements against the directors," and with having a bad memory.

Then Mr. Haire's antecedents are questioned; afterwards the English courts of equity are treated with a blessing, and Vice-Chancellor Sir John Stuart with something else, for giving credence to Mr. Kœnig's affidavit, and for ordering the Society to refund all the premiums they had received on this policy.

Then the members of the Society are referred to the *Times* of a particular date for an estimate of Sir John Stuart's decisions. The directors are strongly advised to appeal to a court of review; but as they had no wish to make a profit of the transaction, they declined to follow the advice; and they had concluded that the business was at an end, but they find that "*Mr. Fowler, having failed to accomplish his end by legal means, seems determined now to attempt it by illegal ones. He has printed a pamphlet on the subject, which is one tissue of falsehoods from beginning to end, and transmitted a copy of it to each of the ordinary directors, with the cool request that they, to save him trouble and expense, would furnish him with a list of the policy-holders, to enable him to send copies of it to them also.*"

Mr. Fowler has, no doubt, found it impossible to procure a list of the members, even at a sacrifice of trouble and expense, without the aid of the directors, which aid they intimate they have withheld; and yet, with the usual consistency displayed in their pamphlet, it is headed "*Audi alteram partem.*"

They (the Directors) say that "*the only plea maintained by the Society was, that Mr. Haire, having gone beyond the limits of the licence, the policy had been forfeited; and that plea was held to be a true and fair one, and it has been given effect to.*"

By whom, it may be asked, was the plea held to be true and fair? It was, no doubt, held to be good in law, and hence its effect. The Vice-Chancellor made the Society refund the premiums, which the directors never offered to do. After this, perhaps the less said about fairness the better.

"*The directors do not believe that the memorandum was written by Mr. Kœnig at the dictation of Mr. Cook.*"

Mr. Kœnig says it was. Mr. Cook is not here to deny it. The Vice-Chancellor leans to the side of Mr. Kœnig, and the memorandum certainly seems to bear unmistakable evidence of official wording.

Mr. Fowler is charged with suppressing the words "save as aforesaid"; and the directors add, "*After this, it will scarcely be credited that Mr. Fowler's pamphlet contains a fair statement of the case.*"

A fair statement, indeed! How can the directors hazard such a remark when they have previously asserted "*that the pamphlet is one tissue of falsehoods from beginning to end,*" and that Mr. Fowler supports his claim "*by the most unscrupulous assertions and equally unscrupulous suppositions*?"

The directors suggest that it is, perhaps, unnecessary to advert to the opinions expressed by other persons upon this claim; nevertheless, they cannot help looking upon one Mr. Macbryde's *interference as a piece of gross impertinence*; and one of their extraordinary directors (a very "extraordinary" director, indeed) is rebuked for giving an opinion adverse to the Society, upon an *ex parte* statement. This gentleman is now in possession of the directors' version. Will he alter his decision? Other opinions, adverse to the directors, are referred to, but they insinuate that Mr. Fowler took care to frame his statement so as to secure a favourable response.

What a bad fellow this Mr. Fowler must be!

The directors say, in conclusion, that if this claim ought to have been paid, no other similar claim ought to be resisted. I can only hope we may never see another such claim resisted, except, as before observed, upon the plea of fraud. Would it not have been better for the directors to have deducted the extra premiums the Society was entitled to, and to have handed the balance to the assignee of the policy? and will it not be better for the Society to practise indisputability, instead of professing it?

Let this catchpenny term be erased from the prospectuses of those Offices who have been so ill-advised as to adopt it, and perhaps we may see, at no distant day, a return to that confidence in the insurance institutions of the country which some Offices have, of late years, done their best to destroy.

I am, Sir,

Yours truly,

PHILO-SCOTIÆ.

London, September, 1859.