MEMORANDUM.

It appears from this letter that the Executors filed transfer with the Company in 1886 as the legal representatives of Temple.

The Trust Company which assumed to represent Temple in its agreement with me in 1896, must I suppose have acted for the Executor.

Can an Executor authorize another to act for him without disclosing his Agency?

The Philadelphia Trust and Safe Deposit Company is described in that agreement, April 1896 as "Trustee under the will of Joseph E. Temple," yet in 1886 the Equitable Society say a certificate was furnished them that Wilson & Allen were Temple's Executors and in 1899, they executed an assignment of the Policy to Temple's heirs. How could the Trust Company as "Trustee under the Will of Joseph E. Temple," make a contract in behalf of his estate while the same was in the hands of the Executors?

If they represented the Executors, they did not disclose their agency. As I understand the law an Executor cannot transfer his authority to another, "Quod delegatus est, non delagari potest" is I believe a universal principle.

There could not at the same time have been two legal representatives of Temple's Estate. If the Executors represented it in 1886 and also in 1899, the Estate could not have been represented by a "Trustee under the Will" in 1896.

If such "Trustee" had any authority it <u>must</u> have been conferred by the Executors and not by the Will. The authority

of the Executors must be exclusive and the right to represent the estate must be derived from or through them. If so derived the so-called "Trustee" becomes a mere agent or attorney for the Executors and cannot contract or bind the estate or a debtor of the same without disclosing such agency.

If this view of the matter is correct, my admissions and agr agreements in the instrument with the "Trustee" are void and the statute of limitations bars the right of Temple as against the principle in the note, and of course releases the endorser.

I never received a cent nor a cent's worth from Temple except money borrowed by the Continent Company for which I was liable only as endorser. If the assignment of the Policy was not as collateral security to sustain such endorsement, it was absolutely without consideration and void.

If my agreement with the so-called "Trustee" under the will of Joseph E. Temple" was really with one who only represented the Executors, it is void because he did not disclose his character but claimed to be what he was not.

If this is correct, the matter stands with Mrs Tourgee as my lawful assignee, against the Insurance Company on the ground:

I.--That the assignment of the Policy did not carry the Tontine.

II.--That the assignment was to secure the liability of another which has never been legally established.

III.--That such liability of the principal cannot now be established since the bar of the Statute of Limitations obtains, the Continent Corporation having made no payment nor corporate acknowledgement in writing and the admission of the endorser having been made with one not authorized to bind the estate.