

CONSULATE OF THE UNITED STATES OF AMERICA,

Bordeaux, France, Sept. 7th, 1903.

My dear Kilmer:

Mrs Tourgee has written you something about a rather curious snarl I have with The Equitable Life Assurance Society and the Philadelphia Trust, Safe Deposit and Insurance Company which is Trustee of the Estate of Jos. E. Temple, late of that city. You will find the whole matter set out in the Statement and Exhibits hereto annexed. The Assignment to her of the Tontine, I will send a week from to-day as I cannot of course, assign it until after the Tontine Period expires, viz, September 13, 1903.

The gist of the matter is that I claim the Tontine Agreement did not pass by assignment of the Policy on my life, not being part of it, nor essential to the contract of Assurance and the assignment carried only the Policy not the Tontine contract. The two contracts differ in every respect. One is conditional on my death, the other on special survivorship. One matures at death the other on Sept. 13, 1903. One is payable in cash; the method of discharging the other is optional with me. If the Tontine was assignable before September 13, 1903, the assignment of the Policy could not convey such interest with specific reference to it. It is neither a part of the Policy nor "money payable under the same." The Policy is a contract to pay \$15,000 in the event of my death. The Tontine Agreement is a contract to do one of four

things in case I am living on September 13, 1903.

~~The contract of Assurance, that is, the Policy is not affect-~~  
ed in any manner by the failure or fulfillment of the Tontine Agreement. The former was assigned to Mr Temple September 24, 1883; the latter to Mrs Tourgee on the day my interest in the same accrued, viz September 13, 1903.

You will observe that the assignment to Mr Temple is dated September 24, 1883, while the note for which it is claimed to be held as security was given on May 24, 1884. The note was not therefore any part of the consideration for this assignment. It was given as security for another loan which had been fully paid off before this note was given. The Policy was undoubtedly retained as security for this loan and was so recognized by me in an agreement dated April 28, 1896. This agreement, like the assignment makes no reference to the Tontine Agreement and grants no power to the assigns or his trustee to act for me in determining the option on which the satisfaction of this contract depends.

This agreement while it bars me from denying the debt or setting up the statute of limitations, leaves me to plead usury, since the Principal in the note could have done so. This by Pennsylvania law cuts off one-fifth the amount of the note and the interest on the same, reducing the claim by more than \$1000. leaving all told about \$21,000 for which the Trustee holds as security the Policy of \$15,000. The Principal in the note is not only insolvent but non-existent. The security is not only insolvent but has judgments aggregating at least \$50,000 hanging over

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him. The Trustee must do one of two things to save either his debt or the premiums he has paid to wit:

- 1--Get hold of the Tontine Dividend, or
- 2--Keep on paying until my death. If this should occur now the face of the Policy would not leave him whole. Temple thought I was going to die very soon, 18 years ago. I may live as much longer.

Now, if I can prevent his getting the Tontine, I think he will be ready to take what he can get, say the cash surrender value of the Policy, minus the Tontine, or something of that sort.

I wish, therefore, you would,

- 1--Ascertain the value of the Tontine Dividend allowed in this case by the Assurance Society.

- 2--The present cash-surrender value of the Policy.  
Contract

- 3--File the Assignment of the Tontine to Mrs Tourgee with the Company and take a receipt for the same.

When this is done we will let him sweat until he says something. Then we will see what opening is offered for negotiation. I may hear from the Trustee soon. He is likely to have some proposition to make concerning the maturity of the Tontine Period. If any proposition is received, I will let you know. I do not wish to sue nor threaten, but just quietly choke him off. I do not, of course wish you to move in the matter until after you have in hand for filing the Tontine Contract which cannot be sent you for a week yet.

It was very kind of you to offer to look after this matter which you might not have done if you had known all the circumstances. I am greatly your debtor for your pleasant attention to Mrs Tourgee during her lonely stay in New York. Hoping to be able to repay all such debts some time, I am,

Most sincerely yours,

