52 Cours du Jardin Public,

Bordeaux, France, October 19, 1903.

My dear Carter:

I send you herewith a Complaint setting forth a cause of action on the part of Mrs Tourgee against the Equitable Life Assurance Society of the United States. Also a Power of Attorney authorizing your firm to prosecute such action.

I have put the statement in the form of a Complaint as a convenient method of informing you of its character, not with any intent to prescribe this particular instrument as the Complaint should you advise the prosecution and be willing to undertake the same. The one I send is probably redundant as I was anxious to make it show all the points in favor of my contention.

The facts in the case are as follows:

September 13, 1883, I took out Policy No. 264,580 on my life with the Equitable Assurance Society of the United States for $15,000, payable at death to my "executors, administrators or assigns."

This Policy was termed Semi-Tontine, that is, the Company entered into a contract to pay the insured a certain sum of money or issue to him certain paid-up insurance at the end of 20 years should he be then alive and the said Policy in force. This contract was entirely distinct from the Policy, being used as a premium or bait to induce the taking out of the Policy which differed from any other Policy only in the fact that it was not enti-

tled to share in the dividends declared by the Society until after the lapse of 20 years.

September 25,1883,I assigned this Policy to Joseph R. Temple by an instrument in form absolute,but really as part security f for a large sum of money loaned by him to OUR CONTINENT PUBLISHING COMPANY and endorsed by me. This note was paid at maturity. I was then trying to reorganize the Company and negotiate its sale to other parties. I had invested in it all I had and was trying to save something by carrying it on from week to week and borrowed from Mr Temple other small amounts--always with heavy usurious interest--and the Policy was retained by him as security. On the 24th of May,1884,the Company borrowed of him $2500 at 3 months,paying an enormous usury,and the same Policy with the same assignment was kept by him as collateral. All sums borrowed of him except this last was paid at maturity.

On the 28th of April,1896,I signed an agreement with the Trustee of Temple's estate,admitting my liability as endorser of said note on condition:

1--That he should not sue for a time specified,two months.
2--That the assignee should pay the annual premiums on the Policy,or
3--Give me 3 months notice of refusal to do so.

On the 13th of September,1903,the Tontine Period expired.

On that day,I conveyed my interest in the Tontine Agreement then just accrued,to Mrs Tourgee who is a judgment-creditor for more than $20,000.

On the 15th of September,without hearing from me,the Compa-

ny recognized the right of the heirs of Temple to receive the Tontine under the assignment, allowed them to make election of the options accorded to me and paid over to them the entire Tontine.

My contention is that the Tontine Agreement is no part of Policy and did not pass under an assignment of the Policy without special reference and without authority to act for me in choice of options specially vesting in me at expiration of Tontine Period and not before.

The Tontine Agreement was of even date, between the same parties and conditioned upon the maintenance of the Policy for 20 years. It was printed on another page of the same sheet of paper These are the things it has in common with the Policy, or contrac of Assurance on my life. The conditions are absolutely conflicting. One matures at death; the other on specific survival. The Policy descends to heirs; the Tontine can neither descend nor be assigned before maturity because no interest accrues until that time to the beneficiary. The Tontine is payable only under specific options and the right to elect between options offered can not pass by mere implication. One might as well insist that the assignment of the Policy vested in the assignee the right to live or survive in my place.

The Policy is described in the assignment by number and the name of the beneficiary. No reference is made to the Tontine It specified that the assignee is entitled to receive "all mon-

eys which may be payable under the same." This does not embrace the Tontine which is not payable under the terms or conditions of the Policy, but under an entirely differently conditioned contract.

The words "All money payable under the same" cannot reasonably be counted to mean the Tontine as the money that might actually be payable under the contract of insurance or Policy, ~~are~~ is of three kinds:

1--The amount of the Policy, payable at death.
2--A cash-surrender value if the owner chose to surrender.
3--Annual dividends after lapse of Tontine period.

It is worthy of note that the cash-surrender value took no note of the Tontine--showing how completely dehors the Policy was considered by the Company.

I contend:
1--That I could not have assigned the Tontine before it accrued, Sept. 13, 1903.
2--That if I could have assigned a mere contingency, it coul not have been done without express words.
3--That no one could have had any right to choose between the "options" accruing to me on Sept. 13, 1903, except by expres authority to act for me and in my behalf. Such authority cannot accrue by inference.

I believe the question if new. The Company were informed in April, 1896, that the assignment was not absolute but for security.

The amount of the debt for which as endorser I am liable, has never been ascertained. The Continent Company received only $2000 for the $2500 note. I believe the endorser cannot be held for the amount of the usury nor for interest on usurious interest.

These opinions of mine, I hold of course, subject to your approval. If you think the conveyance to her not good and the Company not liable, please say so without any hesitation.

My idea is to raise the question of the Company's liability on the assignment as it stands without raising the question of its character--not that there is any question about that. You will see from the agreement with the Trustee of Temple that ther is not, but in order to reduce the matter to the sharpest possibl form, it may be well to make two causes of action, one putting in issue squarely, the question of the Company's right to pay the Tontine to the Temple heirs claiming under the assignment even granting it to have been absolute in fact as well as in form, and the other setting up that the Company was affected with notice of its true character. I do not see why the former could not be tried without testimony. All that I leave to you only inviting your attention to the enclosed letter of the Company to Mr C.A. Kilmer, Mrs Tourgee's Agent and my comments attached there to. It seems to me that the Company admits all that is required to try the issue "Did the Tontine pass by the assignment?"

If it did, then it may be necessary to sue the Temple heirs of possible the heirs and the Company jointly. I have however, much confidence in this new point as to the separability of Policy and Tontine.

Remember, the failure of the Tontine in no way affected the character or value of the Policy.

Mrs Tourgee was in New York last August and thought to talk over all these questions with you, but unfortunately for her, you were out of the City. Sincerely yours,