

Carter, Hughes, Rounds & Schurman
Attorneys & Counsellors at Law,
96 BROADWAY & 6 WALL ST.

CABLE ADDRESS "CARSWAL"

*Walter F. Carter, Charles E. Hughes,
Arthur C. Rounds, Geo. W. Schurman,
Carl A. Hansmann, Thos. H. Rothwell,
Walter F. Carter, Rich. E. Dwight.*

New York, November 16th 190

Hon. Albion W. Tourgee,
52 Cours du Jardin Public,
Bordeaux, France.

Dear Sir:

Your letter of the 19th ult. to Mr. Carter, with its enclosures, was received, and has received our careful consideration.

We are of the opinion that upon the facts you state Mrs. Tourgee would not be justified in bringing an action against the Equitable Life Assurance Association, and we would not care to act for her in bringing such an action.

We think that the "provisions and requirements" printed upon the back of the copy of the policy you sent us do not constitute an independent contract with the Company but must be considered as a part of the policy and therefore as covered by your assignment. This is the ordinary rule, and we see nothing upon the papers sent us leading us to regard your case as exceptional. The clauses upon the back of the policy were not signed by the Company and are not binding upon it except because of its execution by its proper officers of the policy itself. And moreover, that policy expressly provides that it is "issued and accepted upon the condition that the provisions and requirements contained or written by the Society upon the back of this policy are accepted by the assured as part of this contract as fully as if they were recited at length over the signatures hereto affixed".

Your assignment to Mr. Temple was absolute in form and con-

A W T 2

veyed all your "right, title and interest" in the policy and "all money which may be payable under the same". Whether this assignment was in fact absolute or as security for advances, and whether in the latter event, the Insurance Company, had notice that it was held as security is, so far as appears, immaterial. Mr. Temple and his representatives would, in either event, be entitled to collect any moneys payable by the Company upon the policy so long as any part of the indebtedness remained unpaid. Your rights would be to an accounting against them for any surplus they might receive.

It is true that the policy provided that you should have certain options with reference to the disposition to be made of the policy at the termination of the tontine period. We know, however, of no authority holding that this right of yours can not be assigned, and it seems to us, in view of the form of your assignment, that you are not in a position to object to the exercise of the option by your assignee. If the Insurance Company itself has recognized the assignee's rights we think you are not entitled to complain. Moreover, whether the right to exercise the option could be assigned or not, certainly you cannot complain of the payment of moneys by the Company to the assignee, for if you should yourself exercise any one of the options the moneys which would become due in accordance with that exercise would be payable not to you but to the assignee.

We think there can be no doubt of your power to assign your rights under the policy, including the tontine provisions, although these rights were not to mature until the present year. We think it clear further that your assignment in fact operated to transfer your rights under the tontine provision, that the assignee was entitled to elect which option should be exercised and that in any event, whether this election was exercised by him or by yourself, any moneys paid or

A W T 3

payable by the Company would be payable to the assignee.

Of course this opinion does not deal at all with your rights as against the present holders of the policy. Upon establishing that the assignment was made as security for a loan you would, we presume, be entitled to redeem and to recover any surplus remaining from the proceeds of the policy after the amount due to the assignee upon account of the debt was paid. Your letter does not state definitely whether the premiums during the past twenty years have been paid by yourself or by the assignee. If by the assignee he would, we presume, be entitled to reimbursement for these, in which case the surplus would very likely be small.

As your present letter and Mrs. Tourgee's power of attorney do not indicate that you contemplate suit against the present holders of the policy, and as we cannot see our way to advising an action against the Company, we return the papers you sent us herewith, as follows:

Copy of policy of Equitable Life Assurance Society No. 264580.
Letter G.W. Phillips, Actuary, to yourself, dated March 31, 1896.
Letter C.E. Kilmer, dated Sept. 26, 1903 and copy of receipt enclosed therein.
Two duplicate originals of assignment by yourself to Mrs. Tourgee dated Sept. 14, 1903.
Copy assignment of policy by yourself to Joseph E. Temple, dated Sept. 25, 1883.
Two copies agreement between yourself and the Philadelphia Trust Co. dated April 28, 1896.
Copy of papers sent by you to the Philadelphia Trust Co. dated March 24, 1896.
Original and copy of letter S.S. McCurdy, Assistant Registrar, to Charles E. Kilmer, dated Sept. 28, 1903.
Power of Attorney Mrs. Tourgee to Mr. Carter.
Copy of draft complaint.
Typewritten copy of the policy of insurance.

Kindly acknowledge receipt.

Regretting that we cannot advise you to begin the action contemplated, we remain,

Very truly yours,

Encs.

Lester Hughes Round, Schuman