

MEMORANDUM OF TRANSACTION.

1--Note of THE CONTINENT PUBLISHING COMPANY for \$2,500, dated May 24th, 1886, at three months to my order and endorsed by me to Joseph E. Temple, with interest from date.

I had frequently borrowed money from Mr Temple always at usurious rates. I received on this note but \$2000. The money was paid by a cashier's draft not by Mr Temple's check, drawn, I think to "bennew."

2--On the 25th of September, 1886, by separate deed, (See Exhibit A), I assigned to Joseph E. Temple for "one dollar and other valuable considerations," all my right, title and interest in Policy No. 364,580 of the Equitable Life Assurance Society and all money which may be payable under this Policy.

This was after the note was due and the assignment makes no reference to the note. It was fully understood however, to be as security for this note and has been so recognized.

3--The first Premium of \$569.55 was paid by me and I think \$300. on the second. All other premiums have been paid by Mr Temple or the representatives of his estate.

4--I have acknowledged and still acknowledge myself bound on said note the same as the principal, to wit: For the principal money and interest less the usury and interest on the same.

5--There is no question that this conveyance covers the Assurance of \$15,000. on my life. The question is whether it covers also the Tontine Dividend which is contingent:

1--On my being alive on the 13th day of September, 1903, the end of the Tontine period of 20 years.

2--On the Policy being then in force.

My contention is that the above does not affect the Tontine Dividend. My contention is that the Tontine Dividend is no part of the Policy of Assurance, but a mere prize intended to induce parties to take out insurance. It is in effect, a wager which the Company wins if the insurer dies before its maturity and loses if the person

(2).

insured lives 20 years and the Policy is still in force. If I had died before the end of the Tontine Period the Policy of Insurance would still have been good and the amount of the same payable to my heirs or assignees, but the Tontine agreement would not have survived. There are two separate contracts, one for \$15,000. insurance and one for the Tontine Dividends. One is positive and invariable; the other contingent and determinable only on conditions not ascertainable until 20 years after.

2--Because of this, the Tontine privilege or Dividends did not pass by the Assignment of the Policy but only the contract of Assurance set out in the Policy. The fact that the terms of the Tontine wager are printed on the same sheet of paper as the contract of Insurance does not make it a part of the same.

3--The Tontine contract, by its terms, is not only contingent but personal. The option provided is a personal one, to me in case of survivorship and not to my heirs or assigns. Such an interest cannot pass by assignment of the Policy any more than the condition on which it is based, viz, survivorship.

4--The Tontine Option does not insure to the owner of the Policy but to the person insured contingent on survivorship. Even he has no assignable interest in such option until after the lapse of the Tontine period.

5--Interest in such a separable contingent contract does not pass upon a mere assignment of the Policy without mention of the independent contract. The Tontine Contract refers to the Policy to determine amount, maturity, etc, but is not an integral part of the contract of insurance. The failure of the Tontine agreement does not affect the insurance contract. There are two contracts, -- the Tontine wager depending on the Policy of Insurance for the determination of its term or limitations, but not its amount or conditions. Neither contract affects the amount of the other. The insurance is all the time \$15,000. The Tontine

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Dividend depends:

- 1--On the number of lapsed or forfeited Tontine agreements of the specific class to which this one belongs.
- 2--The amount of the "Accumulated Reserve," and
- 3--The amount of the "Surplus" in which the survivor of the Tontine Period" may be entitled to share.

None of these are elements of the Insurance Policy, the amount of which remains the same whether the assured lives until the Tontine Period expires or not.

(4) If the interest of the insured in the Tontine Dividend is capable of assignment at all before the expiry of the Tontine Period, it is certainly possible that it should pass by assignment of the Policy containing no specific reference thereto or to the "Option" by which alone advantage may be taken of the same.

(5) The assignment contains no grant of power to Temple or his representatives, to do anything in my name--to determine any other thing necessary to secure the Tontine Dividend.

(4) For these reasons, I believe that the representatives of Temple do not take the Tontine Dividend by virtue of the assignment of the Policy and cannot avail themselves of the Option relating to the same. I shall therefore assign the same to my wife on the day after the right to take advantage of the option. I send this assignment to be filed with the Company.

**TEMPLE'S CLAIMS AGAINST ME FOR WHICH POLICY NO. 2841586
IS CAPABLE OF ASSESSMENT AS SECURITY.**

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TEMPLE'S CLAIMS AGAINST ME FOR WHICH POLICY NO. 264,580
IS HELD AS SECURITY.

11)

Principal of Note dated May 24, 1884, ----- \$2500.00.
(\$500. of this was insur.)

Interest for 19 years, ----- 2850.00.

Premiums paid by him or his representatives, --- 10521.45.

Interest on premiums, (See Schedule), ----- 6150.55.
Total, --- \$220.22.00.

POLICY PAYABLE AT DEATH, ----- \$15000.00.

Tontine Dividends payable on condition that insured lives until September 13th, 1903, the Policy being still in force. This consists of:

1-- The accumulated Reserve, ----- \$ 5990.55.

2-- The Surplus--that is the share of the profits derived from all Semi-Tontine policies in which the insured did not outlive the Tontine Period or the Policy was not then in force. The amount of this is, of course, unknown but I am informed that it is likely to be equal to the face of the Policy, viz, ----- \$15000.00.

Total, ----- \$35990.55.

WHY TEMPLE PAID PREMIUMS.

About one year after the date of this note for which Policy was held as security, by the failure of THE CONTINENT PUBLISHING COMPANY, I became not only insolvent but liable for an indebtedness of nearly \$100,000. This meant of course, that Temple could recover nothing from me as endorser simply because I had nothing and his only chance for recovery was by the assignment of the Policy.

In the winter of 1884/5 I was taken ill at the Continental

Hotel, Philadelphia. Temple heard of my illness and came to talk of his debt. My physician was present and after an interview with him, Temple announced that he would pay the premiums on the Policy as long as I might live.

At his death, he provided in some way for the payment of the same by his representatives. I do not know in what manner. At least they have paid the premiums ever since.

I understand that Temple left the bulk of his estate to the City of Philadelphia. The Philadelphia Trust, Safe Deposit Company, No. 413, Chestnut Street, is Trustee of his estate and in possession of the original Policy. The assignment (See Exhibit No.

"A") hereto annexed, is an absolute and unconditional one. I do not think they can get anything on the Policy without suit until after my death. Though I have paid or compromised, ~~markedly~~^{much} of my indebtedness, I have no property and they can recover nothing of me except through the assignment of this Policy.

I do not think they will care to trouble, in mean, they cannot sue the Company until after my death. I acquit them liability on the endorsement by an instrument of writing dated April 28, 1896, (See Exhibit No. "B"). This binds me not to plead the statute of limitations in bar of recovery, but leaves me to avail myself of any defence the principal in the note may have had, such as usury.

While the action of Temple's representatives has been apparently very considerate, since a part of the Tontine Dividend, at least must come to me or my heirs, it must be remembered that the only way for them to get anything, for the debt, was to keep the Policy in force and wait for my death. The face of the policy will not it is true, meet all their expenditures with interest and also the original debt with interest. If however, they abate say 20 percent of their claim, leaving \$15,000 or \$16,000, or something, it should be practicable to arrange with the Company so that they can get this amount and still leave something for my family.

It should be remembered also that my dealings with Mr. Temple, extending over a period of ten or 12 months, were by no means of a charitable character. In all I must have borrowed from him at least \$40,000 or \$50,000, all at usurious rates, often very high. At one time I borrowed \$25,000. All these were paid except the note in question, the usurious interest amounting to more than the whole of the present note. He knew my condition and that I was risking everything to capitalize The Continent and get it off my hands. He took advantage of my necessity as he had a right to do, but his action does not leave me under any overwhelming obligation to give his legatees any more than is their strict legal right. I do not feel compelled to sacrifice my family in order to add to the endowment of the Philadelphia Park.

After all it is not so bad for a man to get 75 or 80 per cent of his money in a case where both the principal debtor and security are hopelessly insolvent--made so by the same unfortunate failure. The fact is Temple took advantage of my need and ran his chance on the letter of the law and I feel under no obligation to go beyond it. If the law leaves me an interest in the Tentire Dividend, I want it. If it all belongs to the City of Philadelphia, so be it; but I do not see how the city--that is the representatives of Temple--can get it without a suit and I do not think they will care to sue. If they will reduce their claim to what they would be likely to get after suit or in case of my death, I think something might be worked out of it for Mrs. Taurgee, to whom I owe more than \$20,000, by unimpeachable judgments. The refusal of a part of my creditors to compromise their claims against me has forced me to fight and I have I think in this matter, the advantage of position.

One thing is sure.--They cannot get anything out of me or my estate except through the conveyance of my Policy by the instrument of September 24, 1889.

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If this does not include the Tontine, their only chance to get anything is to pay the premiums as long as I live and then take the face of the Policy.

They cannot get the Tontine Dividend during my life without my co-operation, unless their deed gives them the right to accept the Tontine Option which is certainly not provided for in the contract. X

If my view of the contract is correct, it is impossible for me to convey my interest under the Tontine agreement, that is, the "Tontine Option" until it attaches on the expiration of the Tontine Period, Sept. 13, 1903. On that day, I shall execute a conveyance to Mrs Tourgee, so that in case of litigation whether early or late, there will be a conflicting, meritorious interest. I will send with this an attested copy of this conveyance, which will at least prevent the Insurance Company paying over to the Temple Trust, the Tontine Dividend without a judgment. The Trustee cannot sue the Company until my death and the assignment of the Tontine interest immediately on the maturity of the Tontine Contract, will at least affect the result of suit even after my death, with so much doubt that I think the Trustee will be glad to compromise the matter reasonably.

In case of such a compromise, I will, of course, do all in my power to enable the Trustee to get his money at once. As we do not know the amount of the "Surplus" it is impossible to say what might be done, but when they are ready to make a compromise Mrs Tourgee will elect which one of the four options may be most favorable to a settlement.

They cannot surrender the Policy and get another during my lifetime without my consent, and if they allow it to lapse, they lose everything they have paid. Under these circumstances it seems to me that an acceptable compromise is the only way out.