

LAW OFFICES OF
MOOT, SPRAGUE, BROWNELL & MARCY.
45 ERIE COUNTY SAVING'S BANK BUILDING.

ADELBERT MOOT.
HENRY W. SPRAGUE.
GEORGE F. BROWNELL.
WILLIAM L. MARCY.

Buffalo, N.Y. June 28th, 1905.

My dear Mrs. Tourgee:-

I received your letter of June 17th, and power of attorney therein contained, this morning; also the other papers this afternoon; and I answer at once, because I know you will be anxious for all the light I can give you.

There are several kinds of Tontine policies on the twenty year plan, that have been issued by the New York Equitable Society, and I see the one referred to in your letter is in the same form as one issued to me in December of the same year, having the same period of time to run. I have examined the conditions of that policy, and they do furnish some ground for the contention that the representatives of Mr. Temple had no right to exercise the option and take a sum of money in cash in lieu of the policy. We can properly claim that the Judge, as the original owner of the policy, and you, as his assignee, had the right to notice of any such attempt to exercise the option in it, because the policy was merely held as collateral security by them for a debt and for the moneys advanced from time to time by them in payment of premiums. This may not help you so much as you would like, because it may be that the debt and the premiums paid together will eat up the entire policy, and it may be upon that theory that the Society acted in making them the cash payment made September 14th, 1903. I write with the utmost frankness, because I realize you do not wish to be misled in the least with false hopes, but you do want everything possible done to secure to you your rights, if you have any in this matter. To that end, if you have not done so, will you kindly fill out proofs of death sent you, in proper form, and send them to me as soon as possible after the receipt of this letter? Upon

receipt of such proofs of death, I will take them and the other papers and go to New York and secure an interview with the right official of the Company, and get at the bottom facts from which to determine what your rights are, if any. It may turn out that your rights are not very clear, and are not rights which the Company, or representatives of the Temples, will admit. In that event, of course I will have to bring a suit for you, but as between the widow of Judge Tourgee and the Equitable Society, at the present time, if we have a fighting chance, courts and juries alike will give the widow the benefit of that chance in a contest with the Equitable Society, and the officials of the Equitable Society must know as much by this time.

The usurious part of the transaction bears upon the question of what debt, if any, exists to the Temples for which they are entitled to hold this policy. Under the laws of this state, such usury as you speak of would be fatal to their claim of any debt whatever, but unfortunately the transaction took place in Pennsylvania, where the law seems to be less stringent. There is a possibility, however, of evading the Pennsylvania law to a certain extent, by bringing an action in equity in this state and getting a court of equity to force all parties to do equity in a settlement with you, if we find you have any right whatever that has survived all these transactions in all these years, so that we can assert it as the basis of a claim against the Company and the Temple estate. I say "Temple estate", because we will probably have to meet both the Company and the estate if a contest becomes necessary. Of course I shall try to adjust the matter, if possible, without litiga-

tion, even advising you to make some concession to that end, because litigation is expensive and almost always uncertain, as the wife of every lawyer knows.

So many deaths have occurred that the laws of evidence will shut out the testimony of many, and may make it difficult for any one to prove a case in court. In short, I cannot tell with any certainty what your rights are, or what we can do, until I have received the proofs of death which I am asking you to send me, and have gone to New York and seen what papers the Company has, and ascertained what its position is in the whole matter. Even then I may not be certain, because of the complications your letter discloses, but I will know enough then to know either that we have no chance, or something about the probability as to any chance or chances we may have. As soon as I learn anything additional, I will at once inform you, because I can appreciate the importance of information to you at this time.

I note the complaint, drawn I assume by Judge Tourgee, touching the \$6089.70, but his death has changed the character of the question entirely. It appearing by the papers that the Temple estate acknowledged the policy was collateral security to a note for \$2500, and premiums paid, the question probably will take this form, to wit: Charge the Temple estate, or their assigns, with the \$6089.70 received, credit that estate with the \$2500, and interest, and any premiums paid, and what will be left of the \$15,000 to be paid on the policy that should be paid to you instead of that estate. In this way, you see equity may make the Company and the Temples, or their assigns, now do what is right, just as if there had been no attempt to ignore any of you

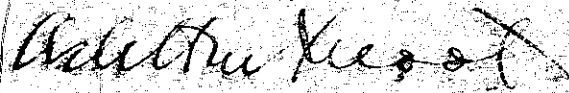
in September, 1903.

I today write a letter to the Company demanding the \$15,000 for you, notifying the Company that I will send forward your proofs of loss, and advising the Company that we do not admit the validity of the claims of any other person to this policy or its proceeds. This letter, I take it, will protect your rights until we shall have ample time to ascertain what they are and assert them in or out of court, as may be necessary, if we find they are such as can be asserted.

Surely you did the wisest possible thing in sacrificing everything else to the harmony of your wedded lives. The result must have been an indispensable support to your husband as long as he lived, and ^{must be} a precious memory to you, now that he has passed away.

Kindly remember me to your daughter, and believe me, as ever,

Sincerely your friend,



To

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