

December 20th, 1905.

Policy No. 239,865.- Tourgee.

Julian T. Davies, Esq.,

#59 Cedar St.,

New York City.

My dear Sir:-

In answer to your letter of December 12th in the above entitled matter, I have to say, that if the policy had not been afterwards modified by the endorsement thereon contained in my letter of the 5th, there would be no ground for questioning the soundness of the conclusions of your letter. Upon the other hand, your letter almost entirely ignores the purpose and legal effect of that modification. It seems very clear to me that that modification divided the annual risk into four quarterly risks, and when your Company consented to thus divide a single annual risk into four quarterly risks, it consented to modify the contract so that it would be unable to collect for those quarters, if any, of a year during which Judge Tourgee should not live. The increased quarterly premium might be accounted for on the theory that it represented interest, or it might be accounted for on the theory that it represented this change in risk; but it is not necessary to account for it upon any theory. It was, of course, within the power of your Company to consent to divide the risk, and the payment of a greater premium each quarter was a sufficient consideration to support such modification. The vital point is that when Judge Tourgee died, he was not in default, and, the risk ceasing at that time, neither he nor his family can be compelled to pay anything more for a risk your Company ceased to

carry when he died. The case cannot be viewed, therefore, the same as if no modification of the contract had ever been made, but your letter does so treat it.

I find no reason in your letter for changing my opinion in this matter. If you still adhere to your opinion, I will, as soon as possible, bring an action for Miss. Tourges, in which I will plead every provision of the policy on which you lay any stress, in hanc verba, and also the modification thereof upon which I rest my opinion. By making my complaint cover the provisions of the policy, and of the modification in question, the legal question will be raised squarely and clearly by a demurrer upon your part. This demurrer can be quickly argued, and whichever fails can quickly appeal it in this department. Our Appellate Division would undoubtedly certify the case to the Court of Appeals, and the case can be disposed of within six months in that Court.

I shall be glad to accept any reasonable suggestions you may make about bringing such an action, so as to make it as convenient as possible for you and the Company to handle the case.

Respectfully yours,