

1906

* March 15.

PEOPLE'S LIFE INS. CO..... APPELLANTS;

AND

TATTERSALL. RESPONDENT.

Insurance — Payment of premium—Thirty days' grace—Death of insured after premium due—Estoppel.

APPEAL from a decision of the Court of Appeal for Ontario(1), affirming the judgment at the trial(2), in favour of the respondent.

By a condition of a policy of life insurance thirty days grace were allowed for payment of a premium if insured was unable to pay it when due. The insured died about ten days after a premium was payable and a firm of solicitors acting for his family notified the insurance company of his death, stating in their letter that if the premium had not been paid they would pay it. On the same day the beneficiary under the policy called at the company's office and saw the secretary who, knowing, the premium was unpaid, told her the policy was all right so far as he knew. The solicitor of the company to whom had been given the letter with notice of the death of insured answered it by requesting that proofs of loss be sent in saying nothing about the premium.

The company afterwards set up the non-payment and refused to pay. The beneficiary named in the policy sued and obtained a verdict at the trial. This

*PRESENT: Sedgewick, Girouard, Davies, Idington and MacLennan JJ.

(1) 11 Ont. L.R. 326,

(2) 9 Ont. L.R. 611,

was affirmed by the Divisional Court, which held that plaintiff was a beneficiary and the company were estopped by conduct from setting up non-payment. The Court of Appeal affirmed this decision.

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The Supreme Court heard counsel on behalf of the appellants and without calling on respondent's counsel dismissed the appeal.

Appeal dismissed with costs.

Watson K.C. for the appellants.

Crerar K.C. for the respondent.
