EFFECT OF THE JAPANESE OCCUPATION ON LIFE INSURANCE POLICIES ISSUED IN THE PHILIPPINES BY AMERICAN AND CANADIAN COMPANIES

By FRANCISCO ORTIGAS, JR.*

I THE ASIA LIFE CASES

Paz Lopez Constantino vs. Asia Life Insurance Company [1] and *Agustina Peralta vs. Asia Life Insurance Company* [2] were "test" cases, the first to be brought (jointly) to the Philippine Supreme Court on the question of the effect of the Japanese Occupation on life insurance policies issued in the Philippines by foreign Companies. For brevity, the cases will hereinafter be referred to as the Asia Life Cases.

Prior to the Japanese Occupation, there were several American and Canadian Life Insurance Companies licensed to do business in the Philippines. Asia Life Insurance Company, a corporation with head office in New York, was one of them. The Company has ceased to sell insurance in the islands since after the liberation.

The foreign companies had several thousands of life policies issued and outstanding in the Philippines when the Japanese occupied Manila on January 2, 1942. The occupation authorities ordered the closure of all Philippine branches of the foreign Companies so that Filipino policy-holders, throughout the occupation, were thus deprived of the right of paying premiums which became due on their policies during that period. Ability and willingness on the policy-holders' part to pay the premiums became of no moment.

Some Filipino policyholders survived the war; others died before the liberation. The foreign Companies declared some of their policies as having been cancelled because of non-payment of premiums which became due during the occupation. The Companies rejected offers to pay the premiums after the occupation, with interest, for the revival of the contracts.

Plaintiffs in the Asia Life Cases had contended that the Japanese Occupation of the Philippines and the resultant impossibility of Filipino policyholders to pay premiums on life policies issued by American and Canadian Companies should not make for the *cancellation* of their policies. They argued that the policies should be deemed merely *suspended* during the period of enemy occupation and

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[1] G. R. No. L-1669, prom. August 31, 1950.

[2] G. R. No. L-1670, prom. August 31, 1950.

liable to revival at the first opportunity thereafter with the tender of the unpaid premiums, plus interest.[3]

On August 31, 1950, the Philippine Supreme Court decided the Asia Life cases adversely to the Filipino policyholders and favorably to the American and Canadian Companies.[4] The Court held that war was no excuse for non-payment of premiums due on a life policy and cannot avoid a forfeiture. The doctrine was reiterated on October 10, 1950, in *Carrero vs. The Manufaqturers Life Insurance Company*,[5] and, on March 20, 1952, in *Gonzaga vs. Crown Life Insurance Co.*[6] The writer strongly believes that the Philippine Supreme Court has prejudiced the people of this forum in the Asia Life cases, and the purpose of this article is to explain the considerations forming the basis of his opinion, and to present the matter, as a civic question, to the Philippine Bar and to law students in general.

II THE POLICIES AND THEIR RESERVES

Life insurance and its basis in the actuarial science is a complicated matter with which the average judge, lawyer or law student is not expected to be thoroughly familiar. My own connection with the insurance business for a number of years has not qualified me to be a technician in the subject. I understand only the general principles of it.

I cannot resist the feeling that our Supreme Court had decided the Asia Life cases without full comprehension of fundamental concepts in the life insurance business. As *amicus curiae*, I am afraid I was not able to explain, to the understanding of the court, the views and considerations supporting the contention of plaintiffs in those cases. For instance, as I will later on discuss, the Supreme Court (Mr. Justice Bengzon penning the decision) apparently misconstrued an argument of mine based on the enormous growth of the life insurance business since the days of the American Civil War.

There are very few Filipino actuaries in our country;—not more than seven by my actual count. It is possible that not one of them has had the experience of working out the actuarial basis of life insur-

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[3] The writer's law firm, as counsel for plaintiffs in *Carrero v. The Manufacturers Life Insurance Company*, G. R. No. L-3032, a case involving the identical question, had taken the same position, and they were allowed to appear as *amici curiae* in the Asia Life cases. They actually assumed the burden of filing the memoranda against the foreign Companies in those cases. Counsel for defendant foreign Companies was the firm of Dewitt, Perkins & Ponce-Enrile, now known as "Perkins, Ponce-Enrile & Associates."

[4] 47 O. G. (12 Supp.) 428.

[5] See note 3, *supra*.

[6] G. R. No. L-4197, prom. March 20, 1952.

ance rates in the Philippines and, on that supposition, they can hardly be deemed to be experts on technical actuarial matters bearing on the question of the effect of the Japanese Occupation on life policies issued in our country by the foreign Companies. Their stand, *pro* or *con*, can only be based on abstractions and generalizations.

Most actuaries are with the insurance business. Most of them are actual or prospective employees of insurance companies. It should not be surprising, therefore, if most actuaries took the side of the foreign Companies on the question at issue in the Asia Life cases. But I can point out to the rather significant fact that Monsieur A. M. Begault, who was the President of the Belgian Actuaries at the end of World War I, and one of the Belgian delegates to the conference which drafted the Treaty of Versailles, had, in that conference, taken a stand in support of plaintiffs' contention in the Asia Life cases. The fact is significant because it shows, and I believe conclusively, that actuarial considerations, which could not have been ignored and disregarded by Monsieur Begault, are not essentially against the view that the Japanese Occupation *suspended*, and did not *cancel*, the policies involved in those cases.

For the orientation of the average lawyer and law student, it will perhaps be necessary, in order to comprehend the effect of the Japanese Occupation on life policies issued in the Philippines by the foreign Companies, to briefly explain, as an initial step, the general features of life insurance policies and their "reserves." There are several types of life insurance contracts. There are the ordinary life policy, the term insurance policy, the endowment policy, the health insurance policy, the hospitalization policy, and others. The most common in the Philippines are the ordinary life and the endowment contracts, with the latter probably exceeding the former in number and amount of policies issued. The policies involved in the Asia Life cases and in the other known cases of the same nature were mostly of the endowment type.

The ordinary life policy is one where, in consideration of the payment of a fixed annual premium by the insured, an insurance Company obligates itself, upon the death of the insured, to pay a beneficiary the amount for which the policy has been issued. For the sake of a simplified explanation, I will give an example of how ordinary life contracts operate. The example cannot be exactly true to fact because there are many factors not taken into account. The objective of the example is merely to illustrate the fundaments of the contract in a manner which I believe can be understood by the average lawyer or law student.

Suppose that by mortality tables, it has been determined that the average Filipino dies at age 50. In other words, some Filipinos die before reaching age 50; others die after reaching age 50; but the average year of death is 50. X, 30 years old, and Y, 40 years old, are Filipinos insured for ₱1,000.00 each. As X is 30 years old, he can be expected to live for 20 more years. His annual premium can therefore be determined under one method of calculation at ₱1,000.00 divided by 20, or ₱50.00 per year. On the other hand, Y is expected to live only 10 years more. His annual premium should therefore be determined at ₱1,000.00 divided by 10, or ₱100.00 a year. If X and Y should die before age 50, the Insurance Company will suffer a loss because it will have to pay the beneficiaries a total of ₱2,000.00, while the amount of premiums it will have received will be less than ₱2,000.00. But if X and Y should die after age 50, the Company will realize a profit, because the payments to the beneficiaries will remain at ₱2,000.00 but the Company will have received premiums in excess of ₱2,000.00. The Insurance Company will have thousands of policyholders, and in the long run it will be found that the losses it may suffer by reason of the death of some of the policyholders before age 50 will be off-set by the profits which will accrue to the Company by reason of the fact that other policyholders will die after age 50. There will be a neutralization of profits and losses. The actual gain of the insurance Company in the transactions may come from a little surcharge added to the premiums. Also added to the premiums is a small amount as a factor of safety so that, if anything unforseen happens, benefit payments which will be called for by the contingency can be met and absorbed by the safety factor. The computation of an actual premium is a complicated process which the actuaries work out.

Ordinary life insurance is the underlying basis of all life insurance policies, and other types of contracts are merely modifications or conveniences adopted and tacked thereon. The following has been stated in connection with the ordinary life insurance policy:

> ". . . . immediately upon the payment of the first premium, the insured attains an estate, in the event of his death, of a fixed amount, determined by the face of the policy. Naturally, he has paid in only a fraction of this amount in the first few years, and in the event of his death in the first few years, a very substantial loss is suffered by the insurer. Theoretically, if the insured then lives to the exact age fixed for him by the mortality tables, the insurance company breaks even, whereas if he lives beyond that period, the Company is the gainer. It is the equal offset of premature deaths and deaths occurring beyond the average span which renders the mortality tables accurate and permits the insurer to assume such risks with safety.

> To break down the principles of life insurance into more specific language, the insured pays what is known as the gross premium. This is in turn, divided into two parts, the 'net premium' and the 'loading charge' or 'expense loading.' The net premium is set by law, the expense loading by the company's method of management. The net premium, in turn, is divided into two parts, the current year 'mortality element' and the current year increase to 'policy reserve.' Since the reserve is built from the insured's own money, the Company therefore, uses the insured's own money plus interest accumulations thereon to reduce his risk each year. If death occurs during a certain year, the company, in effect, returns a portion of the insured's own funds to him which have been built up as reserves and pays the balance from the mortality pool. Thus, the company's risk is reduced as the death rate increases, so that they offset each other. When a premium rate is guaranteed, it is because an exact balance has been struck between the increasing death rate and increasing net risk.
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> As the insured ages, less and less go into the reserve, and more of the payment must go to net premiums until a point is reached where the entire premium not only goes to pay the net premium on the risk, but a portion of the interest earning upon the reserve must be applied to mortality." [7]

In the example previously given, X's annual insurance premium at age 30 has been determined at ₱50.00, which would also be his annual premium at age 50. Obviously, the annual premiums are not equal to the actual cost of insurance each year for the simple reason that the cost of insurance at age 30, when death is expected 20 years away, cannot be the same as for age 50, when death has already become imminent. Again, as an example, and disregarding the so-called "loading charge," we might assume that of the ₱50.00 paid by X at age 30, ₱10.00 was applied by the insurance company to the actual cost of insurance for that year, while ₱40.00 was credited as a "reserve" for future premiums. The following year, or at age 31, the annual premium of ₱50.00 may be used as follows: ₱12.00 for actual cost of insurance for that year, and ₱38.00 added to the "reserve" for future premiums which will bring the total of the "reserve" to ₱78.00. This "reserve" is generally called the "cash surrender value" or "cash value" of the policy. It belongs equitably to the insured X, in my example, and will be returned to him should he surrender his policy. Our Supreme Court has explained this cash surrender value of ordinary life policies in *Sun Life Assurance Co. of Canada v. Ingersoll*,[8] stating:

> "In the course of the opinion in this case, an explanation was given of the meaning of "surrender value" or "cash surrender value," as used in connection with a policy of insurance, and of the manner in which such value is acquired. Upon this point it was observed that the surrender

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[7] APPLEMAN, INSURANCE LAW AND PRACTICE, 9.

[8] 42 Phil. 331, 339.

> value of a policy "arises from the fact that the fixed annual premiums is much in excess of the annual risk during the earlier years of the policy, an excess made necessary in order to balance the deficiency of the same premium to meet the annual risk during the latter years of the policy. This excess in the premium paid over the annual cost of insurance, with accumulations of interest constitutes the surrender value. Though this excess of premiums paid is legally the sole property of the company, still in practical effect, though not in law, it is moneys of the assured deposited with the company in advance to make up the deficiency in later premiums to cover the annual cost of insurance, instead of being retained by the assured and paid by him to the company in the shape of greatly increased premiums, when the risk is greatest. It is "net reserve" required by law to be kept by the company for the benefit of the assured, and to be maintained to the credit of the policy. So long as the policy remains in force the company has not practically any beneficial interest in it, except as its custodian, with the obligation to maintain it unimpaired and suitably invested for the benefit of the insured. This is the practical, though not the legal, relation of the company to this fund."

The computation of an actual insurance premium is a complicated operation. In X's and Y's cases, the ₱50.00 and ₱100.00 annual premiums should be increased a bit so as to allow the insurance company something for its expenses and profit and to provide for a safety factor. On the other hand, the insurance company has control of the "reserve" for future premiums, and it gets income from the investment of that "reserve." That income should reduce the ₱50.00 and ₱100.00 annual premiums of X and Y in my example. As stated by Knight[9]:

> "When a company issues insurance policies on a large number of lives, it may be sure that the latter will not all fail immediately. While it cannot forecast the time of death of any individual life, it can tell, with some degree of certainty, the proximate number of the group that will fail in each successive year until all may be expected to have died. From this it follows that the company may estimate about how many premiums it will receive from the survivors of the group each year, and consequently, about how many premiums may be expected before the claims arise. Money paid in as premiums by the group of individuals, therefore, need not all be held as ready cash to pay claims, but may be invested, some in securities that may be quickly liquidated, and some in assets that mature at some future time, which need not be so readily convertible into cash. Now, since the company invests the money paid in as premiums and earns interest thereon, it is only fair that it should estimate the interest which it expects to earn, and discount the funds collected from the policyholder by quoting him a lower premium rate than would otherwise be necessary. This is exactly what the companies do."

In connection with this article, it is rather important to remember and to consider that when the income from the *"reserve"* is taken

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[9] KNIGHT, ADVANCED LIFE INSURANCE, 28.

into account in the computation of premiums, or, in the computation of any payment to be made by the insurance company, that income is taken to be, at present, only 4% per annum of the *"reserve."* In other words, if the investment of the *"reserve"* nets 4% a year, the Companies will be able to meet all their obligations and make a normal and fair profit at the same time. Therefore, if the investment of the *"reserve"* actually nets 6% to an insurance company the 2% excess is added income to the company. This 2% might amount to a tremendous sum. A foreign Company, for instance, may have a paid-up capitalization of ₱5,000,000.00. That was the money put up in the business by its owners or stockholders. The Company might control a total policy *"reserve"* in the Philippines of ₱100,000,000.00, which actually represents money belonging to the Filipino policyholders in that Company. 2% of that sum of ₱100,000,000.00 will amount to ₱2,000,000.00. This may represent extra income to the Company as the expected rate or amount of income from its investment of the *"reserve"* was only 4% per annum. The extra income will be 20% of capital investment, a very high figure indeed. The example, of course, is extreme because the extra income will be subject to charges, like dividends for participating policies, nevertheless the additional income is there.

As previously stated, the most common form of life insurance in the Philippines is the so-called endowment policy. Under a 20-year endowment policy, generally, the insurance company obligates itself to pay, say ₱10,000.00, to the insured if he survives the 20-year period, or the same amount of ₱10,000.00 to the beneficiary if the insured should die at any time within the period. The insured, of course, has to pay premiums while he is alive, during the 20-year life of the policy.

An endowment policy is essentially an ordinary life insurance contract, except that (1) the insured is expected to surrender his policy at the end of a stated period, say 20 years, and (2) besides the payment of premiums as a consideration for the insurance proper, the insured adds to those premiums a certain amount as a savings, the savings to be returned to him at the end of the period. The annual savings, plus compounded interest, usually computed at 4% a year, will amount at the end of the endowment policy period to the sum for which the endowment policy has been issued. The endowment feature increases the *"reserve"* on the policy and thus increases the amount of the total *"reserve"* controlled by the Company. The earning power of the Company is proportionately increased.

III THE AUTOMATIC PREMIUM LOAN PLAN

It has been demonstrated that ordinary life and endowment policies have reserves, or "cash surrender values" which *legally* belong to the insurer but which are *equitably* owned by the insured. The reserve, however, is by law made existent only after three annual premiums have been paid. The reserve, or "cash surrender value," is in fact money of the insured which he has entrusted to the Company for the implementation of the insurance contract in due course.

Sec. 184 (g) of our Insurance Act gives a right to the insured to borrow the reserve of his own policy at any time upon payment of interest. That sub-section requires life policies to have:

> "A provision that after three full years' premiums have been paid, the company at any time, while the policy is in force, will advance, on proper assignment or pledge of the policy and on the sole security thereof, at a specified rate of interest, a sum equal to, or at the option of the owner of the policy less than, the reserve at the end of the current policy year on the policy and of any dividend additions thereto, less a sum not more than two and one-half per centum of the amount insured by the policy and of any dividend additions thereto; and that the company will deduct from such loan value any existing indebtedness on the policy and any unpaid balance of the premium for the current policy year, and may collect interest in advance on the loan to the end of the current policy year; which provision may further provide that such loan may be deferred for not exceeding six months after the application therefor is made. A company may, in lieu of the provisions hereinabove permitted for the deduction from a loan on the policy of a sum not more than two and one-half per centum of the amount insured by the policy and of any dividend additions thereto, insert in the policy a provision that one-fifth of the entire reserve may be deducted in case of a loan under the policy, or may provide therein that the reduction may be the said two and one-half per centum or the one-fifth of the said entire reserve at the option of the company: Provided, however, That nothing in this Act shall be considered as compelling any insurance company to loan on any policy an amount in excess of the death benefit of such policy, and one-half of the difference between the benefit in case of death and the benefit in case of survival of the policyholder."

Let us take the case for instance of a 20-year endowment policy for ₱10,000.00 on which the insured has already paid seven annual premiums at ₱300.00 per year. Let us suppose that at the end of the 7th year, the policy had a reserve or "cash surrender value," of ₱1,300.00. Obviously, if the insured could not pay the 8th annual premium when it becomes due, he can either surrender his policy and get his ₱1,300.00, or he can borrow ₱300.00 from the reserve of his policy and with the money pay the 8th annual premium.

To regulate the relations between insurer and insured if and when the insured fails to pay a premium (after three annual premiums have been paid and the reserve has become existent), Section 184 (f) and (h) of our Insurance Act has also required life policies to have:

> "(f) A provision specifying the options to which the policyholder is entitled in the event of default in a premium payment after three full annual premiums shall have been paid."
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> "(h) A table showing in figures the loan values, if any, and the options available under the policy each year upon default in premium payments, during at least twenty years of the policy, together with a provision that, in the event of the failure of the policyholder to elect one of said options within the time specified in the policy, one of said options shall automatically take effect and no policyholder shall ever forfeit his right to same, by reason of his failure to elect."

To meet the legal requirements above set out, most insurance policies provide that upon his inability to pay any premium due, the following options are available to the insured:

> (1) He may surrender the policy for its cash surrender value;
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> (2) He may convert the policy to a non-participating paid-up policy for a reduced amount, payable at the same time and on the same conditions as the original policy;
>
> (3) He may convert the policy to a paid-up non-participating term insurance for the same amount; or
>
> (4) He may continue the policy under its original terms and conditions through the automatic premium loan plan.

The last option (4) is usually the automatic. Under the automatic premium loan plan, a loan is extended to the insured, without his actually applying for it, equal in amount to the annual premium which has not been paid. As many loans can be made as premiums become due and are not paid, provided the reserve has not been exhausted by the loans and interests. An example of an automatic premium loan clause in a life policy is as follows:

> "AUTOMATIC PREMIUM LOAN. After this Policy has been in force three full years, if any premium or instalment of premium hereon shall not be paid within the month of grace, and if no surrender option has been chosen by the Insured during this period, the Company will, without any request on the part of the Insured, advance the premium or instalment against this Policy bearing interest at the rate of six per centum (6%) per annum in advance compounded annually until paid, provided the loan value hereon, if any, is sufficient to secure all indebtedness hereunder with interest. When the premium or instalment of premium is so charged, this Policy will be continued in force the same in all respects as though said loan had been requested by the Insured. The

same benefit will be applied from time to time as the premiums or instalments of premium become due hereunder and are not paid, as long as the balance of the loan value hereon at the last date of default, after deduction of all indebtedness hereunder, is sufficient to pay the premium or instalment of premium then due hereon with interest. If, however, the loan value subject to deduction aforesaid be insufficient to pay the premium or instalment of premium with interest as above provided, then this Policy will be continued in force but only for such proportion of a year as the aforesaid loan value subject to deduction bears to the annual premium hereunder, after the expiry of which time this Policy will automatically terminate and become void.

When this Policy is continued in force by the Automatic Premium Loan Provision as herein provided, the Insured may resume the payment of premiums or instalments of premium without medical examination. The indebtedness hereon may be paid wholly or in part in cash, or may be allowed to remain as a loan against the Policy. In any settlement of this Policy the indebtedness to the Company hereon shall be a first lien in priority to the claim of any Beneficiary or Assignee."

I have stated before that insurance companies expect the investment of their reserves to earn a certain percentage each year. Premiums and benefit payments are computed in the expectation of the reserve earning the percentage profit. I understand that, at present, the percentage of return is determined at 4% per annum;—this is the "interest calculated at the rate which forms the basis of the scale of charges of Assurance Companies."

Under the automatic premium loan plan, a foreign company receives 6%, instead of 4%, per annum, on the investment of its reserve, and this is a decided and marked advantage. On top of that, the investment of the reserve in bonds, securities, loans, etc., is always subject to a risk of loss, however small this may be, because of the strictness of the laws governing investments open to insurance companies, but the investment of the reserve in premium loans is not subject to any risk of loss at all. Any event, therefore, which results in the operation of the automatic premium loan plan is advantageous to the company.

IV POLICIES CANCELLED DURING THE OCCUPATION

At the commencement of the Japanese Occupation, the outstanding life policies issued by the foreign Companies could be grouped into three classes, as follows:

The *first* class included those policies with reserves big enough to absorb the automatic premium loans necessary for the payment of all premiums due during the occupation.

The *second* class included those policies with reserves insufficient for the purpose of meeting all premium payments during the occupation.

> The *third* class included those policies without reserves for the reason that three annual premiums had not then been paid thereon.

The *second* and *third* classes of policies were declared cancelled for non-payment of premiums during the occupation. The *third* class policies were forfeited on their first premium date anniversaries during the occupation; while policies of the *second* class were annulled upon exhaustion of the reserve by automatic premium loans.

While we are not directly concerned herein with the *first* class of policies, it could be parenthetically pointed out that the insured under those policies were also greatly prejudiced by the fact that the Philippine branches of the foreign companies had to close during the occupation. During the occupation, the insured were deprived of the right:

1. To surrender their policies for the corresponding cash surrender values;
2. To convert their policies to non-participating contracts for a reduced amount, payable at the same time and on the same conditions as the original policies; and
3. To convert their policies to paid-up non-participating term insurance contracts for the same amount.

The rights enumerated above were rights of the insured under their policies. The rights, more probably than not, would have been exercised if the Philippine branches of the foreign Companies had not been closed during the occupation. For one thing, money was tight during the early days of the occupation and many of the policyholders would have preferred to surrender their policies for their cash surrender values. There would have been other policyholders who would have preferred to convert their policies to paid-up contracts for reduced amounts, or to term insurance contracts for the same amount, rather than continue further payments of premiums. On the other hand, those with means to pay their premiums and who could not be expected either to surrender or convert their policies were prejudiced because their premiums were paid through the automatic premium loan plan, and they had to shoulder the 6% annual interest on the loans which, for the three years of the occupation, amounted to no less than 18% of an annual premium,—a sizable sum indeed.

Our Supreme Court, in the Asia Life cases, has said that policies of the *second* and *third* classes, affected by the Japanese Occupation, were in the thousands. The statement might be true, but if percentages had been used, the figure would be relatively low. Take a foreign company which had began its business in the Philippines, say twenty years before the outbreak of World War II (most of them

have been in business here for longer periods). On the assumption that its policyholders increased at the rate of one a year, its position, as regards number of policyholders, would be as follows:

Year	*No. of Policyholders*
1922	1
1923	2
1924	3
1925	4
1926	5
1927	6
1928	7
1929	8
1930	9
1931	10
1932	11
1933	12
1934	13
1935	14
1936	15
1937	16
1938	17
1939	18
1940	19
1941	20
1942	18
1943	17
1944	16
1945	?

In 1941, the foreign Company had 20 policyholders, only 2 of them with policies belonging to the *third* class, that is, having no reserves because three premium payments have not been paid thereon. The policies of these two were cancelled in 1942. The policies of the other 18 policyholders were continued by the automatic premium loan plan. In 1943, one of the remaining 18 policies could have been cancelled for insufficiency of the reserve, the same thing happening in 1944, until the number of policyholders was brought down to 16 at the end of 1944. Thus, 4 policies out of 20, or only 20% of all policies outstanding at the outbreak of the war, were really affected by the Japanese Occupation. The chances are that my example errs yet in favor of the foreign Companies.

Of the 20% of policyholders whose policies could not be kept alive during the occupation under the automatic premium loan plan, because of the absence or insufficiency of policy reserves, I expect that more than nine-tenths (9/10) were young men and women who, paraphrasing Mr. Justice Bradley in *New York Life Insurance Co.*

vs. Statham,[10] (hereinafter referred to simply as the Statham case) are the good risks never heard of again because those in health can get new policies cheaper than to pay arrearages on the old contracts. They were for the most part the ones who purchased their policies in the years 1939, 1940 and 1941. Older people would have purchased their policies in previous years, and their policies would have belonged to the *first* class; that is, with sufficient reserves to keep the contracts alive through automatic premium loans during the three years of the Japanese Occupation. There were then only 2% in my example of the totality of policyholders who were old enough to be subjected very adversely to the rigors of the Japanese Occupation, and of these 2%, certainly there must have been some who did not at all feel the effects of war in their physical make-up. The claims for reinstatement of policies which would if at all prejudice the interests of the foreign Companies could very easily be not more than 1.5% of all Filipino policyholders of those companies. The Philippine Insurance Commissioner can probably gather exact figures, but he probably does not have the time, nor the interest to do so.

The point to stress is that policies like those involved in the Asia Life cases might actually run into the thousands, but they would still be a small fraction of the total number of policies issued to Filipinos by the foreign Companies. The fraction would still be considerably reduced if we take account of the fact that the foreign Companies probably have a million policyholders in other parts of the world to every thousand of its Filipino policyholders. In the actuarial bucket, which is the basis of the premium structures of the foreign Companies, the Japanese Occupation of the Philippines which resulted in the non-payment of premiums by Filipino policyholders during the period, was a mere drop which could be lost in the safety factor of the bucket. That is the reason Monsieur Begault, the Belgian actuary, after World War I, did not hesitate to advocate that policies issued to Belgian citizens premiums on which could not be paid during the German occupation of his country be deemed merely suspended during the period of that occupation and thereafter reinstatable upon payment of back premiums, with interest.

V THE ISSUE IS LATE PAYMENT OF PREMIUMS

The precise question in the Asia Life cases was whether or not late payment of premiums, caused by the lines of war being drawn between insured and insurer, could be legally excused. The question was not one of non-payment of premiums. It is conceded that non-

[10] 93 U. S. 24, 23 L. ed. 789.

payment of premiums will forfeit a policy. If late payment cannot be excused, non-payment will ensue, and the policy should be cancelled. If, however, late payment is excused, upon payment of the premiums, there can be no non-payment and the policy cannot be cancelled.

The use of the term "non-payment of premiums" in connection with the issue in the Asia Life cases, gives the connotation that the insured sought to get the benefits of his policy without payment of the premiums which had become due. Thus, even counsel for the defendant foreign Company in those cases had argued as follows:

> "A tells B, 'If you pay me ₱200 on the 31st day of December, 1944, I undertake to deliver to you my white horse which is in my barn.' On the appointed day B comes to A and says, 'I come to get your white horse. You must deliver it to me.' A answers, 'I am under no obligation to deliver the white horse to you because you do not pay me the ₱200, which is the consideration for such delivery.' B counters, 'True, I do not pay you the ₱200, but it is because the Japanese took all my money and *now I don't have it. I have a good excuse.*' This is exactly the position of the assured in these cases."

The example given obviously demonstrates that the purchaser wanted to have the horse *without paying for it.* It would be a clear case of non-payment, which no court of equity should ordinarily countenance. The argument sought unjustly to prejudice the Court against the rights of the people of the forum. So that it could be applied to the Asia Life cases with a semblance of fairness, counsel for defendant foreign Company should have insisted that, in his example, *B, the purchaser should be made to offer the ₱200 to A when he calls for delivery of the horse at a date later than December 31, 1944.*

The Filipino insured or beneficiaries who have taken a view opposite to that maintained by the foreign Companies do not claim the benefits of the corresponding policies *without payment* of premiums. They are willing to pay those premiums, but the foreign Companies had refused to accept the same on the ground that tender was inexcusably *late.* In other words, the issue is not *non-payment,* which would involve getting a benefit (the horse in the example) for nothing. The issue concerned *late* payment,—whether or not it was excused by the lines of war being drawn between insured and insurer.

The proper example of a sale of a horse nearest the situation in the Asia Life cases would be as follows:

> A, an American, tells B, a Filipino, "If you pay me ₱50 now as earnest money, and ₱200 on the 31st day of January, 1942, in Manila, I undertake to deliver to you my white horse which is in my barn in said

city." The earnest money was paid, and on the appointed day, B comes to A's barn in Manila and finds that A and his horse had fled to the United States. They returned to Manila on March 10, 1945, on which date, B comes to A and says, "I come to get your white horse. You must deliver it to me. Here are your ₱200." A answers, "I am under no obligation to deliver the white horse to you because you did not pay me the ₱200, which is the consideration for such delivery, on January 31, 1942." Whereupon, B replied, "But you and your horse were not in Manila on that date. How could I have paid you the ₱200? The lateness of my payment now is excusable." A then counters, "True, we were not here, but it is because the Japanese forced us to flee to the United States. I have a good excuse. You could have swam the Pacific and paid me the ₱200 in the United States. Since you did not do so, I am no longer obligated to deliver my horse to you and your earnest money has been forfeited to my favor. Your offer to pay me ₱200 now is inexcusably late."

Our Supreme Court seems to have taken the view that the issue was "non-payment of premiums." Said the Court in the Asia Life cases:

> "After perusing the Insurance Act, we are firmly persuaded that the non-payment of premiums is such a vital defense of insurance companies that since the very beginning, said Act 2427 expressly preserved it, by providing that after the policy shall have been in force for two years, it shall become incontestable (i.e., the insurer shall have no defense) except for fraud, *non-payment of premiums*, and military or naval service in time of war (sec. 184 (b), Insurance Act). And when Congress recently amended this section (Rep. Act No. 171), the defense of fraud was eliminated, while *the defense of non-payment of premiums was preserved.* Thus the fundamental character of the undertaking to pay premiums and the high importance of the defense of non-payment thereof, was specifically recognized." [11]

The foregoing statement would be a platitude if "non-payment of premiums" were the real issue in question. But if *late payment* was the question involved, another picture should be drawn. An unjustified *late* payment can be refused, and this will result in non-payment of premiums and in the cancellation of the policy. But if the *late* payment is "excusable," it has to be accepted by the insurer. Then, there would be no non-payment of premiums, and the policy cannot be cancelled.

That prompt payment of premiums is not of the essence of a life policy and is not as sacrosanct as our Supreme Court has emphasized it to be can be easily and fully demonstrated by simple reference to Section 184 (a) of our Insurance Act which requires life policies to have:

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[11] 47 O. G. (12 Supp.) 437.

"(a) A provision that the insured is entitled to a grace either of thirty days or of one month within which the payment of any premium after the first year may be made, subject at the option of the company to any interest charge not in excess of six per centum per annum for the number of days of grace elapsing before the payment of the premium, during which period of grace the policy shall continue in force, but in case the policy becomes a claim during the said period of grace before the overdue premium or the deferred premiums of the current policy year if any are paid, the amount of such premiums, with interest on overdue premium, may be deducted from any amount payable under the policy in settlement."

The above-quoted provision of law constitutes an answer to the oft-invoked plea of insurance companies that prompt payment of premiums is of the essence of a life policy. To alleviate the many inequitable results of that plea, our legislature has "excused" premium payments late by one month. The statute itself, and the fact that life companies continue in operation despite the statute, clearly show beyond cavil that prompt payment of premiums is not of the essence of life policies and that excusing *late* payment, in certain cases, will not kill the policies.

According to information supplied to me by Mr. Harold J. Taylor, Associate Counsel for the John Hancock Mutual Life Insurance Company, Boston, Mass., "a Massachusetts statute, Gen. Laws, C. 175, 153, enacted in 1878, provides that a policy issued to a resident of Massachusetts by an insurer organized in a foreign country, shall not be invalidated by war between that country and the United States. Other states possibly may have a similar statute. This statute may have been enacted in consequence of the Statham case, which was decided in 1876." Here again is a concrete instance where late payment of premiums, due to war, has been legally "excused" by a legislative enactment.

In the 1930 edition of his book (2d Ed.) Professor Vance had listed excuses for late payment of premiums as follows: [12]

"85. No excuses for failure to pay premiums due can be alleged in order to prevent a forfeiture, save—

(a) War, in some jurisdictions.
(b) Insolvency of the insurer.
(c) Refusal of tendered premium.
(d) Any wrongful act of insurer preventing payment.
(e) Want of notice, when it is the duty of the insurer to give notice.
(f) Waiver of prompt payment."

[12] At page 291.

In the 3rd Edition (1951) of Professor Vance's book, the "excuses" for late payment of premiums were increased by one as follows: [13]

> "54. No excuses for failure to pay premiums due can be alleged in order to prevent a forfeiture, save—
>
> (a) War, in some jurisdictions;
> (b) Insolvency of the insurer;
> (c) Refusal of tendered premium;
> (d) Any wrongful act of insurer preventing payment;
> (e) Want of notice, where it is the duty of the insurer to give notice;
> (f) Waiver of prompt payment; or
> (g) Insanity where proof of such would entitle insured to have premiums waived, according to some courts."

It may be noted that the number of excuses for late payment of premiums is not a constant. It can be increased, and it will increase, with the years. It can also be noted that excuses for late payment of premiums are not all statutory; most are based on judicial pronouncements.

Professor Vance has stated that "even an act of God, rendering the payment of the premiums by the insured wholly impossible will not prevent the forfeiture of the policy when the premium remains unpaid. The reason usually given is that the act required is not necessarily personal to the insured, but may be performed by another for him." [14] In the case of *Carrero vs. The Manufacturers Life Insurance Company*,[15] counsel for the defendant foreign Company argued that *force majeure*, or an act of God, is not an excuse for late payment of premiums in a life policy. He said specifically that insanity of an insured was *force majeure*, or an act of God, but that it would not excuse late payment of the premium. It is indeed true that if the insanity of an insured prevents him from paying premiums on time, such insanity, as *force majeure*, will not excuse the late payment of the premiums, provided always that the insurance company were ready, able and willing to accept payment of the premiums. But, on the other hand, if all the employees on an insurance company should become insane on a given date and such insanity should prevent them from accepting a tender of premiums due on that date from an insured who is ready, willing and able to pay those premiums, it cannot be contended that the policy should lapse. It really depends on which party or parties the *force ma-*

[13] At pages 326-327.
[14] At page 327, 3d.
[15] See note 3, *supra*.

jeure acts upon. If it acts upon the insured and payment becomes non-feasable, the insurance contract is abrogated; but if the *force majeure* acts on the insurance company making payment of premiums non-feasable, the insurance policy should not be invalidated.

Let us take another example. Suppose that on the last day for a premium payment an insured is riding in a train in order to go to the place of payment of the premium. If lightning, an act of God, destroys the train and the insured is prevented from making prompt payment of the premium, his policy should be cancelled. But take the case where on the last day of a premium payment, lightning destroys the Insurance Company's offices and prevents the insured from making his premium payment. Certainly, his late payment to be tendered when the Company's offices resume functioning cannot but be deemed an excusable late payment. Or take the example of the Philippine Government, tomorrow, ordering the closure of the offices of an insurance Company with reason or because of a mistake. It would certainly shock the conscience of all fair-minded persons if it should be held that all policies with premiums due on the date of closure of the insurer's offices should be cancelled because the premiums on those policies were not paid on time.

Considering that the number of excuses for late payment of premiums is not a constant but can be increased; and that excuses for late payment are not necessarily statutory but can also be based on judicial decisions, I had asked our Supreme Court to rule that when late payment is due to *force majeure* acting upon the insured (as pestilence, destruction by lighting of a train in which he may be riding in order to go to the place of payment, etc.), it is inexcusable and the resulting non-payment of premiums should forfeit the policy. However, if late payment is due to *force majeure* acting upon the insurer (like the closing of its office by fire, earthquake, government decree, etc.), it should not be a cause of forfeiture. If late payment is due to *force majeure* acting on both insured and insurer, it should not result in forfeiture either because of the rule of *contra proferentem*—hereinafter to be more fully discussed.

The Japanese Occupation was *force majeure* acting on the foreign Companies rather than on the insured. The Japanese Occupation Government in the Philippines did not prevent the Filipinos from paying insurance premiums. As a matter of fact, premiums were paid by Filipinos to domestic life insurance companies. The reason premiums were not paid to the foreign Companies, was because their offices in Manila were ordered closed by the Japanese Government. The *force majeure* acted on the foreign Companies.

There was an attempt on the part of defendant foreign Company in the Asia Life cases to establish the proposition that premiums on life policies issued in the Philippines by the foreign Companies were payable at their head offices abroad. That proposition could result in the view that war, as *force majeure*, acted on the Filipino insured and not on the insurer. The Supreme Court did not consider it necessary to determine the place of payment of the premiums, but I submit that that place was Manila.

Most life policies issued in the Philippines stipulate generally as follows:

> "Todas las primas son pagaderas, sea a la oficina principal de la Compañia, o sea a un agente o cajero a cambio del recibo official de la Compañia firmado por el gerente-general y refrendado por un agente o cajero de la Compañia."

It was the practice of the foreign Companies before the war to accept payments of premiums at their branch offices in the Philippines in respect of policies issued locally. In the stipulation of facts in *Carrero vs. The Manufacturers Life Insurance Co.*,[16] the parties agreed that "prior to the war, insurance premiums on local policies payable to defendant in United States currency were paid at defendant's branch office in the City of Manila in its equivalent in Philippine currency."

The Philippine Supreme Court, in the case of *Glaraga vs. Sun Life Assurance Co.*,[17] had called particular attention to the relation between contract stipulation and established custom or rule of conduct in reference to the payment of premiums. The syllabus of said case, in part, reads as follows:

> "Where a life insurance company issued and delivered one of its policies to the insured in and by which the powers of its special agents were limited and defined, and the policy specified how and in what manner the premiums were to be paid and to whom they were to be paid, *in the absence of allegation and proof of an established custom or rule of conduct ratified and approved by the company*, the premiums on the policy must be paid at the time and in the way and manner specified in the policy, and if not so paid, the policy will lapse and be forfeited by its own terms." (Italics mine).

For authority on this point, the following citation from Cody "Law of Insurance," [18]

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[16] See note 3, *supra*.
[17] 49 Phil. 737.
[18] Sec. 157-a, p. 196.

> "Excuse for nonpayment of premiums on time. . . .A course of dealing between the parties, whereby the insurer customarily receives the premium a few days late, is proof of a partial modification of the contract, which cannot be terminated without reasonable notice so as to prevent the insured from being surprised into a breach of his policy. And so, in the case last mentioned, where it was proved that such a course of dealing had existed, it was held that a tender of the premium by the widow-beneficiary a reasonable time after due date, bound the insurer tho' not accepted by it. (Howell vs. Knickerbocker Ins. So., 44 N.Y., 276, 4 Am. Rep., 675.)"

Likewise, in the case of *Manhattan Life Ins. Co. vs. Fields*,[19] it was held that:

> "Where an insurance Company, for a long time, notifies the insured to pay the premiums at a certain local bank, a clause in the policy requiring all premiums to be paid at the company's office in New York City is waived."

In view of the foregoing, I submit that by the established custom and rule of conduct ratified and approved by the foreign Companies, the place of payment of premiums on their policies issued in the Philippines must be deemed to be in Manila and not at their respective principal office abroad. A contrary view would pave the road to bad faith on the part of the insurer. For if the strict terms of the policy were to be followed, the insurer could at any time cancel any policy in the Philippines through the mere expedient of refusing receipt of premiums at its branch office in Manila. There would in most cases be no way of paying the premiums in the United States or Canada except by the insured making arrangements for payment in cash, arrangements which would be very difficult indeed to make. Bank drafts may not be legal tender at the principal office of the insurance companies abroad.

If the premiums on life policies issued in the Philippines by the foreign Companies were payable in Manila, the Japanese Occupation, as *force majeure*, which prevented prompt payment of premiums, acted on the insurer, rather than on the insured. Perhaps, the most that could be said is that the Japanese Occupation was *force majeure* acting upon both the insured and the insurer. But even in such cases, life policies should not be invalidated by late payment of premiums. It is now a matter of record that the Supreme Court did not uphold my plea. I submit that the Court was in error.

VI THE LEGAL THEORIES APPLICABLE TO THE QUESTION

There were three theories, in the *academic* sense, applicable to the question of the late payment of premiums on life policies as a re-

[19] Civ. App., 1894, 26 S. W. 280.

sult of the lines of war being drawn between insured and insurer. Our Supreme Court recognized the existence of those three *academic* theories in the decision in the Asia Life cases as follows:

> "Professor Vance of Yale, in his standard treatise on Insurance, says that in determining the effect of non-payment of premiums occasioned by war, the American cases may be divided into three groups, according as they support the so-called Connecticut Rule, the New York Rule, or the United States Rule.
>
> The first holds the view that 'there are two elements in the consideration for which the annual premium is paid—First, the mere protection for the year, and, second, the privilege of renewing the contract for each succeeding year by paying the premium for that year at the time agreed upon. According to this view of the contract, the payment of premiums is a condition precedent, the non-performance of which, even when performance would be illegal, necessarily, defeats the right to renew the contract.'
>
> The second rule, apparently followed by the greater number of decisions, holds that 'war between states in which the parties reside merely suspends the contracts of life insurance, and that, upon tender of all premiums due by the insured or his representative after the war has terminated, the contract revives and becomes fully operative.'
>
> The United States rule declares that the contract is not merely suspended, but is abrogated by reason of non-payment of premium, since the time of the payments is peculiarly of the essence of the contract. It additionally holds that it would be unjust to allow the insurer to retain the reserve value of the policy, which is the excess of the premiums paid over the actual risk carried during the years when the policy had been in force. This rule was announced in the well-known Statham case, which, in the opinion of Professor Vance, *is the correct rule.*"

It is possible that the Court did not realize the technical inapplicability of the Connecticut and the United States rules to present-day life policies, but the matter is perhaps of minor importance.

The three *academic* theories were based on decisions of American courts after the Civil war. At that time, the automatic premium loan plan was generally unknown. The Connecticut and United States rules would be technically inapplicable today for the simple reason that provided a policy had a reserve, war would not ordinarily forfeit the insured's rights thereunder because of the impossibility of prompt payment of a premium due. The reserve would be used for promptly meeting that premium under the automatic premium loan plan. The policy would be cancelled only upon exhaustion of the reserve. The Connecticut rule, which provided for forfeiture both of the policy and of its reserve, and the United States rule which provided for the forfeiture of the policy, with the reserve being returned to the insured, would find no legal application to life policies issued by the foreign Companies in the Philippines and outstanding

at the outbreak of the war. For practical purposes in these modern times, the three *academic* theories can be reduced to two, to wit: the *cancellation* theory and the *suspension* theory.

Subsequent to the American Civil War, the question of the effect of war on life policies came up again after World War I. No reported controversy was decided by any court, however, possibly because insurance, placed by citizens of the defeated central powers with allied insurance companies, payable in the currency of the country of the insured, became practically worthless with the post-war inflation. Moreover, the proceeds of any policy due to a citizen of the defeated countries was confiscable for reparations payment, and there was consequently little or no motive at all for a policyholder to assert his rights against an insurer. Under the treaty of Berlin of 1921, for instance, all assets in the United States belonging to German nationals were confiscated for the payment of reparations due the United States. Furthermore, citizens of the allied central powers insured by a company in an enemy territory could always reinstate his policy under the theory of *suspension* adopted by the Treaty of Versailles.

The problem of the effect of war on life policies was covered by the Treaty of Versailles. The life insurance provisions of the Treaty are found in Section V of Part X, Annex III, and they read as follows:

> "11. Contracts of life insurance entered into between an insurer and a person who subsequently became an enemy shall not be deemed to have been dissolved by the outbreak of war, or by the fact of the person becoming an enemy.
>
> Any sum which during the war became due upon a contract deemed not to have been dissolved under the preceding provision shall be recoverable after the war with the addition of interest at 5 per cent per annum from the date of its becoming due up to the day of payment.
>
> Where the contract has lapsed during the war owing to nonpayment of premiums, or has become void from breach of the conditions of the contract, the assured or his representatives or the persons entitled shall have the right at any time within twelve months of the coming into force of the present Treaty to claim from the insurer the surrender value of the policy at the date of its lapse or avoidance.
>
> Where the contract has lapsed during the war owing to nonpayment of premiums the payment of which has been prevented by the enforcement of measures of war, the assured or his representative or the persons entitled shall have the right to restore the contract on payment of the premiums with interest at 5 per cent per annum within three months from the coming into force of the present Treaty.
>
> 12. Any Allied or Associated Power may within three months of the coming into force of the present Treaty cancel all the contracts of insu-

rance running between a German insurance company and its nationals under conditions which shall protect its nationals from any prejudice.

To this end the German insurance company will hand over to the Allied or Associated Government concerned the proportion of its assets attributable to the policies so cancelled and will be relieved from all liability in respect of such policies. The assets to be handed over shall be determined by an actuary appointed by the Mixed Arbitral Tribunal."

It will be noted that those policies the premiums on which could not be paid because the lines of war were drawn between insured and insurer, were made reinstatable under the terms of the Treaty of Versailles, and judicial enforcement of the policyholder's rights did not become necessary.

The position of the Philippines in World War II was somewhat similar to that of France and Belgium during World War I. In France, a moratorium on insurance premiums was proclaimed when World War I broke out.

"In France, as in all the belligerent countries of Europe, the outbreak of the war was speedily followed by moratoria of a more or less sweeping kind. The primary object of these moratoria was, of course, to protect citizens called *en masse* to the colors, and their families, from immediate ruin or acute distress occasioned by their inability under the circumstances to meet promptly their debts, contractual payments like rents, and morally or financially compulsive obligations like life insurance premiums. The French authorities perceived that the application of the moratorium can not properly be one-sided, i. e., can not without working serious harms be confined to one set of persons obligated to make payments to another set of persons or institution, but must be extended to cover in part at least the payments due from the second set to the first or to still other parties." [20]

It is perhaps to be regretted that our Government did not decree a similar moratorium on insurance premiums in the Philippines when World War II broke out here. Such a moratorium may have compelled our Supreme Court to decide the Asia Life cases favorably to the Filipino policyholders.

When the draft of the insurance provisions of the Treaty of Versailles was being prepared by the Technical Committee, Monsieur Begault, previously referred to herein, charged the British with looking after their interests alone. In a letter dated April 4, 1919, which he addressed to Mr. W. P. Phelps, of the British Life Offices Association, Monsieur Begault unequivocably said:

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[20] Effects of the War Upon Insurance, etc., Carnegie, Endowment for International Peace, 40.

"Certain resolutions which have been taken at the meetings, in which you took part, have completely neglected the interests of Belgian and French assured in German Companies, only the interests of English Companies having German or Belgian assured have been carefully examined."

Monsieur Begault was perhaps the moving spirit behind the insurance provisions of the Treaty of Versailles as they were finally approved. His position was clearly stated in his aforesaid letter to Mr. Phelps, as follows:

". . .In complying with the Law of Trading with the Enemy and believing himself protected by the Moratorium Law and not wishing to favour the enemy by sending them money the Belgian and French assured in most cases have not paid their premiums during the war. In addition to which, those who have found themselves in occupied territory, deprived of their income and of their ordinary profits, have been actually unable to do so. The Belgian and French Companies have so well understood this, that they have maintained the contracts in force in spite of the non-payments of premiums and have actually come to terms with their assured for the payment of premiums in arrear. As you know many assured in the occupied parts have suffered from the war, their health has altered and they would not be able to pass a medical examination which would permit them to effect a new contract with a new company. If their old company only gives them the surrender value of their policy, they will suffer a serious injury and the provision for the future that they have made for their family will be destroyed. This is why the Belgian Delegation have wished to see preserved the principle of the maintenance of Contracts in spite of the non-payment of premium but naturally the companies would have the right to have paid to them the arrears of premiums increased at least with the interest calculated at the rate which forms the basis of the scale of charges of Assurance Companies. Would you be willing then (the French are in agreement with us) that the British Delegate might be empowered to accept the following amendment 'all provisions of forfeiture which would have been or would be enforced by a company against an assured who had become an enemy will be annulled without reserve on paying the premiums eventually due'. This would permit the putting in order in 1919 of the position of all Belgian and French Assured who since 1914 have not paid their premiums of assurance. To avoid adverse selection which Sir H. Babington Smith feared at the Meeting in October 1917 it would be understood that this clause would be applied to all contracts of a country and would not at the selection of the assured taken individually, be accepted or rejected."

As before pointed out, the Treaty of Versailles finally adopted the *suspension*, not the *cancellation*, theory as the principle applicable to life policies where the lines of war had been drawn between insured and insurer.

We next heard of the effect of war on life policies at the 1932 meeting of the International Law Association. In that year, the

Association, adopting the *suspension* and rejecting the *cancellation* theory, approved the following rule:

> "5. Life insurance.
>
> (a) These should remain valid and in force in accordance with their terms and subject to the provisions of pars. 7 and 8 hereof;
>
> (b) Contracts should be considered as contracts of life insurance for the purpose of these Rules, when they depend on the probabilities of human life, combined with the rate of interest for the calculation of the reciprocal engagements between the parties."
>
> "7. Payment Under Insurance Contracts.
>
> Subject to the provisions of Rule (7), payments falling due under contracts of insurance, whether accrued before the war, or, in accordance with these Rules, during the war, should be suspended until the termination of the war unless arrangements are made with the assent of the belligerent Powers concerned given either before or during the war for the payment of premiums and/or losses to or through a neutral body."
>
> "8. Formalities.
>
> No insurance claim should be defeated by reason only of a failure during the war to give notice or do any other act under the contract where such failure is attributable to the existence of a state of war."

The stand taken by the framers of the Treaty of Versailles and by the International Law Association was not without effect on law writers.[21]

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[21] Thus, in 14 Ruling Case Law, 987, title "Insurance," it had been said that:

> "Notwithstanding considerable contrary authority, the *better rule* seems to be that the existence of war between the territories in which the insured and the insurer reside is no excuse for failing to pay a life insurance premium, though payment is thereby made impossible."

In 29 American Jurisprudence 365, the text above quoted from 14 Ruling Case Law, 987, was rewritten as follows:

> "Notwithstanding considerable contrary authority, the view has been taken that the existence of war between the territories in which the insured and the insurer reside is no excuse for failing to pay a life insurance premium although payment is thereby made impossible."

The reference to the *cancellation* rule as being the *"better"* rule was suppressed.

And in 32 Corpus Juris, Section 549 (6) Title "War," page 1309, the following appeared:

> "The existence of a state of war between the territories in which insured and the company reside will not, according to *weighty* authority, excuse a forfeiture for nonpayment of premiums, although in a number of jurisdictions there are decisions to the contrary."

But in 45 Corpus Juris Secundum, Section 473 (5) Title "War," page 190, it will be noted that the word "weighty," used originally in 32 Corpus Juris, 1309, had been omitted and replaced by the word "some." To quote the later text:

> "War. The existence of a state of war between the territories in which insured and the company reside will not, according to *some authorities*, excuse a forfeiture for nonpayment of premiums although in a number of jurisdiction there are decisions to the contrary."

The foregoing substantially recites the legal position, before World War II, of the question of the effect of war on life policies. The tragedy of it is that, prior to the liberation, no one in the Philippines, at least no one in authority, seemed to know of the doctrines of *cancellation* and of *suspension*. In April, 1947, the then Deputy Insurance Commissioner of the Philippines stated in a radio broadcast that *"There is to our knowledge no rule or principle of law which condones interest on premiums corresponding to the occupation period, nor is there any rule or principle of law which would suspend the enforcement of the terms of the policy as agreed upon between the insured and insurer, particularly those with respect to the payment of premiums during the war years."* The Deputy Commissioner evidently was not acquainted with the rule of *suspension* in the United States, nor with the general principles of law as reflected in the Treaty of Versailles and in the rules adopted by the International Law Association in 1932.

I took up the cudgels for plaintiffs in the Asia Life cases, and I made a special study of the question only after I had felt the injustices which would be occasioned once policies were declared forfeited for lack of prompt payment of premiums during the occupation. Although I had not even heard of Monsieur Begault then, I felt, as he did, that

> a) "not wishing to favour the enemy by sending them money, the Belgian and French Assured in most cases have not paid their premiums during the war." (The Filipino, for the same reason, refrained from judicial consignment of premiums.)
>
> b) "Those who have found themselves in occupied territory, deprived of their income and of their ordinary profits, have been actually unable to (pay their premiums)." (In the Philippines, as previously pointed out, policyholders who could have taken advantage of the "cash surrender values" of their contracts could not get them by surrender of the policies, however much their need for money was. On the contrary, they were actually forced by the war to pay premiums, *plus interest*, from the reserves (or cash surrender values) of their policies).
>
> c) "As you know many assured in the occupied parts have suffered from the war, their health has altered and they would not be able to pass a medical examination which would permit them to effect a new contract with a new company. If their old Company only gives them the surrender value of their policy, they will suffer a serious injury and *the provision for the future that they have made for their family will be destroyed.*"

I would like to stress that the New York, Connecticut and United States rules, or the *cancellation* and *suspension* theories, could be viewed only relatively. One rule can be deemed *better* than the others, but certainly it would be almost rank effrontery to say that one of the rules is the *correct* rule and the others *incorrect*. Pro-

fessor Vance, an authority on Insurance Law, whom our Supreme Court had cited with approval, had stated in the Second (1930) edition of his Book (p. 213) that the United States rule (the *cancellation* theory) was "the better view." I have not come across any present day authority, well-versed in insurance law and practice, who has dared to say that either one of the *cancellation* or *suspension* theories is *correct* and the other *incorrect*. Yet, our Supreme Court, in the Asia Life cases, erroneously attributed to Professor Vance the conclusion that the United States rule was and still "is the *correct* rule." That is one of the reasons why I have stated, at the beginning of this article, that I feel that the Asia Life cases was decided without full comprehension on the part of the Court of fundamental principles in the life insurance business. Even the Court's invocation of the United States rule, as "announced in the well-known Statham case," was erroneous in the sense that that rule, (which the Court added "is the *correct* rule" according to Professor Vance) is inapplicable to modern policies. In the words of Professor Vance himself, the United States rule "proper held . . . that the insurer must pay to the insured the equitable value of his policy at the outbreak of the war." [22] The second policy sued upon in the Asia Life cases had an equitable value at the commencement of the Japanese occupation, but the Supreme Court did not order the payment of that value to the heirs of the deceased policyholder. After feeling "no hesitation to adopt the United States Rule, which is a variation of the Connecticut rule for the sake of equity," after specifying that the United States rule was "the *correct* view," the Court did not apply it to its full extent. The Court obviously did not understand the technical inapplicability of the United States rule to present-day life policies because of the existence of the modern automatic premium loan plan.

VII THE STATHAM CASE AND MODERN ACTUARIAL CONSIDERATIONS

It would now be technically correct to say that the Statham case, which is the basis of the United States rule, is no longer a *judicial* precedent. The views expressed by Mr. Justice Bradley, who penned the majority decision, should be considered, at present, as no more than an off-the-bench statement of a jurist. The reason is simple. In *Ruhlin vs. New York Life Insurance Co.*[23] and *Griffin vs. McCoach* [24] (1941) 313 U.S. 498, 85 L. Ed. 1481, the United States Supreme Court itself has unequivocably ruled that it has no

[22] At page 293, 3d.
[23] 304 U. S. 202, 82 L. ed. 1290 (1938).
[24] 313 U. S. 498, 85 L. ed. 1481 (1941).

jurisdiction over the construction or interpretation of insurance statutes in the American Union, the matter being within the exclusive jurisdiction of State courts. In other words, *the United States Supreme Court had no jurisdiction over the subject matter when it decided the Statham case.*

The following was held in *Ruhlin v. New York Life Insurance Co.*,[25]:

> "It was stated in *Carpenter v. Providence Washington Ins. Co.*, 16 Pet. 495, 511, 10 L. Ed., 1044, 1051, that questions concerning the proper construction of contracts of insurance are 'questions of general commercial law', and that state decisions on the subject, though entitled to great respect, 'cannot conclude the judgment of the court.' A limitation was put on this doctrine in *Mutual L. Ins. Co. v. Johnson*, 293 U.S. 335, 340, 79 L. Ed., 398, 402, 55 S. Ct., 154. Putting aside all questions of power the Court interpreted a specific provision of an insurance contract in accordance with the decision of the highest court of the State of Virginia, where delivery was made. 'All that is here for our decision is the meaning, the tacit implications, of a particular set of words, which, as experience has shown, may yield a different answer to this reader and to that one. With choice so 'balanced with doubt', we accept as our guide the law declared by the state where the contract had its being.' The decision in *Erie R. Co. v. Topkins*, 304 U.S., 64, ante, 1188, 58 S.C., 817, 114 A.L.R., 1487, No. 367, decided April 25, 1938, goes further, and settled the question of power. *The subject is now to be governed, even in the absence of state statutes by the decisions of the appropriate state court.* The doctrine applies though the question of construction arises not in an action at law, but in a suit in equity. *Compare Mason v. United States*, 260 U.S., 545, 557, 558, 67 L. Ed., 396, 400, 401, 43 S. Ct., 200.
>
> Had *Erie R. Co. v. Tompkins* been announced at some prior date the course of this case might have been different. This Court might not have issued a writ of certiorari."

And two syllabi in *Griffin v. McCoach*,[26] read as follows:

> "2. In determining what law governs an insurance policy and whether the public policy of the state of the forum permits a recovery on the policy of a beneficiary having no insurable interest in the life of the insured, a Federal court is bound to follow decisions of the courts of the state in which it sits."
>
> "8. Whether lack of insurable interest is immaterial in a suit involving the right to insurance proceeds where the insurer has acknowledged liability and paid the proceeds into court is a question to be decided by a Federal court according to the decisions of the courts of the state in which it sits."

To stress the actual impotence of the Statham case, I venture to say that should a Virginia case involving the effect of war on

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[25] See note 23, *supra*.
[26] See note 24, *supra*.

life policies now be appealed to the Federal Supreme Court, the latter tribunal would have to decide the same in accordance with *Manhattan Life Insurance Co. v. Warwick*,[27] which upheld the *suspension* theory, in utter disregard of the principles enunciated in the Statham case.

Mr. Justice Bradley was an actuary. Mr. A. deW. Mason, Associate General Solicitor of the Prudential Insurance Company of America, in a paper he read in New York City on May 12, 1943 before the Association of Life Insurance Counsel, had this to say of him:

> "It is not surprising, perhaps, that Justice BRADLEY should be the first jurist to stress the actuarial aspects of the situation, although they were adverted to, as had been noted, by the Court of Appeals of New York in the Cohen case. As I understand, Mr. Justice BRADLEY was also a student of the actuarial science. Before going on the Bench and while engaged in a busy practice of law in the City of Newark, he nevertheless found time to make a study of this science and acted for several years as consulting mathematician for the Mutual Benefit Life Insurance Company."

The reader might note Mr. Mason's reference to actuarial *science*. The point which could be emphasized is this: Mr. Justice Bradley, an actuary in 1876, having the actuarial positions of life companies in 1876 in mind, advocated the adoption of the *cancellation* theory. In 1919, Monsieur Begault, President of the Belgian Actuaries, undoubtedly having the actuarial position of life companies in 1919 in mind, advocated the adoption of the *suspension* theory. Both Mr. Justice Bradley and Monsieur Begault were actuaries, and their calling was a *science*. Moreover, Monsieur Begault belonged or pertained to the insurance business itself, as Mr. Justice Bradley had pertained to it. Why did they differ in their views on a *scientific* (mathematical) matter? The only possible reply is that the actuarial position of life companies in 1876 had so changed or altered in 1919 as to make the theoretical fears of Mr. Justice Bradley of no practicable significance in the later year.

Mr. Justice Bradley sought to justify the *cancellation* theory, on actuarial considerations, in these words:

> "The business of insurance is founded on the law of averages; that of life insurance eminently so. The average rate of mortality is the basis on which it rests. By spreading their risk over a large number of cases, the companies calculate on this average with reasonable certainty and safety. Anything that interferes with it deranges the security of the business. If every policy lapsed by reason of the war should be revived, and all the back premiums should be paid, the companies would have the

[27] 20 Gratt (Va.) 614.

benefit of this average amount of risk. But the good risks are never heard from; only the bad are sought to be revived, where the person insured is either dead or dying. Those in health can get new policies cheaper than to pay arrearages on the old. To enforce a revival of the bad cases, whilst the company necessarily lose the cases which are desirable, would be manifestly unjust. An insured person, as before stated, does not stand isolated and alone. His case is connected with and correlated to the cases of all others insured by the same company. The nature of the business, as a whole, must be looked at to understand the general equities of the parties."

To show the difference in actuarial situations between 1876 and in these modern times is not difficult, and it is still a wonder why our Supreme Court had failed to see it.

Further discussion of the point might be made with reference to the following tabulations:

CIVIL WAR TIMES
(Alabama)

Year	*No. of policyholders*	*Reserve*	*Rate of profit on reserve*
1842	1	nil	4%
1843	2	nil	"
1844	3	₱ 9.00	"
1845	4	15.00	"
1846	5	17.00	"
1847	6	19.00	"
1848	7	20.00	"
1849	8	21.00	"
1850	9	23.00	"
1851	10	25.00	"
1852	11	27.00	"
1853	12	32.00	"
1854	13	38.00	"
1855	14	40.00	"
1856	15	45.00	"
1857	16	47.00	"
1858	17	50.00	"
1859	18	54.00	"
1860	19	57.00	"
1861	?	57.00	?
1862	?	57.00	?
1863	?	57.00	?
1864	?	57.00	?

MODERN TIMES
(PHILIPPINES)

1923	1	nil	4%
1924	2	nil	"
1925	3	₱ 9.00	"

1926	4	15.00	"
1927	5	17.00	"
1928	6	19.00	"
1929	7	20.00	"
1930	8	21.00	"
1931	9	23.00	"
1932	10	25.00	"
1933	11	27.00	"
1934	12	32.00	"
1935	13	38.00	"
1936	14	40.00	"
1937	15	45.00	"
1938	16	47.00	"
1939	17	50.00	"
1940	18	54.00	"
1941	19	57.00	"
1942	17(?)	58.00	4%-6%
1943	17(?)	59.00	"
1944	16(?)	58.00	"
1945	15(?)	57.00	"

The figures given in the two tabulations above are of course not accurate. They are arbitrary, and their only purpose is to illustrate a general idea. These are the assumptions in the tabulations:

(a) X foreign company started in Alabama in 1842 with one policyholder, and in the Philippines, also with one policyholder, in 1923. A gain of one policyholder was made each year for the next 19 years in both cases.

(b) The total amount of reserves increased with the number of policyholders.

(c) The interest rate which forms the basis of the scale of charges of X insurance Company (the expected rate of profit from the investment of the reserve) was 4% in both cases.

It will be seen that the actuarial position of X Foreign Company in Alabama in 1860, the year preceding the Civil War, and in the Philippines in 1941, the year preceding the Japanese Occupation, was identical. The difference sets in during the first year of the Civil War and during the first year of the Japanese Occupation. Because the automatic premium loan plan was unknown in Alabama in 1861, all premium payments stopped, and the reserve remained stationary for the 3 years of the war. Under the United States rule, that reserve was to be returned to the policyholders. The reserve became trust property which X Foreign Company should not even continue to invest. But the case in the Philippines was different because of the existence of the automatic premium loan plan. This plan had two effects, to wit: it allowed the payment of premiums on all policies more than 3 years old, and the reserve was thus in-

creased; and it allowed part of the reserve, automatically loaned for the payment of premiums, to earn 6%, instead of 4%, per annum. Thus, the Japanese Occupation of the Philippines resulted: (1) in the inability of policyholders to pay premiums to X Foreign Company; (2) in the operation of the automatic premium loan plan in respect of all policies more than 3 years old; and (3) in affording X Foreign Company an income of 6% per annum on its total reserve used in the loans where, invested otherwise, it was expected to net only 4% per annum. The effects of the Japanese Occupation benefited X Company immensely; which was not the case with those of the Civil War in Alabama. The point I want to bring out is that, on actuarial considerations, this immense profit gained by X Foreign Company may more than offset the losses in respect of the relatively few policyholders who would have died, or who would have fallen into ill health during the Japanese Occupation.

Our Supreme Court, in its decision in the Asia Life cases, said of a part of the decision in the Statham case that it lent itself *"to the approval of fair-minded men."* It also said that the decision was *"logically and juridically sound."* The invocation of actuarial considerations, at the same time invoking "logic," fairness," and "justice" constituted an irrelevancy, and showed that the functions of actuarial science in insurance were probably not fully understood by the court. If an event, situation, or condition is within the actuarial contemplation, or can be absorbed by the actuarial position, it does not matter whether such event, situation or condition is "logical or illogical," "fair or unfair," or "just or unjust."

Take the case of suicide. From the point of view of "logic," "fairness" and "justice," a man should not be allowed to take out an insurance policy, and then kill himself afterwards so that his beneficiary could collect the proceeds of the policy. Yet actuarial science can determine the number of people who would commit suicide in a given period and the loss from suicides can be computed. If provision for that loss be included in the computation of the premiums payable by the insurance group, the beneficiaries of a suicide can be paid the amount of the policy, regardless of all consideration of "logic," "fairness" and "justice." "In Minnesota, distinguishing the case from one where the contract of insurance is simply against suicide, it has been held that a policy insuring against death 'through violent or accidental means (including suicide, sane or insane)' is enforceable." (1 Couch, pp. 28-29). If the Asia Life cases were to be decided on the actuarial considerations invoked by Mr. Justice Bradley in the Statham case, it was erroneous to have injected factors of "logic," "fairness" and "justice" into the matter. The question to determine should have been whether or not the rule of *sus-*

pension was within the contemplation of, or could be absorbed by, the actuarial positions of the foreign Companies.

In the Asia Life cases, defendant foreign Company referred to the actuarial consideration involved in the question of war as an excuse for late payment of premiums as follows:

> "*Amici curiae* choose to disregard the relation which each policyholder bears to the other policyholders and to the insurance company. Policyholders have, in regard to each other, an associated relation whereby one is interested in the engagement of all, since out of the concurrence of risks arises the law of averages which underlie the whole insurance business. If, as *amici curiae* concede, the living policyholders are prejudiced by the death of one policyholder, whether there are few or many policyholders in one insurance company, it must necessarily follow that the revival of policies that have lapsed and ceased to be in force *in accordance with their express provisions*, and which therefore constitute valueless claims in pursuance of the terms of the policy contracts, will adversely affect all surviving policyholders. It would mean the loss to the surviving policyholders of property rights which they had acquired in the accumulation of reserves, dividends and profits held by the insurance company in trust for them. It is respectfully submitted that *in reality* it is not the insurance company that suffers—it is the thousands of policyholders whose property rights consisting of their shares in the accumulated profits and dividends would be confiscated by a declaration that the policies here in question and other similar ones had not ceased to be in force."

It is easy to explain what was meant. I have previously pointed out that premiums carry a safety factor which become part of the reserve, so that if anything unforseen happens, benefit payments called for by the contingency can be met and absorbed by this safety factor. Should nothing unforeseen happen, the safety factor is periodically returned to the policyholders as "dividends." When the investment of the reserve by the insurer nets more than 4% per annum, part of the excess is also distributed to the policyholders as "dividends." Now, if benefit payments made by an Insurance Company beyond the usual rate, are absorbed by the safety factor and by the extra income from the investment of the reserve, the insurance company does not suffer a loss. Instead, the "dividends" to the policyholders are reduced. It is the policyholders who suffer a loss in that respect. Only in the event that the benefit payments should exceed the safety factor and the extra income from the investment of the reserve will the insurance Company itself have to shoulder the loss from an unusual number of benefit payments.

The above quoted statement made by defendant foreign Company in the Asia Life cases shows that the benefit payments on claims similar to those of plaintiffs in the cases, (which are bound to be *relatively* small) would not go beyond the safety factor and

the *"extra"* income from the investment of the reserve which the Japanese Occupation fomented through the enforced operation of the automatic premium loan plan on all policies issued in the Philippines by the foreign Companies.

The accuracy of the indirect admission made by defendant foreign Company in the Asia Life cases finds confirmation in the annual report of 1945 to the policyholders, wherein Mr. Arthur B. Wood, president and managing director, Sun Life Assurance Company of Canada, wrote as follows:

> "Even at the expense of repetition I think it advisable once again to stress the fact that earnings in life assurance differ fundamentally in character from earnings of a commercial or financial undertaking organized for profit. Because of the long-term nature of the life assurance contract the premium rates must be sufficient to ensure the fulfillment of the contract *under any and all conditions.* Safety margins are therefore included in the premiums to provide for adverse fluctuations in mortality, expenses and interest rates, and *for unforseen contingencies."*

It is to be regretted that our Supreme Court invoked the Statham case, with its abstraction on actuarial science, as a basis for its decision in the Asia Life cases. Actuarial considerations are matters of fact, not of conjecture, and the Court should not have rejected the theory of *suspension* without proof that such theory was outside of the actuarial computations of the foreign Companies. I had specifically pointed out to the court that the theory of *suspension*, followed in New York where all the foreign companies operate, must be part of the actuarial bases of their policies. It would be only common sense to conclude that if a foreign Company faces the *suspension* theory in New York, where it does business, the computation of its premium structure would include a provision for meeting losses, if any, from the possible operation of that *suspension* theory in respect of its policies. Moreover, in the absence of a definite statement of the law in the Philippines prior to World War II, the foreign Companies must have prepared for the possible adoption of the *suspension* theory in this jurisdiction by including it as a favor in their computations. That was only logical and to be expected from such highly organized concerns as life insurance companies.

The question arises as to who had the burden of introducing proof of the actuarial bases of life policies issued by the foreign Companies. Plaintiffs in the Asia Life cases, suing for ₱3,000.00 each, less overdue premiums and interest, could not be expected to produce that proof. Social justice demanded that the foreign Companies should have been required to introduce actuarial proof against

the *suspension* theory. In the absence of proof, and as the indications were that the actuarial positions of the foreign Companies included the *suspension* theory within their bases, judgment in the Asia Life cases should have been rendered in favor of plaintiffs.

VIII PROTECTION OF THE PEOPLE OF THE FORUM

The strongest point of dissatisfaction that I entertain in respect of the decision in the Asia Life cases lies in the fact that our Supreme Court had failed thereby to protect the people of the forum —its own people. It is a fact that there were two theories applicable to the Asia Life cases,—the *cancellation* and the *suspension* theories. Both theories were supported by reason and judicial authority, if indeed the *suspension* theory was the more equitable. The choice should not have been difficult to make if the interests of the people of the forum had been taken into account.

In the field of private international law, the protection of the people of the forum is a guiding principle.

> "A state will respect and give effect to the laws of another state so far as can be done consistently with its own interests." [28]
>
> "Since it is the duty of each state to look to the interest of its own subjects, comity, which is voluntary and not obligatory, cannot supersede discretion where such interest is involved." [29]

In a way, it was the duty of our Supreme Court *"to render such an interpretation of the laws as will best promote the protection of the public, in so far as this may be accomplished in accordance with well-established rules of construction."* [30]

The adoption of the *suspension* theory for the protection of the people of the forum could not have been criticized as an arbitrary action for the benefit of our people, devoid of any element of justice, and taken on the consideration alone that our Supreme Court had the power to adopt it. No, the *suspension* theory had elements of justice in itself, in the same way that the *cancellation* theory must also have its own elements of justice. The adoption of one theory or the other was merely a point of view, perhaps a psychology. Patriotic jurists would have had no hesitation in advocating the *suspension* theory for their own jurisdictions. Only the pure internationalists can decide legal questions without taking the interest of their own peoples at heart.

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[28] *Lowndes v. Coach*, 40 L. R. A. 835.
[29] *Gooch v. Faucett*, 39 L. R. A. 835.
[30] 50 Am. Jur., Sec. 381.

Stated in another way, the Asia Life cases cannot be claimed to have been decided on the basis solely of reason. Both *suspension* and *cancellation* theories have found support in reason from high judicial tribunals of foreign jurisdictions. Our Supreme Court, therefore, would not have been unreasonable if it had decided the Asia Life cases by adoption of the *suspension*, instead of the *cancellation*, theory. The protection of the people of the forum could have fully been justified by the reasonableness of the *suspension* theory.

There were two other factors which could have added justification to the protection of the people of the forum, if indeed additional justification was yet required. The first was the theory of *contra proferentem;* the second, the fact that the *suspension* theory should have been deemed as forming part of the general principles of law.

The role of *contra proferentem* has been briefly discussed as follows:

> "*Theory of rule contra proferentem.*—Various reasons have been assigned for the rule of construction against the insurer and in favor of the insured. Perhaps the most generally assigned reason for the rule is, in effect, that to hold otherwise, without an absolute necessity therefor, would tend to subvert the very object and purposes of insurance, which is that of indemnity to the insured in case of loss, or the payment of money on the happening of a contingency, which indemnity should be effectuated, rather than defeated, to which end the law makes every rational intendment, so as to give the fullest protection possible to the interests of the assured. In fact, where two interpretations equally fair may be made, that which allows a greater indemnity will prevail. And since indemnity is the ultimate object of insurance, the construction should be in favor thereof, and likewise for the benefit of the trade, for, in case of doubtful construction, insurance is regarded as a contract umberrimae fidei. And every presumption in favor of good faith will be indulged in in construing policy clauses, the presumption being that an insurance company, in choosing the language of its policy, did not intend any jugglery or equivocation. This is in accordance with the rule that policies of insurance create reciprocal rights and obligations which require the utmost good faith by both parties. And the *strictum jus* or *apex juris* is not to be laid hold on. And the reason for the rule of construction against the insurer is that policies of insurance are made on printed forms carefully prepared in the light of wide experience, by experts employed by the insurer, and in the preparation of which the insured has no voice. Still another version of the reason is that the rule is based on the fact that insurance contracts are usually prepared by the insurer, who seeks so to frame them as to limit their scope, so that it is only fair that any doubt as to the meaning of the language used should be resolved in favor of the insured, in order to avoid the injustice that would result from a narrow and technical construction. That is, contracts of insurance couched in 'language selected by the company for its own purpose,' and printed and prepared by skilled experts, and offered to the lay public, must, when ambiguous, be construed in favor of the assured, or, in other words, that

since the language of the policy is that of the insurer, it is both reasonable and just that its own words should be construed most strongly against it. Also, that insurance contracts are to be interpreted, except, perhaps, where the language used follows a statutory form or provision, in the light of the fact that they are drawn by the insurer, and are rarely, if ever understood by the people who pay the premiums, especially where the policy has never been seen by the insured. And the fact that the language of the policy follows the language of the application does not alter the situation, since, when the insurer adopts such language in covering the risk, it becomes the author of the ambiguity and the ultimate cause of doubt. The rule of liberal construction also has been attributed to the fact that contracts of insurance are generally drawn up in loose and inartificial language, but this statement undoubtedly is too broad." [31]

Plaintiffs in the Asia Life cases were not only people of the forum,—they were the representatives of the insured who should have been protected under insurance contracts. The very nature of insurance seeks to relieve the individual of a loss which he may not be able to bear and to distribute such loss among many, each of whom may be able to bear his part of the loss without difficulty. So that if the issue to be resolved has to be determined solely on who should bear a loss, then the answer should point to the insurers and the other policyholders as that would be the only reply consonant with the essence of the insurance business itself.

The Supreme Court could likewise have protected the people of the forum by rightfully holding that the *suspension* theory was part of our insurance law. It is provided in Section 172 of the Philippine Insurance Act that:

"Sec. 172.—After the becoming effective of this Act, no foreign . . . insurance company shall transact any new business in the Philippines until after it shall have obtained a certificate of authority for that purpose from the Insurance Commissioner . . . *Every company receiving any such certificate of authority shall be subject to the insurance laws of the Philippines* . . ."

In *Enriquez vs. Sun Life Assurance Co. of Canada,*[32] the following was said:

"Until quite recently, all of the provisions concerning life insurance in the Philippines were found in the Code of Commerce and the Civil Code. In the Code of Commerce, there formerly existed Title VIII of Book II and Section III of Title III of Book III, which dealt with insurance contracts. In the Civil Code there formerly existed and presumably still exist, Chapters II and IV, entitled insurance contracts and life annuities, respectively, of Title XII of Book IV. On and after July 1, 1915, there was,

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[31] I COUCH ON INSURANCE, Sec. 188a.

[32] 41 Phil 269.

> however, in force the Insurance Act No. 2427. Chapter IV of this Act concerns life and health insurance. The Act expressly repealed Title VIII of Book II and Section III of Title III of Book III of the Code of Commerce. *The law of insurance is consequently now found in the Insurance Act and the Civil Code.*"

In *Ang Giok Chip vs. Springfield Fire & Marine Ins. Co.*,[23] the following was stated:

> "An important question in the law of insurance, not heretofore considered in this jurisdiction and, according to our information, not directly resolved in California from which State the Philippine Insurance Act was taken, must be decided on this appeal for the future guidance of trial courts and of insurance companies doing business in the Philippine Islands. (p. 376).
>
> x x x x x x x x x x x x x
>
> "The Philippine law on insurance was taken verbatim from the law of California. Accordingly, the courts of the Philippines should follow in fundamental points at least, the construction placed by California courts on a California law." (p. 378).

In *Gercio vs. Sun Life Assurance Co. of Canada*,[24] it was held:

> "The Philippine Law of Insurance should be supplemented by the general principles prevailing on the subject. The purpose should be to have the Philippine law of Insurance conform as nearly as possible to the modern law of Insurance as found in the United States proper."

It will be seen from the foregoing citations that the law applicable to insurance cases is found, firstly, (a) in Act No. 2427; then (b) in the Civil Code; then (c) in the jurisprudence of the State of California; and lastly, (d) in the modern law of insurance as found in the United States proper. *The Civil Code has precedence over United States law.*

In Article 6 of the old Civil Code, applicable to the Asia Life cases, it is provided that "when there is no law exactly applicable to the controverted point, the custom of the place shall be applied and, in default thereof, the general principles of law." There were admittedly no applicable "customs of the place," and the general principles of law should have governed the question of the effect of war on life policies in the Philippines.

I hold to the view that the *suspension*, not the *cancellation*, theory constitutes the applicable "general principle of law." As previously pointed out, the *weight of authority* among the states in the

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[23] 56 Phil. 375.
[24] 48 Phil. 53.

American Union supports the *suspension* theory which has been upheld in six jurisdictions as follows:

1. *Virginia*
   Manhattan Life Insurance Company v. Warwick, 20 Gratt (Va.) 614.[35]
   Mutual Benefit Life Insurance Co. v. Atwood's Administration, 24 Gratt, 506.[36]
   New York Life Insurance Co. v. Hendren, 24 Gratt., 534.[37]
   Connecticut Mutual Life Insurance Co. v. Duerson's Executor, 28 Gratt., 630.[38]
   Clemit v. New York Life Insurance Co., 76 Va., 355.[39]
2. *Kentucky*
   New York Life Insurance Co. v. Clopton, 7 Bush (Ky.), 179.[40]
3. *New York*
   Cohen v. The (N.Y.) Mutual Life Insurance Company, 50 N.Y., 610.[41]
   Sands v. The New York Life Insurance Co., 50 N.Y., 626.[42]
   Robinson v. Society, 42 N.Y., 54.[43]
4. *Mississippi*
   Statham v. Insurance Co., 45 Miss., 581 Am. Rep., 787.[44]
5. *Tennessee*
   Crawford v. Aetna Ins. Co., 2 Tenn. Cas., 329.[45]
6. *New Jersey*
   Mutual Benefit Life Insurance Co. v. Hillyard, 37 N.J.L., 444.[46]

On the other hand, only three states have adhered to the cancellation theory (the Connecticut and U. S. rules combined) as follows:

1. *Connecticut*
   Worthington v. Charter Oak Life Insurance Co., 41 Conn., 372.[47]
2. *Georgia.*
   Dillard v. Manhattan Life Insurance Company, 44 Ga. 119.[48]
3. *West Virginia*
   Abell v. Penn Mutual Life Insurance Co., 18 W. Va., 400.[49]

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[35] *Manhattan Life Insurance Co. v. Warwick*, 20 Gratt (Va.) 614.
[36] *Mutual Benefit Life Insurance Co. v. Atwood's Administration*, 24 Gratt 506.
[37] *New York Life Insurance Co. v. Hendren*, 24 Gratt 534.
[38] *Connecticut Mutual Life Insurance Co. v. Duerson's Executor*, 28 Gratt 630.
[39] *Clemit v. New York Life Insurance Co.*, 76 Va. 355.
[40] *New York Life Insurance Co. v. Clopton*, 7 Bush (Ky.) 179.
[41] *Cohen v. The (N.Y.) Mutual Life Insurance Co.*, 50 N. Y. 610.
[42] *Sands v. The New York Life Insurance Co.*, 50 N. Y. 626.
[43] *Robinson v. Society*, 42 N. Y. 54.
[44] *Statham v. Insurance Co.*, 45 Miss. 581 Am. Rep. 737.
[45] *Crawford v. Aetna Ins. Co.*, 2 Tenn. Cas. 329.
[46] *Mutual Benefit Life Insurance Co. v. Hillyard*, 37 N. J. L. 444.
[47] *Worthington v. Charter Oak Life Insurance Co.*, 41 Conn. 372.
[48] *Dillard v. Manhattan Life Insurance Co.*, 44 Ga. 119.
[49] *Abell v. Penn Mutual Life Insurance Co.*, 18 W. Va. 400.

I have also pointed out that the *suspension* theory is not only embodied in the Treaty of Versailles but was also adopted by the International Law Association in 1932. I wish to emphasize that the point is not whether the *suspension* theory, followed by the greater number of American courts, by the Treaty of Versailles, and by the 1932 rules of the International Law Association is better or worse. It is better from the point of view of Monsieur Begault and of others who believe in it; it is worse from the standpoint of the obsolete Statham case. The point is that, better or worse, the theory of *suspension* now forms part of the recognized general principles of law because it was adopted at the Treaty of Versailles and by the International Law Association in 1932 after it had become the weight of authority in the United States.

The International Law Association Rules were passed unanimously by jurists well-versed in law. Of the Treaty of Versailles, Mr. R. D. Taylor, Legal Counsel for the Sun Life Assurance Company of Canada, in an address delivered before the 1943 American Life Convention, said that:

> "The interesting thing about these Treaty provisions, it seems to me, is that *jurisconsults from many countries well versed in international law adopted the conclusions rendered in the old State Court decisions, which we have been considering, as an accurate reflection of private international law in the premises.*"

As to which of the two theories constitutes a general principle of law, it cannot be successfully denied that it is the theory of *suspension.* As it was necessary to decide the Asia Life cases under Article 6 of the Civil Code, our Supreme Court was in duty bound to render judgment in favor of the insured and against the insurer by applying the theory of *suspension.*

There is still another consideration which should have induced our Supreme Court to protect the people of the local forum. It cannot be denied that in the State of New York, the rule of *suspension,* and not that of *cancellation,* is followed.[50] All of the foreign Companies have offices in New York City, and they could therefore be sued in that jurisdiction. If plaintiffs in the Asia Life cases and all others of their class were only financially able to do so, they could have sued before the Courts of New York and won their cases.

The applicable law, of course, would be Philippine law but, in the absence of proof, it would be presumed that Philippine law involved in the cases would be similar to New York law. I venture the assertion that in the absence of a prior positive ruling of our

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[50] *Cohen v. The (N.Y.) Mutual Life Insurance Co.,* 50 N. Y. 610.

Supreme Court favorable to the stand of the foreign Companies, the New York Courts would have rendered judgment in favor of the local policyholders. Americans in the United States are generally fair to the Filipino people.

Most Filipino policyholders adversely affected by the Japanese Occupation did not have the means to take their cases before the New York courts. I feel they should now regret having brought their complaints to the local tribunals. The justice which could have been secured by them in New York was actually denied them here by the Philippine Supreme Court.

To be more concrete, let me give an example. A is a New York citizen resident in New York in 1940, while B is a Filipino resident in Manila in the same year. A was insured by a foreign company in New York for $10,000 on July 31, 1940. B was insured also by the same foreign company in Manila for the same amount and on the same date. A was captured in Manila by Japanese forces in 1941 and was thereafter interned at Sto. Tomas. The premiums on both policies were not paid during the occupation. Both A and B died in Manila in 1944. A's beneficiary in New York would be paid the proceeds of A's policy, less accrued premiums and interest, because the theory of *suspension* is followed in that State. B's beneficiary, on the other hand, would not be paid the proceeds of A's policy because our Supreme Court has adopted the *cancellation* policy. The iniquity is patent.

I have previously stated that the adoption of either the *suspension* or the *cancellation* theories was not a question of reason or of logic but rather one of judicial psychology. Our Supreme Court must have acted on the psychology of preference for the *cancellation* theory, in disregard of the interests of its own people. In pursuance of that psychology, the court had even to resort to illogical ratiocination to support the stand it had elected. In the decision in the Asia Life cases, our Supreme Court made the following observations:

> "For the plaintiffs, it is again argued that in view of the enormous growth of insurance business since the Statham decision, it could be relaxed and even disregarded. It is stated 'that the relaxation of rules relating to insurance is in direct proportion to the growth of the business. If there were only 100 men, for example, insured by a Company or a mutual Association, the death of one will distribute the insurance proceeds among the remaining 99 policyholders. Because the loss which each survivor will bear will be relatively great, death from certain agreed or specified causes may be deemed not a compensable loss. But if the policyholders of the Company or Association should be 1,000,000 individuals, it is clear that the death of one of them will not seriously prejudice each

of the 999,999 surviving insured. The loss to be borne by each individual will be relatively small'.

The answer to this is that as there are (in the example) one million policyholders, 'the losses' to be considered will not be the *death of one* but the death of ten thousand, since the proportion of 10 to 100 should be maintained. And certainly such losses for 10,000 deaths will not be 'relatively small'."

The foregoing constitutes the instance I have previously referred to as a clear indication that the Asia Life cases were decided without full comprehension on the part of the Court of fundamental concepts in the life insurance business. The views expressed by Mr. Justice Bengzon show a manifest misconstruction of the arguments of plaintiffs. The conclusion arrived at by the Court was painfully wrong.

Let us take a hypothetical case in very simple terms. Suppose that the whole population of the world were 100 persons. Further assume that, according to established statistics, 10% of the population, or 10 persons, will commit suicide within a given period. If a Company were to insure only 10 persons out of the total population of 100, either its rates would be prohibitive, or it would have to exclude suicide from the risks covered by its policy. The reason is obvious. While it is known that 10% of the population will commit suicide, it is not known who those 10 persons will be. They might be the very 10 persons whom the company has insured. On the other hand, take the case where, instead of 10 persons being insured, 90 persons of the 100 total population were to be insured. The insurer would know that of the 90 policyholders, not more than 10 will die by suicide. Therefore, he can spread the death benefits from the suicides if at all necessary, among 90 persons. He can probably include suicide as a risk covered by the policy without making the premiums prohibitive. The hypothetical cases correctly illustrate the argument that the growth of insurance business relaxes the rules on the insurer's liability.

There was error in the Court's reasoning because it assumed that the increase of the life insurance business was purely relative in the sense that, the percentage of the population buying insurance remaining the same, the actual number of insured increased only proportionately as population multiplied. Thus, if 10, out of a population of 100, or 10%, were insured, the Court considered there would be only 20 insured, also equivalent to 10%, if the population increased to 200. The court closed its eye to the actual fact that the percentage itself has increased, as it is still increasing ,and that, in the example given, the number of insured increased to 50, or 25%, when

the population increased to 200. The argument of plaintiffs in the Asia Life cases was based on the fact of increased percentage.

IX THE UNFAIRNESS OF THE FOREIGN COMPANIES

Even before their advent in the Philippines, the foreign Companies were already aware that there were two conflicting views in respect of the effect of war on the late payment of premiums. The rule of the Statham case and the American State rule of *suspension* were definite doctrines before the end of the last century. World War I came in 1914-1918, and the Treaty of Versailles which settled that conflict was thereafter ratified by all soveriegn powers involved, excepting the United States. The foreign Companies were then reminded, if a reminder was at all necessary, of the two conflicting theories in respect of war as an excuse for the late payment of premiums on life policies.

The business of life insurance is a social enterprise; the companies owe a duty of fairness to the public. The principle of *caveat emptor* is not applicable to its full extent. Had the foreign Companies in the Philippines wanted to keep faith with the people of this country, they could have easily elected the theory of *cancellation* or of *suspension*, and could have inserted corresponding clauses or conditions into their policies so that their Philippine policyholders would know their exact positions under the contracts. But this they did not do, undoubtedly chancing on the lack of information of the people and of the Philippine Government on the subject. As hereinbefore stated, the Office of the Insurance Commissioner, as late as April, 1947, was not even aware of the theory of *suspension* as upheld by the plurality of American States, by the Treaty of Versailles, and by the International Law Association. And it could not be expected that the ordinary policyholder, who is not even a lawyer, could know of the Statham case on the one hand and of the legal precedents substantiating the theory of *suspension* on the other.

War is not altogether an unforseen event. Most life policies have clauses which become operative only in event of war. As a matter of fact our Supreme Court in the Asia Life cases has admitted "that the parties contracted not only for peacetime conditions but also for times of war, because the policies contained provisions applicable expressly to wartime days." Why did the foreign Companies suppress provisions in their policies which could clearly apprise the insured of what to expect in event that war should make prompt payment of premiums physically and legally impossible?

As it appears to me, the foreign Companies must have reasoned it out this way: *"we should not make reference to what would hap-*

pen in event that war should make prompt payment of premiums impossible. If we provide that late payment of premiums will annul the policies, we will lose considerable business thereby. If we covenant that war would merely suspend the policies, we will not be able to raise the question later on. We will not be the loser if the theory of suspension is adhered to by the Philippine courts, but we would profit considerably if the theory of cancellation is adopted. So we better altogether omit mention in the policies of war making it impossible for us to receive premiums promptly even if the insured is ready and willing to pay those premiums in Manila. Let the Philippine courts decide which theory to adopt for this jurisdiction. We have nothing to lose, everything to gain."

I submit that the equities were against the foreign Companies. It was within their means to properly inform their Philippine policyholders of their rights or lack of rights in the event that war forces the Company to flee from the islands thereby making prompt payment of premiums impossible. They voluntarily suppressed provisions for that eventuality in their policies. They have miserably failed in their duty towards the Filipino people.

By this time, the reader will have fully realized that life insurance is nothing more than a devise for meeting financial loss due to death of a member of a group by spreading that loss among all members of the group. The group is constituted by the policyholders. With this in mind, let us take a life insurance group with a constant number of 100 persons of the same age, say of 50 Filipinos and 50 Americans, with each individual insured of ₱1,000.00. If the mortality tables indicate that 3 of the group will die in a normal manner each year, each individual's contribution to the common fund, or his annual premium, need be only ₱30.00 a year. ₱30.00 each from 100 persons will produce ₱3,000.00, the amount necessary to meet the benefit payments to the heirs of the 3 members who will die during a year. However, a factor of safety should be added. It should be assumed that 4 persons out of the group, instead of 3, may die in a normal manner during the year, and the annual premiums should then increase to ₱40.00 in order to raise ₱4,000.00 a year. If a 4th member should actually die, the ordinary business of the insurance group will not be thrown into a temporary disbalance. If only 3 members die, as forcasted by the mortality tables, and only ₱3,000.00 are disbursed as benefit payments, the balance of ₱1,000.00 collected as premiums for the year will be re-distributed among the members of the group. The amounts distributed will be the so-called "dividends" on participating policies.

It used to be claimed, as applied to my example, that since the American life expectancy was longer than that of the Filipino, the Filipino members of the 100-person group should make annual contributions to the common fund in excess of those made by the Americans. This discrimination in annual premiums has been outlawed by Section 191 of our Insurance Act which provides as follows:

> "SEC. 191. No agent, sub-agent, broker, or other person, representing any insurance company doing business in the Philippines shall in any way, directly or indirectly, divide or offer to divide his commission or other remuneration, or give any part of his commission or other remuneration, or any other consideration as an inducement to insurance; or shall any such company or agent thereof, as to any new policies of insurance hereafter issued, make any discrimination against any citizen of the Philippines whereby such citizen of the Philippines is given less advantageous rates, dividends or other policy conditions or privileges than are accorded to Caucasians because of his race. Whoever violates this or the preceding section shall be fined in the sum of two hundred pesos for each such offense and upon conviction the certificate of authority of the company, agent, sub-agent, or broker, as the case may be, shall be revoked by the Insurance Commissioner."

Now, let us further suppose, in the example given, that besides the 3 members of the group who are expected to die in a normal manner each year, actuarial statistics should show that an additional member of the group will commit suicide every year. If it be agreed by the group that death from suicide will be excluded from the risks assumed by them, the annual premium will remain at ₱40.00 per member. But if it be agreed that a benefit payment will nevertheless be made to the heirs of the member who will commit suicide, then the annual premium will have to be increased to ₱50.00 each year per member in order to raise ₱5,000.00. It will be necessary to have ₱4,000.00 each year to meet the 4 death claims, 3 from normal deaths and 1 from suicide. The balance of ₱1,000.00 will remain as a safety factor. If suicide is a risk insured against, how would the reader react if the group made a benefit payment to the heirs of an American member who had committed suicide, but not to the heirs of a Filipino member who had committed suicide? I am confident he will deem the situation unfair and discriminating. But that, in substantial effect, is the result of the adoption by our Supreme Court of the theory of *cancellation* for the Philippines when the theory of *suspension* is the rule followed in New York, and all the foreign Companies operate both in the Philippines and in New York.

Let me restate hereunder the example I have given under the preceding heading:

"A is a New York citizen resident in New York in 1940, while B is a Filipino resident in Manila in the same year. A was insured by a foreign company in New York for $10,000 on July 31, 1940. B was insured also by the same foreign company in Manila for the same amount and on the same date. A was captured in Manila by Japanese forces in 1941 and was thereafter interned at Sto. Tomas. The premiums on both policies were not paid during the occupation. Both A and B died in Manila in 1944. A's beneficiary in New York would be paid the proceeds of A's policy, less accrued premiums and interest, because the theory of suspension is followed in that State. B's beneficiary, on the other hand, would not be paid the proceeds of B's policy because our Supreme Court has adopted the cancellation policy for this jurisdiction. The inequity is patent."

The loss on A's (the American's) policy, *if any*, will be distributed among all policyholders, *including Filipino policyholders in the Philippines*. Is it fair, is it equitable, for the foreign Company to deny the claim of B's beneficiary so that the resulting loss may not be borne by *American policyholders in the United States*? That unfairness and inequity is the result of our Supreme Court's decision in the Asia Life cases.

X EPILOGUE

The *cancellation* theory has been with us for almost three years now. That theory is patently against the interest of Filipino policyholders in foreign Companies. I have been expecting that the office of the Insurance Commissioner, or a civic-minded legislator, would propose a statutory enactment adopting the *suspension* theory for this jurisdiction for the protection of the people of our forum; much in the same way that, after the decision in the Statham case, the State Legislature of Massachussetts expressly made the *suspension* theory applicable to insurance secured by citizens of the State from foreign companies. In the face of official indifference, I have decided to write and publish this article so that, if possible, it may arouse reaction and serve as a reminder, now and for as long as the situation is not remedied.

I have criticized the decision of our Supreme Court in the Asia Life cases. If that decision should be deemed by any proponent of the *cancellation* theory as inadequate for the presentation of views contrary to mine, I hope that an answering article to this will be also prepared and published. The decision of the court, this my article, and the hope for article *in contra* to this, can then serve as permanent bases for lawyers and law students who, in the future, might be interested in a study of the subject covered. And if the Insurance Commissioner should publish the following figures:

1. Total number and amount of policies of the foreign companies outstanding as of December 31, 1941.
2. Amount and number of policies issued by the foreign companies in the Philippines and outstanding as of December 31, 1941.
3. Number of policies cancelled by the foreign companies in the Philippines because of lack of prompt payment of premiums during the period of the Japanese Occupation.
4. Amount of automatic premium loans, by years, extended by the foreign companies to policyholders in the Philippines during the Japanese Occupation.
5. Age statistics of Philippine policyholders of the foreign companies whose contracts were cancelled during the Japanese occupation.
6. Number of Philippine policies issued by the foreign companies which, after having been cancelled during the Japanese Occupation, were reinstated after the liberation,

their understanding of the problem will be greatly aided.