INSURER'S LIABILITY FOR LIFE POLICY THAT HAS LAPSED DUE TO IMPOSSIBILITY OF PAYMENT OF PREMIUM ON ACCOUNT OF WAR

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I THE INSURANCE BUSINESS

Insurance today is an integral and important segment of the economic life of the Philippines as well as of the United States. A very large percentage of the savings of the people represented by the assets of the life insurance companies, and premiums are being paid daily on every imaginable type of insurance coverages which form an aggregate sum of about fifteen (15) billion dollars a year in the United States alone. The insurance business has so become indispensable that without the protection afforded by the fire and casualty insurance companies, many of the important business and industries would be unable to operate.[1] The contribution of life insurance upon the general effect of insurance in shaping the economic and social life of the people is of no less consequence. The industrial revolution and the subsequent upward trend of prosperity of the people sparked the gradual development and increasing importance of life insurance, motivated with the desire among them to make provision for their dependents, in a way similar to the objectives of the more formal family settlements practiced among families of large landed estates.[2]

After the close of the Civil War in the United States, life insurance *began* to grow rapidly; numerous companies were established in all sections of the United States and their business began to make itself felt in the communities.[3]

There was a steady growth in volume in the life insurance in force influenced by war,[4] visit of calamities,[5] such as epidemics and

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[1] VANCE, INSURANCE, Third Edition (Anderson), 22 (1951).

[2] *Id.*, at 27. This factor, together with the prevalence of sounder views with regard to the ethics of life insurance, resulted in a very considerable increase in the volume of life insurance prior to the Civil War.

[3] *Ibid.* The greed for new business led the companies to pay unreasonably large first-year commissions and the practice of paying dividends only at five or ten-year intervals permitted the mutual companies, through their agents, to make promises as to the net cost of insurance, which promises could not be kept; however, the falsity of these promises were not calculated to come to light for some years.

[4] *Id.*, at 30. Life insurance assumed important proportions during both World Wars I and II. At the end of World War I, the amount of insurance in force was estimated at $29,870,000,000. War risk insurance of World War I reached a peak of $40,000,000 under 4,500,000 policies in 1919.

[5] *Id.*, at 29. The influenza epidemic in 1918-1919 took a heavy death toll, both

other "acts of God," [6] so that at the end of 1949, the volume in force was $220, 182,000,000 [7] in the United States alone.

II THE FACTUAL SITUATION CONTEMPLATED IN THE PROBLEM

Life policies in the Philippines, valid and in force as they should be, were existing in great numbers before the outbreak of World War II on December 7, 1941. On January 2, 1942, the Japanese forces occupied Manila. The American and other foreign insurance companies having agencies in Manila, were closed for business and their assets, if any, were seized by the enemy military forces.

Many, if not most of the life policy holders were capable and with ample means to continue the payment of premiums, as they fell due. However, they could not do so, because the agent or representative of the said insurance companies had closed their respective offices and the disruption of communication between the United States and Canada and other parts of the free world on the one hand and the Philippines, on the other, was effected when the Philippines was militarily occupied. Thus, war operations made it impossible for these life policyholders to pay the corresponding premiums on their life policies as they fell due.

Enemy occupation lasted for more than three years. Many of the insured have died. Their beneficiaries have presented their claims before their foreign insurance company's agents for the proceeds on the life policies. Premiums corresponding to the three years under the enemy occupation, which could not be paid, were offered and tendered after the cessation of hostilities and the unconditional surrender of Japan. The insurance companies have refused to accept the offer of payment of the back premiums, claiming that the policies have lapsed due to non-payment of premium. It is generally admitted that the insured and the *cestui que vie* were not at fault in not paying the premium, in the sense that they could not legally have been held negligent. It might even be conceded that war and its consequences are beyond the power and will of the insured or the *cestui que vie*, and for that matter, beyond the power and will of any individual, human or artificial.

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among the young and old, brought a sharp increase in the amount of commercial or legal reserve life insurance in force.

[6] *Ibid.* Among the "acts of God" may be included floods, tornadoes, tidal waves, volcanic eruption, storms, heat waves and others.

[7] Of this amount $144,305.000.000 was "ordinary insurance", $43,059,000,000 was group life insurance, and $32,818.000.000 was industrial insurance. LIFE INSURANCE FACT BOOK. pp. 1, 11, 19, 20, 23 (1950).

III THE STATEMENT OF THE PROBLEM

With the factual background, social context and policy trends touched upon in the preceding expose, the problem asserts itself thus: Is an insurance company liable for the payment of proceeds which it undertook to pay on a life insurance policy to the beneficiary named in said policy the payment of premium of which could not be made promptly as it fell due on account of impossibility to make such payment because the insured or the *cestui que vie* is in enemy held territory, and there being no communication between the territory wherein the home office of the insurance company is established and the enemy occupied territory?

There would seem to be no question if under ideal circumstances, war terminated and commercial intercourse immediately resumed between countries involved in the war before the expiration of the period of grace given to the insured or the *cestui que vie* could lapse after the premium had become due, within which to pay the corresponding premium.[8] It is believed that there can also be no question that the beneficiary could receive the proceeds of the policy if at the time payment of premium was due, and no payment was made by the insured or the *cestui que vie*, dividends to which the latter is entitled to receive on the policies are sufficient in amount to cover the payment of the premium due for the period before the war ended, provided there was express agreement between the parties for the application of said dividends to the payment of premium due. There would in all probability be no problem at all if at the time premium became due, sufficient funds of the insured or *cestui que vie* were in the possession of the insurer and there was express understanding that the same could be availed of by such insurer for application to the payment of premium due.

The problem arises when not one of the categories of funds mentioned are in existence or have been used to cover up these premiums. To assume that such policies have lapsed due to non-payment of

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[8] Sec. 184, par. (a). Insurance Act, *supra*, at footnote 14. Hereafter no policy of insurance shall be issued or delivered within the Philippine Islands unless in the form previously approved by the Insurance Commissioner. In the case of life or endowment insurance, the policy shall contain in substance the following provisions: (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 any overdue premium, may be deducted from any amount payable under the policy in settlement . . .

premium, even if non-payment therefore on account of war would seem to answer the question that no recovery can be had for the beneficiaries. The problem therefore hinges upon the following question: Has the policy really lapsed? If it has lapsed could it be reinstated? If so, could the beneficiaries recover? Or does the policy continue to remain in force, notwithstanding the fact of non-payment of premium, because such payment has been made impossible on account of the existence of war operations in the territory where the insured or the *cestui que vie* resides? Should the insurer be allowed to shirk its obligation successfully and evade its responsibility at the expense of the insured or *cestui que vie?* Or should the beneficiary be favored because the non-payment of premium was due to no fault of the insured or *cestui que vie?* These are some of the questions which this work will try to answer.

The problem is important because perhaps no other country in the Far East has suffered more from the effects of World War II, than the Philippines, both in toll of lives among civilian and military personnel as well as in the destruction of property. The end of the war brought into effect and full force the commitment of the United States to rehabilitate the ravages left by the war in its wake, to reimburse and repay war victims for losses incurred during the war to the extent that they could receive through the Economic Cooperative Administration, the United States Claims Service, the United States-Philippine War Damage Commission, the Veterans Administration, the Guerrilla Affairs Division of the United States Army and various other American government agencies. The Philippine Government too had its share of the burden of rehabilitation and recovery, its role having been executed in the payment of the three years arrears in pay of loyal government employees, credit facilities greatly eased through the Rehabilitation Finance Corporation for home building and as aid to industry and commerce. Efforts have been and are being exerted to attract dollars for local investment and to keep the dwindling dollar reserve intact through a system of exchange and import controls. Along with this situation are the numerous survivors, beneficiaries and dependents of pre-war life policy holders who are looking forward to benefits that they had expected to receive and had been expected for them to receive in just the occurence or happening of such an event . . . i.e. death. The threat of a third global war has reawakened the issue.

IV THE CHAOS OF JUDICIAL ACTION

No specific provision of statute in the United States covers the problem posed, but cases of similar factual situation have reached the courts in that country. The Supreme Court of the United States

has taken its stand on the controversy. State courts have shown independence of attitude with regard to the problem. Therefore, in this work, an attempt shall be made to analyze the different rules of theories established and followed by courts of different jurisdiction in the United States with a view to making a proposal for the "correct" rule made in the light of the nature of the insurance contract, the extent of the applicability of general principles of contracts, equity aspects and the social consequences resulting from each theory.

This conflict of judicial precedents in the United States contributes to the complexity of the situation which arises with regard to the determination of the rights of parties under a policy issued in time of peace by a citizen of one state to a citizen of another when war intervenes. A survey of United States Supreme Court decisions, Federal and State courts' rulings fails to reveal any recent doctrine dealing with the particular situation involved. The crop of decisions on the subject in the United States had been raised principally during the first decade of the post Civil War period. The decisions of these courts of varying jurisdictions have been classified by legal writers on the subject of insurance as the New York Rule, The Connecticut Rule and the United States Rule.[9]

V THE "SUPPOSED" NEW YORK RULE

The "New York Rule" purports to suggest that war between states in which the parties reside merely suspends the contract of life insurance, and that, upon tender of all premiums due by the insured or his representative after the war has terminated, the contract is revived and becomes fully operative.[10] This rule seems to find support in the *greater* number of cases,[11] not only in New York but also in other state jurisdictions, notably Kentucky, Virginia and Mississippi.

The first of these civil war cases following the supposed New York Rule was first decided, not in New York, but in Kentucky.[12]

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[9] VANCE, *supra*, note 1, at 149.

[10] *Ibid.*

[11] *Ibid.*

[12] *New York Life Insurance Co. v. Clopton, etc.*, 7 Bush. 179, 3 Am. Rep. 290, 296 (Kentucky, 1869). The New York Life Insurance Co. issued its policy to C., a resident of Virginia, on the life of her husband, in 1868, containing a proviso that, if the yearly premiums were not paid on or before the several dates of payment therein mentioned, the policy should cease and the company should not be liable for any part of the sum insured. The husband died in 1864, being after the beginning of the Civil War, leaving the premiums for 1862, 1863 and 1864 unpaid, the agent of the company in Virginia having refused payment for these years. Held, that the Civil War did not dissolve the contract of insurance; that the non-payment of the three last premiums, in view of the state of war between the North and the South, did not

The Court of Appeals of Kentucky, as early as 1870, had spearheaded the line of decisions adhering to the New York Rule, that the civil war did not dissolve the contract of insurance; that the nonpayment of the premiums, in view of the state of war did not avoid the policy, and that the beneficiary could recover the sum insured, less the aggregate amount of the due and unpaid premiums. This doctrine has been justified on the premise that belligerent policy interdicted the act because it might aid the enemy in the prosecution of hostilities. Consequently suspension of performance until the restoration of peace would effectuate the whole aim of the law without dissolving the contract, which may be ultimately enforced in perfect consistency with the principle and end of the temporary interdict. It was therefore held that the contract and not the performance is continuing; and a suspension of remedy and not a dissolution of the contract is all that is "necessary, befitting, or just." [13]

The Kentucky court differentiates the situation and rule where the contract involved is one of partnership. And to subject to forfeiture all the premiums paid, as well as the amount of proceeds expected from the policy for the loss of life, would be "harshly and unreasonably penal." None of the parties can be presumed to have contemplated such a disabling war, or to have intended by the condition of avoidance more than voluntary failure to pay when there was legal ability to receive the premiums.[14] It was also said that if the contract was not dissolved by the war the court certainly cannot consistently with the spirit of the literal condition and the facts of the case adjudge the policy avoided by the inevitable non-payment of premiums. Otherwise, such a decision would be as unreasonable as unjust.[15]

Furthermore, assuming that the war totally revoked the agency, then there could have been no legal payment unless the domicile of the assured had been expected nor reasonably required. The war revoked the agent's authority to negotiate policies, but it did not revoke his power to receive premiums for policies previously issued. The war did not, therefore, prevent a legal payment to the agent which consequently would have released the liability of the appellees for the amount so paid. But according to this proposition, the agent, had he received payment of premium, could not have legally paid over to his constituent in New York, during the war; consequently,

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avoid the policy, and that C could recover the sum insured, less the aggregate amount of the three unpaid premiums.

[13] *Id.*, pp. 291-292.

[14] *Id.*, pp. 292-293.

[15] *Id.*, p. 295.

no such payment to the agent could have been available to the company otherwise than by looking to the agent as custodian, subject to all hazards, until the close of the war. For this reason, and also because, the money if deposited with him for his constituent would have been liable to spoliation as enemy property, the agent refused to receive the premium, which was punctually tendered to him in the local currency of the place of domicile of the agent. Therefore, the literal non-payment of premium was neither voluntary nor prejudicial, and taking into consideration all the circumstances of the case, and the attitude of the parties, the policy cannot be adjudged void, consistently with the spirit of the contract and equal justice to the parties.[16]

The Virginia case,[17] reiterating the New York Rule as laid down in Kentucky, was decided a year later involving also an insurance company organized under the laws of New York, where it had its principal office and was doing business there. Here, the plaintiff procured from the defendant insurance company through the latter's agent in Richmond, Virginia, a life policy. The policy provided that the risk would terminate if the premium was not paid when due. The premiums were paid to the agent and the policy took effect. Subsequently, war broke out between the North and the South. When the subsequent payment of premium became due, payment was offered to the agent at the latter's office, in the kind of funds which the company required, but he refused to receive it, claiming that he was "instructed" by the company not to receive payment or renew or continue policies.

The Supreme Court of Virginia regarded the contract as a Virginia contract, made in Virginia, with the Virginia agent, to be performed in Virginia through that agent, and that it was intended by the parties, and so understood by them, that the payment of the premiums were to be made to the agent at Richmond; and if made or tendered to him at the time the premium fell due, it would be a fulfillment of the condition required of the assured.

After dealing at length with the conflict of laws question and the question of agency, with which we are not particularly concerned in this work, the said court discussed the question of the interpretation of the policy with reference to its terms, subject-matter, the situation, character and legal status of the parties, as well as the law then existing and held that payment of the premiums to the agent constituted compliance with the terms of the contract according to

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[16] *Id.*, pp. 295-296.

[17] *The Manhattan Life Insurance Co. v. Warwick*, 20 Gratton 614, 3 Am. Rep., 218, 236 (Virginia, 1870).

its spirit and legal effect, and as understood by the parties. The court justifies its stand by relying on the facts that payment could only be made to some agent of the company; that the company had an agent in Richmond, with whom the contract was made; and by law was bound to keep an agent there uninterruptedly, through whom alone the company could make or renew contracts of insurance with the citizens of Virginia; and that to say that it was contemplated or intended by the parties, or either of them that the assured must every year, when the premiums were about to fall due, leave the agent of the company there, would be a "most violent presumption;" and that the contract was not understood as imposing this needless and burdensome condition on the assured by the fact that the advance premium and the three subsequent premiums, were paid to the agent, with the "unequivocal acquiescence and ratification of the company."

But it was contended for the insurance company that no payment of premium should be binding on the company, unless the same was acknowledged by a printed receipt, signed by an officer of the company. The court disposes of this contention stating that the said requirement did not mean that it required that payment be made to an officer, but that it simply prescribed a particular kind of evidence, a printed receipt signed by an officer and does not exclude the signing of the receipt by the agent at Richmond. Furthermore to the receipts for the payment of premium was attached a condition that those receipts will not be binding until paid and countersigned by the agent at Richmond, showing most unquestionably therefore, that when the receipt was signed by the secretary of the company, the money had not been paid: that it was not necessary that there be any "interchange," "transfer," or "removal" of property, from Virginia into the enemy's country; nor did its performance require "communication," "locomotive intercourse," "negotiation and contracts," between him and the company, or any alien enemy.[18]

The court said that if it was the design of the legislature to protect the State and her citizens against abuses and impositions by these "foreign" companies, who were not amenable to her laws or subject to her jurisdiction, in imposing conditions upon those companies for the privilege of operating in that state, then such protection should be sufficient to give the desired security in time of peace, and they should be necessarily comprehensive enough to embrace a state of war. And to this end, in framing the law, according to the court, whether for a state of peace or war, it was necessary to make the operations of the companies within the State strictly local, and subject to the jurisdiction of the State, and completely independent

[18] *Ibid.*

of any foreign jurisdiction in the making, performance, and enforcement of their contracts in this State. This was evidently the policy or design of the legislature in the law which was framed for the purpose.[19]

The Virginia court also stated that when the contract is made before the war, but not executed by either, and the carrying it into execution would involve a violation of the duty of the parties respectively to their country in the new relations which the war had created, the execution not having been entered upon, and it being uncertain how long the war may last and prevent the execution of the contract, it may be dissolved and this is for their presumed convenience and benefit to be absolved from the obligation of a contract which, in the changed relations of their countries, cannot be carried into execution. On the other hand, if as in this case, the contract is partly executed, and rights under it have vested, and it cannot be dissolved without the loss or forfeiture of one of the parties, and it cannot be carried into execution consistently with the duty of the parties to their countries respectively while the war lasts, in such case it should not be dissolved, but only suspended. But if it can be carried into execution, notwithstanding the war, without conflicting with the obligation of either party, it will be neither dissolved or suspended.[20]

In 1872, the opportunity came for the Court of Appeals of New York to make known its position with regard to the problem on hand. In following the previous rulings of the Virginia and Kentucky courts the New York court [21] held that the payment of the premiums during the existence of the Civil War was legally excused for the reason that a contract of life insurance, between citizens of different States, lawful in its inception, and upon which large sum of money have been paid for premiums, is not dissolved by war between states; that the contract remains; and that the remedy, simply, is suspended, but revives with the return of peace.[22]

In analyzing the contract of insurance, it was there declared by the court that there is no reason apparent why the promise to pay money, upon termination of a specified life, should necessarily be terminated, by the happening of war between the States, of which the parties are respectively subjects, as unlawful and inconsistent with the state of war, merely because it is called an insurance upon life; and that it is no answer to say that the plaintiff had only paid

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[19] *Ibid.*
[20] *Ibid.*
[21] *Cohen v. Insurance Co.*, 50 N. Y. 610; 10 Am. Rep. 522 (1872).
[22] *Ibid.*

for the risk incurred from year to year, for the annual premium paid during the first years of a policy is in excess of the actual risk; and this risk is so much paid in advance for the greater risk during the latter years, in case of a prolonged life. The insurers would be greatly the gainers by avoiding all life policies upon young lives, after the payment of the annual premiums for ten or fifteen years, terminating the risk before the greater hazard of loss, the result of advanced age, has been incurred.[23]

During the same term, the New York Court of Appeals unequivocably made clear its stand on the matter by reiterating the previous ruling made, in a case [24] of fundamentally similar factual pattern. The same contentions were pleaded for the insurance company as in the previous cases. In the latter case, however, payment of premiums was made in Confederate treasury notes, the only currency of the so-called Confederate States for the general business of those States.

In arriving at its conclusion, the New York court stated that the insurance contract contemplated no commercial intercourse, no aid to the enemy's commerce, no aid or comfort to the enemy, no violation of governmental policy and that it is idle to say that it fosters or implies commercial intercourse. It invoked the settled policy of the Government to impair, as little as possible, the private rights of citizens by national differences. That the money falls due annually to the defendant for the premiums, during the war, does not make the contract void any more than would installments of debts falling due upon a bond or note, given before the war, render the bond or note void. According to the said court, that is not commerce or commercial intercourse. The war suspended this contract, and no forfeiture for non-payment would arise while the war lasted, provided the premiums, with proper interest, were promptly paid on the return of peace. It is clear that this state of things, i.e. the war, was a surprise to both parties and they made no provision for war. If they had, it is equally clear that they would never have provided for such sum an inequitable result as the company claimed.[25]

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[23] *Id.*, at p. 530.

[24] *Sands v. The New York Life Insurance Co.*, 50 N. Y. 626, 10 Am. Rep. 535, 545. At the commencement of the war of the rebellion, the defendant (a New York Company) had a general agent residing in Mobile, whose authority to receive premiums was recognized by the defendant, after the issuing of the president's proclamation of August 16, 1861, forbidding commercial intercourse between the Confederate States and other States of the Union. The plaintiff holding, on the 2nd of January, 1862, a policy issued by the defendant upon the life of her husband, paid to such general agent at Mobile, in Confederate currency, the premium which became due on that day. *Held*, that this was a valid and effectual payment.

[25] *Id.*, at pp. 543-544.

It is argued that these payments, at the time required, are a condition precedent to the right to the insurance, which nothing can excuse and that not even an act of Providence can dispense with. Without stopping to question this position, it is clear that war in this respect then, can accomplish what cannot be done otherwise. War extends the statute of limitations not only against citizens, but against the United States. However, it is equally a condition precedent, and justice so requires it, to recover on a policy, that the action shall be brought within the time specified in the policy, yet war annuls that limitation, if necessary, and the action may be brought wholly irrespective of that provision of the policy.[26]

Finally, the court said that if payment had been made to the company's agent in the enemy territory, the money would have been confiscated, but according to the court, the confiscation would not change the validity of the payment.[27]

The subsequent cases, decided in Virginia, followed closely the New York holdings.[28]

VI THE SUPPOSED CONNECTICUT RULE

The supposed Connecticut Rule states that the intervention of the war absolutely terminated all rights under the contract.[29] This rule was not originally applied in the Connecticut jurisdiction, but was initially adopted in Georgia by the Supreme Court of that State. The Georgia Supreme Court in holding that the contract of insurance had terminated and that the policy was of no force, by reason of the conditions, to wit, the existence of war between the United States and the Confederate States among which was Georgia, where plaintiff *cestui que vie* and the insured were residents; and the fact that she was prevented from paying the premiums and interest then due, in order to comply with the conditions of the policy, by reason of war, declared that it would have been illegal for the *cestui que vie* to pay the premium to the company during the war, contrary to law;

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[26] *Ibid.*

[27] *Id.*, at p. 545.

[28] *Mutual Benefit Life Insurance Company v. Atwood's Admn'x.* 24 Grat (Va), 497 18 Am. Rep. 652 (1874). One Atwood, at the time of the outbreak of the Civil War a resident of Virginia, had paid all premiums due on a policy issued by a New Jersey insurance company down to December, 1861, when a premium falling due could not be paid on account of war. Atwood died in 1862. The policy contained the usual conditions of forfeiture upon non-payment of any premium when due. Upon restoration of peace, Atwood's administratrix tendered the unpaid premium, and demanded payment under the policy. The Virginia court held that the policy had been revived and compelled the insurer to make payment in accordance with its terms.

[29] VANCE ON INSURANCE, *supra* at footnote 1, p. 149.

that the contract, according to the court, is an agreement on the part of the insurance company to pay so much at the death of the insured, if the annual premiums are paid as stipulated. It is clear from the policy, and from "known practice" of all companies according to the court, that the insured has a right at any time to refuse to pay and give up his policy; that the contract, upon its face, requires to be revived from year to year, by the payment of premium; that a contract of life insurance is, at best, nothing but an undertaking that the company will take the annual premiums paid, invest them safely, and pay to the insured the product, after deducting the expenses of the business; that if every person insured lived to an average age, this would be exactly the contract; but that as any individual may die at any time, the company agrees to pay him what his premium would amount to, making up its losses on him by the payments of those who live beyond the average age; that therefore, the regular annual payment of the premium agreed upon is thus a condition precedent and if that be illegal, the right never vests. The Georgia Supreme Court emphasizes the fact that if the payment of premium is a condition subsequent, there would be no forfeiture, but that it is not a condition subsequent; that the question here is not one of forfeiture, but a failure to do the thing necessary to acquire the right. This, the court concludes, is a distinction based upon "principles of justice and sound sense." [30]

The second case [31] recorded that followed the supposed Connecticut rule was again, not decided in Connecticut, but in Tennessee, by the Circuit Court of that State in 1873.

The Tennessee court attempted to present the issues in this problem under two main categories, namely: (1) Is the continued execution of a life policy inconsistent with political interest? (2) Is the payment of the premium during the war a condition precedent to recovery? [32]

In declaring the policy in question void, for non-payment of premium, the court stated that the acts by which alone the policy

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[30] *Dillard v. The Manhattan Life Insurance Co.*, 44 Ga. 119, 9 Am. Rep. 167 (1871).

[31] *Id.*, at pp. 168-169.

[32] *Tait v. New York Life Ins. Co.*, 1 Plip. 288; 19 Int. Rev. Rec. 14; 2 Ins. Law J. 863; 4 Bigelow, Ins. Cas. 479, 23 Fed. Cas. 62 (1873). In this case, the policy was issued some years before the war, and the premiums paid to 1861, when the agency at Memphis, Tennessee ceased in consequence of the war. A tender was afterwards made in due time to the former agent, of all sums due before the death, which was in that year. Tender was refused. The contract contains a clause that if the insured shall not pay the said premiums on or before a certain date, the policy shall "cease and determine." Cf. *Cohen v. The New York Mutual Life Ins. Co., supra*, at footnote 39, where a contrary holding was made.

can be continued in life, involve not only the exercise of continuous active duties on the part of the agents, but constant inter-communion across the hostile lines; that every receipt, in unambiguous terms, tells the insured that no payment is good unless the party who claims the right to accept it holds an authenticated form, signed by the president, vice-president or actuary, which necessarily must be transmitted from the home to the local agent from time to time as it is required; that there is no general power to receive premiums without this special warrant, issued in each instance; that the object of this precaution is manifest; and that it is so necessary to the prosecution of the scheme, and is so dependent upon regular communications between the agent and the chief officers, that when the latter are interrupted it necessarily follows that the payments, without an alteration of the contract, cannot be made; that a life insurance agent who should not make his periodical returns and remittances would be an anomaly; and that only when the corporation itself negligently or fraudulently omits to forward the annual receipt in violation of duty under the policy, or by its wrong in any manner prevent performance on the part of the insured, that a recovery may be allowed.[33]

The said court in resolving the issues presented starts with the general premise that all contracts and intercourse of every description are prohibited during the war; and that those agreements, the execution of which increases the power of the enemy are wholly annulled, the parties being reciprocally discharged from their performance.

Relying on the first proposition, the court stated that under a policy of insurance, when carried out according to the very intention of the parties, and in the only mode compatible with the financial scheme upon which it depends, the most continuous and intimate business relations and intercourse are indispensable; that such is their number and widespread localities, that it has been found absolutely necessary to evidence their authority of receiving payment by periodical transmission of authenticated vouchers; that these are never sent unless the home office has received full reports of the agent's doings and a satisfactory accounting for all the premiums before then payable; that when a premium is tendered in due time, if any violation of the terms of the policy by the insured has become known to the agent, it is his duty to decline receiving the premium, report the circumstances to the home office and await instructions; and that it is simply monstrous that the loyal members of this great scheme should be compelled by law to confide this delicate function to a public enemy, who is to exercise it in favor of his fellows in

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[33] *Id.* at p. 623

rebellion; and that therefore, the rule would be as unjust as its exercise would be illegal. The court further stated that these forms and duties are well understood by the parties, and constitute a part of the contract between them, and that they are intended to be specifically and exactly performed; that they cannot be so performed without much intercommunion across the lines; and that to dispense with them is to change the whole nature of the scheme, involving an unprecedented and wholly unwarrantable interference with the substantial terms of the agreement.[34]

With regard to the second issue, the Tennessee Supreme Court said that a leading, if not the most important motive for the prohibition to do business with the enemy is to prevent the increase of his material power; that to allow payment of premium by the creation of a new debt, would constitute a credit upon which the enemy can procure supplies, as by the creation of the products themselves. And the essence of the rule is that while the whole power of the nation is exerted to cut off supplies, and reduce to want and suffering the entire hostile nation, it would be absurd to suffer its efforts to be counteracted by allowing its subjects to perform agreements which would produce or increase what it is endeavoring to destroy.[35]

The court further subscribed to the view that substantially, the insurance is from quarter to quarter, where the premiums were so paid, and that so far as the insured is concerned, it is a new contract each time he elected to pay and continue the insurance.[36] It also relied upon the principle that no degree of mere hardship will satisfy the rule that the act of God rendering performance impossible is a defense; and in no case is impossibility an excuse, if it refer solely to the personal disability of the promissor, there being no natural impossibility in the thing. It has also been suggested that far greater effort is demanded from the promissor, than that of requiring the insured to leave the rebel region and come within the loyal lines, if he wishes to continue the indemnity and that it is not a defense to say that in the accidents of his personal circumstances, he was unable to do so. The principle enunciated rests, it is claimed upon "a solid foundation of reason and justice," which regards the sanctity of contracts; that it requires parties to do what they have agreed to do; that if unexpected impediments lie in the way and a loss must ensue, it leaves the loss where the contract places it; and

[34] *Id.* at p. 621.
[35] *Id.* at p. 623.
[36] *Id.* at p. 624.

finally, that if the parties have made no provision for dispensation, the rule of law can give none.[37]

In 1874, the Supreme Court of Errors of Connecticut finally had for the first time opportunity to give effect to the supposed Connecticut Rule, when in the case of Worthington v. The Charter Oak Life Insurance Company [38] it ruled that where a policy of life insurance is conditioned to be void on the non-payment of the annual premium, a failure to pay such premium, caused by the intervention of war between the territories in which the insurance company and the insured respectively reside, avoids the policy and it is not revived by a tender, after the war, of the unpaid premiums with interest.

In making its decision, the Connecticut court, adopting the pure rule of law approach, reasoned out that a contract of life insurance consists of two parts, and is divisible; that the applicant, upon the payment of the first premium, effects an insurance upon his life for one year, and purchase a right to continue that insurance from year to year, during life, at the same rate; that whether he will continue it or not is optional with him; that the premium for the first year pays for the risk during that year, and for the right to subsequent insurance; that the rate of insurance for a single year is less than the annual premiums on a life policy; and that the difference, continued as it is supposed it will be from year to year through life, may be regarded as the consideration for the right to continue the insurance.

In other words, the Connecticut court would give the contract a simple and literal interpretation, in the following sense: Pay at the time stipulated and you are insured; omit such payment and our proposition is withdrawn, and your right to insure is extinguished.

The court continued declaring in no uncertain terms that it is impossible to put any other construction upon it; that there is no room for doubt or uncertainty; that the payment required is in no sense conditional; that the proposition is not, pay if convenient, or pay unless sudden sickness prevents, or pay unless some unexpected turn of fortune deprives you of the means of paying, or pay unless the act of God or the law intervenes to prevent payment; but that absolute payment is required. To make it still clearer, the proposition is not, if poverty, sickness, accident, or the law prevents payment, the insured shall be insured the same as if he had paid. None of these risks were taken by the insurer; they were all taken by the insured. Lastly, the court declared that every word of the instru-

[37] *Id.* at p. 631.
[38] *Id.* at p. 632.

ment embodying the agreement of the parties is consistent with this view of the contract, and the whole instrument, when fairly considered, is inconsistent with any other view of it; [39] and that a life insurance policy containing a provision that in case of war between the government of the insured and the government of the insurer, the policy should be continued in force during the war without the payment of the premiums would be unprecedented in the history of life insurance. If a court of justice construe the contract as meaning that, they impute to the parties a meaning which they did not intend, for it cannot be presumed that any company "managed by intelligent men would knowingly and understandingly make such a contract." [40]

VII THE UNITED STATES RULE

In 1876, the question raised in the preceding cases finally reached the Supreme Court of the United States, when the case of the New York Life Insurance Company v. Statham [41] was brought on appeal. There, the United States Supreme Court laid down the so-called United States Rule, which upholds the view that a policy of life insurance which stipulates for the payment of an annual premium by the assured, with a condition that it would be void on non-payment thereof, and failure to pay the annual premium, even if caused by the intervention of war between the territories in which the insur-

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[39] 41 Conn. 372, 19 Fed. Cas. 495 (1874). On the 14th of January, 1854, the defendant, a life insurance chartered and located in Connecticut, insured by a policy issued by the company and counter-signed by their agent in Greenville, South Carolina, through whom the insurance was effected, the life of Lewis Worthington, then and after a resident of said Greenville, in the sum of $1,000 payable on the decease of said insured, to this plaintiff, the wife of said Worthington. The policy contained the usual provision, that if the annual premiums were not paid on or before the times fixed in the policy for such payment, the company should not be liable to pay the sum insured. The annual premiums were paid to the agent at Greeville until 1860, when he was withdrawn, and the premiums for that and the next year was remitted, to the company in Connecticut. When the premiums for 1862 fell due the State of South Carolina, with the other Southern States, was in rebellion against the general government, and the President of the United States had by proclamation declared a state of war to exist and had forbidden all commercial intercourse between the citizens of the loyal and those of the rebellious states, and from that time till the close of the war in 1865 no premiums were paid on the policy. At the close of the war the insured tendered to the company the amount of the unpaid premiums and interest, but the company refused to receive them or to acknowledge any further liability upon the Policy. No other premiums were paid. In 1869, the insured died, and the plaintiff brought a suit upon the policy, claiming the amount of the same, after deducting the premiums paid.

[40] *Id.*, at p. 497.

[41] *Id.*, at pp. 499-500.

ance company and the assured respectively reside, which makes it impossible and unlawful for them to hold intercourse, forfeits the policy, if the insurer insists on the condition; but in such cases the assured is entitled to the equitable value of the policy, arising from the premium actually paid, the equitable value being the difference between the cost of a new policy and the present value of the premiums yet to be paid on the forfeited policy when the forfeiture occurred, and may be recovered in an action at law or a suit in equity.

Analyzing the nature of the contract of insurance in question, the court stated that the contract is not an assurance for a single year, with a privilege of renewal from year to year by paying the annual premium, but that it is an entire contract of assurance for life, subject to discontinuance and forfeiture for non-payment of any of the stipulated premiums. It was also held that the annual premiums are an annuity, the present value of which is calculated to correspond with the present value of the amount assured, a reasonable percentage being added to the premiums to cover expenses and contingencies. The whole premiums are balanced against the whole insurance. And while this is all true, it must be conceded, according to the court that promptness of payment is essential in the business of life insurance, as all the calculations of the insurance company are based on the hypothesis of prompt payments, that is upon receipts of premiums due and on compounding interest on them.[42]

The Supreme Court justified its stand, stating that forfeiture for non-payment is a necessary means for the protection of insurance companies from embarrassment; that unless it were enforceable, the business would be thrown into utter confusion; that this associated relations exist whether the company be a mutual one or not and that each is interested in the engagement of all; for out of the co-existence of many risks arises the law of average which underlies the whole business.[43]

It was also there held that an essential feature of the scheme of the insurance business is the mathematical calculations, on which the premiums and amounts are based; and that these calculations are

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[42] *New York Life Ins. Co. v. Statham*, 93 U. S. 24, 23 L. Ed. 789 (1876). This case was jointly decided with the case of *The New York Life Insurance Co. v. Seyms and the Manhattan Life Insurance Co. v. Buck*. Apparently the United States Supreme Court took judicial notice of the confusion of opinions going on in the different State jurisdictions and intended that its rule in these case and its stand on the question, be defined and determined.

[43] *Id.*, at p. 791.

based on the assumption of average mortality, and of prompt payments and compound interest thereon.[44]

The issue with regard to the payment of premium when due is according to the court one in which time is material and of the essence of the contract. Non-payment on the day involves absolute forfeiture, if such be the terms of the contract. Courts cannot with safety vary the stipulation of the parties by introducing equities for relief of the insured against their own negligence.[45]

The question then arises: Must the insured lose all the money which has been paid for premiums on his policy? According to the same court, answering the question squarely, if the insured must lose, then they will sustain an equal injustice to that which the company would sustain by reviving the policy. In such a case, while it would be unjust, after the war to enforce the contract as an executory one against the company, contrary to its will, it would be equally unjust for it, treating the contract as ended, to insist upon the forfeiture of the money already paid on it; and so, while the insurance company has a right to insist on the materiality of time in the condition of payment of premiums, and to hold the contract ended by reason of non-payment, it cannot with any fairness insist upon the condition, as it regards the forfeiture of the premiums already paid. This according to the United States Supreme Court would be clearly "unjust and inequitable." [46]

The Statham case was decided by a divided court, to wit, three Justices, namely Justice Bradley, with whom Chief Justice Waite concurred partly in the result, and Justice Strong, who likewise concurred in the result, composed the majority; while two Justices, namely; Justice Clifford and Justice Hunt, jointly dissented and reiterated the New York Rule.[47]

VIII THE RULE FOLLOWED IN THE PHILIPPINES

The Supreme Court of the Philippines took its stand openly in favor of the United States Rule.[48]

From the beginning, the Supreme Court of the Philippines was determined to remove all doubt with regard to its stand on the matter. In the first two cases,[49] simultaneously decided, against the

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[44] *Ibid.*
[45] *Ibid.*
[46] *Ibid.*
[47] *Id.* at p. 792.
[48] *Id.*, at pp. 793-794.
[49] *Lopez de Constantino v. Asia Life Ins. Co.*, G. R. No. L-1669 and L-1670, promulgated on August 15, 1950. See also *McGuire v. The Manufacturers Life Ins.*

same identical insurance company, raising the same identical question, a unanimous court voted to uphold the opinion prepared by one and the same justice. The next two succeeding cases were decided also by a unanimous court and the two opinions were penned by two other justices, respectively.[50]

In the first two cases decided by the Philippine Supreme Court, namely Constantino v. Asia Life Insurance Company [51] and Peralta v. Asia Life Insurance Company,[52] it was held that the non-payment of premiums does not merely suspend but puts an end to an insurance contract, since the time of the payment is peculiarly of the essence of the contract. It also declared that the rule is not affected by the fact that the non-payment is due to war or that the insured has not been negligent.

The Philippine Supreme Court merely restated the reasons set forth in the Statham case by the Supreme Court of the United States, which laid down the so-called United States Rule. The Philippine court further copying verbatim excerpts of the rationale of the United States Supreme Court in the Statham case likewise rejected the New York Rule in specific terms, which the beneficiaries in the Philippine cases contended to be the rule that should be followed.

The Supreme Court adopted the argument of the insurance company to the effect that the periodic payment of premiums is not an obligation of the insured, so much so that it is not a debt enforceable by action of the insurer; and that inasmuch as the parties contracted not only for peaceful conditions but also for times of war, because the policies contained provisions applicable expressly to war-time days, the logical inference, according to the court, is that the parties contemplated uninterrupted operation of the contract even if armed conflict should ensue.

However, in the Asia Life Insurance cases,[53] the Philippines Supreme Court in adhering to the United States Rule had a touch of originality in its attempt to justify its opinion by stating that the non-payment of premiums is such a vital defense of insurance companies that since the very beginning, said Act 2427 (The Insurance

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Co., G. R. No. L-3581 (September 21, 1950) and *National Leather Co., Inc. v. The United States Life Insurance Co.*, G. R. No. L-2668 (September 30, 1950).

[50] *Lopez de Constantino v. Asia Life Ins. Co., supra.* Justice Bengzon penned the decision.

[51] *McGuire v. The Manufacturers Life Ins. Co.*, G. R. No. L-13581 and *National Leather Co., Inc. v. The United States Life Ins. Co., supra* at footnote 66. Justice Ozaeta and Justice Reyes wrote the opinion respectively in the two cases.

[52] G. R. No. L-1669, *supra*, at footnote 66.

[53] G. R. No. L-1670, *supra*, at footnote 66.

Act of the Philippines) 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;[54] and that when the Philippine Congress recently amended this section, the defense of fraud was eliminated, while the defense of non-payment of premiums was preserved.[55] Thus, the fundamental character of the defense of non-payment of premiums was specifically recognized.

In the subsequent case of the United States Life Insurance Company,[56] a new argument was advanced by the beneficiary to the effect that in view of the enormous growth of the insurance business since the Statham decision, the rule could now be relaxed and even disregarded, as the relaxation of rules relating to insurance is in direct proportion to the growth of the business; that if there were only one hundred men, for example, insured by a company or a mutual association, the death of one will distribute the insurance proceeds among the remaining ninety-nine policy-holders. 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 policy-holders of the company or association should be one million individuals, it is clear that the death of one of them will not seriously prejudice each one of the 999,999 surviving insured. The loss to be borne by each individual will be relatively small.

In disposing of this contention, the Philippine Supreme Court declared that as there are (in the example) one million policy-holders, the losses to be considered will not be the death of one but the death of ten thousand, since the proportion of 1 to 100 should be maintained. And certainly such losses for 10,000 deaths will not be relatively small.[57]

Finally the Philippine Supreme Court reiterated its previous holding to the effect that the rule that the policy lapses for non-payment of premium is not affected by the act that the non-payment was due to war or that the insured had not been negligent. Accordingly, it was also held that there is nothing to the argument that payment should be excused after the enemy occupation for it had been due, not to the beneficiary's or the insured's negligence, but to the insurer's failure or admission to make arrangements for the receipt of premiums that were to fall due during the period of enemy

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[54] G. R. No. 1669 and 1670, *supra* at footnote 66.
[55] Insurance Act (Philippine), *supra* at footnote 14, Sec. 184 (b).
[56] Philippine Republic Act No. 171.
[57] G. R. No. L-2668, *supra* at footnote 66.

occupation. The said court further adopted the reasons appearing in the decision of the lower court that it is unreasonable to expect the defendant to send notice of its closing to the thousands of its insured in the Philippines immediately before and after the fall of Manila, because then such a step would be impracticable owing to the confusion and disorder occasioned by the war and that besides, even if such a notice were actually sent, defendant could not have received payments of insurance premiums because its offices were closed and its American officials interned upon orders of the enemy authorities.[58]

However, courts of superior jurisdiction in the Philippines are not in complete accord. Previous to any of the above cases decided by the Philippine Supreme Court, the Court of Appeals has held the contrary view that the war legally suspended the obligation of the insured to pay the premiums up to the time of the death of the insured, which occurred during the said war.

IX ANALYSIS AND EVALUATION OF THE PHILIPPINE RULE

The rule adopted in the Philippines restated is that the non-payment of premiums due to war puts an end to an insurance contract, even though the insured has not been negligent, but the insurer cannot retain the reserve value of the policy, which is the excess of the premium over the actual risk carried during the years when the policy had been in force.

It is to be noted that the Philippine Supreme Court stresses the absolute importance of making punctual payments of premiums already become due and forfeiture of premiums already paid, for non-payment of subsequent premiums as a necessary means of protecting themselves from embarrassment, otherwise the whole insurance business would be thrown into utter confusion. It is said that like the forfeiture of shares in mining enterprises, and all other hazardous undertakings, there must be power to cut off unprofitable members, or the success of the whole scheme shall be endangered; that the insured parties are associates in a great scheme, such being interested in the engagements of all, for out of the co-existence of many risks arises the law of average, which underlies the whole business; that delinquency cannot be tolerated nor redeemed, except at the option of the company. In other words, the Philippine court would have us understand that non-payment at the day when premiums become due involves absolute forfeiture and that courts are powerless to vary

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[58] *Ibid.*

the stipulation of the parties by introducing equities for the relief of the insured against their own negligence.[59]

The foregoing contentions and reasons were stated by the United States Supreme Court in the Statham case. It seems obvious that the Supreme Court of the United States was too much concerned, if not over solicitous for the protection and growth of the insurance business, which had manifested then and proven now its beneficial and salutary effect upon the economy of a highly industrialized and rapidly growing business of this country. The position of the United States Supreme Court in 1876 was easily understandable, but the situation then and now, with a span of time between them of more than seventy-five years, are vastly different. The insurance business now as we have seen in the figures at the beginning of this discussion is fantastic and its investments not only solid but covers practically every endeavor of human progress. There is on the other hand a crying need for the protection of the rights of the insured, who for the most part belong to the more common strata of people, and whose only expectations for the future provisions of their family are pinned upon the hope of receiving the proceeds from their respective policies, which they had consented to take upon the glowing and convincing promises, representations and "high pressurization" applied to them by insurance agents.

A return to the ordinary and general principles of equity and justice, and not to technical legal rules and ambigous terms, is urged in this work. The courts should not shut their eyes to the substantial rights of the insured and to the very purpose for which insurance was conceived, to make that which is uncertain, certain. To empower the insurer to terminate the contract of insurance for non-payment of premium though the insured was not at fault or negligent, and that the non-payment was due to impossibility of accomplishing the same by reason of cause or causes beyond the will, power and control of the insured, such as war, is not consonant with the highest traditions of justice, and of justice, not for the benefit of one, but for all parties concerned, maintaining always that equilibrium of fairness. It would be tying down the arms of justice and the courts through which justice is administered, for then, it will be giving the insurance companies power to refuse payment of proceeds on insurance policies when payment therefor is justly due and the right to declare the policy null and void, without any appeal at all to the courts.

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[59] *National Leather Co., Inc. v. The United States Life Insurance Co., supra* at footnote 66.

To say that punctual payment is the essence of the insurance contract is to sacrifice form for substance, for certainly it cannot be intended or meant that the beneficiary or *cestui que vie* can collect the proceeds of the policy upon the happening of the event, against which risk the insurance contract was drawn; but that payment of the proceeds of the contract of insurance should be made after the payment of overdue premiums had been collected by the insurer, together with a legal and reasonable rate of interest, as penalty for the delay. In this way, the insurer shall be fully compensated for the delay in the payment of premium, while on the other hand no additional advantage or benefit could have been gained by the insurer, had the premiums been paid on time. Of course, the same cannot be said, if there is a wilful and deliberate intention not to pay the premium, and premium has not been paid, from which acts of the insured, the insurer may rightfully deduce that the insured no longer wish to continue the insurance and that it should be terminated. Such a deduction would be most reasonable especially in an era of perfect peace and tranquility.

Insurance companies are no longer operated on a shoe string basis that the mere delay in the payment of premium would not cause them to go out of business.

Although it may be conceded that payment of premium is a condition precedent to the validity of an insurance policy, that concession may be limited only to normal conditions of peace and in the course of ordinary transactions of business. But in an atmosphere of war and destruction, disruption of communications, and chaos and confusion, special remedies must be sought consistent with giving unto others what is rightly their just due, for in an era of extraordinary happenings, extraordinary remedies must be sought. But at all times and definitely, the payment of premiums is a condition precedent *to the collection of the proceeds* on a life insurance policy.

Another argument relied upon by the Philippine and United States Supreme Courts is with reference to an Oklahoma decision, to the effect that the annual premium is not a debt or an obligation for which the insurer can maintain an action against the insured; or is its settlement governed by the strict rule controlling payment of debts. The fact that it is payable annually or semi-annually, or at any other stipulated time, does not of itself constitute a promise to pay, either express or implied. The payment of the premium is entirely optional, while a debt may be enforced at law, and the fact that the premium is to be paid is without force, in the absence of an unqualified and absolute agreement to pay a specified sum at some certain time. In the ordinary policy there is no promise to pay, but it

is optional with the insured whether he will continue the policy or forfeit.[60]

It would seem that the more reasonable view to take is that regardless of the nature of the obligation to pay the premium in time of war, and under the particular situation illustrated in this work, should be suspended, when it is so rendered impossible of compliance, because payment of premium performs the contract on the part of the insured before the war, and renders the liability on the part of the insurer enforceable should the event insured against happens. The suspension should last until the cessation of hostilities between warring nations in the territories concerned and ordinary normal course of business resumed. In this sense therefore, the contract and not the performance is continuing; and a suspension of the obligation to pay premium and not a dissolution of the contract is all that is necessary, befitting and just.

Moreover, if mere political reasons are to be relied upon here, it can safely be said that the trends of policy of the victor over the vanquished is to give as much material, economic and moral aid to the defeated nations to enable them to stand on their own, and rehabilitate and recover as quickly as possible from the ravages and destruction of the war and contribute to the progress and balanced economy of the world. The billions of dollars that the United States had donated for relief and rehabilitation not only in former enemy countries but also in territories held under their control during the war, attest to the policy and view to be taken, that even though economic relations between the warring nations are to be suspended, during the pendency of the war, these should be restored immediately after the declaration of peace, as labor, capital, needs and other elements permit. It therefore goes to say that private contracts of whatever nature and kind, suspended during the war, must be revived after the war is over and peace restored, subject to obvious limitations, which include the causes of extinction of obligation, and parties be permitted to recover equities gained, and there is no reason in this present day and age why insurance contracts should be exempted from this rule. After the restoration of peace, the parties to an insurance contract should be permitted to recover existing rights and equities gained, for the insurance company, the premiums due and unpaid, plus the legal interest; for the insured, the beneficiary or the *cestui que vie*, the proceeds of the insurance, if the risk undertaken in the policy has occurred, or the period of insurance has expired, the extent of recovery depending upon the nature, kind, classification and amount of the policy taken.

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[60] *Ibid.*

A third contention of the Philippine and the United States Supreme Courts is that the parties do not stand on equal ground in reference to such a revival of the insurance contract. If every policy lapsed by reason of the war should be revived, and all the back premiums be paid, the companies would have the benefit of this average amount of risk. But, according to said courts, risks are never heard from, only the bad are sought to be revived, where the person insured is either dead or dying. Those in good health can get new policies cheaper than to pay arrearages on the old. To enforce a revival of the bad cases, while the company necessarily lose the cases which are desirable, would be manifestly unjust, it is contended. An insured person, as before stated, does not stand isolated and alone. His case is connected with and co-related to the cases of all others insured by the same company.[61]

The foregoing statement advanced to justify the dissolution of the insurance contract for non-payment of premium is a gratuitous one and unsupported by authority. The argument does not penetrate the substance of the issue of fairness of the contrary view, but deals merely upon the realm of possibilities, predicated that people who are insured shall act in bad faith. However, going into the substance of the argument, it can be said that the insurer suffers no loss, if the risk insured against does not happen, if subsequent premiums due during the war have not been paid; and if no revival of the contract is attempted within a reasonable time after the restoration of peace, the insurer, under the view suggested in this work, may consider the contract terminated, as of date of non-payment of subsequent premium. On the other hand, as already suggested. should there be an attempt to revive the contract within a reasonable time after the restoration of peace, proceeds on the policy may be paid to the interested party, if the risk insured against has occurred and premiums due and unpaid shall have been paid, together with a reasonable rate of interest, as compensation for the insurer, for the delay caused in the payment of premiums. It may also be added that those insured whose policies have gone through a number of years will most likely renew and revive their policies, for it would then be cheaper, as premiums would be diminished, risk for the insured greater, and probability of collecting on dividends, cash surrender value, proceeds and other privileges increased.

As a fourth contention advanced by the Philippine Supreme Court in support of the United States Rule, it declared that the non-payment of premiums is such vital defense of insurance companies, that since the very beginning, said Act 2427 expressly preserved it,

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[61] 3 COUCH CYC. ON INSURANCE, Sec. 623, p. 1996.

by providing that after the policy shall have been in force for two years, it shall have become incontestable (i.e. the insurer shall have no defense) except for fraud, non-payment of premiums, military or naval service in time of war and that when the Congress of the Philippines recently amended this section, the defense of fraud was eliminated, while the defense of non-payment of premiums was preserved; and that therefore, the fundamental character of the undertaking to pay premiums and the high importance of the defense of non-payment thereof, was specifically recognized.[62]

The Philippine court would then have us believe that merely because the defense of non-payment of premium was left behind in the statute, by a stretch of the imagination, it should apply to the factual situation under study. Such an argument is absolutely technical, and comprehends only a situation of absolutely normal conditions; but the problem at hand speaks of the existence of a raging war. When the Congress of the Philippines eliminated one of the vital defenses, before available to the insurance companies against the incontestable clause, the defense of fraud, it revealed that the tendency and trend now going on in that country on insurance legislation is to diminish the number of defenses available to insurance companies and towards the greater protection and respect for the rights of the insured, his beneficiary or the *cestui que vie*, and away from that early attitude of complete apprehension and oversolicitousness for the continued business of insurance, which today is indestructible.

The almost fanatic, subservient and slavish belief of the Philippine Supreme Court in the sanctity of the decision of the United States Supreme Court is to say the least far from admirable and farther still from emulation, especially when we take into consideration the fact that the issue is far from settled even in the United States Supreme Court itself. It should be recalled that the Statham Case is a 3 to 2 decision, the majority not being in complete harmony within their own fold. The consistent stand of the Philippine Supreme Court is being made in the fashion of the frightened ostrich believing that by hiding its head and not looking at the dangers that beset it, that there are no such dangers. The Philippine Supreme Court has totally blinded itself against the modern trend towards close government supervision and control of insurance and the world of difference between the infant insurance business of post-Civil War years and the giant collosal business that it is at present.

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[62] *National Leather Co., Inc. v. The United States Life Insurance Co., supra* at footnote 66.

Furthermore, it may be precisely recalled that the insurance business owed its rapid growth to a certain extent to war, and war must have been one of the unknown events against which the policy could have been taken by the insured. The interpretation of the statute on insurance should therefore be in favor of the insured, beneficiary and the *cestui que vie* and against the insurer. The contrary view can only be sustained under normal circumstances, for then non-payment would mean lack of interest in the policy and consent to its termination.

X A PROPOSAL FOR THE CORRECT RULE

It has thus far been shown that there are three different rules existing in the United States with regard to the insurer's liability for life policy premiums of which have not been paid due to impossibility of payment thereof, on account of war.

Our preference is the adoption of the correct rule. The correct rule envisions merely a suspension of the performance of the obligations of the respective parties to the life insurance contract upon the outbreak of the war and the insurance agency closes. The correct rule contemplates that the payment of premium is not a condition precedent for the continued existence of the contract, but a condition precedent for the payment of proceeds of the policy upon the occurrence of the risk insured against, provided, however, that the insured has not been guilty of negligence or fault in failing to pay the premium; and that no intention can be inferred from his acts, or those of the beneficiary or the *cestui que vie* that they desire to terminate the contract. Finally the correct rule should impose upon the insurer the duty to serve personal and constructive notice, after the restoration of peace, to all persons on record, interested in the life policies in their files, urging them to revive, reconstruct, reconstitute and reinstate their respective policies, within a reasonable time, or otherwise, express their respective intentions on their particular life policies; that the reasonable time contemplated shall be construed as not exceeding one year, from date of receipt of such personal notice; and that payment of all premiums due and unpaid shall be a condition precedent to any recovery on the policy. It should also impose upon the insured, the *cestui que vie* and the beneficiary the burden of proving equities in their favor, such as readiness and willingness to pay, offer and tender of payment to personnel of agency, judicial deposit, and various other steps that will demonstrate good faith on the part of those interested in the policy and those who desire to continue the policy.

The correct rule should be supplementary to any and all statutory regulations at present existing regarding such revival and shall prevail against any agreement to the contrary.

Although no legislation is deemed necessary, for the correct rule may be applied under the status of the present law, in order to remove any doubt on the proposed solution of the problem or the disposal of similar cases in the future, a statute should be passed by the Congress of the Philippines, embodying the above ideas of the proposed correct rule, so that the law may conform with the present situation and prevailing conditions of the time, consistent with the universal policy to rehabilitate, assist, aid and compensate war sufferers, according to just, legal and equitable principles.