Judgment of the Lords of the Judicial Committee of the Privy Council, on the Appeal of Joseph Napoleon Anctil, Appellant, v. *The Manufacturers' Life Insurance Company, Respondents; from the Supreme Court of Canada; delivered,* 28*th July* 1899.

Present:

LORD WATSON.
LORD MACNAGHTEN.
SIR HENRY STRONG.

[*Delivered by Lord Watson.*]

THIS action was brought by the Appellant, Joseph Napoléon Anctil, against the Respondent Company, for recovery of the contents of a policy of Insurance issued by the Company on the 12th May 1894, on the life of one Antoine Pettigrew. The amount of the insurance, which was for $2,000, was by the policy made payable to the Appellant, his executors, administrators, and assigns, under deduction of the premium for the current year, upon its being proved, to the satisfaction of the office, that the death of the assured had taken place, whilst the policy was still current.

One of the conditions of the policy, which has led to the present controversy, was in the following terms: "Après que cette police aura été en "vigueur une année entière, elle sera incontes- "table par rapport à quelque motif que ce soit, "pourvu que les primes ici mentionnées aient "été payées promptement, et que l'âge de "l'assuré ait été admis." It is unnecessary for the purposes of this Appeal to refer to the other conditions, or *bénéfices*, as they are termed, which are incorporated with the policy, which expressly

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bears that these conditions are applicable:— " Ainsi que les dispositions au verso de cette " police, font aussi complètement partie de ce " contrat que s'ils étaient énumérés au-dessus des " signatures ci-dessus apposées." Antoine Pettigrew died on the 6th October 1895, when the policy had been current for more than a year, and the premiums had been regularly paid. The present action was raised by the Appellant on the 19th December 1895.

In answering the proposals and queries submitted by the agent of the Appellant Company, which were thus referred to and made to form the basis of the contract of insurance, Antoine Pettigrew, in reply to the eighth question, which required him to give the name and address of the party who was to have the benefit of the contract, stated, " Joseph Napoléon Anctil, Rivière-du-Loup station." To the ninth question, which had reference to the relation between him and that person, he replied, " Mon protecteur, si toutefois j'en ai besoin." To the tenth question, which made the inquiry to whom he desired the benefit of the contract to accrue on the expiry of the period of dotation, which was at the end of 15 years from the date of the policy, Antoine Pettigrew answered, " A moi-même."

It was argued for the Appellant that the effect of the tenth answer was to give Antoine Pettigrew a proprietary interest in the policy. That may be so, but his interest was contingent upon his surviving the date of the policy for a period of 15 years. In the event of his death at any time during that period the sole owner of the policy was the Appellant, Anctil.

By Article 2590 of the Civil Code of Lower Canada it is enacted in regard to life assurance :— " The insured must have an insurable interest " in the life upon which the assurance is " effected.

" He has an insurable interest in the life :—

" 1. Of himself,

" 2. Of any person upon whom he depends wholly or in part for support or education.

" 3. Of any person under legal obligation to him for the payment of money, or respecting the property or services which death or illness might defeat or prevent the performance of.

" 4. Of any person upon whose life any estate or interest in the insured depends."

The only insurable interest which the Appellant had in the life of Antoine Pettigrew, as stated in the proposals for insurance, was that the Appellant was the protector of Pettigrew, whenever he stood in need of protection, which, if true, was an interest the very reverse of what is required by Article 2590 of the Code.

The action led to a considerable amount of litigation. It was tried in the Supreme Court before Mr. Justice Cimon and a jury, who returned a verdict in the shape of answers to no less than 20 questions submitted to them by the learned Judge. The verdict was then reported to the Superior Court, sitting in review, consisting of Caron, Andrews, and Cimon, J. J. The Appellant moved the Court for judgment in his favour, whilst the Respondent Company moved for judgment *non obstante veredicto*, or for a new trial. Mr. Justice Caron and Mr. Justice Andrews (*dissentiente* Cimon), refused the Appellant's motion, and granted a new trial on the ground (1) that, although the "*incontestable*" clause of the policy was a good answer to innocent misrepresentations, nevertheless (2) it was not a good answer to the allegation that the policy was a wager policy ; and (3) that the policy was a wager policy, in which the Appellant, the payee, had no insurable interest.

An Appeal was taken by the present Appellant to the Court of Queen's Bench for Lower Canada, when five learned judges unanimously reversed the judgment of the Superior Court sitting in review, and entered judgment for the Appellant, on the ground that (1) "the one year clause" was a good answer to alleged innocent misrepresentations, and (2) that the jury had found on the evidence that the policy had been taken out by Pettigrew, and not by the Appellant.

The Respondent Company then appealed to the Supreme Court of Canada, who, on the 9th December 1897 (Mr. Justice Sedgewick dissenting) reversed the order of the Queen's Bench, dismissed the Appellant's action and entered judgment for the Respondent Company. The learned judges of the Supreme Court were of opinion (1) that the policy was null and void, having been entered into with the Appellant in his own name, on his own benefit, and he having no insurable interest in the life of Pettigrew; (2) that "the one year clause" was contrary to public law and order; and that the Respondents were not estopped, by "the one year clause," or otherwise, from disputing the validity of the policy.

Their Lordships have now to determine whether the judgment of the Supreme Court of Canada ought to be affirmed *simpliciter*, or whether there ought to be judgment entered for the Appellant, or the case sent back for a new trial. In considering these two last questions, it is legitimate to refer to the evidence led before the jury, for the purpose of ascertaining whether, on a second trial, the facts found by the jury, bearing upon the insurable interest of the Appellant, are capable of substantial or any modification. Their Lordships are satisfied that, were a new trial allowed, these findings would be strengthened as

against the Appellant, but could not be modified in his favour. They have also arrived at the conclusion, that the facts, as found by the jury are, in the circumstances of this case, sufficient to show that the Appellant had no insurable interest in the life of Antoine Pettigrew.

In the first place, it must be observed that, although the terms of the policy, and of the proposals upon which it is based, are such as to cast upon him the *onus* of proving that he had an insurable interest, the Appellant has not in his pleadings alleged, and has not attempted to establish by proof, that he possessed any such interest as is required by article 2590 of the Code. The only contribution, if it can be so called, to that inquiry, made by the testimony of the Appellant, consisted in the assertion that his wife's grandmother was the cousin-german of Antoine Pettigrew. That is the evidence upon which the jury, in answer to question 8 (*b*), found that there was "distant relationship" between Pettigrew and the Appellant.

The jury, in answer to question 2 (*a*) found that all the premiums in the policy had been regularly paid up to the death of Antoine Pettigrew; in answer to question 5, that Pettigrew was, at the time of the policy, and since, a poor man without any means whatsoever; and, in answer to question 6 (*d*), that it was the Appellant who paid all the premiums. In answer to question 3 (*a*) and (*b*) they found that Pettigrew had signed the application for the policy with his mark of a cross, in presence of Hélène Ouellet, as witness, she being the wife of the Appellant. In his evidence the Appellant explains that, at the foot of the application, he wrote the signature Antoine Pettigrew, on either side of the mark made by Pettigrew, who could not write. The most important findings of the jury are contained in their answers to question 15. These are to the effect that; (1) Before the issuing of the policy sued on, the Respondent

Company had, upon the same application, issued another payable to Antoine Pettigrew and his representatives; (2) that Antoine Pettigrew and the Appellant refused the first policy, having in lieu and place thereof exacted the policy sued on; and (3) that it was the Appellant, and not Antoine Pettigrew, who refused the first policy and exacted the second. In his evidence the Appellant thus explains his reasons for declining the first policy—" Parce qu'elle était payable à " Pettigrew ou ses héritiers "; and also his reason for exacting the second—" que si la compagnie " défenderesse voulait émaner une police payable " à moi directment, que j'en paierais les primes, " autrement que je n'en voulais pas."

Their Lordships are of opinion, with the majority of the learned judges of the Supreme Court, that the findings of the jury are in themselves sufficient to establish that the Appellant is not a lawful holder of the policy in question, within the meaning of Article 2590 of the Code. The question remains, whether that clause of the policy which provides that the instrument shall become "*incontestable*" on the lapse of a period of a year or upwards, during which premiums are regularly paid, furnishes a good answer to the objection founded on the terms of the Code. Upon that point their Lordships concur in the opinion expressed by the majorities of the Supreme Court, and of the Superior Court sitting in review. The rule of the Code appears to them to be one which rests upon general principles of public policy or expediency, and which cannot be defeated by the private convention of the parties. Any other view would lead to the sanction of wager policies.

Their Lordships will, therefore, humbly advise Her Majesty to affirm the judgment appealed from and to dismiss the Appeal. The Appellant must pay to the Respondent Company their costs of this Appeal.