

1939

William A. Fawcett v. Security Benefit Association : Appellant's Abstract

Utah Supreme Court

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A. C. Melville; A. W. Fulton; Harry L. Ladbury; Attorneys for Defendant and Appellant;
Romney, Romney and Boyer; Attorneys for Plaintiff and Respondent;

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IN THE

Supreme Court of the State of Utah

WILLIAM A. FAWCETT, Plaintiff and Respondent,
vs.
SECURITY BENEFIT ASSOCIATION,
a corporation,
Defendant and Appellant.

Appellant's Abstract

APPEAL FROM DISTRICT COURT OF SALT LAKE COUNTY,
UTAH.

P. C. EVANS, JUDGE.

A. C. MELVILLE,
A. W. FULTON,
HARRY L. LADBURY,
Attorneys for Defendant and Appellant.

ROMNEY, ROMNEY and BOYER,
Attorneys for Plaintiff and Respondent.

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APPEAL FROM DISTRICT COURT OF SALT LAKE COUNTY,
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P. C. EVANS, JUDGE.

COMPLAINT.

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Comes now the plaintiff and complains of the
1 defendant, and alleges as follows, to-wit:

I

That the defendant now is and was at all times
herein mentioned a fraternal beneficiary society,
duly incorporated under the laws of the State of

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Kansas, doing the business of insuring the lives of its members.

II

That on or about February 6, 1922, Harriett P. Fawcett made application for membership in the Milford Council No. 3611 of defendant association and for a benefit certificate in the sum of \$1,000.00 on the American Experience 20 Pay Plan in the defendant association. That said application was duly approved by defendant, and Harriett P. Fawcett was thereafter initiated and became a member of defendant association, and said association, pursuant to said application, duly issued Benefit Certificate No. 911864, bearing date February 14, 1922, a photostatic copy of which is hereto attached and made a part hereof the same as though it were set out in full herein.

III

That the defendant delivered said certificate to Harriett P. Fawcett on February 18, 1922, during her good health. That on said date she signed said certificate and acknowledged in writing on said certificate the delivery of the same to her, and at which time she paid to defendant the sum of \$2.60, which sum was the amount of the first monthly contribution on said certificate as provided for therein, plus the amount of local dues of defendant association.

IV

That in consideration of the first monthly con-

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tribution of \$2.35 and a like sum to be paid within each month to the financier of the local council for a completed period of twenty years from the date of the first payment on said certificate, the defendant promised and agreed to pay a death benefit to William A. Fawcett, related to the said Harriett P. Fawcett as husband, in the sum of \$1,000.00.

V

That in addition to the first monthly payment as recited herein, from the month of March, 1922, down to and including the month of September, 1928, Harriett P. Fawcett paid to the financier of the defendant association an equivalent of \$2.60 each month during said period, which included the monthly payments of said certificate plus local dues, the last payment thereon having been made on September 30, 1928.

VI

That it is provided in said certificate as follows:

“VI. The Security Benefit Association promises to waive periodical contributions hereinbefore stipulated and to continue protection for death benefit only to the said member in the amount of the face of this Certificate during such period as its withdrawal equity, taken as a single premium, will purchase as temporary protection; provided the member has made the stipulated periodical contributions without default for not less than three years prior to the application for this privilege, and

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has maintained his status as a member as required and prescribed in the Constitution and Laws of the Association.”

That Harriett P. Fawcett was 28 years of age at her nearest birthday at the time of the issuance of said certificate. That according to the table of values which is a part of said certificate, at the age of 28 and after monthly payments were made on said certificate for a period of six full years, the withdrawal equity value of said certificate was sufficient to purchase extended insurance for a period of ten years and thirty days. That on January 6, 1929, Harriett P. Fawcett made application to defendant for extended protection for said period.

VII

That it is provided in said certificate in part as follows:

“In consideration of the first monthly contribution of \$2.35 paid before or at the time of the delivery of this Certificate, and thereafter \$2.35 to be paid within each month to the Financier of the Local Council, for a completed period of twenty years from the date of the first payment thereon:

“I. The Security Benefit Association promises to pay a Death Benefit to William A. Fawcett.”

It is also provided in said certificate as follows:

“(5) This Certificate shall not take effect until all required assessments have been paid

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and the Certificate signed by the applicant in person, and during the applicant's good health."

That as hereinabove alleged, the first payment on said certificate was made on February 18, 1922, and said certificate was delivered to Harriett P. Fawcett on said date, during her good health. That the certificate went into effect on said date. That the first monthly payment was paid as aforesaid on February 18, 1922, and covered a period of one month from February 18, 1922, to March 18, 1922. That each payment thereafter fell due on the 18th day of each month, commencing with March 18, 1922, and covered a period of one month from the 18th day of each month, including the last payment on said certificate as alleged herein, which fell due and covered a period from September 18, 1928, to October 18, 1928. That pursuant to the application filed as herein alleged, Harriett P. Fawcett was entitled to extended insurance for a period of ten years and thirty days from October 18, 1928, which period includes the date of the death of Harriett P. Fawcett as hereinafter alleged.

VIII

That Harriett P. Fawcett died in Salt Lake City, State of Utah, on November 7, 1938. That the plaintiff is named in said certificate as beneficiary and is now the owner and holder thereof.

IX

That within sixty days from the death of Harriett P. Fawcett, the plaintiff caused written notice of the death of the said Harriett P. Fawcett to be filed with the National Secretary of the defendant association. That within ninety days from the death of said Harriett P. Fawcett, the plaintiff caused written proof of death and a claim for the full amount of said certificate to be filed with the National Secretary of the defendant association. That defendant has failed and refused, and does now refuse, to honor plaintiff's claim, and does now refuse to make payment of the amount due and owing to plaintiff on said certificate or any part thereof, notwithstanding the death of Harriett P. Fawcett occurred while said certificate was in full force and effect, as alleged herein.

WHEREFORE, plaintiff prays for judgment against the defendant for the sum of \$1,000.00, plus interest thereon at the rate of six per cent per annum from November 7, 1938, until paid, and for such other and further relief as may to the court seem proper.

ROMNEY, ROMNEY & BOYER,
By HAROLD R. BOYER,
Attorneys for Plaintiff.

STATE OF UTAH, COUNTY OF SALT LAKE, ss.

WILLIAM A. FAWCETT, being first duly sworn, deposes and says: That he is the plaintiff in the above entitled action; that he has read the fore-

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going complaint, knows the contents thereof, and that the same is true of his own knowledge except as to matters stated therein on information and belief, and as to those matters he believes it to be true.

WILLIAM A. FAWCETT.

Subscribed and sworn to before me this 19th day of May, 1939.

[Seal]

HAROLD R. BOYER,
Notary Public.

Filed May 19, 1939.

ANSWER.

[TITLE OF COURT AND CAUSE.]

I

8 Comes now The Security Benefit Association, the defendant above named, and for its answer to the allegations of Plaintiff's Complaint filed herein, admits, denies and alleges as follows, to-wit:

1. Defendant admits the allegations of paragraph one of Plaintiff's Complaint.

2. Defendant admits the allegations of paragraph two of Plaintiff's Complaint.

3. Defendant admits the allegations of paragraph three of Plaintiff's Complaint.

4. Defendant admits the allegations of paragraph four of Plaintiff's Complaint, except that Defendant denies that the consideration alleged

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was the sole consideration of said promise for Defendant; that additional consideration is set forth in said Certificate No. 911864 attached to Plaintiff's Complaint.

5. Defendant admits the allegations of paragraph five of Plaintiff's Complaint.

6. Defendant admits the allegations of paragraph six of Plaintiff's Complaint.

7. Defendant denies the allegations of paragraph seven of Plaintiff's Complaint, except that Defendant admits that said Certificate provided in part as set forth in said paragraph, admits the first payment on said Certificate was made on February 18, 1922, admits that said Certificate was delivered to Harriett P. Fawcett on said date, during her good health, and admits that the said Certificate went into effect on said date.

8. Defendant admits the allegations of paragraph eight of Plaintiff's Complaint.

9. Defendant admits that due notice and proof of death of Harriett P. Fawcett, and claim for benefits was filed with the National Secretary of Defendant Association; admits that Defendant refused and refuses to honor plaintiff's claim, but denies that any sum is due or owing to plaintiff on said Certificate, and denies that the death of Harriett P. Fawcett occurred while said Certificate was in full force and effect.

Defendant denies each and every allegation of said Complaint not hereinabove specifically admitted.

II

Defendant for its affirmative defenses to the allegations of Plaintiff's Complaint, alleges:

10. That it is now and was at all times mentioned in Plaintiff's Complaint a fraternal beneficiary association, a corporation chartered, organized and operating under and by virtue of the Laws of the State of Kansas, and duly licensed and operating in the State of Utah as a fraternal beneficiary association, under and by virtue of the Laws of the States of Utah relating to foreign fraternal beneficiary associations; that the defendant is organized and operated solely for the mutual benefit of its members and their beneficiaries, and not for profit, and that it is organized without capital stock; that it has a lodge system, with ritualistic form of work and representative form of government; that it makes provision for the payment of benefits in case of the death of its members whose death occurs while they are in good standing in the Association, subject to the provisions of the contract made and entered into by and between the Association and its members; that the funds from which the payment of death benefits and the expenses of the society is made are derived from periodical assessments levied and collected from its members; that the payment of death benefits is made to such class or classes of beneficiaries as are provided for in the Statutes of the State of Utah.

11. That on or about February 6, 1922, Har-

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riett P. Fawcett made written application for Beneficiary Certificate in the Defendant Association; that in said application the said Harriett P. Fawcett agreed among other things as follows:

10 “I HEREBY make application for a beneficiary certificate from THE SECURITY BENEFIT ASSOCIATION. And I hereby declare that the foregoing answers and statements are true, full and correct, and I acknowledge and agree that the said answers and statements shall be held to be warranties and with this application shall be considered a part of my beneficiary certificate and together with the constitution and laws of the Association as now existing or hereafter amended or enacted shall constitute parts of my contract with the Association.

 I FURTHER AGREE, if accepted as a member of the Association, to be bound by all its laws now in force or that may be hereafter enacted, without reservation or exception as to the character or nature of such after enacted laws.

 Dated at Milford, Utah, this 6th day of February, 1922.

(Signed Harriett P. Fawcett.)”

That a true and correct copy of said application is attached hereto, marked Defendant's Exhibit “1”, and by reference made a part of this Answer as fully and completely as if copied herein in full.

12. That on or about February 9, 1922, said application was approved by the National Medical Director of Defendant Association, and pursuant thereto American Experience Twenty Payment

Transcript

Life Certificate No. 911864 in the sum of \$1000 was issued to Harriett P. Fawcett; that a true and correct copy of said Beneficiary Certificate is attached to Plaintiff's Complaint; that in addition to the provisions alleged in Plaintiff's Complaint, said Beneficiary Certificate provided in part as follows:

"The Contract

11

This Certificate, together with the Constitution and Laws of the Society and all amendments to each thereof, and the application for membership, which is made a part hereof, shall constitute the agreement between the member and the Society. Copies of the same certified by the National Secretary shall be received in evidence of the terms and conditions thereof, and any changes, additions, or amendments to said Constitution and Laws duly made or enacted subsequent to the issuance of this Certificate shall bind the member and h..... beneficiary and shall govern and control the agreements in all respects the same as though such changes, additions or amendments had been made and were in force prior to the time of the application for membership, and all of which shall have the same force and effect as if incorporated in this Certificate."

13. That the Constitution and Laws of Defendant Association in force at all times from February, 1922, until subsequent to the death of Harriett P. Fawcett, a part of said contract, provided in part as follows:

"Sec. 103. Assessments and Dues to Be Paid Without Notice. Before delivering the

Transcript

Beneficiary Certificate, upon the initiation of a member, the Financier of the Council shall collect one assessment and the local dues from the member, for the month in which the Certificate is delivered, and thereafter, on or before the last day of each succeeding month, the member shall, without notice, pay the sum of one assessment and the local dues to the Financier. The assessments and dues for the month in which the member dies shall be paid to the Financier before the amount due on Certificate is paid the beneficiary."

"Sec. 112. Members Suspended by Their Own Act. The Financier of each Subordinate Council shall keep a book wherein all assessments and dues received from each member holding a valid Certificate shall be credited. Such entries shall be made showing the date when actually received by the Financier. All assessments for every month shall become due and payable on the first day of the month. The Certificate of each member who has not paid such assessment or assessments and dues on or before the last day of the month shall, by the fact of such non-payment, stand suspended without notice, and no act on the part of the Council or any officer thereof, or of the National Council, shall be required as essential to such suspension, and all rights under said Certificate shall be forfeited. No right under such Certificate shall be restored until it has been duly reinstated by the member complying with the Laws of the Association, with reference to reinstatement."

That a true and correct copy of said Constitution and Laws is attached hereto marked Defendant's Exhibit "2" and made a part of this Answer as fully as if copied in full herein.

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14. Defendant alleges that pursuant to said Section 103 the Financier of Council No. 3611 at Milford, Utah, on February 18, 1922, collected one assessment from Harriett P. Fawcett for the month of February, 1922, the month in which said Certificate was delivered. Defendant further alleges that pursuant to Section 112 of said Constitution and Laws the assessment for March, 1922, became due and payable on the first day of March, and the assessment for each subsequent month became due and payable on the first day of such month, but that members were given the right to pay said assessments on or before the last day of such month.

15. Defendant alleges that Harriett P. Fawcett paid the assessment for each subsequent month to and including September, 1928; that Harriett P. Fawcett did not pay the assessment or local Council dues for the month of October, 1928, which were due and payable on the first day of said month; that thereafter and on January 6, 1929, Harriett P. Fawcett made written application for change to extended protection; that in said application Harriett P. Fawcett requested to change said Beneficiary Certificate No. 911864 to continued or whole life protection for death benefits only for ten years and thirty days, and directed that the extended Beneficiary Certificate be payable at death to William A. Fawcett, related to her as husband, and agreed that said extended Beneficiary Certificate should be in substitution and

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revocation of all rights and interests to which she might have been entitled under said Beneficiary Certificate before change, and in lieu of any and all rights which might have been secured to her as a contributor to the Benefit Fund or the other Funds of Defendant Association; that said Harriett P. Fawcett delivered said Certificate to Defendant Association for endorsement and that thereafter and on January 18, 1929, pursuant to said request, the Defendant Association placed the following endorsement on said Certificate:

13

“January 18, 1929.

The Security Benefit Association, upon the request of the said Harriett P. Fawcett, hereby waives the periodical contributions stipulated in this Certificate of membership and continues Whole Life Protection for death benefits only, in the sum of \$1000.00 for ten years and thirty days from October 1, 1928, this Certificate of membership expiring October 30, 1938.

As part of the consideration for this extension the said Harriett Fawcett agrees to surrender this Certificate for cancellation after the expiration thereof as above described.

THE SECURITY BENEFIT ASSN.

J. M. Kirkpatrick,
National President.

J. V. Abrahams,
National Secretary.”

[SEAL]

That by said endorsement said contract was amended and Defendant waived periodical contributions stipulated in said Certificate, and con-

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tinued whole life protection for death benefits only in the sum of \$1000 for ten years and thirty days from October 1, 1928, said Certificate of membership expiring October 30, 1938, and Harriett P. Fawcett agreed to surrender said Certificate for cancellation at the expiration of said time; that said Certificate as endorsed was returned to said Harriett P. Fawcett and Harriett P. Fawcett accepted and retained said Certificate as amended by said endorsement for a period of over ten years without objection, and thereby acquiesced in, accepted and ratified the terms of said contract as amended by said endorsement; that a true and correct copy of said application for change to extended protection is hereto attached, marked Defendant's Exhibit "3", and made a part of this Answer as fully and completely as if copied at length herein. Defendant further alleges that pursuant to the terms of said contract as amended, said Certificate expired October 30, 1938, and thereafter was void and of no force or effect. Defendant alleges that said Certificate at the date of the death of Harriett P. Fawcett on November 8, 1938, was null, void and of no force or effect, and plaintiff is not entitled to recover any sum whatever in this connection.

16. Defendant further alleges that as above set forth, the Defendant is a fraternal beneficiary society, a corporation organized, chartered and existing under and by virtue of the Laws of the State of Kansas, and that the rights of Harriett P. Fawcett as a beneficial member of Defendant Associa-

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tion, and the rights of all other members of Defendant Association are governed by the Laws of Kansas; that Harriett P. Fawcett and all other members of Defendant Association, without regard to the state of residence, are subject to have all rights and liabilities in relation to each other and as between themselves and this Defendant pertaining to their contract of beneficial membership governed, limited and controlled in all respects by, under and according to the Laws of the State of Kansas, and the decisions of its highest Court, to-wit, its Supreme Court, construing and interpreting and applying the Laws of Kansas, and particularly the Laws of Kansas defining when premiums subsequent to the first premium become due and payable; that it is the Law of the State of Kansas, as declared by its highest or Supreme Court in the case of *Wolford, Administratrix v. National Life Insurance Company*, reported in 114 Kansas Reports 411, 219 Pacific Reporter 263, that the date fixed in the contract for the payment of premiums governs, and the fact that the policy was not delivered on a date corresponding with the time specifically fixed for the payment of subsequent premiums does not postpone the time for such payments to the anniversary of the date of delivery; that a true and correct copy of said opinion is attached hereto, marked Defendant's Exhibit "4", and made a part hereof as fully as if copied in full herein. Defendant further alleges that the interpretation of the the Laws of Kansas

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by its highest or Supreme Court, and defining the rights of individuals under insurance policies and certificates of insurance, is within the provision of Section 1 Article IV of the Constitution of the United States, and the Courts of Utah are by reason thereof required to declare that the second monthly assessment due and payable on the Certificate of Harriett P. Fawcett became due on the first day of March, 1922, and each subsequent assessment became due and payable on the first day of each succeeding calendar month, and if the Courts of the State of Utah shall fail and refuse to so hold such failure and refusal will be in violation of the Constitution of the United States as aforesaid, and a denial of the constitutional rights of this Defendant to have the interpretation of its contracts determined, adjudged and decreed under the Laws of the State of Kansas, as declared by the decisions of its highest or Supreme Court, and such failure and refusal will be a denial of the constitutional rights of this Defendant, which for many years past has been and is now a person within the jurisdiction of the State of Kansas, to have all questions touching the interpretation of its contracts determined by the Laws of the State of Kansas, and will further deny to it the equal protection of the Law and will take from this fraternal corporation and its beneficiary members constituting the same, its and their property without due process of law, and in contravention of its rights guaranteed to this Defendant as a corporation of

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the State of Kansas under Section 1 of the 14th Amendment to the Constitution of the United States.

WHEREFORE, the Defendant prays the Court to render judgment in its favor on the alleged cause of action set forth in Plaintiff's Complaint.

A. C. MELVILLE,
Attorney for Defendant.

Duly verified.

Filed June 14, 1939.

Received copy of the foregoing answer this 14th day of June, 1939.

ROMNEY, ROMNEY and BOYER.

REPLY.

[TITLE OF COURT AND CAUSE.]

29 Comes now the plaintiff above named, and in reply to the affirmative defenses contained in defendant's answer, admits, denies and alleges as follows:

I

Admits Paragraph 10 of defendant's answer.

II

Plaintiff admits Paragraph 11 of defendant's answer.

III

Plaintiff admits Paragraph 12 of defendant's answer.

IV

Plaintiff admits Paragraph 13 of defendant's answer.

V

Replying to Paragraph 14, plaintiff admits that pursuant to Section 103 the financier of Council 3611 at Milford, Utah, on February 18, 1922, collected one assessment from Harriett P. Fawcett, but plaintiff denies each and every other allegation contained in said paragraph.

Further replying to said paragraph plaintiff alleges that the first assessment paid by Harriett P. Fawcett and each assessment paid by her thereafter were monthly assessments, and each covered a full month's period; that according to the terms of the contract between the defendant and Harriett P. Fawcett, the said Harriett P. Fawcett was required to pay one assessment within each month for a completed period of twenty years from the date of the first payment thereon; that the date of the first payment thereon was February 18, 1922, as hereinbefore alleged; that Sections 103 and 112, and any other section of the laws of the defendant association in which reference is made to the time when assessments become due, where the expressions "first of the month" or similar expressions are used to refer to the date of the first payment and the corresponding day in each month thereafter; that likewise in said sections of the laws of the defendant association where the expression "last day of each succeeding month" or

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similar expressions are used, they denote the last day of the month with reference to the day of the first payment on the certificate, which last day of the first month was March 17, 1922, and the 17th day of each month thereafter.

VI

Replying to Paragraph 15, plaintiff admits that Harriett P. Fawcett made application to the defendant association on January 6, 1929, for change to extended protection for death benefits only for a period of ten years and thirty days; that Harriett P. Fawcett delivered said certificate to the defendant association for endorsement, and that under date of January 18, 1929, pursuant to said application, the defendant association placed on said certificate the endorsement in words and figures as alleged in said paragraph. Except as herein admitted or qualified, the plaintiff denies each and every allegation contained in said paragraph.

Plaintiff specifically denies that Harriett P. Fawcett acquiesced in or ratified the terms of the endorsement on said certificate. Plaintiff further specifically denies that said certificate expired on October 30, 1938, and that the same was void or of no force or effect thereafter, and particularly denies that the same was void and of no force and effect on November 8, 1938, at the time of the death of Harriett P. Fawcett.

Replying further to said paragraph, the plaintiff alleges that the last payment made by Harriett

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P. Fawcett on said certificate was made on September 30, 1928, and covered a period from September 18, 1928, to October 17, 1928, inclusive; that according to the terms of the contract between the parties as alleged in plaintiff's complaint, and the rights incident thereto, Harriett P. Fawcett was entitled to extended insurance for a period of ten years plus thirty days, for a period commencing on the first day subsequent to the period covered by the actual assessments paid on said certificate; that said period of extended insurance commenced on the 18th day of October, 1928, and expired on November 16, 1938, subsequent to the date of the death of Harriett P. Fawcett, as alleged in plaintiff's complaint; that it was the intent of Harriett P. Fawcett in making application for extended insurance to obtain, and it was the intent of the defendant association, in complying with said application, to allow extended insurance for the period hereinabove alleged, to commence on the day subsequent to the period covered by the actual assessments paid on said certificate.

Further replying to said paragraph, the plaintiff alleges that he did not know prior to the death of Harriett P. Fawcett the contents of said benefit certificate or the endorsement thereon, and that he had never, prior to the death of Harriett P. Fawcett, seen said certificate or the endorsement thereon.

VII

Replying to Paragraph 16, plaintiff admits

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that defendant is a fraternal beneficiary society, a corporation organized under the laws of the State of Kansas, but denies each and every other allegation contained in said paragraph.

WHEREFORE, plaintiff prays for judgment against the defendant in accordance with the prayer of his complaint on file herein, and that it is necessary the court reform the endorsement dated January 18, 1929, on the benefit certificate, to correspond and comply with the intention of the defendant and Harriett P. Fawcett as alleged herein, and in accordance with the original agreement between the said defendant and Harriett P. Fawcett and the rights incident thereto, and that the plaintiff be awarded judgment against the defendant in the sum of \$1,000.00 plus interest at the rate of six per cent per annum from the 7th day of November, 1928, until paid, and for costs of suit, and for such other and further relief as may to the court seem proper.

ROMNEY, ROMNEY & BOYER,
By HAROLD R. BOYER,
Attorneys for Plaintiff.

STATE OF UTAH, COUNTY OF SALT LAKE, ss.

HAROLD R. BOYER, being first duly sworn, on oath, deposes and says:

That he is one of the attorneys for the plaintiff above named, and makes this verification for and on behalf of the plaintiff, for the reason that the plaintiff is now outside of the county of Salt

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Lake, State of Utah, and is unable for said reason to verify said reply; that he has read the foregoing reply, and that the matters stated therein are true to the best knowledge, information and belief of the deponent.

HAROLD R. BOYER.

Subscribed and sworn to before me this 28th day of June, 1939.

LOIS BARLOW, Notary Public.

Received a copy of the foregoing reply this 28th day of June, 1939.

A. C. MELVILLE,
Attorney for Defendant.

Filed June 28, 1939.

**DEFENDANT'S BILL OF EXCEPTIONS.
APPEARANCES.**

44 [TITLE OF COURT AND CAUSE.]

For the Plaintiff: Romney, Romney & Boyer.

For the Defendant: A. C. Melville and Harry L. Ladbury.

BE IT REMEMBERED, that this action came on regularly for trial at the courtroom of Division 6 of the above-entitled court, in Salt Lake City, Salt Lake County, Utah, on the 10th day of August, 1939, at the hour of 2 o'clock p. m. before the Honorable P. C. Evans, one of the judges thereof, sit-

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ting without a jury, whereupon the following proceedings were had:

The plaintiff and the defendant by their attorneys made and entered into a stipulation in writing and filed same in said court, stipulating and agreeing to all of the material facts, and for that reason no evidence was offered or admitted. The Agreed Statement of Facts, with schedule of exhibits, being as follows:

AGREED STATEMENT OF FACTS.

[TITLE OF COURT AND CAUSE.]

17, It is hereby stipulated and agreed by and be-
46 tween the parties hereto, through their respective
Attorneys of record, that the following facts may
be considered by the Court as admitted and that
no evidence thereon will be required:

1. It is admitted that the defendant is and was at all times herein mentioned a fraternal benefit society, a corporation chartered, organized and operating under and by virtue of the Laws of the State of Kansas, and duly licensed and operating in the State of Utah as a fraternal benefit society under and by virtue of the Laws of the State of Utah relating to foreign fraternal benefit societies; that the defendant is a corporation without capital stock, organized and carried on solely for the mutual benefit of its members and their beneficiaries and not for profit; that it has a lodge system with ritualistic form of work and representative form

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of government, and makes provision for the payment of benefits in accordance with Section 43-9-6 of the Statutes of Utah.

2. That on or about February 6, 1922, Harriett P. Fawcett made written application for membership in Milford Council No. 3611 of Defendant Association and a Benefit Certificate in the sum of \$1000 on the American Experience Twenty Pay Plan; that a true and correct copy of said application is attached hereto, marked Exhibit "1", and made a part hereof as fully as though it were set out in full herein; that said application was duly approved by defendant, and said Association pursuant to said application duly issued Benefit Certificate No. 911864 in the amount of \$1000, bearing date February 14, 1922, a photostatic copy of which is hereto attached, marked Exhibit "2", and made a part hereof as fully as though set out in full herein; that the contract between The Security Benefit Association and said Harriett P. Fawcett consisted of the Certificate, Exhibit "2" hereto, the application for membership, Exhibit "1", and the Constitution and Laws of Defendant Association, a true and correct copy of which is attached hereto, marked Exhibit "3", and made a part hereof.

3. That Harriett P. Fawcett was thereafter initiated and became a member of Defendant Association; that Defendant delivered said Certificate to Harriett P. Fawcett on February 18, 1922, during her good health; that on said date Harriett P.

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Fawcett signed said Certificate and acknowledged in writing on said Certificate the delivery of the same to her, and at such time she paid to Defendant the sum of \$2.60, which sum was the amount of the first monthly contribution on said Certificate as provided for therein, plus the amount of Local Council dues of Defendant Association.

4. That in addition to the first monthly payment as above set forth, Harriett P. Fawcett paid to the Financier of the Defendant Association an equivalent of \$2.60 each month from the month of March, 1922, down to and including the month of September, 1928, which sum included the monthly assessment payments on said Certificate, plus Local Council dues, the last payment thereon having been made September 30, 1928.

5. That Harriett P. Fawcett was twenty-eight years of age, nearest birthday, at the time of the issuance of said Benefit Certificate; that according to the table of values, which is a part of said Certificate, after monthly payments were made on said Certificate for a period of six full years, the withdrawal equity value of said Certificate was sufficient to purchase extended insurance for ten years and thirty days; that on January 6, 1929, Harriett P. Fawcett made written application for extended protection for said period; that a true and correct copy of said application for extended protection is attached hereto, marked Exhibit "4", and made a part of this Agreed Statement of Facts.

6. That Harriett P. Fawcett thereupon deliv-

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ered said Benefit Certificate No. 911864, together with said application for extended protection, to the Defendant Association for endorsement, and thereafter and on January 18, 1929, pursuant to said application for extended protection, the Defendant Association placed the following endorsement on said Certificate:

“January 18, 1929.

The Security Benefit Association, upon the request of the said Harriett P. Fawcett, hereby waives the periodical contributions stipulated in this Certificate of membership and continues Whole Life Protection for death benefits only, in the sum of \$1000.00 for ten years and thirty days from October 1, 1928, this Certificate of membership expiring October 30, 1938.

As part of the consideration for this extension the said Harriett Fawcett agrees to surrender this Certificate for cancellation after the expiration thereof as above described.

THE SECURITY BENEFIT ASSN.

J. M. Kirkpatrick,
National President.

J. V. Abrahams,
National Secretary.”

[SEAL]

That said Certificate as endorsed was returned to said Harriett P. Fawcett and received and retained by her.

7. That Harriett P. Fawcett died November 7, 1938; that due notice and proof of death was filed by plaintiff herein within ninety days from the date of death.

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8. The parties hereto further agree that the case of *Wolford, Administratrix, v. National Life Ins. Co.*, reported in 114 Kansas Reports 411, 219 Pacific Reporter 263, attached hereto, marked Exhibit "5", and made a part hereof, is a true and correct copy of the decision of the Supreme Court of Kansas, being the highest court of said state.

9. That the plaintiff herein, prior to the death of the said Harriett P. Fawcett had not seen and did not know the contents of said benefit certificate and the endorsements thereon.

10. It is agreed that either party hereto, or the Court may refer to or consider any portion of the contract, consisting of Exhibits "1", "2" and "3", which they deem pertinent to the issues herein, and in the event of an appeal from the decision of the District Court either party may incorporate in the abstract of the record any portion of said contract which they may deem pertinent, but that it shall not be necessary to copy the entire contract in the record on appeal.

ROMNEY, ROMNEY & BOYER,
By HAROLD R. BOYER,
Attorneys for Plaintiff.
A. C. MELVILLE,
HARRY L. LADBURY,
Attorneys for Defendant.

SCHEDULE OF EXHIBITS.

21, ATTACHED TO THE AGREED STATEMENT
50 OF FACTS, THE ORIGINALS OF WHICH
ARE ON FILE WITH THE CLERK OF
THE COURT, AND WILL BE TRANS-
MITTED TO THE CLERK OF THE SU-
PREME COURT AS A PART OF THE REC-
ORD ON APPEAL.

Exhibit No. 1: Application of Harriett P. Fawcett for membership in Milford Council No. 3611 of defendant association, and a benefit certificate in the sum of \$1000 on the American Experience Twenty Pay Plan.

Exhibit No. 2: Benefit Certificate No. 911864 in amount of \$1000, bearing date February 14, 1922.

Exhibit No. 3: Constitution and Laws of Defendant Association.

Exhibit No. 4: Written application of Harriett P. Fawcett for extended protection.

Exhibit No. 5: Copy of decisions of Supreme Court of Kansas of case of *Wolford, Administratrix, v. National Life Insurance Co.*, 114 Kan. 411; 219 Pac. 263.

[Copies of Exhibits 2 and 4 and all pertinent parts of Exhibit 3 are incorporated in the appendix of this Abstract, pages 42 to 52 inclusive.]

51 Counsel for the respective parties then argued the case to the court, and the same was submitted to the court upon the Agreed Statement of Facts and exhibits attached to the same, arguments of counsel and written briefs.

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Thereafter on the 25th day of October, 1939, the court made and entered, and the clerk of said court filed the Conclusions of Law and Judgment, which are in words and figures as follows:

CONCLUSIONS OF LAW.

[TITLE OF COURT AND CAUSE.]

35, This case having come on regularly for trial
52 on stipulation of the parties hereto, on August 10, 1939, before the Honorable P. C. Evans, one of the Judges of the above entitled court, Harold R. Boyer of counsel appearing for and on behalf of the plaintiff, and A. C. Melville and Harry L. Ladbury appearing for and on behalf of the defendant, the court having considered the evidence and heard the argument of counsel, and having taken the case under advisement, and written briefs having been filed by respective counsel, and the case having been submitted to the court upon a written statement of facts agreed upon by the parties and no proof of additional facts having been made by either party at the time of the trial, and for that reason there being no necessity for the court to make Findings of Fact, and now the court being fully advised in the premises, from the agreed statement of facts makes and files its

Conclusions of Law.

I

That Benefit Certificate No. 911864, dated

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February 14, 1922, issued to Harriett P. Fawcett by the defendant association, was on November 7, 1938, the date of the death of Harriett P. Fawcett, by virtue of the provision for extended insurance contained in Paragraph VI of said certificate, in full force and effect for death benefit only, in the sum of \$1,000.00.

II

That the plaintiff William A. Fawcett is entitled to a judgment against the defendant, Security Benefit Association, a corporation, in the sum of \$1,000.00 plus interest thereon at the rate of six per cent per annum from February 7, 1939, to date of judgment, in the sum of \$41.65, making a total of \$1,041.65 principal and interest to date, with interest thereon at the rate of eight per cent per annum from date of judgment until paid, and for costs incurred in this action.

Dated this 25th day of October, 1939.

P. C. EVANS,
Judge.

Received a copy of the foregoing proposed Conclusions of Law this 23rd day of October, 1939.

A. C. MELVILLE & HARRY L. LADBURY,
Attorneys for Defendant.

Filed October 25, 1939.

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JUDGMENT.

[TITLE OF COURT AND CAUSE.]

37, This case having come on regularly for trial
54 by stipulation of the parties, on August 10, 1939,
before the Honorable P. C. Evans, one of the
Judges of the above entitled court, Harold R.
Boyer of counsel appearing for and on behalf of
the plaintiff, and A. C. Melville and Harry L. Lad-
bury appearing and representing the defendant,
the case having been submitted to the court upon
a written statement of facts agreed upon by the
parties and no proof of additional facts having
been made by either party at the time of the trial,
and for that reason there being no necessity for
the court to make Findings of Fact herein, and the
court from the agreed statement of facts having
made in writing and filed its Conclusions of Law,
ordering that judgment be entered herein in favor
of the plaintiff and against the defendant.

IT IS NOW, THEREFORE, HEREBY ORDERED, AD-
JUDGED AND DECREED that the plaintiff William A.
Fawcett do have and recover and he is hereby
awarded judgment against the defendant Security
Benefit Association, a corporation, for the sum of
\$1,041.65, and that said sum bear interest at the
rate of eight per cent per annum from date hereof
until paid, and for costs of suit incurred herein.

Done in Open Court this 25th day of October,
1939.

P. C. EVANS,
Judge.

Filed October 25, 1939.

Transcript

That thereafter on the 30th day of October, 1939, the defendant filed with the clerk of said court a Notice of Intention to move for a new trial, which Notice with the proof of service was and is in words and figures as follows:

**NOTICE OF INTENTION TO MOVE FOR A
NEW TRIAL.**

[TITLE OF COURT AND CAUSE.]

38, To the above-named plaintiff and to Romney, Rom-
56 ney & Boyer, attorneys for said plaintiff:

You and each of you will please take notice that the defendant herein will on Wednesday, the 8th day of November, 1939, at the hour of 10 o'clock a. m. before Division VI of said Court, Hon. P. C. Evans, Judge, move the above-entitled court for a new trial of the above-entitled cause on the following grounds materially affecting the substantial rights of said defendants, to-wit:

1. Insufficiency of the stipulated facts to justify the decision.

2. That the decision is against law.

Said motion will be based upon the minutes of the court and upon all of the records in the case.

Dated this 30th day of October, 1939.

A. C. MELVILLE,
HARRY L. LADBURY,
Attorneys for Defendant.

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Received a copy of the foregoing Notice this
30th day of October, 1939.

ROMNEY, ROMNEY & BOYER,
Attorneys for Plaintiff.

Filed October 30, 1939.

Thereafter on the 8th day of November, 1939,
the defendant by its attorneys, pursuant to said
Notice, presented and called up for argument and
final decision the said motion for a new trial, which
was submitted to the court.

41, Thereafter on the 14th day of November, 1939,
57 the said court overruled and denied said Motion
for a New Trial, and entered the order denying the
Motion for a New Trial in the minutes of said
court.

58

Certificate of Counsel.

The foregoing transcript of the proceedings in
the above-entitled case, consisting of one volume
and 14 pages, exclusive of the title page, and in-
cluding this page, and numbered from 1 to 14 in-
clusive, together with the exhibits admitted in evi-
dence in said case and referred to and made a part
of the Agreed Statement of Facts, contain all of
the evidence, testimony, proceedings, objections
and exceptions had upon the trial of said cause,
and the defendant presents the same within the
time allowed by law, and prays that it may be
allowed, settled, approved, signed, and filed as a
true and correct Bill of Exceptions in said cause,
containing all the evidence (facts stipulated) ad-

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duced upon the trial thereof, together with the rulings, orders, and proceedings made and had by the court upon and during the trial, and the order of the court made and entered since said trial.

Dated this 16th day of November, 1939.

A. C. MELVILLE,
HARRY L. LADBURY,
Attorneys for Defendant.

58

Acknowledgement of Service.

Acknowledgement of service of the above and foregoing Bill of Exceptions is hereby acknowledged this day, and the same is hereby returned without amendments offered or proposed.

Dated this 16th day of November, 1939.

ROMNEY, ROMNEY and BOYER,
Attorneys for Plaintiff.

59

Stipulation.

The above and foregoing Bill of Exceptions containing a full, true, and correct transcript of all the evidence (fact stipulated) and proceedings in said cause having been duly served, and the same being in all respects full, true, and correct, and the plaintiff having no amendments to offer for the same.

It is hereby stipulated, that the same may be by the Court settled, allowed, approved, and signed by the Honorable P. C. Evans, Judge of said Court, who tried said cause, at any time and without

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further notice to the plaintiff or his attorneys, as and for the Bill of Exceptions of the defendant in said cause to be used on the appeal of said cause to the Supreme Court of the State of Utah, and said Honorable P. C. Evans is hereby authorized to settle the same in accordance with this Stipulation.

Dated this 16th day of November, 1939.

A. C. MELVILLE,
HARRY L. LADBURY,
Attorneys for Defendant.
ROMNEY, ROMNEY and BOYER,
Attorneys for Plaintiff.

60 STATE OF UTAH, COUNTY OF SALT LAKE, SS.

I, P. C. Evans, one of the Judges of the District Court of the Third Judicial District of the State of Utah in and for the County of Salt Lake, before whom the trial and proceedings in the above-entitled cause were had, hereby certifies that the foregoing transcript, consisting of one volume and containing 16 pages, numbered from 1 to 16 inclusive, exclusive of the title page and including this page, together with the exhibits referred to, constitutes all of the proceedings had and all rulings made and all exceptions taken at the trial of said cause, and the same is a full, true, and correct transcript of all the evidence and testimony offered (all facts stipulated) and proceedings had upon and during the trial of the above-entitled cause and subsequent thereto, and the same is hereby settled, allowed, approved, and signed by

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me as Judge of said Court, as and for a true and correct Bill of Exceptions in the above-entitled case.

Dated this 17th day of November, 1939.

[SEAL]

P. C. EVANS,
Judge.

ATTEST:

WILLIAM J. KORTH, Clerk.

By: R. A. HOGENSON, Deputy Clerk.

Filed, Bill of Exceptions, Nov. 20, 1939.

61 Clerk's certificate that Undertaking on Appeal
in due form has been properly filed, and certifying
judgment roll to the Supreme Court of Utah. Cer-
tificate dated November 30, 1939.

Minute Entries and Orders of Court as Follows:

28 Case set for trial, August 10, 1939.
33 Case argued, submitted and taken under ad-
visement.
34 Plaintiff granted judgment.
39 Motion for new trial taken under advisement.
41 Motion for new trial denied.

NOTICE OF APPEAL.

[TITLE OF COURT AND CAUSE.]

42 To the Clerk of said court and to the plaintiff, Wil-
liam A. Fawcett, and to Romney, Romney &
Boyer, attorneys for said plaintiff:
You and each of you will please take notice

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that the defendant, Security Benefit Association, a corporation, hereby appeals to the Supreme Court of the State of Utah from the final judgment therein made and entered in said court and cause on the 25th day of October, 1939, in favor of the plaintiff and against the defendant, and from the whole thereof.

Dated this 22nd day of November, 1939.

A. C. MELVILLE,
HARRY L. LADBURY,
Attorneys for Defendant.

Received a copy of the foregoing Notice of Appeal this 22nd day of November, 1939.

ROMNEY, ROMNEY & BOYER,
Attorneys for Defendant.

Filed November 22, 1939.

**NOTICE OF THE FILING OF AN UNDERTAKING
ON APPEAL TO THE SUPREME COURT OF
THE STATE OF UTAH.**

[TITLE OF COURT AND CAUSE.]

- 43 To William A. Fawcett, and to Romney, Romney & Boyer, attorneys for said plaintiff.

You and each of you will please take notice that the defendant has filed with the clerk of the above-entitled court an undertaking on appeal to the Supreme Court of the State of Utah as re-

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quired by law, a copy of the said undertaking is hereto attached and made a part of this notice.

Dated this 24th day of November, 1939.

A. C. MELVILLE,
HARRY L. LADBURY,
Attorneys for Defendant and
Appellant.

Received a copy of the above Notice this 24th day of November, 1939.

ROMNEY, ROMNEY & BOYER,
Attorneys for Plaintiff.

Filed November 24, 1939.

IN THE
SUPREME COURT OF THE STATE OF UTAH

WILLIAM A. FAWCETT, Plaintiff,
vs.
SECURITY BENEFIT ASSOCIATION,
a corporation,
Defendant.

ASSIGNMENT OF ERRORS.

Comes now the above-named defendant and appellant, and in furtherance of its appeal herein says that the court below erred to the prejudice

of the substantial rights of the appellant in the following particulars:

1. The court erred in finding that the stipulated facts are sufficient to support a judgment in favor of the plaintiff and against the defendant; that said stipulated facts are insufficient to support, sustain, or justify the decision, conclusions of law, and judgment rendered by the District Court.

2. The court erred in signing and entering the conclusions of law and judgment submitted by respondents, and particularly in its conclusion of law that Benefit Certificate No. 911864, dated February 14, 1922, issued to Harriett P. Fawcett by the defendant association, was on November 7, 1938, the date of the death of Harriett P. Fawcett, by virtue of the provision for extended insurance contained in Paragraph VI of said certificate, in full force and effect for death benefit only, in the sum of \$1,000.00, and in rendering judgment therefor.

3. That the court erred in denying appellant's motion for a new trial.

4. That the decision rendered by the District Court is against law.

WHEREFORE, by reason of manifest errors of the court assigned above, the appellant hereby prays that the conclusions of law and final judgment of the lower court be reversed and set aside, and that the lower court be ordered and directed to make and enter its conclusions of law and final judgment that no cause of action exists in favor

of the respondent and against the appellant, and that judgment be entered in favor of this appellant for its costs.

A. C. MELVILLE,
A. W. FULTON,
HARRY L. LADBURY,
Attorneys for Appellant.

Received a copy of the foregoing Assignment of Errors this *8th* day of December, 1939.

ROMNEY, ROMNEY & BOYER,
Attorneys for Respondent.

Filed in Supreme Court December *9th*, 1939.

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Exhibit 2.

Exhibit number 2, Benefit Certificate No. 911864, is attached to the transcript which has been furnished this Court. For the convenience of the Court we set forth herein said Exhibit 2 in full.

	Amount	
No. 911864	\$1000	Monthly Rate \$ 2.35
Age 28		Annual Rate \$26.85

THE
SECURITY BENEFIT ASSOCIATION

American Experience 4%
Whole Life, Paid-Up In Twenty Years, Certificate

THIS CERTIFICATE, issued by The Security Benefit Association, a Fraternal Beneficiary Society, of Topeka, Kansas, organized under the laws of the State of Kansas.

WITNESSETH, that Harriett P. Fawcett is a member of Milford Council No. 3611, located at Milford, State of Utah, and is entitled to the privileges and benefits of the Association, subject to the obligations and responsibilities provided for in the Constitution and Laws of the Society.

In consideration of the statements, answers and agreements in the application of the member, which by this contract are made warranties, and in further consideration of the first monthly contribution of \$2.35 paid before or at the time of the delivery of this Certificate, and thereafter \$2.35 to be paid within each month to the Financier of the Local Council, for a completed period of twenty years from the date of the first payment thereon:

I. The Security Benefit Association promises to pay a Death Benefit to William A. Fawcett, re-

APPENDIX.

lated to the said member as husband, in the Sum of One Thousand Dollars within ninety days after receipt of satisfactory proof of death of said member while in good standing and not in default of the payment of required-contributions.

II. The Security Benefit Association promises to pay to the member, in lieu of the Death Benefit, on surrender of this Certificate for cancellation, a Permanent Total Disability Benefit, of One Half of the Death Benefit, should the member before attaining the age of 70 years, become permanently and totally disabled as the result of injury or disease occurring and originating not less than six months after the delivery of this Certificate, and upon proof that the disability renders the said member unable to perform any work or to engage in any business for compensation or profit.

III. The Security Benefit Association promises to pay, in lieu of all other benefits, on application of the member when attaining to age 70, an Old Age Benefit in one sum equal to the reserve accumulation, on the basis of the American Experience Table of Mortality and four per cent interest (the same being the standards for all withdrawal equities provided in this Certificate, less a withdrawal charge, if any, not to exceed $2\frac{1}{2}$ per cent of the face amount of the Certificate). In lieu of the single sum, the member may elect to receive its equivalent in continuous equal installments or in ten equal annual installments.

IV. The Security Benefit Association promises to pay the Death Benefit or the Disability Benefit by continuous or limited income in monthly, quarterly, semi-annual or annual installments to the aggregate amount equivalent in value to the principal sum of the promised Benefit on an interest assumption not higher than four per cent.

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V. The Security Benefit Association promises to Waive periodical contributions hereinbefore stipulated and to continue whole life protection for death benefit only in the sum which the amount of the withdrawal equity of this Certificate, taken as a single premium, will purchase as Paid-up protection; provided the member has made the stipulated contributions without default for not less than three full years prior to the application for this privilege and otherwise has maintained his status as a member as required and prescribed in the Constitution and Laws of the Association.

VI. The Security Benefit Association promises to Waive periodical contributions hereinbefore stipulated and to continue protection for death benefit only to the said member in the amount of the face of this Certificate during such period as its withdrawal equity, taken as a single premium, will purchase as temporary protection; provided the member has made the stipulated periodical contributions without default for not less than three years prior to the application for this privilege, and has maintained his status as a member as required and prescribed in the Constitution and Laws of the Association.

VII. The Security Benefit Association promises to make an advance for the account of said member in a sum not to exceed the reserve value of periodical contributions hereinbefore stipulated, as the same become due and payable and will charge such advance with five per cent compound interest as a lien against this certificate in an aggregate sum; provided the member has made the stipulated periodical contributions without default for not less than three years prior to the application for this privilege and has maintained his status as a member as required and prescribed in the Constitution and Laws of the Association.

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VIII. The Security Benefit Association promises to provide, in a Supplementary Contract, on application of the member and the payment of the required extra contribution, for (a) the Waiver, or discontinuance of the contributions hereinbefore stipulated; (b) a Life Income for the member; (c) Double Indemnity; and (d) Partial Disability Benefits, under conditions prescribed in such Supplementary Contract.

THE CONTRACT

This Certificate, together with the Constitution and Laws of the Society and all amendments to each thereof, and the application for membership, which is made a part hereof shall constitute the agreement between the member and the Society. Copies of the same certified by the National Secretary shall be received in evidence of the terms and conditions thereof, and any changes, additions, or amendments to said Constitution and Laws duly made or enacted subsequently to the issuance of this Certificate shall bind the member and his beneficiary and shall govern and control the agreements in all respects the same as though such changes, additions or amendments had been made and were in force prior to the time of the application for membership, and all of which shall have the same force and effect as if incorporated in this Certificate.

GENERAL PROVISIONS:

(1) The Society shall have the right and opportunity to examine the body of the member when and as often as it requires in case of permanent total disability or bodily injury.

(2) No person shall have the right to change, amend or abridge the conditions of this Certificate, or to waive the payment of contributions herein

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provided except by endorsement in writing or printing thereon, and such change, amendment, abridgment or waiver shall be attested by either the National President or National Secretary, or both, under the Seal of the Society.

(3) Written notice of any accident or disability for which the member would be allowed benefits hereunder must be filed with the National Secretary within sixty days from the date of the injury or disability. Proof of death and claims for indemnity provided for herein must be filed in writing with the National Secretary within ninety days from date of death or injury, and failure to give such notice and proof shall release the Society from liability.

(4) No action at law or in equity can be commenced or maintained on this certificate until ninety days after filing completed proof of death or completed proof for disability benefits, and no action at law or in equity can be maintained on any claim for death benefits, unless brought within one year from the date of death of the member, nor for disability benefits unless brought within one year from the date of rejection of claim.

(5) This Certificate shall not take effect until all required assessments have been paid and the Certificate signed by the applicant in person, and during the applicant's good health.

(6) The word or term "accident" as used and appearing in this Certificate or any addition or supplement thereto is understood to refer to bodily injury caused or effected directly, independently and exclusively of all other causes, through external, violent and accidental means and does not include injuries while under the influence of intoxicants, drugs or narcotics, or resulting from violation of law.

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IN WITNESS WHEREOF, The Security Benefit Association, by its National President, attested by its National Secretary, has signed and caused the Corporate Seal to be affixed to this Certificate at the City of Topeka, State of Kansas, this 14th day of February A. D., 1922.

J. M. Kirkpatrick,
Attest: National President.
J. V. Abrahams,
National Secretary.

[SEAL]

This Certificate delivered to me this 18th day of February, 1922, and accepted subject to all the provisions and conditions set forth in this Certificate and the Constitution and Laws of The Security Benefit Association.

Witness:

Pearl Hunter.

Harriett P. Fawcett,
Member.

Table of Values attached to Exhibit 2:
End of 6 Years

Age	Loan	Pd. Up Ins.	Ext'd. Yrs.	Ins. Days
28	74.63	232.00	10	30

Exhibit 3.

Exhibit 3, the Constitution and Laws of Defendant Association, is attached to the transcript which has been furnished this Court. For the convenience of the Court we set forth herein the pertinent portions of said Constitution and Laws, as follows:

Exhibits 3, Pages 44, 45.

“Sec. 96. When to Initiate Applicant. Upon receipt of the Beneficiary Certificate, the Financier

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shall notify the candidate that he may be initiated by the Subordinate Council at any regular or special meeting occurring within 60 days after the date of issuance of such Certificate. At any time after election to beneficiary membership and before the receipt of the Beneficiary Certificate the applicant may, if he so desires, be initiated as a social member and if thereafter a Beneficiary Certificate shall be issued pursuant to such application, such Beneficiary Certificate shall not become effective until manually delivered to the applicant while the applicant is in good health and the assessment and dues, for the month in which the Certificate is delivered, have been paid and said Beneficiary Certificate signed by the applicant while in good health, nor unless delivered within sixty days after the date thereof. If the applicant fails to take up his Beneficiary Certificate within the time herein provided, then the social membership of said applicant shall terminate. Provided, that under no circumstances shall any officer of the Council or any member of the Association, or person whomsoever, deliver a Beneficiary Certificate to or collect an assessment and dues thereon from any applicant who is not in good health. A Certificate delivered in violation of these provisions shall be void and of no effect; and in no case shall such Certificate be in force and effect until such initiatory ceremonies shall have been performed and the required assessment and dues from the applicant paid to the Financier, and Certificate delivered to the applicant. The initiation of an applicant shall not take place until the Beneficiary Certificate shall be in the hands of the Financier, except as otherwise provided herein. At the expiration of sixty days from the date of any Certificate that has not been delivered as herein provided, such Certificate shall be null and void,

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and the Financier shall return the same to the National Secretary."

Exhibit 3, Page 46.

"Sec. 98. When Certificate in Force. The Beneficiary Certificate shall become effective and be in force from and after the initiation of the member and the payment of one assessment and Subordinate Council dues to the Financier, the Certificate having been signed by the member and delivered to him while in good health."

Exhibit 3, Pages 47, 48.

"Sec. 103. Assessment and Dues to Be Paid Without Notice. Before delivering the Beneficiary Certificate, upon the initiation of a member, the Financier of the Council shall collect one assessment and the local dues from the member, for the month in which the Certificate is delivered, and thereafter, on or before the last day of each succeeding month, the member shall, without notice, pay the sum of one assessment and the local dues to the Financier. The assessments and dues for the month in which the member dies shall be paid to the Financier before the amount due on Certificate is paid the beneficiary."

Exhibit 3, Pages 57, 58.

"Sec. 112. Members Suspended by Their Own Act. The Financier of each Subordinate Council shall keep a book wherein all assessments and dues received from each member holding a valid Certificate shall be credited. Such entries shall be made showing the date when actually received by the Financier. All assessments for every month shall become due and payable on the first day of the month. The Certificate of each member who has

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not paid such assessment or assessments and dues on or before the last day of the month shall, by the fact of such non-payment, stand suspended without notice, and no act on the part of the Council or any officer thereof, or of the National Council, shall be required as essential to such suspension, and all rights under said Certificate shall be forfeited. No right under such Certificate shall be restored until it has been duly reinstated by the member complying with the Laws of the Association, with reference to reinstatement. Notice of all special or extra or additional or increased assessments shall be given by publication of the notice of levy, and date when due, in the official paper of the Association, and any member failing to pay such special, extra, or increased or additional assessment or assessments in compliance with such notice on or before the last day of the month for which levied shall, by reason of such failure, stand suspended in the same manner as for failure to pay the regular monthly assessments and dues, and he can only be reinstated by complying with the Laws of the Association relating to reinstatement. Failure of members to receive a copy of the official paper containing notice of such assessments shall not excuse payment of such assessment or assessments in compliance with this section."

Exhibit 3, Page 60.

"Sec. 117. Suspended or Expelled Member Forfeits All Rights. Any member suspended or expelled from the Association for any cause whatever forfeits all claims to the Beneficiary Fund, Reserve Fund, Special Reserve Fund, General Fund and all other funds of the Association during said suspension or expulsion."

Exhibit 3, Page 81.

"Sec. 159. Financier to Make Monthly Reports.

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On or before the 5th day of each month the Financier shall make a full and complete report of all assessments paid for or by each member of the Subordinate Council for the preceding month, who is in good standing, together with such arrearages as have been legally paid on suspended Certificates, which have been reinstated since the report of collections for the previous month, and shall forward, with remittance covering same to the National Secretary, by postoffice or express money order, bank draft, certified check or registered letter, in time to reach his office by due course of mail, not later than the 15th day of the month. Failure on the part of the Financier to comply with the above requirements will suspend the Council on the 15th day of the month, without any notice from the National Secretary. Provided, that upon receipt of the report and remittance due from the Financier of the Council by the National Secretary, the Council shall be reinstated."

Exhibit 4.

Exhibit number 4, written application of Harriett P. Fawcett for extended protection, is attached to the transcript which has been furnished this Court. For the convenience of the Court we set forth herein said Exhibit 4 in full.

SECURITY BENEFIT ASSOCIATION
Application for Change to Extended Protection

I, Harriett P. Fawcett, hereby certify that I am a member in good standing in Council No. 3510, located at Salt Lake City, Utah;

That, I desire to exercise my option to discontinue beneficiary contributions and to maintain myself in good standing as a beneficiary member by payment of dues to the subordinate council; and I

APPENDIX.

desire to change beneficiary certificate No. 911864, dated February 14, 1922, for \$1000 to continued or extended whole life protection for death benefit only for Ten years and thirty days subject to the provisions of the Articles of Incorporation, Constitution and Laws of the Security Benefit Association, as same now exist, and to any changes, additions or amendments to the Articles of Incorporation and Constitution and Laws hereafter enacted.

I desire that the extended beneficiary certificate be payable at death to my beneficiary, Wm. A. Fawcett, related to me as husband, which shall be in substitution and revocation of all rights and interest to which I may have been entitled under the said beneficiary Certificate before change, and in lieu of any and all rights which might have been secured to me as a contributor to the Benefit Fund or the other funds of the Society. Having paid to the Financier of my Council all assessments and dues, chargeable and payable to this date, I do hereby deliver to the Financier the said Certificate No. 911864, for transmission and endorsement thereon of the change as aforesaid; and from this date, hereby agree that my said certificate shall be continued and extended for protection for death benefit only for Ten years and thirty days at the expiration of which time the certificate shall be void and cancelled by expiry.

In witness whereof I hereby have fixed my signature this 6th day of January, 1929.

Harriett P. Fawcett,
Signature of Member.

Witness:

Ora Hartsie.