

1940

# William A. Fawcett v. Security Benefit Association : Brief of Appellant

Utah Supreme Court

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## Recommended Citation

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IN THE

# Supreme Court of the State of Utah

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

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## Appellant's Brief

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

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vs.  
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Defendant and Appellant.

---

## Appellant's Brief

---

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

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### STATEMENT.

This is an action for death benefits based upon a Benefit Certificate issued by Defendant, a fraternal beneficiary society, to Harriett P. Fawcett February 18, 1922.

Mrs. Fawcett paid assessments each month until September, 1928. Her Certificate provided that upon default in payment of assessments after six years of

membership she would be entitled to ten years and thirty days extended insurance. Pursuant to her application an endorsement to this effect was placed upon her Certificate, which endorsement further stated that the Certificate would expire October 30, 1938. Mrs. Fawcett died November 7, 1938, and after her death due and proper Proofs of Death were made by plaintiff, her beneficiary.

For convenience the parties will be referred to in this Brief as they were designated in the Trial Court, William A. Fawcett as plaintiff, and The Security Benefit Association as defendant.

### STATEMENT OF FACTS.

Plaintiff's complaint alleges that on February 6, 1922, Harriett P. Fawcett made application for membership in Milford Council No. 3611 of Defendant Association, and for a benefit Certificate in the sum of \$1000.00 on the American Experience Twenty Pay Plan; that said application was approved and Defendant duly issued Benefit Certificate No. 911864, bearing date February 14, 1922; that said Certificate was delivered to Harriett P. Fawcett February 18, 1922, at which time she paid \$2.60, the amount of the first monthly contribution on said Certificate, plus Local Council dues; that in addition to the first monthly payment plaintiff paid an equivalent of \$2.60 each month from March, 1922, down to and including the month of September, 1928; that said Certificate provided for extended protection for a period of ten years and thirty days; that on January 6, 1929, Harriett P. Fawcett made applica-



tion to Defendant for extended protection for said period. (Abst. 1-4)

Plaintiff further alleged that the Certificate did not become effective until delivered to and signed by the applicant during the applicant's good health; that the first monthly payment was made on February 18, 1922, and covered a period 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; that the last payment made covered the period from September 18, 1928, to October 18, 1928, and that Harriett P. Fawcett was entitled to extended insurance for a period of ten years and thirty days from October 18, 1928, or to November 18, 1938; that she died on November 7, 1938, while the Certificate was in full force and effect. (Abst. 4-7)

Defendant in its answer admitted the issuance of the Certificate and payment of assessments and Local Council dues at the time and in the manner alleged by plaintiff, but alleged that under the contract, which consisted of the application, the Certificate and the Constitution and Laws, the member was required to pay one assessment and Local Council dues for the month in which the Certificate was delivered, and thereafter to pay an assessment and Local Council dues on or before the last day of each succeeding month; that all assessments for each month became due and payable on the first day of the month and members who failed to pay such assessment on or before the last day of the month became automatically suspended. Defendant alleged that the assessment paid February 18,

1922, was for the month of February, 1922, the month in which the Certificate was delivered; that the assessment for the month of March was due March 1, 1922, but that the members were given the right to pay said assessment on or before the last day of March; that the last assessment paid by Harriett P. Fawcett was for the month of September, 1928, and that she was granted extended insurance for ten years and thirty days from October 1, 1928; that pursuant to her application, an endorsement was made providing that she was entitled to extended protection for ten years and thirty days from October 1, 1928; that said endorsement further provided that the Certificate of membership expired October 30, 1938; that Harriett P. Fawcett accepted and retained said certificate as amended, and thereby acquiesced in, accepted and ratified the terms of said contract as amended by said endorsement; that said Certificate expired October 30, 1938, and was therefore void and of no force or effect on November 7, 1938, the date of death of Harriett P. Fawcett. Defendant further alleged that as a Kansas corporation the rights and liabilities of all members are governed by the Laws of Kansas, and that under the Laws of Kansas, as interpreted by the Supreme Court of Kansas in the case of *Wolford, Adm'x. v. National Life Insurance Co.*, 114 Kan. 411, 219 P. 263, 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 times specifically fixed for subsequent premiums does not postpone the time for such payments to the anniversary of the date of the policy. Defendant pleaded that under the Full Faith and Credit Clause of

the United States Constitution, it was entitled to have the Laws of Kansas, as interpreted by the Supreme Court of Kansas in said case, applied by the Courts of Utah in determining the rights of plaintiff and of defendant. (Abst. 7-18)

Plaintiff's reply admitted the fraternal character of defendant, admitted the contract contained the language alleged in defendant's answer and reaffirmed the allegations of his complaint, and prayed for judgment in accordance with the prayer of his complaint, and prayed for reformation of the endorsement to correspond with the alleged intention of the parties if necessary.

This case was tried upon an agreed statement of facts. This statement is short, so for the convenience of the Court we will set it out in full in this Brief:

### **"AGREED STATEMENT OF FACTS.**

(Abst. 24-28. Trans. 17, 46)

It is hereby stipulated and agreed by and between 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 of government, and makes provision for the payment of benefits in accordance with Section 43-9-6 of the Revised Statutes of Utah, 1933.

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. 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 delivered 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.

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 endorsement 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."

The Trial Court in written conclusions of law, based upon the Agreed Statement of Facts, found that said Benefit Certificate was on November 7, 1938, the date of the death of Harriett P. Fawcett, by virtue of the provisions for extended insurance contained in paragraph 6 of said Certificate, in full force and effect for death benefits only in the sum of \$1000.00, and that plaintiff was entitled to judgment against defendant for said sum. (Abst. 30-31)

### STATEMENT OF ERRORS.

The Defendant, Appellant herein, contends that the Trial Court erred 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.

All of the above errors involve the same questions and will be discussed together.

### QUESTIONS INVOLVED.

The principal question involved in this case is whether the payment made February 18, 1922, paid for insurance to March 18, 1922, or whether it paid the assessment for the month of February, 1922, requiring another payment to pay the assessment for the period commencing March 1, 1922, and whether subsequent payments were for the period commencing on the first day of each subsequent month or for the period commencing on the 18th day of the month.

A second question involved is the effect of the endorsement placed upon the Certificate January 18,



1929, which stated specifically the Certificate expired October 30, 1938.

A third question involved is whether plaintiff as beneficiary of Harriett P. Fawcett is estopped to claim rights inconsistent with the terms of the endorsement.

A fourth question involved is whether, under the Full Faith and Credit Clause of the United States Constitution, the Laws of Kansas control the rights of all members of Defendant Association, including the date when subsequent assessments become due.

## **BRIEF AND ARGUMENT.**

### **I.**

**THE ASSESSMENT PAID WHEN THE CERTIFICATE WAS DELIVERED FEBRUARY 18, 1922, WAS FOR THE MONTH OF FEBRUARY, 1922, AND A NEW ASSESSMENT BECAME PAYABLE FOR THE PERIOD COMMENCING MARCH 1, 1922, AND FOR THE PERIOD COMMENCING ON THE FIRST DAY OF EACH SUCCEEDING MONTH.**

#### **(a) Method of Operation of Fraternal Benefit Societies.**

At the outset of this argument we wish to call the Court's attention to the fact that the defendant is a fraternal benefit society and not an old line insurance company. The universal practice of fraternal benefit societies is to levy monthly assessments, or as mentioned in Bacon on Life and Accident Insurance, Fourth Edition, page 33, "In the societies the fund is obtained by periodical taxes upon the membership, at stated intervals, or as required, sufficient to meet the demand."

This Court, in the case of *White v. W. O. W.*, 87 Utah 477, 50 P. (2d) 422, had under consideration the difference between fraternal benefit societies and old line life insurance companies, and in the opinion referred to the distinction as defined by Mr. Justice Holmes of the United States Supreme Court:

“The nature of the relationship between the deceased member and the defendant must be understood in order to have a clear notion of the law applicable to the case. Such relationship is well expressed by Mr. Justice Holmes in the case of *Supreme Lodge, K. P. v. Mims*, 241 U. S. 574, at page 580, 36 S. Ct. 702, 704, 60 L. Ed. 1179, L. R. A. 1916F, 919:

“Persons who join institutions of this sort are not dealing at arm’s length with a stranger whose mode of providing for payment does not concern them, but only his promise to pay. They are joining a club the members of which have to pay any benefit that any member can receive. The corporation is simply the machine for collection and distribution.”

The *White* case further discloses how fraternal benefit societies are still operating on the assessment plan, and when necessary may levy extra or multiple assessments, and are not operating on the level premium plan. See also *Jenkins v. Talbot*, 338 Ill. 441, 170 N. E. 735.

The contract in question shows clearly that the member agreed to pay monthly *assessments* and not merely life insurance premiums in payment for insurance for a specified period of time.

Section 103 of the By-laws of the Defendant (Abst. 49), a part of the contract, provides that every member

is required to pay an *assessment* each month. Section 48 provides that the National Executive Committee shall levy extra or special *assessments* when necessary. Section 112 provides that if the *assessment* is not paid on or before the last day of the month, the member becomes suspended (Abst. 49).

**(b) Contract may fix premium due date prior to anniversary of effective date of Policy.**

At the outset of this case plaintiff made the contention that defendant did not have the legal right to require subsequent premiums to be paid on a date other than the anniversary of the effective date of the Certificate. However, plaintiff has apparently abandoned this contention.

It is well established, with but very few exceptions, that an insurance organization may fix the date for payment of premiums, although the policy does not go into effect on a date corresponding to a date fixed for such subsequent premiums. The rule is stated in 32 C. J. Insurance, 1196, Sec. 329, as follows:

“Although there is authority to the contrary, the general rule is that the fact that the policy does not go into effect on a date corresponding to the date fixed for payment of subsequent premiums, does not change the provisions of the contract as to when such subsequent premiums become payable.”

The same rule is announced in 6 A. L. R. 775, as follows:

“When a policy, conditioned to take effect on the payment of the first premium, expressly speci-

fies the date from which the premium period is to be computed, and makes that date the day all the recurring premiums are due and payable, such date must control, regardless of the date on which the policy is delivered.”

There are complete annotations on this subject in 6 A. L. R. 774, 32 A. L. R. 1253, 80 A. L. R. 957, and 111 A. L. R. 1420. See also *Wolford Adm’x. v. National Life Ins. Co.*, 114 Kan. 411, 219 P. 263. As this right is not now seriously questioned by plaintiff, we will not prolong this brief by citing authorities on this question.

The above rule applies to fraternal contracts with much more force than to old line contracts. In an old line company the longer the applicant waits to pay his first premium the shorter the period of protection he receives in return for this premium. In a fraternal society the member may, if he desires, wait until the first day of the next month to pay his first assessment and by so doing will receive a full month’s protection in return for the monthly assessment in addition to a month’s grace period. The choice is left to the member.

Plaintiff stresses the point that an applicant whose Certificate is not delivered until the last day of the month would receive but one day’s insurance in return for his monthly assessment. This is not correct. She would receive insurance protection for the entire month which follows, by reason of the grace period contained in the contract (Constitution and Laws, Sec. 103, 112, Abst. 49, 50.) In Mrs. Fawcett’s case, if she had never paid another assessment after the first she still would have received one month and ten day’s insurance protection in return for one monthly assessment.

**(c) The Contract provides for payments for each calendar month.**

Plaintiff and defendant agree that the main question involved is, "What does the contract provide?" Plaintiff claims that the Certificate and By-laws taken together provided that the first payment paid for insurance from the 18th day of February to the 17th day of March; that the next payment paid for insurance from the 18th day of March to the 17th day of April, etc. Defendant contends that the assessment paid when the Certificate was delivered was the assessment "for the month in which the Certificate is delivered" as required by Section 103 of the By-laws (Exhibit 3, Abst. 49); that the next assessment "became due and payable on the first day of the month" (March), but the member was permitted to pay such assessment and dues "on or before the last day of the month," as provided in Section 112 of the By-laws (Abst. 49, 50), and as provided in the Certificate which requires payment of \$2.35 "to be paid within each month to the Financier of the Local Council;" that the last assessment paid to September 30, 1928, and that the extended protection of 10 years and thirty days expired October 30, 1938.

An examination of the contract will disclose that there is no ambiguity and no inconsistency; that the entire contract is in accordance with defendant's contention that each monthly assessment became payable on the first day of each succeeding month and had to be paid on or before the last day of the month. The Certificate itself provides as follows (Abst. 42):

"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:" (Italics ours.)

When the Certificate of Harriett P. Fawcett was delivered, she was required to pay one assessment and Local Council dues "for the month in which the Certificate was delivered" (February, 1922), and "thereafter on or before the last day of each succeeding month" she was required, without notice, to pay the sum of one assessment and the local dues to the Financier. (Ex. 3, Sec. 103, Abst. 49)

Therefore the assessment and dues for the month of March became due and payable on the first day of March, but the member was permitted to pay such assessment and dues on or before the last day of the month (Ex. 3, Sec. 112, Abst. 49.)

Plaintiff contends that the term "first day of the month" as used in the By-laws, does not mean first day of the month, but on the contrary means the 18th day of the month, and that the term "last day of the month" as used in the By-laws, means the 17th day of the following month, and also contends that the term "within each month" as used in the Certificate, means any time between the 18th day of one month and the 17th day of the following month.

Plaintiff in his complaint was unable to find any language designating the day on which assessments became due, which was more appropriate than that used

by defendant in the contract. He uses the same language as that contained in the contract, but changes the date. The contract provides "all assessments for every month shall become due and payable *on the first day of the month*" (Ex. 3, Sec. 112, pages 57, 58, Abst. 49.) Plaintiff alleges (Abst. 5) "that each payment thereafter fell due *on the 18th day of each month.*" It is difficult to understand how anyone could claim that the term "on the first day of the month," as used in Section 112 of Defendant's By-laws, means "on the 18th day of each month" as alleged by plaintiff in his complaint. Defendant's interpretation is consistent with the language used in the contract. Plaintiff's interpretation changes the language of the contract.

When the term "first day of the month" is used, whether it is in a contract, a journal entry, lease, or any other instrument, it means but one thing, which fact is universally understood. This term is probably used more often than almost any other legal term. Leases provide that rent shall be payable on a certain day of the month. Journal Entries provide that alimony shall be paid on a certain day of the month. Yet the meaning of such terms is never questioned, because they are as clear as the English language can make them.

There are several cases in the United States which interpret the term "first day of each month," "monthly premiums," and similar language.

In the case of *Sov. Camp W. O. W. v. Rhyne*, 171 Miss 687, 158 So. 472, a notice attached to the policy provided that assessments should be paid on or before the first day of each month. The Court interpreted this as meaning on or before March 1, 1933. This, although



the Certificate itself was not dated until February 6, 1924.

The case of *Craig v. Golden Rule Life Ins. Co.*, 184 Ark. 48, 41 S. W. (2d) 769, is quite similar to the instant case. In this case the policy was delivered October 10, 1929, and provided that subsequent payments should be due "on or before the first day of each month during the current calendar year, and monthly in advance thereafter . . . ." The policy further provided for a grace period of twenty days. The insured failed to pay the premium due June 1st on or before June 20th, and was killed June 29th. The Court in the opinion stated:

"It is insisted for appellants that, October 10th being the day the policy was delivered and received by the insured, it thereafter fixed the 10th day of each succeeding month as the due date of the premium thereon, and, the insured being entitled to 20 days' grace on the payment of premiums, the policy was in force on June 29, 1930, when the insured was killed.

*The meaning of the contract is clear and unambiguous*, and its terms were well understood and recognized by the insured and the insurer. The application made on September 28, 1929, recited that the second premium would be due on November 1, 1929; the policy was dated October 9, 1929, the day it was mailed to the insured, and recited that it was granted in consideration of the application and the payment of 85 cents on or before the 1st day of October, 1929, and a like payment on or before the 1st of each month during the calendar year and monthly payments in advance thereafter, increasing annually on January 1st of each year in accordance with the cash savings step rate plan." (Italics ours.)



Here again the language "on or before the first of each month" is interpreted in accordance with Defendant's contention, and the Court held that this language is "clear and unambiguous."

In the case of *Moran v. Knights of Columbus*, 46 Utah 397, 151 Pac. 353, the By-laws provided for forfeiture of membership where the member failed to pay his assessment "within thirty days from the first day of the month in which levied." This Court also took for granted that the By-laws meant what they said and that the "first day of the month" did not mean the 10th, 18th or 25th day of the month. Although the opinion does not state, an examination of the record in that case will undoubtedly disclose that the certificate was delivered on a date later than the first of the month.

In the case of *Kennedy v. M. W. A.*, 92 Utah 487, 69 P. (2d) 508, the certificate, according to the opinion, was issued August 24, 1928, but this Court stated in the course of the opinion that Kennedy paid his dues and premiums for a period of 34 months but stopped payment of premiums and his policy lapsed and became void for non-payment of premiums July 1, 1931 (including one month's grace period,) and he lost his membership standing in the Order. The 34 monthly premiums paid from August, 1928, to May, 1931, both months inclusive, yet the Certificate was not issued until August 24, 1928.

Hundreds of cases can be cited in which the Courts have decided without question that the contracts, using almost identical language as that used by defendant in this case, became void at midnight of the last day of the calendar month. It is significant that in the hun-

dreds or even thousands of cases interpreting fraternal contracts, that no one, up to this time, with possibly one exception, has seen fit to even contend that the terms "first day of the month," "during the month," etc., meant anything other than a month as fixed by the calendar, although in many cases a decision so holding would enable their clients to recover.

As stated above, an examination of the contract as a whole will disclose that the terms "first day of the month," "last day of the month," "within each month," etc., were intended to mean and were understood by the insured to mean but one thing, and that is the first day of each month as fixed by the calendar.

In addition to the Sections of the Constitution and Laws hereinbefore referred to, they contain other references to certain days in the month. Section 159 (Abst. 50, 51) provides that the Financier shall on or before the 5th day of each month make a full and complete report of all assessments paid for or by each member of the Subordinate Council *for the preceding month*, and shall forward the same with remittance not later than the 15th day of the month (Italics ours.) It will be noted that this report is made of payments by members "for the preceding month." If plaintiff's interpretation of the contract were adopted and each member's monthly payment covered a different period of time, it would be impossible to determine what is meant by the term "the preceding month." It is only when defendant's interpretation is adopted that this Section of the By-laws has any meaning. Furthermore it is apparent that the Financier is to make only one report, and that report is to be made on the 5th day of each

month. The remittance is to be made not later than the 15th day of the month. We do not believe even plaintiff would contend that this term, as used in Section 159, is ambiguous, yet it is used in the same contract and uses the same language as that contained in Sections 103 and 112.

Plaintiff in the Trial Court contended, however, that the use in the Certificate of the term "first monthly contribution" means that the first contribution paid for a full month's insurance. Nearly all assessments levied against fraternal certificate holders are monthly assessments, although occasionally assessments are levied quarterly. The term "first monthly assessment" is explained in Section 103 of the By-laws (Abst. 49.) It is the assessment and Local Council dues "for the month in which the Certificate is delivered."

In *Shira v. N. Y. Life Ins. Co.*, 90 Fed. (2d) 953, the insurance policy was dated January 7, 1930, and was delivered to the insured January 16, 1930, on which date the insured paid the first quarterly premium. Subsequent quarterly premiums, by the terms of the policy, became due on April 2, 1930, and a like sum on said date every three calendar months thereafter during the life of the insured. The Court held that it was consistent for parties to a life insurance contract to make such stipulations with reference to the effective date of the policy, the period which the initial payment shall cover, and the times when the future premiums shall become due, and such stipulations are binding on the parties, and further held that the extended insurance ran from the date the premium fell due. Here the term "quarterly

premium” was similar to the term “monthly contribution” used in the instant case.

In the case of *Frysh v. Commercial Casualty Ins. Co.*, 214 Wis. 453, 253 N. W. 184, the policy provided that, “In consideration of the policy fee of Two and No/100 Dollars and the *monthly premium* of Two and 30/100 Dollars” (Italics ours), the insurance was carried to May 1st, “and for such time thereafter as the premiums paid by the insured, as herein agreed, shall maintain this policy in force.” The policy became effective April 15, 1931. The deceased made two other monthly payments. It was Defendant’s contention that the first of the monthly payments kept the policy in force from April 15th to May 1st, and that the other two carried the policy to July 1st. Plaintiff’s contention is that Mike Frysh paid \$2.00 for a policy fee and three monthly premiums amounting to \$6.90, and that the policy having gone into effect on April 15th the three monthly premiums should carry the policy to July 15th. The Court, in sustaining defendant’s contention, said:

“Insofar as the policy is corrected, it is *unambiguous and this conclusion is inescapable. There is no room for construction.*” (Italics ours.)

This, although the policy referred to the premium as “monthly premiums,” similar to the language “monthly contributions” as used in defendant’s contract in the instant case. The Court further stated:

“It seems to us not unreasonable that an insurance company should desire to have its premium payments operate on the insurance as of the first of the month.”

Plaintiff in the Trial Court contended that to give the Certificate the construction contended for by Defendant results in one of three conclusions: either that the first contribution was for term insurance from the date of payment to March 1, 1922, or that it covered a period from February 1, 1922, to March 1, 1922, or that it was not a full month's contribution. As to the first contention, we will say definitely that this was not term insurance. As to the second contention, the assessment was for "the month in which the Certificate was delivered," or the month of February, 1922, although the applicant did not become a member until February 18th. The answer to the second contention also answers the third. The assessment was a monthly assessment.

Plaintiff's final contention is that the construction placed upon the above language by defendant requires 241 monthly payments to be made on a Twenty Pay Life Certificate. The language of the Certificate is as follows:

"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:"

This clause is not in issue in this lawsuit, for the reason that the member at no time made payments for the full period of twenty years. If the question should ever arise as to whether or not the member was required to make 240 or 241 payments in order to pay up her Cer-

tificate, then the question of the correct interpretation of this clause might become important. However, this clause contained in the Certificate is not inconsistent with Defendant's contention. According to Defendant's interpretation, "within each month" would mean on or before the 30th or 31st day of each calendar month. According to Plaintiff's interpretation the term "within each month" means on or before the 17th day of each succeeding calendar month. Under neither interpretation is a two hundred forty-first payment required to be paid until after the expiration of the "completed period of twenty years from the date of the first payment thereon." Similar language has been under consideration by the Courts and has been given the construction contended for by defendant. In the case of *Minnesota Mutual Life Ins. Co. v. Marshall*, 29 F. (2d) 977, 979, in which the question of when a life insurance premium became due was involved, the Court made the following remark:

"An obligation is due during the entire period during which it may be paid, whether that period extends over one day, three days, or thirty days. The premium was not really due, in the sense that the failure to pay it would result in a forfeiture of the policy, until the grace period had expired."

Using the same language in the instant case, a 241st premium was not due, in the sense that the failure to pay it would result in the forfeiture of the policy, until after the maturity of the policy.

It is necessary to use the language "twenty years from the date of the first payment thereon" for the reason that the applicant had sixty days after the date of

issuance of his Certificate within which to pay the first assessment. (Section 96 Constitution and Laws. Abst. 48) In the instant case if Mrs. Fawcett had not paid her first assessment until the 14th of April, her Certificate would not have become paid up until the 14th of April, 1942, thus requiring 240 payments. Twenty years from the date of issuance would have required but 238 payments. However, as stated above, this provision of the contract is not in question in the instant case, but was raised solely in an attempt to inject some ambiguity into an unambiguous contract.

Plaintiff's Attorneys in the trial court cited but two cases which, they claim, tend to sustain their contention. The first is the case of *Sov. Camp W. O. W. v. Reed*, 94 S. 910 (Ala.) The second is *Rybczynski v. Chicago Fraternal Life Assurance Co.*, 277 N. Y. S. 366.

We believe the case of *Rybczynski v. Chicago Fraternal Life Assurance Co.*, 227 N. Y. S. 366, tends to sustain Defendant's rather than Plaintiff's contention. The contract stated that payment would be due on the first day of the calendar month of the quarterly period. A prior Certificate, which was not accepted, was issued January 27, 1926. The Certificate which was accepted was dated February 3, 1926. The Court held that the provision that the payments were due on the first day of the calendar month and must be paid on or before the last day of the month indicated that payments should be made during the month of February, 1927. The only definite holding in the Rybczynski case on this point was that the member had the remainder of the month of February, 1927, in which to make payment. The Court nowhere held that he had to and including

March 2nd. As stated above this holding tends to sustain Defendant's contention rather than that of plaintiff.

As to the Reed case, 94 S. 910 (Ala.), the member paid the December payment on December 31, 1919, and paid two subsequent payments, and in addition had a grace period of one month. Clearly the Certificate was in force under any possible theory on the 25th day of February, 1920. The Court, although it was not necessary, in rendering a decision for the Plaintiff, interpreted the term "monthly premium" as meaning the calendar month to follow, not the calendar month which expired on the day the monthly premium was paid. Whether it was for the month of December, 1919, or January, 1920, is immaterial, because the assessments paid continued the Certificate in force to and within the month of March, 1920.

It is apparent from an examination of the cases cited by the Alabama Court in support of its dicta defining the term "month," that the Court failed to analyze the cases upon which it relied. All of the cases cited interpreted the term calendar "month" as used in contracts and statutes as distinguished from a lunar month. At common law the term "month" meant a lunar month. It was necessary by Statute in most states to provide that the term "month" meant a calendar month. (See Rev. St. Utah 1933, Sec. 82-2-12 (1); G. S. Kan. 1935, Sec. 77-201 (11).) In the case of *Warfield Natural Gas Co. v. Clark*, 257 Ky. 724, 79 S. W. (2d) 21, 97 A. L. R. 971, the Court carefully considered the Reed case and all other decided cases on the point, and made the following logical analysis:



“On the second proposition [that the word ‘month’ as used in the contract between the parties denotes the period between a day of a calendar month and the corresponding day of the succeeding calendar month], there seems to be a confusion of authority with no cases cited that are directly in point. In 5 Words and Phrases, First Series, p. 4674, it is said: “At common law the word ‘month’ when used without qualification, meant a lunar month, or twenty-eight days. [Citing authorities.] . . . Which rule was abolished by statute in England in 1850. [Citing authorities.] In the United States the common-law rule was followed in some of the earlier cases. [Citing authorities.] But the holdings now seem to be uniform that the word, in whatever connection it is used, signifies a calendar month unless a contrary intent is indicated, and in many states this rule has been fixed by statute. [Citing authorities, including *Pyle v. Maulding*, 30 Ky. (17 J. J. Marsh.) 202; *Hardin v. Major*, 7 Ky. (4 Bibb) 104, 105; *Hopkins v. Chambers*, 23 Ky. (7 T. B. Mon.) 257, 262].”

“In the case of *McGinn v. State*, 46 Neb. 427, 65 N. W. 46, 47, 30 L. R. A. 450, 50 Am. St. Rep. 617, cited by counsel for appellant, it is said: “The term ‘calendar month,’ whether employed in statutes or contracts, and not appearing to have been used in a different sense, denotes a period terminating with the day of the succeeding month numerically corresponding to the day of its beginning, less one. If there be no corresponding day of the succeeding month, it terminates with the last day thereof.”

“The case of *Daley v. Anderson*, 7 Wyo. 1, 48 P. 839, 75 Am. St. Rep. 870, cited by counsel for appellant, is to the same effect. See also, *State v. White*, 73 Fla. 426, 74 So. 486; *Page v. O’Sullivan*, 159 Ky. 703, 169 S. W. 542. In the long list of cases cited and in Words and Phrases, supra, and in many other cases not cited, it is held that the word

“month” as used in statutes, contracts, etc., means a calendar month as distinguished from the lunar month, unless the contrary is expressed. But the controversy between counsel here is whether the term “calendar month” means only a month as delimited by the calendar or may also mean a period beginning on a day in one calendar month and running to a corresponding day in the succeeding month. Counsel for appellee of course held to the former view and cite 62 C. J. 969; 26 R. C. L. 732; *Sovereign Camp W. O. W.*, v. *Reed*, 208 Ala. 457, 94 So. 910; *Fairchild-Gilmore-Wilton Co.* v. *Southern Refining Co.*, 158 Cal. 264, 110 P. 951, 953; Ky. Stat. Sec. 452, and subdivision 25 of section 732 of the Civil Code of Practice. The section of the statute cited is in a chapter relating to the construction of statutes, and the section of the Code cited relates to the construction of provisions of the Code. The case of *Fairchild-Gilmore-Wilton Co.* v. *Southern Refining Co.* is more directly in point than any of the other authorities cited. In that case two contracts had been made. One made January 3, 1906, was for the sale of 4,000 tons of asphalt to be delivered within one year from January 1, the delivery to be made as rapidly as possible, provided that not more than 400 tons were to be called for in any one month. Payments were to be made on the 10th day of each month for all material delivered during the preceding month. The second contract was made on May 6, 1906, and is identical in language with the first, except as to date, and the time in which the asphalt was to be taken, which was one year from May 16, 1906, and further that the asphalt furnished under the contract was to be in addition to the amount to be furnished under the former contract. In summing up the conclusion as to the construction to be given the terms of the contract, it was said: “We think the proper construction of the contract of May 16th is that by the ‘one month,’ therein referred to, a calendar

month was intended and understood. *This is shown by the clause immediately following, to the effect that payments were to be made on the 10th of each month for all the asphalt delivered during the preceding month. Evidently both of these kindred provisions refer to the months of the calendar.*" (Italics ours.)

"In *Derby v. Dancey*, 112 La. 891, 36 So. 795, 796, it is said: "A month is a definite period of time, commencing on the 1st day thereof, and ending on the 28th, 29th, 30th, or 31st day."

"From an exhaustive research of authorities, in addition to those cited by counsel for the respective parties, we have been unable to find any fixed rules for determining the meaning of the word "month" as used in contracts, and the failure to find such a rule is not disappointing, since it is apparent at first blush that the meaning of the term, like many others used in contracts, must be determined from the particular sense in which it is used. Where there is doubt or ambiguity in the language of a contract, courts will resort to established rules of construction in determining its meaning. As will be seen from the quoted provisions of the contract, the amount payable for gas furnished during each month shall be due on the 1st day of the following month, and unless paid on or before the 15th of each month, the gas will be shut off without further notice.

"In Webster's New International Dictionary, the words "calendar month" are defined as "(1) any of the months as adjusted in the calendar, now the Gregorian. April, June, September, and November now contain 30 days, and the rest 31, except February, which has 28, and in leap years, 29. (2) The time from any day of such a month to the corresponding day (if any; if not, to the last day) of the next month."

"Standing alone, the quoted excerpt from the rules and regulations on the reverse side of the

application would clearly indicate that the word "month" was used in the sense as first defined in the dictionary, and this construction should be adopted unless the instrument as a whole indicates that it was used in the other sense, or unless it should be made to appear that, by their course of dealing under the contract, the parties themselves put the latter construction upon it. When considered as a whole, there is nothing in the contract to indicate that the term was used other than in the sense of a month as adjusted or delimited by the calendar, nor is there any proof as to the conduct or dealings of the parties under it to warrant a conclusion that they gave it any other construction. *The use of the kindred terms "each month," "on the first day of the following month," and the "5th of each month," as said in Fairchild-Gilmore-Wilton Co. v. Southern Refining Co., supra, indicates not only a "calendar month" but "a month of the calendar" was meant and understood.* (Italics ours.)

We believe the conclusion is inescapable that the contract issued by Defendant to Harriett P. Fawcett was clear and unambiguous; that the terms "the first day of each month," "within each month," "assessment for the month in which the Certificate is delivered" and "on or before the last day of each succeeding month" are perfectly clear, and that the Certificate of Harriett P. Fawcett, as extended, became null and void on October 30, 1938.

**(d) The construction placed upon the contract by the parties thereto is controlling.**

It is universally recognized that the intention of the parties to a contract is the controlling element to be con-

sidered. This rule is well stated in 1 Couch on Insurance, page 346, as follows:

“The rule of interpretation of insurance contracts, and the first object of construction, is to ascertain the intention or meaning of the parties, and the duty of the courts is to construe the contract accordingly.”

Couch further announces the rule for ascertaining the intention of the parties as follows: (P. 351)

“However, the meaning of an insurance contract may be measured by the conduct of all the parties thereto, if the terms of the contract, when reasonably construed, are in harmony with that conduct, since, where the parties have themselves placed a construction on certain provisions of the contract, and the same is neither in conflict with any language therein, nor violative of statute, regulation, or public policy, the courts will adopt such construction. And when the parties to an ambiguous insurance contract, by their own acts, place a construction upon it, *that construction is the best evidence of what the contract was actually intended to mean.*” (Italics ours.)

In the case of *Scotten v. Metropolitan Life Ins. Co.*, 336 Mo. 724, 81 S. W. (2d) 313, the Court held that although the policy was ambiguous as to whether the premiums were due on the anniversary of the date of the policy or on the anniversary of its delivery, this required a construction of the policy as it was understood and acted upon by the insured and the insurer. The Court held:

“It is a well established rule of law that the construction placed upon a contract by the parties, as evidenced by their acts, conduct or declarations

indicating a mutual intent and understanding, will be adopted by the Courts where the language of the contract is ambiguous, or there is reasonable doubt as to its meaning, but not where it is plain and unambiguous."

There is no evidence whatever that Harriett P. Fawcett did not understand the contract in question as requiring payments to be made during the month of March, 1922, and during each calendar month thereafter. The Agreed Statement of Facts discloses that she made her final payment on September 30, 1928, which was the final date for making that monthly payment, according to Defendant's theory. While this evidence is slight, it indicates that Mrs. Fawcett followed the all too human habit of waiting until the last day to make her payments. Outside of this, the only evidence as to the understanding of the parties is the rider attached to the Certificate. This rider is clear, unambiguous and not open to construction. If this rider is held not to be a new contract, it still should be given the greatest weight in determining the intention of the parties. The rider expresses the interpretation as understood by Defendant, it expresses the interpretation of the contract as practiced by all fraternal societies and other assessment insurance organizations, and expresses the interpretation of the contract as accepted by the Courts without question in thousands of reported cases, and unquestionably expresses the interpretation of the insured Harriett P. Fawcett. We wish to set out the language of the rider in full in this Brief for the consideration of the Court. The endorsement provides as follows:

“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)

It will be noted that in two different places the rider is specific as to the period covered. It states that the insured is entitled to death benefits only in the sum of \$1000.00 “for ten years and thirty days from October 1, 1928.” Again it states, “this Certificate of membership expiring October 30, 1938.” Certainly there is nothing ambiguous about this rider. It was received and retained by Harriett P. Fawcett for over ten years without objection.

The rule is well stated in 32 Corpus Juris, Insurance, page 1129, Sec. 233, as follows:

“In the absence of fraud, the unconditional delivery of a policy corresponding with the terms of the application consummates the contract. By the delivery of the policy to insured he is put on notice of the conditions therein expressed. Also, in the absence of fraud or mistake, a policy of insurance, on acceptance thereof, becomes a valid and

binding contract; it is the final contract between the parties, superseding all preliminary agreements and negotiations; it is conclusive as to the engagements of both parties in respect to the obligations declared in it; insured is bound by, and is conclusively presumed to have knowledge of, and to have assented to, all the terms, conditions, limitations, or other provisions or recitals, in the policy, including statements in the application where it is expressly made a part of the policy."

Corpus Juris further states the rule on page 1139 as follows: (Sec. 246)

"Likewise by accepting and retaining the policy or other final written contract of insurance for a considerable period of time, without objection, he waives any departure in the contents of the policy or contract from the application, preliminary agreement, or other prior instrument, and is estopped and precluded from asserting that it is not his contract. Ordinarily failure of insured to read or examine the policy is such negligence as estops him from asserting that it is not his contract. . . ."

This endorsement is the strongest evidence of the interpretation of the contract in question. The rider was short, plain and unambiguous. The presumption is that Harriett P. Fawcett read it and by accepting and retaining it for a period of over ten years she certainly led Defendant to believe that this was her understanding of the contract. Unquestionably this rider did express her interpretation of the contract, as it expressed the construction placed thereon by Defendant. There is absolutely no evidence to the contrary. This is the strongest evidence of the correct construction of the contract.



## II.

**THE ENDORSEMENT ON THE CERTIFICATE CONSTITUTED A NEW CONTRACT.**

The endorsement placed upon the Certificate of Harriett P. Fawcett, together with the surrounding circumstances, disclose clearly that a new contract was consummated at that time. Mrs. Fawcett agreed in her application for change to extended protection, of date January 6, 1929, that the extended Beneficiary Certificate should be in substitution and revocation of all rights and interests to which she might have been entitled under said Beneficiary Certificate before change. (Abst. 52) The endorsement placed upon the Certificate refers to the Certificate, but limits the terms thereof. It requires no citation of authorities to prove that a new contract need not in itself contain all the provisions, but may refer to a superseded contract for the remainder of the terms. An example is an extension agreement, which of itself does not contain all the terms set forth in an original mortgage, but which refers to the original mortgage and changes some of its terms.

On January 6, 1929, Harriett P. Fawcett did not have the right under her original contract, to extended insurance. The original Certificate provides that the member shall have the option to obtain extended insurance "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.*" (Abst. 44.) Harriett P. Fawcett

had not complied with this requirement and therefore was not entitled to extended insurance as a matter of right under Option VI of her contract. The Agreed Statement of Facts shows that the last payment made by Harriett P. Fawcett was on September 30, 1928, which payment was for the month of September (Abst. 26.) At the time she made application for extended insurance she was in default in the payment of the October, November and December, 1928, payments. The terms contained in this option are similar to those under consideration in the case of *Kennedy v. M. W. A.*, 92 Utah 487, 69 P. (2d) 508, in which the Court held that the member must be in good standing in order to have a contract right to extended insurance.

Plaintiff contended and the Trial Court found that the endorsement had no force or effect, and that Mrs. Fawcett's right to extended insurance was in effect by virtue of the provisions for extended insurance contained in the original Certificate. This ruling obviously was error.

### III.

#### **PLAINTIFF IS ESTOPPED TO CLAIM THE CONTRACT DID NOT TERMINATE OCTOBER 30, 1938.**

Plaintiff, of course, as beneficiary of Harriett P. Fawcett, has only the rights that she would have had under the contract. It is evident that Mrs. Fawcett, after accepting and retaining the endorsement for over ten years without objection, would be estopped to claim that it did not correctly state the understanding of the

parties. The correct rule of law, as stated in 32 Corpus Juris, page 1139, is hereinabove quoted, and provides that a party, by accepting and retaining a written contract for a considerable period of time without objection, is estopped and precluded from asserting that it is not his contract. This rule is universal and requires no further authorities.

#### IV.

### **UNDER THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION, THE LAWS OF KANSAS CONTROL THE RIGHTS OF ALL MEMBERS OF DEFENDANT ASSOCIATION.**

In Defendant's Answer, it pleaded its right under the Full Faith and Credit Clause of the United States Constitution to have the rights and obligations of all members interpreted under the Laws of Kansas. The Supreme Court of the United States has on numerous occasions sustained this right. (See *Supreme Council, Royal Arcanum v. Green*, 35 S. Ct. 724, 237 U. S. 531; *M. W. A. v. Mixer*, 45 S. Ct. 389, 267 U. S. 544.) The latest decision of the United States Supreme Court on this question was in the case of *Sov. Camp W. O. W. v. Bolin*, 305 U. S. 66, 59 S. Ct. 35, decided November 7, 1938, in which Mr. Justice Roberts paraphrased Mr. Justice Holmes' language in the Mixer case as follows:

“First. The beneficiary certificate was not a mere contract to be construed and enforced according to the laws of the state where it was delivered. Entry into membership of an incorporated beneficiary society is more than a contract; it is entering into a complex and abiding relation and the

rights of membership are governed by the law of the state of incorporation. Another state, wherein the certificate of membership was issued, cannot attach to membership rights against the society which are refused by the law of the domicile."

This Court, in the case of *White v. W. O. W.*, 87 Utah 477, 50 P. (2d) 422, has recognized and followed the rule as announced by the United States Supreme Court. We quote from the opinion:

"Decision of Supreme Court of domicile of fraternal benefit association held decisive on question of association's power to levy multiple assessments against holders of death benefit certificates."

The Supreme Court of Kansas, in the case of *Wolford, Administratrix, v. National Life Ins. Co.*, 114 Kan. 411, 219 P. 263, pleaded in Defendant's Answer, held as follows:

"A policy of life insurance specifically provided for the annual payment of premiums after the first on the anniversaries of the date of the policy, with a grace period of one month, and that a failure to pay any premium when due should forfeit the rights of the insured and terminate the obligations of the insurance company under the policy. The policy was not delivered to the insured until 22 days after its date. Held, that the fact that the policy was not delivered on its date or a date corresponding with the times specifically fixed for the payments of subsequent premiums did not postpone the time for such payments to the anniversary of the date of delivery." (Syl.)

Although, as heretofore stated in this Brief, apparently plaintiff does not now question the right of

defendant to require subsequent premiums to be paid on a date prior to the anniversary of the policy, defendant still insists upon its constitutional right to have the rights of its members interpreted in accordance with the Law of Kansas.

### CONCLUSION.

From the above we believe the conclusion is incapable that the evidence clearly shows:

1. That the first assessment paid when the Certificate was delivered was the monthly assessment for the month in which the Certificate was delivered; that the next assessment was for the month of March, 1922, although the member had as days of grace until midnight of the last day of March in which to pay said assessment; that each subsequent assessment was for the period commencing on the first day of each month as designated by the calendar; that the last assessment was for the month of September, 1928; that the extended insurance of ten years and thirty days commenced to run October 1, 1928, and terminated October 30, 1938; that this was the understanding of the parties to the contract, as is evidenced by the fact that the member had in her possession for over ten years an endorsement so providing and at no time made any complaint or objection thereto; that the endorsement placed upon the Certificate January 18, 1929, was, as provided in the application therefor, "in substitution and revocation of all rights and interest to which [she] may have been entitled under the said Beneficiary Certificate before change."

2. That the member's rights and the rights of plaintiff as her beneficiary are fixed and determined by said endorsement.

3. That plaintiff, as beneficiary of Harriett P. Fawcett, is estopped to claim any rights inconsistent with the terms of the endorsement, and

4. That under the Full Faith and Credit Clause of the United States Constitution the rights of all members, including Harriett P. Fawcett, and of plaintiff as her beneficiary, must be determined under the Laws of Kansas, and that under such Laws the act of defendant in requiring assessments after the first to be paid on a date prior to the anniversary of the delivery of the Certificate was legal and valid.

From the above the defendant respectfully contends that the judgment of the trial court should be reversed and judgment rendered herein for the appellant, or that the cause be remanded for further proceedings.

Respectfully submitted,

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