CERTIFICATES OF TITLE TO POLICIES OF LIFE ASSURANCE.

To the Editor of the Transactions of the Faculty of Actuaries.

SIR,—In April 1897 a paper by Dr. T. B. Sprague was read before the Institute of Actuaries in which he advocated the issue of Certificates of Title on the request of the Policyholder, after an investigation of the Title by the Solicitor of the Office at the expense of the applicant. The discussion on the paper showed general agreement with this recommendation, and I understand that the practice, though not general, is at present sometimes followed.

Since the paper was read, however, several unlooked-for legal decisions have altered previous conceptions of the security of the Title in certain cases, and the issue of such Certificates of Title may possibly place the Office in an unfortunate position, because the Solicitor's opinion may prove to be erroneous in the light of subsequent legal decisions.

Take the well-known case of the Scottish Life Assurance Company, Ltd. *v.* John Donald, Limited, (1901). A Policy was taken out under the Married Women's Policies of Assurance (Scotland) Act, 1880, for the benefit of the Life Assured's wife, and was subsequently assigned with the consent and concurrence of the wife. On the death of the Life Assured the widow disputed the validity of the assignment, on the ground (*inter alia*) that the Policy was a provision for her of which she was incapable of depriving herself while the marriage subsisted. This contention was declared to be sound, the Court holding that, in certain circumstances, a wife cannot alienate her interest in such a Policy.

It is plain that an Office which had, previous to this decision, granted a Certificate of Title to the assignee of such a Policy in the full belief that his Title was in order, might find itself in the predicament of having to pay the claim twice over.

It will be sufficient to take one further instance—*In re* Robinson,—Clarkson *v.* Robinson (*Times Law Reports*, 28th October 1910). This was a case under the Moneylenders Act, 1900. This Act contains seven sections, only the first two of which are material to the present discussion.

The first section deals with the reopening of the transactions of a moneylender in the case of agreements made after the passing of the Act where

the Court considers that the charges are excessive, and that the transaction is harsh and unconscionable.

There is a clause securing the rights of any *bona fide* assignee or holder for value without notice, but it relates to this section only.

The second section—

(1) provides that a moneylender as defined by the Act

(*a*) shall register his trade name and address or addresses ;

(*b*) shall carry on the moneylending business in his registered name only and at his registered address or addresses alone ,

(*c*) "shall not enter into any agreement in the course of his business "as a moneylender with respect to the advance and repayment "of money, or take any security for money in the course of his "business as a moneylender, otherwise than in his registered "name" ;

(*d*) shall on reasonable request and on reasonable payment for expenses furnish a borrower with a copy of any documents relating to the transaction ;

and

(2) fixes penalties of fine or imprisonment for non-compliance with the requirements of this section.

In the case under review, R., the beneficiary under a will, in consideration of £400 paid to him by one Levine, a moneylender, who carried on business under the registered name of Leslie, transferred to Levine £800, part of the share to which he was entitled under the will. The deed purported to be an out-and-out transfer of the £800 to Levine in his individual name, and contained no covenant by R. to pay the £800 or any sum of money or interest. The Court held that, notwithstanding the form of the deed, it was a security for money given to Levine in the course of his business as a moneylender, and as it had not been taken by him in his registered name of Leslie, it was void under Section 2 (1) (*c*) quoted above. As already indicated, the rights of a *bona fide* holder for value are not protected under this section.

I understand that steps are being taken at present with a view to securing full protection for *bona fide* holders for value claiming under moneylenders, including Insurance Companies in respect of claim and surrender payments, and in respect of loans. Meantime, however, and until a *bona fide* holder has obtained such protection, an Office which, prior to this decision, had given a Certificate of Title, might find itself in a rather awkward situation.

These are two examples of cases where legal decisions adverse to the holder's claim might have been given after he had received from the Office a Certificate that his Title was in order.

In view of the uncertainty caused by the possibility in the future of other unforeseen legal decisions, it would appear to be advisable for an Office, when asked to grant a Certificate of Title, either to reply to the effect that they are not concerned to inquire into the Title until called upon to make some payment under the Policy, or to state that on payment of the necessary fee they will submit the matter to their Solicitor, on the understanding that while the latter's opinion may be regarded as practically final, they do not guarantee that the matter will not be reopened when a payment falls to be made.

An Office is not bound to express any opinion as to the effect or validity of the Title until it is called upon to make payment under the policy. Mr. Wark has pointed out (*T. F. A.* iv. 19) that in view of the decisions in

the case of the *Allgemeine Deutsche Credit Anstalt and others* v. *The Scottish Amicable Life Assurance Society and others* in Scotland, and in the case of *Honour* v. *The Equitable Life Assurance Society of the United States* in England, "it may be taken as settled that neither in Scotland nor in "England will the Court determine the rights of parties in a life policy "during the subsistence of the policy, and that the insurer is not bound to "indicate any opinion or make any admission as to the title to a life policy "until the policy becomes a claim."

I am,

Yours faithfully,

HUGH W. BROWN.

35 St. Andrew Square,
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