

Counsel for Plaintiff in Error.

of the bankrupt or of his administrator, the assignee did not show such diligence as entitles him to exemption from the limitation of two years prescribed by the statute. The court below would not have erred if it had given a peremptory instruction to find for the defendant upon the issue as to limitation.

The case presents another question raised by the defendant's requests for instructions, namely, whether, in view of the peculiar nature of contracts of life insurance, any interest which the bankrupt had in these policies — assuming that he had not, at the time of his bankruptcy, effectively transferred them for the benefit of his daughters — passed to his assignee. The defendant contended in the court below, and contends here, for the negative of this proposition, and insists that if any interest passed to the assignee, it was only such as was represented by the cash value of the policies at the time of the bankruptcy. We do not find it necessary to consider these questions, as what has been said will probably result in a disposition of the whole case under the issue as to the statute of limitations.

*The judgment is reversed, and the cause remanded with directions to grant a new trial, and for further proceedings consistent with this opinion.*

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#### CLEARY v. ELLIS FOUNDRY COMPANY.

ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MASSACHUSETTS.

No. 160. Argued December 13, 1889. — Decided January 6, 1890.

*Avery v. Cleary, ante, 604, affirmed; but as the defendant did not prosecute a writ of error, the judgment below is affirmed on the ground that no error was committed to the plaintiff's prejudice.*

THE case is stated in the opinion.

*Mr. Eugene M. Johnson (with whom was Mr. Nathan Morse on the brief) for plaintiff in error.*

## Opinion of the Court.

*Mr. Joshua D. Ball* for defendant in error.

MR. JUSTICE HARLAN delivered the opinion of the court.

The statement of facts made in *Avery v. Cleary*, just decided, is, in the main, applicable to the present case. The additional facts necessary to be stated are these:

On the 21st of May, 1879, Ellis made a written assignment to the Ellis Foundry Company, a Massachusetts corporation, of policy 68,429, and all his rights under it, with all moneys payable or which might be payable thereon. That corporation, at the same time, gave a writing to Ellis showing that it received the above policy as collateral security for the payment of a debt due to it from Ellis of \$5540.14 within one year from March 1, 1879, with interest, and of all other sums of money that he might owe that company within four years thereafter. Out of the proceeds of this policy collected by Avery as administrator of Ellis, the Foundry Company received, December 31, 1879, the sum of \$5901.64, the amount which Ellis, at his death, owed that corporation.

The present action was brought September 30, 1882, to recover from the company the entire amount received by it on policy 68,429. It proceeds upon the same grounds substantially as those set forth in the other suit. The defendant denied that it had collected such proceeds, and, besides controverting the material allegations of the declaration, pleaded in bar of the action the statute of limitations of two years.

At the close of the evidence it claimed the right to go to the jury, and presented certain prayers for instructions which the court declined to give. This claim was denied, and the court ruled, as matter of law, that upon the evidence the plaintiff was entitled to recover from the defendant only the amount the insurance company would have paid the assignee in bankruptcy as the cash surrender value of the policy at the date of the filing of the petition in bankruptcy, namely, July 3, 1878. It being agreed that such value was \$1200, the jury were instructed to return a verdict in favor of the plaintiff for that amount, with interest from December

## Syllabus.

31, 1879, the date of the payment by Ellis' administrator to the defendant of the sum of \$5901.64. To that instruction the plaintiff excepted, but did not present any prayers for instructions. A verdict was returned in conformity with the direction of the court, and judgment was entered thereon.

For the reasons given in the opinion in *Avery v. Cleary*, the peremptory instruction to the jury to find a verdict in favor of the plaintiff for the surrender value of policy 68,429 was erroneous. But as the defendant did not prosecute a writ of error, the judgment below must be affirmed, upon the ground that no error was committed to the prejudice of the plaintiff. His action was barred by limitation; for, there can be no doubt that this suit is between the assignee and a corporation claiming an adverse interest.

*Judgment affirmed.*

### ROBERTSON *v.* EDELHOFF.

#### ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

No. 170. Argued December 19, 20, 1889. — Decided January 6, 1890.

Ribbons, composed of silk and cotton, in which silk is the component material of chief value, used exclusively as trimmings for ornamenting hats and bonnets, and having a commercial value only for that purpose, are liable to only 20 per cent duty, under the following provision in "Schedule N. — Sundries," in § 2502 of Title 33 of the Revised Statutes, as enacted by the act of March 3, 1883, 22 Stat. 512: "Hats, and so forth, materials for: Braids, plaits, flats, laces, trimmings, tissues, willow-sheets and squares, used for making or ornamenting hats, bonnets and hoods, composed of straw, chip, grass, palm-leaf, willow, hair, whalebone, or any other substance or material, not specially enumerated or provided for in this act, twenty per centum ad valorem;" and are not liable to 50 per cent duty, under the following clause in "Schedule L. — Silk and Silk Goods," in the same section, Id. 510: "All goods, wares and merchandise, not specially enumerated or provided for in this act, made of silk, or of which silk is the component material of chief value, fifty per centum ad valorem."

The present case is controlled by that of *Hartranft v. Langfeld*, 125 U. S. 128. It was proper for the Circuit Court to direct a verdict for the plaintiff.