whether that fraud arose in connection with an insurance policy or the simplest contract.[20]

An insurance policy is unique in that the insured will strain his financial resources to the limit in order to keep the policy in force, and our state has recognized this fact by passing laws regulating the issuance of these policy contracts.[21] Once a policy is issued, the insurance company must be required to live up to the terms of the contract provided the policy was honestly obtained.[22]

We believe that our court, in granting relief in the principal case,[23] as well as others,[24] has dealt justly with complainant and defendant, and that its decision will do much to deter applicants from making dishonest statements. However, we believe that the court should construe each policy strictly and only grant relief where it is clearly apparent the policy would not have been issued if the misrepresentations had not been made.[25]

Statute of Limitations — Action on a Judgment — Part Payment to Toll Statue.—Before the Statute of Limitations had run on a judgment, the judgment debtor made part payments. Plaintiff brought an action on the judgment more than 20 years after its rendition, but less than 20 years after the last part payment. *Held*: Recovery denied. Partial payment of

20. See *supra*, notes 6, 7, 14, 16 and 18.

21. R. S. 17:34-1 to 48 inclusive; N.J.S.A. 17:34-1 to 48 inclusive.

22. Prudential Insurance Company of America v. Connallon, 106 N.J.Eq. 251, 150 A. 564 (Ch. 1930).

23. Metropolitan Life Insurance Company v. Tarnowski, 130 N.J.L. 1, 20 A. 2d 421 (E. & A. 1941).

24. Metropolitan Life Insurance Company v. Lodzinski, *supra*, note 6; Prudential Insurance Company v. Nilan, 111 N.J.Eq. 347, 162 A. 605, 93 A.L.R. 369.

25. Teitelbaum v. Massachusetts Accident Company, 13 N.J.Misc. 811, 181 A. 295 (S. Ct. 1935), *aff'd*, 116 N.J.L. 417, 184 A. 808 (E. & A. 1936); Foster v. Washington National Insurance Company, 118 N.J.L. 228, 192 A. 59 (S. Ct. 1937); Metropolitan Life Insurance Company v. Lodzinski, *supra*, note 6.

a judgment does not suspend the running of the Statute of Limitations. *La Salle Extension University v. Barr,* 19 N.J. Misc. 387, 20 A. 2d 609 (Second District Court of Paterson 1941).

Perhaps nowhere in the law is there a problem more perplexing to theory nor one where the decision of a case reflects more sensitively the theory on which the court proceeds, than in the matter of limitations of actions in regard to part payments on judgments.

There is a split of authority in the decisions in regard to whether the running of the Statute of Limitations is suspended in the case of judgments by payments on account thereof. This is due to a difference of opinion as to whether a judgment is a contract within the rule that payment on account of a contract tolls the statute. The doctrine that part payment revives an action on which the Statute of Limitations has run is by general consent, for some unclear reason, applied only in cases of contracts.[1] Text writers in classifying contracts are accustomed to speak of judgments as contracts of record.[2] And a judgment has been held to be an implied contract within the meaning of the statute.[3] It is not, however, a true contract; at most it is an obligation "implied in law" for the payment of money,[4] the so called quasi-contract. And it is generally held that the term "contract" includes only those obligations based on consent of the parties and not those that are quasi-contractual.[5] A judgment is held not a contract within the meaning of the Constitution prohibiting legislation impairing the obligations of contracts.[6] Nor is it within the rule by which Statutes of Limitations are tolled by a new promise or part payment. That rule has been held directly not to apply to judgments.[7] Also it has been distinctly held by the United States Su-

1. WOOD, LIM. (sec. 66, 3rd edition).
2. 1 STORY, CONTRACTS, 2.
3. Gutta Percha Co. v. Mayor, 108 N.Y. 276, 15 N.E. 402 (1888).
4. Dowling v. Hastings, 211 N.Y. 199, 105 N.E. 194 (1914).
5. State of Louisiana, *ex rel* Folsom Bros. v. Mayor of New Orleans, 109 U.S. 285, 3 S. Ct. 211, 27 L. Ed. 936 (1883).
6. Morley v. L. S. & M. S. Ry. Co., 146 U.S. 162, 13 S. Ct. 54, 36 L. Ed. 925 (1892). "A judgment is, in no sense, a contract or agreement between the parties because defendant has not voluntarily assented to pay."
7. Berkson v. Cox, 73 Miss. 339, 18 So. 934 (1895); McAleer v. Clay County, 38 Fed. 707 (1889); Hughes v. Boone, 114 N.C. 54, 19 S.E. 63 (1894).

preme Court that a new promise or part payment does not interrupt the running of the Statute of Limitations in the case of a judgment.[8]

The question as to whether or not a judgment may be regarded as a contract frequently arises as a question of statutory construction. It is submitted that in such case the question is not whether a judgment is a contract in any sense of the term, but whether it is a contract within the meaning of that term in the particular statutory provision under construction. Thus to justify the decision in the principal case it is best to consider the New Jersey Statutes on Limitations of Actions. N.J.R.S. 2:24-1 (limitations of actions) applies to actions in the nature of debt founded on ordinary contracts. N.J.R.S. 2:24-6 provides a separate section on limitation of actions in respect to judgments. It is noteworthy to observe that the legislature made separate statutory provisions in regard to ordinary contracts and judgments. This factor raises a strong inference that judgments are not considered as contracts in New Jersey. Thus, in support of the case at bar, it is suggested that a judgment is not a contract within the meaning of our Statute of Limitations and that an action on a judgment is not ex-contractu. The part payment of a judgment, therefore, does not toll the statute or raise a new promise such as will start the statute running anew.

Furthermore it is highly significant to note N.J.R.S. 2:24-5, another section of the limitations of actions statute. Here the legislature provided that in actions on lease, specialty, or award . . . such actions must be commenced within 16 years after the accrual of such cause of action, but that "if payment is made on any such lease, specialty or award . . . within or after such period of 16 years, an action may be commenced within 16 years next after such payment." Compare this with the immediately following section of Limitation of Actions on Judgments, R.S. 2-24-6, which states, "A judgment . . . may be revived by scire facias or an action at law may be brought thereon within 20 years next after the date thereof."

It is important to note that the limitation of time within which actions on judgments are required to be brought is absolute. The legislature makes no exception suspending the operation of the statute in cases where part payment shall be made by the judgment debtor. Hence where

8. Morley v. L. S. & M. S. Ry Co., *supra*, note 6.

a time is prescribed within which actions on judgments must be brought, neither a new promise nor part payment will toll the bar of the Statute of Limitations.

It is submitted that the decision in the principal case, in accord with the weight of authority, is wholly sound. Since the 20-year period has passed, suit on the judgment no longer lies. Part payment does not revive the judgment or toll the Statute.[9]

Wills—Distribution of Gift Over to "Issue".—Decedent's will contained a gift to *A* for life, remainder to *A's* "lawful issue . . . in equal parts share and share alike, and if any of such issue be then deceased, leaving lawful issue, such issue to take their parent's share." At the time of the execution of the will, *A* had one child, *B*. At the time of *A's* death, she left her surviving *C*, an adopted child of *B*, *D*, a child born subsequent to the execution of the will, and four grandchildren, the children of *D*. On appeal from a decree of distribution made by the Orphan's Court, *held*, *inter alia*, that *D* and his four children are entitled to share equally as the "lawful issue" of *A*. *In re Fisler*, 131 N.J. Eq. 310, 25 A. 2d 265, (Prerog. 1942).

In decreeing distribution of a gift over to "issue" on a capital rather than a stirpital basis, the court in the instant case perpetuates unnecessarily "a stubborn rule of law"[1] required "to apologize for its existence."[2]

Assuming that the established technical meaning of the word "issue" includes remote descendants as well as children,[3] it does not follow, as

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9. In accord: Garabedian v. Avedesian, 42 R.I. 78, 105 A. 516 (1919); McCaskill v. McKinnon, 121 N.C. 192, 28 S.E. 265 (1897); Olson v. Dahl, 99 Minn. 433, 109 N.W. 1001 (1906).

1. Cardozo, J., in New York Life Insurance & Trust Co. v. Winthrop, 237 N.Y. 93, 142 N.E. 431 (Ct. of App. 1923).

2. Chancellor Wolcott in Wilmington Trust Co. v. Chapman, 171 A. 222 Del. Ct. of Ch. 1934).

3. *e.g.*, Price v. Sisson, 13 N.J.Eq. 168 (Ch. 1860); *aff'd*, Weehawken Ferry Co. v. Sisson, 17 N.J.Eq. 475 (E. & A. 1864).