Washington University Law Review

Volume 22 | Issue 2

January 1937

Insurance—Total Disability Benefits—Chronic Intoxication as Self-Inflicted Injury

The Supreme Court of Oklahoma took a liberal view in holding a son-in-law to have an insurable interest in his mother-in-law, who had lived with him and looked after his home and children.[18] In Illinois it is said by way of *dictum* that a decree of divorce ordering the husband to pay his divorced wife alimony gave her an insurable interest in his life.[19] Where a man named his wife or his heirs as beneficiary in his policy, but on the wife's death changed the beneficiary to a married woman, later divorced, with whom he went to live and who took care of him until his death, an Illinois court held that she prevailed over his heirs.[20] In Arkansas it was decided that though a son-in-law has no insurable interest in his father-in-law, this defense can be asserted only by the insurer and not by a reinsurer.[21] It has been held in that state that a son-in-law had no insurable interest in the life of his father-in-law from the mere fact that the father-in-law lent the son-in-law money, was willing to lend him more and was kindly disposed to him, but the real basis for the decision seems to be that at the time the policy was taken out the father-in-law was 60 years old, thus giving rise to a suspicion that the policy was taken out as a wager.[22]

S. J. B.

INSURANCE—TOTAL DISABILITY BENEFITS—CHRONIC INTOXICATION AS SELF-INFLICTED INJURY—[Oklahoma].—Is a disability resulting from chronic alcoholism the "result of a self-inflicted injury" within the meaning of that term as used in a life insurance policy providing for disability benefits? This question was recently answered in the negative by the Oklahoma Supreme Court on the facts in the case of *New York Life Insurance Company v. Riggins*.[1]

In this case by the terms of a life insurance policy the premiums were to be waived during the total disability of the insured. The policy also provided that the disability benefits were not to be available if the disability of the insured resulted from a "self-inflicted injury." In an action on the policy the insurance company disclaimed liability because of non-payment of premiums. It contended that the disability benefits should not be allowed on the ground that the disability was caused by the chronic alcoholism of the insured which was due to his intentional drinking of intoxicating liquor, and hence was a "self-inflicted injury" within the terms of the policy.

In rejecting this contention the court pointed out that although the insured intended to drink the liquor, "he did not in fact intend to bring about

18. Mut. Aid Union v. Stephens, 97 Okl. 283, 223 Pac. 648 (1924).
19. Begley v. Miller, 137 Ill. App. 278 (1907). The insured himself procured the policy, thus eliminating the necessity of her having an insurable interest in his life.
20. Johnson v. Van Epps, 14 Ill. App. 201, aff'd in 110 Ill. 551 (1883).
21. American Ins. Union v. Manes, 150 Ark. 315, 234 S. W. 496 (1921).
22. Home Mut. Ben. Ass'n v. Keller, 148 Ark. 361, 230 S. W. 10 (1921).

1. 61 P. (2d) 543 (Okla., 1936).

the condition known as chronic alcoholism resulting in partial brain destruction. . ."[2] The court relied on an analogy to cases interpreting the self-destruction clauses of insurance policies which have held that an act intentionally committed which unexpectedly causes death does not come within the terms of a policy excepting the insurer from liability in case of self-destruction.[3]

Thus in *Courtemanche v. Supreme Court, I. O. F.*[4] it was held that although the insured's death was caused by his voluntary act in taking carbolic acid in order to frighten his wife into giving him money, the insurer could not escape liability on the policy which excepted self-destruction, because the result was not intended by the insured. This is the prevailing view[5] and has been followed by cases in Illinois[6] and Kansas.[7] Presumably the problem concerned in the *Courtemanche* case would not arise in Missouri in view of the statute which makes void any provision excepting suicide in a life insurance policy unless the insured contemplated suicide at the time he applied for the policy.[8] However, in the case of *Shaw v. Mutual Protective Insurance Company*[9] the Missouri court held that a nervous breakdown caused by overwork was not a "voluntary act" within the terms of a life insurance policy which provided for a sick indemnity.

It should be noted that the court in the instant case did not consider the casual relationship between the insured's voluntary intoxication and the consequences that followed, as was done in the case of *Mutual Life Insurance Company v. Lawrence*,[10] and as is done in fixing criminal responsibility apart from certain unusual statutory crime.[11] Neither did the court consider the presumption that a man intends the consequences of his voluntary act,[12] but based its decision wholly on the question of the insured's

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2. Supra, note 1.

3. Northwestern Mutual Life Insurance Company v. Hazelett, 105 Ind. 212, 4 N. E. 582, 55 Am. Rep. 192 (1886); Michigan Mutual Life Insurance Company v. Naugle, 130 Ind. 79, 29 N. E. 393 (1891).

4. 136 Mich. 30, 98 N. W. 749, 64 L. R. A. 668, 112 Am. St. Rep. 345 (1904).

5. In Equitable Life Insurance Society v. Paterson, 41 Ga. 338, 5 Am. Rep. 535 (1870) the court held that although the insured drank to intoxication and while intoxicated took an overdose of laudanum and died therefrom, this was not "dying by his own hand" within the terms of the policy. See also 37 C. J. 552. For a collection of cases on this point see 6 Cooley, *Briefs on the Law of Insurance* (2d ed. 1928) 5434.

6. Gooding v. United States Life Insurance Company, 46 Ill. App. 307 (1892); Connecticut Mutual Life Insurance Company v. Smith, 39 Ill. App. 569 (1891).

7. Mutual Life Insurance Company v. Wiswell, 56 Kan. 765, 44 Pac. 996, 35 L. R. A. 258 (1896); In Grand Legion of Select Knights A. O. U. W. of Kansas v. Korneman, 10 Kan. App. 577, 63 Pac. 292 (1901) the court held that the act which resulted in death must have been done with the purpose and intent that it should result in death.

8. R. S. Mo. 1929, sec. 5740.

9. 9 S. W. (2d) 685 (1928).

10. 8 Ill. App. 488 (1881).

11. See 1 Wharton, *Criminal Law* (1932) secs. 65 to 70.

12. State v. Hart, 309 Mo. 77, 274 S. W. 385 (1925); Jacobs v. State, 17 Ala. App. 396, 85 So. 837 (1920); People v. Gilmore, 320 Ill. 233, 150

actual intent. However, in view of the long line of analogous cases which interpret self-destruction clauses as requiring specific intent, the decision appears to be sound.

O. R. A.

SUBROGATION—PRIORITY OF CREDITORS—TAXATION—UNJUST PREFERENCE. —[Federal].—Plaintiff tendered certified checks drawn on defendant bank to the United States Collector of Internal Revenue in payment of taxes. The defendant bank failed and the certified checks were dishonored. The statute which authorized the collector of internal revenue to accept certified checks tendered in payment of taxes also gave him power to exact payment from the original tax debtor in case of failure of the certifying bank.[1] The collector exercised this option of collecting from the plaintiff and was duly paid. The taxpayer then received an assignment of the government's statutory lien and priority[2] along with the return of the certified checks. The plaintiff now claims the right to be subrogated to the government's lien and priority on the basis of the general rule that a guarantor who pays his principal's debt is, at least as far as the principal is concerned, entitled to be subrogated to all the rights of the creditor whom he has paid.[3] *Held;* in an action against the reorganized bank, plaintiff taxpayer is subrogated to the government's statutory lien and priority.[4]

The principle that a surety for a debtor of the government, on payment of the debt is entitled to the government's priority was enunciated in England as early as 1888.[5] It is also firmly entrenched in the United States.[6]

N. E. 631 (1926). However, in Trembly v. Fidelity, 243 S. W. 201 (Mo. 1922) the court held that the law presumes that a self-inflicted death was accidental and not suicidal, in the absence of any evidence to rebut the presumption.

1. 36 Stat. 965, 26 U. S. C. A. sec. 1546 (1934); 26 U. S. C. A. sec. 109 (1925). This statute codifies the Law of Merchants that a holder of a certified check may seek payment from the drawer of the check who has had it certified himself. Bigelow, *Bills Notes and Checks* (Lile's ed. 1928) sec. 206; Randolph National Bank v. Hornblower, 160 Mass. 401, 35 N. E. 850 (1894). Even though certification was procured by drawer upon request of payee.

2. Supra, note 1.

3. 2 Williston, *Contracts* (1927) sec. 1267; Phelps v. Scott, 325 Mo. 711, 30 S. W. (2d) 71, 71 A. L. R. 290 (1930).

4. American Tobacco Co. v. South Carolina National Bank, 15 F. Supp. 215 (D. C. E. D. S. C., 1936).

5. In Re Lord Churchill, Manistry v. Churchill, 39 Ch. Div. 174 (1888).

6. See cases enumerated 60 C. J. 762; Comment, 26 Col. L. Rev. 492, (1926); For a strongly contra opinion see In Re So. Phila. State Bank's Insolvency, 295 Pa. 433, 145 Atl. 521 (1929); Comment, 78 U. of Pa. L. R. 120, a case which held this rule of law to be based on an erroneous conception of early English decisions. The court declared that the common law precedents show that such subrogation was not due to the application of laws of equity but as a matter of sovereign grace, granted only after the king had given his consent. Since the court could find no true equity, it refused to