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Article 12

Insurance: Proceeds of Life Policy Payable to Partnership Held Not Exempt from Insured Debt's, Although Insured Became Partnership Successor

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The judgment lien, so obtained against the partnership, was held by the Supreme Court of the United States not to be annulled as against partners, under the Bankruptcy Act, 67c, 67f (11 USCA par 107), since it is not essential to the adjudication of a partnership that a partner, or partners, should be adjudged bankrupt individually.

The Supreme Court, in this decision, reversed the decision of the Court of Appeals, which decided that the "adjudication of the partnership was necessarily an adjudication of the bankruptcy of the individuals composing it," and that the lien of a judgment obtained within four months of filing of petition against the partnership was lost by the adjudication. The Court of Appeals seems to have followed the Old Bankruptcy Law of 1867, which did not permit the partnership entity to be adjudged a bankrupt, and which declared that when two or more persons who were partners in trade were adjudged bankrupt, the property of the partnership as well as the partner should be taken over by the Bankruptcy Court for administration.

In Section 5a (11 USCA par. 23) the Supreme Court of the United States sees a basis, in 268 U.S. 426, 431, 45 S. Ct. 560, 562 (69 L. Ed. 1028), for the following conclusion, namely, that there "can be no doubt that a partnership may be adjudged a bankrupt as a distinct legal entity; and if proceeded against as a distinct legal entity, without reference to the individual partnerships, it may, as such, under section 12a (11 USCA par. 30) offer terms of composition to the partnership creditors alone. The court then cites a long line of cases in support of this principle.

Hence the court concludes, in reversing the decision of the Court of Appeals, "that the involuntary petition filed against the Provision Co., which did not in terms seek an adjudication that the Beckers (the individual partners) as individuals, nor allege that as individuals they were insolvent or had committed any acts of bankruptcy, was not in legal effect a petition filed against them individually, and the adjudication under that petition that the partnership was a bankrupt, was not in legal effect an adjudication that they were bankrupts individually." There is hence no ground, under either section 67c or section 67f of the Act, for annulling the judgment liens obtained upon their individual real estate more than eight months prior to the filing of their voluntary petitions.

Reversed.

RAYMOND FORD

Insurance: Proceeds of Life Policy Payable to Partnership Held Not Exempt from Insured Debt's, Although Insured Became Partnership Successor.

This case involved a controversy over the avails of a life insurance policy.[1] The material facts of the case are as follows: Cohen and one Kirsner formed a partnership for the purpose of engaging in the mercantile business. The partnership was later dissolved, Kirsner ceasing to be a member. Cohen assumed all the firm liabilities and remained in business as the successor of Cohen and Kirsner. The creditors were informed of this arrangement. While the partnership

[1] *Cohen* v. *Gordon Ferguson, Inc.* (N.D.) 218 N.W. 209.

was still in existence, Cohen obtained an ordinary life insurance policy. By the terms of the policy the insurance company agreed to pay to "Cohen and Kirsner, a partnership of which the insured is a member, its successors or assigns, immediately upon the receipt of due proof of the death of Charles W. Cohen, the insured, $2,500"; and "if such death is accidental, $5,000." After the dissolution of the partnership no changes were made in the policy, and Cohen himself continued to pay the premiums.

Subsequently Cohen was killed in an accident. The question then arose whether the avails of this policy belonged, and should be distributed, to the heirs at law of Charles W. Cohen in accordance with the statute,[2] or whether they belonged to the estate of Cohen and were subject to the claims of creditors and distributable the same as other assets belonging to the estate of the deceased.

The appellants were of the contention that inasmuch as Charles W. Cohen became the successor of the firm of Cohen and Kirsner, the policy became in fact, although not in terms, payable to him; and that upon his death, his personal representatives would be entitled to collect the avails of the policy and that consequently, it falls within the statute, section 8719.

However, the court was of the opinion that the question of whether the distribution of the avails of an insurance policy is controlled by the statute, is determinable by the terms of the policy itself, namely, by the terms used to designate the beneficiaries therein. Nowhere in this disputed section of the statutes can any terms be found which might include policies made payable to the insured himself. Thus the contention of the appellants could not be sustained by the court. The general rule is, that unless exempted by statute, the avails of a life insurance policy, made payable to the insured himself, become at his death a part of his estate, and assets in the hands of the administrator of his estate.[3] There is no such exemption to be found in this statute, and had the lawmakers intended to include policies made payable to the insured himself, they would undoubtedly have done so. Former decisions of the court have upheld this section of the statute. The court can neither add nor detract from its terms, but it must regard it as being applicable only to the classes or kinds of policies enumerated therein.[4]

Thus section 8719 does not purport to apply to all insurance policies, but only to those where the insured has, by the use of appropriate terms in designation of beneficiaries, indicated an intention that the policy shall be controlled by it. The section is applicable only to policies where by their terms are *"made payable to the personal rep-*

[2] Section 8719 C.L. 1913. North Dakota. "The avails of a life insurance policy or of a contract payable by any mutual aid or benevolent society, when made payable to the personal representatives of a deceased, his heirs or estate upon the death of a member of such society or of such insured shall not be subject to the debts of the decedent except by special contract, but shall be inventoried and distributed to the heirs or heirs at law of such decedent."

[3] 4 Cooley's *Brief on Insurance.* 3726.

[4] *Bank* v. *Smith,* 36 N.D. 225, 162 N.W. 302; *Talcott* v. *Bailey,* 54 N.D. 19, 208 N.W. 549.

resentatives of a deceased, his heirs or estate." The policy in suit was not so made; it being made payable to "Cohen and Kirsner, a partnership, its successors or assigns."

Thus the only logical conclusion for the court to come to was that the avails of the insurance policy were held by the administratrix as part of the general assets of the estate of Charles W. Cohen, deceased, subject to claims of creditors, and not distributable to his heirs at law.

AL H. HURLEY

Intoxicating Liquors: Searches and Seizures.

In the case of *Fabri* v. *United States* (24 Fed. (2d) 185), a prohibition agent searched the residence of Fabri under authority of a search warrant, which he assumed to be valid, and seized and took away quantities of various liquors. Upon his arrest Fabri appeared and filed a verified petition, assailing the validity of the warrant, praying that it be quashed and the evidence so obtained suppressed and that the seized property be ordered returned to him at his home. In the petition he alleges only that he was in possession, and not that he was in the lawful possession of the property. Upon a hearing the court below ordered the warrant quashed and the evidence suppressed, but denied the prayer for a return of the property. Defendant sued out a writ of error, which is directed to the part of the order denying him a return of the seized property.

The court held that "where upon an unlawful search of a dwelling house, government agents seize property, the possession of which may or may not have been unlawful, the person from whose possession it is wrongfully taken is prima facie entitled to its restoration, and that the government can make successful resistance to an appropriate petition for its return only by showing affirmatively, by proofs other than those obtained as a result of the unlawful search, that the property was, at the time of seizure, being used in the commission of crime."

Upon the general question of the duty of the courts to order the return of liquor wrongfully seized by government agents in the course of an unlawful search, there is hopeless conflict in the federal courts.

In arriving at its conclusion this court said, "Possession of liquor in a dwelling house may be lawful or unlawful, depending upon the mode of acquisition or the intended use," and "Unless we resort to the facts disclosed by the search there is no ground at all on which to invoke the presumption of section 33 of the National Prohibition Act (41 Stat. 317; U.S.C.A. No. 50.)."

EUGENE M. HAERTLE

Larceny, Bailment, Misappropriation of Funds by a Broker.

Section 343.17, Statutes, among other things provides that "Whoever being a bailee of any chattel, money or valuable security shall fraudulently take or fraudulently convert the same to his own use or to the use of any person other than the owner thereof . . . . shall be guilty of larceny."

A bailment "is a delivery of goods in trust, upon an agreement expressed or implied, that the trust shall be duly exercised, and the goods returned or delivered over when the purpose of the bailment