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Insurance -- Status of Beneficiaries as Such as Altered by Changed Circumstances

Peter Hairston

Discrediting witnesses as to their knowledge of the general reputation of the defendant gives rise to a close question.

Any circumstances detracting from a witness's credibility are competent for impeachment by cross-examination. But the range of such circumstances that may also be shown extrinsically is narrower. The distinction, sometimes difficult to draw, is said to be between discrediting the witness generally and discrediting him in the cause. Thus, while it may not be shown that the witness does not have the intelligence of an ordinary person,[11] it may be shown that he does not have full knowledge of the matter in controversy.[12] But though the evidence in the principal case would be admissible on this theory, it should be excluded on the ground of prejudice.

Where the primary purpose and the ultimate effect of discrediting the testimony is to put before the jury particular facts not otherwise competent the court should have the discretion to exclude such evidence. Instructing the jury to consider the evidence only as discrediting the witness has little practical effect.

W. E. ANGLIN.

Insurance—Status of Beneficiaries as Such as Altered by Changed Circumstances.

At the time that insured took out a benefit certificate, he was married to a woman who had several children by a former marriage. She was named as beneficiary with the insured's children, which term was specifically defined to include step-children, as secondary beneficiaries. She divorced the insured and later remarried. A recent Federal case awards his brother, named as third in line of beneficiaries, the proceeds against the claims of the ex-step-children.[1] The holding was based on the rule that in benefit society[2] insurance only certain classes of persons closely related to the insured can take.[3]

[11] Bell v. Rinner, 16 Oh. St. 45 (1864).

[12] Harrington v. Boston Elevated Ry. Co., 229 Mass. 421, 118 N. E. 880 (1918). (a witness in a tort action testified that he did not know of any place where a certain structure was used. *Held,* it is competent to show that such structure was used at a particular place).

[1] Brotherhood of Loc. Firemen v. Hogan, 5 F. Supp. 598 (D. C. Minn. 1934).

[2] "Benefit society" is used in preference to the more usual term "mutual" as being more indicative of the distinction between straight life and insurance provided by benevolent societies.

[3] The limitation is commonly made by the constitutions of these societies which are incorporated into the contracts of insurance. Some states have statutes imposing similar limitations. N. C. CODE ANN. (Michie, 1931) §6491. The restriction is one on who may take, hence it has been held that although

The ex-step-children lost their rights when they ceased to belong to any such class. The case raises the problem of when changed circumstances will alter the standing of beneficiaries as such. It is to be noted that where the particular change is contemplated and provided for in the policy itself, its terms will prevail and hence no problem arises.[4] Because of this, in all of these cases the intent of the insured is material.[5]

The rule generally announced is that when an ordinary life policy issues the beneficiary takes a vested interest,[6] but that in benefit society insurance no interest vests until the death of the insured.[7]

As a result of this rule, it is usually held that where the beneficiary is named, even though he predecease the insured, the former's estate will take.[8] The word "wife" used in apposition is generally held to be a mere description and therefore not material.[9] However, when the designation is merely "wife" or "Mrs. Insured" and a second wife is left, there is a division of authority, the argument being mainly over the insured's intention.[10] The case presents more difficulty when a class is named, as "my wife and children."[11] One group of courts, led by New York, holds that the interest vests in the class as joint tenants; hence the survivors at the insured's

a beneficiary was designated as being in one class and later, by way of divorce, fell out of that, but remained in another, she still took. Rose v. Brotherhood, 80 Colo. 344, 251 Pac. 537 (1926).

[4] Sherwood v. N. Y. Life Ins. Co., 166 La. 905, 118 So. 78 (1928) (Policy named children and provided that the survivors at the time of the insured's death should take); Fleming v. Grimes, 142 Miss. 522, 107 So. 420 (1926) (Policy provided that the interest of beneficiary revert to insured on the former's prior death).

[5] Pike County Mut. Life Ass'n. v. Berry, 214 Ill. App. 316 (1919); Pape v. Pape, 67 Ind. App. 153, 119 N. E. 11 (1918).

[6] Preston v. Conn. Mut. Life Ins. Co., 95 Md. 101, 51 Atl. 838 (1902); Hooker v. Sugg, 102 N. C. 115, 8 S. E. 919 (1889); NOTE (1927) 75 U. PA. L. REV. 155.

[7] Supreme Council v. Behrend, 247 U. S. 394, 38 Sup. Ct. 522, 62 L. ed. 1182 (1917); Wooten v. Odd Fellows, 176 N. C. 52, 96 S. E. 654 (1918).

[8] Preston v. Conn. Mut. Life Ins. Co., *supra* note 6.

[9] Doney v. Eq. Life Assur. Soc. of the U. S., 97 N. J. L. 393, 117 Atl. 618 (1922).

[10] That the former wife takes against the present wife. Day v. Case, 43 Hun. 179 (N. Y. 1887). That the present wife takes. Modern Woodmen v. Allin, 301 Ill. 119, 133 N. E. 677 (1921).

[11] McLin v. Calvert, 78 Ky. 472 (1880) was a bizarre holding showing the difficulty which courts experienced in disposing of the problem. In that case, insurance payable to the wife and children of the insured was divided in the proportions designated by the statute regulating the distribution of surplus personal property. The holding was subsequently overruled in Bell v. Kinneer, 101 Ky. 271, 40 S. W. 686 (1897).

death take all the proceeds.[12] Another group, among them North Carolina, states that the interest vests individually and that therefore the estates of the deceased take equally with the survivors.[13] It would be more consonant with the latter rule to hold that in such cases a child born after the policy issued would take,[14] but on an analogy to wills, such children are generally included.[15]

In England, under the Married Women's Property Act,[16] where the policy is payable to the "wife" or the "wife and children" a trust is set up for the beneficiary and when, because of her death, the trust cannot be performed, the fund results to the estate of the insured.[17]

When a spouse is beneficiary, what effect will a subsequent divorce have on his right to take? Except in Texas, where a continuing insurable interest is required of the beneficiary,[18] the holding has been, when he was named, that a divorce has no effect[19] and the words "husband" and "wife" in apposition were not conditions, but descriptions only.[20] But in a case involving benefit insurance, where only the word "wife" was used, an opposite result was reached by considering the insured's probable intention.[21] The question has not

[12] Bell v. Kinneer, *supra* note 11; Schneider v. N. W. Mut. Ben. Life Ins. Co., 33 Mo. App. 64 (1888); U. S. Trust Co. v. Mut. Ben. Life Ins. Co., 115 N. Y. 405, 21 N. E. 1025 (1889); Elgar v. Equitable Life Assur. Soc. of U. S., 113 Wis. 90, 88 N. W. 927 (1902).

[13] Cont. Life Ins. Co. v. Palmer, 42 Conn. 60 (1875); Germania Life Ins. Co. v. Wirtz, 196 Mich. 145, 162 N. W. 981 (1917); Hooker v. Sugg, *supra* note 6; Glenn v. Burns, 100 Tenn. 295, 45 S. W. 784 (1898).

[14] Conn. Mut. Life Ins. Co. v. Baldwin, 15 R. I. 106, 23 Atl. 105 (1885).

[15] Pape v. Pape, *supra* note 5; Schull v. Aetna Life Ins. Co., 132 N. C. 30, 43 S. E. 504 (1903); Thomas v. Leake, 67 Tex. 471, 3 S. W. 703 (1887). But see Evans v. Opperman, 76 Tex. 293, 13 S. W. 312 (1890) ("Their children" used as designation of beneficiary precluded later children by a second wife.).

[16] 45 & 46 Vic. c. 75, §11 (1882) ("A policy of assurance effected by any man on his own life, and expressed to be for the benefit . . . of his wife and children, or any of them . . . shall create a trust in favor of the objects therein named, and the moneys payable under such policy shall not so long as any object of the trust remains unperformed form part of the estate of the insured or be subject to . . . his debts. . . .").

[17] In re Browne's Policy, [1903] 1 Ch. 188.

[18] Whiteselle v. N. W. Mut. Life Ins. Co., 221 S. W. 575 (Tex. Comm. App. 1920).

[19] Conn. Mut. Life Ins. Co. v. Schaeffer, 94 U. S. 457, 24 L. ed. 251 (1877) (the leading case on the point. It is regularly cited for the proposition but it was expressly decided on the grounds that the insurance was joint and hence supportable marriage or no marriage.); In re Orear, 111 C. C. A. (8th) 150, 189 Fed. 883 (1911); Filley v. Ill. Life Ins. Co., 93 Kan. 193, 144 Pac. 259 (1914).

[20] Phoenix Life Ins. Co. v. Dunham, 46 Conn. 79 (1878); Doney v. Eq. Life Assur. Soc. of the U. S., *supra* note 9.

[21] Pike County Mut. Life Ass'n. v. Berry, *supra* note 5.

been passed on in North Carolina; so it is possible that our statute[22] which provides that a divorcee "shall thereby lose all his or her right and estate in the real or personal estate of the other party . . . which was settled upon such party in consideration of the marriage alone" might apply.[23] The principal case seems to be the first to consider the changed status of step-children.

In arriving at the disposition made of the divorce cases, the courts have not reached an entirely satisfactory solution of the problem. It is probable that insureds' minds are, in general, centered on the idea of protection and a holding which makes the policy a gift is a violation of their intention. A second objection is that in granting divorces courts make a disposition of the pecuniary relationships between the parties. A consideration of any life insurance involved seems necessary to such a settlement. If it is not taken into account at that time, it might well be considered property not awarded to the wife.

PETER HAIRSTON.

Libel and Slander—The Use of Extrinsic Facts to Identify the Plaintiff.

A newspaper publication referring to a white man as a negro was *held* not to constitute a libel on his white parents, where it neither named nor referred to them.[1]

It is well settled that a written description of a white person as a negro is libelous.[2] But the principal case raises the question as to when the libelous publication refers to a person sufficiently to enable

[22] N. C. CODE ANN. (Michie, 1911) §2522.

[23] A general order issued pursuant to KY. CIVIL PRACTICE CODE (Carroll, 1932) §425 which provides that "Every judgment for a divorce from the bond of matrimony shall contain an order restoring any property not disposed of at the commencement of the action, which either party may have obtained, directly or indirectly, from or through the other, during marriage, in consideration or by reason thereof . . ." was held to abrogate a divorced wife's status as beneficiary of a policy of insurance on her husband's life. Shauberger v. Morel's Adm'r., 168 Ky. 368, 182 S. W. 198 (1916).

[1] Atlanta Journal Co. v. Farmer, 172 S. E. 647 (Ga. App. 1934) (Plaintiff's son was a convict. After having fallen under extreme heat he was chained to a telephone pole, where he soon died of sunstroke. The defamatory article reported the indictment of highway employees to answer for the death of the "negro convict.").

[2] Stultz v. Cousins, 242 Fed. 794 (C. C. A. 6th, 1917); Upton v. Times-Democrat Publishing Co., 104 La. 141, 28 So. 970 (1900); Flood v. News & Courier Co., 71 S. C. 112, 50 S. E. 637 (1905). When such description is made by spoken words, it is not actionable without proof of special damages. Deese v. Collins, 191 N. C. 749, 133 S. E. 92 (1926) commented upon (1927) 5 N. C. L. REV. 183.