Notre Dame Law Review

Volume 10 | Issue 1 Article 7

11-1-1934

Recent Decisions

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excess profits tax are due at the same time as the regular income tax returns. Let us suppose, then, that a month before the end of the fiscal year, the auditors discover that the corporation's profits are going to exceed twelve and one-half per cent of the declared value of the assets. Acting upon this information, the board of directors could vote to all *employees* a bonus which would absorb this excess profit. This may seem, at first sight, to be a scheme of tax evasion, but it is not. Such action by the corporation accomplishes the same ultimate end which these new taxes were designed to effect. The profits of industry will be more evenly distributed. The bonus to the employees will, in addition to increasing their efficiency and good will toward the employer, lessen their dependence upon the Federal Government for aid. And the only manner in which that aid could have been given would have been through the revenue derived from these taxes and others.

This latter procedure is highly commendable in that it will accomplish the legislative intent more readily and directly, because of the elimination of the details of governmental administration and its attendant expense.

Hugh E. Wall, Jr.

RECENT DECISIONS

INSURANCE—CAUSE OF DEATH IN GENERAL—DEATH IN VIOLATION OF THE LAW. —Quincy Cook insured his life for $500 with the defendant company, and named the plaintiff herein as beneficiary. The insured was convicted of murder, and was legally executed. By a clause in the policy it was made incontestable after two years from its date of issue except for fraud, or non payment of premiums. *Held,* that the incontestability clause estops the insurer from setting up as a defense such facts or conditions as are not reserved to its benefit by such incontestability clause. *Afro-American Life Ins. Co. v. Jones,* 151 So. 405 (Fla. 1933).

As to whether the legal execution of the insured for a crime committed by him is a defense to an action by his legal representative on the policy, Vickers, J., in *Collins v. Metropolitan L. Ins. Co.,* 232 Ill. 37, 83 N. E. 542, 14 L. R. A. (N. S.) 356, 122 Am. St. Rep. 54, 13 Ann. Cas. 129 (1908), says: "Where this defense has been sustained it is generally upon the ground that it is against public policy to permit a recovery where the death is in consequence of a violation of the law. . . . The argument rests upon the same grounds that were urged centuries ago in support of the now obsolete doctrine of attainder and corruption of blood. In the earlier history of the common law various consequences other than the punishment of the offender followed conviction for felony, and in some instances the causing of the death by mere misadventure or negligence was visited with certain forfeitures and penalties. Without attempting historical accuracy, the law of England provided that all the property, real and personal, of one attainted, should be forfeited and his blood so corrupted that nothing could pass by inheritance to, from, or through him. He could not sue, except to have his attainder reversed. Thus the wife, children and collateral relations of the attainted person suffered with him." However, such is not the public policy of Illinois. The Supreme Court of this State based its decision, in the *Collins*

case, on an unequivocal constitutional declaration of the public policy of the state to the effect that no forfeiture of property shall follow conviction of a crime. An insurance policy, payable to the personal representative, is a species of property, and to deny recovery on the policy because of a legal execution of the assured, would work a forfeiture of estate. *Collins v. Metropolitan Life Insurance Co., supra.*

A leading case on the subject is one decided by the House of Lords in 1830. The insured was convicted on the crime of forgery, and was executed. The court reasoned that if recovery were allowed on such a contract "it would take away one of those restraints operating on the minds of men against the commission of crime," and that therefore it is void on the grounds of being against public policy. *Amicable Society v. Boland,* 5 Eng. Rep. 70 (1830). It should be borne in mind that forfeitures were enforced in England at the time of this decision, and continued to be enforced up until the time they were abolished in 1870 by Statute (33 & 34 Victoria).

The English case has been cited with approval by the Supreme Court of the United States, in *Burt v. Union Central Life Ins. Co.,* 187 U. S. 362, 23 Sup. Ct. 139, 47 L. ed. 216 (1902), where the court said: "It is the policy of every state . . . to uphold the dignity and integrity of its courts of justice. Such contracts would be speculations upon whether the courts would do justice. . . . They would tend to stir up litigation. . . . and bring reproach upon the state, its judiciary, and executive, and would, we think, be against public policy and void." Such a policy would in effect be insuring against the risk of a miscarriage of justice. *Burt v. Union Central Life Insurance Co., supra.*

Under the common law, all the property of a felon after conviction was forfeited to the state. But in a Kentucky case the popular American and modern view is expressed. There the testator was convicted for murder, but while awaiting sentence, he made a will, and died before sentence was imposed. The constitution of the state provided that the forfeiture should be only for the life of the offender, so consequently the fee simple is a reversion after the death of the felon, who may dispose of his property by will. *Rankin's Heirs v. Rankin's Executors,* 6 T. B. Mont. (Ky.) 531, 17 Am. Dec. 161 (1828).

It is provided in Article I, Section 10, of the United States Constitution that "No state . . . shall pass any bill of attainder . . ."; and it is provided in Article III, Section 3, that ". . . no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted." To illustrate these provisions it is said that when the United States confiscates an enemy's land, there is nothing left in him which he may convey by deed, but the innocent children are protected, and may take the inheritance after his death. *Wallach v. Van Riskirk,* 92 U. S. 202 (1875).

Several states have similar constitutional provisions, among which, are the following: Illinois (ILL. CONST. art II, § 11); Ohio (OHIO CONST. art. I, § 12); Indiana (IND. CONST. art. I, § 75); Wisconsin (WIS. CONST. art. I, § 12); and Pennsylvania (PA. CONST. art. I, § 19). In Rhode Island, by statute (PUB. ST. R. I. c. 248, § 52), a convict is prohibited from making a will or a conveyance of property while imprisoned, but this does not prohibit him from giving bond on appeal by him from a judgment of the probate court affecting his property rights, for the giving of an appeal bond is not, strictly speaking, a conveyance of property, but is rather an attempt to protect property. *Kenyon v. Saunders,* 30 Atl. 470, 471 (R. I. 1894). It is also provided by statute (PUB. ST. R. I. c. 248, § 34) in this State that no conviction for *any* offense shall work a forfeiture of estate. But this statute does not prevent a convict from maintaining an action to enforce his property rights. *Kenyon v. Saunders, supra.*

In some states statutes prohibit the defense of suicide, except when it was contemplated at the time of effecting the insurance, and make void any con-

trary stipulation in the policy. The following states have such statutes: Missouri (MO. REV. STAT. § 6150); North Dakota (N. D. COMP. LAWS (1913) § 6633); Colorado (COLO. COMP. LAWS (1921) § 2532); and Virginia (VA. GEN. LAWS (1923) § 4228).

Where suicide is a defense to an action on an insurance policy, a general rule is that if the death of an insured is by his own hand where he was insane, it is as much the result of the disease as death by fever or consumption. *John Hancock Mutual Life Insurance Co. v. Moore,* 34 Mich. 41 (1876).

Where there is no incontestability clause in a policy, but suicide of the insured is not one of the risks assumed, the Supreme Court of the United States, speaking through Mr. Justice Hunt, in a leading case, has said: "If the assured, being in possession of his ordinary reasoning faculties, from anger, pride, jealousy or a desire to escape from the ills of life, intentionally takes his own life, the proviso attaches, and there can be no recovery. If the death is caused by the voluntary act of the assured, he knowing and intending that his death shall be the result of his act, but when his reasoning faculties are so far impaired that he is not able to understand the moral character, the general nature, consequences, and effect of the act he is about to commit, or when he is impelled thereto by an insane impulse, which he has not the power to resist, such death is not within the contemplation of the parties to the contract, and the insurer is liable." *Mutual Life Insurance Co. v. Terry,* 82 U. S. 562, 591, 21 L. ed. 236, 242 (1872).

After the above liberal rule had been handed down by the Supreme Court, insurance companies attempted to exclude liability in such instances by inserting "sane or insane" clauses in policies. It is the general rule that these clauses are valid; and it is no answer to such a stipulation that the insured was of unsound mind and wholly unconscious of the act. *Bigelow v. Berkshire Life Insurance Co.,* 93 U. S. 284, 23 L. ed. 918 (1876).

That public policy favors incontestability clauses is evidenced by the fact that some states, by statute, require them. States having illustrative statutes are: Alabama (ALA. CODE (Michie, 1928) § 8365); Massachusetts (MASS. GEN. LAWS (1921) c. 175, § 132); New Hampshire (N. H. PUB. LAWS, c. 277, § 9); and Ohio (OHIO GEN. CODE, §§ 9410-9420).

In policies having an incontestability clause, the defense that the death of the assured was by suicide cannot be made where sufficient time has elapsed to make the clause applicable. This has been held notwithstanding the policy provides in another clause that suicide is not one of the risks assumed. This result is reached by the well recognized rule that where terms of the policy are doubtful, the construction most favorable to the assured will be adopted. One court holds that this is the proper construction, regardless of the fact that suicide is technically a crime. *Patterson v. Natural Premium Mutual Life Insurance Co.,* 100 Wis. 118, 75 N. W. 980, 42 L. R. A. 253 (1898).

William J. Kennedy.

TORTS—TROVER FOR CONVERSION—NECESSITY OF DEMAND AND REFUSAL.—The recent case of *Wilson Cypress Co. v. Logan,* 156 So. 286 (Fla. 1934), is interesting in that it presents the question of the necessity of demand and refusal in a suit in trover for conversion. On May 6, 1931, one Newman, an independent logger who purchased lands or logging rights from others in his logging operations, sold to the defendant logs which he believed he had acquired from the owner. The logs sold by Newman to the defendant were in fact owned by the plaintiff, and he has brought this suit for conversion. The majority of the court, with Ellis, J., dissenting, held the defendant was guilty of a wilful conversion, and affirmed the decision of the lower court. The dissent, which is the more voluminous, sets out