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Insurance--Effect of Legal Execution of Insured for Crime

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reasonable ground.¹⁵ But it has been decided that exemption of pipe lines of less than ten miles length from a tax measure¹⁶ and exemption of farmers and planters, who grind and refine their own sugar and molasses, from a tax measure by the business of sugar refining is not within the banned degree of discrimination.¹⁷

The contention of the dissenting justices in the principal case, that the prevailing opinion holds a tax on gross sales if laid upon a graduated basis is always a denial of equal protection, seems to be well-founded. The court had been committed to the doctrine that a tax on gross sales on a graduated basis did not deny equal protection. The arbitrariness of graduation must be a matter of degree. The tax in the principal case would never equal one per cent. of the gross sales. The tax approved by the Supreme Court on salmon fisheries was limited to 25c per case in the higher bracket. In that case, too, the burden of taxation was higher on those who produced more. It is suggested that there is no sound basis for the narrow limits marked out in the prevailing opinion of the principal case.

—JOHN L. DETCH.

INSURANCE — EFFECT OF LEGAL EXECUTION OF INSURED FOR CRIME. — Defendant issued an insurance policy to C, promising to pay the amount of the policy upon receiving proof of the death of the insured. There was no stated exception of the risk of death by execution. *Held*, public policy does not bar recovery on such a policy by plaintiff, the beneficiary, where the insured was legally executed for murder. *Corey v. Massachusetts Mutual Life Insurance Co.*¹

Leading in the opposite result is the Supreme Court of the United States, which has held, where the insured was executed for murder, that: "There is an implied obligation on his part to do nothing to wrongfully accelerate the maturity of the policy," and that it would be against public policy to enforce the contract under such circumstances.² The instant holding, generally regarded as

¹⁵ Louisville Gas Co. v. Coleman, 277 U. S. 32, 48 S. Ct. 423 (1928).

¹⁶ Eureka Pipe Line Co. v. Hallanan, 87 W. Va. 396, 105 S. E. 506 (1920).

¹⁷ Sugar Refining Co. v. Louisiana, 179 U. S. 89, 21 S. Ct. 43 (1900).

¹ 178 S. E. 525 (W. Va. 1935). As to the incontestable clause precluding a defense based upon public policy, see (1925) 35 A. L. R. 1491.

² Burt v. Union Central Life Insurance Co., 187 U. S. 362, 23 S. Ct. 139 (1902). The result in this case is weakened by the fact that plaintiff's most

the better view,³ refutes the implied obligation to do nothing wrongfully to accelerate payment of the policy by pointing out that few would adopt murder, followed by public execution, as a means of accelerating maturity.⁴ Hence enforcement of the contract under such circumstances would not tend to induce crime.⁵ On the contrary, it is more likely that if such policies were not enforced, juries and executive clemency would be perverted to avoid execution, so that dependents of the insured would not become public charges.⁶ Furthermore, public policy, as expressed in state constitutions, has abolished corruption of blood and forfeiture of estate as a consequence of felony.⁷ Depriving the beneficiaries of the insurance benefits here would not accord with that policy.

A policy of insurance is a contract of "adhesion". The terms of such a contract do not result from mutual negotiation; rather, the insurer fixes the terms, to which the insured may "adhere" if he chooses.⁸ Provisions of such contracts are construed strictly against the party choosing them.⁹ Such an approach in the instant case would prevent the court from reading into the insurance policy any implied obligation by the insured not to subject himself to legal execution, when the insurer has, at its own instance, failed to provide expressly against such a contingency.

To hold that the beneficiary cannot recover necessarily disregards the ordinary rules of contract law, which direct payment of the policy on maturity. Similar disregard is evidenced where a person kills another to secure the latter's property by will or by

pressed contention was that the insured had been unjustly executed. Certainly public policy would forbid construing a contract as insurance against the miscarriage of justice. For further reference to the division of authority on this point, see the instant case, at 178 S. E. 526.

³ *Collins v. Metropolitan Life Insurance Co.*, 232 Ill. 37, 83 N. E. 542 (1907); *Weeks v. New York Life Insurance Co.*, 128 S. C. 223, 122 S. E. 586 (1924); *Fields v. Metropolitan Life Insurance Co.*, 147 Tenn. 464, 249 S. W. 798 (1923); *Allen v. Diamond*, 13 F. (2d) 579 (C. C. A. 7th, 1926). In Virginia it is provided by statute that: "In any action . . . on a policy of insurance hereafter issued to any person, . . . to recover for the death of such person, it shall be no defense that the insured committed suicide or was put to death by execution under the law; provided however, that if there shall be an express provision in the body of such policy limiting the liability of the insurer in the event that the insured shall, within two years from the date thereof, die by his own act, such provision shall be valid . . ." VA. CODE ANN. (Michie, 1930) 1932 Supp., § 4228.

⁴ See the principal case, at 178 S. E. 526.

⁵ *Ibid.*, 527.

⁶ *Ibid.*, 528.

⁷ W. VA. CONST., art. 3, § 18.

⁸ VANCE ON INSURANCE (2d ed. 1930) 201.

⁹ *Ibid.*

operation of law. Such a person either cannot take the legal title at all,¹⁰ or else is declared constructive trustee of the property.¹¹ Judicially articulated public policy there prevents the wrongdoer from taking, squarely in the face of statutes of descent which vest property in the killer immediately upon the death of the decedent.¹² Public policy may go far to controvert statutory law, or to work an exception to an insurance contract,¹³ where the beneficiary is a wrongdoer; but in the instant set-up, where the beneficiary is entirely innocent, it is submitted that to override established law public policy should be given legislative expression.

Certainly, unless there is evidence that deaths by execution were not included in the computation of the mortality tables on which the insurer bases his rates, denial of recovery here would be giving the insurer a windfall, for if such deaths were so included, the insurer was paid to take such risk.

In sum, the forthright disposition of the problem in the principle case should put the matter at rest.

—HERSCHEL H. ROSE, JR.

NAVIGABLE WATERS — NAVIGABILITY — RIPARIAN OWNER'S RIGHT OF ACCESS. — The United States government authorized the straightening of the James River to improve navigation between Hopewell and Richmond, Va., a distance of twenty-five miles. It was for the benefit of the city of Richmond, and the city brought condemnation proceedings. Defendants, riparian owners, claimed damages to their rights of access through prospective diversion of the river from their lands. The city claimed that riparian owners have no private property rights in the flowing of streams inconsistent with the public right of navigation, and that no damages should be awarded such owners by reason of diversion or diminu-

¹⁰ *Riggs v. Palmer*, 115 N. Y. 506, 22 N. E. 188 (1889).

¹¹ *Bryant v. Bryant*, 193 N. C. 372, 137 S. E. 188 (1927).

¹² W. VA. REV. CODE (1931) c. 42, art. 1, § 1.

¹³ The courts make an exception to life insurance contracts by holding that the beneficiary in a policy of insurance who murders the insured will be denied the right to recover thereon upon grounds of public policy. *Johnston v. Metropolitan Life Ins. Co.*, 85 W. Va. 70, 100 S. E. 865 (1919); *Wickline, Adm'r v. Life Ins. Co.*, 106 W. Va. 424, 145 S. E. 743 (1928). The legislature has constituted conviction of felonious killing a bar to the claim of the convicted party to the insurance or property of the decedent. W. VA. REV. CODE (1931) c. 42, art. 4, § 2. See Note (1934) 40 W. VA. L. Q. 188; (1935) 41 W. VA. L. Q. 287.