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Fraudulent Conveyances--Assignment of Life Insurance Policy in Fraud of Creditors

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It is submitted that outside of the objection and suggestion, stated above, the decision in the present case is sound and wholesome, and the fact that a one-hundred year old precedent is apparently contra[20] to the statute of March, 1933, should not be controlling in light of present-day needs.

—CHARLES W. CALDWELL.

FRAUDULENT CONVEYANCES — ASSIGNMENT OF LIFE INSURANCE POLICY IN FRAUD OF CREDITORS. — In order to obtain $8000 from the plaintiff and to sell her certain notes, M told the plaintiff that he carried (and would continue to carry) from $75,000 to $100,000 in life insurance, payable to his estate. In fact, the actual amount of such insurance was only $45,000. Less than two months thereafter, M, while insolvent, transferred the policies to his wife, the defendant, no consideration having been given for the transfer. At M's death, a week later, the face value of the policies was paid to the defendant. The appraisal of M's estate indicated that the liabilities were far in excess of the assets. Plaintiff sought by a suit in equity to reach the insurance monies. It was held, reversing the lower court, that while the transfer was constructively fraudulent as to the plaintiff, her recovery would be limited to the cash-surrender value of the policies at the time the change in beneficiaries was made. *Mahood v. Maynard.*[1]

It is well recognized that a life insurance contract is not one of indemnity.[2] Unlike fire and accident insurance, the event upon which the sum is to be paid is certain to happen at a future time.[3] The insurer promises to pay a fixed sum in consideration of annuities paid it; the premiums constitute the consideration for the

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ground for a rational compromise between individual rights and public welfare." And further, it was added: "Where, in earlier days, it was thought that only the concerns of individuals or of classes were involved, and that those of the State itself were touched only remotely, it has later been found that the fundamental interests of the State are directly affected; and that the question is no longer merely that of one party to a contract as against another, but of the use of reasonable means to safeguard the economic structure upon which the good of all depends."

[20] Sturges v. Crowninshield, *supra* n. 14.

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[1] 171 S. E. 884 (W. Va. 1933).

[2] Patterson, *Insurable Interest in Life* (1918) 18 COL. L. REV. 381, 388. Wurzburg v. N. Y. Life Insurance Co., 140 Tenn. 59, 203 S. W. 332 (1918).

[3] VANCE ON INSURANCE (2d ed., 1930) 80.

entire assurance. The non-payment of these annuities is a condition subsequent which makes the policy void.[4] The policy is an asset of the estate; it is transferable and the creditors may seize and sell it as such.[5] The beneficiary, too, has a vested interest in the policy,[6] subject to a defeasance.[7] Moreover, the beneficiary is not divested of his interest in the policy by the failure of the insured to pay the premiums, for the beneficiary may pay them himself.[8] It is submitted that the proceeds of life insurance payable to the estate are assets of the estate and are subject to fraudulent conveyance.[9] It is true that statutes have made great inroads into the symmetrical order of fraudulent conveyancing law[10] to protect the wife and children of the insolvent in preference to the creditors. But even these statutes permit recovery of the premiums, which is more than the cash-surrender value of the policy, which value only was allowed by the court in the principal case. The West Virginia statute,[11] which is not controlling in this case, permits recovery of the premiums of insurance over the exempted amount. As a rule, premiums which are paid out of the insolvent estate are recoverable in insurance policies fraudulently conveyed.[12]

It is submitted that the West Virginia court has gone far in protecting the beneficiary of the insolvent; and that on principle there should be recovery of all the proceeds by the creditor, since the proceeds are the result of investments made from funds of the insolvent estate.[13]

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[4] Abell v. Penn Mutual Life Insurance Co., 18 W. Va. 400 (1881).

[5] Grigsby v. Russell, 222 U. S. 149, 32 S. Ct. 58 (1911).

[6] Douglass v. Eq. Life Assurance Soc., 150 La. 519, 90 So. 834 (1921); Bradshaw v. Mutual Life Insurance Co. of N. Y., 205 N. Y. 467, 98 N. E. 851 (1912).

[7] Indiana National Life Insurance Co. v. McGinnis, 180 Ind. 9, 101 N. E. 289 (1913). In this case the court said, "The interest therein taken and owned by the beneficiary upon the issuance, delivery and acceptance of the policy was a defeasable, vested interest."

[8] Mutual Life Insurance Co. v. Hill, 178 U. S. 347, 20 S. Ct. 1032 (1900).

[9] GLENN, THE LAW OF FRAUDULENT CONVEYANCES (1931) 247.

[10] A leading article is Williston, *Can an Insolvent Insure His Life for Wife's Benefit?* (1891) 25 AM. L. REV. 185.

[11] W. VA. REV. CODE (1931) c. 48, art. 3, § 23.

[12] Fidelity Trust Co. v. Union National Bank of Pittsburgh, 169 Atl. 209 (Pa. 1933); Rose v. Meury, 112 N. J. Eq. 62, 163 Atl. 276 (1932); Farley v. First National Bank, 250 Ky. 150, 61 S. W. (2d) 1059 (1933).

[13] (1913) 26 HARV. L. REV. 362, 363.