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A cursory examination of the court reports will reveal that there is a constant stream of cases coming before our courts in which the principal questions at issue involve the disposition of the proceeds of matured life insurance policies. The question arises most often when the insured, having reserved the right to change the beneficiary, had manifested an intention that someone other than the beneficiary named in the policy should receive the proceeds, but had not complied with the formalities prescribed in his contract for effecting a change. Unfortunately, the answer to the question in the particular case has often been made unnecessarily difficult because our courts have not evolved any consistent theory on the basis of which the problem can be resolved. This is unfortunate, since it has a tendency to induce litigation which might have been avoided were there a consistent underlying theory readily determinable as a basis for predicting the probable outcome in the particular case.

It is the almost universally accepted rule that a named beneficiary's interest becomes fully vested at the inception of the contract of insurance and cannot be cut off thereafter either by the insured alone or by agreement between the insured and the insurer, unless the right to do so is reserved expressly.[1] It is equally well settled that if an option to change the beneficiary is expressly reserved, then the power exists, and, if it is exercised in the manner prescribed in the contract, the change of beneficiary will be fully effective to entitle the subsequently designated beneficiary to the proceeds of the policy.[2] To this extent the law is clear and consistent and causes no difficulty.

In general there are two kinds of cases which do cause difficulty: (1) those in which an insured who has reserved an option to make a change of beneficiary has taken some of the steps prescribed in his contract for effecting a change, but has died or become incapacitated before the procedure has been carried through to the end; and (2)

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[1] For the history of this rule and a collection of cases, see Page, "The Power of the Contracting Parties to Alter a Contract for Rendering Performance to a Third Person," 12 WIS. L. REV. 141 at 167-181 (1937). See also, Grismore, "The Assignment of a Life Insurance Policy," 42 MICH. L. REV. 789 at 793-794 (1944).

[2] See the cases cited in the following notes.

those in which, an option having been reserved, no steps whatever have been taken toward complying with the prescribed formalities, but other conduct of the insured makes it clear that it was his intention that someone other than the formally designated beneficiary should receive the proceeds of the policy upon its maturity. Where an option to change the beneficiary is reserved, the customary policy provision relating to the matter is to the effect that a change may be accomplished by filing a written request at the home office of the insurer and accompanying the request with the policy itself for endorsement. It is further commonly stipulated that the change shall be effective only after such endorsement has been made. It may or it may not stipulate that, once the endorsement has taken place, the change shall be deemed to relate back to, and to be effective as of, the date of the signing of the request for a change.[3]

While the courts have a tendency to place these two kinds of cases in separate and more or less distinct categories and to deal with them as if they involved the application of different principles, it is submitted that a careful analysis will reveal that they all involve the same fundamental considerations. The real question at issue in all of these cases would seem to be whether the formalities prescribed in the contract for effecting a change are to be deemed to be conditions subsequent to the right of the formally designated beneficiary as well as conditions precedent to the duty of the insurer to pay a claimant, or whether they are *merely* conditions precedent to the duty of the insurer to make payment to the person claiming the proceeds. That is to say, if we conclude that the right of the formally designated beneficiary is vested the moment he is so designated, subject only to being divested in the manner prescribed in the contract, then we should also conclude that his right continues unimpaired unless and until those formalities or conditions subsequent have either been complied with or else have become legally excusable. On the other hand, we may conceivably take the view that the prescribed formalities are intended solely for the protection of the insurer, that is, that they are merely conditions precedent to his duty to pay a particular person. On this view of the matter, the insured, without complying with the prescribed formalities,

[3] An occasional case can be found in which the policy stipulated that the change of beneficiary must be consented to by the insurer, although this is unusual. See, e.g., Barrett v. Barrett, 173 Ga. 375, 160 S.E. 399 (1931). It may be doubted whether such a stipulation would be held to vest any discretion in the insurer or to be anything more than a formality like that of endorsing the change on the policy.

would seem to have the power, by a manifestation of intention so to do, to vest the beneficial interest in someone other than the formally designated beneficiary. However, the insurer would have the right to refuse to recognize the claim of such person, since the conditions precedent to the insurer's duty to do so have not been complied with, and to discharge his obligation by paying the formally designated beneficiary. The latter, on this hypothesis, would then hold the money so received as trustee for the claimant. Of course, since the prescribed formalities, on this interpretation, are deemed to be solely for the benefit of the insurer, he may waive them, if he sees fit to do so, and may pay the claimant directly.

A situation somewhat analogous to this last supposed has arisen in connection with the application of the so-called "facility-of-payment" clause, which is found in many industrial life insurance policies. When a specific beneficiary is named in a policy containing such a clause, but the insurer pays the proceeds to some one of the persons described in the "facility-of-payment" clause, to the exclusion of the named beneficiary, it has usually been held that, while the obligation of the insurer has been fully discharged by such payment, nevertheless, the person receiving the payment holds the money in trust for the named beneficiary. The theory of this holding is that the "facility-of-payment" clause is designed solely for the convenience and protection of the insurer and that payment under it does not determine the ultimate right to the money.[4]

Unfortunately, in most of the cases coming before the courts, it is not at all certain which is the correct view of this matter. This is so because the insurance contract, as it is commonly drawn, does not make clear the intention of the parties in regard to it. Undoubtedly the parties to the contract may make the rights of the beneficiary as broad or as narrow as they wish. There is no principle of the law to prevent this, since it has become well settled in the modern law of this country that a third party beneficiary may have such rights as have been conferred upon him by the parties to the contract. The difficulty stems from the fact that the customary manner of framing the "change of beneficiary" clause leaves us without any real basis for determining whether it was intended to make the prescribed formalities conditions subsequent to the right of the formally designated beneficiary, or whether they are written in solely for the protection of the insurer.

[4] The cases are collected in 166 A.L.R. 78 ff. (1947).

If the latter be deemed the correct interpretation, then they are merely conditions precedent to the insurer's duty to make payment, and the failure to fulfill the requirements would seem to leave the formally designated beneficiary at least in the position of a nominee for payment, regardless as to what may be the ultimate rights as between himself and some other claimant.

It ought to be emphasized that the problem is essentially one of determining the correct interpretation to be placed upon the language of the contract, contrary to what one might suppose from a reading of the decided cases. Courts are inclined to talk in terms of whether the interest of the beneficiary, during the lifetime of the insured, is to be deemed to be a vested one or a mere expectancy, and to draw conclusions on the basis of this determination, as if there were some rule of law defining the nature of the beneficiary's relation to the contract. It is submitted that a correct analysis leads to the conclusion that the nature of his right, that is, the question as to whether he has an absolute or a contingent right, and the nature of the contingency, if any, are dependent solely upon the terms of the contract itself. Admittedly his right is not vested in the sense that it cannot be cut off without his consent; but to say that he has no right whatever prior to the death of the insured, as some courts seem to assert, would seem to be equally wide of the mark. He has a present right, although a contingent one, and the real problem to be solved is to determine the nature of the contingency.

When we come to examine the decided cases we find that they are in hopeless confusion. Not infrequently the court has apparently adopted one interpretation in one case and then in a later case the other, although the language of the contracts involved in the two cases is the same. Oftentimes inconsistent ideas find expression in the same case without apparent realization that they are inconsistent. Thus, in the recent case of *Gill v. Provident Life and Accident Insurance Company*,[5] the West Virginia court, after asserting it to be the rule that the rights of the formally designated beneficiary cannot be cut off without at least substantial compliance with the formalities prescribed in the contract, proceeds to hold further that some of these formalities at least are intended solely for the benefit of the insurer and so may be waived by him by his filing a bill of interpleader, thus giving the claimant a preferred position. How all of these assertions

[5] (W.Va. 1948) 48 S.E. (2d) 165.

can be true the court does not explain. Compliance with the prescribed formalities either is or is not a condition subsequent to the right of the formally designated beneficiary. If it is, he alone would seem to have the power to dispense with the necessity for that compliance. If it is not, even then, waiver by the insurer would seem to be wholly immaterial when the insurer files a bill of interpleader, thus making the formally designated beneficiary and the claimant the real parties to the dispute, as was the situation in the West Virginia case. Waiver by the insurer can be a factor only when the insurer himself is resisting the claim of the claimant, since he can dispense with the necessity of fulfilling only those conditions which qualify his own duty. We must not overlook the fact that the claimant may conceivably have a right to the money without having the right to require the insurer to pay it to him. The insurer may have the right to pay the formally designated beneficiary as nominee for the claimant unless he has waived that right; but unless he is resisting the claimant's demand, no further question of waiver by him can be involved.

Where the first type of situation mentioned above is involved, that is, where the insured had started to take the prescribed steps for effecting a change of beneficiary, but has died or become incapacitated before they could be carried to completion, the decided cases are, for the most part, consistent with the view that these formalities are conditions subsequent to the right of the formally designated beneficiary, and that unless they have been observed or their fulfillment is legally excusable, the claimant is not entitled. Thus where the insured had manifested an intention to change the beneficiary and had delivered his policy to the claimant with instructions to secure the necessary forms from the insurer so that he could carry out the specified procedure, and had died five hours later, before the necessary steps could be taken, it was held that the formally designated beneficiary was entitled to the proceeds.[6] This decision was based on the ground that the required procedure had not been substantially complied with. It was so held in spite of the fact that the claimant had paid the last premium due on the policy and had agreed to pay future premiums. The same result was reached when the insured had made out a formal request for a change of beneficiary and had delivered it to his employer for transmittal to the insurer, as required by the terms of the group policy under which he was insured, but had died before the employer sent it

[6] West v. Pollard, 202 Ga. 549, 43 S.E. (2d) 509 (1947).

to the insurer.[7] So also where the insured had failed to acknowledge his formal request for a change before a notary public,[8] or had failed to give specified information, or had failed to transmit his request through the proper channel as prescribed in his contract,[9] and had died before the omission could be supplied, it was held that the formally designated beneficiary should prevail over the claimant, as the insured had not done everything required of him to effect a change.

However, it does not follow from these decisions that literal compliance with every specified detail is essential. If the insured has done everything required of him to effect a change, and all that remains to be done is that the insurer record the change on its records or on the policy, then it is generally conceded that the newly designated beneficiary should prevail. This is so, although the insured has died before the insurer has had an opportunity to act on his request for a change.[10] This result is sometimes justified on the ground that the acts to be done by the insurer are purely ministerial and that their omission cannot defeat the claimant because of the equitable principle that the law regards that as done which ought to have been done,[11] sometimes on the theory that these acts are solely for the benefit of the insurer and may be waived by him,[12] and at other times on the ground that substantial compliance with the prescribed formalities is all that is required, and that this has occurred.[13] In view of what has already been said, it would seem to follow that the last of these positions is the only one

[7] Johnson v. Johnson, (C.C.A. 5th, 1943) 139 F. (2d) 930.

[8] Equitable Life Assur. Society of the U.S. v. McClelland, (D.C. Mich. 1949) 85 F. Supp. 688. Cf. the cases cited in note 16, infra.

[9] Young v. American Standard Life Ins. Co., 398 Ill. 565, 76 N.E. (2d) 501 (1948).

[10] Numerous cases to this effect are collected in the annotation in 78 A.L.R. 970 (1932). In Schwerdtfeger v. Am. United Life Ins. Co., (C.C.A. 6th, 1948) 165 F. (2d) 928, the court reached this decision, although the insured's agent retained possession of the request for a change of beneficiary until after insured's death. Boehne v. Guardian Life Ins. Co., 224 Minn. 57, 28 N.W. (2d) 54 (1947) accord.

[11] See e.g., Reliance Life Ins. Co. v. Bennington, 142 Md. 390, 121 A. 369 (1923); Boehne v. Guardian Life Ins. Co., 224 Minn. 57, 28 N.W. (2d) 54 (1947); Equitable Life Ins. Co. of Iowa v. Dinoff, (D.C. Ohio, 1947) 72 F. Supp. 723.

[12] See e.g., Royal Union Mut. Life Ins. Co. v. Lloyd, (C.C.A. 8th, 1918) 254 F. 407; Schwerdtfeger v. American United Life Ins. Co., (C.C.A. 6th, 1948) 165 F. (2d) 928.

But in Johnson v. Johnson, (C.C.A. 5th, 1943) 139 F. (2d) 930, it was held that such waiver must occur prior to the death of the insured, on the theory that the rights of the beneficiary become vested at the moment of the insured's death. As is pointed out in the text above, it is difficult to see how waiver by the insurer can in any way affect the rights of the beneficiary so far as his ultimate right to the money is concerned. His equitable right to the money would seem to depend upon other considerations. Since waiver by the insurer can in any event affect merely the remedy, it should make no difference whether it occurs before or after the death of the insured.

[13] See Hoskins v. Hoskins, 231 Ky. 5, 20 S.W. (2d) 1029 (1929).

that can reasonably be defended. It can be asserted with some show of reason that the parties to the contract could hardly have intended that each step in the procedure must be literally complied with to effect a change of beneficiary. It is much more reasonable to assume that what they had in mind was a compliance sufficient to give assurance of the authenticity of the insured's desire to bring about a change and to provide trustworthy evidence of that desire to the insurer.[14] If we accept this interpretation, then the condition has been fulfilled when enough has been done to accomplish these purposes, and the only problem that remains is to determine what amounts to substantial compliance.

An occasional case can be found in which a court has held that nothing short of literal compliance with all the specified formalities will satisfy the condition. Thus, in one case in which the insured filed with the insurer a formal request for a change, but died before the insurer had an opportunity to endorse the change on the policy, it was held that the original beneficiary must prevail.[15] Such a strict interpretation does not seem to be justified in the absence of controlling language, in view of the obvious intent of the customary contract to give the insured broad and more or less uncontrolled power in the matter of designating a new beneficiary.

As might be expected, the cases which purport to follow the majority view are not all in agreement as to just how far the insured must carry the procedure before it will be said that he has done everything required of him to fulfill the condition subsequent and to make the change of beneficiary effective. Sometimes the court has seemed to be unnecessarily strict in this regard. However, in some of these cases the court's apparent lack of liberality may have been due to the fact that it was not convinced that the insured really had desired to make the change which he had requested.[16]

[14] See Atkinson v. Metropolitan Life Ins. Co., 114 Ohio St. 109, 150 N.E. 748 (1926) which seems to approach the solution of the problem from this point of view.

[15] It was so held in Freund v. Freund, 218 Ill. 189, 75 N.E. 925 (1905). But see Sun Life Assur. Co. v. Williams, 284 Ill. App. 222, 1 N.E. (2d) 247 (1936), which seems to reject the holding of the Freund case.

[16] See e.g., Johnson v. Johnson, (C.C.A. 5th, 1943) 139 F. (2d) 930, where the court held that insured had not done all that was required of him when he sent a request for a change of beneficiary to his employer, as required by his contract, for transmittal to the insurer. The evidence tended to show that he had forwarded the request more or less against his will. Cf. Thomas v. Locomotive Engineers' Mut. Life and Accident Ins. Assn. v. Hopkins, 191 Iowa 1152, 183 N.W. 628 (1921), which held that insured had done everything required of him, although he omitted to supply an affidavit explaining his failure to send in his certificate as required by his contract. In this case it was clear that insured did desire to make the change in question.

So also, if the facts leave in doubt the question as to whether the insured had finally made up his mind to exercise his power to change the beneficiary in favor of the claimant, his failure to take all of the prescribed steps may weight the scale in favor of the view that the insured had never really made up his mind to make the change or had changed his intention while in the process, in either of which cases, of course, the claimant has no rights even though some steps to bring about the change had already been taken.[17]

It is also worthy of note that some courts have been inclined to adopt a stricter rule in the case of fraternal benefit or relief association policies in which the matter of change of beneficiary is usually governed by the by-laws of the association. In these cases it has sometimes been asserted that literal compliance with all the requirements set forth is always essential to vest any right in the newly designated beneficiary.[18] It may be doubted, however, whether there is any justification for such a distinction, since the rights of the parties are contractual in this case as well as in the case of a policy issued by a regular commercial company. The tendency of the more recent cases is to make no distinction between the two kinds of insurance.[19]

Although the insured has not done everything required of him, the requested change of beneficiary may nevertheless be held effective, if the failure to take the omitted steps was due to unanticipated circumstances beyond his control. Thus, if he is required to forward his policy along with the request for a change for endorsement of the name of the new beneficiary thereon, and he is unable to do so because the policy has been lost or is otherwise unavailable[20] or because it is in the possession of the then named beneficiary, who refuses to surrender it,[21] the change will be effective in spite of the omission. Like-

[17] See e.g., Young v. American Standard Life Ins. Co., 398 Ill. 565, 76 N.E. (2d) 501 (1947); Sun Life Assur. Co. of Canada v. Secoy, (D.C. Ohio, 1947) 72 F. Supp. 83.

[18] See e.g., Boehne v. Guardian Life Ins. Co., 224 Minn. 57, 28 N.W. (2d) 54 (1947) (dictum); Ringler v. Ringler, 156 Md. 270, 144 A. 221 (1928).

[19] See McCloud v. Aetna Life Ins. Co., 221 Minn. 184, 21 N.W. (2d) 476 (1946); Supreme Council of the Royal Arcanum v. Behrend, 247 U.S. 394, 38 S.Ct. 522 (1918) and annotation in 1 A.L.R. 971 (1919).

[20] Barrett v. Barrett, 173 Ga. 375, 160 S.E. 399 (1931) (in this case the insured was too ill to get the policy out of his safe deposit box).

[21] Alfama v. Rose, 323 Mass. 643, 83 N.E. (2d) 868 (1949); McDonald v. McDonald, 212 Ala. 137, 102 S. 38 (1924). Additional cases are collected in an annotation in 36 A.L.R. 771 (1925). In McDonald v. McDonald, the court held that it need not be shown affirmatively that the original beneficiary refused on demand to give up the policy. The court said, at p. 142, "That appellee [the named beneficiary] had possession is sufficiently alleged, and is not denied. In these circumstances there are authorities which hold on what seems to be good reason that it may be fairly inferred that appellee would not have surrendered the policy

wise, where the insured was in a Japanese prisoner-of-war camp, where he was denied the privilege of writing to anyone other than a relative, his letter to a relative requesting her to have the beneficiary changed was held effective to accomplish his purpose, although no other steps whatever had been taken.[22] While it cannot be claimed in these cases that the condition has been complied with, the decisions in them are undoubtedly justifiable on the ground that the condition has been excused by impossibility. It is a well-established principle of the law of contracts that fulfillment of a condition may be excused on the ground of impossibility, where the circumstances which prevent the fulfillment were unforeseen by the parties at the time the contract was made and were of such a nature that, had they, at the time, thought of the possibility of their occurrence, they as reasonable men would have written an exception into the general language used in the contract.[23]

Where no steps whatever were taken by the insured to exercise his power to change the beneficiary in the prescribed manner, and none were contemplated, but the insured in some other way unmistakably manifested an intention that some person other than the formally designated beneficiary should receive the proceeds of the policy at its maturity, most of the courts have adopted a quite different approach to the solution of the problem from that used in the type of case which has just been discussed. This situation arises most often when the insured, without attempting to change the beneficiary in the manner prescribed, purports to assign his contract in general terms for a valuable consideration, to a third person, with the obvious intention that the assignee shall have the right to the proceeds of the policy at its maturity as well as all the other rights conferred by the contract. Of course, if the contract in express terms confers upon the insured the additional power to cut off the rights of the named beneficiary by an assignment, as is sometimes the case, no question arises, and the assignee will prevail.[24] However, in the usual case no such power is conferred upon the insured by the terms of his contract. In this situation two distinct lines of authority exist. A majority of the courts which

on demand of the insured." Gill v. Provident Life & Accident Ins. Co., (W.Va., 1948) 48 S.E. (2d) 165, accord.

But cf. Ponlain v. Sullivan, 308 Mass. 58, 30 N.E. (2d) 848 (1941), which held that an insured who had delivered a policy to the named beneficiary with intent to make a gift of the policy to the beneficiary had lost the right to change the beneficiary or to have any control over the policy.

[22] Finnerty v. Cook, 118 Colo. 310, 195 P. (2d) 973 (1948).

[23] See GRISMORE, PRINCIPLES OF THE LAW OF CONTRACTS §164 (1947).

[24] Fisher & Co. v. Phoenix Mutual Life Ins. Co., 15 Tenn. App. 502 (1932).

have dealt with the question have held that the rights of the assignee are superior to those of the named beneficiary, at least to the extent of the assignee's equity.[25] While the reasons which have motivated these decisions have not always been definitely articulated, they have apparently been sought to be justified on one or the other of two more or less distinct theories. One group of cases seems to proceed on the theory previously mentioned that the beneficiary has no vested interest whatever in the policy, that the right to the proceeds resides in the insured until his death and consequently can be assigned by him, thus defeating the expectancy of the beneficiary. Other courts, having more regard for the essential nature of the beneficiary's rights, have taken the position that an assignment is to be deemed the equivalent of a formal change of beneficiary and is effective as such. It is submitted that these decisions, on whatever theory they may be based, are wholly inconsistent with the results reached in the kind of case first discussed above. If it be assumed that the beneficiary does have a contingently vested right, as those cases seem to assert, and that the formalities prescribed for a change of beneficiary are conditions subsequent to that right, then it is difficult to see how the right can be destroyed by a transaction which does not pretend to embody any of the prescribed elements. However, it is not difficult to understand why the courts have been astute to find reasons for evading this conclusion in this type of case. Life insurance has come to be regarded as an investment medium and as an asset to be hypothecated by the insured in time of financial need, and it does seem unfortunate that he should not be able to so use it without resorting to the rather cumbersome procedure for changing the beneficiary. A minority of courts, however, have preferred to adhere to more orthodox principles and have held that an assignment alone will vest no right in the assignee superior to those of the beneficiary, who alone can assign the right to the proceeds while they continue in him.[26]

At least one court has held that an insured who delivered his policy to a third person with intent to make a gift thereof and to vest all the rights in the donee had effectively cut off the rights of the formally designated beneficiary, although he had taken no steps what-

[25] See Grismore, "The Assignment of a Life Insurance Policy," 42 MICH. L. REV. 789 at 796-800 (1944) where the cases are collected and discussed in more detail.

[26] Ibid., pp. 800-802.

ever to comply with the change of beneficiary clause in his policy.[27] Obviously there is less reason for violating accepted principles where the dispute is between two claimants neither of whom has paid value than there is in the assignment case.

So also, the Supreme Court of Arkansas has held that the legatee in a will to whom the testator had bequeathed a policy of insurance was entitled to the proceeds in preference to the formally designated beneficiary,[28] although most of the courts in which this question has arisen seem to have reached the opposite conclusion.[29] In a recent New Jersey case the court refused to prefer a claimant who based his claim on an affidavit prepared by the insured during his lifetime, in which he declared that the claimant was to be the beneficiary of his policy in place of the formally designated beneficiary.[30]

Where the insured and a named beneficiary have entered into an agreement supported by a valuable consideration that the insured will refrain from changing the beneficiary, it is generally held, for obvious reasons, that such beneficiary is entitled to the proceeds of the policy as against a substitute donee beneficiary. This is so although all the requirements for changing the beneficiary have been met.[31] Undoubtedly, if the insurer in such a case should pay the substitute beneficiary

[27] Jennings v. Provident Life & Accident Ins. Co., 246 Ala. 689, 22 S. (2d) 319 (1945) s.c. on appeal after retrial under the title, Jennings v. Jennings, 250 Ala. 130, 33 S. (2d) 251 (1947). Johnson v. N.Y. Life Ins. Co., 56 Colo. 178, 138 P. 414 (1914) contra.

Of course, where no beneficiary is named in the policy and the proceeds are payable to the estate of the insured, an effective gift can be made of the policy by delivering it with donative intent, Opitz v. Karel, 118 Wis. 527, 95 N.W. 948 (1903); Peel v. Reibel, 205 Minn. 474, 286 N.W. 345 (1939); Smith v. Pacific Mut. Life Ins. Co., 130 Neb. 501, 265 N.W. 534 (1936).

[28] Pedron v. Olds, 193 Ark. 1026, 105 S.W. (2d) 70 (1937). See also, Benson v. Benson, 125 Okla. 151, 256 P. 912 (1927), annotated in 62 A.L.R. 940 (1929) in which, in a proceeding to probate a holographic will, it was said that a disposition of a life insurance policy by will would be effective to cut off the beneficiary named in the policy so long as there was no showing that the contract prescribed any particular method for effecting a change of beneficiary; and Townsend v. Fidelity & Casualty Co., 163 Iowa 713, 144 N.W. 574 (1914), holding that where a policy of insurance is silent as to the method of changing the beneficiary such change may be effected by the will of the insured.

[29] Cook v. Cook, 17 Cal. (2d) 638, 111 P. (2d) 322 (1941); Wannamacher v. Stroman, 167 S.C. 484, 166 S.E. 621 (1930). Of course, where the insurance is payable to the estate of the insured or to his executors or administrators it may be disposed of by will, Miller v. Miller, 200 Iowa 1070, 205 N.W. 870 (1925).

[30] Metropolitan Life Ins. Co. v. Dinzik, 141 N.J. Eq. 336, 57 A. (2d) 247 (1948). See also the cases cited in notes 7, 8, and 9, supra.

[31] Beed v. Beed, 207 Iowa 954, 222 N.W. 422 (1929); Gaston v. Clabaugh, 106 Kan. 160, 186 P. 1023 (1920); King v. Supreme Council Catholic Mut. Ben. Assn., 216 Pa. 553, 165 A. 1108 (1907); Benard v. Grand Lodge A.O.U.W., 13 S.D. 132, 82 N.W. 404 (1900); Neary v. Metropolitan Life Ins. Co., 92 Conn. 488, 103 A. 661 (1918).

without knowledge of the equities of the prior beneficiary, he would be absolved of further liability, but in that case the substitute would no doubt be adjudged a trustee of the fund for the benefit of the original beneficiary.

It is obvious from this review of the cases that the law on the subject is in a confused and uncertain state. There is much to be said for the view that the problem would be simplified were the courts to deal with the "change of beneficiary" clause in the regular life policy in all cases just as a majority of the courts have dealt with the "facility of payment" clause in the usual industrial life policy. It would not be unreasonable to take the view that all of the formalities prescribed for changing the beneficiary are intended solely for the protection of the insurer and are not at all designed to qualify the power of the insured to vest a beneficial interest in the proceeds in any third person without complying with those formalities. On this view of the matter, as was pointed out above, the insurer would be fully protected, since payment to the formally designated beneficiary would discharge his obligation. On the other hand, the wishes of the insured in regard to the disposition of the money could be fully met, since the court, on interpleader or in a suit brought by the claimant against the person receiving the fund, assuming the formally designated beneficiary could not show a superior equity, could then award it to the claimant, provided he could show by trustworthy evidence that he was the person finally intended by the insured to have it.