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LIFE INSURANCE AS AN ASSET AVAILABLE TO CREDITORS IN MARYLAND

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In this article concerning the proceeds of insurance policies as an asset available to creditors, proceeds from property-protecting policies such as marine, fire, theft and the like, are excluded from consideration. Also, it is not the purpose to consider problems arising out of cases where a creditor is the named beneficiary or assignee.¹ It is the matter of the proceeds payable from life insurance policies where a creditor is not named beneficiary or assignee that will be considered.

As an original proposition it is accepted that, under appropriate circumstances, proceeds from insurance policies are just as much an asset available to creditors as any other property of a debtor, such as real property or chattels.

Professor Glenn, in his book "Creditors' Rights and Remedies"² states:

"A policy of life insurance in effect represents accumulated payments by the insured which, if he dies within a limited period, result in a payment to his estate or the beneficiary under the policy, but if he lives beyond a certain period, result in his being entitled to receive from the insurer certain cash, in addition to having his insurance continued, or, in some instances, in substitution of the latter right. When this stage has been reached the policy is said to have

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¹ As exemplified in *Fitzgerald v. Rawlings*, 114 Md. 470, 79 A. 915 (1911).

² GLENN, *THE RIGHTS AND REMEDIES OF CREDITORS RESPECTING THEIR PROPERTY* (1915) 40.

a cash surrender value. As has been said, this cash surrender value is composed of 'the excess in the premiums paid over the annual cost of insurance, with accumulations of interest.'³ As the Supreme Court has noted, nearly every insurance policy of the present day 'will be found to have either a stipulated surrender value or an established value, the amount of which the companies are willing to pay'.⁴ When a policy reaches this stage, it bears out the remark of Vice Chancellor Pitney that 'there is no mystery or charm about life insurance. It is not the means of creating wealth, nor yet a contract of mere indemnity, as is that of fire and marine insurance. It is in its most usual form, simply a mode of putting by money for savings.'⁵ Apart from the question of fraudulent transfer, in connection with laying by such treasures for the benefit of another by means of a policy of life insurance, there is no doubt that unless restrained by statute this cash surrender value is an asset available to creditors'.⁶

Without laboring this point further, it may be added that under the Bankruptcy Act⁷ insurance policies may pass to the trustee in bankruptcy if the insurance is not exempt under Federal or State law.⁸ Decisions of Federal courts, including the District Court for Maryland,⁹ have likewise established this.

However, not all proceeds from policies in which the debtor is the insured are available to his creditors. Thus, where a policy is payable to a beneficiary, other than the insured, and no power is reserved to the insured to divest the interest of the beneficiary by changing the beneficiary,

³ Citing *In re McKenny*, 15 F. 535 (D. C. S. D. N. Y., 1883).

⁴ Citing *Burlingham v. Crouse*, 228 U. S. 459 (1913).

⁵ Citing *Merchants Co. v. Bosland*, 53 N. J. Eq. 282, 31 A. 272 (1895).

⁶ See also, *VANCE, INSURANCE* (2nd Ed. 1930) 614.

⁷ Sec. 70A; 11 U. S. C. A. 110A. ". . . That when any bankrupt, who is a natural person, shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representative, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets. . . ."

⁸ *Ibid.*, Sec. 6.

⁹ *In re Jones*, 249 F. 487 (1917).

it is the absolute property of the beneficiary and, in the absence of statute to the contrary or fraud, it cannot be reached by the insured debtor's creditors.¹⁰

If, however, such a policy is taken out or the premiums on such a policy are paid by the insured in fraud of creditors, or when he is insolvent, some jurisdictions permit creditors to pursue the proceeds to a greater or lesser degree, the result often being regulated by statutes covering this situation in the particular state. In the absence of statutes, some states permit creditors to recover the entire proceeds; other states allow the creditors so much of the fund as represents premiums paid while insolvent plus interest; still other states hold that even an insolvent may devote a reasonable part of his money for the protection of his family and, in the absence of actual fraud, protect the fund for the beneficiaries without even allowing creditors to recover the value of the premiums paid.¹¹

Also, generally, in the absence of statutory protection, the assignment, while insolvent, of the insured's interest in a policy to a third person without a fair consideration is a fraudulent conveyance.¹²

Maryland, by virtue of statutes, has permitted a husband to take out life insurance for the benefit of his wife or to assign such policy to his wife so that it shall be free from the claims of his creditors;¹³ and, even more liberally, has permitted any person to take out life insurance on his own life or bona fide to assign such a policy, for the benefit

¹⁰ VANCE, *INSURANCE* (2nd Ed. 1930) 616, 617; COOLEY, *BRIEFS ON INSURANCE* (2d Ed. 1928) 6494.

¹¹ VANCE, *INSURANCE* (2nd Ed. 1930) 621-626; Note, *Rights of Creditors of an Insured Insolvent Against His Wife and Children as Beneficiaries of a Life Policy* (1923) 23 Col. L. Rev. 771.

¹² VANCE, *INSURANCE* (2nd Ed. 1930) 617; GLENN, *FRAUDULENT CONVEYANCES AND PREFERENCES* (1940) Sec. 177.

¹³ Md. Code (1939) Art. 45, Sec. 8: "Any married woman by herself and in her name or in the name of any third person with his assent as her trustee may insure or cause to be insured for her sole use the life of her husband for any definite period or for the term of his natural life; and any husband may cause his own life to be insured for the sole use of his wife and may also assign any policy of insurance upon his own life to his wife for her sole use; and in case of the wife surviving her husband, the sum or net amount of such insurance becoming due and payable by the terms of the insurance shall be payable to her for her own use, free from the claims of the representatives of her husband, or any of his creditors."

of wife, children, or any relative or creditor free from all claims of the creditors of such insured person.¹⁴

These statutes have been before the Court of Appeals in relatively few cases. This paucity of decisions is perhaps due to the sweeping construction given these statutes by the Court.

In *Elliott v. Bryan*,¹⁵ a husband, utterly insolvent, assigned to his wife a policy that was payable to himself or his personal representatives and assigns. After the death of the husband a creditor sought to reach the proceeds by a bill in Equity on the theory that the assignment was in fraud of creditors. In its opinion, speaking of Article 45, Section 4, the Maryland Court of Appeals said:

“This statute is one of a series of enactments in furtherance of the policy of protecting married women. It enables a husband to provide a fund for the benefit of his wife, in which his creditors have no interest or concern. It is nothing to the purpose that the creditors may be unable to obtain payment of their claims out of the husband’s property. This was the very exigency which the statute was intended to meet; this was the occasion when the wife needed protection. It would have been unnecessary to exempt the proceeds of the insurance from the claims of creditors, in cases where the husband’s property was sufficient to pay them. It was contemplated, that in cases where the creditors could not otherwise obtain payment, they would resort to this settlement on the wife; and at this point the statute interposes and secures it to her. There is no restriction, qualification or proviso in the Act of Assembly, and it would be against common reason to except from its operation the cases of husbands who were unable to pay their debts.”

In this case the statement of facts as alleged indicates that at the time of the assignment the policy had a realizable value of several thousand dollars.

¹⁴ Md. Code (1939) Art. 45, Sec. 9: “All policies of life insurance upon the life of any person which may hereafter mature, and which have been or shall be taken out for the benefit of or bona fide assigned to the wife or children or any relative dependent upon such person or any creditor shall be vested in such wife or children or other relative or creditor, free and clear from all claims of the creditors of such insured person.”

¹⁵ 64 Md. 368, 1 A. 614 (1885).

Two months after deciding *Elliott v. Bryan*, the Court of Appeals, in *Earnshaw, Ex'r. et al. v. Stewart*,¹⁶ again had the opportunity to pass on the validity of an assignment of an insurance policy which was under attack by a creditor, where the debtor had assigned the policy to his four sons. In this case Article 45, Section 9, and particularly the words "bona fide", as used in the statute, received the Court's attention. The facts of the transaction, such as they are, are set forth in the following paragraph of the Court's opinion dealing with the insurance phase of the litigation:

"This is a bill to set aside an assignment of a life policy, made by a father to his four sons; also to set aside a bill of sale made to his son, William, as being in fraud of the rights of his creditors. So far as concerns the life policy, it is sufficient to say, that the assignment is, under the Act of 1878, chapter 200,¹⁷ a valid assignment. This the Act declares in express terms. It may not be easy to understand what the Legislature meant by 'bona fide' as here used, unless they meant there must be an out and out assignment to the wife or children, and not one upon some secret trust in favor of the assignor; or it may be they meant it to apply to assignments of life policies to creditors, which the same section of the Act authorized the insured to make. But be that as it may, it is clear, we think, that construing the Acts of 1862, Chapter 9,¹⁸ and 1878, Chapter 200,¹⁹ together, the Legislature meant to confer upon the insured the right to make a *voluntary* assignment of a life policy to his wife or children, *free and clear* says the Act, '*from all claims of the creditors of such insured persons.*' *Elliott v. Bryan*, ante page 368."

It is interesting to note in the *Earnshaw* case that a transfer of personal property by the vehicle of a bill of sale at about the same time that the insurance was assigned was held by the court to be a fraudulent conveyance subject to successful attack by the creditor, although the vol-

¹⁶ 64 Md. 513, 2 A. 734 (1886).

¹⁷ Md. Code (1939) Art. 45, Sec. 9, quoted *supra*, n. 14.

¹⁸ Md. Code (1939) Art. 45, Sec. 8, quoted *supra*, n. 13.

¹⁹ Md. Code (1939) Art. 45, Sec. 9, quoted *supra*, n. 14.

untary assignment of the insurance policy, just a few days before the bill of sale was executed, was protected by the Court by virtue of Article 45, Section 9. In neither the *Elliott* case nor the *Earnshaw* case was there any dissenting opinion.

Stress is laid on these two decisions for two reasons, first, because they are the only two decisions of the Court of Appeals construing Article 45, Sections 8 and 9, with the exception of one other case, *Pratt v. Hill*²⁰ which, while mentioning Article 45, Sections 8 and 9, decided nothing regarding the insurance proceeds because of the incompleteness of the record, which did not set forth the terms of the insurance policy; secondly, because both the *Elliott* case and the *Earnshaw* case show the practically out and out immunity from attack by creditors which the Court of Appeals gave to the assignment of insurance policies under the conditions set forth in Article 45, Sections 8 and 9. It definitely put Maryland in the category of states which permit a person, even though highly insolvent, by the vehicle of insurance to protect those who have a claim to his bounty free from the claims of creditors. The only indicated limitation on the protection of such an assignment from creditors was in the event the assignment was not in good faith as between the assignor and the assignee.

An important point to be considered in connection with Article 45, Sections 8 and 9, is whether or not the enactment of the Uniform Fraudulent Conveyance Act²¹ in 1920 has not to a large extent, if not entirely, where insolvency is involved, destroyed the effectiveness of Article 45, Sections 8 and 9. It would seem, unless they are protected by exemption statutes, that the assignments of policies by insolvent debtors in both the case of *Elliott v. Bryan*, and *Earnshaw v. Stewart*, clearly would be fraudulent conveyances within the provisions of the Uniform Act which, in Section 4, provides:

“Every conveyance made and every obligation incurred by a person who is or will be thereby rendered

²⁰ 124 Md. 252, 92 A. 543 (1914).

²¹ Md. Code (1939) Art. 39B.

insolvent is fraudulent as to creditors without regard to his actual intent if the conveyance is made or the obligation is incurred without a fair consideration."²²

"'Conveyance' includes every payment of money, *assignment*, release, transfer, lease, mortgage or pledge of tangible or intangible property, and also the creation of any lien or incumbrance."²³

"Fair consideration is given for property, or obligation, (a) When in exchange for such property, or obligation, as a fair equivalent therefor, and in good faith, property is conveyed or an antecedent debt is satisfied * * *"²⁴

Applying these definitions to Section 4 above, it can be said that every assignment made by a person who is insolvent is fraudulent as to creditors without regard to his actual intent if the assignment is made without a fair consideration. In both the *Elliott* and the *Earnshaw* cases there was an assignment of the insurance policies by a person who was insolvent without a fair consideration.

It would seem quite certain that the assignments made in those cases, if made today, could be successfully attacked by creditors unless Article 45, Sections 8 and 9, or some other exemption statute such as Article 83, Section 8 could preserve them. But Article 39B, Section 14, provides:

"All Acts or parts of Acts inconsistent with this Act are hereby repealed. But nothing herein shall be construed to repeal any part of the existing insolvent law of this State as contained in Article 47 of the Code of Public General Laws of Maryland (Bagby's Code) so far as said insolvent law is not superseded by the Federal Bankrupt Law; nor the law relating to fraudulent conveyances from husband to wife as contained in Article 45, Sections 1, 2 and 11 of said Code; nor the provisions of Article 16, Section 48 of said Code relating to the method of establishing the creditor's claim; nor the provisions of the Act of 1912, Chapter 451 and of the Act of 1916, Chapter 371, relating to sales in bulk."

²² Md. Code (1939) Art. 39B, Sec. 4.

²³ Md. Code (1939) Art. 39B, Sec. 1. Italics supplied.

²⁴ Md. Code (1939) Art. 39B, Sec. 3.

If the assignment is made by the insured to his wife she apparently would be protected from any attack on the assignment by any creditors of the husband subsisting at the time of the assignment, unless these creditors assert their rights within three years thereof, and from attack of all creditors subsequent to the assignment, because of the provisions of Article 45, Section 1.²⁵

It will be noticed that Article 39B, Section 14 does not preserve Sections 8 and 9 of Article 45, although it does specifically preserve Sections 1, 2, and 11 of that Article.

If this assignment can be attacked by creditors as fraudulent under the state law then in the event that the assignor goes into bankruptcy, the policy, unless exempted by state or Federal Statute, would vest in the trustee by virtue of the Bankruptcy Act which provides that "property transferred by him in fraud of his creditors" vests in the trustee.²⁶ Also, the policy probably could be reached by the trustee under Section 70e and Section 67 of the Bankruptcy Act.²⁷

As a result, then, of the enactment of the Uniform Fraudulent Conveyance Act, the only protection that Maryland debtors, harassed by their creditors, have in order to preserve their insurance for the benefit of their families must be found in procedural obstacles confronting cred-

²⁵ Md. Code (1939) Art. 45, Sec. 1: "The property, real and personal, belonging to a woman at the time of her marriage, and all the property which she may acquire or receive after her marriage, by purchase, gift, grant, devise, bequest, descent, in the course of distribution, by her own skill, labor or personal exertions, or in any other manner, shall be protected from the debts of the husband, and not in any way be liable for the payment thereof; provided, that no acquisition of property passing from one spouse to the other, shall be valid if the same has been made or granted in prejudice of the rights of subsisting creditors, who, however, must assert their claims within three years after the acquisition of the property, or be absolutely barred, and, for the purpose of asserting their rights under this section, claims of creditors not yet due and matured shall be considered as due and matured."

²⁶ Bankruptcy Act, Sec. 70A(4); 11 U. S. C. A. 110A(4).

²⁷ Md. Code (1939) Art. 48A, Sec. 114 enables a married woman to insure the life of her husband for the wife's sole use and protects any insurance payable from the claims of the husband's creditors. If the premiums are paid with the wife's money there would appear to be no question of any fraud on the husband's creditors. If, however, this statute should be construed so broadly as to cover such insurance even though the husband paid the premiums interesting problems would arise.

itors in their pursuit of this asset, or in some other exemption statutes of the state. The latter statutes will be considered subsequently.

Let us for the time being consider this problem of the proceeds from insurance as an asset available for creditors, in the situation where the debtor has not divested himself of all right to the proceeds, fraudulently or not, but is the holder of a policy on his own life, with either himself, his estate or some third person named as beneficiary and with the privilege on the part of the insured to change the beneficiary. There appear to be no decisions of the Maryland Court of Appeals on this question. The law generally appears to be that if there is no presently realizable value in such a policy, i. e., that the insurance company has no obligation to pay anything until the happening of a condition such as death, then until the happening of that condition there is nothing available for the insured's creditors. This would seem to fall under the general principle that in the absence of fraud a creditor has no greater rights against a third person than the debtor has against said third person, that a creditor can only take that which his debtor has or to which he is entitled. Professor Vance states:

"It may be said, that as a general rule, the policy is not to be regarded as liable to seizure under any form of judicial process against the insured so long as the duty of the insurer to pay is subject to any contingency, or to any condition precedent. Such a condition may be under the control of the insurer, as where the policy gives the insurer the power to elect between several optional forms of the settlement; or where it permits the insured to fix the duty of the insurer by electing to receive cash, or a paid-up policy, or some other optional benefit. Until such option is exercised in favor of a cash payment, the insurer cannot be said to be so indebted to the insured as to be subject to garnishment. But where the policy is taken out by the insured for his own benefit and the only condition to the insurer's promise to pay an agreed surrender value is the insured's giving up the policy for cancellation, the courts generally permit the at-

taching creditor to deliver up the policy and receive the surrender value."²⁸

As a general proposition, aside from proceedings in bankruptcy, where under the terms of the policy the debtor-insured has named a third person as beneficiary, but reserves the right to change the beneficiary, creditors cannot subject the interest of the insured to the satisfaction of their judgments either before or after the death of the insured.²⁹

Assuming that the provisions and conditions of the policy are such that a creditor of the insured could subject them to the satisfaction of his claim or judgment³⁰ and no exemption statutes interfere, what procedure could a creditor use?

In approaching this question it would seem important first to note that an insurance policy is a chose in action.³¹ A chose in action cannot, at common law, be reached in execution by a fieri facias. Chancellor Bland said:³²

"At the time when the principles of the common law in relation to the distinction between real and personal property became established, but a small proportion of the community seems to have been of that incorporeal kind which is now so very large in amount and so productive. Hence, in the spirit of the simplicity of the common law, it was deemed safest and best to confine the power of the creditor over the property of his debtor to that alone which was visible, tangible and capable of being distinctly valued, sold and transferred, as affording an ample scope for the creditor to obtain the satisfaction to which he was entitled.

²⁸ VANCE, INSURANCE (2nd Ed. 1930) 614.

²⁹ See VANCE, INSURANCE (2nd Ed. 1930) 563, 564. In this connection it is interesting to note that if the policy reserves to the insured the right to change the beneficiary with the assent of the insurer, the beneficiary first designated does not take a vested interest. COOLEY, BRIEFS ON INSURANCE (2nd Ed. 1928) 6406; *Rosman v. Travelers Ins. Co. of Hartford*, 127 Md. 689, 96 A. 875 (1916). See also *Bullen v. Safe Deposit and Trust Company*, 177 Md. 271, 9 A. (2d) 581 (1939).

³⁰ See the quotation from Professor Vance, *supra*, n. 28.

³¹ *Rittler v. Smith*, 70 Md. 261, 16 A. 890 (1889) where it was said: "It is settled law in this state that a life insurance policy is but a chose in action for the payment of money and may be assigned as such. *Insurance Company v. Flack*, 3 Md. 341; *Whitridge v. Barry*, 42 Md. 150."

³² *Coombs v. Jordan*, 3 Bland 284, 314 (1831).

"Upon these principles the writ of fieri facias was framed, and in concise and general terms expressed the nature and extent of the sheriff's power and duty. The language of the execution imports, that the goods and chattels, which are the subject of it, are property of a tangible nature, capable of manual seizure, and of being detained in the sheriff's custody, and such as are conveniently capable of sale and transfer by the sheriff, to whom the writ is directed, for the satisfaction of a creditor."

And, as recently as 1933,³³ the Court of Appeals held that a widow's right of dower in land, before the same had been assigned and set off, could not be taken in execution because it was a mere chose in action.

In other words, in the absence of statutory provisions, a creditor cannot execute on a chose in action. One cannot fi. fa. an intangible. And by execution, as the writer hopes to establish later, is meant seizure and sale under a writ of fieri facias.³⁴

Execution being eliminated as a method of procedure, it remains to consider briefly what other remedies a creditor could pursue to reach the value of the policy in the hands of the insurance company. The possibilities which occur to the writer are: A creditor's bill in equity, supplementary proceedings, attachment on original process, attachment on judgment, and bankruptcy.

Creditor's Bill: While creditor's bill might be available in some jurisdictions³⁵ it seems highly doubtful that it could be used in Maryland. In *Harper v. Clayton*,³⁶ the Court held that a widow's right to dower in the lands of her deceased husband, before the same has been assigned and set off to her, is a mere chose in action, cannot be taken in execution at law, and that equity, apart from statutory authority and in the absence of fraud or some

³³ *Harford Bank v. Banking & Trust Co.*, 165 Md. 454, 169 A. 315 (1933).

³⁴ Md. Code (1939) Art. 23, Sec. 85. In this connection it may be noted that the Legislature has specially provided by statute that the interest which a debtor may have on the books in the capital stock of a corporation "shall be liable to execution or attachment".

³⁵ *Stephens v. Cady*, 55 U. S. 528 (1852); *Ager v. Munay*, 105 U. S. 121 (1881).

³⁶ 84 Md. 346, 35 A. 1083 (1896).

element of trust, has no jurisdiction to subject the choses in action of a debtor to the payment of creditors, merely because the creditors have no remedy at law. The Court quoted with approval from an Indiana case.³⁷

“Equity will not subject choses in action to the payment of a judgment creditor, because equity only aids the law, and will, therefore, not interfere, except as to such property as may be sold on execution at law.”

Harper v. Clayton, and the above quotation were approved in *Harford Bank v. Banking & Trust Co.*³⁸

Supplementary Proceedings: The statute³⁹ provides that under the conditions set forth a creditor can reach the “property or credits which would be liable to said attachment or execution”. This would seem to indicate that whether or not the value of the policy can be reached in these proceedings depends on whether or not they can be made subject to attachment—execution being eliminated.

Attachment on Original Process: The statute⁴⁰ says:

“Any kind of property or credits belonging to the defendant, in the plaintiff’s own hands, or in the hands of any one else, may be attached; and credits may be attached which shall not then be due.”

This language may be broad enough to afford a creditor this remedy if the other requisites for laying the attachment exist. There appear to be no decisions on the point.⁴¹ While not determined as yet, this remedy is probably available.

³⁷ *Williams v. Reynolds*, 7 Ind. 622 (1856).

³⁸ 165 Md. 454, 169 A. 315 (1933).

³⁹ Md. Code (1939) Art. 75, Sec. 147.

⁴⁰ Md. Code (1939) Art. 9, Sec. 10.

⁴¹ In *Stone v. Mutual etc. Co.*, 74 Md. 579, 22 A. 1051 (1891) the Court of Appeals held that where there is a loss under a fire insurance policy which provided that the insurance company might either pay the insured a stipulated amount or else rebuild, and the company elected to rebuild, a creditor of the insured could not successfully lay an attachment in the hands of the company. In this case, it must be remembered, it was fire and not life insurance involved. Also, the election was the choice of the insurer and not the insured. Also the insurer had already signed a contract with a builder before the attachment was laid in the company’s hands.

Attachment on Judgment: The Code⁴² provides in part:

“Any plaintiff having a judgment or decree in any court of law or equity in this State may, instead of any other execution, issue an attachment against the lands, tenements, goods, chattels and credits of the defendant in the plaintiff’s own hands, or in the hands of any other person. * * *”

Here again there appears to be no decision of the Court of Appeals for guidance, and one can only speculate as to whether or not this procedure could be used. The language may be broad enough to make this remedy available.

Bankruptcy: If the debtor is adjudged bankrupt, the insurance policy or its cash surrender value may pass to the trustee in bankruptcy under the provisions of the National Bankruptcy Act.⁴³

In bankruptcy proceedings in the District Court for Maryland, the Court has had to pass on what, if any, proceeds from life insurance policies, the bankrupt could exempt and what, if any, passed to the trustee in bankruptcy under Sections 6 and 70 of the Bankruptcy Act. The results reached have turned on the problem of construing Article 83, Section 8 (the Maryland exemption statute) and Article 3, Section 44 of the Maryland Constitution. The first, and to the writer the most important case is *In re Jones*.⁴⁴

In this case the bankrupt held a policy of life insurance on his life in which his wife was named beneficiary, but the bankrupt had the power at any time to change the beneficiary without the wife’s consent. At the time of the filing of the petition in bankruptcy the policy had a cash surrender value of \$1,725.85. The trustee in bankruptcy claimed that he was entitled to the policy or its surrender value. The bankrupt and his wife denied the trustee’s claim.

The District Court for Maryland (Judge Rose) took the view that inasmuch as the insured up to the time of

⁴² Md. Code (1939) Art. 9, Sec. 29.

⁴³ Sec. 70A; 11 U. S. C. A. 110A.

⁴⁴ 249 F. 487 (D. C. D. Md., 1917).

the filing of the petition had not exercised his right to change the beneficiary, the policy had no cash surrender value payable to the bankrupt, his estate or personal representative, and, as a consequence, it did not pass to the trustee. This result would be in harmony with the general view followed by state courts and referred to above, that an insured's interest in such a policy could not be reached by his creditors.

Three days after this opinion was handed down, but before any order had been entered, the United States Supreme Court decided the case of *Cohen v. Samuels*,⁴⁵ in which it ruled that where the bankrupt held life insurance policies, naming certain relatives beneficiaries but reserving the absolute right to change the beneficiaries without the latter's consent, under the provisions of the Bankruptcy Act⁴⁶ vesting the trustee with powers which the bankrupt might have exercised for his own benefit, the trustee could exercise this power and the cash surrender value must pass to the trustee.

As a result of this decision Judge Rose rendered a supplemental opinion in the *Jones* case holding that the policy, unless exempt by state statute, passed to the trustee in bankruptcy. In the course of this supplemental opinion he said:

“Does the Maryland law exempt such policies? As was pointed out in the previous opinion, they are not exempt by virtue of Sections 8 and 9 of Article 45 of the Maryland Code, unless they are for the benefit of the wife, and the Supreme Court has ruled that they are not. Are they made immune by Section 8 of Article 83, which purports to exempt all money payable in the nature of insurance, benefit, or relief, in the contingency or event of sickness, accident, hurt, or death of any person, from execution or seizure in satisfaction of debt or a claim upon judgment in any civil proceeding? This language is plain enough. Nobody would raise any question as to what it means, if it were not that Section 44 of Article 3 of the State Constitution limits the power of the Legislature to

⁴⁵ 245 U. S. 50 (1917).

⁴⁶ Sec. 70A(3); 11 U. S. C. A. 110A(3).

grant exemptions from execution of property not exceeding in value \$500. In view of this limitation, it has been argued that the legislative intent must have been different from that which its words naturally import. This contention is not persuasive, nor may it be assumed that the General Assembly was either ignorant of the constitutional prohibition or indifferent to it. Whatever may or may not be true as to individual members, the court must assume that the General Assembly knew the constitution and sought to obey it. Nothing said or decided in *Himmel v. Eichen-green*, 107 Md. 612, 69 Atl. 511, or *Dale v. Brumbly*, 96 Md. 674, 54 Atl. 655, justifies the assumption that the power of the Legislature to exempt from execution can be exercised without limit as to value. In these cases it was held that what is now Section 236 of Article 23, which is the corporation law of the state, constitutionally exempts from liability to attachment all moneys, irrespective of the amount, payable under a certificate issued by a fraternal beneficial association. The decision was based upon two grounds: (1) That attachment is not execution. (2) That the association in whose hands it was sought to attach the money would have no power under the laws of the state to pay any of that money to a creditor of one of its members. Neither of these reasons here applies. The restriction imposed by Section 44 of Article 3 of the Constitution must, until the Court of Appeals otherwise rules, be held binding; but, if so, it is unnecessary for the Legislature to say anything about it. It will of its own force be read into every act dealing with the subject."

The Court then ruled that the bankrupt was entitled to exempt \$500 from the cash surrender value.⁴⁷

⁴⁷ In the last paragraph of the Supplemental Opinion in this case (In re Jones, 249 F. 487, 491) the Court said: "The bankrupt has claimed an exemption of \$100 out of the general assets of his estate. He has not received it. He will be entitled, upon payment to the trustee in bankruptcy of \$1,225.85, which is \$500 less than the surrender value of the policy, to hold free of all claims of the trustee, but in full satisfaction of all exemptions to which, under section 8 of article 83 he is entitled." While it is not stated why the claim for the \$100 exemption out of general assets was refused, the language above quoted would seem to warrant the conclusion that the court was of the opinion that the debtor would not be entitled to more than a total of \$500 from all types of exemptions. In other words, if the debtor had been allowed a \$100 property exemption he would only be allowed a \$400 insurance exemption. Another example might contem-

It should be added that Judge Rose in reaching his result also referred to an interpretation given to Article 83, Section 8, by Judge Wickes in Circuit Court No. 2 of Baltimore City in an unreported case some ten years earlier. The following is probably the litigation to which reference was made.

In *Nicholson v. Nicholson*,⁴⁸ various claimants, including creditors of the deceased insured, filed a bill to have the Court determine their rights to portions of the estate, practically the whole of which consisted of the proceeds of an insurance policy made payable to his personal representatives and which had been collected by the personal representative. The Court exempted \$500 saying:

"Nor does this Court deem that the order passed on the fourth day of June, 1907, by his Hon. Judge Wickes sitting herein, the practical effect of which order was to exempt from execution \$500 of the proceeds of said policy, settles the issues above named.

"Giving full effect to the action of his Honor, Judge Wickes, the question still remains as to what disposition is to be made of the proceeds of said insurance policy over and above the sum of \$500 decided to be exempted in accordance with Ch. 381, of the Acts of 1904.

"Addressing the Court's attention to the various claims set up I am unable to discover any good reason to hold that the proceeds of the insurance policy are to be exempted to any greater extent than the sum of \$500 from the claims of the creditors of Edwin C. Nicholson, and I do not consider it necessary to refer to any decision or statute law other than those already mentioned."⁴⁹

plate a situation where the debtor had a policy with only a cash surrender value of \$300, wearing apparel worth \$150 and other general assets worth more than \$500. If the cash surrender value is exempted and \$100 from general assets under Art. 83, Sec. 8 making a total of \$400, then the debtor, under this decision could only exempt \$100 worth of his wearing apparel, not all of it as provided in Art. 83, Sec. 11 which provides: "All wearing apparel . . . shall be exempt from execution, in addition to the property hereinbefore exempted. . . ."

⁴⁸ 2 Baltimore City Rep. 564 (1908), Elliott, J.

⁴⁹ For recent U. S. Supreme Court cases on the question of Federal courts following state court decisions see *Vandenback v. Owens-Illinois Glass Co.*, 311 U. S. 538 (1941), note 21 of which says: "We have applied the rule enumerated in the case of *Erie R. Co. v. Tompkins*, 58 S. Ct. 816,

Before taking up the other decisions in bankruptcy, it might be well to consider whether or not it may be possible that the Circuit Court No. 2 of Baltimore City and the Bankruptcy Court assumed too much in ruling that the provision in Article 83, Section 8, exempting all money payable in the nature of insurance from creditors was restricted by the Constitutional limitation.

The Maryland Constitution, Art. 3, Sec. 44, provides:

“Laws shall be passed by the General Assembly to protect from *execution* a reasonable amount of the property of the debtor, not exceeding in value the sum of five hundred dollars.” (Italics supplied.)

Such a provision did not appear in the Constitution of 1776 but was incorporated into the Constitutions of 1851⁵⁰ and 1864⁵¹ and, of course, is in the present Constitution of 1867.

In 1861 the Legislature, at a special session held in Frederick, enacted the following statute:⁵²

“Be it enacted by the General Assembly of Maryland, that one hundred dollars worth of property of each defendant therein shall be exempt from execution

that state law as determined by the state's highest court is to be followed as a rule of decision in the Federal Courts, to determinations by state intermediate appellate courts. . . .” This note cites *West v. American T. & T. Co.*, 311 U. S. 223 (1940) (intermediate court); *Fidelity Union T. Co. v. Field*, 311 U. S. 169 (1940) (Court of Chancery, which seems to have original jurisdiction, but is treated as on a parity with the Supreme Court, both of which are below the Court of Errors and Appeals, and the language in the Supreme Court opinion appears to treat it as an intermediate court); *Six Companies of California v. Joint Highway District*, 311 U. S. 180 (1940) (intermediate court); and *Stoner v. New York Life Ins. Co.*, 311 U. S. 464 (1940) (intermediate court).

While all these decisions seem to be treated as decisions of courts of intermediate appellate jurisdiction it is possible that the language in the cases, particularly *Fidelity Union Trust Co. v. Field* (involving the New Jersey Court of Chancery) may be broad enough to hold that Federal Courts are bound by the decisions of State Courts of original jurisdiction, in the absence of higher authority. If this is true, then it may be that the Federal Court considers itself bound by Judge Elliott's ruling in Circuit Court No. 2 of Baltimore City. If the Supreme Court decisions, on the other hand, do not go as far as suggested, then the Federal Court would not necessarily be bound by Judge Elliott's ruling.

⁵⁰ Art. 3, Sec. 39.

⁵¹ Art. 3, Sec. 43.

⁵² Md. Laws 1861, Ch. 7, Sec. 1.

issued on any judgment in any civil proceeding whatever, except on judgments for breach of promise to marry or for seduction."

In 1904 the Legislature amended this statute⁵³ to include the provision exempting insurance. It provides as follows:

"One hundred dollars in property, whether the same consists of money, land or goods, of every defendant, as well as *all* money payable in the nature of insurance, benefit or relief in the contingency or event of sickness, accident, hurt or death of any person, shall be exempt from execution or *seizure* in satisfaction of debt or claim upon any judgment in any civil proceedings, except on judgments for breach of promise to marry or for seduction."

Research reveals only one decision of the Court of Appeals in which Article 3, Section 44, of the Constitution has been considered. That is the case of *Himmel v. Eichen-green*.⁵⁴

In this case plaintiff, a creditor, had a writ of attachment against a non-resident defendant-debtor, laid in the hands of the Supreme Conclave Improved Order of Heptasophs, a fraternal beneficial association, as garnishee. Action of assumpsit was brought against defendant-debtor. The writ sought to attach \$250 due the defendant-debtor, as beneficiary of the deceased Eichengreen, who held a benefit certificate in the association. Both defendant and garnishee filed a motion to quash the attachment on the ground that the fund was a benefit and not liable to attachment under Article 23, Section 217, of the then existing Code.⁵⁵ Motion to quash was sustained by the lower court and plaintiff-creditor appealed. The Court of Appeals affirmed the orders of the lower court.

⁵³ Md. Laws 1904, Ch. 381.

⁵⁴ 107 Md. 610, 79 A. 915 (1908).

⁵⁵ Md. Code (1904) Art. 23, Sec. 217: "The money or other benefit, charity, relief or aid to be paid, provided or rendered by any association authorized to do business under Sec. 210 to Sec. 223 (both inclusive) of this article, shall not be liable to attachment by trustee, garnishee or other process and shall not be seized, taken, appropriated or applied by any legal or equitable process or by operation of law to pay any debt or liability of a certificate holder or of any beneficiary named in a certificate, or of any person who may have any right thereunder."

One of the questions to be determined by the Court was whether or not the enactment of Article 23, Section 217 was a valid exercise of legislative power, under the Maryland Constitution. The contention of the creditor was that this statute was in conflict with Article 3, Section 44, of the Constitution authorizing the General Assembly to protect from execution a reasonable amount of the property of the debtor not exceeding in value the sum of \$500. On this point the Court, speaking through Judge Briscoe, said:

“There is no force in the second objection to the Act, that it violates the provisions of Article 3, Section 44, of the Constitution, relating to the exemption from execution of the property of the debtor, not exceeding the sum of five hundred dollars.

“There can be no reason for the assertion of this objection in the case at bar because if available, the amount in question does not exceed the sum of five hundred dollars.

“The limitation however prescribed by the Constitution under Article 3, Section 44, clearly relates to the exemption of property from execution and is not applicable to cases of exemption from attachment, of ‘money or other benefits’ payable under a certificate issued by a fraternal association, as in this case. In *Dale v. Brumbly*, 96 Md. 674, the amount involved under the certificate was \$3,000. We there said: ‘The Act of 1894, Ch. 295, which was in force at the date of the last named assignment, declares that such associations are organized and carried on for the sole benefit of its members and their beneficiaries and not for profit. It also provides that the fund or benefit shall not be liable to be applied by any legal process or by operation of law to pay any debt or liability of a certificate holder,’ &c., &c.

“The association would have no power then under its constitution or the laws of the State to pay the fund to a creditor of the deceased.

“In *Coward v. Dillinger*, 56 Md. 59, it is said: All property within the limits of the State, whether owned by residents or non-residents, is subject to its laws,

and the State has the right to prescribe how and in what manner such property shall be subjected to the claims of creditors. It is upon this principle that attachment laws are founded.

“We think that an *attachment* is not such an execution as was intended, to be affected by the constitutional provision here relied on.” (Italics supplied.)

The writer has taken the liberty of quoting rather extensively above for a number of reasons:

(1) All of this part of the opinion may be said to be dictum as only \$250 was involved. If dictum, it is nevertheless submitted that it is all that we have from the Court of Appeals construing this particular constitutional provision. If, however, we consider the creditor's attack on the statute to be total because it gives out and out exemption without regard to limitation of amount, which appears to be actually the situation, it would seem that the construing of the constitutionality of this statute was essential to the decision in the case, and that the quoted language should not be considered as mere dictum.

(2) While the particular facts in this case involved a certificate of a beneficial association not run for profit, this should not seem to be the decisive factor. It is difficult to see why that would permit the legislature to exempt the fund (which is the debtor's property) if the Constitution says “nay”. The important factor would seem to be that there is no constitutional limitation on the legislature to exempt a debtor's property from attachment—as distinguished from execution.

(3) The Court of Appeals has, in deciding this case, made a distinction between attachment and execution and, by so doing, thereby has put a restrictive meaning on the word “execution”, in Article 3, Section 44 of the Constitution. In other words, “execution” as used in the Constitution does not mean seizure of a debtor's property by any type of process provided by law, but it is limited to some special type of process or processes. What, then, is meant by “execution”?

There were four writs of execution known to the common law for the enforcement of a money judgment, as distinct from a judgment in a possessory action:⁵⁶

1. *Capias ad satisfaciendum* (ca. sa.), which was a writ for the seizure of the debtor's person. This obviously is not pertinent, and would be of little value in any event, because of the Maryland Constitutional provision: "No person shall be imprisoned for debt."⁵⁷

2. *Levari facias* (lev. fa.). This writ has been little used in the United States and apparently is not known in Maryland.⁵⁸

3. *Elegit*. This is not authorized in the United States except in Florida and Delaware.⁵⁹ It is not used in Maryland.⁶⁰

4. *Fieri facias* (fi. fa.). This writ is, of course, in use in Maryland.

By a process of elimination, it can be concluded that execution in Maryland for the enforcement of a money judgment can only be one thing, namely, the writ of *fieri facias*. Therefore, when the Constitution in Article 3, Section 44 uses the word "execution", it contemplates only the use of the writ of *fieri facias*.

And, as said above, in the absence of statute, the writ of *fieri facias* can only reach tangible property. It cannot reach an intangible such as a chose in action.

In connection with this distinction it is perhaps of value to note that many of our statutes speak of execution or attachment,⁶¹ and execution or seizure.⁶² If "execution" is taken in the broad sense of any type of legal remedy for subjecting a person's property to the satisfaction of a creditor's claim or judgment it would seem unnecessary sur-

⁵⁶ GLENN, *THE LAW OF FRAUDULENT CONVEYANCES* (1931) 25.

⁵⁷ Md. Const. (1867) Art. 3, Sec. 38.

⁵⁸ FREEMAN, *EXECUTIONS* (1882) Sec. 370.

⁵⁹ *Ibid.*

⁶⁰ POE, *PRACTICE* (Tiffany 1925 Ed.) Sec. 627.

⁶¹ Md. Code (1939) Art. 70, Sec. 13, Old Age Assistance; Md. Code (1939) Art. 101, Sec. 64, Workmen's Compensation; Md. Code (1939) Art. 23, Sec. 176, Cemetery lots; Md. Code (1939) Art. 95A, Sec. 15(c), Unemployment Compensation; Rules of the Supreme Bench of Baltimore City, Rule 9A of the Common Law Courts.

⁶² Md. Code (1939) Art. 83, Sec. 8.

plusage for the Legislature, when it used the term "execution", to add any further term, such as attachment.

In insisting on the above distinction, the writer is not unmindful of the fact that an attachment on judgment, as distinguished from attachment on original process, is said to be an execution. Quoting from Poe on Practice:

"The process itself is treated by the Acts of Assembly on the subject, beginning with the original Act of 1715, as an execution; and our Court of Appeals have declared that its office is the same as that of a fieri facias, and that it must be governed by the same principles and rules."⁶³

But even the attachment on judgment requires the aid of the fieri facias effectively to consummate it. Following the above quoted sentence, Poe says:

"This general language, while undoubtedly correct in a certain sense, is still not strictly accurate, and unless explained, is calculated to mislead . . . Accordingly, while an attachment upon judgment is an execution, it is not final process in all respects like a fi. fa., under which the sheriff proceeds to seize and sell; but while it is final process against the defendant, it is also, at the same time, rather in the nature of an interlocutory proceeding, designed as the beginning of a process either in rem or personam, under which a final judgment of condemnation may be obtained, and when obtained, may be enforced by the effective writ of fieri facias. In other words, while it has some of the attributes of an execution, it has, at the same time, especially against the garnishee, many qualities of mesne process . . ."⁶⁴

The above is quoted because, while the general statement that attachment on judgment is treated as an execution may, at first blush, appear to destroy the distinction between execution and attachment on judgment, in reality such a statement emphasizes the distinction. If they are the same, why say it is treated like an execution and, as

⁶³ POE, PRACTICE (Tiffany Ed. 1925) Sec. 690.

⁶⁴ *Ibid.*

Poe points out, in reality the *fi. fa.* is a necessary supplement to the writ of attachment. In this connection it is to be noted that the statute authorizing attachment on judgment says: "In all judgments . . . an execution or attachment may issue . . ." ⁶⁵ If they are one and the same, this would not seem to be necessary.

Furthermore, it does not seem reasonable to say that the Constitutional limitation on what property is to be exempt, and how much, is to turn on the question of whether or not the creditor has obtained a judgment; that chooses in action of the type under discussion are fully exempt from attachment on original process, but if the creditor has obtained a judgment, and then has issued an attachment on judgment, the constitutional limitation applies and chooses in action of the type under discussion are then only exempt up to \$500. It would hardly seem to be the function of the Constitution to concern itself with making a mere procedural question be the decisive test for permitting the exemption of property. It would seem far more likely that what the framers of the Constitution had in mind was to provide for the kind and amount of property that could be exempted, and that they of purpose, by the use of the word "execution", refused to place any restriction on the legislature's power to exempt property not reachable by execution, such as choses in action. The possibility of creditors seeking to subject such things as pensions⁶⁶ to the satisfaction of their claims could well have been in the minds of the framers. And, by the same token, the protection of one's family through the device of insurance could well be considered an end socially to be desired. Free rein should be given to the legislative branch of the government so that it might adequately protect this property from creditors free from constitutional restraint. If the legislature were restricted by the Constitution in its power to exempt only as to tangible property,

⁶⁵ Md. Code (1939) Art. 26, Sec. 21.

⁶⁶ Old Age Pensions, Md. Code (1939) Art. 70A, Sec. 13; Unemployment Compensation, Md. Code (1939) Art. 95A, Sec. 15(c); Workmen's Compensation, Md. Code (1939) Art. 101, Sec. 64; State Employee's Retirement Fund, Md. Laws, 1941, Ch. 377, adding Md. Code (1939) Art. 73B, Sec. 11.

and left unrestricted as to intangibles, such as choses in action, this result could be achieved.

If the preceding analysis of the word "execution" in the Constitution is proper, and the writer believes it is, then it would seem that the District Court's decision in *In re Jones*⁶⁷ permitting a bankrupt to exempt only \$500 of his insurance is not sound, and that the bankrupt should be granted total exemption as to his insurance policy or its cash surrender value.

Let us next consider briefly three subsequent bankruptcy opinions.

In re Cooper's Estate,⁶⁸ is of interest because the bankruptcy court differed with its previous decision in the *Jones* case as to the amount of the exemption. In the *Cooper* case the Court decided that the cash surrender value was not "money payable in the nature of insurance" nor upon the contingency of death, but that nevertheless it was property and that the bankrupt was entitled to \$100 exemption (not \$500) under the first clause of Article 83, Section 8.⁶⁹

This problem was again before the District Court for Maryland when the bankrupt had certain policies whereby his life was insured for the benefit of his wife. The right to change the beneficiary was reserved, but it had not been exercised at the time of bankruptcy. The policies had a cash surrender value of \$836.25. The bankrupt claimed a \$500 exemption, the trustee contended the bankrupt was only entitled to \$100. The District Court allowed a \$500 exemption. No opinion was reported. An appeal was taken to the Circuit Court of Appeals in *Hickman v. Hanover*.⁷⁰ This Court affirmed the lower court in allowing \$500 exemption. In the opinion the Court said:

"In the argument here, it was conceded by both sides that the second clause of the statute⁷¹ exempting "money payable in the nature of insurance", etc., must

⁶⁷ 249 F. 487 (D. C. D. Md., 1917).

⁶⁸ 28 F. (2d) 438 (D. C. D. Md., 1928).

⁶⁹ See *supra*, *circa* notes 50 to 53.

⁷⁰ 33 F. (2d) 873 (D. C. D. Md., 1920).

⁷¹ Md. Code (1939) Art. 83, Sec. 8.

be deemed limited by the constitutional provision, and therefore in no event can an exemption under that clause exceed \$500. It was also conceded that if the exemption cannot be sustained under that clause, the cash surrender value is nevertheless a species of property, and the bankrupt would be entitled to an exemption of \$100 under the first clause of the statute".

It is to be noted that the only question before the Court was the exemption of either \$100 or \$500, and not the question of total exemption. Hence the Circuit Court of Appeals did not pass on the question of whether or not a bankrupt is entitled to a total exemption.

In discussing the proposition that the cash surrender value is not "money payable in the nature of insurance" the opinion said:

"But we think this is too narrow and too literal a construction of the Maryland statute. While there are a few cases which hold that exemption statutes should be strictly construed, the better and almost universal rule is that such statutes should receive a liberal construction in favor of the debtor in order to advance the humane purpose of preserving to the unfortunate or improvident debtor or his family the means of obtaining a livelihood and prevent them from becoming a charge upon the public . . .

"We think the plain purpose of the statute was to encourage men to insure their lives for the benefit of their families. The legislature evidently attached more importance to the exemption of insurance than to the exemption of other property, for in the latter case it was limited to the small sum of \$100. The cash surrender value is certainly within the spirit of the statute, and we do not think that we put any strain upon the statute by holding that it is within its terms. Nowadays, nearly all, and possibly all, life policies have a cash surrender value clause. The cash surrender value is an ordinary incident to these policies. That value arises as much from the policy as the money payable upon the contingency provided for in the policy. These matters must have been well-known to the Legislature, and it is not likely that they intended that such policies should be exempt only upon the

actual happening of the contingency mentioned. Our view is that although the cash surrender value might not be strictly and technically money from insurance, because not payable upon the contingency mentioned, nevertheless, it is in the nature of insurance, and it is an incident of the policy of insurance, and money payable in the nature of insurance as would be the proceeds of the policy when finally collected upon the death of the insured . . .”

Would it seem unreasonable to maintain that the same arguments of policy attributed to the Legislature in the above opinion could likewise be attributed to the framers of the Constitution, that they of purpose left the Legislature untrammelled in its power to grant total exemption of choses in action?

Finally, to complete the record of opinions on this subject, in *In re Beachley*,⁷² not the insured but an assignee of a policy went into bankruptcy. He was not related in any manner to the insured. The Bankruptcy Court said:

“‘Money payable in the nature of insurance, benefit or relief in the contingency or event of sickness, accident, hurt or death of *any* person,’ (italics inserted) as the phrase is used in Article 83, Section 8 of the Maryland Code, above quoted, means when construed with relation to the section of the Bankruptcy Act above quoted,⁷³ money arising from insurance written upon the life of a *bankrupt*, as distinguished from insurance upon some one else’s life to which the bankrupt has acquired a right, as in the present case, by assignment.”

It was held that the policy belonged to the trustee and not to the bankrupt and that it was proper for the trustee to sell it for the benefit of the bankrupt’s creditors. The Court did in this case, however, permit the bankrupt to exempt \$100, not as insurance money, but as “property”.

The effect of this decision would seem to be that any policies held by the bankrupt, in which he is not the assured, and that have a realizable value, pass to the

⁷² 19 F. Supp. 104 (D. C. D. Md., 1937).

⁷³ Sec. 70A (3) ; 11 U. S. C. A. 110A (3). See *supra*, n. 7.

trustee as property and are not treated as insurance. This result may seem proper where the bankrupt is a stranger to the insured as in the instant case, but if the owner of the policy is the wife of the bankrupt it seems the result might be questionable.

In conclusion, at the present time the bankruptcy court holds that if the insurance held by the bankrupt is on the life of one other than the bankrupt it is treated as property and not as insurance and may be protected only to the extent of \$100. If the bankrupt is the insured, and reserves the right to change the beneficiary and the policy has a cash surrender value, the bankrupt may keep the policy by paying to the trustee the cash surrender value at the date of the filing of the petition in bankruptcy less \$500; or if the bankrupt fails to do this, the trustee is entitled to the policy but the bankrupt may be entitled to \$500 from its proceeds. It is the writer's opinion that this latter rule in bankruptcy is based upon a misconception of the Constitutional limitation on the Legislature's power to exempt property and that the bankrupt when he is the insured should be granted a complete exemption as to all money payable in the nature of insurance by virtue of Maryland statute.