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THE RIGHTS OF THE CREDITORS OF THE INSURED WITH PARTICULAR REFERENCE TO PHILIPPINE LAWS *

By ERNESTO Y. SIBAL **

PART ONE

INTRODUCTION

LIFE INSURANCE

The basic and primary purpose of life insurance is the protection of those who are dependent upon the insured for their support and maintenance. In so far as it is thus a safeguard against the vicissitudes of life and fortune, more particularly against the toll of poverty, suffering and want, it is essentially promotive of the general welfare and the stability of society. The law, as expressed in statutory form, often recognizes this. And when not so expressed, judges usually base the rationale of their decisions on its recognition. But, at the same time, the law must recognize the maxim that a man must be just before he is generous; that if it is important to society that a man should make provision for his dependents, it is almost as important for the continuity and maintenance of social and commercial intercourse that a man should observe the duty of good faith and fair dealing towards those with whom he conducts intercourse, particularly his creditors. In other words, just as the recognition of the rights of dependents is essential, the recognition of the rights of creditors is equally indispensable. A clash between the claims of dependents and creditors is, therefore, inevitable. And it is in the settlement of these conflicting claims and the determination and delimitation of the rights of the respective parties that the courts, in

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* * Member of the Philippine Bar and Graduate Student, Yale School of Law, 1934.

the absence of specific statutory guidance, find themselves called upon to lay down certain rules. But inasmuch as the objects of human sympathies differ and vary according to the circumstances, so it will be observed that these rules are often flexible or even uncertain depending on the particular merits of the claims of the dependent beneficiaries and the creditors. The following chapters will essay to set forth the manner in which the courts have tried to face and determine these conflicting claims.

CHAPTER ONE

POLICIES PAYABLE TO INSURED OR THIRD PARTY BENEFICIARIES SUBJECT TO CHANGE

SECTION ONE.—*In the Absence of Exemption Statutes*

1. *Policies payable to Insured.*—We first consider a policy taken out by a person on his own life and made payable to himself or his estate. In the absence of a specific exemption statute and before such a policy becomes a matured money claim, the question that often arises under such circumstances is whether an ordinary creditor can attach such a policy and have it sold or assigned for the satisfaction of his claim. It would seem that, in view of the modern tendency of courts to give to "life policies the ordinary characteristics of property",[1] and the recognition of the fact that such policies "are now articles of commerce, the frequent subjects of purchase and sale, and ready and valuable means of obtaining loans and securing obligations",[2] such policies may be attached and thereafter sold or assigned. As early as 1872, the Supreme Court of Massachusetts,[3] under a creditor's bill, held that such policies are assignable choses of action, possessing a market value and hence can be applied to the payment of debts. This ruling was followed by the same court in 1906[4] and in 1911.[5] In New York, it has even been held that such policies are attachable, although under a New York statute, they cannot be sold on execution.[6] And in the Philippines, prior to the passage of an exemption statute,[7] in a case where, after a policy payable to the insured himself had been attached and sold at public auction to enforce a judgment in favor of a creditor of the insured and after the purchaser of the policy had surrendered it to the insurer, the original insured sought to have the policy declared as still in

force and effect, the court dismissed the action on the ground that the interests of the insured on the policy had been divested by the sale. The court, speaking by Mr. Justice Malcolm, said:

"If, then, an insurance policy with a cash surrender value can be considered as either personal property or as an interest in personal property, it is subject to attachment and execution. We think this inquiry must be answered in the affirmative because the general rule is, that apart from statutory provision to the contrary, a policy of life insurance or its proceeds is not exempt from seizure, although in most jurisdictions, including California, from which the sections of the Philippine Code concerning execution have been taken, statutes have been enacted containing exemptions of life insurance policies. * * * Our ruling is, that the effect of the sale under execution of all the rights which the plaintiff Misut had in the policy issued to him, was to divest him of all his rights in the policy and that, if the question may be considered as before us, the interest of the insured was liable to execution to pay his debts."[8]

The confusion in connection with this question arises in a case where instead of first having the policy attached and subsequently sold or assigned to himself, so that he in fact becomes the owner of the policy the creditor attempts to garnish the cash or surrender value of a policy in the hands of the insurer. Very often such cash or surrender value is only payable upon the exercise of an option by the insured or owner of the policy accompanied by the surrender of the policy. Naturally, inasmuch as what could be garnished is only something absolutely due and payable, in other words a "debt," it must follow that until the insured or owner of the policy has elected to take up the cash or surrender value and thus fixed and determined the obligation of the insurer to pay a definite sum, a creditor has nothing to garnish in the hands of the insurer. So, in *Farmers' & N. Bank v. National L. Ins. Co.*,[9] the court explicitly held:

"Neither the cash surrender value nor the cash loan value of a policy of life insurance like that in question here can be treated as a debt due the insured by the company, until steps have been taken by the insured to effect the loan or to withdraw in cash the accumulated surplus apportioned to the policy by the company. The making of the application for the loan and the surrender of the policy to withdraw in cash the accumulated surplus apportionable to the policy are acts dependent upon the volition of the insured, and a court of equity cannot compel him to take those steps, nor can it render a decree which renders the taking of those steps upon the part of the insured unnecessary."

This ruling finds support in many cases[10] and was expressly relied upon in *Van Dyke Co. v. Roll.*[11]

However, once the insured or owner of the policy has elected to take the cash or surrender value, the same becomes liable for debts.[12] Likewise, the amount which, in case of policies with endowment or tontine features, becomes payable to the insured during his lifetime as a result of the *direct primary obligation of the insurer,* and not by reason of the surrender and cancellation of the policy, may be attached or garnished; and the mere fact that the insured is entitled to certain options as to the form of disposition of such amount is of no consequence. Thus, in *Ellison v. Straw,*[13] a semitontine policy provided that upon the expiration of 15 years, the insured would be entitled to certain accumulations to be paid or applied in such manner as the insured should elect. Upon the expiration of said period and before the insured had made any election as to the manner of disposition of the accumulations, a creditor sought to garnish the said accumulations. The court held that the said accumulations constitute a debt of the insurer and hence are subject to garnishment. The reasoning of the court is very lucid and logical:[14]

> "That sum (referring to the accumulations) was not payable at all in the event of his death before the expiration of the tontine period. It therefore was nothing in the nature of life insurance, but, on the contrary, was most clearly an agreement to pay him a computable sum upon certain contingencies. * * * Life insurance is one thing, investment is another. * * * Life insurance is a promise to pay a certain sum upon the death of the insured. Doubtless the amount so payable may be augmented by accumulations of excessive premiums and their earnings in the hands of the company without destroying the essential character of the contract. When, however, we find, as frequently, a promise to repay a sum made up from a portion of the premiums and their earnings at a date certain in the lifetime of the assured, we have only a contract such as a savings bank may as well make."[15]

From this reasoning we may also deduce that the ordinary dividends accruing to life participating policies become liable for the debts of the insured immediately upon their accrual.

As to policies which have already become a matured money claim by reason of the expiration of the endowment period or the death of the insured, there is no doubt as to the right of the creditor to subject the proceeds to his claim.[16]

a. *Policies payable to insured contingently.*—Some policies are made payable to a third person if surviving at the maturity of the policy; otherwise, to the insured or his estate. In such case, the interest of the insured is merely contingent;[17] and in

Murphy v. Casey,[18] the court refused to subject such interest during the lifetime of the insured (and the beneficiary) to the claims of his creditors on the ground that to do so "would throw the whole contract relations of the parties into confusion." However, if the beneficiary dies before the insured, the contingent right vests and becomes a valid claim at the death of the insured.[19]

2. *Policies payable to third party beneficiaries subject to change.*—In a policy payable to a third party beneficiary subject to change, some courts hold that the beneficiary has a defeasible vested interest. Others hold that he has a mere expectancy, and that therefore the insured remains the owner of the policy.[1] In the first group of cases, it seems settled that the courts will not compel the insured to change the beneficiary and will not therefore allow a creditor of the insured to subject the policy to the satisfaction of his claim.[2] But in the other group of cases, no definite rule can be ascertained. The New York courts, in several cases where the beneficiary was the wife,[3] held that the creditor can reach the policy for the purpose of satisfying his claims. The Appellate Division in *Lowenstein v. Koch*[4] in which the beneficiary was the sister of the insured, intimated the same doctrine. The Massachusetts courts have expressed several dicta to the same effect.[5] But in *Maurice v. Travelers' Ins. Co.,*[6] where the wife was also the beneficiary, the New York Supreme Court attempted to overrule the prior decisions and tried to distinguish the case at bar from the bankruptcy cases,[7] by arguing that under the Bankruptcy Act the trustee in bankruptcy is expressly vested with those powers which the bankrupt "might have exercised for his own benefit." Nevertheless, the court made this qualification to its broad doctrine: "It seems to me to follow that the receiver can obtain the surrender value of the policy only if the court shall determine that equitably the insured should exercise that power.[8]

This apparent conflict ceases, however, when the policy becomes a matured money claim. In such case, if it is an ordinary straight life policy, the interest of the beneficiary becomes fixed and absolute, and whatever right the creditor might have had before maturity is definitely lost,[9] unless it be found that the premiums were paid in fraud of creditors.[10] But if it is an endowment policy maturing not by death but by the

expiration of the endowment period, the proceeds, unless the policy otherwise provides, belong to the insured [11] and may therefore be subjected to the claims of his creditors.[12]

SECTION II.—*The Exemption Statutes*

The principles set forth in section one are subject to specific exemption statutes of several states. These statutes, if prospective in operation, will not be held unconstitutional.[1] Likewise, they being a recognition of the primary purpose of insurance, namely the protection of the family,[2] they are construed very liberally.[3] Moreover, although in general they are aimed at the protection of third person beneficiaries, particularly the family or other dependents of the insured, some of them have been construed [4] as including the insured within the purview of their beneficent provisions. So, in *Hing v. Lee*,[4] the Supreme Court of California construed a statute [5] exempting "all moneys, benefits, privileges or immunities accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed five hundred dollars," as applicable to a life endowment policy which matured during the life of the insured. On the other hand, if the exemption statute refers only to policies which by their terms are "made payable to the personal representatives of a deceased, his heirs or estate," and a policy is issued "payable to the insured himself," one court has held that in such case, upon the death of the insured, the proceeds will not go to his family but will be subject to the claims of his creditors.[6]

Furthermore, although most of the statutes apply only in favor of such beneficiaries as the husband,[7] or wife and children [8] or other persons having an insurable interest on the life of the insured,[9] some even go to the extent of expressly including *any* beneficiary, be he a relative or not.[10]

Some courts [11] have held that, inasmuch as in policies payable to third person beneficiaries subject to change, the beneficiary has only an expectancy and that therefore the insured retains the ownership, the exemption statutes do not apply and that the creditors can subject such policies to their claims. The great weight of authority, however, is to the effect that even in such case, the exemption statute applies.[12] The Supreme Court of Minnesota [13] very succinctly gives the reason thus:

"There are no sound reasons, either in morals or in equity and good conscience, why the creditor, to the detriment of the beneficiary, should be given the right and privilege (to change the beneficiary) of the insured in such cases. No credit is extended to the insured on the faith of the insurance, for all persons dealing with him are bound to know the law, and that money to become due thereon, when payable to a third person, is exempt from their claims. The statute is wise in its purpose, securing as it does after the death of the insured pecuniary aid and assistance to the beneficiary, usually someone who is dependent upon the insured for support, and should not be frustrated or impaired by opening the door to those who have no just or equitable claim to the money. * * * To hold with the plaintiff on either point would result in the destruction of the rights the legislature intended to secure to the beneficiaries in such insurance contracts."

In order, however, to avoid this apparent conflict, some state legislatures have gone to the extent of expressly exempting policies in which the right to change beneficiaries have been reserved and "that no court, and no trustee or assignee for creditors should elect for the person effecting the insurance to exercise the right reserved to change the beneficiary." [14]

As to the amount of exemption allowed, the statutes fall roughly into three classes:

(1) Those exempting the whole amount of the insurance payable to a third person, but expressly declaring that premiums paid in fraud of creditors shall be recoverable by them;[15]

(2) those exempting a limited amount of insurance to the beneficiary without regard to the amount of premiums paid;[16]

(3) those exempting insurance procured with a certain amount of premium.[17] In the latter two classes, where more insurance is procured than is exempted under the statutes, the scope of the rights of the creditors is sometimes determined or implied in the statutes themselves, some of them declaring that the beneficiary gets the entire insurance, less the excess premiums paid, while others declare that the beneficiary shall only get a proportionate amount of the proceeds, the excess to go to the creditors.[18] In the absence, however, of such statutory provisions specifically covering such situations, some courts hold that the beneficiary shall get the entire insurance, less the excess premiums paid,[19] while others hold that he shall only get the amount fixed by the statute so exempt.[20] But in California,[21] in a case where the proceeds of the policy in the hands of the beneficiary were in excess of the amount exempted and a creditor of the deceased insured sought to subject the ex-

cess, the court, in dismissing the creditor's action, said: "the limitations on the amount of insurance exempt would only apply in an action by the creditor against his judgment debtor who has received insurance moneys in excess of an amount purchased by an annual premium of $500. The limitation does not apply in an action of a creditor of the husband on the husband's debt against a stranger to the indebtedness who happens to have been the beneficiary in insurance policies and to have received the moneys thereon." And in Kansas,[22] it has been held that once the insurance money has been converted into other forms of property, the exemption ceases, and the property becomes subject to the claim of the beneficiary's creditors.

1. *In the Philippines.*—Under the exemption law [23] of the Philippines, passed in 1931, "all moneys, benefits, privileges or annuities accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed five hundred pesos, and if they exceed that sum a like exemption shall exist which shall bear the same proportion to the moneys, benefits, privileges, and annuities, so accruing or growing out of such insurance that said five hundred pesos bears to the whole annual premiums paid" shall be exempt from attachment and execution. This law is an exact copy of the California exemption law. Therefore, in accordance with the principles laid down above, particularly those from California, we may deduce that the Philippine exemption law applies to all beneficiaries, be they the insured himself or any third person; that the exemption applies during the lifetime and after the death of the insured; that the exemption is limited, and the amount of insurance in excess of the exemption is subject to the claims of creditors; that if the insured has already died and the proceeds have become vested on the beneficiary, no creditor of the insured can lay any claim on the proceeds. But a creditor of the beneficiary can avail himself of the limitation on the exemption. Moreover, once the beneficiary has invested such proceeds in other forms of property, such property becomes absolutely subject to the claims of his (the beneficiary's) creditors.

2. *Conflict of laws.*—An interesting question in connection with these exemption statutes arises in a case where an insured procures a policy in one state and, after paying some premiums, moves to another state where he continues to pay the premiums until his death. The conflict is in the choice of the statute to govern the disposition of the proceeds. The stat-

ute of the state of residence at the time the policy was procured may contain a provision which is different from that of the state of residence at the time of death, especially where the statute of the latter state is less liberal and grants the creditors a limited amount of rights over the proceeds. In a Florida case where the insured procured the policy while in Alabama, directed a change of beneficiary while in Georgia, and died while in Florida (evidently paid some premiums while here), and where under the laws of the first two states, payment of the proceeds should be made to the beneficiary named in the policy while under the laws of Florida payment should be made to the wife and children, the court held that the Florida statute cannot apply inasmuch as the contract was made in Alabama. The court evidently considered the contract as one and entire, for which the first premium is the consideration and the other payments are merely conditions.[24] But in New York, in a case where the insured procured the policy while in Ohio and after paying some premiums moved to New York where after making further payments while insolvent, he died, and where under the laws of New York as contrasted to those of Ohio the exemption in favor of the beneficiary was limited, the court by a vote of three to two declined to apply the Ohio statute to the exemption of the whole proceeds and held that "the administrator has a right to follow the proceeds of these policies to the extent of the amount of insurance purchased by premiums in excess of $500 a year after the time when Mr. and Mrs. Ruggles became New York residents."[25] Evidently, the court did not consider the contract entered into in Ohio as entire but as one in which each premium is a part of the consideration for the insurer's promise to pay the whole amount of the insurance. This is certainly contrary to the decisions of the Federal Supreme Court[26] upon which the dissenting opinion relied.[27]

SECTION THREE.—*The Bankruptcy Act*

1. *Policies payable to insured.*—The pertinent provisions of the Bankruptcy Act of 1898 which have furnished the bone of litigation in connection with life policies are found in the following sections:[1]

Section 6: This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the State laws in force at the time of the filing of the petition in the State wherein they have had their

domicile for the six months or the greater portion thereof immediately preceding the filing of the petition.

Section 70a: The trustee * * * shall be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all * * * (5) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person, * * * (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: Provided, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, 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; * * *"

Section 6 is known as the "exemption" clause; subdivision (3), section 70a, as the "power" clause; subdivision (5) before the proviso, as the "property" clause; and the proviso, as the "proviso" clause.[2]

The first question to confront the federal courts in connection with these provisions of the Bankruptcy Act was the relation between the "exemption" clause and the "proviso" clause. Is the exemption clause which adopts the exemption laws of the several states modified as to life insurance policies by the proviso clause? In other words, does section 70a apply to life policies which are exempted by state laws? One circuit court,[3] answered affirmatively, holding that the effect of the proviso clause was to limit as to life insurance policies the broad terms of the exemption clause. Another circuit court,[4] however, held otherwise. The question was definitely settled by the Federal Supreme Court in *Holden v. Stratton*[5] where the Court held that the proviso clause does not apply to policies which are already exempted by state laws, but applies only to those not otherwise exempt.[6]

The major question, however, that has baffled the Federal courts is the correct interpretation of the proviso clause in its relation to the "property" clause. Several of the lower Federal courts[7] held that all life policies, not otherwise exempt, would pass to the trustee under the "property" clause, and that the only effect of the proviso clause was to confer a privilege upon the insured to "redeem" policies with an actual cash surrender value. This view seemed to have been assumed but not directly

and definitely laid down by the Federal Supreme Court in *Hiscock v. Martens,*[8] when it held that the bankrupt could redeem a life policy having a cash value by the practice or concession of the insurer although not by its express terms. Other lower courts,[9] however, held that *only* policies with an actual cash surrender value are intended to pass to the trustee. The Federal Supreme Court in *Burlingham v. Crouse*[10] purported to settle the question definitely. In this case, the policies, by reason of loans made on them, had no actual cash surrender value. The trustee contended that under the "property" clause the policies vested in him and that therefore he was entitled to their proceeds. The Court held that although under the "property" clause the policies may be construed to vest in the trustee, yet by virtue of the "proviso" clause nothing will vest in the trustee except the cash surrender value and that, *if the policies have no actual cash value, nothing will pass to the trustee.* In other words, the proviso, instead of being a qualification to the "property" clause, as would ordinarily be the case with provisos, constitutes in itself a separate "additional legislation" which contains the whole law relating to life insurance policies as affected by bankruptcy. Thus, the Court says:[11]

"True it is that life insurance policies are a species of property and might be held to pass under the general terms of subdivision 5, section 70a, but a proviso dealing with a class of this property was inserted and must be given its due weight in construing the statute. It is also true that a proviso may sometimes mean simply additional legislation, and not be intended to have the usual and primary office of a proviso, which is to limit generalities and exclude from the scope of the statute that which would otherwise be within its term."

In giving its reason for this apparently unnatural construction,[12] the court observes:[13]

"Congress undoubtedly had the nature of insurance contracts in mind in passing section 70a with its proviso. Ordinarily the keeping up of insurance of either class would require the payment of premiums perhaps for a number of years. For this purpose the estate might or might not have funds, or the payments might be so deferred as to unduly embarrass the settlement of the estate. Congress recognized also that many policies at the time of bankruptcy might have a very considerable present value which a bankrupt could realize by surrendering his policy to the company. We think it was this latter sum that the Act intended to secure to creditors by requiring its payment to the trustee as a condition

of keeping the policy alive. In passing this statute Congress intended, while exacting this much, that when that sum was realized to the estate, the bankrupt should be permitted to retain the insurance which, because of advancing years or declining health, it might be impossible for him to replace * * *. We think it was the purpose of Congress to pass to the trustee that sum which was available to the bankrupt at the time of bankruptcy as a cash asset; otherwise to leave to the insured the benefit of his life insurance." [14]

It being settled that only the cash surrender value, as expressed in the policy or as recognized by the practice or concession of the company,[15] is what passes to the trustee, unless the insured fails to pay said sum in which case "the policy shall pass to the trustee as assets", the next question settled by the court is the date on which the right of the trustee to the policy or its cash surrender value vests. In *Everett v. Judson*,[16] where the bankrupt died after the filing of the petition but before adjudication and the trustee contended that under section 70a the date on which his rights vested was the date of adjudication, the court held that the date of the filing of the petition determined and fixed the rights of the trustee and that only the cash value of the policy on that day and not on the day of adjudication passed to the trustee.[17] Moreover, if any loan has been made on the policy, such loan shall be chargeable to the cash value of the policy, and the trustee gets only the balance.[18] And as against the insurer, the trustee is only entitled to such cash value as is actually due on the policy at the date of the demand on the insurer, inasmuch as the trustee take the policy in the same condition as it was held by the bankrupt.[19]

a. *In the Philippines.*—In the Philippines, there is no provision of the Insolvency Law [20] dealing specifically on life policies. But it has been held [21] that section 32 of the said Insolvency Law covers them. This section is as follows:

Section 32. As soon as an assignee is elected or appointed and qualified, the clerk of the court shall, by an instrument under his hand and seal of the court, assign and convey to the assignee all the real and personal property, estate and effects with all his deeds, books, and papers relating thereto, and such assignment shall relate back to the commencement of the proceedings in insolvency, and shall relate back to the acts upon which the adjudication was founded, and by operation of law shall vest the title to all such property, estate, and effects in the assignee, although the same is then attached on mesne process, as the property of the debtor. Such assignment shall operate to vest in the assignee all of the estate of the insolvent debtor not exempt by law from execution".

This section corresponds to section 21 of the California Insolvency Law of 1895 which served as the model of the Philippine Law, and to section 14 of the Bankruptcy Act of 1867. Comparing this section 32 to section 70a of the Bankruptcy Act of 1898, the Supreme Court of the Philippines, in *Sun Life Assurance Co. v. Ingersoll,*[22] observed:

"While this language is broad, it nevertheless lacks the comprehensiveness of setion 70a of the American Bankruptcy Law of 1898 in at least two particulars; for under subsection 3 of section 70a of the last mentioned law, the trustee in bankruptcy acquires the right to exercise any powers which the insolvent might have exercised for his own benefit, and under subsection 5 the trustee acquires any property of the insolvent which the latter could by any means have assigned to another. The Insolvency Law here in force, in common with the predecessor laws abovementioned, contains nothing similar to these provisions".

Neither does the Philippine Law contain anything similar to the proviso to section 70a of the Bankruptcy Act of 1898; hence, the Court in the aforesaid case remarked that *Burlingham v. Crouse* was not decisive of the case before it. But in arriving at its conclusion, the court practically adopted the doctrine of *Burlingham v. Crouse* to the effect that only the actual cash value of a life policy vests in the trustee and that where the policy has no cash value nothing will pass to the trustee. Accordingly, inasmuch as in the case before it, it appeared that at the time of the filing of the insolvency proceedings (and even at the time of the death of the insured just after his adjudication), the insured had only paid two premiums and therefore, under its terms, no cash value had yet become due on the policy, the court held that the policy never passed to the trustee and that therefore its proceeds upon the death of the insured belonged to his estate.[23] The Court, in relying upon the case of *In Re McKinney,*[24] acknowledged that section 166 of the Philippine Insurance Law declaring life policies to be assignable, regardless of whether the assignee has an insurable interest on the life of insured or not is a "circumstance which debilitates in a slight degree the reasoning upon which the decision in the case of *In Re McKinney* is based".[25]

2. *Policies payable to third party beneficiaries subject to change.*—Where a policy is payable to a third party beneficiary without a reservation by the insured of the right to change the beneficiary, it is obvious that, in accordance with the rule giving the beneficiary a vested right, the trustee has no interest in such policy.[1] This is so, even though under the policy the right

of the beneficiary may yet be lost by his predecease [2] or in case of an endowment policy, by the insured's survival at the expiration of the endowment period.[3]

But what has vexed the courts is the case in which the policy is made payable to a third person but in which the insured has reserved the power to change the beneficiary. Some courts,[4] evidently relying on the case of *Burlingham v. Crouse*, held that inasmuch as the "proviso" clause is the sole source of all bankruptcy legislation affecting life policies and that inasmuch as such clause covers only policies "payable to himself, his estate or personal representatives", it must follow that such a policy does not fall under section 70a and that, therefore, the trustee cannot claim any interest in it. On the other hand, other courts,[5] realizing how such a ruling could easily make life policies a "refuge for fraud" held that such a policy or its cash value passes to the trutee under the "power" clause or under the "property" clause, that is, as "property which prior to the filing of the petition he could, by any means, have transferred". The Federal Supreme Court purported to settle the controversy in *Cohen v. Samuels.*[6] Recognizing the danger of making such a policy "a shelter for valuable assets, and, * * * a refuge for fraud", the court definitely held that the trustee has an interest in it as defined in *Burlingham v. Crouse.* But the specific grounds upon which the Court relied in arriving at its conclusion seem difficult to decipher. The Court's reasoning runs thus: [7]

"We have given attention to these considerations and feel their strength, but they are opposed by other considerations. It might indeed be that it would better fulfill the protection of insurance by considering the proviso alone and literally regarding the policy at the moment of adjudication, and, if it be not payable then in words to the bankrupt—no matter what rights or powers are reserved by him, no matter what its pecuniary facility and value may be to him—to consider that he has no property in it. But we think such construction is untenable. The declaration of subdivision 3 is that powers which he might have exercised for his own benefit shall in turn be vested in the trustee, and there is vested in him as well all property that the bankrupt could transfer or which by judicial process could be subjected to his debts, and especially as to insurance policies which have a cash surrender value payable to himself, his estate or personal representative. It is true the policies in question here are not so payable, but they can be or could have been so payable by his own will and declaration. Under such conditions, to hold that there was nothing of property to vest in a trustee would be to make an insurance policy a shelter for valuable assets and it might be a refuge for fraud. And our conclusions would be the same if we regarded the proviso alone".

Construing the said opinion, Prof. Vance [8] infers that the decision was put upon two grounds: "First, the power possessed by the insured to appoint his creditors as substitute beneficiaries passed as assets to the trustee under subdivision 3 of section 70a of the Act. Secondly, regarding the proviso alone, policies which the insured could, 'at his own will and simple declaration', make 'payable to himself, his estate or personal representative', were to be considered just as if they were so payable in terms." Another writer [9] believes that the Court "has amalgamated the property clause, the proviso clause, and the first half of the power clause of section 70a of the Bankruptcy Act into one formidable projectile." It really seems that the Court was more interested in its conclusion than on the specific legal basis of such conclusion.

The primary legal basis seems to have been struck in *Frederick v. Fidelity Mut. L. Ins. Co.*[10] In this case, it appears that the bankrupt owned a policy payable to his wife subject to his right to change the said beneficiary. The trustee, failed however, to take possession of the policy, and it was only after the death of the bankrupt and the payment of the proceeds by the insurer (without actual notice of the proceedings) to the beneficiary that the trustee sought to enforce his right against the insurer. Evidently, as pointed out by Prof. Vance,[11] if one of the true grounds of *Cohen vs. Samuels* was the property or proviso clause, the Court would have given judgment for the trustee on the ground "that immediately upon adjudication of bankruptcy, title to the cash value of the insurance policy in question vested in the trustee, and that such title could not be impaired by any subsequent dealings between the insurer and the beneficiary, irrespective of actual knowledge of the bankruptcy proceedings." But the Court, in dismissing the trustee's suit did not base its decision on this ground; rather it impliedly relied on the "power" clause, as may be gleaned from this portion of the opinion:

> "The company's contract was to pay the stipulated amount to the beneficiary first named on receiving proof of death of the insured unless the latter should have surrendered the policy, and with the written approval of the officer of the company have changed the beneficiary. The requirement of such surrender and approval was for the protection of the company, and was purposed that at least it should have notice before its liability under the policy was modified. Section 70a of the Bankruptcy

Act cannot be so construed as to give to the trustee in bankruptcy a right as against the company to demand that the surrender value be made assets of the estate as by a change of beneficiary without timely notice to the company of a demand for such a change; for the section by its very words contemplates that the cash surrender value shall have been ascertained and stated to the trustee by the company issuing the policy."

In view of this statement, it is believed [12] that the primary source of the trustee's right to the kind of policy under discussion is the "power" clause in section 70a. In other words, what passes to the trustee in the first instance is the power to change the beneficiary, and that once the trustee has availed himself of this power by changing the beneficiary so as to make the policy payable to the insured, the proviso clause defining the amount which should vest in the trustee comes into operation.[13] But the trustee must exercise this power during the lifetime of the bankrupt, inasmuch as if the beneficiary is not changed until the death of the bankrupt, the said beneficiary, whatever may be the nature of his right during the lifetime of the insured, certainly acquires a vested right upon the death of the insured.[14]

a. *In the Philippines.*—As already adverted to,[15] the Philippine Insolvency Law does not contain the so-called "power" clause of the American Bankruptcy Act of 1898. Section 32 of the Philippine Insolvency Law was taken from section 21 of the California Insolvency Law which in turn was adopted from section 14 of the American Bankruptcy Act of 1867. Construing this said Act of 1867 in *Jones v. Clifton,*[16] the Federal Supreme Court held that a power of revocation and appointment which had been reserved by the bankrupt in a transfer of life insurance policies to his wife was not an interest in property which could be transferred to another. It would therefore seem that, under the Philippine Law, in the case of a policy payable to a third person, with a right reserved to the insured to change the beneficiary, nothing whatever would pass to the trustee, not even the excess over the exemption allowed by the Philippine Law.[17] Although this inference may appear logical, it does not seem sound in view of the fear expressed in *Cohen v. Samuels* of making life policies a "shelter for valuable assets, and * * * a refuge for fraud."

CHAPTER TWO

POLICIES PAYABLE ABSOLUTELY TO THIRD PARTIES

SECTION ONE.—*In General*

Our next point of inquiry is the existence or extent of the rights of creditors to policies which are payable absolutely to third persons. This occurs when the policy is payable to a third person beneficiary who is not subject to change, in which case as already adverted to,[1] such beneficiary acquires a vested interest in the policy or its proceeds; or even when the policy is merely payable to a third person beneficiary subject to change but whose right to the policy or its proceeds has vested by reason of the death of the insured.[2] Inasmuch as in the first instance, the insured has evidently no title or interest in the policy, necessarily the creditors, as a general rule and in the absence of specific statutes[3] protecting the rights of creditors, cannot claim any interest which they can subject to the payment of their credits.[4] And in the second instance, inasmuch as the rights of the beneficiary became absolutely fixed upon the death of the insured, the creditors likewise have no claim on the proceeds.[5] To these general rules, however, we find three distinct exceptions:

1. *Policy is procured or premiums are paid while debtor is insolvent.*—This topic will be limited to a case where the policy which, upon issue as well as maturity, is payable to a third person as distinguished from a policy which though payable to insured when issued is subsequently and at a time when insured is insolvent, assigned or made payable to a third person. This distinction was relied upon in *Central Nat. Bank v. Hume.*[6]

A number of courts[7] have held that, in the absence of a specific exemption statute, the procuring by a person while insolvent of a policy payable to a third person beneficiary and/or the payment of premiums while insolvent is fraudulent as to creditors, irrespective of an actual fraudulent intent. This is based upon the old maxim that a man must be just before he is generous; and more particularly, upon the general rule of law that when a transfer of the debtor's property is made under such circumstances that the result must necessarily be to hinder and delay creditors, it will be presumed that such was the intent of the transferer in making it.[8] And a New Jersey court[9] succinctly rationalizes it thus:

There is, and can be in law, no difference between the payment by a husband of a stated sum of money at stated periods to an insurance company, upon a promise to pay a certain sum at the death of the payer, to his wife, and the deposit by the husband of a like stated sum, at like stated periods, in a savings bank, to the credit of the wife. Both are gifts to the wife, and the money afterwards paid by the savings bank or insurance company, as to the case may be, to the wife or her personal representatives, is nothing more than a payment to her of the money previously paid to it by the husband with its earnings and increase."

Accordingly, in such case, these courts have held that the creditors have an interest in the policy which they can subject to their claims. One court,[10] following the trust fund theory, has even gone to the extent of holding that the whole proceeds of the policy are liable for the debts of the insured. Others limited the amount so liable to the amount of premiums paid by the insured while insolvent.[11]

But the majority of the courts,[12] led by the Federal Supreme Court in *Central Nat. Bank v. Hume,*[13] have held that even in the absence of a specific exemption statute, an insolvent debtor, provided he does not act with an actual fraudulent intent, may devote a "moderate portion" of his earnings to the purchase of insurance for the benefit of his family or to the payment of premiums while thus insolvent and that, in such case, the creditors cannot even claim an amount equal to the premiums paid during insolvency. Although the Federal Supreme Court could have based its judgment on some other grounds,[14] it preferred to base it on this broad ground:

"This argument in the interest of creditors concedes that the debtor may rightfully preserve his family from suffering and want. It seems to us that the same public policy which justifies this, and recognizes the support of the wife and children as a positive obligation in law as well as morals, should be extended to protect them from destitution after the debtor's death, by permitting him, not to accumulate a fund as a permanent provision, but to devote a moderate portion of his earnings to keep on foot a security for support already, or which could thereby be lawfully obtained, at least to the extent of requiring that, under such circumstances, the fraudulent intent of both parties to the transaction should be made out".

As to what is a "moderate portion" of his earnings that one can devote to the purchase of insurance in favor of his family, free from the claims of creditors, the court remarked:

"Cases might be imagined of the payment of large premiums, out of all reasonable proportion to the known or reputed financial condition of the person paying, and under circumstances of grave suspicion, which might justify the inference of fraud on creditors in the withdrawal of

such an amount from the debtor's resources; * * * and in considering the sufficiency of the debtor's property for the payment of debts, the probable, immediate, unavoidable, and reasonable demands for the support of the family of the donor should be taken into account and deducted, having in mind also the nature of his business and his necessary expenses." [15]

As to what would be the extent of the creditor's rights in case the amount of insurance procured or the premiums paid were unreasonable or in case the insured debtor acted with fraudulent intent, the courts hold that only the amount of the premiums paid during insolvency are chargeable to the proceeds. [16]

2. *Fraudulent assignments or transfers.*—We now come to a case where a policy, though originally payable to the insured when issued, is subsequently and during insolvency made payable to a third person, either by assignment or by a change of beneficiary. Even in this case, some courts,[17] out of a tender regard for the beneficiaries (particularly the insured's family), deny any creditor's claim or at most limit such claim to the actual cash value of the policy at the time of the transfer.[18] But the great weight of authority, and as even admitted by the Federal Supreme Court in *Central Nat. Bank v. Hume,* is to the effect that in such case, in the absence of a specific exemption statute, the assignment or transfer is in fraud of creditors, and this, regardless of an actual fraudulent intent.[19] The policy or its proceeds are therefore liable to the creditors in the same manner as if no assignment or transfer had been made.

a. *The exemption statutes.*—But the two exceptions just noted are subject to the provisions of exemption statutes. We have already discussed these statutes in another section. We shall only add a few further observations. There, we have seen that statutes often exempt life policies even when procured during insolvency and/or when the premiums are paid during insolvency, with the proviso that an amount equal to the premiums paid in fraud of creditors shall be subject to the claims of creditors.[20] But in interpreting these statutes, the courts do not agree on the nature of the fraud required. Some courts [21] hold that constructive fraud is enough. Others [22] hold that an actual fraudulent intent is necessary.

As regards policies payable to the insured when issued but later and during his insolvency are assigned or transferred to a third person, there are some statutes [23] expressly exempting

the proceeds of policies assigned to the wife or family of the insured. And even in the absence of such explicit provisions of the exemption statutes, several courts,[24] in construing their exemption statutes have held that the proceeds of policies so assigned or transferred are free from the claims of the creditors of the insured, at least to the extent provided in the statutes.

b. *In the Philippines.*—Under the exemption law of the Philippines, it would seem that the fact that the policy was procured during the insolvency of the insured and/or that the premiums were paid during insolvency or that the policy was assigned during insolvency does not affect the operation of the exemption. The law is very broad and its benign purpose too evident that under the principles of the various American cases, the above inference appears most sound and logical.

3. *Policy is procured or subsequent premiums are paid with embezzled funds.*—A third exception to the above rule is where a policy is procured in whole or in part with embezzled funds or the subsequent premiums are paid with embezzled funds.

The weight of authority is to the effect that where a policy is procured with embezzled funds,[25] the whole proceeds of the policy inure to the benefit of the defrauded person to the exclusion of the designated beneficiary.[26] This doctrine is based on the general principle of law governing constructive trust under which the cestui que trust is allowed to follow the trust funds and to appropriate to himself the property into which such funds have been changed, together with the increased value of such property, provided the trust fund can be clearly ascertained, traced and identified, and provided the rights of bona fide purchasers for value without notice do not intervene.[27] And the fact that life insurance is a beneficient provision for the family which should be favored does not detract from the full application of this doctrine. For, as the New Jersey court [28] very well observed:

> "Public policy clearly forbids the adoption of this suggestion; it would invite the commission of the wrong by assuring the wrong doer that there is one mode in which he could surely profit by his turpitude in securing a provision for his family."

There is only one court which, because of oversolicitousness for the dependent family, has declined to follow this doctrine.[29]

This doctrine is likewise followed even where the policy is procured in part with embezzled funds and in part with funds belonging to the insured. Accordingly, the proceeds will be divided pro rata between the cestui que trust and the beneficiary.[30]

But in a case where the policy is procured with funds belonging to the insured but in which some of the subsequent premiums are paid with embezzled funds, the courts are not unanimous in the application of the doctrine of constructive trust. Some courts, following the principle that life policies are entire contracts, and not contracts from one premium payment to another, held that the "trust" doctrine applies only when the policy was procured with embezzled funds. "The trust, if any, must arise or result from the transaction whereby the trustee acquired the legal title or right to the property in which the trust is claimed, and it must arise at the time the legal title is obtained by the trustee and not afterwards." [31] In such case, they only allow the defrauded person an amount equal to the embezzled funds used in paying the subsequent premiums. Other courts, however, stick to the "trust" doctrine and divide the proceeds pro rata between the cestui que trustee and the benficiary.[32]

On the other hand, in a case where the policy was procured with embezzled funds but all or part of the subsequent premiums were paid with funds belonging to the insured or beneficiary, the court in applying the "trust" doctrine did not limit the right of the beneficiary to the amount of the subsequent premiums which were paid with proper or lawful funds but gave the beneficiary a pro rata share in the proceeds.[33]

In all these cases, it will be observed that the courts, in spite of the warning expressed by the New Jersey court, and at the expense of consistency, always seem to give the presumption in favor of the beneficiary.

CHAPTER THREE

CREDITORS ENTITLED TO PREFERENCE IN THE PROCEEDS OF LIFE POLICIES

The most common way by which a creditor may gain a preference in the proceeds of a policy on the life of his debtor is by having himself named as the beneficiary in a policy se-

cured by and at the expense of his debtor or by procuring the policy at his own expense, in his own name and with himself as the beneficiary.

SECTION ONE.—*Policies Payable to Creditor*

1. *Policy is procured by debtor.*—Where the debtor procures a policy on his own life making it payable to his creditor for the purpose of securing the latter for his credit, it is well-settled that the creditor is entitled to such of the proceeds of the policy as are sufficient to reimburse him for his actual credit at the time of the issue of the policy together with such further loans and interests as may thereafter be made or become due as the case may be.[1] The balance will go to the debtor or his estate.[2] And where such policy has been so made payable to the creditor, the latter has such a vested interest that even if the beneficiary is subsequently changed, his preferred claim to the proceeds will be recognized; and it is not even necessary that he should have been in legal possession of the policy.[3]

2. *Policy is procured by creditor himself.*—It is now very well-settled that a creditor has an insurable interest in the life of his debtor;[4] and it has even been held that the creditor may insure his debtor's life without the consent of such debtor.[5] Likewise, the mere fact that the debt is no longer legally collectible by reason of the bar of the statute of limitations[6] or its discharge in bankruptcy[7] does not destroy the insurable interest of the creditor. The question, however, that has continued to baffle the courts is the extent of this interest;[8] in other words, the amount of insurance that the creditor may validly procure. One court[9] has held that "it is immaterial what amount may be contracted for, as no more will be collected than will be ultimately sufficient to discharge his debt and disbursements on the policy, including interest upon both." Other courts, led by the Supreme Court of Georgia,[10] hold that the insurable interest of the creditor cannot exceed the amount of the indebtedness to be secured which indebtedness embraces "not only a debt or debts actually existing when the insurance is taken out by the debtor, or is thereafter assigned to the creditor, but also additional indebtedness to arise upon the making of further loans or advances by the creditor to the debtor; such for instance, as cash for premiums to be paid in obtaining the policy, or in keeping it alive." Against this holding it may be said that, as a rule, if the debtor lives up to his life ex-

pectancy, the premiums paid will almost equal any amount of insurance that may be taken;[11] hence, under this view, the amount of insurance that may be legally taken may be *any* amount provided the debtor lives up to his life expectancy; while if he dies earlier, the policy, at least to the excess, becomes inefficacious as to the creditor. In other words, the efficacy of the policy as to the creditor does not depend so much on its amount but on the time of death of the debtor. Evidently, this view is ridiculous.

The better view, therefore, seems to be the one expressly laid down by the courts of Indiana,[12] Maryland,[13] and Pennsylvania,[14] and implied in *Cammack v. Lewis.*[15] These courts, while recognizing the danger of wager policies in case a creditor is allowed to take out a policy greatly in excess of his credit,[16] expressly laid down the rule that a creditor may procure a life policy on his debtor's life in excess of the then actual indebtedness provided that the disproportion is not so gross as to raise a presumption of bad faith in the taking out of the policy. In other words, the ultimate test is one of good faith. "The essential thing is, that the policy shall be obtained in good faith, and not for the purpose of speculating upon the hazard of a life in which the insured has no interest." [17] All life insurance contains an element of speculation. But "the law has no universal cynic fear of the temptation opened by a pecuniary benefit accruing upon a death."[18] Hence, consistently with the principles of insurance law, it would logically appear that a creditor may be permitted to procure an insurance which may be in excess of the debt, provided the excess is not such as to lure or tempt him to attempt to put the life of the debtor to an early end. Any other rule, or to follow the view of the Georgia or Texas court under which the creditor will have very little to gain, if any, but plenty to lose (especially if the debtor lives out his life expectancy) will discourage persons from making loans on the security of life policies taken out by themselves. The difficulty arising in this connections lies, however, in the determination of the excess that may be permitted. The Pennsylvania courts, in their desire to lay down a fixed rule, expounded this formula: "In order to ascertain whether an insurance is disproportioned to the debt, regard must be had to the age of the insured, his expectation of life and the cost of carrying the insurance with interest thereon, as well as upon the amount of the debt." Accordingly, "a creditor may law-

fully take out a policy on the life of his debtor in an amount sufficient to cover the debt with interest and the cost of such insurance with intereset thereon during the period of the expectancy of life of the assured according to the Carlisle Tables."[19] The criticism against this formula is that even under these Carlisle Tables there is a chance that the one paying the premiums will pay more than the policy will bring back; hence, as is the case under the Georgia rule, any amount of insurance, regardless of the actual amount of the debt, may yet be taken.[20] So, as remarked by the Maryland court,[21] "it is probably better to leave each case to depend on its circumstances."[22]

The judicial disagreement in the determination of the extent of the creditor's insurable interest likewise exists in the determination of the extent of the recovery to be allowed to the creditor. The Texas and Georgia courts, holding a life policy as a mere contract of indemnity, limit the recovery to the amount of the debt and interest plus the amount expended to preserve the policy, with interest.[23] One criticism against this rule is that suppose the debtor pays his debt before his death? The insurable interest ceasing, does the policy become void? It is curious that while the Georgia court cites the cases of *Dalby v. India & L. Life Assur. Co.*,[24] and *Central Nat. Bank v. Hume*,[25] it failed to notice their necessary implications, the *Dalby* case holding that the cessation of an insurable interest does not nullify the policy, and the Court in the *Hume* case saying:[26]

"If the creditor insures the life of his debtor, he is thereby indemnified against the loss of his debt by the death of the debtor before payment; yet, if the creditor keeps up the premiums, and his debt is paid before the debtor's death, he may still recover upon the contract, which was valid when made, and which the insurance company is bound to pay according to its terms."

The better view, as accepted by text writers,[27] is the one expounded by the Indiana, Maryland and Pennsylvania courts. According to these courts, the creditor is entitled to recover the whole proceeds of the policy.[28] The reason is very well expressed in *Ritter v. Smith*:[29]

"If a *bona fide* assignee for value though a stranger, may recover and hold the whole amount for his own use, why may not a creditor, who in pursuance of a *bona fide* effort to secure payment of his debt, insures the life of his debtor and takes the policy in his own name or for his own benefit, be entitled to hold all he can recover? He is, in fact the owner of the policy, takes the risk of the continued solvency of the in-

surance company, and is obliged to keep the policy alive by paying the annual premiums during the life of the debtor, and the latter is under no obligation to do anything, and in fact does nothing in this respect. If he pays the debt to his creditor he has only discharged his duty; and what interest has he either in the policy or in what his creditor may recover upon it?"

1. *In the Philippines.*—The Philippine Insurance Law[30] expressly provides that "every person has an insurable interest in the life and health * * * of any person under a legal obligation to him for the payment of money". As to how much this insurable interest is, it would seem that the Philippine Supreme Court will follow the better view as set forth above. Likewise, the said Court will follow the view giving the whole proceeds to the creditor. This inference is strengthened when it is considered that in a California case[31] the court held that although the original legal debt was much less than the amount of insurance taken or that, at the time of the debtor's death, the debt was already barred by the statute of limitations, the creditor was still allowed to recover the entire proceeds. The provisions of section 166 of the Philippine Insurance Law allowing the transfer of a life policy to any person whether he has an insurable interest or not evinces a liberality which will influence the Supreme Court in adopting the view above set forth.[32]

SECTION TWO.—*Persons Paying Premiums*

A class of persons who claim a lien on the proceeds of a policy owned by or payable to another are those who pay some or all of the premiums on the policy. It seems settled that a stranger to the policy who *voluntarily* pays a premium has no lien on the proceeds.[1] Nor can a third person who gives the loan used by the insured in paying the premium claim any lien, in the absence of any express agreement to the effect.[2] In California, however, it has been held[3] that in case such a person has "some interest or color of interest"[4] on the policy, he has a lien on the proceeds to secure the repayment of his advances. Accordingly, where one of several beneficiaries pays some of the premiums to keep the policy alive, he acquires, in addition to his corresponding share, an equitable lien on the proceeds, at least to an amount sufficient to reimburse him for his advances.[5] Similarly, if an assignee in good faith pays the premiums on a policy transferred to him by means of an assignment which is invalidated by reason of some defect, he will be entitled to reimbursement out of the proceeds.[6] Also, if a

wife, believing that she was the beneficiary when in fact it was the insured's mother, paid some of the premiums to keep the policy alive, she would be entitled to reimbursement.[7]

On the other hand, where a third person, at the request of the owner or beneficiary[8] or under an express agreement that the policy shall stand as security for the advances,[9] pays the premiums, it is well-settled that the person making the payment is entitled to reimbursement out of the proceeds.

SECTION THREE.—*Creditor-Assignees*

Following the accepted doctrine that the beneficiary of a policy, where the insured has not reserved the power to change the beneficiary, acquires a vested interest in the policy, it is well-settled that the insured in such a policy cannot make a collateral assignment or pledge of such policy without the consent of such beneficiary.[1] And even in policies, where the insured has reserved the power to change the beneficiary, some courts likewise require the consent of the beneficiary to such assignment or pledge.[2] The weight of authority, however, is to the effect that in such case and even if the right to assign is not expressly reserved, the consent of the beneficiary is not necessary.[3] As to policies payable to the insured himself or his estate or personal representatives, there cannot be any doubt as to his power to make such collateral assignment or pledge.[4]

A life policy may be assigned absolutely to a creditor in settlement of his credit, and if done in good faith, the weight of authority recognizes the full absolute property of the creditor on the policy.[5] But if the intention of the parties is that the assignment shall only be collateral, the courts will follow such intention.[6]

As a rule, where a policy has been assigned as security or a pledge, the respective rights of the parties will be determined by the terms of the assignment or pledge. So, to what extent the policy shall stand as security depends on the provisions of the policy.[7]

An assignee or pledgee of the policy is entitled to hold such policy until his credit has been paid.[8] Conversely, a payment or settlement of the debt will release the policy.[9] It would seem, however, that the running of the Statute of Limitations will not affect the rights of the assignee or pledgee on the policy.[10]

Upon the maturity of the debt secured, it has been held [11] that the pledgee has the right and power to sell the policy to the highest bidder for the purpose of realizing money to satisfy the debt. This follows from the nature of the contract of pledge. And it is not even necessary in such case, that the sale be made pursuant to a judgment. In New York however, it has been held that the pledgee of a life policy who holds it as collateral, has only the right to collect, and not the right to sell or surrender it, unless expressly so authorized.[13]

In accordance with the principles of pledge, the assignee's or pledgee's rights in the proceeds of the policy are limited to an amount equal to the debt secured, the premiums paid, and the interest thereon.[14] In case he is named as the beneficiary for the purpose of securing him, he will hold the balance in trust for the insured or his estate.[15] In case the policy is payable to a third person beneficiary subject to change, the assignment works as a pro tanto change of beneficiary to the extent of the assignment, or at least defeats the interest of the beneficiary to the said extent,[16] and the original beneficiary will only receive the balance or excess.

PART TWO

PROPERTY INSURANCE

CHAPTER FOUR

GENERAL CREDITORS

SECTION ONE.—*In General*

Unlike in life insurance where a policy, after some premiums have been paid, ordinarily acquires a cash value, in property insurance whatever value the policy may have accrues only after a loss has occurred. It is then only at this stage that creditors have something to claim as against their debtor. Aside from the question of the exemption of the proceeds in case of policies covering exempted property, the questions that have frequently arisen are in connection with the rights of some creditors to a lien or preference to the proceeds of the policy. Before coming to the resolution of these questions, it would be quite of value to refer to the attitude of the courts towards the claim of creditors to the proceeds of policies covering property exempt from levy.

1. *Proceeds of policy on property exempt from levy.*—In some states, the legislatures, following the policy of the ordinary exemption laws, expressly provide for the exemption of the proceeds of exempted property.[1] In the absence of such specific statutory provisions, some courts,[2] applying a strict construction to their exemption statutes, decline to extend the exemption to the proceeds of the exempted property on the ground that the exemption perished with the property. But the great weight of authority is to the effect that regardless of a specific exemption statute, the proceeds of exempted property are deemed to stand in place of the exempted property and therefore are likewise exempt.[3] "The reason of the rule is found in the fact that the property has been exempted by law for the use of the exemptor and his family and he may insure it to protect himself and them from loss. It is intended by the insurance to secure the means, in case of loss, for the restoration of the property after its destruction by fire. Not to allow the insurance money, after loss, to take the place of the property destroyed and be exempt from liability to the debts of the exemptor, would, by a more technical evasion, prevent the object and spirit of the statutes of exemptions, always liberally construed in favor of the exemptor".[4] The criticism against the rule is that it forgets that the contract of insurance is essentially personal, and that there is no legal connection between the property destroyed and the money payable under the insurance contract.[5]

CHAPTER FIVE

CREDITORS ENTITLED TO PREFERENCE IN THE PROCEEDS OF THE POLICY

SECTION ONE.—*General Creditors*

We shall first consider the case of creditors who, having no lien on specific property, real or personal, desire or claim to have a lien on the proceeds of a policy taken out on the property of the debtor. It seems settled that a general creditor does not have an insurable interest on the general property of his debtor.[1] He cannot therefore procure an insurance in his own name. Hence, in order to have a lien on a policy taken out by the debtor, he must either be the pledgee or the payee of the policy.

1. *Where creditor is the pledgee or where the policy has been assigned as collateral security.*—It is well-settled that, in

the absence of an express prohibition in the policy, a debtor may pledge or assign to his creditor by way of collateral security a policy taken out on his property; and this he may validly do in spite of a prohibition against assignments without the consent of the insurer.[2] And even though the assignment be in form absolute, it may still be proven to have been made by way of collateral security.[3] But in all these cases, the rights of the creditors are subordinate and derivative to those of the debtor. Hence, any defenses available against the insured are likewise available against the creditor.[4] In other words, the creditor is but a mere appointee to receive whatever money may become payable under the policy according to its terms. Moreover, whatever rights he may have under the policy are divested by the payment of the debt.[5]

2. *Where policy provides "Loss, if any, payable to creditor, as interest may appear" or "Loss, if any, payable to creditor".*— Again, a general creditor, not otherwise secured by any specific security may procure a lien on the proceeds of a policy owned by his debtor by having himself named as payee of the policy, by means of such a clause as "Loss, if any, payable to creditor, as interest may appear", or simply "Loss, if any, payable to creditor". Under such clauses, it is not necessary for the creditor to prove an insurable interest on the property.[6] But his rights are the same as if the policy has been assigned to him by way of collateral security.[7]

SECTION TWO.—*Lien Creditors or Creditor-Mortgagees*

1. *Insurance is procured by debtor.*—We next come to the claim of creditors who, having a lien on specific property, real or personal, desire or claim a preference on the proceeds of a policy taken by the debtor on the property subject to the lien. Ordinarily, such person do not have any preference or lien on the proceeds of a policy procured by the mortgagor on his own interest and payable to himself. The reason is that the contract of fire insurance is purely personal and does not run with the property insured.[1] Nor will the provision in the mortgage deed authorizing the mortgagee to procure insurance secure to such mortgagee a lien on the proceeds of a policy voluntarily taken by the mortgagor on his own interest and not in pursuance of an obligation imposed upon him in the mortgage deed.[2] How-

ever, there are several ways by which a creditor-mortgagee may obtain a lien on the proceeds of a policy taken by the mortgagor, viz:

(1) By virtue of a stipulation contained in the mortgage deed obligating the mortgagor to procure an insurance on the mortgaged premises. In such case, even if the policy is not expressly made payable to the mortgagee, the latter will have an equitable lien on the proceeds.[3] As a matter of fact, it is immaterial whether the policy was procured even before the mortgage was executed.[4] And if the mortgage is duly recorded, some authorities hold that assignees of the policy hold their assignment subject to such lien.[5] Moreover, after the insurer has received due notice of the lien, it cannot make payment to the mortgagor, except at its peril, until the lien of the mortgagee is first satisfied;[6]

(2) By assignment of the policy to the mortgagee as collateral security;[7]

(3) By the incorporation of a simple "loss payable" clause or a "standard" or "union mortgage" clause, either on the face of the policy or under the head of warranties or in the form of a rider, in which the mortgagee is expressly made a beneficiary to the extent of his interest.[8] In all of these cases, the mortgagee holds the policy as security in addition to the mortgaged property. And in case of loss of the mortgaged property, he is entitled to receive the proceeds; but in such case, he must apply them to such part only of the secured indebtedness as may already be due, thus extinguishing it pro tanto; otherwise, he must hold such proceeds in trust until the debt matures.[10]

2. *Insurance is procured by mortgagee.*—But instead of relying on the security of a policy taken by the mortgagor, the mortgagee himself, may procure an insurance on his own interest on the mortgaged property. It is well-settled that he has such a distinct and separate insurable interest to the extent of the debt.[11] And a clause in the mortgage requiring the mortgagor to take an insurance for his benefit does not prevent him from procuring a separate insurance for his own benefit.[12] In such case, if he pays the premiums out of his own funds and such premiums are not chargeable to the mortgagor, he becomes exclusively entitled to the proceeds without any duty on his part to apply them to the debt. In other words, the mortgagor, because he does not have any interest on the policy, receives no

benefit and continues to be liable on the original obligation.[13] But, inasmuch as it is contrary to public policy that the mortgagee should receive a double indemnity, it has been consistently held that, in such case, the insurer becomes subrogated to the rights of the mortgagee on the mortgage,[14] at least to the extent of the insurance money paid.

On the other hand, if the mortgagee procures the insurance on his behalf at the expense of the mortgagor or with premiums chargeable to the mortgagor under the agreement, the mortgagee must apply the proceeds to the extinguishment pro tanto of the debt;[15] and in such case, the insurer has no right to be subrogated.[16] However, even though the mortgage provides that upon failure of the mortgagor to take out a policy for the benefit of the mortgagee, the latter may take out such policy and charge the premiums to the mortgagor, yet if the mortgagee takes out a policy and covenants with the insurer that the said insurer, in case of loss, shall be subrogated to his rights under the mortgage, the insurer will still be entitled to subrogation, the theory being that in such case the mortgagee did not procure the insurance pursuant to the authorization but under his own separate and independent interest.[17]

3. *Effect of acts or default of mortgagor on rights of mortgagee.*—One question that has vexed the courts is the effect on the rights of the mortgagee of such acts or default of the mortgagor as will ordinarily invalidate a policy. This question has arisen especially in the case of policies procured by the mortgagor for the benefit of the mortgagee. As to policies procured by the mortgagee on his own interest, there cannot of course be any doubt that, being the party insured, he will not be responsible for any acts of the mortgagor, unless such acts are embraced within the terms of his undertaking.[18] But in the case of policies procured by the mortgagor the question has been resolved by establishing a distinction between the various forms of clauses inserted in the policy for the benefit of the mortgagee. These clauses fall roughly into two classes, viz., the simple "loss payable" clause which merely designates the mortgagee as the beneficiary as his interest may appear without any other stipulation in his favor or separate obligation on his part; and the "union" or "standard" mortgage clause which not only designates the mortgagee as the beneficiary as his interest may appear but also expressly provides that his interest shall not be

invalidated by any act or neglect of the mortgagor or that no act or default of the mortgagor shall affect his right to recover. Accordingly, under the simple "loss payable" clause, it has been uniformly held that the mortgagee is not a party to the contract but simply an appointee of the insurance fund and whose right of recovery is no greater than the right of the mortgagor; hence, a breach of the conditions of the policy by the mortgagor, which would prevent a recovery by him, precludes recovery from the insurer by the mortgagee.[19] Thus, material misrepresentations and concealments by the insured as to the property insured concerning value, existence of other incumbrances, nature of title, nature of use to which property is devoted, will invalidate the policy as against both the mortgagor and the mortgagee.[20] Likewise, breaches of conditions after the issuance of the policy, such as those against alienation or change of title or interest, or other insurance, or vacancy or non-payment of premiums will prejudice the rights of the mortgagee.[21] But after a loss has occurred, the insurer's liability becomes fixed and the mortgagee's rights become vested. Accordingly, acts of the mortgagor subsquent to the loss will no longer defeat the rights of the mortgagee.[22] Nor will an adjustment of the loss, whether by arbitration or agreement, by the insured mortgagor and the insurer, without the knowledge or consent of the mortgagee, be binding upon him.[23]

On the other hand, under the second form of mortgage clause, i. e., the union or standard mortgage clause, it has been uniformly held that the mortgagee is not a mere appointee to receive the proceeds but that the clause creates an independent contract between him and the insurer in which his own insurable interest is the subject-matter of the insurance. Accordingly, his rights will not be affected by any acts, representations, or omissions of the mortgagor either before, at the time of, or subsequent to the issuance of the policy, or after loss.[24]

Similarly, where a mortgagor, with the consent of the insurer, assigns a policy to the mortgagee and the said mortgagee obligates himself to be liable for future premiums, it has been held that the legal effect of such a transaction was "to create a new substantive and distinctive contract of insurance" with the mortgagee and that, thereafter, no act of the mortgagor which might have invalidated the policy as to him, could affect or im-

pair the rights of the mortgagee.[25] Of course, if the assignment does not impose any obligation on the mortgagee, this rule does not apply.[26]

4. *In the Philippines.*—Under section 50 of the Philippine Insurance Law, the right of a mortgagee to be named as payee of a policy procured by the mortgagor is recognized.[27] Likewise, in the case of *San Miguel Brewery v. Law Union & Rock Insurance Co.*,[28] the insurable interest of the mortgagee to the extent of his claim, and, accordingly, his right to procure an insurance on his own behalf, has been expressly recognized. But in such case, if the policy was in the mortgagee's name and there is no statement as to the interest of the owner or mortgagor in the policy, the mortgagor, even if he be the one who pays the premiums, has no interest in the balance of the proceeds after the payment or extinguishment of his debt; moreover, the amount of recovery by the mortgagee is limited to his insurable interest or the amount of his credit.[29]

As to the effect of the acts or default of the mortgagor upon the rights of the mortgagee in a policy taken out by the mortgagor for the benefit of the mortgagee, the following provisions of the Philippine Law are quite specific:

Section 9: Unless the policy otherwise provides, where a mortgagor of property effects insurance in his own name providing that the loss shall be payable to the mortgagee, or assigns a policy of insurance to a mortgagee, the insurance is deemed to be upon the interest of the mortgagor, who does not cease to be a party to the original contract, and *any act of his, prior to the loss, which would otherwise avoid the insurance, will have the same effect,* although the property is in the hands of the mortgagee, but any act which, under the contract of insurance, is to be performed by the mortgagor may be performed by the mortgagee therein named, with the same effect as if it had been performed by the mortgagor.

Section 10: If an insurer assents to the transfer of an insurance from a mortgagor to a mortgagee, and, at the time of his assent, imposes further obligations on the assignee, making a new contract with him, the acts of the mortgagor cannot affect the rights of said assignee.

Clearly, these sections are but the statutory affirmation of the principles already discussed.[30] Under section 9, in consonance with the said principles, if the policy does not otherwise provide, i. e., if the mortgage clause is a simple "loss payable" clause indorsed on the policy originally or, in lieu thereof, by collateral assignment, the acts or default of the mortgagor "prior to the loss" will affect the rights of the mortgagee.[31] Likewise, it must be noted that these acts or default must be

limited to those "prior to the loss". Hence, pursuant to the principles of the common law as laid down by the weight of authority [32] in America, once the loss accrues, the rights of the mortgagee become fixed and no act of the mortgagor or agreement between the mortgagor and the insurer without the knowledge of the mortgagee will affect the rights of the said mortgagee.

On the other hand, the incorporation of the "standard" or "union" mortgage clause under which no acts or default of the mortgagor prior to the loss will prejudice the rights of the mortgagee is expressly sanctioned by the first clause of section 9.[33]

Similarly, section 10 recognizes the common law rule that in case the mortgagor, with the consent of the insurer, assigns the policy to the mortgagee and the latter agrees to assume the obligations of the former to the insurer, such as the payment of premiums and thus in effect enter into a new contract with the insurer, the acts or default of the mortgagor cannot affect or prejudice the rights of the mortgagee-assignee.

FOOTNOTES

PART ONE

LIFE INSURANCE

CHAPTER ONE

SECTION ONE

1. *Policies payable to insured*

1. Crigsby v. Russel, 222 U. S. 149, 32 S. Ct. 58, 56 L. Ed. 133, 36 L. R. A. (N. S.) 642, Ann. Cas. 1913B, 863 (1911).

2. Gordon v. Ware National Bk. (C.C.A. 1904), 132 F. 444, 67 L.R.A. 550. The statement of the court runs thus: "The restriction of this power to sell policies of life insurance to those purchasers who may have an insurable interests in the lives insured thereby would greatly diminish, if it would not practically destroy the value of such policies as security for loans or debts. They are now articles of commerce, the frequent subjects of purchase and of sale, and ready and valuable means of obtaining loans and securing obligations. The policy of the nation is to enlarge, not to restrict, commerce in choses in action." 67 L. R. A., at 555.

3. Anthracite Ins. Co. v. Sears, 109 Mass. 385 (1872).

4. Biggert v. Straub, 193 Mass. 77, 118 Am. St. Rep. 449, 78 N.E. 770 (1906).

5. Blinn v. Dame, 207 Mass. 159 (1911).

6. Kratzenstein v. Lehman (1896) 18 Misc. 590, 42 N.Y.S. 237, aff'd in (1897) 19 Misc. 600, 44 N.Y.S. 369. See also Cavagnaro v. Thompson, 78 Misc. 687, 138 N.Y.S. 819 (1912); Planters' St. Bank v. Willinghim, 111 Ky. 64, 63 S.W. 12; note, 16 L.R.A. (N.S.) 316.

7. Act No. 3862, P.L., Vol. 27, p. 309 (Nov., 1931).

8. Misut v. West Coast S. F. L. Ins. Co., 41 Phil. 258, 261-262 (1920). This ruling is reinforced by reference to section 166, Act No. 2427 (Philippine Insurance Law) under which life policies are declared to be assignable, regardless of whether the assignee has an insurable interest on the life of the assured or not. See Sun Life Assur. Co. of Canada v. Ingersoll, 42 Phil. 331, 345 (1921). But in this case, the court (dictum) seemed to limit the right to attach life policies to only those with a cash surrender value (p. 346).

9. 161 Ga. 793, 131 S.E. 902, 44 A.L.R. 1184 (1926).

10. See note, 44 A.L.R. 1188.

11. 241 Mich. 255, 217 N.W. 29, 57 A.L.R. 692 (1928). The Court said: "When the money is payable absolutely and without condition, the debt may be garnished. But the present right of the insured to money under this policy and the liability of the company to pay it are not absolute. The right to receive it is one personal to the insured, and he alone may exercise it. It may not be forced upon him by the insurer. The obligation to pay does not become due at or within a time fixed by the policy, but it rests upon the happening of an event not measured by a time limit, and which may or may not transpire. He must also surrender the policy, or make tender thereof, before his right of action will accrue.

12. Cooper v. West, 173 Ky. 289, 190 S. W. 1085 (1917); Soobie v. Connor, 94 Misc. 429, 157 N.Y.S. 567 (1916).

13. 119 Wis. 502, 97 N.W. 168 (1903).

14. *Ibid.*, 97 N.W. 168, at 169-170.

15. See also Talcott v. Field, 34 Neb. 611, 52 N.W. 400, 33 Am. St. Rep. 662 (1892).

16. Talcott v. Field, *Ibid.;* Delaney v. Walsh (Tex. Civ. App.), 37 S. W. 615 (1896); VANCE, INSURANCE (2d Ed. 1930), sec. 161, p. 614.

17. McCutcheon v. Townsend, 127 Ky. 230, 105 S.W. 937 (1907).

18. Murphy v. Casey (Minn.) 184 N. W. 783.

19. See Brown's Appeal, 125 Pa. 303 (1907).

SECTION ONE

2. *Policies payable to third party beneficiaries subject to change*

1. VANCE, INSURANCE (2d Ed. 1930), sec. 147, at 561-562, citing 37 C.J. 579; 14 R.C.L. 1388; JOYCE, INSURANCE (2d Ed.) sec. 740; BACON, LIFE AND ACCIDENT INSURANCE (2d Ed.), sec. 379; COOLEY, BRIEFS ON INSURANCE (2d Ed.), p. 6406; Note, 9 Cornel L. Quar. 475.

2. National Bank v. Appel Clothing Co., 35 Colo. 149, 83 P. 965, 4 L.R.A.(N.S.) 456, 117 Am. St. Rep. 186 (1905); Townsend's Assignee v. Townsend, 127 Ky. 230, 105 S. W. 937, 16 L.R.A.(N.S.) 316 (1907).

3. Cavagnaro v. Thompson, 78 Misc. 687, 138 N.Y.S. 819 (1912); Clark v. Shaw, 91 Misc. (N.Y.) 245 (1915); Ecker v. Meyer, 118 Misc. 356, 194 N.Y.S. 320 (1922).

4. 165 App. Div. 760 (1915).

5. Biggert v. Straub, 193 Mass. 77, 118 Am. St. Rep. 449, 78 N. E. 770 (1906); Blinn v. Dame, 207 Mass. 159 (1911).

6. 121 Misc. 427, 201 N. Y. S. 369 (1923).

7. Cohen v. Samuels, 245 U. S. 50, 38 Sup. Ct. 36, 62 L. Ed. 145.

8. 201 N. Y. S. 369, 377.

9. Neil v. Marquis, 256 Pa. 608, 101 A. 70 (1917). In this case the court remarked (at 613-614): "The moment he (the insured) breathed his last the happening of the condition subsequent which might have divested the defendant's rights on the policies became impossible. If up to that time her (the beneficiary's) interest on the policies amounted to nothing more than a bare expectancy, that expectancy then ripened and her interest in the policies and their proceeds immediately became a vested one. Thus the air was cleared; and the position of the creditor became forthwith what it would have been if, when the policies were originally issued or subsequently assigned to her, no right to change their beneficiary had been reserved by the insured."

10. See *infra*.

11. Tennes v. Northwestern M. L. Ins. Co., 26 Minn. 271, 3 N. W. 346 (1879); Robinson v. Union C. L. Ins. Co., 96 Kan. 237, 150 Pac. 564 (1915); Talcott v. Field, 34 Neb. 611, 33 Am. St. Rep. 662, 52 N. W. 400 (1892).

12. Talcott v. Field, *supra* note 11.

CHAPTER ONE

SECTION TWO

The Exemption Statutes

1. Bank of Minden v. Clement, 256 U. S. 126, 65 L. Ed. 857, 41 S. Ct. 108 (1921); Brown v. Stocker, 40 N. D. 113, 1 I. L. R. 753 (1918); Hamilton Nat. Bak. v. Amster, 134 Tenn. 537, 184 S. W. 5 (1915); Worthen Co. Thomas (U. S. 1934) 1 United States Law Week, index p. 865 (May 29, 1934); See COUCH, INSURANCE (1929), sec. 330, p. 938; See Notes, 21 Columbia L. Rev. 598; 8 Va. L. Rev. 58.

2. See Central Nat. Bank v. Hume, 128 U. S. 135 (1888); Manufacturing Co. Platt, 13 Col. App. 15 (1899). In this case, the court remarked: "The duty which the insured owes to his dependent family and to the state is of higher importance than that which he owes to his creditors. * * * We see no difference in principle between compelling the husband while living to support his wife and family and in permitting him to make some provision for their support after his death." And in Kimball v. Cunningham, 192 Ala. 223 (1915), the Court said: "The policy of such legislation finds its origin in the duty of maintenance and protection which every husband owes to his family, and the importance to the state that as few widows and orphans as possible should be cast as paupers upon the public charity."

3. See Friedman Bros. v. Fennel, 94 Ala. 570, 10 So. 649 (1891); Richardson v. Michener, (Ohio) 11 Dec. Rep. 830, 30 Bull. 120 (1895).

4. 37 Cal. App. 313, 174 Pac. 356 (1918); See also Holmes v. Marshall, 145 Cal. 777, 79 Pac. 534 (1905).

5. Cal. Code of Civ. Proc., sec. 690, subdiv. 18. See also Flood v. Libby, 38 Wash. 366, 107 Am. St. Rep. 851, 80 Pac. 533 (1905). The Philippine Exemption Law, Act No. 3862, was adopted from this provision of the California Code.

6. Cohen v. Gordon, (N. D.), 218 N. W. 209 (1928).

7. Code of Iowa (1931), sec. 8776; Mich. Laws 1927, No. 70.

8. Arizona Civ. Code of 1915, sec. 3302, subdiv. 2; D. of Col. Code, secs. 1161, 1162; Iowa, *supra* note 7; Caroll's Kentucky Stats. (1930), secs. 654, 655; Maryland Laws 1904, Act No. 45, sections 8 & 9; Mich., *supra* note 7; Mason's Minn. Stat. 1927, sec. 3388; Missouri Rev. Stat. 1919, sec. 6149; New Hampshire Laws 1926, c. 288, sec. 2; N. C. Const., Art. 10, sec. 7; Ohio Gen. Code 1926, sec. 9394; Purdon's Penna (Pa.) Ann. Stats., Title 40, sec. 51; S. C. Code of Laws 1922, sec. 4099.

9. Caroll's Ky. Stats., *supra* note 8; Oklahoma Com. Stats., 1921, secs. 6726 & 6727; Oregon Code Ann. 1930, vol. 3, Ins., Sec. 46-514.

10. Minn., *supra* note 8; Miss. Code 1930, sec. 1756; N. Y. Laws 1927, c. 468, sec. 55a; Vermont Gen. Laws 1917, sec. 578; Washington Rev. Stats. 1931, sec. 7230-1; Wis. Stats. 1931, secs. 246.09, 246.11, 272.18; Wyo. Ins. Code 1921, sec. 36.

11. In re Jones (D. C. 1917), 249 F. 487; In re Shoemaker (D. C. 1915), 225 F. 329.

12. Jens v. Davis (C. C. A. 1922), 280 F. 706; In re Fetterman (D. C. Ohio 1917); 243 F. 975; In re Pitman (D. C. N. C. 1921), 235 F. 639; see note 23 Colum. Law Rev. 771; In re Stansell, 8 F. (2d) 363 (1925); Dawson v. National Life Ins., 156 Tenn. 306, 300 S. W. 567 (1927); Murphy v. Casey (Minn.) 184 N. W. 783 (1921).

13. Murphy v. Casey, *supra* note 12.

14. Mass. Laws of 1928, c. 176; N. Y., *supra* note 10; Pennsylvania, *supra* note 8; Mich. *supra* note 7.

15. Ill., Cahill's Rev. Stat. 1925, c. 73, p. 342; Ky. *supra* note 8; N. Y., *supra* note 10; W. Va. Acts of 1929, cc. 26, 27; Iowa, *supra* note 7; Mich:, *supra* note 7; N. Hampshire, *supra* note 8; Tenn. Code of 1932, secs. 8456-8458.

16. Arizona, *supra* note 8; S. Dakota, Rev. Code 1919, secs. 2661, 9310, construed in Cornwell v. Surety Fund Life Ins. Co., 144 S. D. 391, 184 N. W. 211 (1921); Miss. Code 1930, sec. 1757.

17. Ala. Code 1928, sec. 8277; California, *supra* note 5; Idaho, Comp. Stats. 1919, s. 6920; Montana, Rev. Codes 1921, sec. 9428, p. 7; Missouri, *supra* note 8; Nebraska, Comp. Stats. 1929, sec. 44-1102; Nev., Comp. Laws 1929, sec. 8844; S. Carolina, Code of Laws 1922, sec. 4099; Texas, Laws of 1929, S. B. 19; Utah, Comp. Stats. 1917, sec. 6925, par. 8; Phil. ippines, *supra* note 5.

18. Ala., *supra* note 17; Cal., supra note 5; Neb., *supra* note 17; Mo., *supra* note 8.

19. Kiely v. Hickox, 70 Mo. App. 617 (1897); Stigler v. Stigler, 77 Va. 163 (1883). See Sternberg v. Levy, 159 Mo. 617, 60 S. W. 1114 (1901). In John v. Burn, 92 Miss. 159, 45 So. 858 (1907), the beneficiary was allowed to keep all the proceeds from the policies, less the premiums paid by the insured on the whole policy while he was insolvent, including the portion of the premiums paid in keeping up the exempt insurance.

20. Stone v. Knickerbocker Life Ins. Co., 52 Ala. 589 (1875); Red River Nat. Bk. v. De Berry, 47 Tex. Civ. App. 96, 105 S. W. 998 (1907). It was formerly held in California, however, that a statute exempting in favor of the wife insurance procured with an annual premium not exceeding $500 had no application when the premium exceeded that sum. In re Brown's estate, 123 Cal. 399, 55 P. 1055, 69 Am. St. Rep. 74 (1899).

21. North British & Mer. Ins. Co. v. Ingalls, 109 Cal. App. 147, 292 Pac. 678 (1930).

22. 115 Kan. 105, 222P. 121 (1924); see also Merrel Drug Co. v. Dixon, 131 Ky. 212, 24 L. R. A. (N. S.) 1018 (1909) and note; Bull v. Case, 165 N. Y. 578, 59 N. E. 301, Cf. Cook v. Allee, 119 Iowa 226, 93 N. W. 95, and Friedlander v. Mahoney, 31 Iowa 315.

23. Act No. 3862, P. L., Vol. 27, p. 309.

24. Equitable L. A. Soc. v. McRee, 75 Fla. 257, 78 n. So. 22 (1918).

25. United States M. & F. Co. v. Ruggles, 224 App. Div. 504, 231 N. Y. S. 100 (1928).

26. N. Y. L. Ins. Co. v. Statham, 93 U. S. 24 (1876); Central Bank of Wash. v. Rume, 128 U. S. 195 (1888); Cohen v. N. Y. Mut. Life Ins. Co., 50 N. Y. 610 (1872).

27. *Ibid.*, see note, 38 Yale L. Journal 681; note, 42 Harvard L. Rev. 575.

CHAPTER ONE

SECTION THREE.—*The Bankruptcy Act*

1. *Policies payable to insured.*

1. 30 Stat. 565 [11 USCA sec. 110 (a) (3) and (5)].

2. Patten, *Insured Wife's Rights under General Exemption Statutes*, 3 Boston U. L. Rev. 75 (1923).

3. Re Scheld, 52 L. R. A. 188, 44 C. C. C. A. 233, 104 F. 870 (1900).

4. Steele v. Buel, 44 C. C. A. 287, 104 F. 968 (1900).

5. 198 U. S. 202, 24 S. Ct. 656, 49 L. Ed. 1018 (1905).

6. "The mission of the proviso was, in the interest of the perpetuation of policies of life insurance, to provide a rule by which, where such policies passed to the trustee because they were not exempt, if they had a surrender value their future operation could be preserved by vesting the bankrupt with the privilege of paying such surrender value, whereby the policy would be withdrawn out of the category of an asset of the estate." (198 U. S. 202, 213).

7. Re Becker, 106 F. 54 (1901); Re Slingluff, 106 F. 154 (1900); Re Welling, 51 C. C. A. 151, 113 F. 189 (1902); Re Coleman, 69 C. C. A. 496, 136 F. 818 (1905); Re Hettling, 99 C. C. A. 87, 175 F. 65 (1909); Re Orear, 102 C. C. A. 78, 178 F. 632, 30 L. R. A. (N. S.) 990 (1910).

8. 205 U. S. 202, 27 S. Ct. 488, 51 L. Ed. 771 (1907).

9. Re Buelow, 98 F. 86; Re Josephson, 121 F. 142 (1903); Gould v. N. York L. Ins. Co., 132 F. 927 (1904); Morris v. Dodd, 110 Ga. 606, 50 L. R. A. 33, 36 S. E. 83 (1900).

10. 228 U. S. 459, 33 S. Ct. 564, 57 L. Ed. 920, 46 L. R. A. (N. S.) 148 (1913).

11. *Ibid.*, at 926 (57 L. Ed.).

12. See note, 35 Harvard Law Rev. 80, 82, n. 12.

13. *Supra* note 10, 57 L. Ed. at 926, 927.

14. See Grubbs, *Rights of Trustee in Life Insurance Policies*, 2 Va. L. Rev. 425; note, 2 California L. Rev. 46.

15. Hiscock v. Martens, *supra* note 8.

16. 228 U. S. 474, 33 S. Ct. 568, 57 L. Ed. 927, (1913).

17. Here the surrender value of the bankrupt's policies, because of previous loan liens, was but $63.80, while the amount payable under the policies upon the bankrupt's death shortly after the filing of the petition was $8,675.14. See also Andrews v. Partridge, 228 U. S. 479, 33 S. Ct. 570, 57 L. Ed. 929 (1913). In the Philippines, this rule has been held applicable under the Insolvency Law (Act No. 1956) there in force. Sun Life Assur. Co. of Canada v. Ingersoll, 42 Phil. 331 (1921).

18. In re Wolff (D. C.), 165 F. 984 (1908); In re Loveland (C. C. A.) 200 F. 136 (1912); Burlingham v. Crouse, *supra* note 10.

19. In re Chandler (D. C.), 290 F. 988 (1923).

20. Act No. 1956 (P. L.).

21. Sun Life Assurance Co. v. Ingersoll, 42 Phil. 331 (1921).

22. *Ibid.*, at 337.

23. After relying on the cases of In re McKinney, 15 F. 535; Holt v. Everrol, 2 Ch. Div. 266 (England); Morris v. Dodd, 110 Ga. 606, 60 L. R. A. 33, and 7 C. J., sec. 207, p. 122, the court remarked (pp. 343, 344) "The authorities above marshalled already exhibit the resolute attitude of courts, both high and low, upon the proposition that the assignee acquires no beneficial interest in insurance effected on the life of the insolvent, except to the extent that such insurance contains assets which can be realized upon as of the date when the petition of insolvency is filed; and this attitude is manifest whether the question has arisen under provisions like section 32 of our Insolvency Law, corresponding to section 14 of the American Bankruptcy Act of 1867, or under section 70a of the American Bankruptcy Act of 1898. The explanation is to be found in the consideration that the destruction of a contract of insurance is not only highly prejudicial to the insured and those dependent upon him, but is inimical to the interests of society. Insurance is a species of property that should be conserved and not dissipated. As is well known, life insurance is increasingly difficult to obtain with advancing years, and even when procurable after the age of fifty, the cost is then so great as to be practically prohibitive to many. Insolvency is a disaster likely to overtake men in mature life; and one who has gone through the process of bankruptcy usually finds himself in his declining years with the accumulated savings of years swept away and earning power so diminished. The courts are therefore practically unanimous in refusing to permit the assignee in insolvency to wrest from the insolvent a policy of insurance which contains in it no present realizable assets."

24. 15 F. 535 (1883).

25. The court also seemed to have made a very sweeping statement when it observed: "Certainly no case has been called to our attention from the voluminous jurisprudence of the United States or of England where a policy of ordinary life insurance, having no cash surrender value, was ever taken upon process of execution from an insured person, * * * and we have discovered no case in which such a policy has been declared to pass to the trustee as assets in bankruptcy, during the life of the insured." For, the decisions in Anthracite Ins. Co. v. Sears, 169 Mass.

383 (1872); Biggert v. Straub, 193 Mass. 77 (1905); Kratzenstein v. Lehman (1896) 18 Misc. 590, 42 N. Y. S. 237; Re Becker, 106 F. 54 (1901; Re Sligluff, 106 F. 154 (1900); Re Welling 51 C. C. A. 151, 113 Fl. 189 (1902); Re Coleman (C. C. A.) 136 F. 818 (1905); Re Hetting (C. C. A.) 175 F. 65 (1909); Re Orear (C. C. A.) 178 F. 632 (1910) seem to belie this statement.

SECTION THREE.—*The Bankruptcy Act*

2. *Policies payable to third party beneficiaries subject to change*

1. VANCE, INSURANCE (2d Ed. 1930), sec. 164, p. 632, citing In re Majors (D. C.) 241 F. 538 (1917).

2. *Ibid.*

3. In re Simmons & Griffin (C. C. A.) 255 F. 521 (1919).

4. Re Samuels, 237 F. 796 (1917); cf. Re Hammel, 221 F. 56 (1916); Re Arkin, 231 F. 947 (1916).

5. Re Shoemaker, 225 F. 329 (1915); Re Bonvillain, 232 F. 370 (1916); Malone v. Cohn, 236 F. 882 (1916).

6. 245 U. S. 50, 38 S. Ct. 36, 62 L. Ed. 143 (1917).

7. *Ibid.*, 62 L. Ed. 143, at 145.

8. VANCE, *op. cit. supra* note 1, sec. 164, p. 633.

9. Patten, *Wife's Rights under Exemption Statutes*, 3 Boston U. L. Rev. 75, 81.

10. 256 U. S. 395, 41 Sup. Ct. 503, 65 L. Ed. 1009 (1921).

11. VANCE, *op. cit. supra* note 1, sec. 164, p. 634.

12. Patten, *op. cit. supra* note 9.

13. See note, 35 Harvard L. Rev. 80.

14. VANCE, *op. cit. supra* note 1, sec. 147, p. 564. In Eldridge v. Mut. Life Ins. Co., 217 Mass. 444, 105 N. E. 361 (1914) the court said: "The husband's power to surrender was one which passed to the trustee in bankruptcy. Blinn v. Dame, 207 Mass. 159, 93 N. E. 601, 20 Ann. Cas. 1184 (1911). But the insured died before the power to surrender was exercised. Thereby the wife's right became fixed and absolute to the proceeds under the terms of the assignment." See also note 31 Yale L. Journal 325.

15. *Supra.*

16. 101 U. S. 225 (1879).

17. Act No. 3862, P. L., Vol. 27, section 1 provides: "The following property shall be exempt from attachment and execution, except as herein otherwise provided: * * * 10. All moneys, benefits, privileges or annuities accruing or in any manner growing out of any life insurance, if the annual premiums paid do not exceed five hundred pesos, and if they exceed that sum a like exemption shall exist which shall bear the same proportion to the moneys, benefits, privileges, and annuities so accruing or growing out of such insurance that said five hundred pesos bears to the whole premiums paid."

CHAPTER TWO

POLICIES PAYABLE ABSOLUTELY TO THIRD PARTIES

1. See *supra.*

2. VANCE, INSURANCE (2d Ed. 1930), sec. 147, p. 564.

3. There are specific statutes which, while exempting the proceeds of a policy up to a certain amount, expressly declare that the excess over that amount shall inure to the benefit of third persons. See VANCE, *ibid.*, sec. 162, n. 21.

4. VANCE, *ibid.*, sec. 162, p. 617.

5. *Ibid.*, sec. 147, p. 565.

6. 128 U. S. 195, 32 L. Ed. 370, 9 S. Ct. 41 (1888); see also Masonic Mut. Life v. Paisley, 111 F. 32. Prof. Williston criticizes this distinction thus: "There is an obvious fallacy in the reasoning of the court. It is said that the policies in question were in the name of Mrs. Hume, that they never formed part of her husband's estate. This is very true, but the premiums which secured the policies and kept them alive were part of that estate, and have been diverted from the payment of debts to investments for the wife. Suppose that Mr. Hume, instead of taking out insurance, had deposited yearly in a savings bank in the name of his wife an amount equal to what he actually expended in insurance premiums, could there be any doubt that the creditors would be entitled to the fund? Surely not. Yet the only difference between such an investment and a policy of life insurance is that the bank engages to pay an amount equal to what it has received with interest, while the insurance company agrees to pay a fixed sum which may be greater or may be less than the amount of premiums with interest, the time of payment being uncertain." 25 American Law Rev. 185, 193.

7. Re Bear (1875) 11 Nat. Bankr. Reg. 46, Fed. Cas. No. 1178 (1875); Fern v. Ward, 80 Ala. 213, 51 L. R. A. 112 (1899); Houston v. Maddux, 179 Ill. 377, 53 N. E. 599 (1899); Merchants' & M. Transp. Co. Borland 53 N. J. Eq. 282, 31 A. 272 (1895); Union Cen. L. Ins. Co. v. Ecjert, 5 Ohio Dec. Rep. 528 (1875); Stigler v. Stigler, 77 Va. 163 (1883).

8. See 12 R. C. L. 538.

9. Merchants' & M. Transp. Co. v. Borland, *supra* note 7. The court adopted the reasoning of Prof. Williston, *supra* note 6.

10. Fern v. Ward, 80 Ala. 555, 2 So. 114 (1886); Thompkins v. Levy, 87 Ala. 263, 6 So. 346 (1888). See also Stokes v. Caffery, 8 Bush (Ky) 535 (1871).

11. *Supra* note 7.

12. Hendrie & B. Mfg. Co. Platt, 13 Colo App. 15, 56 Pac. 209 (1899); Johnson v. Alexander, 125 Ind. 575, 9 L. R. A. 660, 25 N. E. 706 (1890); Goodpaster v. Connor, 13 Ky. L. Rep. 138 (1891); Hearing's Succession, 26 La. Ann. 326 (1874); Ross v. Minn. Mut. L. Ins. Co. 154 Minn. 186, 191 N. W. 428 (1923); Adler and Sons Clothing Co. v. Hellman, 55 Neb. 266, 75 N. W. 877 (1898); Elliot's Appeal, 50 Pa. 75, 88 Am. Dec. 525 (1865); Red River Nat. Bank v. De Berry, 47 Tex. Civ. App. 96, 105 S. W. 998 (1907); see note, 31 A. L. R. 51; note, 21 Mich. L. Rev. 937.

13. 128 U. S. 195, 32 L. Ed. 370, 9 Sup. Ct. Rep. 41 (1888).

14. Inasmuch as the insured used to receive money from his wife's mother, it would seem that the premiums may have been paid with such funds.

15. Prof. Williston, *supra* note 6, in his concluding paragraph summarizes his strong criticism of the case, thus: "It is not intended to find fault with the statutory provisions allowing an insolvent debtor to insure his life for the benefit of those dependent upon him. It may well be

that such a policy is better for society than to require all assets of every kind to be given up to creditors. What is insisted upon is this, that, by the common law, as brought to this country, no exceptions were made to the sweeping rule that an insolvent debtor could not, in anyway, convey his property to a volunteer, so as to free it from the claims of creditors. The statutes themselves above referred to are an admission of this, for, if the law without the statutes were not what is contended, why pass the statutes? If, now, the sentiment is right and just that a man should make provisions—to some extent at least—for those dependent upon him, before paying his debts, and if that sentiment exists among a majority of the people, it should find expression in statute, and the extent of the right should so be properly defined. Till then the rule of the common law should prevail and the courts, uninfluenced by considerations of "meritoriousness" which are for the legislature to consider, should enforce the law."

16. *Supra* note 12.

17. Davis v. Cramer, 133 Ark. 224, 202 S. W. 239 (1918); National Bk. v. Appel Clothing Co. 35 Colo. 149, 4 L. R. S. (N. S.) 456, 83 Pac. 963 (1905); Barbour v. Connecticut Mut. Life Ins. Co., 61 Conn. 240, 23 Atl. 164 (1891); Langford v. Freeman, 60 Ind. 46 (1877); Hearing's Succession, 26 La. Ann. 326 (1874); Adler & Sons Clothing Co. v. Hellman, 55 Neb. 266, 75 N. W. 877 (1898).

18. Davis v. Cramer, *supra* note 17.

19. Navasco Guano. Co. v. Cockfield (C. C. A.), 253 F. 883 (1918); Friedman Bros. v. Fennel, 94 Ala. 570, 10 So. 649 (1892); Ionia County Sav. Bank v. McLean, 84 Mich. 625, 48 N. W. 159 (1891); Catchings v. Manlove, 39 Miss. 655 (1861); Travelers Ins. Co. v. Grant, 54 N. J. Eq. 208, 33 Atl. 1060 (1896); Gould v. Fleetman, 188 App. Div. 759, 176 N. Y. S. 631 (1919); Burton v. Farinhold, 86 N. C. 260 (1882); Elliot's Appeal, 50 Pa. 75, 88 Am. Dec. 525 (1865); Walter v. Hartman (Tenn.) 675 S. W. 476 (1902); Re Monat 1 Ch. 831, 68 L. J. Ch. N. S. 390, 47 Week. Rep. 506, 80 L. J. N. S. 406 (1899) (England).

20. See *supra.*

21. Houston v. Maddux, 179 Ill. 377, 53 N. E. 599 (1899); Union Cent. L. Ins. Co. v. Eckert (1878) 5 Ohio Dec. Rep. 528 (1878).

22. Ross v. Minn. Mut. L. Ins. Co., 154 Minn. 186, 191 N. W. 428 (1928); McCutcheon's Appeal, 99 Pa. 133 (1881).

23. Maryland, Laws 1904, Act 45, secs. 8 & 9; Minn., Mason's Stats. 1927, sec. 3388; N. Y., Laws of 1927, c. 468, sec. 55-a; Pennsylvania, Purdon's Penna Ann. Stats., Title 40, sec. 511; Georgia, Code 1911, Vol. 1, p. 654, sec. 2498; Indiana, Burns Anno. Stats. 1926, sec. 8960.

24. Eppinger v. Canepa, 20 Fla. 262 (1883); Pulsifier v. Husse, 97 Me. 434, 54 Atl. 1076; Lytte v. Baldinger, 84 Ohio St. 1, 95 N. E. 389 (1911); Burron v. Williams, 58 S. C. 280, 79 Am. St. Rep. 840, 36 S. N. 561 (1900).

25. Embezzlement must be proved, although proof beyond reasonable doubt is not necessary; also, that the funds embezzled were actually used in paying the premiums, although it is not necessary to show that the identical specie or bills abstracted were so employed. Bromley v. Cleveland, C. C. & St. L. R. Co., 103 Wis. 562, 79 N. W. 141 (1899); Truelsch v. Northwestern Mut. L. Ins. Co. (Wis.) 202 N. W. 352, 38 A. L. R. 914 (1925).

26. Shaler v. Trowbridge, 28 N. J. Eq. 595 (1877); Holmes v. Gilman, 138 N. Y. 369, 20 L. R. A. 566, 34 Am. S. Rep. 463, 34 N. E. 205 (1893); followed in Vorlander v. Keyes, 1 F (2d) 67 (1924); Mass. Bond. & Ins. Co. v. Josselyn, 224 Mich. 159, 194 N. W. 548 (1923); Truelsch v. Northwestern Mut. L. Ins. Co., *supra* note 25. In Holmes v. Gilman, *supra*, the court declined to make a definite commitment as to what its decision would be in case the proceeds are greater thar the amount embezzled.

27. *Ibid.;* see 1 PEERY, TRUST AND TRUSTEE (6th Ed. 1911), sec. 166; 3 POMEROY, EQUITY JURISPRUDENCE (4th Ed. 1918), 2405; STORY'S EQUITY JURISPRUDENCE (14th Ed.) secs. 1666-1670. "This excess above full compensation is not given to the cestui que trust by reason of any merit on his part. It comes to him as a mere windfall. Public policy demands that the faithless trustee should not retain any advantage derived from his breach of trust. Hence the wholesome rule that whatever a trustee loses in the misuse of the trust fund he loses for himself, and whatever he wins he wins for the beneficiary." AMES, LECTURES ON LEGAL HISTORY (1913), 413.

28. Shaler v. Trowbridge, *supra* note 26.

29. Bennet v. Rosborough, 155 Ga. 265, 116 S. E. 788, 26 A. L. R. 1397 (1923). The decision was, however, by a divided court. See criticism, VANCE, *op. cit. supra* note 2, sec. 619, n. 27.

30. Vorlander v. Keyes, *supra* note 26. See note, 9 Minn. L. R. A. v. 190; note 13 Va. L. Reg. (N. S.) 175.

31. Thum v. Wolstenholme, 21 Utah 407, 61 P. 537 (1900); Holmes v. Davenport (Sup), 18 N. Y. S. 56, 63, 64 (1891). See dicta, Hubbard v. Strapp, 32 Ill. pp. 541 (1899); Bank of Stewart v. Mardre, 142 Ga. 110 (1914).

32. Vorlander v. Keyes, *supra* note 26; Mass. Bonding Co. v. Josselyn, *supra* note 26; Truelsch v. Miller, *supra* note 26.

33. Dayton v. Chafflin, App. Div. 120, 45 N. Y. S. 1005 (1897), reversing the decision of the lower court (Sup) 41 N. Y. S. 839 (1896) which only allowed the beneficiary the amount of her money which went into the premiums.

CHAPTER THREE

CREDITORS ENTITLED TO PREFERENCE IN THE PROCEEDS OF LIFE POLICIES

SECTION ONE.---*Policies Payable to Creditor*

1. Central Nat. Bank v. Hume, 128 U. S. 195, 9 S. Ct. 41, 32 L. Ed. 370 (1888); Deal v. Hainley, 135 Mo. App. 507, 116 S. W. 1 (1909); Am. L. & H. Ins. Co. v. Robertshaw, 26 Pa. 189 (1856).

2. Haberfield v. Mayer, 256 Pa. 151, 100 A. 587 (1917).

3. Bush v. Kansas City Life Ins. Co. (Mo. Sup) 214 S. W. 175 (1919).

4. 14 R. C. L. 924 and cases cited.

5. Hearing's Succession, 26 La. Ann. 326 (1874); Ferguson v. Mass. Mut. Life Ins. Co., 102 N. Y. 647 (1886); Contra: Acme Mfg. Co. v. McCormick, 175 N. C. 277, L. R. A. 1918F, 572, 95 S. E. 555 (1918).

6. Curtiss v. Aetna Life Ins. Co., 90 Cal. 245, 27 Pac. 211, 25 A. S. R. 114 (1891); Conn. Mut. L. Ins. Co. v. Dunscomb, 108 Tenn. 724, 69 S. W. 345, 91 A. S. R. 769, L. R. A.

7. Ferguson v. Mass. M. L. Ins. Co., *supra* note 5.

8. "An examination of scores of cases bearing upon every conceivable phase of these questions has satisfied us that it has become a difficult, if not an impossible, task to make the daylight of truth shine so clearly upon the complicated and conflicting mass of decisions as to bring into clear view the correct rule relating to this class of insurance." Lumpkin, P. J., Exchange Bk. v. Loh, 104 Ca. 446, 44 L.R.A. 372, 375 (1898).

9. Equitable L. Ins. Co. v. Hazzlewood, 75 Tex. 338, 12 S. W. 621 (1898).

10. Exchange Bank v. Loh, *supra* note 8 (dictum); Coan v. Swan, 30 Vt. 6 (1856); see 2 MAY, INSURANCE (3rd Ed.) sec. 459a; 1 BACON, BENEFIT SOCIETIES AND LIFE INSURANCE (2d Ed.) sec. 250a.

11. Even Lumpkin, P. J., *supra* note 8, admits this fact: "In every instance of life insurance there is a chance for the insured * * * to pay in more than the policy will bring back."

12. Amick v. Butler, 111 Ind. 578, 12 N. E. 518, (1887).

13. Ritter v. Smith, 70 Md. 261, 16 A. 890, 2 L. R. A. 844 (1899).

14. Ulrich v. Reinoehl, 143 Pa. 238, 22 A. 862, 13 L. R. A. 433 (1891); see also Mut. Aid Union v. White, 166 Ark. 467, 267 S. W. 137 (1923).

15. 15 Wall. 643, 21 L. Ed. 244 (1872).

16. See Reg. v. Flanagan, 15 Cox, Cr. Cas. 411. In this case it appeared that a woman, having lent diverse sums to several persons, secured the loans by insurance on their lives, and then poisoned them to secure the insurance money.

17. Bradey, J., Conn. Mut. Life Ins. Co. v. Stoeffer, 94 U S. 251, 24 L. Ed. 251 (1877).

18. Holmes, J., Crigsby v. Russel, 222 U. S. 149, 32 S. Ct. 58, 56 L. Ed. 133 (1911).

19. This rule was first intimated in Grant's Adm'r v. Kline, 115 Pa. 618, 9 A. 150 (1887)), was spoken of approvingly in Cooper v. Shoeffer (Pa.) 11 A. 780 (1887), was expressly adopted in Ulrich v. Reinohl, and reaffirmed in Shaffer v. Spangler, 144 Pa. 223, 22 A. 865 (1891) and in Wheeland v. Atwood, 192 Pa. 237, 43 A. 946, 73 A. S. R. 803 (1899).

20. See criticism by Lumpkin, P. J., *supra* note 8. See also, VANCE, INSURANCE (2d Ed. 1930) sec. 56.

21. Ritter v. Amick (Maryland) *supra* note 13.

22. In this case, insurance to the amount of $6,500 was held not to be so disproportionate to a debt of $1,000 as to avoid the contract. In Corson's Appeal, 113 Pa. 438, 6 A. 213, 57 A. S. R. 479 (1886), a policy for $2,000, to cover a debt of about $700, was sustained. In Grant Adm'r v. Kline, 115 Pa. 618 (1887), the policy was for $3,000, the debt was $743 and the transaction was declared valid. But in Cammack v. Lewis, 15 Wall. 643, 21 L. Ed. 244 (1872), a policy for $3000 to secure a debt of $70.00 was held manifestly dishonest and void. In Cooper Weaver's Adm'r (Pa.) 11 A. 780 (1887) a policy for $3000 to secure a debt of $100 was declared void as a wager.

23. Cheeves v. Anders, 87 Tex. 287 (1894); Coldbaum v. Blum, 79 Tex. 638, 15 S. W. 364 (1891); Exchange Bk v. Loh, *supra* note 8; see also Tate v. Commercial Bldg. Assn. 97 Va. 74, 33 S. E. 382, 45 L. R. A. 243, 75 A. S. R. 770 (dictum) (1899); Warnock v. Davis, 104 U. S. 775, 26 L. Ed. 92 (dictum) (1881); Crotty. v. Insurance Co., 144 U. S.

621, 12 S. Ct. 749, 36 L. Ed. 566 (1892) in which the policy was payable to "Michael Crotty, creditor"; Strode v. Drug Co., 101 Mo. App. 627, 74 S. W. 379 (dictum).

24. 24 L. J. C. P. N. S., 15 C. B. 365.

25. 128 U. S. 195, 32 L. Ed. 370 (1888).

26. See Exchange Bk., *supra* note 8, at 374 (44 L. R. A.).

27. VANCE, *op. cit. supra* note 20, at 628; RICHARDS, INSURANCE (4th Ed. 1932), sections 37 & 340; 14 R. CL., sec. 101.

28. See also dictum, Central Nat. Bk. v. Hume, *supra* note 25.

29. See note 13, *supra*.

30. Act No. 2427, sec. 13 (11).

31. Curtiss v. Aetna L. Ins. Co. *supra* note 8.

32. In England, a creditor has an insurable interest in the life of his debtor to the extent of his credit (Godsall Boldero (1807) 9 East. 72); Van Lindman v. Desborough (1828), 3 C. & P. 353; see EMMANUEL, INSURANCE (1931), 55; COLE, INSURANCE LAW (1929), 53; Anderson v. Eddie (1795); PARK'S MARINE INSURANCE (8th Ed.) 914; BUNYON, LIFE ASSURANCE (1904), 15). The mere fact that such interest ceases, such as by payment of the debt, before the death of the debtor, does not invalidate the policy, inasmuch as life insurance is not a contract of indemnity. Dalby v. India & London Life Assur. Co. (1854), 15 C. B. 365. In such case, however, by virtue of a limitation as to the amount of recovery under 14 Geo III, c. 48, sec. 3 which provides that "no greater sum shall be recovered or received from, the insurer or insurers than the amount or value of the interest of the insured in such life or lives," the amount of recovery shall be limited to the amount of the debt at the time of issue of the policy. So in a case where a creditor procured two policies on the life of his debtor in excess of his credit and upon the death of the debtor collected on a policy an amount equal to his credit, he was not allowed to make any claim on a second policy—not even the premiums which he paid. But in Bruce v. Garden, L. R. 5 Ch. App. 32 (1869 where a creditor insured his debtor for an amount twice that of the debt, and it was not shown that the premiums were to be charged to the debtor, the Lord Chancellor held that the creditor is entitled to the whole proceeds of the policy.

CHAPTER THREE

SECTION TWO.—*Persons Paying Premiums*

1. Moir v. Moir, 5 Mo. App. 68, aff'd 88 Mo. 566 (1884); Lockwood v. Bishop, 51 How. Prac. (N. Y.) 221 (1876); Lyons v. Knights of Macabees of the World, 192 App. Div. 109, 182 N. Y. S. 212 (1920); Grandlodge, A. O. U. W. v. Cleghorn (Tex. Civ. App.) 42 S. W. 1043 (1897); Lefthwith v. Wells, 43 S. E. 364, 101 Va. 255, 99 A. S. R. 865 (1903); Life Ins. Co. v. Webre (La. App.), 143 So. 730 (1932).

2. Sullivan v. Sullivan, 99 Cal. 187, 33 Pac. 862 (1893); Nulsen v. Harndon, 176 La. 1097, 147 So. 359, 88 A. L. R. 236 (1933). See note, 88 A. L. R. 239.

3. Stockwell v. Mut. L. Ins. Co., 140 Cal. 198, 73 Pac. 853 (1903).

4. Citing POMEROY, EQUITY JURISPRUDENCE, sec. 1243.

5. Note 3, *supra*.

6. Conn. Mut. L. Ins. Co. v. Burroughs, 34 Conn. 305 91 Am. Dec. 725 (1867); Harley v. Heist, 86 Ind. 196, 45 Am. Rep. 285 (1927); Ky. Grangers' Mut. Ben. Soc. v. Howe's Adm'r, 9 Ky. L. Rep. 198 (1887); Unity Mut. L. Assur. Assn. v. Dugan, 118 Mass. 219 (1885); City Savings Bk. v. Whittle, 63 N. H. 587, 3 Atl. 645 (1887); Conn. Mut. Life Ins. Co. Van Campon, 57 Hun. 592, 11 N. Y. S. 103 (1890); Matlock v. Seventh Nat. Bk., 180 Pa. 360, 36 Atl. 1082 (1897).

7. Metropolitan L. Ins. Co. Tesauro, 94 N. J. Eq. 637, 120 A. 918 (1923); see also Weierts v. Muehl. 81 Ky. 336 (1883), where widow who paid some premiums to maintain a policy payable to insured's (husband) heirs, was reimbursed out of the proceeds. Cf. Supreme Lodge, N. E. O. P. v. Hine, 82 Conn. 315, 320, 73 A. 79 (Benefit society); Spengler v. Spengler, 65 N. J. Equity 176.

8. Morgan v. Mut. Ben. & L. Ins. Co., 16 Cal. App. 85, 116 Pac. 389 (1911); Morgan v. Mut. B. & L. Ins. Co., 116 N. Y. S. 989, 132 App. Div. 455, judgment aff'd 91 N. E. 1117, 197 N. Y. 607 (1909).

9. MacDonald v. Humphries, 56 Ark. 63, 19 S. W. 234 (1892). See also Krittins v. Old Fellows' Ben. Assn., 7 Ohio N. P. 439, 5 Ohio S. & C. P. Dec. 592 (1900); Young v. Hipple, 273 Pa. 439, 117 A. 185, 25 A. L. R. 1541 (1922); Croman v. Metropolitan L. Ins. Co. (R. I.) 147 A. 618 (1929).

SECTION THREE.—*Creditor-Assignees*

1. COUCH, INSURANCE LAW (1929), sec. 1459, p. 5232.

2. Johnson v. N. Y. Life Ins. Co., 56 Colo. 178, 138 P. 414 (1914); Douglass v. Equitable Life Assur. Co. Soc., 150 La. 519, 90 S. 834 (1921); Metropolitan Life Ins. Co. v. Zgliczenski, 94 N. J. Eq. 300. 119 A. 29 (1922); Mahoney v. Katon et al., 205 N. Y. S. 707, 123 Misc. 231 (1924); Third Nat. Bk. v. Lewis, et al., 73 Okla. 329, 176 Pac. 237 (1918); Barner v. Lyter, 31 Pa. Sup. Ct. 435 (1906). See *Assignment of Life Insurance Policies*, 22 Lawyer and Banker 283.

3. Rawls v. Penn. Mut. L. Ins. Co., 165 C. C. A. 319, 253 F. 723 (certiorari denied in (1919) 249 U. S. 614, 63 L. Ed. 802, 39 S. Ct. Rep. 388) (1918); Menter v. Townsend, 68 Ark. 391, 59 S. W. 41 (1900); Mut. Ben. L. Ins. Co. Clark, 81 Cal. App. 546, 254 Pac. 306 (1927); Farmers' State Bk. v. Kelly, 1555 Ga. 733, 118 S. E. 197 (1923); Henrich v. Prior, 84 Ind. App. 211, 146 N. E. 865 (1925); Jenkins v. Union Cent. L. Ins. Co., 112 Kan. 552, 212 P. 363 (1923); Crice v. Ill. L. Ins. Co., 122 Ky. 572, 92 S. W. 560 (1906); Bank of Belsoni v. Hodges, 132 Miss. 238, 96 So. 97 (1923); Missouri St. L. Ins. Co. v. California St. Bk., 202 Mo. App. 347, 216 S. W. 785 (1919); Stevens v. First Nat. Bank, 117 Okla. 148, 245 Pac. 567 (1925); Antley v. N. Y. L. Ins. Co., 139 S. C. 23, 137 S. E. 199, 60 A. L. R. 184 (1927); McNeil v. Chinn, 45 Rex. Civ. App. 551, 101 S. W. 465 (1907). See note 60 A. L. R. 184, 191; note, 42 Harvard Law Rev. 250.

4. COUCH, *op. cit. supra* note 1, sec. 1458w, p. 5259.

5. VANCE, INSURANCE (2d Ed. 1930) sec. 168, p. 646; COUCH, *op. cit. supra* note 1, sec. 1458u, p. 5254.

6. Page v. Burnstein, 102 U. S. 664, 26 L. Ed. 268 (1880); COUCH, *op. cit. supra* note 1, sec. 1458u, p. 5255.

7. Crowell v. N. W. H. L. Ins. Co., 140 Iowa 258, 118 N. W. 412 (1908); Hays v. Lapeyre, 48 La. Ann. 749, 35 L. R. A. 647, 19 So. 821 (1895); First Nat. Bk. v. Security M. L. Ins. Co., 283 Mo. 336, 222 S. W. 832.

8. Gilman v. Curtiss, 66 Cal. 116, 4 Pac. 1094 (1884); Cash v. Hayden's Adm'r., 26 Ky. L. Rep. 1045, 83 S. W. 136 (1904).

9. Hicks v. National L. Ins. Co., 60 F. 690, 9 C. C. A. 215, 20 U. S. App. 410 (1874); Hirsch v. Mayer, 54 N .Y. S. 1075 (1898); 1 COOLEY, BRIEFS ON INSURANCE (2d Ed. 1928) 6530.

10. Conway v. Caswell, 121 Ga. 254, 48 S. E. 956 (1904); Commercial Savings Bk. v. Rornberger, 140 Cal. 16, 73 P. 625 (1903); Guardian L. Ins. Co. v. Rosenbaum (C. C. A.) 280 F. 861 (1922); 7 COOLEY, *op. cit. supra* note 9, at 6530; 17 R. C. L. 948.

11. Gordon v. Ware Nat. Bk. (C. C. A., 1904), 132 F. 444, 67 L. R. A. 550. In this case, the court said "One of the inherent and indispensable elements of a pledge is the right and the power to sell the subject of it to the highest bidder for cash, in order to realize the moneys to pay the debt. The restriction of this power to sell policies of life insurance to those purchases who may have insurable interests in the lives insured thereby would greatly diminish, if it would not practically destroy, the value of such policies as security for loans or debts. They are now articles of commerce, the frequent subjects of purchase and of sale, and ready and valuable means of obtaining loans and securing obligations. The policy of the nation is to enlarge, not to restrict, commerce in choses in action." (67 L. R. A. 553).

12. Cornell v. Mut. Life Ins. Co., 179 Mo. App. 420, 165 S. W. 858 (1914).

13. Crossman v. Lindeman, 123 N. Y. S. 108, 67 Misc. Rep. 437 (1910).

14. Burlingham v. Crouse, 228 U. S. 459, 57 L. Ed. 920 (1915) VANCE, INSURANCE (2d Ed. 1930), sec. 168, p. 645; Note 83 A. L. R. 77.

15. VANCE, *ibid.*, sec. 168, 645.

16. Merchant's Bank v. Gerrard, 158 Ga. 867, 124 S. E. 715 (924); Antley v. N. Y. Life Ins. Co., 139 S. C. 23, 137 S. E. 199 (1927); Hawkes v. Molley, 174 Ga. 481, 163 S. E. 494 (1932); Elmore v. Continental L. Ins. Co., 131 Kan. 335, 291 P. 755 (1930); Bank of Belzoni v. Hodges, 132 Miss. 238, 96 So. 97 (1923); Barbin v. Moore, 159 Atl. 409 (N. H., 1932; Note, 32 Colum. L. Rev. 1071; note, 11 N. C. L. Rev. 169.

PART TWO

PROPERTY INSURANCE

CHAPTER FOUR

GENERAL CREDITORS

SECTION ONE.—*In General*

1. See Gardenhire v. Glasser, 26 Ariz. 503, 226 Pac. 911 (1924) construing and applying Arizona Rev. Stats., sec. 3302, subsec. 16; Fletcher v. Staples, 62 Minn. 471, 64 N. W. 1150 (1895), construing Minn. Gen. Stats. 1894, sec. 5459, subdiv. 5; Ketcham v. Ketcham, 269 Ill. 584, 109 N. E. 1025 (1915); Peerless Pacific Co. Burckhard, 90 Wash. 221, L. R. A. 1917C, 353, 153, Pac. 1037, Ann Cas. 1918B, 147 (1916).

2. See West Florida Grocery Co. v. Teutonia F. Ins. Co., 74 Fla. 220, L. R. A. 1918B, 968, 77 So. 209 (1918); Roche v. Rhode Island Ins. Asso., 12 Ill. App. 360 (1878); Smith v. Ratcliff, 66, Miss. 683, 14 A. S. R. 606, 6 So. 460 (1899); Wooster v. Page, 54 N. H. 125, 20 Am. Rep. 128 (1873).

3. Ellis v. Prat City, 111 Ala. 629, 33 L. R. A. 264, 20 So. 649 (1895); Wilson v. Lowry, 5 Ariz. 335, 52 Pac. 777 (1898); Pabst v. Scott, 31 Ark. 652 (1877); Houghton v. Lee, 50 Cal. 101 (1875); Reynolds v. Haines, 83 Iowa 342, 13 L. R. A. 719, 32 A. S. R. 311, 49 N. W. 851 (1891); Armstrong-Turner Millinery Co. v. Round, 106 Kan. 146, 9 A. L. R. 1255, 186 P. 979 (1920); Rulo v. Murphy, 51 S. W. 312, 21 Ky. L. Rep. 295 (1899); Fletcher v. Staples, 62 Minn. 471, 64 N. W. 1150 (1895); Wabash R. Co. v. Boaring, 103 Mo. App. 158, 77 S. W. 106 (1903); Tillotson v. Wolcott, 48 N. Y. 188 (1872); Strouse v. Becker, 44 Pa. 206 (1863); Wright v. Brooks, 101 Tenn. 601, 49 S. W. 828 (1898); Weschester F. Ins. Co. v. Goggan (Tex. Civ. App.), 203 S. W. 163 (1918); Premo v. Hewitt, 55 Vt. 362 (1883); Fuget Sound, etc. Co. v. Jeffs, 11 Wash. 466, 39 Pac. 962, 27 L. R. A. 808, 48 A. S. R. 885 (1895).

4. Ellis v. Pratt City, *supra* note 3.

5. VANCE, INSURANCE (2d Ed. 1930), p. 613.

CHAPTER FIVE

CREDITORS ENTITLED TO PREFERENCE IN THE PROCEEDS OF THE POLICY

SECTION ONE.—*General Creditors*

1. VANCE, INSURANCE (2d Ed. 1930), sec. 47; RICHARDS, INSURANCE (3rd Ed. 1909), sec. 30; JOYCE, INSURANCE 2d Ed. 1917), 2037; Glenn, *Creditor Insurance and Creditor's Rights*, 21 Columbia Law Rev. 209.

2. True v. Manhattan F. Ins. Co. (C. C.) 26 F. 83 (1885); Ribend v. Liverpool, etc., 30 Cal. 78 (1886); Allen v. Phoenix Assur. Co., 12 Idaho 653, 8 L. R. A. (N. S.) 1903, 88 Pac. 245, (1906); Dickey v. Pacomoke City Bk., 89 Md. 280, 43 A 33 (1899); Wakefield v. Martin, 3 Mass. 558 (1801); Aetna Ins. Co. v. Smith, 117 Miss. 327, L. R. A. 1918D, 1158 78 So. 289 (1918); Ellis v. Kreutzinger, 27 Mo. 311, 72 Am. Dec. 270 (1858); Marts v. Cumberland M. F. Ins. Co., 44 N. J. L. 478 (1882); Griffey v. N. Y. C. Ins. Co., 100 N. Y. 417, 53 Am. Rep. 202, 3 N. E. 309 (1885); Sheridan v. Pacific S. F. Ins. Co., 107 Or. 285, 212 Pac. 783 (1923); Ins. Co. of Pa. v. Phoenix Ins. Co., 71 Pa. 31 (1872); Henderson v. Abbeville-Greenwood M. Ins. Co., 96 S. C. 430, 81 S. E. 171 (1913); Scottish U. & M. Ins. Co. v. Andrews, 40 Tex. Civ. App. 89 S. W. 419 (1906).

3. Merrill v. Colonial, etc., Ins. Co., 169 Mass. 10, 61 A. S. R. 268, 47 N. E. 439 (1897).

4. Bergson v. Builders' Ins. Co., 38 Cal. 541 (1869); Nichols v. Baxter, 5 R. I. 491 (1858); Hobbs v. Memphis Ins. Co., 1 Sneed (Tenn.), 444 (1853); East Texas F. Ins. Co. v. Coffee, 61 Tex. 287 (1884); Reed v. Windsor County M. F. Ins. Co., 54 Vt. 413 (1882).

5. Robert v. Traders Ins. Co., 17 Wend. (N. Y.), 631 (1836).

6. Donaldson v. Sun M. Ins. Co., 95 Tenn. 280, 32 S. W. 251 (1895); Woods v. Ins. Co. of Pa., 83 Wash. 563, 144 P. 650 (1914); Atlas Reduction Co. v. N. Zealand Ins. Co., 138 F. 497 (1905); Parks v. Conn. F.

Ins. Co., 26 Mo. App. 511 (1887); Van Alstyne v. Aetna Ins. Co., 14 Hun. 360 (1878). Contra: Miller v. Stuyvesant Ins. Co., 283 App. Div. 6, 227 N. Y. S. 326 (1928).

7. See Patterson, *Unsecured Creditor's Insurance*, (1931) 31 Columbia Law Rev. 217.

SECTION TWO.—*Lien Creditors or Creditor-Mortgagees*

1. Holler v. National Mar. Bk., 89 Md. 602, 45 L. R. A. 438, 43 A. 800 (1899); Northern Tr. Co. v. Snyder, 22 C. C. A. 47, 76 F. 34 (1896); Whitehouse v. Gergill, 88 Me. 479, 34 A. 276 (1896); Hall v. Niagara F. Ins. Co., 93 Mich. 184, 18 L. R. A. 135, 32 A. S. R. 497, 53 N. W. 727 (1892); Annely v. De Saussure, 26 S. C. 497, 2 S. E. 490 (1886); McLaughlin v. Park City Bank, 22 Utah 473, 54 L. R. A. 343, 63 P. 589 (900); Plimpton v. Farmers M. F. Ins. Co., 43 Vt. 497, (1871).

2. Farmers' Loan & Trust Co. v. Penn. Plate Glass Co., 186 U. S. 434, 22 S. Ct. 842, 46 L. Ed. 1234 (1902).

3. Wheeler v. Insurance Co., 101 U. S. 439. 25 L. Ed. 1035 (1879); Eastern Milling Co. of New Jersey v. Eastern Milling Co. of Penn., 125 F. 143 (1903); First Nat. Bk. v. Com. Union Assur. Co., 40 Idaho 236, 232 P. 899 (1925); Norwich F. Ins. Co. v. Boomer, 52 Ill. 442, 4 Am. Rep. 618 (1869); Chipman v. Carroll, 53 Kans, 163, 35 P. 1109, 25 L. R. A. 305 (1894); Thomas v. Vonkapff, 6 Gill & J. (Ind.) 372; Providence County Bank v. Benson, 24 Pic (41 Mass.) 204 (1883); Miller v. Aldrich, 31 Mich. 408 (1875); Ames v. Richardson, 29 Minn. 330 (1882); Hyde v. Hartford Fire Ins. Co. 70 Nebr. 503, 97 N. W. 629, 113 Am. St. Rep. 796 (1903); Carter v. Racket, 8 Paige (N. Y.) 437 (1840); Freasley Bros. Co. v. Firemen's Fund Ins. Co., 104 Okl. 8, 229 P. 598 (1925); *In re* Reynolds' Estate, 94 Vt. 149, 109 A. 60 (1920). See note, 6 Boston U. L. Rev. 272.

4. Nichols v. Baxter, 5 R. I. 491 (1858).

5. *In re* Sands Ale Brew. Co., 3 Miss., (U. S.) 175.

6. Grange Mill Co. v. Western Assn. Co., 118 Ill. 396, 9 N. E. 274 (1886). Gibbs Mack Co. v. Niagara Fire Ins. Co. (S. C.), 111 S. E. 805 (1922) (Constructive notice was sufficient).

7. Buckley v. Garret, 60 Pa. 333 (1869); Buffalo Steam Eng. Works v. Sun M. Ins. Co., 17 N. Y. 401 (1858).

8. See the following cases: Callensville Sav. Soc. v. Boston Ins. Co., 77 Conn. 676, 69 L. R. A. 924, 60 A. 647 (1905); Glens Falls Ins. Co. Porter, 44 Fla. 568, 33 So. 473 (1902); Southern States F. & Gas. Ins. Co. v. Napier, 22 Ga. App. 361, 96 S. E. 15 (1918); Gilman v. Commonwealth Ins. Co., 112 Me. 528, L. R. A. 1915C, 758, 92 Atl. 721 (1914); Bankers J. S. Land Bank v. St. Paul F. & M. Ins. Co., 158 Minn. 363, 197 N. W. 749 (1924); Fidelity-Phoenix F. Ins. Co. v. Cleveland, 57 Okla. 237, 156 Pac. 638 (1916).

9. Kirkland v. Arnold, 178 Ala. 227, 59 So. 162 (1912); Bonham v. Johnson, 98 Ark. 459, 136 S. W. 191 (1911); Sick v. Ropuano, 94 Conn. 294, 108 A. 858 (1920); Home Ins. Co. v. Marshall, 48 Kan. 235, 29 Pac. 161 (1892); Gardner v. Continental Ins. Co., 25 Ky. L. Rep. 426, 75 S. W. 283 (1903); Burbank v. Buhler, 108 La. 39, 32 So. 201 (1902); Smith v. Packard, 19 N. H. 575 (1849); Pearman v. Gould, 42 N. J. Eq. 4, 5 A. 811 (1886).

10. Mix v. Hatchkiss, 14 Conn. 31 (1840); Thorp v. Croto, 79 Vt. 390, 10 L. R. A. (N. S.) 1166, 118 A. S. R. 562 (1907).

11. Carpenter v. Providence W. F. Ins. Co., 16 Pet. 495, 10 L. Ed. 1044 (1842); Hacket v. Cash, 196 Ala. 403, 72 So. 52 (1916); Trustees of Schools v. St. Paul F. & M. Ins. Co., 296 Ill. 99, 129 N. E. 567 (1921); Addison v. Kentucky & L. Ins. Co., 7 B. Mon. (Ky.) 470 (1847); Investors Mortg. Co. v. Marine & M. Ins. Co., 155 La. 627, 99 So. 486 (1924); Fox v. Phoenix F. Ins. Co., 52 Me. 333 (1864); Allen v. St. Paul F. & M. Ins. Co., 167 Minn. 146, 208 N. W. 816 (1926); Lowenstein v. Queen Ins. Co., 227 Mo. 100, 127 S. W. 72 (1910); San Miguel Brew. v. Law U. & R. Ins. Co., 40 Philippine 674 (1920); See 2 COUCH, INSURANCE (1929), 1182, n. 50.

12. Foster v. Van Reed, 70 N. Y. 19, 26 Am. Rep. 544 (1877).

13. Hacket v. Cash, 196 Ala. 403, 72 So. 52 (1916); Carpenter v. Providence, *supra* note 11; Ponder v. Gibson-Homons Co., 166 Ark. 591, 266 S. W. 682 (1924); Concord U. M. F. Ins. Co. v. Woodbury, 45 Me. 447 (1858); Callahan v. Linthicum, 43 Md. 97, 20 Am. Rep. 106 (1875); Dick v. Franklin F. Ins. Co., 10 Mo. App. 376 (1881); Layden v. Lawrence, 79 N. J. Eq. 113 (1911); Stuyvesant Ins. Co. v. Reid, 171 N. C. 513 (1916).

14. Carpenter v. Providence, *supra* note 11; Honore v. Lamar F. Ins. Co., 51 Ill. 409 (1869); Cushing v. Thompson, 34 Me. 496 (1852); Wash. F. Ins. Co. v. Kelly, 32 Md. 421, 3 Am. Rep. 149 (1870); Sussex County M. Ins. Co. v. Woodraff, 26 N. J. L. 541 (1857); Aetna F. Ins. Co. v. Tyler, 16 Wend. 385, 30 Am. Dec. 90 (1836); Milwaukee M. Ins. Co. v. Ramsey, 76 Or. 570, L. R. A. 1916A, 556, 149 P. 542 (1915); Thornton v. Enterprize Ins. Co., 71 Pa. 234 (1872). But in Massachusetts, it has been held that the mortgagee may collect both the insurance and the mortgage debt. Suffolk Fire Ins. Co. Bogden, 9 Allen (Mass.) 123 (1864); King v. Ins. Co., 7 Cush. (Mass) 1, 54 Am. Dec. 683 (1851). (Criticized by JONES, MORTGAGES [4th Ed.] sec. 421, pp. 328, 329; PARSONS, MARINE INSURANCE (1868 Ed.) p. 230n; OSTRANDER, F. INS., sec. 119, p. 278.) It is otherwise, however, when the mortgagee agrees that the insurer shall be subrogated as now required by Gen. L. 1921, c. 175, sec. 99 (p. 991). Canton Coop. Bk. v. Am. Cent. Ins. Co., 219 Mass. 132, 106 N. E. 635 (1914).

15. Concord U. M. F. Ins. Co. v. Woodbury, 45 No. 447 (1842); Dick v. Franklin F. Ins. Co., Mo. App. 376; (1881); Leyden v. Lawrence, 79 N. J. Eq. 113, 81 A. 121 (1911); Kernochan v. N. Y. B. F. Ins. Co., 17 N. Y. 428 (1858); Stuyvesant Ins. Co. v. Reid, 171 N. E. 513 (1916); Conn. M. L. Ins. Co. v. Scammon, 117 U. S. 634, 6 S. C. T. 889, 29 L. Ed. 1007 (1886); Kissire v. Plunkett-Jarrell Grocer Co., 103 Ark. 473, 145 S. W. 567 (1912).

16. Norwich F. Ins. Co. v. Boomer, 52 Ill. 442, 4 Am. Rep. 618 (1869); Stenchfield v. Nilliken, 71 Me. 567 (1880); Pendleton, v. Elliot, 67 Mich. 496, 35 N. W. 97 (1887); Nelson v. Bound Brook M. F. Ins. Co., 43 N. J. Eq. 256, 11 A. 681 (1887); Kernochan v. N. Y. B. F. Ins. Co., 17 N. Y. 428 (1858); Louden v. Weddle, 98 Pa. 242 (1881).

17. Foster v. Van Reed, 70 N. Y. 19, 26 Am. Rep. 544 (1877); Franklin F. Ins., 10 Mo. App. 376.

18. Buffalo S. Eng. Works v. Sun Mut. Ins. Co., 17 N. Y. 401 (1858); See VANCE, INSURANCE (2d Ed. 1930), 657, n. 72.

19. St. Paul F. & M. Ins. Co. v. Ruddy, 299 F. 189 (1924); Holbrook v. Baloise F. Ins. Co., 117 Cal. 561, 40 P. 555 (1899); Scania Ins. Co. v. Johnson, 22 Colo. 476, 45 P. 431 (1896; States F. C. Ins. Co. v. Napier, 22 Ga. App. 361, 96 S. E. 15 (1918); Am. Cant. Ins. Co. v. Birds Bldg. & L. Assn., 81 Ill. App. 258 (1899); Franklin Ins. Co. v. Wolff, 23 Ind. App. 549, 54 N. E. 772 (1899); Hill v. International Indemnity Co., 116 Kan. 109, 225 P. 1056 (1924); McKinley v. Western Assur. Co., 97 Ky. 474, 30 S. W. 1004 (1895); Monroe Bldg. & L. Assn. v. Liverpool & L. Insurance Co., 50 La. Ann. 1243, 24 So. 238 (1898); Adams v. Bockingham Mut. F. Ins. Co., 29 Me. 292 (1849); Agricultural Ins. Co. v. Hamilton, 82 Md. 88, 30 L. R. A. 633, 51 A. S. R. 457, 33 A. 429 (1895); Franklin S. Inst. v. Cent. M. F. Ins. Co., 119 Mass. 240 (1879); Jokulski v. Citizens' Mut. Ins. Co., 131 Mich. 603, 92 N. W. 98 (1902); Kabrich v. State Ins. Co., 48 Mo. App. 393 (1932); Antes v. State Ins. Co., 61 Neb. 55, 84 N. W. 412 (1900); Warbose v. Sussex Mut. Ins. Co., 42 N. J. L. (1880); Williams v. Pioneer Co-op. F. Ins. Co., 183 pp. Div. 826, 171 N. Y. S. 353 (1918); Rooper v. National F. Ins. Co., 161 N. C. 151, 76 S. E. 869 (1912); Hazard v. Franklin Mut. F. Ins. Co., 7 R. I. 429 (1863). See note, 38 A. L. R. 367; note 48 A. L. R. 121.

20. Carpenter v. Am. Ins. Co., 1 Story, Fed. Case, No. 2, 428 (1839); Fitching Sav. Bank v. Amazon Ins. Co., 125 Mass. 431 (1878); Van Buren v. St. Joseph County Village F. Ins. Co., 28 Mich. 398 (1874).

21. Humphrey v. Hartford F. Ins. Co., 15 Blatch, 504, Fed. Case, No. 6, 875 (1879); Scania Inc. Co. v. Johnson, 22 Colo. 476, 45 Pac. 431 (1896); McKinney v. Western Assur. Co., 97 Ky. 474, 30 S. W. 1004 (1895); Boldwin, v. Phoenix Ins. Co., 60 N. H. 164 (1880); Sias v. Roger Williams Ins. Co., 8 F. 187 (1880); Continental Ins. Co. v. Hulman, 92 Ill. 145, 34 Am. Rep. 122 (1879); Hale v. Mechanic's Mut. F. Ins. Co., 6 Gray 169, 66 Am. Dec. 410 (1856).

22. Bergman v. Com. Union Ins. Co., 12 Ky. L. R. 942 (1891); Browning v. Home Ins. Co., 71 N. Y. 508, 27 Am. Rep. 86 (1877).

23. Bergman v. Commercial Assur. Co., 92 Ky. 494, 15 L. R. A. 270, 18 S. W. 122 (1892); First Nat. Bk. v. Natl. Liberty Ins. Co., 56 Minn. 1, 194 N. W. 6, 38 A. L. R. 380 (1923); Home Ins. Co. v. Stern, 72 Miss. 943, 18 So. 414 (1895); Firemen's Ins. Co., 60 Misc. 558, 112 N. Y. S. 496 (1908); Contra: Collinsvilee Sav. Soc. v. Boston Ins. Co., 77 Conn. 676, 69 L. R. A. 924, 60 Atl. 647 (1905); Cleandos v. American F. Ins. Co., 84 Wis. 184, 19 L. R. A. 321, 54 N. W. 390 (1893). See note, 10 Colum. L. Rev. 153; note, 11 Corn. L. Quar. 553.

24. Sacombe v. Glens Falls Ins. Co., 45 Cal. App. 611, 188 Pac. 305 (1920); Cutchlaw v. Reliance M. Ins. Asso., 198 Iowa 1086, 197 N. W. 318 (1924); Hilman v. Com. Ins. Co., 112 Mo. 528, L. R. A. 1915C, 758, 92 A. 721 (1914); Perreta v. St. Paul F. & M. Ins. Co., 106 Misc. 91, 174 N. Y. S. 131 (1919); Orenstein v. New Jersey Ins. Co., 131 S. C. 500, 127 S. E. 570 (1924); Wagner v. Patters, 142 Va. 412, 128 S. E. 445 (1925); Oregon Mortgage Co. v. Hartford F. Ins. Co., 122 Wash. 183, 210 Pac. 385 (1922). But see Erie Brewing Co. v. Insurance Co., 81 Ohio St. 1, 89 N. F. 1063, 25 L. R. A. (N. S.) 740, 135 Am. St. Rep. 735. See note 4 Va. L. Rev. 69; 14 Mich. Law Rev. 691; 33 Columbia Law Rev. 305.

25. Foster v. Equitable M. F. Ins. Co., 5 Gray (Mass.) 216 (1854); Pranin v. Mercer County M. F. Ins. Co., 28 N. J. L. 93 (1859); Francis v. Butler M. F. Ins. Co., 7 R. I. 159 (1862).

26. Buffalo S. Eng. Works v. Sun Mut. Ins. Co., 17 N. Y. 401 (1858).

27. Act No. 2427, sec. 50: "The insurance shall be applied exclusively to the proper interest of the person in whose name it is made to appear *unless specified in the policy.*"

28. 40 Phil. 674 (1920).

29. *Ibid.*: In this case, a mortgagor who was under obligation to procure a policy and later indorse it to his mortgagee for the latter's security, requested the latter to take the policy for the benefit of both. The mortgagee, pursuant to the request, procured a policy by his negligence and mistake, the policy was only made payable to him. After the mortgagor had sold the property to another, the mortgagee represented to the purchaser, in good faith but negligently, that the policy covered the interests of both parties, and relying on such representation, the purchaser continued to pay the premiums. Upon loss and when the mortgagee tried to collect the whole loss in order to apply it to his interest and that of the mortgagor, he discovered that the policy he procured protected only his own interest. After the court, in 40 Phil. 674, denied the right of the mortgagor and his transferee to recover on the policy, the transferee brought an action against the mortgagee based on the negligent misrepresentation. The court rendered judgment on this ground (negligent representation) (48 Phil. 522). No judgment could have been given on the ground that the mortgagee undertook to procure the insurance himself, inasmuch as the undertaking was without any consideration and was the mere compliance with a request. But the true basis of the judgment, as already pointed out, was the negligent misrepresentation of the mortgagee as to the extent of the policy. Cf. Seaman Renidge, K. L. & Co., 195 Mich., 417, 161 N. W. 919 (1917); Sheller v. Seattle T. Tr. Co., 120 Wash. 140, 206 P. 846 (1922); Bates v. Norther B. & Mortg. Co., 129 Wash. 343, 228 P. 32 (1924); 26 C. J. 1112-1115 (Fraud). See in general Smith, *Liability for Negligent Language* (1900) 14 Harvard Law Rev. 184; Williston, *Liability for Honest Misrepresentation* (1911) 24 Harvard L. Rev. 415; Bohlen, *Misrepresentation as Deceit, Negligence, or Warranty* (1929) 42 Har. L. Rev. 733; Green, *Deceit* (1930) 16 Va. L. Rev. 749 (reprinted in GREEN, JUDGE AND JURY [1930] 280); Carpenter, *Responsibility for International, Negligent and Innocent Misrepresentation* (1930) 24 Ill. L. Rev. 749; Weisiger, *Basis of Liability for Misrepresentation* (1930) 24 Ill. L. Rev. 866; Bohlen, *Should Negligent Misrepresentations Be Treated As Negligence or Fraud?* (1932) 18 Va. L. Rev. 703; Note (1931) 31 Calumbia Law Rev. 858.

30. See *supra*.

31. *Ibid.*

32. *Ibid.*

33. "Unless the policy otherwise provides * * *."