"My keenest interest is excited, not by what are called great questions and great cases, but by little decisions which the common run of selectors would pass by because they did not deal with the Constitution or a telephone company, yet which have in them the germ of some wider theory, and therefore of some profound interstitial change in the very tissue of the law."—Oliver Wendell Holmes, Collected Legal Papers (1920) 269.

Recent Cases

Insurance—Insurable Interest—Creditor's Interest in Debtor

Watson v. Massachusetts Mut. Life Ins. Co.1

R was indebted to W. To protect this obligation, W induced R to take out a policy of insurance, payable to his estate, and to assign it absolutely to W. W paid the premiums in reliance on representations of the insurer's agent that the assignment would make him the absolute owner of the policy. After W had paid the premiums for a number of years, the insurer notified him that he would not be

1. 140 F. (2d) 673 (1943).

(378)
considered the owner of the policy, that the assignment was not absolute but collateral only. \( W \) brings an action against the Insurance Co. for breach of contract, relying upon the assignment. Held: \( W \), being a creditor, had an insurable interest in the life of \( R \), and was the absolute owner of the policy. The insurance contract being valid, the insurer's disclaimer of liability was a breach.

In so holding, the court rejects the somewhat traditional view of insurable interest. It points out that the doctrine grew up by judicial decision declaring a public policy against (1) wagering contracts and (2) temptation to take human life. Many cases seem to measure insurable interest in life insurance on a basis of indemnity against the loss of a pecuniary interest which the person making the contract has in the life of the insured.\(^2\) The court rejects this rule as not practical, because human life is not measurable in monetary values, and refers to the numerous exceptions which have been recognized.\(^3\) The court suggests that the theory should be "to limit public opportunity to engage in a speculative business of buying and selling insurance policies on the lives of others" by restricting the power of individuals to give away or sell chances on their own lives.

It is well settled, in the absence of statute,\(^4\) that a person can take out insurance on his own life and designate one with no insurable interest as beneficiary.\(^5\) As to other contractors, the Court of Appeals of the District of Columbia would apply these requirements: (1) that they must stand in a close family or financial relationship with the insured, (2) that they must acquire the insurance with the consent of the insured, and (3) where it is a creditor, that the face value of the policy bear a reasonable relation to the debt. If these are satisfied at the time of the issuance of the policy, the question of insurable interest will not be con-

\(^2\) See, Vance, Insurance (2nd ed. 1930) § 52-55; 2 Appleman, Insurance Law & Practice (1941) § 761, 762; Patterson, Insurable Interest in Life, (1918) 18 Col. L. R. 381; Note (1930) 41 Mo. L. Series 27. As to insurable interest in other than life insurance, see, Notes (1927) 36 Mo. L. Series 42 (fire insurance), (1939) 4 Mo. L. Rev. 212 (auto insurance).

\(^3\) The court mentions that the insured can name anyone as beneficiary, and that such beneficiary in many states can take over the payment of premiums, thus speculating on the life of the insured. Also, in some jurisdictions, a subsequent assignee of an insurance policy without insurable interest may continue the premiums, citing Grigsby v. Russell, 222 U. S. 149, 32 Sup. Ct. 58, (1911).

\(^4\) E.g., Mo. Rev. Stat. (1939) § 5862 (forbidding the issuance of any policy of assessment plan insurance in which the beneficiary has no insurable interest in the life insured); Section 5882 ("No corporation, company or association transacting business under the provisions of this article (stipulated premium plan) shall issue a certificate or policy to any person . . . . unless the beneficiary named in the certificate or policy is the husband, wife, legal representative, relative, heir, creditor or legatee of the insured, or who may have an insurable interest in the insured . . . .") (italics mine) (apparently never applied when insured procures policy on his own life, see Note (1941) 6 Mo. L. Rev. 221, 223.); see Note (1940) 5 Mo. L. Rev. 511.

idered further, and the beneficiary or assignee can recover the full face value of the policy.

Applying this test, the creditor, $W$, had an insurable interest in the life of $R$. In Missouri, a different result would have been reached. Although the courts of this state recognize the insurable interest of one standing in a close family or business relationship to the insured,\textsuperscript{7} when this is lacking, the requirements appear to be different. Missouri courts have said that when the insured takes out the policy, names the beneficiary, and pays the premiums, that the lack of insurable interest in the beneficiary is not fatal.\textsuperscript{8} Likewise, when the contract is made by one other than the insured, if there is "... any reasonable expectation of pecuniary benefits, or advantage from the continued life of another (it) creates an insurable interest in such life. ... 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 (contractor) has no interest." In such situations, the courts have said that the fact that the insurable interest ceases before the maturity of the policy does not invalidate the policy.\textsuperscript{10} This language is consistent with the test applied in the principal case. However, it seems that where the beneficiary or the assignee of the policy is a "creditor" of the insured, it makes no difference what the intent of the parties may have been, or that there was ample "pecuniary" interest in the life of the insured at the time of the taking of the policy. Such "creditor" is held to have an interest only to the amount of the indebtedness, and no more.\textsuperscript{11} The decisions cannot be reconciled with the theory announced above. In those cases, there is no attempt to measure the amount of insurable interest, and even when it is entirely extinguished, the beneficiary is allowed to recover the full face amount of the policy.\textsuperscript{12} The theory seems to be that the insurable interest is a requisite which must be present at the time

\textsuperscript{6} See Note (1941) 6 Mo. L. Rev. 221.
\textsuperscript{7} Shields v. Sharp, 35 Mo. App. 178 (1889); Parish v Missouri Mut. Ass'n, 8 S. W. (2d) 1018 (1928); See Mo. Rev. Stat. (1939) § 5847 (Married woman may insure life of husband), § 5849 (Unmarried woman may insure father or brother), § 5882 (see supra note 4).
\textsuperscript{8} Walker v. General American Life Ins. Co., 141 S. W. (2d) 785 (Mo. 1940); McFarland v. Creath, 35 Mo. App. 112 (1889).
\textsuperscript{11} Strode v. Meyer Drug Co., 101 Mo. App. 627, 634, 74 S. W. 379, 381, (1903), "The construction our courts put on such transactions as we have here is that the creditor, whether he be named as payee of the policy when it is issued, or becomes the payee afterwards by assignment, acquires the status of beneficiary as far as is necessary to make him whole, and no further."; Craft v. Miller, 72 S. W. (2d) 806 (Mo. App. 1934); Morrow v. Nat. Life Assn., 184 Mo. App. 308, 168 S. W. 881 (1914); Heusner v. Mutual Life Ins. Co., 47 Mo. App. 336 (1891); Deal v. Hainley, 135 Mo. App. 507, 116 S. W. 1 (1909).
\textsuperscript{12} See note 9, supra.
of the issuance of the policy, to control the issuance of wagering policies, and to minimize the temptation to take human life, and that thereafter it becomes unimportant. In the creditor cases, on the other hand, it must continue to the maturity date of the policy, and the beneficiary cannot collect more than this "insurable interest." Likewise, any "assignment" by the insured, beneficiary, or both, is valid only to the extent of the assignee's insurable interest in the life of the insured.\(^{13}\)

It does not appear that protection of the insured is the motivating factor in reaching this result, for in other cases where the basis of insurable interest is a strictly business relationship, the termination of that interest before maturity of the policy does not defeat the recovery.\(^{14}\) If the purpose is to prevent the issuance of wagering policies in the first place, this arbitrary distinction between a close family or business relationship on the one hand and a "creditor" relationship on the other would seem to be unwarranted. A requirement of a reasonable relationship between the amount of the policy and the debt would accomplish the desired result. Moreover, it would not be necessary that the insurable interest continue to the death of the insured.

However, as the "creditor" cases have been placed in a special category in Missouri, it is of interest to see in what situations with regard to creditors and assignees recovery has been allowed, and to what amount.\(^{15}\)

A. The clearest case for the full recovery by the creditor would be the fact situation in which the insured takes out the policy, pays all the premiums, and names the creditor as beneficiary. It would seem that the creditor should be allowed to recover the face amount of the policy. If a stranger with no insurable interest can obtain the face value of the policy, a fortiori a creditor with a limited interest should not be in a worse position. No cases have been found where the issue was directly presented, but language in the case of Dieterle v. Standard Life Ins. Co.\(^{16}\) appears to indicate that even in this situation, the creditor will be permitted to recover only the amount of his indebtedness.\(^{17}\)

B. Where the insured takes out the policy, names the creditor as beneficiary, but the creditor pays the premiums, the creditor beneficiary may recover only the amount of his debt plus the premiums paid, even though it is the clear intent of

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14. Alexander v. Griffith Brokerage Co., 228 Mo. App. 773, 73, S. W. (2d) 418 (1934), (where employer procured policy on the life of its branch manager. The employment was terminated before maturity of the policy, but the employer was allowed full recovery.)
15. The fact classifications were chosen by the author arbitrarily to indicate the various factors considered important by the courts. It should be noted, however, that it is the moving party who is considered, and not always the objective party, e.g., where the beneficiary induces the insured to procure the policy, it may be treated as though the beneficiary procured it himself.
both the parties that the creditor is to be the full owner of, or have a definite interest in, the policy. 18

C. When the insured has taken out the policy, named his estate or a third person as beneficiary, and paid all the premiums, then assigns it to another, there is little question but that the courts of Missouri will require that the assignee have an insurable interest in the life of the insured. 19 If there is no insurable interest, but the assignee gives consideration for the assignment, he will be allowed to recover for his own use only such consideration, and hold the rest of the policy in trust for the beneficiary or the estate of the insured. 20 This is illogical, for if the insured could have named anyone he wished as beneficiary in the first place, why cannot he assign the policy with equal freedom. The only conceivable explanation is the fear, unexpressed by the courts, that a creditor might be able to force an assignment, though the insured might not of his own volition have trusted the assignee with an inducement for murder.

D. The next situation is the one in which the insured takes out the policy, pays part of the premiums, then assigns absolutely to one who is not a creditor at that time, who is to continue the premiums on the policy. To be consistent, this type of assignment should be held to be absolutely void by the Missouri courts. Since there is no original insurable interest, although it comes into being at a later date, it is not good. In this fact situation, but where the assignment is absolute for only a part of the policy, with the remainder reserved to the original beneficiary, the assignment has been declared to be against public policy, and not enforceable. 21 It could be argued that freedom of contract should allow this. It would seem that the danger of a wagering agreement would be overcome by the benefit to be derived by the insured who is unable to continue the policy, and will be forced to allow it to lapse unless this sort of arrangement can validly be made.

E. In the above situation, with the exception that the assignee of the partially paid policy is an existing creditor, rather than one with no existing interest, the court has allowed the assignment to be good for the amount of the debt, plus the amount of subsequent advancements and premiums which have been paid by the

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24. Mut. Life Ins. Co. v. Richards, 99 Mo. App. 88, 72 S. W. 487 (St. Louis Ct. of App. 1903); (Query, is there a clear distinction as drawn by the Springfield Court of Appeals in Morrow v. Nat. Life Ass'n., 194 Mo. App. 308, 168 S. W. 881 (1914) between this case and Bruer v. K. C. Mut. Life Ins. Co., 100 Mo. App. 540 (K. C. Ct. App. 1903), cited supra note 23?); cf. McFarland v. Creath, 35 Mo. App. 112 (1889) (where the fact that practically all assessments were paid by the assignee was not considered controlling).
26. Allen v. Aetna Life Ins. Co., 228 Mo. App. 18, 62 S. W. (2d) 916 (1933); cf. Bowers v. Missouri Mut. Ins. Co., 333 Mo. 492, 62 S. W. (2d) 1058 (1933) (Husband took out insurance policy on wife, although they were separated and a divorce was pending. Held, husband had an insurable interest at the time the policy was taken out, so policy was valid.)
Concluding, in Missouri, in the absence of the close family or business relationship, there must not only be some sort of pecuniary interest in the life of the insured at the time of the issuance of the policy, but also this financial interest must continue to maturity, and recovery will be allowed only to the extent of the pecuniary interest, with the remainder being held for the benefit of the estate of the insured. However, where there is a close family or business relationship, so that the financial interest cannot be measured with ease, a failure of the insurable interest after the issuance of the policy is of no effect whatsoever, and full recovery is allowed.

J. A. Wright