## SUPREME COURT OF APPEALS OF VIRGINIA.

CRISMOND'S ADM'X et al. *v.* JONES et al.

Jan. 12, 1915.

[83 S. E. 1045.]

1. **Insurance (§ 116*)—Insurable Interest—Son—Son-in-Law.**—A son had an insurable interest in his father's life, so that the father's assignment of a policy in consideration that the son assume the payments thereon, prior to Code 1904, § 2859a, permitting assignment of a policy for a valuable consideration without regard to the assignee's insurable interest, was valid; but a son-in-law had no insurable interest in his father-in-law's life, and hence the assignment of a policy to him in consideration that he assume the payments thereon was invalid, except in so far as acquiesced in by the adult children of insured uniting with him in the assignment.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 158-162; Dec. Dig. § 116.*]

2. **Insurance (§ 114*)—"Insurable Interest"—Necessity—Grounds.**—One taking out a policy of insurance in the life of another person for his own benefit must have an interest in the continuance of the life of the insured; an "insurable interest" being such an interest arising from the relations of the parties as will justify a reasonable expectation of advantage or benefit from the continuance of the insured's life, though it is not necessary that such advantage be capable of pecuniary estimation.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 136-138; Dec. Dig. § 114.*

For other definitions, see Words and Phrases, First and Second Series, Insurable Interest.]

3. **Insurance (§ 122*)—Insurable Interest—Assignment.**—The assignee of a policy of life insurance or of the proceeds thereof must have an insurable interest in the life of the insured.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 166, 167; Dec. Dig. § 122.*]

4. **Insurance (§ 116*)—Insurable Interest—Husband and Wife—Parent and Child.**—Based exclusively upon affinity, a wife has an insurable interest in her husband and the husband in his wife, and based exclusively upon consanguinity, a father has an insurable interest in his child and a child in the life of its father.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 158-162; Dec. Dig. § 116.*]

5. **Insurance (§ 114*)—Insurable Interest—Good Faith.**—While an

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

assignment of a policy of insurance must, in any case, be characterized by good faith, yet good faith alone is not sufficient to sustain a policy of insurance, taken out upon the life of another by one who has no interest in the continuance of such life.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. §§ 136-138; Dec. Dig. § 114.*]

**6. Executors and Administrators (§ 500*)—Commissions—Statute.**—Under Code 1904, §§ 2678, 2679, requiring executors and administrators to settle their accounts and providing for a forfeiture of their commissions, an administrator of an estate qualifying in 1893 and an executor of an estate qualifying in 1892 were not entitled to commissions on that part of the estate of their respective decedents due and payable to heirs, not made until compelled by suit.

[Ed. Note.—For other cases, see Executors and Administrators, Cent. Dig. §§ 2131-2139; Dec. Dig. § 500.*]

Appeal from Circuit Court, Spottsylvania County.

Suit by J. B. Jones and others against Betty K. Crismond, administratrix of H. F. Crismond, deceased, and others. Decree for complainants, and defendants appeal. Affirmed.

*St. Geo. R. Fitzhugh*, of Fredericksburg, for appellants.

*S. P. Powell*, of Denver, Colo., for appellees.

HARRISON, J. The essential facts of this case are that John T. Coleman, in February, 1881, had his life insured in the Valley Mutual Life Insurance Company for $1,000, and in September of the same year he procured another policy in the same company for $2,000. In both of these policies he made his wife, her personal representatives or assigns, the beneficiary. In November, 1882, the wife, Emily L. Coleman, died. In September, 1889, John T. Coleman, the insured, assigned the $2,000 policy and all the money to be derived therefrom to his son, W. J. Coleman, and his son-in-law, H. F. Crismond, in consideration of their assuming the payment of the premiums and assessments to become due and payable under the terms of the policy. On the same day a like assignment of the $1,000 policy and the money to be derived therefrom was made to Richard T. Goodwin, another son-in-law of the insured. The reason for making these assignments, expressed on their face, was that the beneficiary named in each of the policies was dead and the insured was unwilling to continue to pay the premiums and keep them in force. All of the children of the insured approved and acquiesced in these assignments except the appellees, who were infant

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grandchildren of the insured, being the children of a deceased daughter.

John T. Coleman died in 1892, leaving a will in which his son Wm. J. Coleman, and his son-in-law, H. F. Crismond, were named as his executors. The policies were not mentioned in the will, but were later collected and disposed of in accordance with the terms of the assignments, one-third of the proceeds to each of the three assignees, the insurance company paying the same to Wm. J. Coleman, one of the assignees, who was, before such payment, required to qualify as administrator of Emily L. Coleman, the wife and original beneficiary, and to receive the same as her administrator. Shortly after the policies were paid and canceled, the insurance company failed.

The appellees, grandchildren, as already stated, of the insured, claimed that the assignment of each of these policies was invalid and of no effect. A number of grounds were urged in support of this contention, all of which were decided adversely to the complainants, except the fifth, which involved the insurable interest of the assignees of the policies in the insured. The correctness of the conclusion reached by the court upon that question is the chief subject of controversy raised by this appeal.

[1] We are of opinion that there was no error in the ruling of the circuit court that Wm. J. Coleman had an insurable interest in his father's life, and that the assignment of the $2,000 policy, so far as it concerned his interest therein, was valid and free from any objection. Valley Mutual Life Ins. Co. *v.* Teewalt, 79 Va. 421.

We are further of opinion, after the best consideration we have been able to give the subject, that the circuit court did not err in holding that the two sons-in-law were without any insurable interest in the life of their father-in-law, and therefore that the assignments, so far as their interest in them was concerned, were under the law invalid, except to the extent that they were acquiesced in by the adult children of the insured who united with him in executing the same.

[2, 3] It is a settled principle in our American jurisprudence that one taking out a policy of insurance on the life of another person for his own benefit must have an interest in the continuance of the life of the insured. And this court has repeatedly held that the assignee of a life policy or the proceeds thereof must have an insurable interest in the life of the insured. Roller *v.* Moore's Adm's, 86 Va. 512, 10 S. E. 241, 6 L. R. A. 136; Life Ins. Co. *v.* Davis, 96 Va. 737, 32 S. E. 475, 44 L. R. A. 305; Tate *v.* Building Association, 97 Va. 74, 33 S. E. 382, 45 L. R. A. 243, 75 Am. St. Rep. 770.

It is to be observed that the assignments here involved were

made long before the statute was passed providing for the assignment of a policy for a valuable consideration without regard to whether the assignee has an insurable interest or not; so that this case is not controlled by that statute, which is found in Acts 1902-1904, p. 256, Code, § 2859a. The established principle adverted to rests upon the view that where the person taking out the policy on the life of another has no insurable interest in such life, and therefore no interest in its continuance, the transaction is a mere speculative or wager contract and is void because contrary to public policy.

What constitutes an insurable interest in the life of another is very clearly stated by Mr. Justice Field in Warnock *v.* Davis, 104 U. S. 775, 26 L. Ed. 924, where it is said:

"It is not easy to define with precision what will in all cases constitute an insurable interest, so as to take the contract out of the class of wager policies. It may be stated generally, however, to be such an interest, arising from the relations of the party obtaining the insurance, either as creditor or of security for the assured, or from the ties of blood or marriage to him, as will justify a reasonable expectation of advantage or benefit from the continuance of his life. It is not necessary that the expectation of advantage or benefit should be always capable of pecuniary estimation; for a parent has an insurable interest in the life of his child, and a child in the life of his parent, a husband in the life of his wife, and a wife in the life of her husband. The natural affection in cases of this kind is considered as more powerful—as operating more efficaciously—to protect the life of the insured than any other consideration. But in all cases there must be a reasonable ground, founded upon the relations of the parties to each other, either pecuniary or of blood or of affinity, to expect some benefit or advantage from the continuance of the life of the assured otherwise the contract is a mere wager, by which the party taking the policy is directly interested in the early death of the assured."

[4] The extent to which this court has gone, based exclusively upon affinity, is to hold that a wife has an insurable interest in her husband and a husband in his wife, and, based exclusively upon consanguinity, to hold that a father has an insurable interest in his child and a child in the life of its father. Beyond this jurisdiction the ties of blood and affinity alone have not been held, so far as we are advised, to afford an insurable interest further than the relationship of husband and wife, parent and child, brother and sister, and grandparent and grandchild. Ætna Life Ins. Co. *v.* France, 94 U. S. 561, 24 L. Ed. 281; Corbett *v.* Ins. Co., 37 App. Div. 152, 55 N. Y. Supp. 775; Burke *v.* Ins. Co., 155 Pa. 295, 26 Atl. 445.

We have been cited to no case, and have not found one, which

goes so far as holding that the connection between son-in-law and father-in-law is sufficient to create an insurable interest in the latter in favor of the former, while numerous courts, which have held that insurable interest could be based upon ties of consanguinity and affinity, have held that the relationships of uncle or aunt, nephew or niece, cousins, stepson or stepdaughter, brother-in-law, mother-in-law, son-in-law, etc., will not support an insurable interest. Cooley's Briefs of Insurance Law, pp. 290, 291, and cases there cited.

[5] The learned counsel for the appellants has argued with great force that good faith in the transaction is the essential thing in determining the validity of the policies assigned in this case, and cited Ins. Co. *v.* Schaefer, 94 U. S. 460, 24 L. Ed. 251, in which Mr. Justice Bradley says:

"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."

It may be conceded that the utmost good faith obtained between the parties to the transaction under consideration, but good faith alone is not sufficient to sustain a policy taken out upon the life of another by one who has no interest in the continuance of such life. If there were, the law which condemns such transactions, upon the ground of public policy, would avail but little. Of course the transaction must in any case be characterized by good faith, but as said by Mr. Justice Field in Warnock *v.* Davis, supra:

"In all cases there must be a reasonable ground, founded upon the relation of the parties * * * either pecuniary, or of blood, or of affinity, to expect some benefit * * * from the continuance of the life of the assured, otherwise the contract is a mere wager, by which the party taking the policy is directly interested in the early death of the insured."

In the light of the decisions of this court and the great weight of authority elsewhere, insurable interest, based exclusively upon affinity, cannot be extended so as to give a son-in-law an insurable interest in the life of his father-in-law. The affection, if any, springing from the relation of father-in-law and son-in-law is not the natural love which springs from the relation of parent and child, but is an acquired affection such as that existing between friends who are strangers in blood, and cannot be considered as more powerful and operating more efficaciously to protect the life of the insured than any other consideration.

[6] We are further of opinion that the circuit court did not err in denying to the executors of John T. Coleman and the administrators of Emily L. Coleman commissions on that portion of the estate of their respective decedents which was due and payable to the appellees. Although the administrator of Emily

Coleman qualified in 1893, and the executors of John T. Coleman qualified in 1892, neither of these fiduciaries made any settlement of their accounts, as required by statute, until compelled to do in this cause, which was instituted by the appellees in 1899; and no reasonable or sufficient excuse has been offered for their failure to perform this plain and mandatory duty. Code, §§ 2678, 2679.

We are further of opinion that there is no merit in the cross-errors assigned by the appellees. That the amount involved gives this court jurisdiction in the premises clearly appears from the record. The action of the court in holding that W. J. Coleman had an insurable interest in his father's life has already been disposed of and need not be further considered.

No sufficient ground is shown for the contention of appellees that the court erred in charging them with $500 which appears to have been due from their father to the estate of their grandfather, John T. Coleman.

Upon the whole case, we are of opinion that the decree complained of must be affirmed.

Affirmed.

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PROVIDENCE FORGE FISHING & HUNTING CLUB, Inc., *v.* MILLER MFG. CO., Inc., et al.

Jan. 12, 1915.

[83 S. E. 1047.]

**1. Waters and Water Courses (§ 111*)—Riparian Owner—Boundaries.**—An owner of land adjoining an inland fresh-water lake or pond, or an artificial pond created by damming an ordinary stream, takes to the center, though the rule does not apply to the great navigable lakes.

[Ed. Note.—For other cases, see Waters and Water Courses, Cent. Dig. §§ 114, 121, 122; Dec. Dig. § 111.*]

**2. Boundaries (§ 14*)—Waters and Water Courses—Construction of Deed.**—A deed describing land as bounded on the east by the "Providence Forge mill pond" did not exclude any part of the pond from the conveyance, but the grantee took to the center.

[Ed. Note.—For other cases, see Boundaries, Cent. Dig. §§ 102-107; Dec. Dig. § 14.*]

**3. Adverse Possession (§ 60*)—Requisites—Hostile Possession.**—The acts of an owner of land adjoining a fresh-water pond in

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*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.