

SUN LIFE ASSURANCE COMPANY OF CANADA, PLAINTIFF AND APPELLEE, VS. FRANK B. INGERSOLL, AS ASSIGNEE OF THE INSOLVENT ESTATE OF DY POCO, AND TAN SIT, ADMINISTRATRIX OF THE ESTATE O...*G. R. No. 16475. November 08, 1921*

Ponente: STREET, J.

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This is an action of interpleader filed by the Sun Life Assurance Company, pursuant to section 120 of the Code of Civil Procedure, in order to compel the two defendants to interplead and litigate their claims to the proceeds of a policy of insurance which the plaintiff had issued upon the life of one Dy Poco, now deceased. The defendants, Frank B. Ingersoll and Tan Sit, both answered, each asserting a claim to the proceeds of said policy, the first in the character of assignee in insolvency of Dy Poco, and the second as the administratrix of his estate. After hearing the cause, his Honor, Judge James A. Ostrand, declared that Frank B. Ingersoll, the assignee in insolvency, had the better right and ordered the Insurance Company to pay the money to him. From this judgment Tan Sit appealed.

It appears in evidence that on April 16, 1918, the plaintiff, the Sun Life Assurance Company of Canada, in consideration of the payment of a stipulated annual premium during the period of the policy, or until the premiums had been completely paid for twenty years, issued a policy of insurance on the life of one Dy Poco, of Manila, Philippine Islands, for the sum of \$12,500, United States currency, payable to the said assured or his assigns on the 21st day of February, 1938, and if he should die before that date, then to his legal representatives. On June 23, 1919, the assured, Dy Poco, was adjudged an involuntary insolvent by the Court of First Instance of Manila, and the defendant, Frank B. Ingersoll, was appointed assignee of his estate. On July 10, 1919, the said Dy Poco died, and thereafter on August 21, 1919, the defendant, Tan Sit, was duly appointed by the Court of First Instance of Manila as the administratrix of his intestate estate.

By the terms of the policy it was provided that after the payment of three full premiums, the assured could surrender the policy to the company for a "cash surrender value," indicated in an annexed table; but inasmuch as no more than two premiums had been paid upon the policy now in question up to the time of the death of the assured, this provision had not become effective; and it does not appear that the company would in accordance with its own usage or otherwise have made any concession to the assured in the event he had desired, before his death, to surrender the policy. It must therefore be accepted that this policy had no cash surrender value, at the time of the assured's death, either by contract or by conventional practice of the company in such cases.

The solution of the case depends upon the interpretation to be placed by us upon certain provisions of our Insolvency Law (Act No. 1956), but as the problem is by no means free from difficulty, we deem it advisable to state at the outset the results reached by the Supreme Court of the United States in dealing with a similar problem under the provisions of the Federal Bankruptcy Act of 1898,

In the first place that court has held that the title of the trustee is determined as of the date when the petition of bankruptcy is filed, and that the circumstance that the death of the insolvent occurs after the petition is filed but before the adjudication of bankruptcy does not give the trustee any additional right to the proceeds of the policy, where he had none to the policy itself before death occurred (*Everett vs. Judson*, 228 U. S., 474; 57 L. ed., 927). Moreover, in such case, the personal representative of the deceased is entitled to exercise the same rights that the deceased himself might have exercised, with reference to the policy and its proceeds. (*Andrews vs. Partridge*, 228 U. S., 479; 57 L. ed., 929.)

The rule thus declared is apparently applicable under our Insolvency Law, with the sole difference that the operative act which under our law vests title in the assignee is the transfer of the insolvent's property to the assignee by the clerk of the court (sec. 32, Act No. 1956). This transfer, however, relates back to the commencement of the proceedings in insolvency, and the result is the same as under the American statute.

Upon the question of the extent of the right, or title, which the trustee acquires to insurance in existence on the life of the insolvent upon the date of the filing of the petition in bankruptcy, great diversity of opinion formerly existed in the Federal tribunals; and great uncertainty upon this point prevailed until the case of *Burlingham vs. Crouse* (228 U. S., 459; 57 L. ed., 920; 46 L. R. A. [N. S.], 148) was decided a few years ago by the Supreme Court of the United States.

The provision of law under consideration in that case was section 70 (a) of the Bankruptcy Act of 1898.[1] In the part here material to be quoted said provision is as follows:

"The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors if he shall have one or more, upon his or their appointment and qualification, shall in turn 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 (1) documents relating to his property; (2) interests in patents, patent rights, copyrights, and trade-marks; (3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person; (4) property transferred by him in fraud of his creditors; (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."

Upon the inspection of this provision it will be seen that by the general language used in the part preceding the proviso, and especially by the words used in the fifth subsection, practically everything in the nature of property pertaining to the bankrupt is vested in the trustee, subject—in the case of insurance policies—to the limitation expressed in the proviso.

Now, prior to the decision in *Burlingham vs. Crouse*, supra, the idea more generally prevailing in the Federal courts appears to have been to the effect that any policy of insurance in force upon the life of the bankrupt would, under the general language above quoted, necessarily pass to the trustee in bankruptcy but for the proviso, which enables the bankrupt to rescue certain policies, namely, those having a "cash surrender value" by redeeming them from the trustee upon paying to him said surrender value. In other words, the proviso was looked upon as an independent and additional piece of legislation, establishing a special rule as to policies having a cash surrender value, but not otherwise limiting the general words of the statute.

In *Burlingham vs. Crouse*, supra, however, the Supreme Court of the United States held that the proviso in question had the effect not only of securing to the insolvent the right to redeem policies having a cash surrender value but of limiting the general language preceding the proviso in such manner that a policy having no surrender value does not vest in the trustee in bankruptcy at all. In other words, the proviso itself contains a definitive statement of the rights of the trustee in bankruptcy to the insurance effected prior to the insolvency on the life of the insolvent; and therefore the trustee can in no event take any insurance from the insolvent other than that which has a cash surrender value. This result was reached by declaring that the proviso fulfilled the office of a proviso proper, which is, to limit the general language which precedes it.

At the same time the court accepted the proposition that a policy of insurance is property, though admittedly of a peculiar character; and it further suggested that, but for the limiting effect of the proviso, the general words used in the statute would apparently have been sufficient to pass the policy there in question to the trustee in bankruptcy.

Upon inspection of the Insolvency Law in force in these Islands (Act No. 1956), it will be seen that it contains nothing similar to the proviso to section 70 (a) of the American Bankruptcy Law now in force. It results that *Burlingham vs. Crouse*, supra, is not decisive of the case before us; and furthermore, as will be readily seen, its implications are not particularly favorable to the pretensions of the appellant.

The property and interests of the insolvent which, under the law here in force, become vested in the assignee of the insolvent are specified in section 32 of the Insolvency Law which, in the part here material to be stated, reads as follows:

"SEC. 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 of the debtor 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."

Now, it is a well-known fact in our legislative history that the Insolvency Law (Act No. 1956) is in great part a copy of the Insolvency Act of California, enacted in 1895, though it contains a few provisions from the American Bankruptcy Law of 1898 (see observation of Justice Trent in *Mitsui Bussan Kaisha vs. Hongkong & Shanghai Banking Corporation*, 36 Phil., 27, 37). Again, upon comparing the California Insolvency Law of 1895 with the American Bankruptcy Act of 1867, it will be found that the former contains much in common with the latter; and among the provisions common to the Bankruptcy Act of 1867, the California Insolvency Law of 1895, and the Insolvency Law in force in these Islands (Act No. 1956), is precisely the provision which appears as section 32 of our Act, defining the property which passes as assets to the assignee in insolvency. (Bankruptcy Act of 1867, sec. 14; California Insolvency Law of 1895, sec. 21; Philippine Insolvency Law, sec. 32.)

Under each of said laws the assignee acquires all the real and personal property, estate, and effects of the debtor, not exempt by law from execution, with all deeds, books and papers relating thereto; and while this language is broad, it nevertheless lacks the comprehensiveness of section 70 (a) of the American Bankruptcy Law of 1898 in at least two particulars; for under subsection 3 of section 70 (a) 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

above-mentioned, contains nothing similar to these provisions.

Having discovered the source of section 32 of our Insolvency Law to be in the American Bankruptcy Act of 1867, we may properly look to the decisions of the courts of the United States as instructive upon any question of interpretation arising in the application of said section; and in this connection we find a pertinent opinion from one of the Federal courts, dealing with the very question whether an assignee in bankruptcy acquires the title to a policy of insurance over and above the net reserve or cash surrender value, upon which point the decision is to the effect that he does not.

The case to which we refer is that of *In re McKinney* (15 Fed., 535), which arose upon the following facts: On July 23, 1856, one Andrew McKinney took out a policy of insurance upon his life for \$3,000, payable to his executors, administrators or assigns. The policy was continued in force until his death in October, 1882. Before this event had occurred, however, the insured had been adjudicated a bankrupt and had in fact secured a discharge from the court of bankruptcy.

Said policy of insurance had been mentioned in the schedule of assets submitted in the insolvency proceedings, but the assignee took no steps in reference to it; and all premiums accruing after the adjudication of insolvency were paid by the wife of the insolvent out of her own funds, she supposing that the policy would inure to her benefit.

After the death of the insured, his assignee in bankruptcy was directed to transfer to the widow of the bankrupt, as the proper person interested in his estate, the policy of insurance, upon payment to the assignee of the surrender value of the policy approximately as of the date when the assignee obtained title to the assets of the bankrupt.

In passing upon the facts above stated the court declared that no beneficial interest in this policy had ever passed to the assignee over and beyond what constituted the surrender value, and that the legal title to the policy was vested in the assignee merely in order to make the surrender value available to him. The conclusion therefore was that the assignee should surrender the policy upon the payment to him of said value, as he was in fact directed to do.

In this connection the court observed that the assignee in bankruptcy had no right to keep the estate unsettled for an indefinite period, for the mere purpose of speculating upon the chances of the bankrupt's death. The speedy settlement of the estates of bankrupts, as contemplated by law, is incompatible with such course. Moreover, it was observed that, as regards everything beyond the surrender value, the assignee in bankruptcy would, after the discharge of the bankrupt, have no insurable interest in the life of the bankrupt.

In the course of the opinion in this case, an explanation was given of the meaning of "surrender value" or "cash surrender value," as used in connection with a policy of insurance, and of the manner in which such value is acquired. Upon this point it was observed that the surrender value of a policy "arises from the fact that the fixed annual premiums is much in excess of the annual risk during the earlier years of the policy, an excess made necessary in order to balance the deficiency of the same premium to meet the annual risk during the latter years of the policy. This excess in the premium paid over the annual cost of insurance, with accumulations of interest, constitutes the surrender value. Though this excess of premiums paid is legally the sole property of the company, still in practical effect, though not in law, it is moneys of the assured deposited with the company in advance to make up the deficiency in later premiums to cover the annual cost of insurance, instead of being retained by the assured and paid by him to the company in the shape of greatly-increased premiums, when the risk is greatest. It is the 'net reserve' required by law to be kept by the company for the benefit of the assured, and to be maintained to the credit of the policy. So long as the policy remains in force the company has not practically any beneficial interest in it, except as its custodian, with the obligation to maintain it unimpaired and suitably invested for the

benefit of the insured. This is the practical, though not the legal, relation of the company to this fund.

"Upon the surrender of the policy before the death of the assured, the company, to be relieved from all responsibility for the increased risk, which is represented by this accumulating reserve, could well afford to surrender a considerable part of it to the assured, or his representative. A return of a part in some form or other is now usually made." {In re McKinney, 15 Fed., 535, 538.)

In this connection it may be observed that the stipulation providing for a cash surrender value is a comparatively recent innovation in life insurance. Formerly the contracts provided—as they still commonly do in the policies issued by fraternal organizations and benefit societies—for the payment of a premium sufficient to keep the estimated risk covered"; and in case of a lapse the policy-holder received nothing. Furthermore, the practice is common among insurance companies even now to concede nothing in the character of cash surrender value, until three full premiums have been paid, as in the policy now before us.

In the course of the same opinion, his Honor, Judge Brown, discussing the legal aspects of the case then before him, said:

"To the extent of its actual cash surrender value, therefore, this policy, at the time of the bankruptcy, was 'property' and 'effects' of the bankrupt within sections 6044, 5046, of the Revised Statutes, and as such passed to the bankrupt's assignee. So far as necessary to make the cash surrender value available, the title to the policy also passed to the assignee, so that he might thereafter either surrender it to the company, or assign it over, either to the bankrupt, or to any other person having an insurable interest in his life, on receiving payment of the surrender value at that time, or so much of it as the assignee might be able to obtain.

"Beyond this interest in the surrender value I think nothing passed to the assignee in bankruptcy save the naked title to the policy in order to make that interest available. As an executory contract, aside from its surrender value, the policy had no pecuniary value whatever. Assuming that the bankrupt had the average expectation of life, as a mere contract for future insurance it would be a burden rather than a benefit to the estate; for, whatever might be afterwards obtained from it, (beyond the present surrender value), a still greater sum must presumably be paid out in the shape of future premiums and interest in order to keep the policy alive, since these premiums, with interest on the average, not only equal the amount ultimately payable, but all the company's expenses and profits in addition. As an executory contract, therefore, aside from its surrender value, the policy was not 'property' or 'effects,' but an incumbrance which the assignee would be bound to reject, like leases at an unfavorable rent. * * * In such cases the assignee has at least an election to reject the contract; and if, knowing its terms, he does nothing to avail himself of it, and allows third persons to acquire an interest in it, he must, as against the latter, be deemed to have rejected it, except in so far as the law itself casts it upon him." (In re McKinney, 15 Fed., 535, 538.)

We have quoted at length from this opinion, and consider it the more respectable, because it has been cited or quoted with approval more than once by the Supreme Court of the United States (Holden vs. Stratton, 198 U. S., 202; 49 L. ed., 1018; Hiscock vs. Mertens, 205 U. S., 202; 51 L. ed., 771; Burlingham vs. Crouse, 228 U. S., 459, 469),—an approval which certainly would not have been given if the reasoning along which that decision proceeds had been considered specious or unsound.

The conclusion reached in the case of In re McKinney, supra, to the effect that, in the absence of express provision of law to the contrary, a policy of insurance constitutes assets for an assignee in insolvency only to the extent of its realizable value is corroborated by the decision of the Court of Appeal of Great Britain in Holt vs. Everall (2 Ch. Div., 266), which arose under the English Bankrupt Act of 1869. It there appeared that in 1870 a trader effected policies of insurance on his own life. In the following year, wishing that his wife might have the benefit of the policies, under the married woman's act, he surrendered them to the insurance company, and received in substitution therefor policies at the same premiums, payable on the same day, and entitled to the same

privileges, as the former, and which provided that the sums assured should be paid to the wife. Within two years from the date of the substitute policies the husband liquidated, dying before the discharge. The trustee claimed the insurance.

All of the Lords Justices were of the opinion that the old policies, having no surrender value, could not have been available as assets to the trustee, and therefore that the disposition made of them by the insured was not obnoxious to the Bankrupt Act.

Said James, L. J.: "In that point of view it is important to see whether there was any actual property—anything that could be called property—at the time when the husband obtained the policies in question. If the husband at that time had anything of value, and that was given up as part of the consideration of the new policies, there might be this question; but I am satisfied that that which was given up was not of any value whatever; that there was, in fact, nothing taken away from the creditors, and that the transaction, as far as the creditors were concerned, was in substance exactly the same as if the policies of 1871 had been made without any reference whatever to the existing policies of 1870, which he might at any moment have given up or forfeited, or dealt with as he thought fit. There is, therefore, nothing substantial arising from the fact that the policies of 1871 were in exchange for the policies of 1870." (2 Ch. Div., 273-274.)

And Mellish, L. J., added: "In this case the old policies were really worth nothing; they were policies which an insolvent trader, knowing that he was going to become a bankrupt, would naturally allow to drop, as he could have no interest in keeping up a policy and paying the premiums for the benefit of his creditors; or perhaps not even for their benefit, because if the policy were such as these were, which had only been effected for a single year, it would be no benefit to the creditors and would be worthless in the hands of the trustee." (2 Ch. Div., 276.)

The case of *Morris vs. Dodd* (110 Ga., 606; 50 L. R. A., 33) from the year 1900 is to the same effect; and although this case was decided after the American Bankruptcy Act of 1898 had been enacted, the reasoning proceeds along the line suggested in *In re McKinney* and *Holt vs. Everall*, *supra*. The facts in *Morris vs. Dodd*, *supra*, were, briefly, that a husband, within four months prior to the filing of his petition in bankruptcy, had transferred to his wife an insurance policy which before such transfer had been payable to his legal representatives. The policy had no cash surrender value either when the transfer was made or when the petition in bankruptcy was filed. Upon the death of the husband pending the proceedings in bankruptcy, it was held that the wife was entitled to the proceeds of the policy. Said the court: "The purpose of the bankruptcy act is to take the property owned by the bankrupt when the petition is filed, and apply it towards the payment of his then existing debts, discharging him in due course from any further liability; his after-acquired property not being subject to such debts. This being true, it is apparent that the creditors represented by the trustee, whose debts cannot continue against the bankrupt, can have no insurable interest in his life for the purpose of indemnifying themselves against loss." (50 L. R. A., 44.)

Numerous decisions of later date, tending to the same conclusion, could be cited from the Federal courts of the United States, but inasmuch as these decisions have been rendered under the regime of the Bankrupt Law of 1898, already discussed, we omit mention of particular cases; and in this connection it suffices to refer to section 207 of the title Bankruptcy (7 C. J., 122), under which the pertinent cases are collated.

The authorities above marshaled clearly 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 70

(a) of the American Bankruptcy Act of 1898. The explanation is to be found in the consideration that the destruction of a contract of life 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 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.

Having reviewed the cases most directly pertinent to the situation before us, attention will again be directed to section 32 of the Insolvency Law, and related provisions, in order to exhibit an aspect of the case upon which we have not as yet commented. That section, among other things, declares that the assignment to be made by the clerk of the court "shall operate to vest in the assignee all of the estate of the insolvent debtor not exempt by law from execution." Moreover, by section 24, the court is required, upon making an order adjudicating any person insolvent, to stay any civil proceedings pending against him; and it is declared in section 60 that no creditor whose debt is provable under the Act shall be allowed, after the commencement of proceedings in insolvency, to prosecute to final judgment any action therefor against the debtor. In connection with the foregoing may be mentioned subsections 1 and 2 of section 36, as well as the opening words of section 33, to the effect that the assignee shall have the right and power to recover, and to take into his possession, all of the estate, assets, and claims belonging to the insolvent, except such as are exempt by law from execution.

These provisions clearly evince an intention to vest in the assignee, for the benefit of all the creditors of the insolvent, such elements of property and property right as could be reached and subjected by process of law by any single creditor suing alone. And this is exactly as it should be: for it cannot be supposed that the Legislature would suppress the right of action of every individual creditor upon the adjudication of insolvency, and at the same time allow the insolvent debtor to retain anything subject to the payment of his debts in a normal state of solvency.

We are thus conducted to the conclusion that "leviable assets" -and "assets in insolvency" are practically coextensive terms. Hence, in determining what elements of value constitute assets in insolvency, we are at liberty to consider what elements of value are subject to be taken upon execution, and vice versa.

Accordingly, we proceed to inquire whether, under the laws prevailing in this jurisdiction, a policy of insurance having no cash surrender value, but payable to the insured or his legal representative, is property that may be taken upon execution against him. In this connection it must be admitted that the laws of these Islands declare no exemption with respect to insurance policies; and this species of property is not enumerated, in section 48 of the Insolvency Law, among items from the ownership of which the assignee is excluded. Moreover, all life insurance policies are declared by law to be assignable, regardless of whether the assignee has an insurable interest in the life of the insured or not (Insurance Act No. 2427, sec. 166)—a circumstance which debilitates in a slight degree the reasoning upon which the decision in the case of *In re McKinney*, supra, is based. Finally, this court itself has held that insurance policies having a present cash surrender value are subject to be taken upon execution. (*Misut Garcia vs. West Coast San Francisco Life Ins. Co.*, 41 Phil., 258.) Upon the question whether a life insurance policy having no surrender value can be seized upon execution, this court has not passed; but the same considerations would apparently be controlling upon this point that have determined the position of the courts on the question whether such a policy passes to the assignee in insolvency. In other words, a policy devoid of a cash surrender value cannot be either "leviable assets" or "assets in insolvency." 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 surrender value, was ever taken upon process of execution from an insured person, or the beneficiary named in the policy, during the life of the insured; 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; though there are apparently cases in which, after death of the insured, the proceeds of such policies have been declared by some of the Federal courts of the United States to be assets in insolvency—contrary to the rule afterwards laid down by the Supreme Court of the United States in *Burlingham vs. Crouse*, *supra*.

As applied to the facts of the "case before us, the conclusion to which we have arrived is that the assignee in insolvency acquired no beneficial interest in the policy of insurance in question; that its proceeds are not liable for any of the debts provable against the insolvent in the pending proceedings, and that said proceeds should therefore be delivered to his administratrix.

The judgment will therefore be reversed; and the plaintiff, the Sun Life Assurance Company, will be directed to pay the proceeds of the policy to the defendant Tan Sit. So ordered, without special pronouncement as to costs.

Johnson, Araullo, Avancena, Villamor, and Romualdez, JJ., concur.

[1] 30 U. S. Stat. at L., 544.

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