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THE LIABILITY OF LIFE INSURANCE COMPANIES IN CASES OF SUICIDE.

THE statistics of suicide show that its occurrence is subject to certain laws, and that future suicides may therefore be ascertained in the same way as death from other causes, and the addition to be made to the premium of a policy, when the undertaking of an insurance company is made to include death from suicide, may be estimated. The policies issued by some companies of the United States cover risk of death by suicide, while it is expressly excepted by others.

At common law suicide was a crime and was visited with punishment as such. It has, however, never been enacted or held that it is a crime or contrary to public policy to enter into a contract insuring the payment of a certain sum upon the occurrence of death, even though caused by suicide.

So far as the law or practicability is concerned, companies may or may not assume the risk of death by suicide as they see fit. Suicide is against good morals, and a company is justified in refusing to insure against it upon the ground that although the sum insured is not to be paid to the person who commits the suicide, and he personally obtains no advantage by his act, yet the company, by agreeing to make the payment to some one designated in the policy, holds out a certain inducement to him to commit the act. The punishment of suicide at common law, denying the body of the criminal Christian burial and the for-

feiture of his goods to the king, did not reach the criminal himself, for the very act of suicide placed him beyond the reach of human punishment; still the punishment, such as it was, tended no doubt in some degree to the prevention of the crime.

In the United States, life insurance companies are corporations subject to the provisions of their acts of incorporation and those of the contracts into which they have entered and their other obligations. The policy-holders of a mutual company may be considered abstractly as in equity the owners of the company's assets, and as possessed of discretion and control over their disposition. The policy-holders of a life company are not, however, practically acquainted with the principles and calculations of such insurance, and do not ordinarily exercise any discretion in regard to the application of the assets, nor delegate any to the directors.

When a mutual company, therefore, excepts suicide from the risk insured against, and the premiums to be paid by the members are assigned upon that assumption, and death when it occurs is caused in the manner excepted, the payment of the sum assured is not at all a matter of choice or discretion on the part of the directors of the company. They have no right or power to pay the sum so assured, as the premiums returned to the policy-holders under the name of dividends would necessarily be affected thereby, and the cost of insurance to other members increased. A greater burthen than that stipulated for would for that reason be thrown upon them, and their contract with the company be violated.

If suicide be regarded as a crime, as it was at common law, it is obvious that a criminal intent is a necessary ingredient in its commission as in that of any other crime. A person, therefore, who kills himself without intending so to do, either by taking poison instead of medicine, in handling a gun carelessly, or in any other way, obviously does not commit suicide. Hence the principle that the crime of suicide cannot be committed by a lunatic, because a lunatic is incapable of forming a criminal intent.

But although a criminal prosecution cannot be maintained against such a person because of the absence of a criminal intent, the want of such an intent does not in itself constitute a reason why a civil action should not be maintained against him. When damage is occasioned by a trespass, or by the breach of a contract on the part of a lunatic, it is more reasonable that it

should fall upon the unhappy person by whom it has been caused, even without guilty intent, than upon another; accordingly, civil actions against such persons have been maintained: *Bagster* v. *Portsmouth*, 7 D. & R. 614; *Weaver* v. *Ward*, Hobart 134; *Cross* v. *Andrews*, Cro. Eliz. 622.

When companies do not assume the risk of death by suicide, a proviso is inserted in their policies that the same shall be void in case the insured "shall die by his own hand," or sometimes "in case he shall commit suicide." The latter expression is somewhat more technical than the former, and for some purposes may possibly have a different meaning; but when it occurs in a policy of life insurance, there would seem to be no difference between them. Attempt has been made, it is true, to give a different signification to the two expressions, even when occurring in policies of life insurance, as, for example, by WIGHTMAN and POLLOCK, JJ., in *Clift et al.* v. *Schwable*, 3 Man., Gr. & Scott 437 (54 Eng. Com. L. 437), but no adjudication appears to have been founded upon the distinction.

The word suicide being derived from the two Latin words *sui* and *cædo*, is defined by Webster as meaning "self-murder, the act of designedly destroying one's own life." The word therefore only implies of itself, etymologically, that the act of killing designated by it was the proper act of the party, or, in other words, that it was done by his own hand, wittingly.

The mind of a man who is insane is commonly said to be alienated. When crazy, he is said to be beside himself, that is, he is no longer, strictly speaking, himself. Anything done by a man when he is deprived of reason to such a degree as to be incapable of an intelligent volition cannot in justice be said to be his own act. When, therefore, a policy is made void in case the party insured "dies by his own hand," and the party kills himself while insane, the question that arises relates to the nature of the act, and the gist of the inquiry is whether the killing was or was not the proper act of the party himself.

Thus, in the case of *Borradaile* v. *Hunter*, 5 Man. & Gr. 639 (44 Eng. Com. L. 335), the action was upon a policy on the life of Mr. Borradaile, in which it was provided that the policy should be void if the insured died by his own hand. The jury found "that he *voluntarily* threw himself from Vauxhall Bridge with the intention of destroying life; but at the time of committing

the act he was not capable of judging between right and wrong." Upon this verdict a judgment was directed for the defendant, which was affirmed by the full bench. ERSKINE, J., in giving judgment, said: "All that the nature of the contract requires is that the act of self-destruction should be the *voluntary* and wilful act of a man having at the time sufficient powers of mind and reason to understand the physical nature and consequences of such act, and having at the time a purpose and intention to cause his own death by that act."

In *Clift et al.* v. *Schwabe*, 3 Man., Gr. & Scott 437 (54 Eng. Com. L. 437), the policy was to be void in case the insured should "commit suicide." He died in consequence of having voluntarily, and for the purpose of killing himself, taken sulphuric acid, but under circumstances tending to show that he was at the time of unsound mind. It was held that all kinds of *voluntary* self-destruction were within the terms of the proviso, and therefore that if the assured *voluntarily* killed himself, it was immaterial whether he was or was not at the time a responsible moral agent.

In these two cases the actions upon the policies, one of which was made void in case the assured "died by his own hand," and the other in case he "committed suicide," were not sustained, because it appeared that, although circumstances tended to show that the minds of the assured were at the time unsound, yet they nevertheless put an end to their lives *voluntarily*.

In the case of *Breasted* v. *Farmers' Loan and Trust Co.*, 4 Hill 73, the referees reported that the person insured "threw himself into the Hudson river from the steamboat Erie while insane, for the purpose of drowning himself, not being mentally capable at the time of distinguishing between right and wrong."

The finding of the referees, therefore, as held by WILLARD, J., who wrote an elaborate opinion and gave the judgment in the Court of Appeals, was not "that the intestate acted *voluntarily*, or that he *knew* the consequences of his act," and the judgment was for the plaintiff.

In the case of *Dean and Another* v. *American Mutual Life Ins. Co.*, 4 Allen 96, the policy was made void in case the insured died "by his own hand" and it was agreed in the case that the insured caused his own death by cutting his throat with a razor, but the plaintiffs offered to prove that the act of killing was the

direct result of insanity, that his insanity was what is called *suicidal depression*, impelling the insured to take his own life, and that suicide is the necessary and direct result of such insanity or disease. The case was reserved on this offer and the plaintiffs were nonsuited by the full bench upon the ground that "self-destruction was intended by the plaintiff's intestate, he having sufficient capacity at the time to understand the nature of the act which he was about to commit and the consequences which would result from it."

The contract of a life policy is not impaired by these decisions, but its true intent is carried out by them. "A party cannot be said to die by his own hand, in the sense in which these words are used in the policy, whose self-destruction does not proceed from the exercise of an act of volition, but is the result of a blind impulse, of mistake or accident, or of other circumstances over which the will can exercise no control." Per BIGELOW, C. J., *Dean* v. *Am. Mut. Life Ins. Co.*, 4 Allen 96.

In a subsequent case, decided by the same court: *Cooper* v. *The Massachusetts Mutual Life Ins. Co.*, 102 Mass. 227, Chief Justice CHAPMAN, in giving the judgment of the court, said: "We all think that, as applied to this case, there is no substantial difference of signification between the phrases "shall die by his own hand," "shall commit suicide," and "shall die by suicide," and that they include self-destruction under the influence of insanity within the limitation above stated. In the present case there was no offer to prove madness or delirium, or that the act of self-destruction was not the act of the will, and intention of the party, adapting the means to the end, and contemplating the physical nature and effects of the act. The insanity, therefore, was not such as to take the case out of the proviso."

In the case of *Coffey* v. *The Home Life Insurance Co.*, recently tried in the Superior Court, New York, the insured was supposed to have taken poison, but there was no positive proof of the condition of his mind at the time. So far as known, he entered the state-room of the steamboat where the poison was supposed to have been taken, in an entirely sound state of mind and body, and there was no proof that this condition of mind was afterwards changed.

MONELL, J., instructed the jury that, if the insured took poison neither through accident nor mistake, but when his mind was

either insane or at least in a state that rendered him incapable of discerning between right and wrong, the act was not his own and there was no breach of the proviso in the policy against suicide.

This ruling is not in accordance with the judgment of BIGELOW, C. J., in the case above cited, nor with the other authorities which hold that when the act of suicide is committed voluntarily and intentionally and with a knowledge of the nature and consequences of the act, it is the act of the party and comes within the terms of the proviso, even although it was committed *under an insane delusion* which rendered the party morally and legally irresponsible and incapable of distinguishing between right and wrong.

In the case above cited, MONELL, J., further charged that when a man takes his own life, the presumption of law is that he was at the time insane. The presumption of law, it seems to us is, that he is ordinarily sane, and a man who takes the life of another and alleges that he was at the time insane, must rebut this presumption and show affirmatively that at the time when he committed the deed he was insane.

In the very recent case of *Terry* v. *Life Ins. Co.*, in the Circuit Court of the United States for the District of Kansas (to be reported in Dillon's Circuit Court Reports), MILLER, J., stated the doctrine as follows: "It being agreed that deceased destroyed his life by taking poison, it is claimed by defendants that he 'died by his own hand,' within the meaning of the policy, and that they are therefore not liable. This is so far true, that it devolves on the plaintiff to prove such insanity on the part of the deceased, existing at the time he took the poison, as will relieve the act of taking his own life from the effect, which, by the general terms used in the policy, self-destruction was to have, namely, to avoid the policy. It is not every kind or degree of insanity which will so far excuse the party taking his own life, as to make the company insuring liable. To do this, the act of self-destruction must have been the consequence of insanity, and the mind of deceased must have been so far deranged as to have made him incapable of using a rational judgment in regard to the act which he was committing. If he was impelled to the act by an insane impulse, which the reason that was left him did not enable him to resist, or if his reasoning powers were so far overthrown by his mental condition that he could not exercise his reasoning faculties on the act he was about to do, the company is liable. On the other

hand, there is no presumption of law, *primâ facie*, or otherwise, that self-destruction arises from insanity; and if you believe, from the evidence, that the deceased, although excited, or angry, or distressed in mind, formed the determination to take his own life, because in the exercise of his usual reasoning faculties he preferred death to life, then the company is not liable, because he died by his own hand within the meaning of the policy."

In addition to the cases already cited, see *St. Louis Mutual Ins. Co.* v. *Graves*, 6 Bush 268; *Dormay* v. *Borradaile*, 10 Beav. 342; *Estabrooke* v. *Union Mutual Life Ins. Co.*, 54 Me., 224; *Regina Morse* v. *The Louisana Equitable Life Ins. Co.*, Chicago Chronicle, vol. VII, p. 187; 21 Pick. 162; 38 Me. 414; 11 Cush. 448; 4 Selden 299; 3 M. G. and Scott 437; 3 Chitty's Crim. Law 160; 1 Russell on Crimes 9; Beck's Med. Jur. 587.

The whole subject was very carefully considered by McKENNAN, J., in *Nimich* v. *Ins. Co.*, *ante* 101, and the conclusion very forcibly laid down, after investigation of all the cases, that the proviso against liability in case the assured "shall die by his own hand," includes all kinds of voluntary self-destruction. If the assured commit suicide, comprehending the physical nature and consequences of his act and intending to destroy his life, the policy is void, though he may not have been able to comprehend the moral nature of the act. And in an action on such a policy, the burden is first on the insurer to show that the insured died by his own hand; and this being done it then rests upon the plaintiff to prove that the insured was of such insane mind that he did not commit the act with the knowledge and intent that it should result in death.

It would seem, therefore, from the authorities above cited, that the question is not precisely whether a party at the time when he committed suicide was or was not insane, but whether he had sufficient reason to understand the physical nature and consequences of his act, and sufficient will to make the act voluntary.

J. F. LYMAN.