of another court with similar powers, for the evident purpose of evading the Constitution, would be unconstitutional.

But whether the criticism of the principle which allows territorial judges to be appointed for specific terms be sound or not, one thing is certain, that the reasons which have led the Supreme Court to consider that Section 1 of Article III of the Constitution did not apply to courts of the territories, has no application to a Commission Court, which would conclusively interpret the law of the lawful railway rates between towns in different States, *i. e.*, the rates which Congress established when they said all rates shall be "just and reasonable." These laws are passed by Congress in pursuance of its right to "regulate commerce with foreign nations, between the States, and with the Indian tribes." It is a power which Congress exercises in its rôle of a legislative body for a Federal government. The interpretation of such laws is a judicial function conferred on the Federal government by the express words of Article III, and in providing for its exercise, Congress is expressly limited by the same article to appointing judges "during good behavior."

W. D. L.

NOTE.

In sequence with the foregoing Annotation, the April number of the AMERICAN LAW REGISTER AND REVIEW will contain an examination of some constitutional questions raised by the proposed annexation of the Hawaian Islands.

DEPARTMENT OF INSURANCE.

EDITOR-IN-CHIEF,
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THE KNIGHTS TEMPLAR AND MASONS' LIFE INDEMNITY COMPANY *v.* BERRY ET AL.[1]

Insurance by Beneficial Association.

An association claiming to be a beneficial association defended a suit on a death certificate on the ground that the person to whom the certificate was issued had committed suicide, which was a sufficient defense, unless the association was in effect an insurance company, in which case, under the laws of the State where the question arose, such a defense could not be effectually interposed. *Held*, that the holder of the certificate could recover.

[1] Reported in 50 Fed. Rep., 511.

STATEMENT OF THE CASE.

In Error from the Circuit Court for the Western District of Missouri to the Circuit Court of Appeals of the Eighth Circuit.

The action was brought to recover on a policy issued by the Knights Templar and Masons' Life Indemnity Company to a man who afterward committed suicide. The policy provided that no recovery should be had in case of self-destruction by the insured, except to the amount of assessments paid in. The insurance laws of Missouri, however, provided that suicide should not constitute a defense to an action on a policy. The Court held that while the company was expressed to be a benevolent association, yet its contract was one of insurance, and it was, therefore, brought within the insurance laws. Affirmed.

INSURANCE BY BENEFICIAL ASSOCIATIONS.

There are two points involved in the principal case, viz.:

(1) That the organization whose charter and by-laws were before the Court was in effect an insurance company, although masquerading under the cloak of a beneficial association; and

(2) That it was proper to show this fact in a suit on the certificate or policy.

The main question in this case is of essential importance in a large number of cases in which so-called beneficial associations are involved, because of the different rules which govern the transfers of the policy of life insurance and the certificate of death benefits, and the defenses to each, and because of the penalties generally provided for violation of insurance laws. In the former the contract is of such a character that the beneficiary has a vested interest in the policy which he alone may divest; in the latter the beneficiary has in most cases merely an expectancy, which the member of the association alone, or the member with the concurrence of the association, may divest. Moreover, the laws governing life insurance are extremely stringent in many States (*e. g.*, in limiting the defenses to policies, in the deposit of bonds for a reserve, etc.), and if an insurance company is likely to attempt to avoid the penalties of the statute, by assuming the guise of a beneficial association, it becomes of great practical importance to formulate such rules that it may be possible to determine what are the essential features of each sort of organization.

It is clearly settled that the simple assumption of the form of a beneficial association is not sufficient to enable the company to avoid the effect of the insurance laws. This is shown by the principal case as well as by others: Com. *v.* Wetherbee, 105 Mass., 149.

Of course, each organization stands on its own bottom. If it is an insurance company in effect, if

its chief purpose is to pay a member's estate, or assignee, or designated beneficiary, a stipulated sum on the decease of the member, then it is an insurance company, no matter what its form. If its chief purpose is one of benefit, whatever that term may imply, it is a beneficial association. It is of vital importance to learn the facts of each case. The importance of these and the impossibility of reaching any satisfactory conclusion without them is shown by Com. *ex rel.* Atty.-Gen. *v.* Equitable Beneficial Association, 137 Pa., 412, where CLARK, J., dwelt at some length on the difference in theory and purpose between the two sorts of organization, but whose opinion is not decisive in the present connection because the facts of that case were dissimilar. To say, broadly, that there are two sorts of companies, the one to insure, the other to benefit, does not aid materially in the solution of the problem.

While the decisions are not inharmonious in broad statement of principles, it is not at all easy to decide just what are the essential features of a beneficial association.

The features which suggest themselves as bearing on the question are the existence of capital stock, the government of the company, the accumulation of assets with which to pay policies, a reserve fund, whether the assessments are made before or after the death of the member, whether the death benefit is a stipulated sum or variable with the size of membership, entrance fees, limitation of death benefits to certain classes of persons, whether the purpose is wholly financial endowments, sick benefits, etc. That no one of these is decisive of the question may be seen by a brief review of some of the leading cases.

In the opinion of the Court in Berry *v.* Indemnity Co., affirmed in the principal case, it is said: "There are corporations in which the element of insurance is so mingled with benevolent, charitable, social, or other ends that it is difficult to tell whether they should be classed as insurance companies or benevolent societies. But that difficulty does not arise in this case. It is apparent from an examination of its charter and its method of doing business that the defendant is a mutual life insurance company on the assessment plan. Its business is insurance and nothing else. There is not a social, charitable or benevolent feature in its organization, or the conduct of its business. It has no lodges, pays no sick dues, and distributes no aid, and gives no attention to members in distress or poverty. It deals with its members on the strictest business principles. . . . The learned counsel for defendant say that their client manifests its "benevolence by contract and through contractual relations instead of mere voluntary and, therefore, uncertain gifts." That is precisely the kind of benevolence practiced by all insurance companies as long as they continue to pay their honest losses. The defendant is not a "co-operative benevolent insurance society," nor a fraternal brotherhood having a community interest (whatever these phrases may mean), but is an incorporated life insurance company on the co-operative or assessment plan, not for mutual benevolence, but for mutual insurance.

In Com. *v.* Wetherbee, 105 Mass., 149, which may be regarded as a

leading case on the subject, and in which The Connecticut Mutual Benefit Company was before the Court, GRAY, J., said: "A contract of insurance is an agreement by which one party for a consideration (which is usually paid in money, either in one sum, or at different times, during the continuance of risk) promises to make a certain payment of money upon the destruction or injury of something in which the other party has an interest. In fire and marine insurance the thing insured is property; in life or accident insurance it is the life or health of a person. In either case neither the times and amounts of payments by the assured, nor the modes of estimating or securing the payment of the sum to be paid by the insurer, affect the question whether the agreement between them is a contract of insurance." The contract in this case called for payment of $10 at its inception, $2 annually, and $1 upon the death of any member. The corporation had also established a guaranty fund of $100,000. "This is not the less a contract of mutual insurance upon the life of the assured, because the amount to be paid by the corporation is not a gross sum, but a sum graduated by the number of members holding similar contracts; nor because a portion of the premium is to be paid upon the uncertain periods of the deaths of such members; nor because in case of non-payment of assessments by any member the contract provides no means of enforcing payment thereof, but merely declares the contract at an end, and all moneys previously paid by the assured, and all dividends and credits accrued to him to be forfeited to the company."

In Bolton *v.* Bolton, 73 Me., 299, the by-laws of the association provided that each member should pay a membership fee of $2, and $1.10 on each assessment, in consideration of which the association agreed to pay to the member's widow as many dollars, not exceeding $1,000, as there should be surviving members. The membership was limited to Masons. The contract was, nevertheless, held to be a contract of insurance, notwithstanding that the organization was benevolent and not speculative.

In State *v.* Brewer, 15 Mo. App., 597, the provisions were to promote the well-being of the members, and to furnish aid to their families in case of their death. No moral or social pre-requisite was required for membership, but merely certain conditions of age and health. There were no benefits except in case of death, and funds were collected for this purpose by assessments. Held to be a mutual insurance company and subject to the insurance laws of the State. See also State *v.* Citizens' Beneficial Association, 6 Mo. App., 163, and State *v.* Merchants' Exchange Beneficial Association, 72 Mo., 146.

In American Legion of Honor *v.* Larmour, 81 Tex., 71, the certificate of the American Legion of Honor was held to be an insurance contract, but under a special statute the company was held exempt from certain penalties provided for regular insurance companies. A similar corporation, whose purpose was declared to be "to give financial aid and benefits to members during life, and to their families or those depending on them after death, and to pay weekly sick benefits to its members," etc., was held to be an insurance company in Farmer *v.* the State, 69 Texas, 561.

In Rochhold *v.* Canton Masonic Benevolent Society, 129 Ill., 440, a contract of membership, issued by a benevolent society, whereby the society agreed in view of the age and condition of health of the member, and in consideration of a present payment and of the agreement to pay to it certain contingent sums in the future, to pay him or to his widow or heirs, etc., was held, apart from all statutory definitions and classifications, a contract of life insurance. The statutory provision of Illinois permitting certain associations, whose death benefits should be for the widows of members, and where there were no annual dues or premiums, and no member was to receive any profit, is complied with, although a member of such an organization receives pay as an officer; and such an association does not have to deposit bonds: The Commercial League Assoc. of America *v.* The People, 90 Ill., 1878.

In State *v.* Farmers' Benevolent Association, 18 Neb., 276, the contract was held to be one of insurance, although sick benefits were to be paid.

In State *v.* Standard Life Association, 38 Ohio, 281, an association, organized under the statute allowing mutual benefit associations, did not purport to afford any relief and protection to its members, but only to provide for their family and heirs. It was held to be in no sense a mutual aid association to members, but a mutual insurance of members for the benefit of their family and heirs.

In Mutual Benefit Life Insurance Company *v.* Maryé, 85 Va., 643, it was held that a company doing business on the assessment plan must pay its benefits by assessments made after the death of a member upon the surviving members.

In State *v.* Nichols, 78 Iowa, 747, the Ancient Order of United Workmen was before the Court. Its purpose was declared to be (1) to give protection to all kinds of labor; (2) to create a fund for the benefit of its members during sickness or other disability, and in case of death to pay a stipulated sum to such person or persons as may be designated by each member, thus enabling him to guarantee his family against want; (3) certain secret work; (4) literary and scientific work. There was no provision for carrying out the 1st, 3d and 4th. It was held that such an organization was a mutual insurance company, and subject to the insurance laws.

It State *v.* Crickett, *et al.*, 37 Minn., 13, the purpose of the association was to endow the wife of each member when he should have married with a sum equal to as many dollars as there were members, to be collected by assessment. There was an admission fee of $10, half yearly dues of $2, and each assessment was to be $1.25. There was no capital stock. Held not to be a beneficial association.

From an examination of the foregoing cases, it will be seen that, in the absence of statutory provisions, organizations whose prominent object is to insure against death or accident have been declared insurance companies, despite the fact of that object being coupled with a purpose of greater or less benevolence. Some of the Courts have held that the existence of the purpose to insure is sufficient to stamp upon the company its character, no matter what other features may

be present. That would seem to be the most satisfactory position to assume, inasmuch as any qualification of it might lead, as it has led, to fraud on the part of companies organized for the purpose of securing the benefits of life insurance without being subjected to the rigid laws which govern it in most States.

The mere fact of the prospectus or the constitution of the company containing an expression of benevolent design, would not seem to change the situation, for beneficence to the parties interested is the spirit of all mutual insurance companies. Beneficial associations, so far as the payment of death benefits are concerned, are not more benevolent either in design or execution. Each sort of organization is beneficial to a limited class, namely, its members. It would seem to be logically necessary, therefore, that beneficial associations should have some additional or different characteristics to warrant the courts in holding that they are not insurance companies.

Where there are statutory provisions, of course such provisions govern: Com. *v.* National Mutual Aid Association, 94 Pa. St., 481; State *v.* Bankers' and Merchants' Mut. Benefit Assoc., 23 Kan., 499; State *v.* Merchants' Exchange Mut. Benefit Society, 22 Alb. L. J., 427. But in such cases the question has usually arisen in an action by the commonwealth to inflict a penalty. Whether the same decision would hold in cases where the company was not a party may be questioned.

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