was an act in the State. According to the principle, each State could tax each share according to the dividends paid. Declaring a dividend is an act necessarily performed within the State.

But to assert, as is often done, that one can be taxed in the State of his domicile for every kind of personal property for which he holds a title, and that the situs of such property is the domicile of the owner, is a fiction of law for which we have no sympathy. It enables each State of the Union to tax property all over the United States. It enables the States of the east, where shares of corporations are largely held, to live off the west, where the corporations are doing business and owning property.

It is an argument frequently made by State attorneys-general in these tax cases that if the decision is adverse to the State her power of raising revenue will be hampered. The fact seems to be totally lost sight of, that a principle which enables State A to reach out and tax property or business carried on in State B, also enables State B to tax property and business in State A. Infinitely better would it be to establish a rule which would practically, as well as theoretically, confine each State to the property and business within its own territorial limits. W. D. L.

DEPARTMENT OF INSURANCE.

EDITOR-IN-CHIEF,
GEORGE RICHARDS, ESQ.
Assisted by
GEORGE WHARTON PEPPER, LUTHER E. HEWITT.

CROTTY *v.* UNION MUTUAL LIFE INS. CO. OF MAINE.[1]
SUPREME COURT OF THE UNITED STATES.

Creditor's Policy—Insurable Interest—Recital of Debt in Policy.

A effected insurance upon his life with the defendant company, the policy containing a stipulation that the amount of the policy should be payable to the insured if he survived the term named therein; or, if he should die within that term, then "to Michael Crotty, his creditor, if living; if not, then to the said (A's) executors, administrators or assigns." A died within the term, and Crotty brought suit against the company, describing himself as a creditor of A, both at the time of the effecting of the insurance and at the date of A's death. The debt was stated to be "for various sums of money, which this plaintiff had at various times

[1] Reported.

advanced to the said (A), amounting to several thousand dollars." The answer denied that A was ever indebted to the plaintiff, and the only proof adduced by the latter was the recital of the debt in the policy and proofs of death. *Held*, that if the recital in the policy was an admission of the debt at all, it was an admission only *as of* the date of the policy. The existence of the debt at the time of the death must be established by affirmative testimony, both as to the fact and the amount.

Opinion by Mr. Justice BREWER.

CREDITORS' POLICIES.

Insurance effected by the creditor for his own benefit.

While on principle it should seem that a policy of insurance effected by the creditor upon the debtor's life ought to be treated as a pure contract of indemnity, yet it appears to be well established by a multitude of decisions that such is not its true nature. Lord ELLENBOROUGH, indeed, in Godsall *v.* Boldero, 9 East, 49, treated a demand under a creditor's policy as being a demand for indemnity, and expressly based his decision upon Lord MANSFIELD'S opinion in Hamilton *v.* Mendes, 2 Burr., 1210, which was a case involving a contract of marine insurance. But in spite of some recent vigorous declarations that Lord ELLENBOROUGH was right in this view, the weight of authority is decidedly the other way. This will appear from an examination of the following decisions

In Godsall *v.* Boldero, 9 East, 49 (1807), a creditor had effected an insurance upon the life of Mr. Pitt. The debtor having died insolvent, the debt was paid by his executors out of funds coming into their hands *aliunde*. The creditor, who had then been paid in full, was not permitted by Lord ELLENBOROUGH to recover upon the policy. Said his lordship: "The interest which the plaintiffs had in the life of Mr. Pitt was that of creditors; a description of interest which has been held in several late cases to be an insurable one, and not within the prohibition of the Stat. 14, Geo. III, C. 48, § 1. That interest depended upon the life of Mr. Pitt, in respect of the means, and of the probability, of payment which the continuance of his life afforded to such creditors, and the probability of loss which resulted from his death. The event, against which the indemnity was sought by this assurance, was substantially the expected consequence of his death as affecting the interest of these individuals assured in the loss of their debt. This action is, in point of law, founded upon a supposed damnification of the plaintiffs, occasioned by his death, existing and continuing to exist at the time of the action brought; and, being so founded, it follows, of course, that if, before the action was brought the damage, which was at first supposed likely to result to the creditors from the death of Mr. Pitt, were wholly obviated and prevented by the payment of his debt to them, the foundation of any action on their part on the ground of such insurance fails."

The writer has been unable to find any case prior to Godsall *v.* Boldero in which the nature of a creditor's policy, as to whether it be a contract of indemnity or not, is discussed. And it will be observed that even in Godsall *v.* Boldero itself, Lord ELLENBOROUGH does not explicitly make a distinction between life insurance effected by a creditor and life insurance in the ordinary form.

In Dalby *v.* India and London Life Assurance Co., 15 C. B., 365 (1854), the Court was compelled to decide whether or not Godsall *v.* Boldero would be followed. Dalby, as trustee for the Anchor Life Assurance Co., sued upon a policy of £1000 on the life of the Duke of Cambridge. The Anchor Life Assurance Co. had insured the Duke's life in four separate policies, two for £1000 and two for £500 each, granted by that company to one Wright. In order to comply with a resolution of their directors limiting insurances to £2000 on one life, they effect a policy with the defendants for £1000 by way of reinsurance. At the time the policy was subscribed by the defendants, the Anchor Company had an insurable interest to the full amount. Afterward an arrangement was made between the office and Wright, by which the former granted to Wright and his wife an annuity in consideration of a sum of money and the delivery of the four policies for cancellation. This was done, but one of the directors kept the present policy on foot by the payment of the premiums until the Duke's death. The question, therefore, was whether the interest of the plaintiff, which had terminated before the Duke's death, was sufficient to obviate the objection that he was suing upon a wagering contract. The Exchequer Chamber were unanimous in holding that the interest was sufficient.

Baron PARKE, in delivering the opinion, pointed out that the contract in suit would have been unquestionably legal at common law whether the plaintiff had had an interest therein or not, and he cited Cozzens *v.* Nantes, 3 Taunt., 315, and the earlier case of Lucena *v.* Crauford, 2 B. & P., 324. "The contract commonly called life assurance," said the learned judge, "when properly considered, is a mere contract to pay a certain sum of money on the death of a person in consideration of the due payment of a certain annuity for his life. The amount of the annuity being calculated in the first instance according to the probable duration of the life, and when once fixed it is constant and invariable. . . . . . This species of insurance in no way resembles a contract of indemnity." Having thus explained the nature of line insurance, and having shown that the contract, even without interest, would have been good at the common law, he proceeded to construe the Statute 14 G., III c. 48, as to insurances on lives, and came to the conclusion that the requirements of the statute are satisfied when an interest subsists at the time of effecting the insurance. Of Godsall *v.* Boldero he said: "Upon considering this case it is certain that Lord ELLENBOROUGH decided it upon the assumption that a life policy was in its nature a contract of indemnity, as policies on marine risks and against fire undoubtedly are; and that the action was, in point of law, founded on the supposed damnification occasioned by the death of the debtor existing at the time of the action brought, and his Lordship relied upon the decision of Lord MANSFIELD in Hamilton *v.* Mendes, 2 Burr, 1270, that the plaintiff's demand was for an indemnity only. Lord MANSFIELD was speaking of a policy against marine risks, which is in its terms a contract for indemnity only. But that is not the nature of what is termed an insurance for life; it really is what it is on the face of it, a contract to pay a certain sum in the event of death; it is valid at common law, and if it is made by a person having an interest in the duration of the life, is not prohibited by the Statute 14 G., III c. 48."

This decision of Baron PARKE'S was followed in Law *v.* London Indisputable Co., 24 L. J. Ch., 196; 1 K. & J., 223. This was a case in which the interest which subsisted at the date of effecting the policy had completely terminated at the date of the death. The purchaser of a legacy which was contingent upon the legatee's attaining a certain age, insured the life of the legatee for a term which more than covered the period of contingency. The legatee attained the specified age, but died within the period named in the policy. The plaintiff was permitted by Vice-Chancellor WOOD to recover, on the authority of Insurance Co. *v.* Dalby. "Godsall *v.* Boldero," said the Vice-Chancellor, "was not a decision which met with universal approbation, and the decision of the Exchequer Chamber places the matter upon what, I confess, appears to me, independent of the high authority of that court of appeal, to be the right footing with regard to polices of this description." The view taken in these last two cases is violently assailed by Mr. PORTER in his work on insurance (page 15), which contends that Lord ELLENBOROUGH'S judgment was correct. He argues that Dalby *v.* India and London Life Assurance Co. is based (1) on a misinterpretation of the gambling act. "In fire insurance," he says, "which is under the same statute, a man must have interest at the time of insurance and of loss. But in life insurance the words are construed in a different sense altogether. But it would seem to be clear that the same words in the same statute are not capable of two contrary constructions." (2) On a confusion between a man's interest in his own and another's life. (3) On a mistaken view as to the nature of a premium. "It is what a man will pay to protect himself from a probably greater loss. A man has no insurable interest in his premiums, and by law cannot insure them. He has no more interest in them than in his last year's butcher's bill." (4) On a *petitio principii*—inasmuch as both cases consider that life insurance cannot be a contract of indemnity because the sum is certain and all will be payable; whereas the other point to be decided is whether the whole insurance should be payable at all events, or only so much of it as compensates for the loss.

In opposition to PORTER'S view Mr. RICHARDS, in his valuable work on insurance (page 38), says that Baron PARKE'S decision "unquestionably gives the sound and sensible rule. . . . 'The rate of premiums in life insurance is based upon the supposition that the event upon which payment is to be made to the insured will certainly occur at some time or other, and if a creditor after paying premiums for a long term of years was likely to lose all the benefit of his insurance, it would practically prevent the use of this important kind of security." It may be objected to RICHARDS' statement that if the law declared that a creditor's policy was a contract of indemnity the rate of premiums would be modified so as to meet the popular demand for security of this nature. This is, doubtless, the answer that PORTER would make; but by way of rejoinder it may be remarked that the modification of the premium rate would have to depend in each case upon the value of the creditor's chance of recovering his debt. Such a contingency surely cannot be recognized as a factor in insurance. "The probabilities are not capable of being estimated beforehand with any approximation to certainty." Moreover, it will be observed that since Lord ELLENBOROUGH, in Godsall *v.* Boldero, confessedly appealed to the preexisting law, his appeal must fail if the law as evidenced by the decided cases does not sustain his view. Upon this point Baron PARKE'S reasoning seems to be conclusive, and since he found that life insurance was not a contract of indemnity before the statute, the only question for him to determine was whether the statute changed its nature. His decision was in effect that the statute had deprived the contract of life insurance of its character as a wager policy, but had not transformed it into a contract of indemnity. The *petitio principii*, and the mode of interpretation to which PORTER objects do not seem to be open to such criticism. Baron PARKE drew his conception of life insurance from the law as it existed before the statute, and merely kept before his mind the old law, and the mischief in giving effect to the statutory remedy.

PORTER contends that the courts have shrunk from a consequence of these two decisions, and points to the case of Hebdon *v.* West, 3 B. & S., 579, 32 L. J., Q. B., 85. In this case the plaintiff, a clerk in a bank, was promised by a partner therein that his salary should be increased from £200 to £300 per annum, for seven years. The partner also declared that as long as he lived certain sums due by the plaintiff to the bank should not be called in. The plaintiff thereupon insured the partner's life for £500, and (his debt to the bank having increased) he subsequently effected another insurance with another company for £2500. The partner died, and the plaintiff having collected the first policy paid the amount of it to the bank. In a suit upon the second policy it was held that the mere promise to forbear did not give the plaintiff an interest, but that the promise to employ raised an interest which would have been sufficient to support the second policy. The voluntary payment, however, of the £5000 under the first policy, since it more than covered the amount of the entire interest, was held to be a bar to recovery upon the second. It will be observed that this was not a question of the *cessation* of interest; here the plaintiff's whole interest was exhausted by the first insurance, and evidence to that effect was before the Court. The plan suggested by PORTER, of objecting to this evidence, was not attempted by counsel.

The Supreme Court of the United States has adopted the view of the law taken in Dalby *v.* The Insurance Company.

In the Connecticut Mutual Life Insurance Co. *v.* Schaefer, 94 U.S., 457, an insurance was effected upon the joint lives of husband and wife, payable to the survivor on the death of either. The insured was divorced *a vinculo matrimonii.* The woman thereafter was paid the premiums to the time of the death of her former husband, and she was held to be entitled to recover upon the policy. Mr. Justice BRADLEY, after quoting from Dalby *v.* Life Insurance Co. at length, uses this language: "As thus interpreted, we might almost regard the English statute as declaratory of the original common law, and as indicating the proper rule to be observed in this country, where that law furnishes the only rule of decision." "In any case," he had observed in an earlier portion of the opinion, "it would be very difficult after the policy had continued for any considerable time for the courts without the aid of legislation to attempt an adjustment of equities arising from a cessation of interest in the insured life. A right to receive the equitable value of the policy would probably come as near to a proper adjustment as any that could be devised. But if the parties themselves do not provide for the contingency the courts cannot do it for them." It is thus seen that Mr. Justice BRADLEY quoted Baron PARKE with approval, and Mr. Justice BRADLEY's approval of Baron PARKE met in its turn with the approbation of the Supreme Court of Pennsylvania.

In Scott *v.* Dickson, 108 Pa., 6, Mr. Justice PAXSON, referring to the Life Insurance Company *v.* Schaefer, and to the rule in Dalby *v.* The Insurance Co., said: "It requires but a moment's reflection to see that this rule is based upon sound principles. It treats a contract of life insurance not as a contract of indemnity as in the case of fire or marine insurance, but as a contract to pay a certain sum of money in the event of death, and if the policy fell with the cessation of interest it would lead to this result. A is a creditor of B to the extent of $1000, and insures his life to that amount. He continues the policy until he paid in premiums, say, $1100. B then pays the debt. If the policy ceases as soon as the debt is paid, A loses all he has paid, and in reality is out of pocket $100, although he has received his debt in full." In this case Scott had been the surety upon Dickson's official bond, and (as far as can be gathered from the report) he continued to be thus contingently liable until Dickson's death. The contingent liability was held by the court to give Scott an insurable interest in Dickson's life, which was undoubtedly a correct decision. But it is somewhat difficult to perceive how any question as to the *termination* of the interest could under the facts have arisen. In that branch of the opinion from which the above quotation was made, the Court decided that there was a sufficient interest to support an assignment of the policy—supposing a valid assignment to have been made. The ultimate decision, however, was that although the attempted assignment by the insured to his surety had not been completed by delivery, yet the evidence in the case justified the court in treating the policy as if it had been originally effected by Dickson upon his own life for the benefit of Scott —the latter being treated as if he had been the beneficiary designated in the policy.

Insurance effected by the debtor for the benefit of his creditor.

The cases which have heretofore been examined have been cases in which (with the exception of Scott *v.* Dickson) the policies were effected by the creditor, and in which the premiums were paid by him. An important distinction is to be noted between cases of this class and cases in which the debtor obtains the insurance on the insurable interest of the creditor—that is, insures for the benefit of his creditor—and pays the premiums himself. Says Chief Justice FULLER, in Washington Central Bank *v.* Hume, 128 U. S., 195: "If the creditor insures the life of his debtor, he is thereby indemnified against the loss of his debt by the death of his debtor before payment; yet if the creditor keeps up the premiums and his debt is paid before the debtor's death, he may still recover upon the contract which was valid when made, and which the insurance company is bound to pay according to its terms; but if the debtor obtains the insurance on the insurable interest of the creditor, and pays the premiums himself and the debt is extinguished and the insurance falls in, then the proceeds would go to the estate of the debtor: Knox *v.* Turner, L. R., 9 Eq., 155." To the same effect is the language of Mr. Justice BREWER in the principal case: "If a policy of insurance be taken out by a debtor on his own life naming a creditor as beneficiary or with a subsequent assignment to a creditor, the general doctrine is that on payment of the debt the creditor loses all interest therein and the policy becomes one for the benefit of the insured, and collectable by his executors or administrators."

It is said in 2 May on Insurance (3d edition), 459: "A creditor's claim upon the proceeds of insurance intended to secure the debt should go no further than indemnity, and all beyond the debt premiums and expenses should go to the debtor and his representatives or remain with the company, according as the insurance is upon life or property."

Another case which discusses what constitutes a creditor's interest is the Connecticut Mutual Life Insurance Co. *v.* Luchs, 108 U. S., 498. This was a case in which the company issued a policy upon one Dillenburg, who at that time was in partnership with the plaintiff, Luchs, and who was desirous by means of the policy of securing Luchs in respect of the advance made by him of Dillenburg's share of the capital. The court was clearly of opinion that Luchs had an insurable interest in the life of Dillenburg—first, because at the time the policy was applied for Dillenburg was still in default; and, second, because Luchs was interested in having Dillenburg continue in the partnership. See also Murrell *v.* The Company, 10 Cush., 282; Insurance Co. *v.* Johnson, 4 Zab., 576; Bevin *v.* The Company, 23 Conn., 244.

The relation between the amount of insurance and the amount of the debt.

As to the *amount* of the creditor's interest the case of Cammack *v.* Lewis, 15 Wallace, 643, is a leading authority. In that case A, being indebted to C in the sum of $70, took out a policy of insurance for $3000 for seven years, B agreeing to pay the premiums. A died intestate a few months after the policy was issued, and B produced A's note for $3000, dated on the same day with the policy, but given confessedly without consideration, and also an assignment of the policy to him. It was held as to B that the policy being one of $3000 to secure a debt of $70, was a sheer wagering policy without any claim but considered as one meant to secure the debt. Said Mr. Justice MILLER: "Under these circumstances we think that Cammack could in equity and good conscience only hold the policy as security for what Lewis owed him when it was assigned and such advances as he might afterward make on account of it, and that the assignment of the policy to him was only valid to that extent."

In Warnock *v.* Davis, 104 U. S., 775, it is said: "In cases where the insurance is effected merely by way of indemnity, as where a creditor insures the life of his debtor for the purpose of securing his debt, the amount of insurable interest is the amount of the debt."

The problem suggested in this last quotation confronted the Court in Grant's Administrators *v.* Kline, 115 Pa., 118. In that case a policy upon the life of Grant was taken out by him and assigned to Kline to secure a debt of $214, due by the former to the latter. The amount of the policy was $3000. It appeared that other policies had been taken out for Kline's benefit, and that he had paid premiums thereon to the extent of several hundred dollars. They had, however, been allowed to lapse, and "while the money thus fruitlessly paid on premiums may not have amounted to an insurable interest in the life of Grant, for the reason that such payments do not make him a creditor for their amount, we think they show good faith in the transaction." "This brings us," said Mr. Justice PAXSON, "to the main question. Was the amount of insurance so disproportioned to Kline's interest in the life of Grant as to make this a wagering policy? We approach this question with caution; the more so that this Court has not laid down a rule upon this subject. That we shall be compelled some day to do so is possible. We have said that the sum insured must not be disproportioned to the interest the holder of the policy has in the life insured. To take out a policy of $5000 to secure a debt of $5 would be such a palpable wager that no court would hesitate to declare it so as a matter of law. Care must be taken also that a debt shall not be collusively contracted for the mere purpose of creating an insurable interest. Mr. Dickens, in his inimitable "Pickwick Papers," has shown how a debt may be created for the purpose of lodging the debtor in prison by collusion with the creditor. Speaking for myself, it may be that a policy taken out by the creditor on the life of his debtor ought to be limited to the amount of the debt with interest, and the amount of the premiums with interest thereon during the expectancy of life, as shown by the Carlisle tables. This view, however, has never yet been adopted by this Court in any adjudicated case, nor do we feel compelled to define the disproportion now in view of the particular facts of the case in hand. We do not regard it as either immoral or wagering for Kline to attempt to secure the sums he had already fruitlessly paid in premiums on Grant's life, and if Grant had no objection thereto, and assisted him therein, I do not see that any one could object to this but the company. Again, we have the declaration of Grant that he owed Kline a considerable sum of money, the precise amount not stated; that Kline had aided him in various ways, and never refused him a favor, etc. In view of their connection by marriage, and of their admitted relations, it is, at least, probable that Kline had aided him at many times and in various ways pecuniarily that are not represented by any evidences of debt. And if the sum insured was regarded by Grant as a reasonable amount to indemnify Kline, with what grace can Grant's administrators come in and allege that it was not? They have no possible equity; Grant never paid one dollar of the premium, and if they are allowed now to recover, it is not by virtue of any equity, but by force of an inexorable rule of public policy which treats it as a wagering policy, and declares the policy holder a trustee for the person insured as to the entire proceeds, save only the money actually loaned, with the premiums paid.

Assuming, then, that Kline might, with Grant's consent, lawfully seek to indemnify himself for the premiums paid and lost, we have the sum of $743.56 as the amount which Kline was out of pocket. We do not know what Grant's expectation of life was when the policy was taken out, and there is nothing before us upon which we could base any reliable opinion. But it appears he was 65 years of age, and was an unusually good risk. While we do not know what the amount of the annual premium was, we do know that it must have been a considerable sum on $3000 for a man of 65 years, and with the annual interest would roll up rapidly. That Grant died within the year is not to the purpose; he might have lived long enough for the debt and premiums at compound interest to have exceeded the amount of the policy. Surely, in such case, we cannot say as a matter of law that the disproportion was so great as to make it a wagering policy.

In Cooper *v.* Shaeffer, 20 W. N. C. (Pa.), 123 (1887), the same Court held that the disproportion between an insurance of $3000 and a debt of $100 was so great as to require the Court to say, as a matter of law, that the transaction was a wager.

Here, however, there was no evidence as to the expectancy of life, nor does consideration seem to have been paid to the age of the insured, or to the probable amount of annual payments which the creditor would be called upon to make. Indeed, the Court have since remarked that "Cooper *v.* Shaeffer decided nothing but that particular litigation:" PAXSON, C. J., in Ulrich *v.* Reinoehl, 143 Pa., 238 (1891). In this last case, however, the rule suggested in Grant *v.* Kline (*supra*) seems to have been finally adopted. The policy was for $3000 to secure a debt which originally amounted to $110.02. Evidence was admitted to prove that the debtor's expectation of life was twenty-six years, and that after about seventeen years the creditor would have carried the policy at a loss. Although the insurance was in a mutual company, the trial Court found itself able to estimate the probable amount of assessment during the expectancy. In deciding that the contract was not a wager, the Court used the following language: "In order to ascertain whether an insurance is disproportioned to the debt, regard must be had to the age of the