

INSURABLE INTEREST IN LIFE.

III.

INSURANCE EFFECTED ON THE LIFE OF ANOTHER.

Insurance effected on the life of another differs materially from insurance on one's own life in that the interest requisite is necessarily special, and not general. An examination of such insurance should disclose the nature of an insurable interest and make it possible to formulate a definition.

We must begin with the Statute 14 Geo. III. c. 48. This enacted that "no insurance shall be made . . . on the life . . . of any person . . . wherein the person . . . for whose use, benefit, or on whose account such policy . . . shall be made, shall have no interest." What this interest must be, was left to the courts to determine.

The question arose first for decision in *Halford v. Kymer*, 10 B. & C. 724 (1830), where a father had insured the life of his son. Payment of the fund was refused by the insurers on the ground of lack of interest, and in this they were sustained, the court holding that the interest must be pecuniary in its nature. Mere love and affection, then, for a member of one's family will not suffice in England. This decision is unquestioned there, and has been followed repeatedly: *Barnes v. London, Edinburgh & Glasgow L. Ins. Co.*, [1892] 1 Q. B. 864. A definite pecuniary interest must always be proved, unless, perhaps, in the case of a policy taken out by a wife upon the life of her husband. There it will be presumed: *Reed v. Royal Exchange Ass. Co.*, Parke's Add. Cas. 70 (1795), *per* Lord Kenyon.

The American courts have been inclined to take a much more liberal view of the matter, governed as they are, and solely in most cases, by their conceptions of the requirements of public policy; yet often the idea of an accompanying pecuniary advantage is present in their minds. This advantage need not, apparently, be either certain or definite, nor of the nature stated by Lord Eldon in *Lucena v. Crawford*, 2 B. &

P. N. R. 269 (1806), to be necessary in the case of insurance on goods; it will be sufficient in most jurisdictions if a close relationship be joined to a reasonable hope of gain from the continuance of the life. There are not wanting dicta to the effect that even less than this will answer. Thus, in *Corson's Appeal*, 113 Pa. 438 (1886), Clark, J., says at p. 444: "An insurable interest is not necessarily a definite pecuniary interest, such as is recognized and protected at law;" and Bradley, J., says: "Indeed, it may be said generally that any reasonable expectation of pecuniary benefit or advantage from the continued life of another creates an insurable interest in such life:" *Conn. L. Ins. Co. v. Schaeffer*, 94 U. S. 457 (1876); *Kentucky L. & Acc. Ins. Co. v. Hamilton*, 63 Fed. (C. C. A.) 93 (1894).

No authorities need be cited to prove that a creditor may insure the life of his debtor to secure his debt, for this is one of the oldest uses of life insurance. It has been said, however, that such policies differ from others in that they are contracts of indemnity: *Fox v. Penn. M. L. I. Co.*, 4 Big. L. & A. Ins. Rep. 459 (1874), *per* Sharswood, J., in the District Court of Philadelphia. This cannot be true as concerns the insurer; it must be restricted to claims for the surplus of the fund by the debtor or his representatives: *Dalby v. I. & L. L. Ass. Co.*, 15 C. B. 365 (1854); *Goldbaum v. Blum*, 79 Tex. 638; 15 S. W. Rep. 564 (1891).

A distinction is drawn in cases of creditors' policies between those effected by the creditor absolutely for his own protection and benefit, and those under an agreement of the parties for collateral security, the debtor paying the premiums. The rule governing the latter is stated most clearly by Stuart, V.-C., in *Courtenay v. Wright*. 2 Giff. 337 (1860). (See *Lea v. Hinton*, 5 DeG., M. & G. 823 (1854); *Drysdale v. Piggott*, 8 Id. 546 (1856). Cf. *Levy v. Taylor*, 66 Tex. 652 (1886)). "Where the relation of debtor and creditor subsists, and the true construction of the instruments and the evidence of the real nature of the transaction shows that the policy of insurance was effected by the creditor as a security or indemnity, if the debtor directly or indirectly provides money to defray the

expense of that security, he is on a principle of natural equity, entitled to have the security delivered up to him when he pays his debt, which it was directly or indirectly at his expense effected to secure." To this Lord Hatherly, L. C., adds: "The court requires distinct evidence of a contract—that the creditor has agreed to effect a policy and that the debtor has agreed to pay the premiums, and in that case, the policy will be held in trust for the debtor:" *Bruce v. Garden*, L. R. 5 Ch. App. 32 (1869). (Cf. *Anick v. Butler*, 111 Ind. 578 (1887)). As regards the creditor, then, this is substantially a contract of indemnity, and it was so regarded by the Supreme Court of the United States in *Crotty v. Union M. Ins. Co.*, 144 U. S. 621 (1891).

The general rule when the creditor himself pays the premiums and there is no agreement that the debtor shall be at liberty to redeem the policy, (*Matthews v. Sheehan*, 69 N. Y. 585 (1877); *Tatham v. Ross*, 150 Mass. 440 (1890)), is that the fund belongs to the creditor: *Freme v. Bladé*, 2 DeG. & J. 582 (1858); *Corson's Appeal*, 113 Pa. 438 (1886). This is but just, and the objection sometimes urged that it permits the creditor to be paid his debt twice is utterly fallacious. The debt is his in any event, and the policy has been purchased by the payment of premiums calculated on the chances of the debtor's life and not of his solvency: *Law v. London I. L. P. Co.*, 1 K. & J. at 229 (1855); *Ferguson v. Mass. M. L. Ins. Co.*, 32 Hun (N. Y.) 306 (1884). To allow the representatives of the debtor to claim from the creditor the fund *minus* the expenses (and the debt, if that is yet unpaid) is to put all the chances of loss upon the creditor. If his debtor dies soon, the creditor reaps no benefit—if the premiums and their accumulated interest consume the fund, as they must more often than not, his security for the debt is gone. We shall have occasion to examine the question more at length in treating of the *quantum* of insurable interest.

This subject of creditors' policies shows clearly the necessity of understanding properly the nature of the contract, for after the interest had ceased to exist no recovery could be had, were the contract one of indemnity as regards the insurer:

Supra, p. 66. No distinction seems to be drawn between interests indefinite in duration—*e. g.*, that of debtor and creditor—and those necessarily limited, like the one in *Law v. London I. P. Co.*, 1 K. & J. 223 (1855). In this case, a father purchased from his son a legacy contingent on the son's attaining thirty years of age. When the son wanted twenty months of that age, the plaintiff applied to the defendant company to insure his son for that time. It appears to have been the custom of the company to insure only for even terms of years, and the insurance accordingly was effected for two years. The son attained thirty, but died before the term of the policy had expired. The company refused payment, alleging lack of interest, though they had been informed of the circumstances and had themselves suggested the two-year term. It was held by Sir W. Page Wood, V.-C. (afterwards Lord Hatherly, L. C.) that the failure of interest was immaterial, provided there had been a sufficient interest at the inception of the risk. "The policy never refers to the reason for effecting it. It is simply a contract, that in consideration of a certain annual payment, the company will pay at a future time a fixed sum calculated by them with reference to the value of the premiums which are to be paid, in order to purchase the postponed payment. Whatever event may happen in the meantime is a matter of indifference to the insurers. They do not found their calculations upon that, but simply upon the probabilities of human life, and they get paid the full value of that calculation. . . . The company, therefore, got a full value in premiums for that insurance for two years, and, accordingly, I cannot, in the least, doubt what should be the result. . . . The whole of this case shows perfect *bona fides* on the part of the plaintiff. I do not think I can say that the plaintiff is within the words or the spirit of that enactment [14 Geo. III. c. 48], he having an interest in the life, and the insurance having been effected in the manner I have described."

Fraud, of course, will vitiate the contract—thus one with a day's interest could hardly be allowed to insure the entire life, and the question of a *bona fide* interest or one merely colorable would, necessarily, be left to the jury.

Another illustration of a pecuniary interest of determinate duration is that of a surety on an official bond. Thus, in the case of *Scott v. Dickson*, 108 Pa. 6 (1884), it does not appear from the report for what term the office was held, yet Paxson, J. (see p. 14) was of the opinion that insurance might be effected for life. The law on this subject is stated most clearly in *Sides v. Knickerbocker Ins. Co.*, 16 Fed. Rep. 650 (1883), in the Circuit Court of Tennessee by Hammond, J.: "Where there is, to begin with, an adequate insurable interest, which demonstrates that the parties are not seeking to evade the prohibition against gambling policies, whether we go by a statutory or Common Law prohibition, the insurer must pay according to the contract, and it is no concern of his, unless the policy provides against these misadventures, that there may have been, before the death occurred, a diminution or entire cessation of insurable interest. The surplus, if any, may or may not, according to the circumstances in each case, go to the personal representatives of the deceased, when the remaining interest of the assured is satisfied; but it is now, since *Godsall v. Boldero* was overruled, never a defence to the insurer that the interest of the policy-holder has lessened or ceased."

These are the principles that control such cases as *Rawls v. American M. L. Ins. Co.*, 27 N. Y. 282 (1863) and *Ferguson v. Mass. M. L. Ins. Co.*, 32 Hun (N. Y.) 306 (1884). In the first, the policy was in form taken out by the debtor on his own life with the creditor as beneficiary, but it was the creditor who applied for the policy and paid the premiums. As we have seen, this makes a policy equivalent to a policy taken out by the creditor, as regards the requirement that he be interested in the life. While the court so construed it, they allowed a recovery, though the debt was barred by the Statute of Limitations and the policy contained a clause that no more should be recovered than the debt. This provision was held not to defeat recovery, for the insurance company could not take advantage of a plea open to the debtor alone. The contract, therefore, was not so much an insurance of a debt, as a promise to pay upon the termination of the life. The

facts in *Ferguson v. Mass. M. L. Ins. Co.*, 32 Hun (N. Y.) 306 (1884), were similar, save that here the creditor had received his discharge in bankruptcy, and the debt, of course, was definitely gone.

Apart from the direct relation of debtor and creditor, it may be said generally that when the death of a person would entail upon another the risk of pecuniary loss, such other will have an interest which he may protect by insurance, subject, of course, to the rule stated above with regard to the duration of the interest. The two cases just cited are excellent illustrations. In *Sides v. Knickerbocker Ins. Co.*, 16 Fed. 560 (1883), premises were leased in which the landlord had but a life interest. It was held that the chance of losing the lease through the premature death of the landlord gave the tenant an insurable interest in the landlord's life. In *Scott v. Dickson*, 108 Pa. 6 (1884), the action was analogous to a bill of interpleader to determine the ownership of the fund, the contention being, on behalf of the insurer's administrator, that no interest existed in a surety on a bond before any breach had taken place. It was said by Paxson, J.: "When Mr. Scott became Mr. Dickson's bail on his official bond, he had an interest in his life, which he could have protected by taking out a policy directly thereon. That he was never called upon for payment upon this bond is not to the purpose; he might have been; he was liable for any breach of it, and this liability constituted an interest in the life of Dickson, and this interest existed at the time of the alleged assignment of the policy."

Another form of interest often before the courts is that of a partner. The leading case is *Conn. M. L. Ins. Co. v. Luchs*, 108 U. S. 498 (1882). (Cf. *Cheeves v. Anders*, 25 S. W. (Tex.) 324 (1894)). A. and B. formed a partnership, towards which each was to contribute \$5,000. B. did not pay in his share and A. insured his life to that amount. Lack of interest was one of the grounds of the company's defence, but Field, J., said: "Certainly Luchs had a pecuniary interest in the life of Dillenburg on two grounds: because he was his creditor and because he was his partner. The continuance of the partnership, and, of course, a continuance of Dillenburg's life, fur-

nished a reasonable expectation of advantage to himself. It was in the expectation of such advantage that the partnership was formed, and, of course, for the like expectation, was continued." The authorities cited by the court in support of this last point are three: *Morrell v. Trenton M. L. & F. Ins. Co.*, 10 Cush. 282 (1852); *Trenton M. L. & F. Ins. Co. v. Johnson*, 4 Zab. 576 (1854). (already cited at length upon the subject of interest requisite at the Common Law, *supra* p. 75) and *Bevin v. Conn. M. L. Ins. Co.*, 23 Conn. 244 (1854). The facts of these cases were substantially the same. A man desirous of going to California in the days of the gold excitement of '49 would agree to share his earnings with some one at home, in return for assistance in procuring an outfit. Insurance would then be effected on his life for such an amount as the parties pleased, and several times the question arose whether these were not mere wagering contracts. Their validity, however, was sustained when the amount was reasonable, the court saying, in *Morrell v. Trenton M. L. & F. Ins. Co.*, 10 Cush. 282 (1852), "He had a subsisting contract with that person, made on a valuable consideration, by which he was to receive one quarter part of his earnings in the mines of California for one year. Such an interest cannot, from its nature, be valued or apportioned. It was an interest upon which the policy attached. By the loss of his life within the year, the person whose life was insured lost the means of earning anything more, and the plaintiff was deprived of receiving his share of such earnings to an uncertain and indefinite amount."

The case of *Hebdon v. West*, 3 B. & S. 578 (1863), will serve to mark the limits of these interests. A banker's clerk had been lent money by his employer and was told that the loan would not be demanded during the banker's life. His salary, also, was raised and was to continue at the increased figure for the term of seven years. The clerk obtained insurance on the banker's life, with the permission of the latter. Wightman, J., held that the expectation of not having to repay the loan while his employer lived could give no insurable interest—there was no consideration or circumstance of any kind to make such a promise binding, and it did not give even an

appreciable interest in the life, much less a pecuniary one as required by the Statute. But the other interest was sufficient. This is not necessarily in conflict with the dictum of Bradley, J., that "any reasonable expectation of pecuniary benefit will suffice": *Conn. M. L. Ins. Co. v. Schaeffer*, 94 U. S. 457 (1876), but should it be so regarded, it would seem more in consonance with the views of public policy expressed by the courts. Certainly it is not so open to abuse.

Many other cases might readily be cited, *e. g.*, agreements to raise a child or keep a person till death, but it is needless further to multiply examples of the various forms of pecuniary interest on which policies may be effected; the same principle underlies them all, that death will cause a loss to the assured.

We turn now to a consideration of interest arising from relationship, though with small hope of extracting much from the confusion of the authorities. Its very existence is denied by some—relationship is regarded rather as evidence of the probable existence of an insurable interest than as in itself giving rise to it. Thus May (§ 107) says: "Relationship seems not to be of importance except as tending to give rise to the circumstances that justify a well-founded expectation of pecuniary advantage from the continuance of the life insured or risk of loss from its termination." And *Bliss on Insurance*, § 31, is to the same effect. This is, of course, based upon authority and it has been followed by various courts, notably in Illinois, Indiana and Missouri; opposed to it are many decided cases and still more dicta.

Why there should be this difference of opinion is not evident. The reason for requiring an interest is, of course, to be found in public policy; now, if a pecuniary interest will prevent gambling of this sort, will not natural love and affection? If a man is rich his death may be much more to his heir's advantage than his life. The pecuniary interest will not avail public policy here. And if a man is poor, often nothing but natural love and affection exists, apart from the ordinary considerations of the law, to prevent his murder. It is a somewhat curious fact that natural love and affection are recognized very generally as sufficient in the Federal courts and in those

of the Eastern States, while those of the Central and Western States incline rather to the basis of the pecuniary interest. But mere friendship, however intimate, is never recognized as the basis for a policy : *Condell v. Woodward*, 29 S. W. Rep. (Ky.) 714 (1895).

To examine, first, the opinions of the more important courts, it will be convenient to cite first the language of Bradley, J., in the leading case of *Conn. M. L. Ins. Co. v. Schaeffer*, 94 U. S. 457 (1876) :

"Precisely what interest is necessary, in order to take a policy out of the category of mere wager, has been the subject of much discussion. In marine and fire insurance, the difficulty is not so great, because there insurance is considered as strictly an indemnity. But in life insurance, the loss can seldom be measured by pecuniary values. Still, an interest of some sort in the insured life must exist. . . . 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. On this point, the remarks of Chief Justice Shaw, in a case which arose in Connecticut, (in which State the present policy originated), seem to us characterized by great good sense. He says : ' In discussing the question in this Commonwealth (Massachusetts) we are to consider it solely as a question of Common Law, unaffected by the Statute of 14 Geo. III., passed about the time of the commencement of the Revolution, and never adopted in this State. All, therefore, which it seems necessary to show, in order to take the case out of the objection of being a wager policy, is, that the insured has some interest in the *cestui que vie* ; that his temporal affairs, his just hopes and well-grounded expectations of support, of patronage, and advantage in life, will be impaired ; so that the real purpose is not a wager, but to secure such advantages, supposed to depend on the life of another ; such, we suppose, would be sufficient to prevent it from being regarded as a mere wager. Whatever may be the nature of such interest, and whatever the amount insured, it can work no injury to the insurers, because the premium is proportioned to the amount ; and whether the insurance be a

large or small amount, the premium is computed to be a precise equivalent for the risk taken. We cannot doubt,' he continues, 'that a parent has an interest in the life of a child, and *vice versa*, a child in the life of a parent; not merely on the ground of a provision of law that parents and grandparents are bound to support their lineal kindred when they may stand in need of relief, but upon considerations of strong morals, and the force of natural affection between near kindred, operating often more efficaciously than those of positive law': (*Loomis v. Eagle Life Ins. Co.*, 6 Gray, 399). We concur in these views."

The question litigated in this case was the right of a wife to insure her husband; and this is, therefore, in great measure a dictum, yet it represents very fairly the opinion of the United States Supreme Court. Thus Clifford, J., had said in *Ins. Co. v. Bailey*, 13 Wall. 616 (1871), that "a policy is not invalid as a wager-policy, if it appear that the relation, whether of consanguinity or of affinity was such, between the person whose life was insured and the beneficiary named in the policy, as warrants the conclusion that the beneficiary had an interest, whether pecuniary or arising from dependence or natural affection, in the life of the person insured."

We may compare with this the definition of Field, J., in the later case of *Warnock v. Davis*, 104 U. S. 775 (1881): "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 surety 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 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. Such policies have a tendency to create a desire for the event. They are, therefore, independently of any statute on the subject, condemned, as being against public policy." It is interesting, here, to note in passing the curious confusion of terms, the insured being spoken of as the assured, and *vice versa*.

These expressions of opinion have been very generally cited, and may be said fairly to represent the views of those courts that admit the sufficiency of interest arising from relationship. It now remains to examine a few cases in those courts, to see what the degree of the relationship must be, and a few cases in other courts, to see from what relationship a pecuniary interest is inferred.

Marriage will not, in general, give rise to an interest, save only in the case of husband and wife. The husband's interest may be based upon his right to her *consortium*, for any injury to which he would have had his action of trespass at Common Law; however, like hers in him, it may not unreasonably be looked upon as a natural consequence of the love and affection a husband and wife must be presumed to bear towards each other. (Cf. *Conn. M. L. Ins. Co. v. Schacffer*, 94 U. S. 457 (1876); *Corson's App.*, 113 Pa. 438 (1886)). The subject of insurance for the benefit of married women is now regulated by statute in very many of the States. These statutes provide usually that such policies shall be exempt from any claims against the husband's estate: (See 25 *Amer. L. Rev.* 185 (1891)); often, indeed, the maximum amount is limited, or what may be paid annually in premiums.

In this connection, we may refer very briefly to a leading United States case, *Washington Central Bank v. Hume*, 128 U. S. 195 (1885), and an article upon it by Professor Williston, in 25 *Amer. L. Rev.* 185 (1891), as illustrating a wife's interest in her husband's life. The question involved was her right to hold the fund when premiums upon insurance on his

life had been paid by an insolvent husband. The court awarded the whole fund to her on the ground, *inter alia*, that the policy rested mainly on her interest in his life. The application for one of these policies, it may be noted, was in her name, but the court appears not to have recognized any distinction between the principles involved in the several cases. All depend upon her interest. The distinction drawn is "between the transfer of a policy taken out by a person upon his insurable interest in his own life, and payable to himself or his legal representatives, and the obtaining of a policy by a person upon the insurable interest of his wife and children, and payable to them"—this, says Fuller, C. J., has been repeatedly recognized by the courts. The first is void, as against creditors under the Statute 13 Eliz., c. 5; concerning the second, the court says: "Conceding, then, in the case in hand, that Hume paid the premiums out of his own money when insolvent, yet, as Mrs. Hume and the children survived him, and the contracts covered their insurable interest, it is difficult to see upon what ground the creditors, or the administrators as representing them, can take away from these dependent ones that which was expressly secured to them in the event of the death of their natural supporter. The interest insured was neither the debtor's nor his creditors'. The contracts were not payable to the debtor, or his representatives, or his creditors. No fraud, on the part of the wife, or the children, or the insurance company, is pretended. In no sense was there any gift or transfer of the debtor's property, unless the amounts paid as premiums are to be held to constitute such gift or transfer. . . . But, even though Hume paid this money out of his own funds when insolvent, and if such payment were within the Statute of Elizabeth, this would not give the creditors any interest in the proceeds of the policies, which belonged to the beneficiaries for the reasons already stated."

This raises the question of the creditors' right to recover the premiums. "The premiums form no part of the proceeds of the policies and cannot be deducted therefrom on that ground," nor can they be on the ground that they were gifts

unlawfully made. "This argument in the interest of creditors concedes that the debtor may rightfully preserve his family from suffering and want. It seems to us that the same public policy which justifies this, and recognizes the support of wife and children as a positive obligation in law as well as morals, should be extended to protect them from destitution after the debtor's death by permitting him, not to accumulate a fund as a permanent provision, but to devote a moderate portion of his earnings to keep on foot a security for support already, or which could thereby be lawfully obtained, at least to the extent of requiring that, under such circumstances, the fraudulent intent of both parties to the transaction should be made out.

"And inasmuch as there is no evidence from which such intent on the part of Mrs. Hume or the insurance companies could be inferred, in our judgment none of these premiums can be recovered."

This result is severely criticized by Professor Williston : 25 *Amer. L. Rev.* 185 (1891).

Three possible dispositions of the fund, he finds from an examination of the authorities, have been suggested :

- (1) The wife is entitled to the whole of the proceeds ;
- (2) The wife is entitled to the whole of the proceeds less the amount of the premiums paid after insolvency ;
- (3) The wife can derive no benefit whatever from such a policy.

We will venture to suggest a fourth—that the wife is entitled to the surrender-value of the policy at the time of insolvency.

We have not space to examine Mr. Williston's article at length ; all the authorities are reviewed, and his conclusion is that the principle of the following of trust funds is applicable here. The creditors, therefore, may follow the premiums into the policy which they have been the means of creating or preserving as well as into land or stocks ; accordingly, the creditors are entitled to the premiums paid during insolvency, if the policy was taken out before insolvency, and to the whole fund if the policy was taken out after it. The statutes, he says, may regulate the matter as they will, but their very existence is an admission of the Common Law rule.

The suggestion that the wife is entitled only to the surrender-value of the policy at the time of insolvency is based upon the principle that the beneficiary has a vested right in the fund. A premium is regarded as a gift and the beneficiary cannot, in general, be changed at will : *Biddle on Ins.* § 285 ; *Washington Central Bank v. Hume*, 128 U. S. 198 (1885). The surrender-value at the time of insolvency belongs to the wife, for it could then have been demanded of the insurer ; everything realized in excess of this is the product of moneys devoted to this use during insolvency ; therefore, if the creditors can object to such payments of premiums and the doctrine of the following of trust funds applies, it would seem that this excess might well be awarded to the creditors.

Examining further interests arising from relationship, it appears that a father has an interest in his son's life : *Loomis v. Eagle Ins. Co.*, 6 Gray 396 (1856), and *vice versa* : *Reserve M. L. Ins. Co. v. Kane*, 81 Pa. 154, (1876). In the latter case, the court declares : " It would be technical in the extreme to say that a son has no insurable interest in his father's life." The cases cited are express authorities in support of these propositions, and to them might be added many weighty dicta both in the United States Supreme Court and elsewhere. (Cf. *Conn. M. L. Ins. Co. v. Schaeffer* ; *Warnock v. Davis* ; *Washington Central Bank v. Hume* ; *Loomis v. Eagle Ins. Co.* ; *Corson's Appeal*, etc., *supra* ; *Grattan v. National L. Ins. Co.*, 15 Hun (N. Y.) 74 (1878)).

Even when these relations arise from adoption, it would seem an interest exists : *Hodge v. Ellis*, 76 Ga. 272 (1886) ; and such an interest exists in the life of one standing *in loco parentis* toward the assured : *Carpenter v. U. S. L. Ins. Co.*, 161 Pa. 9 (1894) ; in these cases, however, a pecuniary interest is usually present as well.

Many of the dicta referred to will be found to assert an interest in lineals, but no case has been met with that directly decides this point on the basis of natural love and affection.

The relationship of brother and sister has been said to be on the border-line, and with the present paucity of authorities, it is difficult to say whether it will suffice or not. The trouble

comes from the fact that almost all the cases seem to be complicated by a pecuniary element that alone would give an interest. Thus in *Lord v. Dall*, 12 Mass. 115 (1815), the brother whose life was insured, was the sole dependence of his sister; *Keystone M. B. Ass'n. v. Beaverson*, 16 W. N. C. (Phila., C. P.) (1885), is the converse of this—a brother insured the life of his sister, whom he had supported without any expectation of repayment. *Aetna Ins. Co. v. France*, 94 U. S. 561 (1876), seems to be the only case deciding the point in favor of such an interest, yet even here it may well be said that the question did not arise; the policy was by one on his own life, and only the arrangement for the payment of the premiums would call for an interest in the beneficiary.

No interest would seem to arise from the relation of uncle or aunt and nephew or niece: *Corsons' Appeal*, 113 Pa. 438 (1886), nor, in fact, from any such collateral relationship: *Riner v. Id.*, 166 Pa. 617 (1895). It has been held in Pennsylvania that a step-son has no interest in his step-father: *Union B. M. A. Soc. v. MacDonald*, 122 Pa. 324 (1888), and to judge from the language of Clark, J., there is such an absolute lack of interest that no question of motive or *bona fides* can arise.

The principle underlying these cases appears to be that love and affection for the members of one's own immediate family of the whole blood will in these jurisdictions be presumed to exist, sufficient to comply with the requirements of public policy in the avoidance of wagers.

The cases in the courts where a pecuniary interest is required under all circumstances, need not detain us long. Many courts, indeed, prefer to rely rather on this element when it is present, and *Loomis v. Eagle L. Ins. Co.*, 6 Gray 396 (1856), is based upon both grounds. The same may be said of *Kane v. Ins. Co.*, 31 L. I. 196 (1874). An adult son had insured his father's life and the court held that aside from the mere ties of kindred he had a right to protect himself against the contingency of having to support his mother and brothers. The extreme to which the rule may be carried appears in the case of *Currier v. Continental L. Ins. Co.*, 57 Vt.

496 (1884), where it was said by Taft, J.: "We think that where no facts are shown in relation to the wife, the presumption is that the husband has an insurable pecuniary interest in her life, for he is entitled to her services; there are many cases where she is the real support of the husband and family. In all ordinary cases, the husband has, in fact, a deep interest in the continued life of the wife. Cases may exist where the husband has no interest whatever in his wife's life—she may be a burden, a hopeless maniac or an invalid, and such facts may require the application of a different rule. Ordinarily, we hold the presumption to be that the wife is a help-mate, and the husband has an interest in her living of a pecuniary nature."

Even before marriage a man and his future wife have a pecuniary interest in each other, arising from the contract and its anticipated advantages: *Corson's Appeal, supra*; *Chisholm v. N. C. L. Ins. Co.*, 52 Mo. 213 (1873). In this latter case, a woman insured her fiancé, paying the premiums herself, and he died before marriage. The court held that an uncertain interest like this was sufficient, and suggested that she might have had an action against him, had there been a breach of the contract.

In general, a strong probability of pecuniary advantage to be derived from the continuance of the life will be required by these courts just as if no relationship existed. Thus a father can insure a minor son, for he is entitled to the latter's earnings, and a son can insure his father, if he is, by law, entitled to support and maintenance if in need; but a grandson cannot insure his grandfather: *Burton v. Conn. M. L. Ins. Co.*, 18 Ins. L. J. 713 (1889); nor a man his brother or his mother-in-law: *Lewis v. Ins. Co.*, 39 Conn. 100 (1874); *Rombach v. Piedmont & Arlington Ins. Co.*, 35 La. Ann. 233 (1883), for here no such liability to support exists. Nor can an uncle insure his nephew or *vice versa*: *Singleton v. St. L. M. Ins. Co.*, 66 Mo. 63 (1877), in which many authorities are reviewed.

The rule is unquestionably often a harsh one, as in *Mitchell v. National L. Ins. Co.*, 45 Me. 104 (1858), where it was held

that a father could not insure the life of his son, unless he still had a claim to his services, or a relation of debtor and creditor subsisted. The rule had its origin, doubtless, in the evils of the so-called "graveyard insurance," yet we cannot but feel that in many cases it might profitably be relaxed.

The question of the *quantum* of insurable interest is of importance. The courts have declared repeatedly that if one holding an interest of trifling value insure it for a disproportionate sum, this will be gambling as much as is insurance without interest.

In England, the Statute 14 Geo. III., c. 48, § 3, provided that "no greater sum shall be recovered or received from the insurer or insurers than the amount of value of the interest of the insured." This was construed in *Hebdon v. West*, 3 B. & S. 578 (1863). The plaintiff had a pecuniary interest in the insured, and had taken out a number of policies thereon, aggregating much more than his interest. One insurer defended, on the ground that the plaintiff had already received on other policies more than his interest, and the plea was sustained upon demurrer. The court held that, "though, upon a life policy, the insurable interest at the time of making the policy, and not the interest at the time of the death, is to be considered," the original interest is the limit of recovery. The interest may be fully insured for greater security in each of several companies, as is sometimes done in marine insurance, but only a single recovery is permissible. This provision of the Statute makes the contract strictly one of indemnity during the continuance of the interest, as regards moneys received from the insurers. It will be noticed that the Statute does not refer to moneys received from other sources, and the insurers remain liable, therefore, to the full amount of the original interest, even if the interest has terminated or the loss been made good *aliunde*.

In the Supreme Court of the United States, the question arose in *Cannack v. Lewis*, 15 Wall. 643 (1872), and a policy for \$3000 to cover a debt of \$70 was declared "a sheer wagering policy." The rule there laid down was stated more succinctly in *Conn. Mut. L. Ins. Co. v. Schaeffer*, 94 U. S.

457 (1876): "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." This has often been cited, as in *Crotty v. Union M. Ins. Co.*, 144 U. S. 621 (1891).

A more liberal rule has been adopted in Texas, and perhaps some other States, where a creditor may insure his debtor's life to any reasonable amount, and reimburse himself for his expenses in carrying the policy: *Levy v. Taylor*, 66 Tex. 652 (1886); *Goldbaum v. Blum*, 79 Tex. 638; 15 S. W. Rep. 564 (1891).

What discrepancy is permissible has been examined recently in Pennsylvania, in *Ulrich v. Reinoehl*, 143 Pa. 238 (1891). A creditor accepted a policy of \$3,000 on the life of an insolvent debtor in satisfaction of a debt of \$100, and the claim was made against the creditor by the debtor's executor that the contract was a wager. Paxson, C. J., referred briefly to the earlier cases, explaining that they furnished no satisfactory guide, and then proceeded to an examination of the question. We quote at length from his opinion:

"It is settled law that a creditor has an insurable interest in the life of his debtor, but up to this time there is no decision as to the limit of this right. . . . Starting out with the conceded proposition that a creditor has an insurable interest in the life of his debtor and may lawfully take out a policy thereon, it follows logically that he may take out the policy in such a sum as may reasonably secure the debt. It needs no argument to show that if my debtor owes me one thousand dollars, a policy for one thousand dollars would be inadequate, for if my debtor dies within twenty-four hours after the policy is taken out, I am a loser by the amount of the premium paid, and it would be but a few years before the interest on the debt and the premiums would exceed the debt. Every future payment, then, would be a loss, with the only alternative of adding to this loss year by year or abandoning the policy altogether, and sinking the whole amount paid. It seems clear upon reason that the creditor may take out a policy in excess

of his debt. But to what excess? The answer to this question obviously depends upon circumstances. An important element in the consideration of this question is the age of the assured. The difference between a policy on the life of a man of twenty-five years of age and one of seventy-five is clear to the dullest understanding. The assured was only forty-two years of age, and his expectancy of life was twenty-six years. The chances were greatly in favor of his living out his expectancy. The Carlisle Tables were prepared with care by competent experts, and are the result of actual experience. I am, therefore, justified in saying that the chances were in favor of the assured living out his expectancy, in which case, there would be the loss of interest on the debt for twenty-six years, added to the dues and assessments with interest thereon for the same period. The evidence shows that in such an event, the defendants would have been losers by a considerable sum. In fact, I infer from the tables furnished, that after about seventeen years the defendants would have carried this policy at a loss. The defendants assumed this risk when they took out the policy. . . .

In order to ascertain whether an insurance is disproportioned to the debt, regard must be had to the age of the assured, his expectation of life, and the cost of carrying the insurance, with interest thereon, as well as upon the amount of the debt. The evidence which forms the subject of the first assignment was not only proper but essential to an intelligent understanding of the case. . . .

The rule we now announce may not be the best, but we have not been able to find a better, after a most careful and anxious consideration of the question. . . . We are of opinion that a creditor may lawfully take out a policy on the life of his debtor to an amount sufficient to cover the debt with interest, and the cost of such insurance with interest thereon, during the period of the expectancy of life of the assured according to the Carlisle Tables."

The creditor's only hope of gain is in the early decease of his debtor. It is obvious, taking into account the debt itself and the interest thereon—compound interest it should be,

accurately to represent the expense of the insurance—and the premiums and the interest thereon, that if the debtor die very soon a comparatively slight excess of insurance above the debt will make the creditor whole. But the odds are much against this. In an average case, the premiums and interest thereon will theoretically equal the face of the policy if the insurer's profit be disregarded; therefore only the premiums and interest charges saved by a premature death can be applied to the satisfaction of the debt and all its accumulated interest. As we approach the calculated expectancy of life, more nearly to equalize the chances of death, the number of premiums so applicable is decreased and the interest charges are increased, until finally a single premium with the interest for one premium-period upon the premium-account must almost equal the debt with the interest charges thereon. And this calculation disregards the insurer's profits. By this time the insurance has become so great as to defeat its own object if the debt is of any magnitude, yet the debtor must die at least one premium-period before his expectancy merely to make the creditor whole. This means that the odds must always be against the creditor.

The assumption, of course, on which this calculation is based is that the policy is newly issued and that the creditor and the company can invest their money to the same advantage. It need hardly be said that the matter is radically different when an old policy is taken by assignment as security for the debt. Such a policy has already acquired a surrender-value and the premiums are smaller than they would be on a new one. This discussion, too, does not apply to insurance effected for a short and definite term to protect a debt. The purpose of such insurance is really indemnity, obtained by accepting a small and certain loss which will guard against a threatened and greater one. A further analogy to fire and marine insurance consists in the fact that death is not a certain event within the term of the policy, as it is in insurance upon the whole life, and the premiums, therefore, are less than the corresponding premiums on a life-policy under the "level-premium" system.

The practice of taking out an insurance policy in payment

of a debt appears, therefore, to be fallacious. As between the insurer and the assured, the matter is even enough—the premiums represent the value of the insurance with a commission for services and, perhaps, something towards a reserve fund, and, in an average case, neither party can really be said to make a profit out of the other. The difficulty comes from the fact that the creditor's chances are always weighted down by the debt and its interest account.

From this it appears that under the prevailing system of insurance it is a mathematical impossibility to reach the limit set by the court in *Ulrich v. Reinohl*, which is the limit that should be reached to give the assured complete protection; the conclusion, therefore, is forced upon us that no insurance of a creditor, whatever be the amount, can properly be considered excessive. This result, of course, is very unsatisfactory; the insurance must be greatly in excess of the debt to avoid almost certain loss, and when the insurance is sufficiently large to accomplish this, the cost is such that a court impressed with the dangers of insurance on life might well be inclined to impose a limit unduly restricted.

The question of the disposition of the fund when the beneficiary has no insurable interest in the life of the assured, or his interest is inadequate, is hardly relevant to an inquiry into the nature of an insurable interest. It may be stated, however, that, in general, the contract will be enforced as regards the insurer, but the beneficiary will be considered a trustee of the fund or of its surplus for the benefit of the personal representatives of the insured. There is some conflict in the decisions, but it is believed that this statement of the law is sustained by the weight of authority in the Federal and State courts.

From this review of the subject, the American courts appear to have differed widely in regard to the true nature of an insurable interest in life. The legislatures have interfered but little in the matter, and this branch of the law is, therefore, in great measure, judge-made; like the Rule against Perpetuities, it has been developed from time to time as necessity required, and the development has naturally varied in the courts of so

many jurisdictions. All the courts are agreed that an insurable interest is such an interest as a sound public policy requires one to have in the life of another before he may effect insurance thereon, "to prevent gambling on the chances of human life," but no satisfactory definition has yet been given. Mr. Biddle does not attempt one, but thinks (*Biddle on Ins.* § 187) that "we must conclude with Hoar, J., that in America 'the question, what is such an interest in the life of another as will support a contract of insurance upon the life, is one to which a complete and satisfactory answer, resting upon sound principles, can hardly yet be said to have been given:' *Forbes v. American M. Ins. Co.*, 15 Gray (Mass.), 249 (1860)."

The difficulty is doubtless due, at least in part, to the effect of relationship between the parties. In many jurisdictions, as has been shown at length, relationship gives rise to an interest, but on various grounds; in some jurisdictions, this interest is attributed to the natural love and affection subsisting between members of a family; in some, to the pecuniary interest that must be presumed to exist or that exists through the operation of statutes imposing the duty of affording support; in others, no effect whatever is conceded to it.

Some of the courts, notably the Supreme Courts of the United States, Massachusetts and Pennsylvania, have attempted elaborate definitions, of which the more important have already been quoted, but apparently none has yet been elaborated that is wholly satisfactory to the court enunciating it. The text-writers, as a rule, refrain from formal definition (see *May on Ins.*, *Cooke on Ins.*, *Bliss on Ins.*, *Beach on Ins.*, etc.), and quote these definitions and the accompanying *dicta* with the statement that a really good definition of an insurable interest seems impossible. In fact, many of those attempted are really descriptions.

The best, perhaps, are to be found in *Bunyon on Life Assurance*, § 12, stating the English rule, and in *Richards on Insurance*, § 27, stating the result of the American cases dependent upon a pecuniary interest.

"An insurable interest must be pecuniary; no ties of love

or affection are sufficient. The interest must arise out of some subsisting right of property which may be prejudicially effected by the occurrence of the event insured against, and which, whether in possession, in reversion, or contingent, would give the assured a standing in a Court of Equity if the title were in question:" *Bunyon on L. Ass.*, § 12.

"Every person has an insurable interest in the life and health of himself, on any person on whom he depends wholly or in part for education or support, of any person under a legal obligation to him for the payment of money, or respecting property or services of which death or illness might delay or prevent the performance, and of any person upon whose life any estate or interest vested in him depends:" *Richards on Ins.*, § 27.

Erskine Hazard Dickson.