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RESIGNATION OF PROF. PARSONS. We note with regret that Prof. James Parsons has resigned the chair of Partnership and Decedents' Estates, in the Law Department of the University of Pennsylvania. Professor Parsons has been connected with the Department twenty-two years, and the depth of his scholarship, the breadth of his learning, were never shown more conspicuously than in the last year of his service.

THE HENRY M. PHILLIPS PRIZE. The American Philosophical Society announces a prize of two thousand dollars in gold for the best essay on the following subject: *The development of the law, as illustrated by the decisions relating to the police power of the State.* Each essay must consist of not more than one hundred thousand words, and must reach Frederick Fraley, president of the American Philosophical Society, No. 104 South Fifth street, Philadelphia, not later than May 1, 1899. Full information will be sent on application to the Society.

USURY; CONTINGENT PAYMENT. The question of what constitutes usury has again been raised in the case of *Missouri, Kansas & Texas Trust Co.* v. *Krumseig*, 77 Fed. 32 (1897), which followed the decision in *Missouri, Kansas & Texas Trust Co.* v. *McLachlan*, 61 N. W. 560 (1894).

It has long been held that where the lender demands an excessive rate of interest, and at the same time there is a contingency upon the happening of which he gets no interest at all, or loses both principal and interest, the risk to the lender prevents the contract from being usurious. If the contingency operates to give the lender less than his due, the alternative possibility of his getting more is not illegal. But this exception to the usury law should not be broadly applied; if the lender, in the event of either alternative, is sure of his principal and legal interest, and the contingency merely affects his receipt of the excessive interest, he has nothing at stake to be lost by the happening of the contingency, and the contract is within the usury laws. Thus where the money is lent at the legal rate of interest, and the debtor is obliged to take out from the lender a policy on the debtor's or another's life, and pays to the lender the premiums on that policy, the loan and the contract of insurance are held to be one transaction, and the risk to the lender being only that he will not get the premiums, or excessive interest, if the life insured come to an end, the contract is usurious: *Missouri Valley Ins. Co.* v. *Kittle*, 2 Fed. 713 (1880); *National Life Ins. Co.* v. *Harvey*, 7 Fed. 805 (1881); *Miller* v. *Life Ins. Co. of Virginia*, 24 S. E. 484 (1896).

A fortiori, where the lender is secured against any loss whatever, even of excessive interest, and the contingency is immaterial as regards him, the contract must be held usurious. In *Trust Co.* v. *McLachlan*, (*supra*), the plaintiff loaned money to the defendant at an excessive rate, upon condition that the debt, principal and interest was to be cancelled by the death of the debtor. Had the contract stopped there it would have been valid; as the whole principal was at stake, the payment being contingent on the continuance of the debtor's life, the chance of losing all makes the possibility of the lender getting too much not illegal But this contract further stipulated that the lender might take out a policy on the life of the debtor, and thus indemnify itself against loss by his death, the cost of the premiums to the lender being included in the excessive rate of interest charged the debtor. The court said the contract was unique; that it was a scheme to cover usury by the color of a contingency, where none really existed. The contract was therefore held void. In the later case of *Missouri, &c.*, *Trust Co.* v. *Krumseig*, (*supra*), where the facts were exactly similar, the court said a bill in equity would lie to cancel a mortgage made under such a contract, and, under the Minnesota Statute, without the payment of lawful interest, the parties not being *in pari delicto*.

If we apply the test of usury to such a contract, we see that these decisions are clearly right. The plaintiff had nothing at stake under the contingency; if the debtor lived, he received the excessive interest, and his principal was secure; if the debtor died, he received the equivalent to the principal and excessive interest, by means of the insurance policy. There was no risk, and the contract was therefore usurious.

PRACTICE OF MEDICINE; MISDEMEANOR; EX POST FACTO LAWS. *People* v. *Hawker*, 46 N. E. Rep. 607. The extension of the constitutional doctrine of the police power of the states has apparently reached such a point that the individual rights of citizens can be seriously infringed upon in a *bona fide* exercise of that power. At least such is the decision in the recent case of *People* v. *Hawker*, 46 N. E. Rep. 607 N. Y. (1897). The defendant had been convicted under a statute declaring guilty of a misdemeanor any person who, after conviction of a felony, should practice medicine, the felony in this case having been committed before the passage of an act prescribing the qualifications for the practice of medicine, prohibiting any one from practising who had ever been convicted of a felony. The defense was that the statute was prospective in its application, or if it was not prospective, it was null and void as being in violation of the Constitution of the United States, forbidding the state to pass any *ex post facto laws*. The conviction was sustained, two judges concurring solely on the ground that the record did not show that the defendant had ever been a physician. Two judges dissented. The only serious contention involved in the case, was that the law was *ex post facto*. An *ex post facto* law is one that punishes as a crime an act done before its passage and which, when committed, was not punishable; an act that aggravates a crime or inflicts a greater punishment than the law annexed to it when committed; or a law which alters the rule of evidence so as to convict an offender. C. J. Chase, in *Calder* v. *Bull*, 3 Wall. 386. It was argued that, while the statute did not directly enlarge the punishment for the felony of which the defendant had been committed, it did deprive him of his rights of property, of the right to earn his living by the practice of medicine, and that in this way the punishment was aggravated. The court said the difficulty with that contention was, that the record did not show that the defendant had ever been a physician, and that no presumption could be indulged in to that effect. The court then went on to show that the exercise of the police power for the preservation of public health made necessary the subordination of the rights secured to the individual by the constitutional provision, that no person should be deprived of life, liberty or property without due process of law. Illustrating the thought, the court said, "the property of a citizen may be seized and burned if, in the judgment of physicians, it is infected and liable to cause the spread of contagious disease. He may be certified into an insane asylum or carted away into a pest-house and there restrained and imprisoned if, in the judgment of the physician, such a restraint is advisable." Continuing the same line of reasoning, the court said, "a state, in the exercise of its police power, might impose reasonable conditions under which individuals might practice medicine—that a provision that such individuals must be of good moral character was only reasonable—that the defendant having been convicted of felony the presumption of bad character attached to him, and that, therefore, this state statute deprived him of no rights secured by the

constitution, it not appearing that he had previously been a registered physician." Whether the decision would have been different if such had appeared is interesting to consider. Two of the judges concurring expressly on the ground that that feature did not present itself, while O'Brien, J., in a brief dissent, sums up his conclusion as follows: "The statute in question punishes the defendant for an offence committed twenty-five years ago, and of which he was then convicted and for which he was punished. The statute plainly inflicts an additional punishment, and is in conflict with the constitution." This case serves as an interesting illustration of what is apparently the true rule, that individual rights must, to a certain limit, bow before a legitimate exercise of the police power, having in view the interest of the public, *bona fide* designed to that end. It is to be hoped a final authoritative judgment will be arrived at by an appeal to the United States Supreme Court.

WILLS; DESIGNATION OF DEVISEES. *In Conway's Est.*, 181 Pa. 156 (May 3, 1897), a novel question was presented. The testator gave his residuary estate to his "spinster or unmarried nieces." Six of his nieces had never been married, two had been married and were widows; all were actually unmarried at the time of testator's death. The only cases brought to the court's attention were those which hold that the word "unmarried" ordinarily means "never having been married:" *Dalrymple* v. *Hall*, L. R. 16, Ch. D. 715 (1881); but that such meaning can be shown not to have been intended by reference to the context: *Mertens* v. *Walley*, L. R. 26 Ch. D. 575 (1883); *In re Leshingham's Trusts*, L. R. 24 Ch. D. 703 (1883). In the case under discussion the context furnished no clue as to testator's intention.

The court's decision was as follows: "The word 'or' must have been used either in connecting the word 'spinster' with a word he (testator) supposed to be its equivalent, by way of explanation, or conjunctively, in the sense of 'and.' If we assume that he used it in the former of these senses, then he was mistaken in the use of the word he selected to furnish an explanation of the word 'spinster,' and has failed in his effort to make his own purpose clear. If, on the other hand, we assume that he used the word conjunctively, then all his nieces become participants in his bounty in equal shares. The spinsters and the widows stood in the same relation to the testator; their actual condition was that of single or unmarried women; and no reason for discriminating between them appears in the will or in the circumstances presented by the case. This construction relieves the testator from the charge of mistake in his efforts to express his intention, from an arbitrary discrimination between those standing in the same degree of relationship to him, and works equality in the distribution of his estate."