## RECENT CASES.

BANKRUPTCY—PROPERTY TO WHICH TRUSTEE GETS TITLE—INSURANCE POLICIES—An insurance policy on life of bankrupt was payable to certain relatives, but reserved to bankrupt the absolute right to change the beneficiary. *Held:* Trustee in bankruptcy was entitled to the cash surrender value of the policy, under the Bankruptcy Act, July 1, 1898, c. 541, Sec. 70a, which provides that the trustee shall be vested with title to all . . . (3) Powers which the bankrupt might have exercised for his own benefit . . . and (5) Property which he could by any means have transferred: Provided, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may . . . pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of creditors . . . otherwise the policy shall pass to the trustee as assets. *In re* Samuels, 38 Sup. Ct. Rep. 36 (1917).

The interpretation of Sec. 70 has given the courts great difficulty. The thorniest question is what constitutes a cash surrender value. The proviso to Sec. 70a, 5 has been construed in the lower courts in two different ways. First, that all policies payable to the bankrupt were property which he might have transferred, and so passed to the trustee, except that the bankrupt could redeem those policies having a cash surrender value. *In re* Coleman, 136 F. 868 (1905); *In re* White, 174 F. 333 (1909); *In re* Hettling, 175 F. 65 (1909). A policy having no cash surrender value, but being valuable otherwise, passed to the trustee, but without being redeemable. *In re* Slingluff, 106 F. 154 (1900); Van Kirk v. Vermont Slate Co., 140 F. 38 (1905). This construction regarded the proviso as being passed in tenderness to the bankrupt. A second construction was that no policies passed to the trustee except such as had a surrender value, and they only to the extent of the surrender value if the bankrupt or his representatives paid that amount to the trustee. *In re* Welling, 113 F. 189 (1902). This regarded the proviso as additional legislation intended to prevent the trustee from simply gambling on the bankrupt's life, and so delaying the winding up of the estate.

Of course it is well settled that a trustee does not take title to a policy which gives nothing but the right to speculate on the bankrupt's life. Gould v New York Life Ins. Co., 132 F. 924 (1904). The difficulty is that a policy often has no cash surrender value, but a very great value as collateral for a loan, as for instance a tontine investment policy such as was dealt with in *In re* Slingluff, *supra*, and *In re* Mertens, 142 F. 445 (1906). In such a case the court insisted that there was no reason why the deposits of the assured in a life insurance company to secure a sum payable to himself at a given date if he should be then alive, should be treated differently from a similar contract with a savings bank: *In re* Slingluff, *supra*.

In the Supreme Court it was decided in Hiscock v. Mertens, 205 U. S. 202 (1907), that the cash surrender value need not be given by the terms of the policy if it exists by the practice of the company. This is now settled law. *In re* Herr, 182 F. 716 (1910). In Burlingham v. Crouse, 228 U. S. 459 (1912),

the court held that where there was no cash surrender value either by contract or custom of the company, the title did not pass. This seemed a clear adoption of the second construction. But in fact there was no value which the bankrupt could have transferred in that case, for the company had loaned the bankrupt the full surrender value on the policy as collateral. Under either construction, therefore, according to the rule in Gould v. Ins. Co., *supra*, the trustee could not take title to the policy. In Everett v. Judson, 228 U. S. 474 (1913), and Andrews v. Partridge, 228 U. S. 479 (1913), it was held that where the bankrupt died before the estate was closed, his representatives could retain the proceeds of the policy after paying the cash surrender value to the trustee. As in both cases there was by contract a cash surrender value, neither case is a rejection of the first construction.

In *In re* Hammel, 221 F. 56 (1916), the policy in question had a collateral loan value, but no surrender value, and was payable to wife of bankrupt with the right reserved to bankrupt to change the beneficiary. It was held, on the authority of Burlingham v. Crouse, *supra*, that the bankrupt would not be required to change the beneficiary to himself and raise a loan on the policy. This case seems clearly wrong, for the right was certainly a "power which the bankrupt might have exercised for his own benefit." The Circuit Court in the principal case, whose decision was reversed, decided the case on the apparent authority of *In re* Hammel, *supra*, forgetting the all important difference that there was in the principal case a cash surrender value, not merely a value as loan collateral. In doing so, they went in the face of the overwhelming weight of authority. *In re* Wolf, 165 F. 984 (1908); *In re* White, 174 F. 333 (1909); *In re* Hettling, *supra; In re* Orear, 178 F. 632 (1910); *In re* Herr, *supra; In re* Dolan, 182 F. 949 (1910); *In re* Jamison, 222 F. 92 (1915); Malone v. Cohen, 236 F. 882 (1916); *Contra, In re* Pfaffinger, 164 F. 526 (1908). They were properly overruled by the Supreme Court, which pointed out that the Circuit Court's decision would make an insurance policy a shelter for valuable assets, and a possible refuge for fraud.

BILLS AND NOTES—DURESS—THREATS OF PROSECUTION—The defendant was coerced into giving his promissory note to the plaintiff for his son's debt by the plaintiff's threats of criminal prosecution of the son. The threatened prosecution was lawful. *Held:* The lawfulness of the prosecution does not destroy the defence of duress in an action on the note. Kohler v. Savage, 167 Pac. 789 (1917).

Threats of prosecution of a wife, parent, or child have come to be generally recognized as exceptions to the old common law rule that, to sustain the defence of duress in an action on a contract, the threatened prosecution must have been against the contracting party. Embry v. Adams, 191 Ala. 291 (1915). However, some courts have refused their aid in cases of contracts induced by such threats where the prosecution threatened was lawful. Eddy v. Herrin, 17 Me. 338 (1840); Mascolo v. Montesanto, 61 Conn. 50, 55 (1891); Bailey v. Devine, 123 Ga. 653, 655 (1905). These cases seem to proceed on the theory that, the inducement of stifling a criminal prosecution having been illegal, the transaction is void; and both parties having

been equally guilty, neither will be helped, but they will be left as they then stand, even though the contract may have been executed. Adams v. Barrett, 5 Ga. 404 (1848); Booker v. Wingo, 29 S. C. 116, 122 (1887).

On the other hand, in the majority of jurisdictions, especially in modern decisions, it has been held that the lawfulness or unlawfulness of the threatened prosecution makes no difference; the coerced party in either event may be relieved. Hensinger v. Dyer, 147 Mo. 219, 227 (1898); Adams v. Irving Bank, 116 N. Y. 606 (1889); Williamson v. Ackerman, 77 Kan. 502 (1908).

Where relief has been granted, some of the decisions accord with the principal case in making duress, and the undue influence it implies, the grounds thereof. Morse v. Woodworth, 155 Mass. 233 (1891); Galusha v. Sherman, 105 Wis. 263, 277 (1900); Williamson v. Ackerman, *supra*. Other decisions have gone on the theory that such contracts are opposed to public policy. Budd v. Rutherford, 4 Ind. App. 386 (1891); McCormick Harvesting Machine Co. v. Miller, 54 Neb. 644 (1898); Gorringe v. Reed, 23 Utah 120, 131 (1901). By the latter reasoning, these contracts are absolutely void, and it has been held there can be no binding ratification of them. Stanard v. Sampson, 99 Pac. 796 (1909). However, where duress is made the ground of relief, it seems the contracts are merely voidable. Morse v. Woodworth, *supra;* Green v. Moss, 65 Ill. App. 594 (1896). Ratification may accordingly take place. Miller v. Minor Lumber Co., 98 Mich. 163 (1893). It has also been vaguely intimated that the right to avoid may even be lost by the laches of the obligor, but no decision or *dicta* definitely expressing this idea have as yet appeared.

MASTER AND SERVANT—PARENT'S LIABILITY FOR TORTS OF CHILD—INJURIES FROM AUTOMOBILE—The defendant bought an automobile for the enjoyment of himself and his family. His nineteen-year-old daughter, while driving the car, with her father's permission, for her own pleasure, injured the plaintiff. *Held:* The defendant was not liable for her tort. Blair v. Broadwater, 93 S. E. 632 (Va. 1917).

Apart from any question of agency, the general rule is that a father cannot, on the grounds of parental relationship alone, be held liable for injuries caused by the tortious acts of his minor child, with which he is in no way connected. Brohl v. Lingeman, 41 Mich. 711 (1879); Malmberg v. Bartos, 83 Ill. App. 481 (1898); Mirick v. Suchy, 74 Kan. 715 (1906). The rule has been stated that he is liable "only on the same grounds that he would be responsible for the wrong of any other person." Broadstreet v. Hall, 168 Ind. 192, 199 (1907). Accordingly the parent is liable in all jurisdictions when the child at the time of the act actually stood in the relation of servant to him, by virtue of his commands or express authorization. Schaeffer v. Usterbrink, 67 Wis. 495 (1886); Jennings v. Schwab, 64 Mo. App. 13 (1895); Broadstreet v. Hall, *supra*.

However, in some jurisdictions the doctrine has developed that, in cases like the principal case, where the father buys a car for the pleasure of his family, and his child drives it for his own accommodation, the child, while so engaged is the agent of his parent, and engaged in his business, and the

parent is therefore liable for his negligence. McNeal v. McKain, 33 Okl. 449 (1912); Marshall v. Taylor, 168 Mo. App. 240 (1912); Birch v. Abercrombie, 74 Wash. 486 (1913). These cases proceed on a presumption of an agency created by the parental relation. The father's liability is particularly strongly predicated when the son is driving some other members of the family, and not himself only. Winn v. Haliday, 69 So. 685 (1915).

It is well settled that any other person permitted to use an automobile for his own accommodation is not acting as agent for the accommodation of the owner. Steffen v. McNaughton, 142 Wis. 49 (1910); Hartnett v. Gryznish, 218 Mass. 258 (1914); Reilly v. Connable, 214 N. Y. 586 (1915). It is difficult to see, therefore, how a child under exactly the same circumstances becomes an agent by virtue of his relationship merely, and thus subjects his father to liability. Many jurisdictions have adopted this attitude, and hold in accord with the principal case. Doran v. Thompson, 76 N. J. L. 754 (1908); Parker v. Wilson, 179 Ala. 361 (1912); Blaricom v. Dodgson, 220 N. Y. 111 (1917).

Similar confusion exists on the question of the husband's responsibility for his wife's torts under the same conditions. Crawford v. McElhenney, 171 Ia. 606 (1915); Farthing v. Strouse, 172 App. Div. 523 (N. Y. 1916); Hutchins v. Haffner, 167 Pac. 966 (Col. 1917). The modern decisions, like the parent and child cases, are based on the doctrine of *respondeat superior*, and the common law theory of a husband's liability, to a great extent, for his wife's torts regardless of any agency, has been lost sight of, although the latter is by far the older doctrine, and probably the real historic basis for such decisions as hold him liable. Thus in both classes of cases it seems that the father's or husband's liability varies entirely with the court's willingness to adopt the presumption of an agency arising purely from the family relation.

MASTER AND SERVANT—WORKMEN'S COMPENSATION—RECOVERY FOR DISEASE—A workman inhaled dust from hides. The dust contained germs which got into his throat and caused his death from septic infection. *Held:* The workman's family was entitled to compensation. Dove v. Alpena Leather Co., 164 N. W. 253 (Mich. 1917).

The broad principles upon which recovery for disease under the Workmen's Compensation Acts may be had are well worked out. The diseases for which compensation is claimed may be those suffered independently of an accidental injury, or those suffered in connection with such an injury. The first class may again be divided into so-called occupational diseases which are a normal and expectable result of the employment, and diseases arising from some unusual condition of the employment.

In the absence of special provisions for certain specified occupational diseases, as in the English act, compensation for industrial diseases is almost everywhere denied. Steel v. Cammel [1905] 2 K. B. 232; Eke v. Hart-Dyke [1910] 2 K. B. 677. Most of the statutes require a compensable injury to be a "personal injury by accident." Four States, Michigan, Ohio, Connecticut, and Massachusetts omit the words "by accident." Of these, the Michigan courts have denied recovery on the ground that the word accidental was

used elsewhere in the statute. Adams v. White Lead Works, 182 Mich. 157 (1914). Connecticut and Ohio have also denied compensation, Industrial Commission v. Brown, 120 Ohio 309 (1915); Miller v. American Wire Co., 90 Conn. 349 (1915), on the grounds (1) That in those States theretofore the amount of the premiums had been calculated on the basis of injuries, not diseases and injuries, and (2) that there was grave practical difficulty in fixing a definite date as the beginning of disease. Massachusetts, however, allows compensation. *In re* Hurle, 214 Mass. 223 (1914); Johnson v. Accident Co., 217 Mass. 388 (1914). The reasons are: (1) That the same economic and humanitarian reasons that apply to compensation for accidents apply to occupational diseases. (2) While a temporary hardship will be worked through the fact that insurance was calculated on injuries, administrative construction cannot control judicial construction, and insurance rates will immediately adapt themselves to the change.

Even in Massachusetts, compensation for a general breakdown due to overwork or long continued strain is denied. *In re* Magelet, 116 N. E. 972 (1917). They hold, therefore, that a disease to be compensable must not merely develop during the employment, but must be caused by the conditions which the claimant must encounter therein, or by the peculiar character of the work which he is required to do. An injury which is gradual and extends over a long time is compensable only if peculiar to the employment. Of course, those jurisdictions which deny recovery for occupational disease deny it also for general breakdown. Walker v. Hockney Bros., 2 B. W. C. C. 20 (1909); Black v. New Zealand Shipping Co., 6 B. W. C. C. 720 (1913).

Diseases which are the result of some unusual incident of the employment, and not a reasonably to be anticipated result of pursuing the work are compensable. It can be said that they arose from some identifiable occasion, and therefore are distinguishable from occupational diseases. Kelly v. Coal Co., 4 B. W. C. C. 417 (1911); Alloa Coal Co. v. Drylie, 6 B. W. C. C. 398 (1913); Banbeary v. Clugg, 8 B. W. C. C. 37 (1914), all of which were enforced exposure cases; *In re* McPhee, 109 N. E. 633 (Mass. 1914); Vennen v. Lumber Co., 154 N. W. 640 (Wis. 1915); Plass v. Central New England R. R. Co., 155 N. Y. S. 854 (1915), a case of ivy poisoning; Larke v. Life Ins. Co., 90 Conn. 303 (1915), where erysipelas developed from frostbite; Hiers v. Hull, 164 N. Y. S. 767 (1915); Higgins v. Campbell [1905] A. C. 230, in both of which the entrance of a disease germ was held to be an accident in a business which was ordinarily healthy. Voluntary as distinguished from enforced exposure (see *supra*) is not compensable, for the injury must arise out of the employment as well as in the course thereof. McLuckie v. Watson, 6 B. W. C. C. 850 (1913). Sunstroke and heat prostration are compensable, Ismay v. Williamson, 1908 A. C. 437; Maskery v. Shipping Co., 7 B. W. C. C. 428 (1914), unless it can be said to be a probable result of the employment. Olson v. The Dorset, 6 B. W. C. C. 658 (1913). In a close case the decision of the arbitrator almost invariably stands.

The theory of all the above cases is that, provided there is an unusual combination of circumstances that could be called an accident connected with the injury, the accident need not happen to the workman so long as the injury afflicts him. The injury may develop a considerable time after the

accident. Connecticut in such cases denies compensation. Linnane v. The Aetna Brewing Co., 91 Conn. 158 (1916). The Connecticut courts hold that an accidental injury must be one simultaneous with the accident, and cannot be a mere accidental exposure from which injury develops after the lapse of some short time.