

Michigan, and it has been described as "practically ideal."<sup>17</sup> The first proposal is revolutionary. It makes possible the situation which it is the purpose of the hypothetical question to avoid, namely the giving of an opinion without letting the jury know beforehand the facts upon which it is based.<sup>18</sup> But while at fault theoretically, this proposal will work out better than the present hypothetical question, especially in those jurisdictions following the general rule that the hypothetical question need not contain all the facts bearing on the issue in the case. Under that rule the lawyer has more opportunity for abuse than he has under the minority rule, but the first proposal of the act will practically eliminate all abuse by the lawyer because the statement of the facts upon which the expert's opinion is based is shifted to the expert himself. The expert is also relieved of the necessity of giving opinions on cross examination in accordance with hypothetical variations. Furthermore, he is given the opportunity to base his opinion upon data which *he* thinks competent and relevant. While at first thought this might appear to be objectionable, it should work out to advantage,<sup>19</sup> especially in insanity cases, in connection with which criticism of the hypothetical question is most vigorous.<sup>20</sup> Continued decisions like that in the principal case emphasize the need of reform, if expert testimony is to be of real assistance in the securing of proper decisions upon complex issues of fact.

S. K.

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INSURANCE—RELATIONSHIP BY AFFINITY AS CONSTITUTING INSURABLE INTEREST—[Missouri].—The relationship of a son-in-law to the insured in an industrial life insurance policy was recently held to constitute an insurable interest in the father-in-law when coupled with the fact that the son-in-law had provided his father-in-law a home, taken care of him and paid his funeral expenses.<sup>1</sup>

While, apparently at common law, life insurance policies not supported

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17. 2 *Law and Contemporary Problems* 454 (1935).

18. 1 Greenleaf, *Evidence* (16th ed. 1899) sec. 441.

19. 2 *Law and Contemporary Problems* 455 (1935).

20. Glueck, *supra*, note 9, pp. 29 et seq.

1. *Chandler v. American Life & Accident Ins. Co.*, 96 S. W. (2d) 883 (Mo. App., 1936). Industrial insurance is distinguished from ordinary insurance in that the amounts are usually small and the premiums are paid at weekly intervals instead of annually, semi-annually, or quarterly. For definitions see *Ark. Crawford & Moses, Dig. Supp.*, 1927, sec. 6016e; *L. R. A.* 1916F 461. In Kentucky the requirement of insurable interest has been held unnecessary in industrial insurance on the ground that the purpose of such insurance is not to create a fund to provide for the future support of the insured's family, but to provide for the proper care of the insured in his last illness and a respectable burial. *Metropolitan Life Ins. Co. v. Nelson*, 170 Ky. 674, 186 S. W. 520, *L. R. A.* 1916F 457 (1916); *contra*, *Williams v. People's Life & Accident Ins. Co.*, 224 Mo. App. 1229, 35 S. W. (2d) 922 (1931).

by an insurable interest in the insured were valid and enforceable,<sup>2</sup> the doctrine of insurable interest is now firmly embedded in American law.<sup>3</sup> Where the policy is taken out by the insured himself for the benefit of another, the beneficiary need not have an insurable interest in the insured.<sup>4</sup> But where the contract is between the insurance company and a third party, the courts are insistent on his having such an interest.<sup>5</sup> This fundamental principle rests on two grounds: (1) the necessity that there be no possible incentive to take the life of the insured in order to procure the insurance money;<sup>6</sup> (2) the general policy against wagering contracts.<sup>7</sup>

In spite of their accord on the necessity of an insurable interest, the courts disagree as to what constitutes such an interest.<sup>8</sup> The most gener-

2. Vance, *Insurance* (2d ed. 1930) 147. The situation was changed by the enactment of the statute of 14 Geo. III, ch. 48, which forbade the making of such contracts and declared them void. Cf. *Whitmore et al. v. Sup. Lodge Knights & Ladies of Honor*, 100 Mo. 36, 46, 13 S. W. 495 (1890), where it is said that this statute was merely declaratory of the common law.

3. Vance, *op. cit.*, 148; 1 May, *Insurance* (3d ed. 1891) sec. 102; 1 Cooley, *Briefs on Insurance* (2d. ed. 1927) 370. In New Jersey policies without interest are still enforceable. *Howard v. Commonwealth Beneficial Ass'n*, 98 N. J. L. 267, 118 Atl. 449 (1922). To the effect that this is the only state so holding see Comment, 32 Yale L. J. 296 (1922).

4. Vance, *op. cit.*, 151-152 and cases cited therein. The theory is that every man has an insurable interest in his own life. See *Afro-American Life Ins. Co. v. Adams*, 195 Ala. 147, 70 So. 119 (1915). Professor Vance prefers the statement that in such cases the matter of insurable interest is immaterial. Vance, *ibid.* It appears, however, that although the policy was taken out by the insured, if the moving party was the beneficiary, who himself paid the premiums, the court will deny recovery. See *Cisna v. Sheibley*, 88 Ill. App. 385 (1899). The main rule has been changed in some states by statute, where it is required that in policies issued by assessment insurance companies the beneficiary *must* have an interest in the life of the insured. R. S. Mo. 1929, sec. 5751; Ill. Smith-Hurd Rev. Stats. 1935, ch. 73, sec. 310.

5. Vance, *op. cit.*, 151; 1 Cooley, *op. cit.*, 330.

6. For an analysis of these reasons see Patterson, *Insurable Interest in Life* (1918) 18 Col. L. Rev. 381. *Quaere* whether the criminal processes are not a sufficient deterrent to overcome this presumption. But see Patterson, *ibid.*, l. c. 389. Should the presumption be indulged merely because scattered cases of this kind have found their way into the courts? See *New York Mut. Life Ins. Co. v. Armstrong*, 117 U. S. 591, 6 S. Ct. 877, 29 L. ed. 997 (1886).

7. For definitions of "wagering contracts" see *Carhill v. Carbolic Smoke Ball Co.*, 2 Q. B. 484, 490 (1892); Restatement, *Contracts* (1932) sec. 520. Is the Law inconsistent in sanctioning gifts *inter vivos* and testamentary disposition of property, and opposing "wager" insurance policies? See Patterson, *supra*, note 6, l. c. 386-387. A distinction should be made between cases where the policy is taken out by a close relative, though not possessing a pecuniary interest in the insured, and those cases where the beneficiary is engaged in the *business* of wagering on life. See *Cisna v. Sheibley*, 88 Ill. App. 385 (1899).

8. Brothers have an insurable interest in the lives of each other because of relationship alone. *Century Life Ins. Co. v. Custer*, 178 Ark. 304, 10 S. W. (2d) 832, 61 A. L. R. 914 (1928). Close relationship (as between

ally quoted test, laid down as *dictum* by Mr. Justice Field in the Supreme Court case of *Warnock v. Davis*,<sup>9</sup> is that there must be a reasonable ground, founded on 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 insured.

The rule is firmly established that relationship by affinity alone is not enough to support a policy of life insurance.<sup>10</sup> While it is held that a wife and husband have an insurable interest in each other,<sup>11</sup> in cases involving mothers-in-law, fathers-in-law, sons-in-law, sisters-in-law, etc., the courts have applied the rule strictly, even in the face of facts negating both a gambling venture and the possibility of the murder of the insured. Thus it has been held that where the father-in-law himself procured the policy, naming his wife beneficiary, and on her death assigned it to two sons-in-law, the heirs of the father-in-law prevailed over the sons-in-law.<sup>12</sup> Even where the mother-in-law lived with her son-in-law and was dependent on him for support, he was held to have no insurable interest in her life.<sup>13</sup>

The instant case is an example of the liberal tendency of the Missouri courts in applying the doctrine of insurable interest in life.<sup>14</sup> In a leading case in this country the Supreme Court of Missouri held that a woman has an insurable interest in her fiancé.<sup>15</sup> And it has been decided in this state that the filing of a divorce suit by the wife does not destroy the interest of her husband.<sup>16</sup> But where a sister-in-law could show no reason outside a mere gambling intention, the St. Louis Court of Appeals held that she had no insurable interest in her brother-in-law.<sup>17</sup>

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father and adult son) is insufficient, but must be accompanied by a pecuniary interest. *Life Ins. Clearing Co. v. O'Neill*, 106 Fed. 800, 45 C. C. A. 641, 54 L. R. A. 225 (C. C. A. 3, 1901).

9. 104 U. S. 775, 779, 26 L. ed. 924 (1881).

10. *Vance, op. cit.*, 161; 1 *Cooley, op. cit.*, 387.

11. The apparent exception to the rule in favor of the wife rests on her legal right to support from her husband. The apparent exception in favor of the husband rests on his common law right to the services of the wife and, under the married women's acts, by which the wife is entitled to retain her own earnings, his expectation of services. *Vance, op. cit.*, 162. The right of the wife to insure her husband's life is recognized in some states by statute. R. S. Mo. 1929, sec. 5736; Ark. *Crawf. & Moses*, Dig. 1921, sec. 5579; Ill. *Cahill's Rev. Stats. of 1931*, ch. 73, sec. 342; Okl. *Stats. of 1931*, sec. 10518. See also 3 *Vernier, American Family Laws* (1935) sec. 230.

12. *Crismond's Adm'x. et al. v. Jones et al.*, 117 Va. 34, 83 S. E. 1045 (1915).

13. *Stambaugh v. Blake*, 15 Atl. 705 (Conn., 1888).

14. *Chandler v. American Life & Accident Ins. Co.*, 96 S. W. (2d) 883 (1936). The question does not seem to have been presented to the Kansas courts.

15. *Chisholm v. Nat. Capitol Life Ins. Co.*, 52 Mo. 213, 14 Am. Rep. 414 (1873).

16. *Bowers v. Missouri Mut. Ass'n*, 333 Mo. 492, 62 S. W. (2d) 599 (1933), *aff'g* 52 S. W. (2d) 599 (1932). Apparently this is merely a recognition of the general American rule that a policy valid at its inception is valid always. *Vance, op. cit.*, 149.

17. *Williams v. People's Life & Accident Ins. Co.*, 35 S. W. (2d) 922 (1931).

The Supreme Court of Oklahoma took a liberal view in holding a son-in-law to have an insurable interest in his mother-in-law, who had lived with him and looked after his home and children.<sup>18</sup> In Illinois it is said by way of *dictum* that a decree of divorce ordering the husband to pay his divorced wife alimony gave her an insurable interest in his life.<sup>19</sup> Where a man named his wife or his heirs as beneficiary in his policy, but on the wife's death changed the beneficiary to a married woman, later divorced, with whom he went to live and who took care of him until his death, an Illinois court held that she prevailed over his heirs.<sup>20</sup> In Arkansas it was decided that though a son-in-law has no insurable interest in his father-in-law, this defense can be asserted only by the insurer and not by a reinsurer.<sup>21</sup> It has been held in that state that a son-in-law had no insurable interest in the life of his father-in-law from the mere fact that the father-in-law lent the son-in-law money, was willing to lend him more and was kindly disposed to him, but the real basis for the decision seems to be that at the time the policy was taken out the father-in-law was 60 years old, thus giving rise to a suspicion that the policy was taken out as a wager.<sup>22</sup>

S. J. B.

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INSURANCE—TOTAL DISABILITY BENEFITS—CHRONIC INTOXICATION AS SELF-INFLICTED INJURY—[Oklahoma].—Is a disability resulting from chronic alcoholism the “result of a self-inflicted injury” within the meaning of that term as used in a life insurance policy providing for disability benefits? This question was recently answered in the negative by the Oklahoma Supreme Court on the facts in the case of *New York Life Insurance Company v. Riggins*.<sup>1</sup>

In this case by the terms of a life insurance policy the premiums were to be waived during the total disability of the insured. The policy also provided that the disability benefits were not to be available if the disability of the insured resulted from a “self-inflicted injury.” In an action on the policy the insurance company disclaimed liability because of non-payment of premiums. It contended that the disability benefits should not be allowed on the ground that the disability was caused by the chronic alcoholism of the insured which was due to his intentional drinking of intoxicating liquor, and hence was a “self-inflicted injury” within the terms of the policy.

In rejecting this contention the court pointed out that although the insured intended to drink the liquor, “he did not in fact intend to bring about

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18. *Mut. Aid Union v. Stephens*, 97 Okl. 283, 223 Pac. 648 (1924).

19. *Begley v. Miller*, 137 Ill. App. 278 (1907). The insured himself procured the policy, thus eliminating the necessity of her having an insurable interest in his life.

20. *Johnson v. Van Epps*, 14 Ill. App. 201, aff'd in 110 Ill. 551 (1883).

21. *American Ins. Union v. Manes*, 150 Ark. 315, 234 S. W. 496 (1921).

22. *Home Mut. Ben. Ass'n v. Keller*, 148 Ark. 361, 230 S. W. 10 (1921).

1. 61 P. (2d) 543 (Okla., 1936).