REVIEW OF RECENT DECISIONS

INSURANCE.

Columbian Circle v. Auslander, 135 N. E. Rep., 53. (Supreme Court of Illinois.) In Illinois and other states the persons who may be designated as beneficiaries in fraternal benefit societies are limited to certain designated members of the famly. Where a member of a fraternal benefit society designated as beneficiary a woman whom he falsely stated to be his wife, and thereafter he married that woman on the death of his first wife, the designated beneficiary was entitled to the benefit under a by-law of the society, providing that, in the absence of designation of beneficiaries, the wife should receive the benefit, even if it should be held that the designation of the wife was void.

National Life Insurance Co. v. Watson (Kentucky), 239 S. W. 35. Where the insurance contract provides that liability will not attach in case of suicide, held that the company will not be liable in the event of suicide, unless the insured was so devoid of mind that he did not know what he was doing, and did not intend to commit the act which resulted in his death, and the mere fact that it was committed as a result of an irresistible impulse or an insane impulse is not sufficient to render the company liable.

The Courts of several states have held that in case of suicide if the insured had sufficient intelligence to know what he was doing and what would be the probable effect of his act, that the company is not liable.

Woodmen of the World v. Alexander (Civ. App., Texas), 239 S. W. 343. In this case it is held that in an action on a beneficiary certificate, the presumption against suicide merely places on the party asserting it the burden of proof, but has of itself no probative force, and the finding of the jury that the assured did not commit suicide cannot be supported on the presumption the law indulges against it.

Koprivica v. Standard Accident Insurance Co. (St. Louis Court of Appeals), 218 S. W., p. 689. It is held that:

"In an action on policy insuring 'against loss resulting directly, exclusively, and independently of all other causes from bodily injury sustained * * * solely through external violent and accidental means,' plaintiff has the burden of proving sufficient facts from which a reasonable inference can be drawn that an injury received by accidental means was the sole cause of death."

"Proof that barrel of beer fell on insured, that he became sick, was put to bed, and on the following day was taken to a hospital, where he died six weeks later, warrants inference that accident caused death, but was overcome by positive evidence produced by insurer that immediate cause of death was pneumonia followed by congestion of the lungs, such evidence shifting burden on plaintiff to produce evidence tending to show that the congestion of the lungs

was caused or could have been caused by the accident, insurer, in absence of such evidence, being entitled to a directed verdict."

"Presumptions of fact proceeding from other facts in proof are rebuttable or disputable as a matter of course, and, since they merely amount to an assumption of what may be true, may be entirely overcome or removed from the case by competent proof going to supply the fact presumed."

Mayfield v. Montana Life Ins. Co., et al. (Montana), 205 Pac. Rep., p. 669. "Where general agent of an insurance company who had done considerable profitable business for the company, and who made it a practice to represent to prospective patrons that insurance taken out through him would be binding on the company from the date of the first year's premium, and the passing of a satisfactory medical examination, told an applicant who was particularly desirous of having his life insured at the time of the application by reason of a contemplated journey that the insurance would take effect from the payment of premium and the passing of a satisfactory medical examination, the conditions of the receipt issued providing that the insurance should not effect until approval of application at the company's home office were waived."

Camden Fire Ins. Assn. v. Prezioso (Court of Chancery of New Jersey), 116 Atl. Rep., 694: "An insurance company's right against a tort-feasor, through whose negligence loss occurred, to recover the amount paid on the policy covering such loss, is not barred by a settlement between the latter and the insured for a sum less than such tort-feasor's liability, though insured gave a full release; such release being a fraud on the insurer."

EFFECT OF POLICE POWER ON DUE PROCESS CLAUSE.

An interesting case in which these two constitutional points were considered was Pennsylvania Coal Company, Ptf. in error, v. H. J. Mahon *et al.*, decided Dec. 11, 1922, and reported at U. S. S. C Adv. Ops. 1922-23, p. 154. The Pennsylvania Coal Company owned a certain parcel of ground which they conveyed, by deed, to plaintiffs in this case in 1878. In the deed the Coal Company reserved the right to remove all the coal under the land—the plaintiffs taking the premises with the risk and waiving all claim for damages that might arise from mining out the coal. On May 27, 1921, an Act of Pennsylvania, commonly known there as the Kohler Act, was approved by the legislature. This Statute, or Act, prohibited the mining of anthracite coal in such way as to cause a subsidence of, among other things, a human habitation, with certain exceptions, including among them land where the surface is owned by the owner of the underlying coal, and is distant more than 150 feet from any improved property belonging to any other person. After the passage of this Act the grantees of the above property, H. Mahon *et al.*, sought by a bill in equity, to prevent the Pennsylvania Coal Company from mining under their property in such a way as to remove the supports and cause a subsidence of the