NOTES

THE HUMANITARIAN RULE—A POSITION OF PERIL DOCTRINE

The Missouri court, setting forth the constitutive facts of a cause of action under the humanitarian doctrine, has denominated the position of peril as the chief factor of liability.[1] The peril of the injured party has been described as "the real foundation upon which the structure of this doctrine rests,"[2] for the basic principle of the humanitarian doctrine is that, after plaintiff has come into a position of peril, defendant by the use of due care could have avoided injuring him.[3] Where the danger zone[4] commences is a question for the jury under the facts and circumstances of the case if there is a reasonable doubt.[5] The court, however, has been so frequently plagued with the problem of determining the pleading, proof and instruction which should govern the jury in ascertaining the existence of a position of peril that one may well wonder at the optimism of the St. Louis Court of Appeals when it stated:

> This opinion [referring to *Banks v. Morris*[6]] is such a masterful and succinct statement of the doctrine of the humanitarian rule as applied in this state that the bench and bar will have little difficulty hereafter in understanding what is necessary in pleading, proof, and instruction in this class of cases.[7]

The best known attempt at a general definition of the position of peril or, as it is often called, the position of imminent peril[8]

1. Banks v. Morris (1924) 302 Mo. 254, 257 S. W. 482, 484.
2. State ex rel. Vulgamott v. Trimble (1923) 300 Mo. 92, 253 S. W. 1014, 1019.
3. Alexander v. St. Louis & S. F. Ry. (1931) 327 Mo. 1012, 38 S. W. (2d) 1023, 1026; Bumgardner v. St. Louis Pub. Serv. Co. (1937) 340 Mo. 521, 102 S. W. (2d) 594, 597.
4. The terms "position of peril" and "danger zone" are used interchangeably. Keele v. Atchison T. & S. F. Ry. (1914) 258 Mo. 62, 167 S. W. 433, 438; State ex rel. Himmelsbach v. Becker (1935) 337 Mo. 341, 85 S. W. (2d) 420, 423. See Gaines, The Humanitarian Doctrine in Missouri (1934) 20 ST. LOUIS LAW REVIEW 113, 122.
5. Kloeckener v. St. Louis Pub. Serv. Co. (1932) 331 Mo. 396, 53 S. W. (2d) 1043, 1044; Homan v. Missouri Pac. R. R. (1933) 334 Mo. 61, 64 S. W. (2d) 617, 623.
6. (1924) 302 Mo. 254, 257 S. W. 482.
7. Wilsch v. Gleiforst (Mo. App. 1924) 259 S. W. 850, 852.
8. It is unnecessary that the words "imminent peril" be defined in the instructions since they are ordinary English words. Bryant v. Kansas City Rys. (1921) 286 Mo. 342, 228 S. W. 472, 474. In Nagle v. Alberter (Mo. App. 1932) 53 S. W. (2d) 289, 293, the court said that if defendant desired a more specific instruction, he should have asked for it.

is that of White, J., who said, "Peril would be imminent only when the ordinary and natural efforts to be expected in such person would not put him in a place of safety."[9] Also frequently recurring in attempts at definition are the statements that the word "peril" as used in the humanitarian doctrine means something more than a bare possibility of an injury occurring,[10] and that it is "not a contingent danger to a person in peril which brings into operation the humanitarian rule, but a certain danger."[11] The question to be considered here is what typical fact situations have been held to have created a position of peril.

The zone of peril when the plaintiff is *aware* of the approach of an oncoming vehicle is very narrow, so that, where plaintiff attempts to take the right of way or "beat it across," the duty of defendant to act does not begin until plaintiff is actually in the vehicle's path, or so close to it that it is apparent that he will not stop before reaching it.[12] Thus, in a case involving a plaintiff who was not oblivious, an instruction authorizing a verdict for plaintiff "if the jury find as said deceased approached and attempted to cross the tracks he was in a place of imminent and dangerous peril" was held erroneous as including within the danger zone the approach to the track.[13] Obliviousness on the part of plaintiff, however, widens the zone of peril beyond the path of the moving vehicle.[14] It is for this reason that an instruction is erroneous which authorizes the jury to find for the defendant if it should find that "plaintiff walked or moved directly into the path of defendant's said automobile at a time when defendant could not by the exercise of the highest degree of care avoid striking plaintiff."[15] The cases condemning such an instruction have involved oblivious plaintiffs and for this reason the

9. Banks v. Morris (1924) 302 Mo. 254, 257 S. W. 482; Ziegelmeier v. East St. Louis & Suburban Ry. (1932) 330 Mo. 1013, 51 S. W. (2d) 1027, 1029.

10. State ex rel. Vulgamott v. Trimble (1923) 300 Mo. 92, 253 S. W. 1014, 1019; Wallace v. St. Joseph Ry., L. H. and P. Co. (1935) 336 Mo. 282, 77 S. W. (2d) 1011, 1013.

11. Stewart v. Missouri Pac. R. R. (1925) 308 Mo. 383, 272 S. W. 694, 696; Perry v. Fleming (1927) 221 Mo. App. 1071, 296 S. W. 167, 170.

12. Stanton v. Jones (1933) 332 Mo. 631, 59 S. W. (2d) 648, 654; Smithers v. Barker (1937) 341 Mo. 1017, 111 S. W. (2d) 47, 52, and cases there cited.

13. Lamoreux v. St. Louis-S. F. Ry. (1935) 337 Mo. 1028, 87 S. W. (2d) 640, 642.

14. Clay v. Missouri Pac. R. R. (Mo. 1928) 5 S. W. (2d) 409, 412; Jordan v. St. Joseph Ry., L. & P. Co. (1934) 335 Mo. 319, 73 S. W. (2d) 205, 208.

15. Martin v. Fehse (1932) 331 Mo. 861, 55 S. W. (2d) 440, 442; Hawken v. Schwartz (Mo. App. 1934) 72 S. W. (2d) 877, 880; Prater v. Rausch (1939) 344 Mo. 888, 129 S. W. (2d) 910, 911.

court has been opposed to narrowing thus the limits of the position of peril.[16] However, in *Kirkham v. Jenkins Music Co.*, the court approved an instruction which authorized a verdict for defendant if the jury found that "plaintiff stepped out of said safety zone and into the path of defendant's * * * automobile in such close proximity that defendant could not by the highest degree of care have avoided striking plaintiff."[17] The cases condemning similar instructions were distinguished. It was pointed out that in this case, if plaintiff had continued to walk north, there would have been no collision, since defendant's car was also travelling north, and the possibility that she might go west out of the safety zone was not such certainty of peril as is required to create a position of peril. In the distinguished cases there was a certainty of peril even if the vehicles in question continued in their original courses.[18] In the recent case of *Branson v. Abernathy Furniture Co.*,[19] the court again distinguished the right-angle-crossing cases, in which the danger zones were wide because of plaintiff's obliviousness, from cases in which the original parallel paths of the moving vehicles do not make collision inevitable. In this case plaintiff and defendant were driving their automobiles in opposite directions on a highway when plaintiff's car skidded to the left so that defendant's car struck it. Since no collision would have resulted had both parties continued in the directions they were going and intended to go, the court held that there was a narrower zone of peril than in the right-angle-crossing cases.[20]

Despite this importance in many instances of the fact of obliviousness in the proof of a case under the humanitarian doctrine, it is not necessary to plead it, even in the absence of helpless peril.[21] Nor is it necessary that an instruction require the jury to find that plaintiff was oblivious, so long as it requires that plaintiff be found to have been in a position of peril.[22] In *Perkins*

16. See Burke v. Pappas (1927) 316 Mo. 1235, 293 S. W. 142, 146, where the court said, "Under the humanitarian doctrine * * * the driver of an automobile cannot supinely wait until the pedestrian takes the last step into the direct path of the automobile before acting to avoid injuring the pedestrian, but his duty to stop the automobile, or warn the pedestrian of impending danger, we think, arises upon the first appearance of danger."

17. (1937) 340 Mo. 911, 104 S. W. (2d) 234, 235.

18. Id. at 236.

19. (1939) 344 Mo. 1171, 130 S. W. (2d) 562.

20. Id. at 569.

21. Banks v. Morris (1924) 302 Mo. 254, 257 S. W. 482, 485.

22. Karte v. J. R. Brockman Mfg. Co. (Mo. 1922) 247 S. W. 417, 423; Wenzel v. Busch (Mo. 1923) 259 S. W. 767, 771; Barnes v. Terminal R. R. Ass'n (1938) 343 Mo. 589, 122 S. W. (2d) 907.

v. Terminal Railroad Association[23] the court, in a four to three decision, went even further and approved an instruction which authorized the jury to determine whether plaintiff was "approaching" and was "in a position of peril," without requiring a finding of obliviousness.[24] Gannt, J., in whose dissent Frank, J., concurred, agreed that obliviousness is not an ultimate fact to be pleaded under the humanitarian doctrine, where the proof shows plaintiff was in a position of peril, but felt that it must be pleaded where plaintiff is only approaching a position of peril.[25] Ellison, J., in a separate dissent, disapproved of the instruction altogether.[26] A year later, the *Perkins* case, while not directly overruled, was modified in another *en banc* decision.[27] Ellison, J., now speaking for a majority of the court, condemned the use of the word "approaching" as indefinitely extending the field within which vigilance under the humanitarian doctrine was to be exacted.[28] It has now been settled that it is reversible error to impose a duty upon a defendant when plaintiff is approaching, entering, or coming into a position of peril.[29] This is so even though the jury is required to find also that the plaintiff was oblivious to his peril.[30] The court, in *State ex rel. Snider v. Shain,* though conceding that obliviousness may extend the zone in which a situation of peril arises, nevertheless maintained that the duty of defendant does not begin until the situation of peril arises.[31] It is doubtful whether, in this particular case, the instruction[32] did mislead the jury. It required them to find not only

23. (1937) 340 Mo. 868, 102 S. W. (2d) 915, 920.

24. See id. at 932, for earlier cases approving such "approaching instructions." State ex rel. Himmelsbach v. Becker (1935) 337 Mo. 341, 85 S. W. (2d) 420, 423.

25. Perkins v. Terminal R. R. Ass'n (1937) 340 Mo. 868, 102 S. W. (2d) 915, 924.

26. Id. at 935.

27. Buehler v. Festus Merc. Co. (1938) 343 Mo. 139, 119 S. W. (2d) 961. Two judges concurred only in the result.

28. Id. at 970.

29. Kick v. Franklin (1939) 345 Mo. 752, 137 S. W. (2d) 512, 515. The words "immediately coming into" in the instruction, while severely condemned, were not held reversible error in this case because the balance of the instruction made it clear that no duty was imposed until after the plaintiff was in imminent peril. See also Hilton v. Terminal R. R. Ass'n. (1940) 345 Mo. 987, 137 S. W. (2d) 520, 522.

30. State ex rel. Snider v. Shain (1940) 345 Mo. 950, 137 S. W. (2d) 527, 529. See Larey v. Missouri-K. T. R. R. (1933) 333 Mo. 949, 64 S. W. (2d) 681, 683; State ex rel. Himmelsbach v. Becker (1935) 337 Mo. 341, 85 S. W. (2d) 420, 423; Crews v. Kansas City Pub. Serv. Co. (1937) 341 Mo. 1090, 111 S. W. (2d) 54, 57.

31. (1940) 345 Mo. 950, 137 S. W. (2d) 527, 529.

32. "* * * if you further find that at said time and place * * * plaintiff * * * was in or coming into a position of peril of being struck by defendant's

that defendant ought to have seen plaintiff coming into the path of his automobile, but also that plaintiff was both actually and apparently oblivious to any impending danger.

A judge of the Supreme Court of Missouri recently expressed the belief that the case of *Banks v. Morris*,[33] which definitely established the rule that obliviousness is only an evidentiary fact, should be overruled.[34] In connection with the instruction under consideration in the *Perkins* case, he pointed out that it was illogical not to require an instruction on obliviousness, since it was obliviousness which made plaintiff's position perilous and which was, therefore, essential to plaintiff's case.[35] Logic equally demands that, in any case where plaintiff's obliviousness enlarges the danger zone, the jury be instructed as to it. Although the court has held that a finding of obliviousness need not be required by instruction, its decisions show that both a "reasonable appearance" of obliviousness and actual obliviousness on plaintiff's part are necessary to extend the zone of peril. In a recent case the court said:

> It is the reasonable appearance of an intention to immediately go into the path of an oncoming vehicle without knowing of its approach, and actually not knowing, that places a person in a position of imminent peril from it, while far enough beyond its path to still be able to stop in time to avoid it if he knew it.[36]

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automobile * * * and was oblivious of such peril * * * and if you further find that defendant saw, or by the exercise of the highest degree of care could have seen the plaintiff in or immediately coming into a position of being struck and injured by defendant's automobile * * * and apparently oblivious of any impending danger."

33. (1924) 302 Mo. 254, 257 S. W. 482, 485.

34. Ellison, J., dissenting in Perkins v. Terminal R. R. Ass'n (1937) 340 Mo. 868, 102 S. W. (2d) 915, 934.

35. Ibid.

36. Poague v. Kurn (Mo. 1940) 140 S. W. (2d) 13, 19. See also Womack v. Missouri Pac. R. R. (1935) 337 Mo. 1160, 88 S. W. (2d) 368, 371, and cases there cited. Elkin v. St. Louis Pub. Serv. Co. (1934) 335 Mo. 951, 74 S. W. (2d) 600, 603. See Smithers v. Barker (1937) 341 Mo. 1017, 111 S. W. (2d) 47, 52, where the fact situation under consideration is presented under two headings—"reasonable appearances" and "actual facts."

It should be noted that unusual circumstances, even where plaintiff is not oblivious, may widen the danger zone. In Bode v. Wells (1929) 322 Mo. 386, 15 S. W. (2d) 335, 337, plaintiff started across a street car track at the usual stopping place, signalling the motorman to stop by waving an uplifted umbrella. It was held that the danger zone was not bounded by the near rail of the track where she was struck because it was easy to see that she intended to cross the track. This case was distinguished in McGowan v. Wells (1930) 324 Mo. 652, 24 S. W. (2d) 633, 638, where it was held that plaintiff did not enter the danger zone until he took the last step or so before going into the course the street car would take since plaintiff saw the car coming, walked at an ordinary gait, and did not signal

On a number of occasions the Missouri court has cited section 480 of the *Restatement of the Law of Torts*[37] as authority for the proposition that it is not enough to allow recovery under the humanitarian doctrine that plaintiff was oblivious to his peril in a case establishing a wide zone of peril, but that it must further appear that plaintiff's obliviousness was sufficiently apparent so that it could have been known in the exercise of ordinary care.[38] It should be noted that section 480 of the Restatement is not a statement of the Missouri humanitarian doctrine, which does not require that defendant knew of plaintiff's situation.

On the basis of the cases, a recent article on the humanitarian doctrine,[39] although recognizing that it is not mandatory, advocates requiring an instruction on obliviousness for the reasons that

> (a) it would make clearer to the jury the meaning of imminent peril and why it arises; (b) it would help circumscribe the arguments made to juries; and (c) it is appearances reasonably indicating obliviousness of danger that extend the rule beyond what otherwise would be the last clear chance zone of peril, * * *.[40]

Ellison, J., has pointed out that an examination of the Missouri cases will show that in many instances plaintiffs have *from*

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the car. See Schinogle v. Baughman (Mo. App. 1921) 228 S. W. 897, and cases there cited (pedestrian aware of approach of vehicle yet unconscious of his peril).

37. Restatement, *Torts* (1938) sec. 480; comment b. "*When defendant can assume plaintiff will avoid danger.* It is not enough that the defendant should see the plaintiff in a position which would be dangerous were the plaintiff not aware of what is going on. The defendant must also realize or have reason to realize that the plaintiff is inattentive and, therefore, in peril. The defendant is entitled to assume that the plaintiff is paying or will pay reasonable attention to his surroundings; until he has reason to suspect the contrary, he has no reason to believe plaintiff is in any danger. Therefore, the defendant is liable only if he realizes or has reason to realize that the plaintiff is inattentive and consequently in peril."

38. Crews v. Kansas City Pub. Serv. Co. (1937) 341 Mo. 1090, 111 S. W. (2d) 54, 57; Poague v. Kurn (Mo. 1940) 140 S. W. (2d) 13, 18; Camp v. Kurn (Mo. 1940) 142 S. W. (2d) 772, 775. In Womack v. Missouri Pac. R. R. (1935) 337 Mo. 1160, 88 S. W. (2d) 368, 371, 372, "reasonable appearances" were first, plaintiff did not look toward the train, second, the road was in such a slick, muddy condition that it might reasonably be inferred that the driver's close attention was required to stay on it, and third, the car continued at the same speed all the way up the incline to the railroad track.

39. Trusty, Humanitarian Rule in Missouri (1940) 11 Mo. B. J. 88, 96. See Trusty, *Constructing and Reviewing Instructions* (Mo. ed. 1941) 169, sec. 29.

40. I. e., the extension of the position of peril beyond the zone where plaintiff could not escape by exercising due care.

choice pleaded, proved, and asked instructions on the theory that they were oblivious of the peril or unable to extricate themselves.[41]

We have already noted that the position of peril means more than the bare possibility of an injury occurring—that it is a certain, not a contingent, danger.[42] With only this generalized verbalism as a guide, the court has been called upon to decide in cases involving fact situations more complicated than ordinary collision cases whether a position of peril exists. In a leading case,[43] the plaintiff rode in a freight car, partitioned in the center, one-half of which contained his horses. A sudden stopping of the train threw one of the horses through the partition upon the plaintiff. The court conceded that plaintiff was not in a safe place but held that his position was not so perilous as to bring him within the humanitarian rule. Again, riding on the ladder of a rapidly moving freight car was held to be a dangerous way to travel but not a perilous position within the meaning of the humanitarian rule.[44]

The ease with which one may change the course of an automobile, as contrasted with a railroad train or street car, has also given rise to peculiar problems in ascertaining the position of peril. In one case,[45] defendant was driving a truck eastward while plaintiff was going westward on a motorcycle. When defendant reached a north and south street, he turned left without giving any warning and struck plaintiff. The court held that plaintiff was not in a position of peril until defendant turned left. Similarly, where plaintiff pulled out to the left to get by a taxi-cab standing on the right, and defendant, going in the opposite direction, pulled out from behind an automobile in front of him and struck plaintiff's car, the court said that plaintiff was not in a position of peril until defendant's car turned to the left to pass around the car in front of him.[46] These decisions suggest the problem which arises where the facts of the case indi-

41. Perkins v. Terminal R. R. Ass'n (1937) 340 Mo. 868, 102 S. W. (2d) 915, 932.

42. See notes 10 and 11, supra.

43. State ex rel. Vulgamott v. Trimble (1923) 300 Mo. 92, 253 S. W. 1014, 1018.

44. Stewart v. Missouri Pac. R. R. (1925) 308 Mo. 383, 272 S. W. 694, 695. In this case plaintiff voluntarily jumped off at his destination. The court said that, even conceding plaintiff was in a position of peril, he would have been unable to recover. One may doubt whether the same decision would have been reached had the train been operated so as to put plaintiff in real danger of being thrown off or of jumping off involuntarily.

45. Phillips v. Henson (1930) 326 Mo. 282, 30 S. W. (2d) 1065, 1067.

46. Dilallo v. Lynch (1936) 340 Mo. 82, 101 S. W. (2d) 7, 10.

cate that the same negligent act both gave rise to the position of peril and caused the injury. In several cases the court has allowed recovery in such a situation. Thus, in *Huckleberry v. Missouri Pacific Railroad*,[47] plaintiff was standing near defendant's right of way where there were pools of gasoline from overturned tank cars. Defendant's wrecking crew operated the engine so as to cause sparks to ignite the gasoline and burn the plaintiff. The court held that plaintiff was in a position of peril, reasoning that, although in the absence of fire plaintiff's position was safe, in the presence of fire it was extremely perilous.[48] In *Bobos v. Krey Packing Co.*[49] plaintiff was injured because of the negligent starting of a truck while he was climbing upon it with his hand on the handrail. The court said:

> The position of plaintiff while in the act of climbing onto the truck, considered with reference to its standing still, or moving slowly, was no doubt a comparatively safe one, but with reference to the truck's being "suddenly and violently started forward" it was extremely perilous. There was therefore a "present existence" of plaintiff's perilous position before the driver started the truck.[50]

Despite these cases, the court, in apparently similar fact situations, has refused to allow recovery. In *Ridge v. Jones*,[51] plaintiff was injured because of the negligent starting of an automobile, which skidded into him as he stood with his hand on the door immediately after alighting. The court here ruled that plaintiff was not in a position of peril until the car started, after which time nothing could have been done to avert the injury, and thus the humanitarian doctrine did not apply. The court distinguished those cases allowing recovery despite the fact that the negligent act causing the injury also created the peril on the ground that, in those cases, the plaintiffs were "in immediate peril if such act was committed—not necessarily perhaps that *injury* was *certain* to follow the negligent act, but that the *peril* was certain and imminent."[52]

Consider the similarity of the fact situations distinguished. In *Bobos v. Krey Packing Co.*,[53] the court found a present ex-

47. (1930) 324 Mo. 1025, 26 S. W. (2d) 980.
48. Id. at 984.
49. (1927) 317 Mo. 108, 296 S. W. 157.
50. Id. at 161. See Weed v. American Car and Foundry Co. (1929) 322 Mo. 137, 14 S. W. (2d) 652; Menard v. Goltra (1931) 328 Mo. 368, 40 S. W. (2d) 1053.
51. 335 Mo. 219, 71 S. W. (2d) 713.
52. Id. at 715.
53. (1927) 317 Mo. 108, 296 S. W. 157.

was perilous with reference to the truck's being violently started the truck, because his position (beside truck, hand on hand rail) was perilous with reference to the truck's being violently started forward. Yet, the court refused to say, in *Ridge v. Jones*,[54] that plaintiff's position (beside automobile, hand on door) was equally perilous with reference to the automobile's being negligently started. The cases can be distinguished only with difficulty. Both logic and the "precepts of humanity and natural justice,"[55] from the latter of which it has been said that the humanitarian doctrine flows, would seem to indicate that drivers of automobiles should be required equally to avoid skidding into persons standing beside them as to avoid striking pedestrians who walk or stand in their paths.[56] Later cases indicated that the court has followed the reasoning of *Ridge v. Jones* which must be regarded as a more restrictive interpretation of what constitutes the position of peril.[57]

In restricting the limits of the position of peril the court directly restricts the operation of the humanitarian doctrine. Once the defendant's position of peril is ascertained the duty of plaintiff is such that the defense of contributory negligence no longer exists. The Missouri doctrine is really a position of peril doctrine. Recently the Missouri rule has been subjected to thoughtful questioning. It has been suggested that the entire doctrine be reappraised with due regard to the conflicting social interests involved.[58] The court realizes the strain placed upon the Missouri rule by modern, fast-moving motor traffic.[59] By broadly construing the position of peril, the court may be placing on drivers of automobiles duties which the law should not require them to assume, duties developed in the days when the only vehicles that moved at great speed were railroad trains or street cars.[60] In default of a thorough reconsideration, the courts

54. (1934) 335 Mo. 219, 71 S. W. (2d) 713.

55. Banks v. Morris (1924) 302 Mo. 254, 257 S. W. 482, 484.

56. For a contrary viewpoint see Comment (1941) 6 Mo. L. Rev. 118.

57. See Duckworth v. Dent (Mo. App. 1939) 135 S. W. (2d) 28, rev'd (Mo. 1940) 142 S. W. (2d) 85, comment (1940) WASHINGTON U. LAW QUARTERLY 482; Roach v. Kansas City Pub. Serv. Co. (Mo. 1940) 141 S. W. (2d) 800, comment (1941) 6 Mo. L. Rev. 118.

58. McCleary, The Bases of the Humanitarian Doctrine Reexamined (1940) 5 Mo. L. Rev. 56, 88.

59. Crews v. Kansas City Pub. Serv. Co. (1937) 341 Mo. 1090, 111 S. W. (2d) 54, 57.

60. See id. at 57, 58, where the court said, "Our humanitarian doctrine holding liable an oblivious operator, who could have seen an oblivious person approaching the path of his vehicle, was developed in the days when the only vehicles that moved at great speed were railroad trains or street cars running on a track. * * * In other words, in such cases obliviousness could

may be able by manipulation of the concept of "position of peril," to confine the operation of the doctrine within socially desirable bounds.

ALVIN M. EXTEIN.

RIGHTS OF BENEFICIARY AND TRANSFEREE AS AFFECTED BY ASSIGNMENT OF A LIFE INSURANCE POLICY

When the person who contracted for insurance on his own life assigns the contract to another, the rights of the assignee are essentially dependent upon and interwoven with the rights of the beneficiary and of the person who took out the policy. Partly because of this fact, and partly because the courts have dealt more fully with problems of change of beneficiary than with problems of assignment, the first part of this paper will be devoted to a consideration of the rights of a beneficiary in the event of an attempted change of beneficiary. This background is necessary in order to consider later the effect of an assignment. In dealing with cases involving life insurance contracts, courts frequently speak of the "insured." In the case of insurance procured by a person upon his own life, payable to another, however, both the applicant and the named beneficiary may be said to be "insured." For purpose of differentiation, the designation *cestui que vie* will be applied to the person upon whose life the policy is issued. The person to whom the proceeds of the policy are to be paid will be called the beneficiary. An assignment may be made in a state other than the place of application for the policy or the home office of the company, thereby raising problems of the proper choice of law to govern the transaction. Neither problems of conflict of laws nor problems of assignment for collateral security will be considered here.[1]

The first English life insurance policies apparently contained no clause reserving the right to change the beneficiary. That

not widen the zone of peril very far. It may not work so well in the case of 2 equally speedy vehicles like automobiles which run anywhere in the street, with a wide zone of peril because of the speed of many feet (or yards) per second which obliviousness could widen to more than 100 feet * * * Whatever may be the ultimate solution for the new strain placed upon the fair and just operation of our humanitarian doctrine by modern fast-moving traffic, the question cannot be answered here."

1. Although some of the assignments in cases cited hereafter were made for purposes of collateral security, those cases are here cited for their treatment of general assignment problems rather than for their treatment of other phases of assignment for collateral security.