

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

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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.

this policy form was carried over into early American law is evident from the many reported cases involving such policies. Its adoption was probably due to a number of factors: the historical dependency of American law on English precedent, the evolution of the third party beneficiary contract, and the rising tendency to protect the family by giving a married woman statutory power to contract for insurance on the life of her husband. When the insurance contract does not reserve a right to change the beneficiary, courts have held uniformly that the beneficiary takes a vested interest which is not subject to change without his express consent.² The interest vests in him from the time of "delivery" of the policy as that term has been variously defined by the courts.³ In connection with contracts in which no power is reserved to change the beneficiary, no problem of assignment arises except from the assignment by the beneficiary of his own interest. But by the terms of such a policy, the *cestui que vie* who applies for the insurance may reserve to himself certain conversion rights, or the right to control of the proceeds upon the prior death of the named beneficiary. An assignment of the policy by the *cestui que vie* under these circumstances passes only those rights expressly reserved by him.⁴

It later became common practice to insert a "reservation of right" clause in the policy reserving the power to change the designation of the beneficiary in a case where the *cestui que vie* was the applicant. Only this type of policy will be considered in this paper.

The rights of the *cestui que vie* and of the beneficiary are determined by the contract of insurance, and the interest of the *cestui que vie* is limited by rights existing in the designated beneficiary. The rights of the assignee are necessarily derivative from the assignor. Consequently, when the *cestui que vie* attempts to transfer the insurance policy, the effective creation of rights in the assignee depends on the nature of the beneficiary's interest in the policy. It therefore becomes necessary to observe

2. Vance, *Insurance* (2d ed. 1930) Sec. 144, 145, pp. 541-551. Wisconsin formerly held contra, but this has been changed by statute. Wis. Stats. (1937) Ch. 246, sec. 246.09 and see *Christman v. Christman* (1916) 163 Wis. 433, 157 N. W. 1099.

3. Patterson, *The Delivery of a Life-Insurance Policy* (1919) 33 Harv. L. Rev. 198.

4. Vance, *op. cit. supra* note 2, at sec. 147, p. 566; *Hubbard v. Stapp* (1889) 32 Ill. App. 541; *Pierce v. Charter Oak Life Ins. Co.* (1884) 138 Mass. 151; *Mo. State Life Ins. Co. v. Calif. State Bank* (1919) 202 Mo. App. 347, 216 S. W. 785; *St. John v. Am. Mutual Life Ins. Co.* (1855) 13 N. Y. 31, 64 Am. Dec. 529; *Alday v. Reliance Life Ins. Co.* (Ga. 1939) 5 S. E. (2d) 707.

the nature of the beneficiary's interest in the light of various attempts to affect that interest. From these observations, analogies may be drawn to aid in the treatment of certain problems in the less settled field of assignment.

By compliance with formal procedure for changing the beneficiary under the reservation of right clause, the *cestui que vie* may at any time transfer the potential receipt of benefit under the policy from one beneficiary to another, without the consent of the former.⁵ This procedure, in general, consists of giving to the company a written notice, accompanied by the policy for indorsement; the change takes effect at the time of indorsement but in certain circumstances may be held to relate back to the act of the *cestui que vie*.⁶ With the advent of this clause it became necessary for courts to reexamine the interest of the beneficiary. Some courts, influenced by prior decisions, held that the beneficiary still had a vested interest in the proceeds of the policy, but that the reservation of right clause made this vested interest subject to divestment. Other courts decided that under such a clause the interest of a beneficiary did not come into existence until the *cestui que vie* died without having effected a change of beneficiary.

Various interpretations have been made by different courts in defining the nature of the beneficiary's interest under a policy containing a reservation of right clause. Thus, it has been denominated "vested subject to being divested," "vested subject to a condition," "conditional," "contingent," an "expectancy" and a "mere shadowy interest."⁷ Further, several terms of varying connotation seem to be used synonymously in the course of

5. Vance, *op. cit. supra* note 2, at sec. 147, p. 566; Potter v. Northwestern Mutual Life Ins. Co. (Ia. 1933) 247 N. W. 669; Toussant v. Nat. Life & Accident Ins. Co. (1920) 147 La. 977, 86 So. 415; Davis v. Modern Industrial Bank (N. Y. 1939) 18 N. E. (2d) 639; Met. Life Ins. Co. v. Olsen (1923) 81 N. H. 143, 123 Atl. 576.

6. There are several reasons for such relation back. In some instances equity will uphold the charge where compliance with formalities was beyond control of the party attempting to effect the transfer. For a discussion of the points see *infra* page 526.

The reservation of right clause contained in some policies requires that consent of the insurer be given to the change, and that this consent be shown by the indorsement on the policy. In these circumstances indorsement is a discretionary act. See generally, in this connection, E. M. Grossman, Problems of the Insurer when Attempted Change of Beneficiary Is Incomplete, Assoc. of Life Ins. Counsel Papers, Dec. 6, 1932, 413, 443.

7. See Vance, *op. cit. supra* note 2, at sec. 147, p. 562. See also Johnson v. N. Y. Life Ins. Co. (1914) 56 Colo. 178, 138 Pac. 414; Freund v. Freund (1905) 218 Ill. 189, 75 N. E. 925; and Neary v. Mutual Life Ins. Co. (1918) 92 Conn. 488, 103 Atl. 661.

a single opinion.⁸ The only profitable inquiry must therefore involve the nature of the interest in the beneficiary which courts have recognized, rather than the labels which they apply.

Many jurisdictions hold that, under an attempt to transfer beneficial rights to another, the prior named beneficiary has such interest that he may require at least substantial compliance with provisions of the reservation of right clause.⁹ Drawing an analogy to, and in some instances even citing as precedent, the cases upholding as indefeasibly vested the interest of a beneficiary under a policy without such clause,¹⁰ these courts view the reservation of right clause as an encroachment on what was formerly recognized as a vested interest, and construe it strictly. They regard compliance with formalities of the clause as a condition precedent to the divesting of the beneficial interest.¹¹ Under this view, the formalities are for the protection of the beneficiary,¹² and the insurance company cannot, by waiver of compliance, divest his interest.¹³

A number of jurisdictions, however, regard the interest of the beneficiary as insufficient to enable him to require substantial compliance with provisions of the policy regarding change of

8. See, for example, the dissent in *Neary v. Mutual Life Ins. Co.* (1918) 92 Conn. 488, 103 Atl. 661, which uses most of these terms.

9. *Johnson v. N. Y. Life Ins. Co.* (1914) 56 Colo. 178, 138 Pac. 414; *Met. Life Ins. Co. v. O'Donnell* (1917) 11 Del. Chanc. 404, 102 Atl. 163; *Sheppard v. Crowley* (1911) 61 Fla. 735, 55 So. 841; *Freund v. Freund* (1905) 218 Ill. 189, 75 N. E. 925; *Indiana Nat. Life Ins. Co. v. McGinnis* (1913) 180 Ind. 9, 101 N. E. 289; *Ehlermann v. Bankers' Life Ins. Co.* (1924) 199 Ia. 417, 200 N. W. 408; *N. Y. Life Ins. Co. v. Murtagh et al.* (1915) 137 La. 760, 69 So. 165; *Kockanek v. Prudential Life Ins. Co.* (1928) 262 Mass. 174, 159 N. E. 520; *McKinney v. Fidelity Mut. Life Ins. Co.* (1917) 270 Mo. 305, 193 S. W. 564; *Met. Life Ins. Co. v. Tesauro* (1923) 94 N. J. Eq. 637, 120 Atl. 918; *City Nat'l Bank v. Lewis et al.* (1918) 73 Okla. 329, 176 Pac. 237; *Gannon v. Gannon* (1926) 88 Pa. Super. Ct. 239; *John Hancock Mut. Life Ins. Co. v. Bedford et al.* (1914) 36 R. I. 116, 89 Atl. 154; *Wannamaker v. Stroman* (1932) 167 S. C. 484, 166 S. E. 621 (the court apparently has returned to the requirement of substantial compliance after a period of uncertainty); *Cronbach v. Aetna Life Ins. Co.* (Tenn. 1926) 284 S. W. 72; *Christman v. Christman* (1916) 163 Wis. 433, 157 N. W. 1099.

10. *Neary v. Mut. Life Ins. Co.* (1918) 92 Conn. 488, 103 Atl. 661.

11. *Johnson v. N. Y. Life Ins. Co.* (1914) 56 Colo. 178, 138 Pac. 414; *Ehlerman v. Bankers' Life Ins. Co.* (1924) 199 Ia. 417, 200 N. W. 408; and cases cited *supra* note 9.

12. *Hurst v. Mut. Res. Fund Life Ins. Co.* (1893) 78 Md. 59, 26 Atl. 956; *Cockrill v. Southwestern Life Ins. Co.* (Tex. 1937) 103 S. W. (2d) 399; *Sullivan v. Maroney* (1910) 77 N. J. Eq. 565, 78 Atl. 150.

13. *Slurzberg v. Prudential Life Ins. Co.* (N. J. 1936) 192 Atl. 451; *Douglass v. Equitable Life Ins. Soc.* (1922) 150 La. 519, 90 So. 834; *Wilkie v. Phila. Life Ins. Co.* (S. C. 1938) 197 S. E. 375; *Hotel-Men's Mut. Ben. Ass'n v. Brown* (1887) 33 Fed. 11; *Muller v. Penn. Mut. Life Ins. Co.* (1916) 62 Colo. 245, 161 Pac. 148.

beneficiary before his rights under the policy are extinguished.¹⁴ These courts are agreed that prior to the death of the *cestui que vie* the beneficial interest has no concrete form, and that provisions of the clause are for the benefit of the company and so may be waived by it;¹⁵ these courts, however, are not in accord as to the time or method of such waiver.

Thus, some courts hold that upon death of the *cestui que vie* the beneficial interest vests absolutely in the person recognized as beneficiary by the company at that time; any act relied on as a waiver must have taken place prior to that time.¹⁶ Other courts of this group permit the company to effectuate many acts of the *cestui que vie* from which the intent may be inferred as sufficient to effect a change of beneficiary,¹⁷ although these acts do not amount to substantial compliance. This is on the ground that the *cestui que vie* should be permitted to change the beneficiary at any time until the very moment of his death, and that to require notice of such desire to be communicated to the company in time to permit a recognition of the change before death would deprive the *cestui que vie* of a part of his contract rights.¹⁸ Upon this basis, an insurer may waive compliance with the formalities even after death of the *cestui que vie*. Such waiver is said to be

14. *Mente v. Townsend* (1900) 68 Ark. 391, 59 S. W. 41; *Morrison v. Mutual Life Ins. Co.* (1940 Cal.) 103 P. (2d) 963; *Ratray v. Banks* (1924) 31 Ga. App. 589, 121 S. E. 516; *Daugherty v. Daugherty et. al.* (1913) 152 Ky. 732, 154 S. W. 9; *Atl. Mut. Life Ins. Co. v. Gannon et. al.* (1901) 179 Mass. 291, 60 N. E. 933; *Hooton v. Hooton et. al.* (1925) 230 Mich. 689, 203 N. W. 475; *Hogue v. Minn. Packing Co.* (1894) 59 Minn. 39, 60 N. W. 812; *Lamar Life Ins. Co. v. Moody* (1920) 122 Miss. 99, 84 So. 135; *LaBorde v. Farmers' State Bank* (1927) 116 Neb. 33, 215 N. W. 559; *White v. White* (1922 N. Y.) 194 N. Y. S. 114; *Atkinson v. Met. Life Ins. Co.* (1926) 114 Ohio St. 109, 150 N. E. 748; *McNeill v. Chinn* (1907) 45 Tex. Civ. App. 551, 101 S. W. 465.

15. *Taylor v. Southern Bank & Trust Co.* (1933) 227 Ala. 565, 151 So. 357; *Daugherty v. Daugherty et. al.* (1913) 152 Ky. 732, 154 S. W. 9; *Smith v. Pac. Mut. Life Ins. Co.* (Neb. 1936) 265 N. W. 534; See also cases cited supra note 14.

16. *Clark v. Met. Life Ins. Co.* (1926) 126 Me. 7, 135 Atl. 357; *Strianese v. Met. Life Ins. Co.* (N. Y. 1927) 221 App. Div. 81, 223 N. Y. S. 16; *Berg v. Damkoehler* (1902) 112 Wisc. 587, 88 N. W. 606; *Colonial Trust Co. v. Scranton Life Ins. Co.* (1921) 30 Pa. Dist. R. 954; *Carson v. Carson* (Okla. 1933) 26 P. (2d) 739.

17. *John Hancock Mut. Life Ins. Co. v. White* (1898) 20 R. I. 457, 40 Atl. 5; *Martinelli v. Cometti et. al.* (1929) 133 Misc. (N. Y.) 810, 234 N. Y. S. 389; *In re Hills* (1924) 123 Misc. (N. Y.) 762, 206 N. Y. S. 220; *Daugherty v. Daugherty et. al.* (1913) 152 Ky. 732, 154 S. W. 9; *Bank of Belzoni v. Hodges et. al.* (1923) 132 Miss. 238, 96 So. 97; *LaBorde v. Farmer's State Bank* (Neb. 1927) 116 Neb. 33, 215 N. W. 559; *Atkinson v. Met. Life Ins. Co.* (1926) 114 Ohio St. 109, 150 N. E. 748.

18. *Atkinson v. Met. Life Ins. Co.* (1926) 114 Ohio St. 109, 150 N. E. 748.

evidenced by a payment to the substituted beneficiary,¹⁹ or by the filing of a bill of interpleader in a contest between persons claiming the beneficial interest.²⁰

Strictest compliance with the formalities for changing the beneficiary is not required by courts of either group, and equity will uphold the change if the cause of variance is beyond control of the party attempting to effect the transfer of beneficial interest.²¹ Thus, if the original beneficiary is in possession of the policy and refuses to surrender it, presentation of the policy to the company for indorsement will not be required.²² If the *cestui que vie* takes effective steps for a change of beneficiary but dies before indorsement of the policy by an officer of the company, the change will be regarded as complete if the indorsement be considered a mere ministerial act.²³ Where, however, by the court's interpretation of the clause, consent of the company to the transfer is discretionary, equity will not enforce the change.²⁴ Equitable enforcement of an attempted change of beneficiary operates independently of any waiver of compliance with formalities by the company, and so is effective in those jurisdictions which hold that compliance with formalities is a condition precedent to affecting the beneficiary's interest, as well as in those states which hold such compliance to be for the benefit of the insurer.

19. *In re Hills* (1924) 123 Misc. (N. Y.) 762, 206 N. Y. S. 220; *Allis v. Ware* (1881) 28 Minn. 166, 9 N. W. 666; *Norfolk Nat'l Bank v. Flynn* (1899) 58 Neb. 253, 78 N. W. 505; *Gosling v. Caldwell* (1878) 1 Lea. (Tenn.) 454, 27 Am. Rep. 774.

20. *McDonald v. McDonald* (Ala. 1924) 102 So. 38; *Daugherty v. Daugherty et. al.* (1913) 152 Ky. 732, 154 S. W. 9; *Bank of Belzoni v. Hodges et. al.* (1923) 132 Miss. 238, 96 So. 97; *Atkinson v. Met. Life Ins. Co.* (1926) 114 Ohio St. 109, 150 N. E. 748.

21. *N. Y. Life Ins. Co. v. Rose et. al.* (1924) 70 Cal. App. 175, 233 Pac. 343; *Gannon v. Gannon* (1926) 88 Pa. Super. Ct. 239; *Quist v. Western & Southern Life Ins. Co.* (1922) 219 Mich. 406, 189 N. W. 49; *Hoskins v. Hoskins* (1929) 231 Ky. 5, 20 S. W. (2d) 1029; *Teague v. Pilot Life Ins. Co.* (1931) 200 N. C. 450, 157 S. E. 421.

22. *John Hancock Mut. Co. v. Bedford et. al.* (1914) 36 R. I. 116, 89 Atl. 154; *N. Y. Life Ins. Co. v. Rose et. al.* (1924) 70 Cal. App. 175, 233 Pac. 343; *Kavanagh v. New Engl. Mut. Life Ins. Co.* (1925) 238 Ill. App. 72; *N. Y. Life Ins. Co. v. Cook et. al.* (1927) 237 Mich. 303, 211 N. W. 648; *Aherns v. First Nat'l Life, H. & A. Ins. Co.* (1927) 6 La. App. 661.

23. *Wentworth v. Equitable Life Assur. Soc.* (1925) 65 Utah 581, 238 Pac. 648; *Met. Life Ins. Co. v. Clanton et. al.* (1909) 76 N. J. Eq. 4, 73 Atl. 1052; *LaBorde v. Farmer's State Bank* (1927) 116 Neb. 33, 215 N. W. 559; *Stewart v. Stewart* (1930) 90 Ind. App. 620, 169 N. E. 593; *Teague v. Pilot Life Ins. Co. et. al.* (1931) 200 N. C. 450, 157 S. E. 421; *Brown v. Home Life Ins. Co.* (1925) 3 F. (2d) 661.

24. *Freund v. Freund* (1905) 218 Ill. 189, 75 N. E. 925; *Herrod v. Kimbrough* (1924) 83 Pa. Super. Ct. 238; *Lewis v. Reed* (1920) 48 Cal. App. 742, 192 Pac. 335; See also *Sheppard v. Crowley* (1911) 61 Fla. 735, 55 So. 841, based on statutory interpretation.

Although the right of assignment by the *cestui que vie* and the beneficiary of their respective interests under the policy exists wholly apart from any contractual provisions, as a characteristic of a non-negotiable chose in action,²⁵ the right to change the beneficiary does not exist in the absence of a provision in the insurance contract. Provisions in the policy in regard to assignment are generally limited to statements that the company will not be responsible for the validity of an assignment, and that the company will not be deemed to have had notice of the assignment (for purpose of payment) until a written copy is filed at the home office.²⁶ Such provisions are simply attempts on the part of the insurer to avoid liability arising out of an assignment transaction, and have not affected the decisions of most courts as to the effect of an assignment on the beneficiary's interest.

The effect upon the interest of the beneficiary of various situations arising out of an assignment of the insurance policy has not been completely considered in any jurisdiction, and less than one-half the states have any cases on the point at all. Authority is thus lacking for much of the following analysis, which is developed by analogy from treatment by the courts of attempts to change the beneficiary.

An assignment of the policy transfers power to change the beneficiary and control of the policy from the *cestui que vie* to the assignee. The latter, by executing that power and by complying with policy provisions for a change of beneficiary, can transfer the interest of the former beneficiary to the assignee or to a third party.²⁷ This would be true even in a jurisdiction which holds the beneficiary's interest sufficient to enable him to compel substantial compliance with policy provisions to affect his interest.

In most instances, the assignee does not comply with policy provisions which would be necessary for an actual change of beneficiary, but stops with a notification to the company of the assignment to him. The question therefore arises whether notification to the insurer by the assignee of the transfer of the policy to him will have the same legal effect as if the assignee had exercised the power vested in him by the assignment and had

25. Vance, *op. cit. supra* note 2, at sec. 29, p. 74.

26. B. L. Holland, Assignment by Insured of policies which Reserve to the Insured the Right to Change the Beneficiary, *Assoc. of Life Ins. Counsel Papers*, May 24, 1928, 181.

27. *Douglass v. Equitable Life Assur. Co.* (1922) 150 La. 519, 90 So. 834; *Anderson v. Broad Street Bank* (1918) 90 N. J. Eq. 78, 105 Atl. 599; *Muller v. Penn. Mut. Life Ins. Co.* (1916) 62 Colo. 245, 161 Pac. 148.

actually effectuated a change of beneficiary. It has been pointed out above that the meager policy provisions relating to assignment have almost universally been considered by the courts as inserted solely for the protection of the insurance company. The answer to the question is dependent upon the view adopted by various courts regarding the nature of the interest of the beneficiary under a policy subject to a reserved power to change the beneficiary.

In jurisdictions which require substantial compliance with policy provisions to effect a change of beneficiary, the courts have generally held that notice of the assignment given to the company prior to the death of the *cestui que vie* is insufficient to affect the interest of the beneficiary.²⁸ Substantial compliance with policy provisions for changing the beneficiary is also required of the assignee.

In jurisdictions which are less stringent, it was noted above that the *cestui que vie* is permitted to change the beneficiary in circumstances not amounting to substantial compliance with the reservation of right clause. As to assignment, these courts have held that notice to the company, in the lifetime of the *cestui que vie*, of transfer of the policy will justify payment of the benefit to the assignee. The latter is thus protected even though no change of beneficiary was actually made.²⁹

28. Sullivan v. Maroney et. al. (1910) 77 N. J. Eq. 565, 78 Atl. 150; Anderson v. Broad Street Bank (1918) 90 N. J. Eq. 78, 105 Atl. 599; Met. Life Ins. Co. v. Zgliczenski (1922) 94 N. J. Eq. 300, 119 Atl. 29; Johnson v. N. Y. Life Ins. Co. (1914) 56 Colo. 178, 138 Pac. 414; Muller v. Penn. Mutual Life Ins. Co. (1916) 62 Colo. 245, 161 Pac. 148; Douglass v. Equitable Life Assur. Co. (1922) 150 La. 519, 90 So. 834; Goldman v. Moses (1934) 287 Mass. 393, 191 N. E. 873; Third Nat'l Bank of Lawton v. Lewis et. al. (1918) 73 Okla. 329, 176 Pac. 237; Barner v. Lyter (1906) 31 Pa. Super. Ct. 435; Warren v. Prudential Ins. Co. (Fla. 1939) 189 So. 412. But see Shay v. Merch. Banking Trust Co. (Pa. 1939) 6 Atl. (2d) 536 upholding such an assignment as against the beneficiary. The Pa. courts have required substantial compliance with policy provisions to change the beneficiary, and apparently this requirement still exists. Cody v. Metropolitan Life Ins. Co. (Pa. 1939) 5 Atl. (2d) 887. In the Shay case the court apparently bases its decision on the nominal difference between a change of beneficiary and an assignment rather than on the rights of the beneficiary under an insurance contract. Further, it is said that although the assignment is regarded as an attempted change of beneficiary which does not comply with policy provisions for such change, these provisions are for the benefit of the company and are waived by interpleader.

In S. C., a somewhat similar situation is created by the changing opinion of the court. At the present time substantial compliance is required to change the beneficiary, but an earlier case, permitting assignment of the policy to divest the beneficial interest, remains undisturbed. See cases cited *infra*, note 29.

29. Antley v. N. Y. Life Ins. Co. et. al. (1927) 139 S. C. 23, 137 S. E. 199 (overruling Barron v. Liberty Nat. Bank (1925) 131 S. C. 443, 128

In the event that no notice of an assignment of the policy was given to the company until after the death of the *cestui que vie*, several situations are presented. Those jurisdictions which regard the interest of the beneficiary as such that he may compel substantial compliance with the reservation of right clause before his interest is affected, hold that a mere notice of the assignment to the company, even before death of the *cestui que vie*, will not affect the interest of the beneficiary. Clearly a notice of assignment not given until after death would be insufficient.

On the other hand, in jurisdictions holding that the beneficiary's interest is insufficient for him to compel substantial compliance with the reservation of right clause to affect his interest, there are several possibilities arising out of notice of an assignment of the policy given to the company after the death of the *cestui que vie*. If the company pays the original beneficiary before receiving notice of the assignment, its liability under the policy will be discharged, because under the terms of the policy, the insurer does not have to recognize an assignment until it has received notice thereof. The policy provisions relative to assignment here operate to protect the insurer.

In the event of notice of assignment after death but before payment, however, it would seem that even the courts which hold the beneficiary's interest insufficient to compel substantial compliance will divide according to their conception of the time at which the beneficial interest finally becomes absolutely vested. Thus, it is to be expected that those courts of this group which hold that the interest vests in that person recognized by the company as beneficiary at the moment of death of the *cestui que vie* will hold that notice received thereafter cannot affect that interest. In this situation, the insurer will not be permitted

S. E. 414, contra); *Farmer's State Bank v. Kelley* (1923) 155 Ga. 733, 118 S. E. 197; *Merchants' Bank et. al. v. Garrard* (1924) 158 Ga. 867, 124 S. E. 715; *Lamar Life Ins. Co. v. Moody* (1920) 122 Miss. 99, 84 So. 135; *Bank of Belzoni v. Hodges et. al.* (1923) 132 Miss. 238, 96 So. 97; *Davis v. Modern Ind. Bank* (1939) 279 N. Y. 405, 18 N. E. (2d) 639; *McNeill v. Chinn* (1907) 45 Tex. Civ. App. 551, 101 S. W. 465; *Mo. State Life Ins. Co. v. Cal. State Bank* (1919) 202 Mo. App. 347, 216 S. W. 785; *Shay v. Merch. Banking Trust Co.* (Pa. 1939) 6 Atl. (2d) 536; *Mente v. Townsend* (1900) 68 Ark. 391, 59 S. W. 41; *Mayer v. Ill. Life Ins. Co.* (1918) 211 Ill. App. 285; *Equitable Life Ins. Co. v. Mitchell* (1927) 248 Ill. App. 401; *Atl. Life Ins. Co. v. Gannon* (1901) 179 Mass. 291, 60 N. E. 933; In effect this case is overruled, sub silentio, by *Goldman v. Moses* (1934) 287 Mass. 393, 191 N. E. 873; *Bland v. Bland* (1920) 212 Mich. 549, 180 N. W. 445; *Farracy v. Parry* (1928 Tex. C. C. A.) 12 S. W. (2d) 651 (dictum); *Schade v. Western Union Life Ins. Co.* (1923) 125 Wash. 200, 215 Pac. 521 (dictum). But see dictum contra, *Sun Life Assur. Co. of Canada v. Sutter* (Wash. 1940) 95 P. (2d) 1014, 125 A. L. R. 1089.

to alter the respective rights of the parties between themselves by an election to recognize the claim of the assignee over that of the named beneficiary. Consequently, payment to the assignee will not discharge the insurance company from liability on the contract to the beneficiary. Likewise, the more common act of interpleader, occurring under these circumstances, will have no effect on the beneficiary's vested interest. Interpleader will not be taken as an effective election on the part of the insurer to recognize the claim of the assignee or as a waiving of the fact that notice of assignment was not received until after death of the *cestui que vie*.

On the other hand, it has been noticed that some courts are exceedingly liberal in permitting the beneficiary's interest to be affected by acts of the *cestui que vie* not amounting to substantial compliance, even though notice of those acts is not received until after the latter's death. It is to be expected that after death such courts will allow the company to waive notice of the assignment. Payment of the benefit to the assignee in these circumstances would discharge the liability of the company. Likewise, interpleader would be construed as a waiver by the company of earlier notice of the assignment; if there is a valid transfer by the *cestui que vie*, the assignee will receive the benefit of the policy.

Only the broadest outlines of this picture have as yet been filled in by the courts. Decisions, particularly in states permitting a change of beneficiary without substantial compliance with policy provisions, have been confined to the simple situation in which notice of assignment is given to the company before death of the *cestui que vie*, with scant *dicta* pointing out other possibilities. There is a close relationship, however, between courts' treatment of attempted change of beneficiary and assignment. Knowing the decisions of a court on the first point, one should be able to predict its holding on the second point, following the lines set forth in this paper.

J. J. THYSON