

INSURANCE—RIGHT TO PROCEEDS—CLAIM OF REMAINDERMAN UNDER POLICY TO LIFE TENANT AS ABSOLUTE OWNER—[Missouri].—Defendant issued a fire insurance policy on real property to cotenants or “their legal representatives.” Deceased devised a life estate in his interest to his cotenant with remainder over to the intervenor charitable corporation in fee simple. A conveyance by the life tenant after testator’s death purported to pass the whole interest in the property to plaintiff who procured a reissuance of the policy to himself as the assured and paid all assessments on the policy out of his own funds. A fire destroyed the insured property. The intervenor claimed an interest in the proceeds proportional to its vested remainder interest. *Held*, by the Kansas City Court of Appeals, that the life tenant and remainderman were to share the proceeds in proportion to their respective interests in the property destroyed, after the remainderman reimbursed the life tenant for its commensurate part of the premiums paid by him.<sup>1</sup>

What respective interests do life tenant and remainderman have in the proceeds of such a policy?<sup>2</sup> In the instant case the court adopted the Rhode Island rule<sup>3</sup> that if the policy covers merely the life tenant’s interest, he is entitled to the full insurance, but he is, after payment of the loss, a

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1. *Fitterling v. Johnson County Mutual Fire Ins. Co.* (Mo. App. 1938) 112 S. W. (2d) 347.

2. In the absence of any express agreement or stipulation in the instrument that created the life estate, the clear majority view is that the proceeds of a fire insurance policy do not replace the destroyed property, when the life tenant has procured the policy. *Leeds v. Cheetham* (Ch. 1827) 57 Eng. Rep. 533; *Kearney v. Kearney* (1864) 17 N. J. Eq. 59; *Suffolk Fire Ins. Co. v. Boyden* (1864) 91 Mass. 123; *Rayner v. Preston* (1881) L. R. 18 Ch. Div. 1, 50 L. J. Ch. N. S. 472, 44 L. T. N. S. 787; *International Trust Co. v. Boardman* (1889) 149 Mass. 158, 21 N. E. 239; *Addis v. Addis* (1891) 14 N. Y. S. 657; *Harrison v. Pepper* (1896) 166 Mass. 288, 44 N. E. 222, 33 L. R. A. 239, 55 Am. St. Rep. 404; *Spaulding v. Miller* (1898) 103 Ky. 405, 45 S. W. 944; *Blanchard v. Kingston* (1923) 222 Mich. 631, 193 N. W. 241; *Thompson v. Gearheart* (1923) 137 Va. 427, 119 S. E. 67, 37 A. L. R. 36; *Clark v. Leverett* (1925) 159 Ga. 487, 126 S. E. 258, 37 A. L. R. 180; *Underwood v. Fortune* (Mo. App. 1928) 9 S. W. (2d) 845; *King v. King* (1932) 163 Miss. 584, 143 So. 422; *Corder v. McDougall* (1933) 216 Calif. 773, 16 P. (2d) 740; *Fitterling v. Johnson County Mutual Fire Ins. Co.* (Mo. App. 1938) 112 S. W. (2d) 347. As early as 1729 Lord Chancellor King, in *Lynch v. Dalzell* (1729) 2 Eng. Rep. 292, held that a contract of insurance was a personal contract which inured to the benefit of the person to whom the contract was made and by whom the premiums were paid. This was quoted with approval by Story, J., in *Columbia Insurance Co. of Alexandria v. Lawrence* (1829) 35 U. S. 507, 9 L. ed. 512. Some courts have held that such a contract is one to indemnify the insured against loss or damage, and not someone else not a party to the contract. *Thompson v. Gearheart* (1923) 137 Va. 427, 119 S. E. 67. It is the general consensus among American courts that insurance is a personal contract and does not attach to the *res* subject to the risk. *Sanders v. Armstrong* (1901) 22 Ky. L. Rep. 1789, 61 S. W. 700. However, apportionment has been applied where the contract of insurance preceded the life tenant’s occupation. *Haxall v. Shippen* (1839) 37 Va. 536, 34 Am. Dec. 745; *Graham v. Roberts* (1851) 41 N. C. Eq. Rep. 99.

3. *Sampson v. Grogan* (1899) 21 R. I. 174, 42 A. 712, 44 L. R. A. 711.

trustee for the remainderman as to the excess received over the value of his life interest.<sup>4</sup> To that extent the court adapted the doctrine of *Ridge v. The Home Life Insurance Co.*,<sup>5</sup> in which the St. Louis Court of Appeals held that as between a life tenant and a *reversioner*, the life tenant, although insuring the fee, is entitled to recover for only his interest in the property at the date of the loss, and the balance of the fund is to be paid to the *reversioner*. In *Millard v. Beaumont*<sup>6</sup> the Springfield Court of Appeals extended the rule of the *Ridge* case to the situation where loss occurred after the death of a *devisor* who had insured the property. The same court in *Underwood v. Fortune*<sup>7</sup> reached a different result. The court held that unless required by contrary terms in the instrument creating the estate or in some agreement of the life tenant, the latter, who insures the property as a whole, is entitled to the entire proceeds of the policy payable to him and cannot be held accountable to the remainderman for such money, even if it exceeds the value of the life tenant's interest and is equal to the whole value of the property destroyed. This rule, commonly known as the Massachusetts doctrine,<sup>8</sup> is based on the theory that the contract of insurance is a personal contract and inures to the benefit of the party with whom it is made and by whom the premiums are paid.<sup>9</sup> It is a contract of indemnity against loss.<sup>10</sup>

There exists still a third rule, the South Carolina doctrine, which holds that any fire insurance effected by the life tenant is also for the benefit

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4. The rationale of the instant case is: Sound public policy requires that any money collected by a life-tenant on a total loss by fire should be used in rebuilding, or should go to the remainderman, reserving the interest for life for the life tenant. The latter ought not to be allowed to put himself in a position in which he would have no motive for proper care of the estate by having a policy of fire insurance, whereby in case of loss, he could substitute the full fee-simple value of the buildings in place of his interest for life. *Fitterling v. Johnson County Mutual Fire Ins. Co.* (Mo. App. 1938) 112 S. W. (2d) 347.

5. (1895) 64 Mo. App. 108.

6. (1916) 194 Mo. App. 69, 185 S. W. 547.

7. The court distinguished *Ridge v. The Home Life Ins. Co.* and *Millard v. Beaumont* from this case on the basis that in the latter cases the fire insurance policy contained the clause "as her interest may appear," whereas in this case no such clause was in the policy. Under any rule, when the policy contains such an express restriction upon the interest of the life tenant in the proceeds of the policy, the courts give effect thereto and limit the life tenant's payment to his expressed interest in the policy. *Underwood v. Fortune* (Mo. App. 1928) 9 S. W. (2d) 845.

8. *Harrison v. Pepper* (1896) 166 Mass. 288, 44 N. E. 222, 33 L. R. A. 239, 55 Am. St. Rep. 404; *Spaulding v. Miller* (1898) 103 Ky. 405, 45 S. W. 944; *Thompson v. Gearheart* (1923) 137 Va. 427, 119 S. E. 67, 37 A. L. R. 36; *Clark v. Leverett* (1925) 159 Ga. 487, 126 S. E. 258, 37 A. L. R. 180; *Underwood v. Fortune* (Mo. App. 1928) 9 S. W. (2d) 845; *King v. King* (1932) 163 Miss. 584, 143 So. 422; *Corder v. McDougall* (1933) 216 Calif. 773, 16 P. (2d) 740.

9. *Finney v. Fair Haven Ins. Co.* (1842) 46 Mass. 192, 38 Am. Dec. 397; *Brewster v. Warner* (1883) 136 Mass. 57, 49 Am. Rep. 5.

10. *Wilson v. Hill* (1841) 44 Mass. 66; *King v. State Mut. Fire Ins.* (1851) 61 Mass. 1; *Lerow v. Wilmarth* (1864) 91 Mass. 382.

of the remainderman,<sup>11</sup> and any money collected by him from a total loss by fire should be used in rebuilding, or should go to the remainderman, reserving the interest for life to the life tenant and crediting him with the premium paid.<sup>12</sup> Although there is no obligation on the life tenant to insure, where he does take out insurance, a duty rests on him to protect and insure the remainderman's interest, apparently on the theory that failure to do so would be waste.<sup>13</sup>

The court here viewed the reissuance<sup>14</sup> of the policy to the plaintiff life tenant and payment of premiums by him as having created a new insur-

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11. The reason given is that the relation of a life tenant to a remainderman is that of a trustee. It is not necessary that the relationship should be that of an express trust. It may be only that of a *quasi* trust inasmuch as the duty to preserve and protect the estate in remainder to the remainderman is to a certain extent a fiduciary one and has frequently been termed an implied or *quasi* trusteeship. *Clark v. Leverett* (1925) 159 Ga. 487, 126 S. E. 258.

12. *Clyburn v. Reynolds* (1889) 31 S. C. 91, 9 S. E. 975; *Welsh v. London Assur. Corp.* (1892) 151 Pa. 607, 25 Atl. 142, 31 Am. St. Rep. 736; *Green v. Green* (1897) 50 S. C. 514, 27 S. E. 952, 62 Am. St. Rep. 846; *Crook v. Hartford Fire Ins. Co.* (1935) 175 S. C. 42, 178 S. E. 254.

13. If the exercise of ordinary care requires him to insure, his failure to do so would render him liable to the remainderman at least for damages. Loss resulting from such negligence would amount to waste. If such waste was both permissive and voluntary and was committed in a manner evidencing an utter disregard of the rights of the remainderman, the life tenant would forfeit his estate. *Parker v. Chambliss* (1852) 12 Ga. 235; *Roby v. Newton* (1904) 121 Ga. 679, 49 S. E. 694; *Grimm v. Grimm* (1922) 153 Ga. 655, 113 S. E. 91. The fact that the life tenant, acting in his own behalf, insured this property for his own benefit would indicate that he thought it prudent to insure and is persuasive that the ordinary care of a prudent man for the preservation and protection of this property required him to insure for the benefit of the remainderman as well as himself. *Clark v. Leverett* (1925) 159 Ga. 487, 126 S. E. 258. The power of a court of equity to enjoin the life tenant from committing waste is based upon the principle that the tenant is considered in the nature of a trustee for those in remainder. *Smith v. Daniel* (1827) 2 S. C. 143, 16 Am. Dec. 641.

14. In the instant case, the court viewed the reissuance of the policy as new insurance by the life tenant, even though the proceeds were payable as of the date of the reissuance. It neglected to inquire into the actual legal effect of a *reissuance*, in view of the fact that the policy was originally issued to the cotenants, the deceased and his brother, and their legal representatives, and the plaintiff was named administrator of the estate. An insurance policy so taken out was held, in *Annelly v. De Saussure* (1887) 26 S. C. 497, 2 S. E. 490, 4 Am. St. Rep. 725, not to inure to the benefit of the cotenant. One tenant in common is not in any sense a trustee for his cotenant and has no insurable interest in his share of the property. The provision for payment to "his legal representatives" strengthens this construction, and the insurance should pass to the deceased's representative though his realty passed to his devisees. "As between the beneficiaries of an estate and the personal representative, a fire policy, payable to insured and his legal representatives, is personal property, and where loss occurs after the death of the insured the personal representative is entitled to collect, unless a different purpose is manifested by the terms of the policy." *Couch, Insurance* (1930) sec. 424; *Oldham v. Boston Ins. Co.* (1920) 189 Ky. 844, 226 S. W. 106, 16 A. L. R. 305.

ance contract. The instant case, therefore, is in conflict with *Underwood v. Fortune*. It clearly adopts the Rhode Island rule, not heretofore followed in Missouri. Perhaps the equitable viewpoint and sound public policy recognized in recent cases between vendor and purchaser<sup>15</sup> are preferable. At any rate the supreme court of this state must now determine whether the Massachusetts or Rhode Island doctrine shall prevail. S. R. S.

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MUNICIPAL CORPORATIONS—BANKRUPTCY—CONSTITUTIONAL LAW—[Federal].—The National Municipal Bankruptcy Act of 1937<sup>1</sup> has, unlike the Act of 1934, been upheld.<sup>2</sup> The new Act, like the old, permits municipalities to institute voluntary proceedings in courts of bankruptcy. The Lindsay-Strathmore Irrigation District filed a voluntary petition under the Act, sufficiently alleging insolvency and other requisite matters. The district court, feeling bound by *Ashton v. Cameron County District*,<sup>3</sup> which had declared the Act of 1934<sup>4</sup> to be invalid, dismissed the petition and declared the new statute also to be unconstitutional. The United States Supreme Court in reversing the lower court held the new Act to be neither violative of the Fifth Amendment nor an unconstitutional interference with the essential sovereignty of the states.

The two acts differ in few respects. The machinery provided in them is essentially similar. The original Act lumped political subdivisions together with non-political ones, while the new Act lists them separately. The *Ashton* case had declared the earlier Act to be unconstitutional because the statute applied to political districts and therefore interfered with the political powers of the State. It was thought by some that separate listing of the various subdivisions of the state to which the new Act would apply would allow the courts to circumvent the *Ashton* case by making use of the separability clause and thereby declaring the new Act constitutional as to the non-political subdivisions.<sup>5</sup> But the Supreme Court did not distinguish between the new statute's applicability to political and to non-political subdivisions. It should be noted further that the Lindsay-Strathmore Irrigation District had once been held to be a political subdivision by the Supreme Court of California,<sup>6</sup> and federal courts are required to adopt that interpretation of the district's status.<sup>7</sup> The only other substantial

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15. *Mahan v. The Home Insurance Co. of N. Y.* (1920) 205 Mo. App. 592, 226 S. W. 593; *Standard Oil Co. v. Dye* (1929) 223 Mo. App. 926, 20 S. W. (2d) 946.

1. (1937) 50 Stat. 653, (1937) 11 U. S. C. A. secs. 401-404.

2. *United States v. Bekins* (1938) 58 S. Ct. 811, 82 L. ed. 751.

3. (1936) 298 U. S. 513, 56 S. Ct. 892, 80 L. ed. 1309.

4. (1934) 48 Stat. 798, (1937) 11 U. S. C. A. secs. 301-303.

5. Black, *Has Congress Circumvented the Ashton Decision?* (1937) 23 A. B. A. J. 683.

6. *Lindsay-Strathmore Irrigation Dist. v. Superior Ct.* (1920) 182 Cal. 315, 187 Pac. 1056.

7. *Claiborne County v. Brooks* (1884) 111 U. S. 400, 4 S. Ct. 489, 28 L. ed. 470; *Railroad Commission v. Los Angeles R. Corp.* (1929) 280 U. S. 145, 50 S. Ct. 71, 74 L. ed. 234.