

It will be noted that while the maxim is thus sometimes applied to cases of involuntary manslaughter, the policy behind the maxim, *viz.*, to deter the commission of crimes for the purpose of obtaining property, cannot be said to apply to accidental or unintentional killings. It is nevertheless submitted that the maxim should be applied, according to its terms, to all cases of felonies, whether committed by accident or with intent to take the life of the victim. By adoption of a rule that the felon will always be denied recovery while recovery will be allowed where there is no legal wrong,²¹ there will be resultant simplicity and certainty of application of the maxim which in the writer's judgment will more than compensate for disregarding the rationale of deterrence.

E. M. S.

INSURANCE—CANCELLATION BY MAIL—[Texas].—In a recent Texas case insured sued on an accident policy which contained a clause providing for cancellation by the company by written notice mailed to insured's last address as shown by the records of the company. Notice of cancellation was mailed by the company the day before the accident on which the suit was based. Insured contended that the cancellation was not effective until he received the notice. *Held*, that under this cancellation clause, the notice was effective when mailed.¹

There is some conflict of authority as to whether notice of cancellation sent by mail must be received before becoming effective.² However, a substantial preponderance of the decisions holds that notice of cancellation sent by mail must be received to be effective.³

The leading case supporting the instant decision is *Wolunter v. United States Casualty Co.*,⁴ where it was said that "the assured assumed the risk of due receipt of that notice."⁵ In *Dent v. Monarch Life Ins. Co.*,⁶ reaching

(1890) 35 Ill. App. 576; *In re Wolf* (Surr. Ct. 1914) 88 Misc. 433, 150 N. Y. S. 738; *Hull v. Metropolitan Life Ins. Co.* (1917) 26 Pa. Dist. Rep. 197.

20. *De Zotell v. Mutual Life Ins. Co.* (1932) 60 S. D. 532, 245 N. W. 58; *In re Hall* [1914] P. 1; *Lundy v. Lundy* (1895) 24 Can. Sup. Ct. 650, *rev'g McKinnon v. Lundy* (1894) 21 Ont. App. 560.

21. *E. g.*, where a homicide is justifiable or committed by an insane person.

1. *California-Western States Life Ins. Co. v. Williams* (Tex. Civ. App. 1938) 120 S. W. (2d) 844.

2. 6 Couch, *Cyclopedia of Insurance Law* (1st ed. 1930) 5094, sec. 1440. For a discussion of the question with reference to fire insurance policies, see Note (1914) 50 L. R. A. (N. S.) 35.

3. *American Fire Ins. Co. v. Brooks* (1896) 83 Md. 22, 34 Atl. 373; *Healey v. Ins. Co. of Pa.* (1900) 50 App. Div. 327, 63 N. Y. S. 1055; 5 Cooley, *Briefs on Insurance* (2d ed. 1927) 4589.

4. (1919) 126 Va. 156, 101 S. E. 58. The case was finally decided on the question of proper address, but the decision on the sufficiency of mailing of notice was necessary to the disposition of the case and is therefore not mere *dictum*.

5. 126 Va. at 166, 101 S. E. at 61.

6. (1936) 231 Mo. App. 283, 98 S. W. (2d) 123.

a similar result, the court suggested that the reasoning behind this minority view is that the parties have in effect agreed that the government, in its business of operating the mails, shall constitute the agent of the insured for this purpose. Failure to deliver notice would then be failure of the agent of the insured, and not attributable to the company. In a New York case,⁷ the minority holding seems to find some support by inference. The mailed cancellation was held ineffective, because the address on the letter varied from that stated in the policy. Had the address been proper, mailing of the notice would apparently have effected cancellation.

Many of the cases which seem to support this view may, on more searching analysis, be distinguished.⁸ Several cases⁹ hold that proof of mailing of notice is sufficient to effect cancellation, in the absence of affirmative proof that the notice was not actually received. These seem rather to add an evidentiary qualification to the majority rule than to support the minority view.

The majority view appears more in keeping with the prevailing policy of the courts to construe insurance contracts strictly against the insurer.¹⁰ It seems to be felt that there would be inherent injustice in allowing cancellation of the policy in the absence of actual notice. Especially is this true in liability and fire insurance cases where the insured, upon notice, could take steps to procure other coverage on the risk. The courts, however, have drawn no clear distinction between the various types of insurance.

To place the minority view on the ground that the parties have agreed that the mails shall constitute an agency of the insured appears an attempt to justify the holding rather than a logical basis for decision. Probably the real reason behind the minority view is suggested by the language in the principal case, that the provision for cancellation by mail was so clearly intended to obviate necessity for actual receipt of notice that to hold otherwise "would be to interpolate into the contract a condition which cannot be implied."¹¹

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7. *Hughes v. Royal Indemnity Co.* (Mun. Ct. 1917) 165 N. Y. S. 530.

8. This is true of the cases cited by the Virginia court in the *Wolunter* case. (1919) 126 Va. 156, 101 S. E. 58, cited note 5, supra. In *International Life Ins. & Trust Co. v. Franklin Fire Ins. & Trust Co.* (1876) 66 N. Y. 119, it was decided only that the motive or sufficiency of cause of the company's cancellation cannot be inquired into where the policy provides for termination for certain specified causes "or for any other cause." The court clearly avoided the issue of notice. In *Manchester Fire Assurance Co. v. Ins. Co. of Ill.* (1900) 91 Ill. App. 609, where insured notified the insurer's agent by telephone, sufficient notice was found to have been given the company. Notice by mail was not involved.

9. *Liverpool Ins. Co. v. Harding* (C. C. A. 8, 1912) 201 Fed. 515; *Wolford v. Nat. Life Ins. Co.* (1923) 114 Kan. 411, 219 Pac. 263, 32 A. L. R. 1248; *Crown Point Iron Co. v. Aetna Ins. Co.* (1891) 127 N. Y. 608, 28 N. E. 653, 12 L. R. A. 147.

10. 32 C. J., *Insurance* (1923) 1152, sec. 265. Cf. *Fritz v. Pennsylvania Fire Ins. Co.* (1913) 85 N. J. L. 171, 38 Atl. 748, 50 L. R. A. (N. S.) 35.

11. *California-Western States Life Ins. Co. v. Williams* (Tex. Civ. App. 1938) 120 S. W. (2d) 844.