June 1931

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Eric Collins

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THE DOCTRINE OF INSURABLE INTEREST IN ILLINOIS AS APPLIED TO LIFE INSURANCE

ERIC COLLINS

At early common law an insurable interest was unnecessary under any circumstances, all contracts of insurance being enforceable at law. The insurer might have a remedy in an action in a Court of Chancery but only when the circumstances surrounding the contract were of such an unconscionable nature that a manifest injustice would result from an enforcement of the contract. The remedy in such a case would be a delivering up of the policy to the insurer, the suit being brought on an application to have the policy so delivered up.

Historically, the doctrine of insurable interest finds its inception in the rise of maritime insurance, the forerunner of all other forms of insurance. The history of maritime insurance shows that it is essentially an indemnification against loss, a means by which the individual, for a consideration, might divide up the risk of loss of his goods while in course of transportation across the seas. There was never, originally, any question of gain involved in the contract; it was solely and exclusively an indemnity against a possible loss.

From this question of an indemnity against loss the doctrine of insurable interest arose, as the courts early recognized the fact that there could not be an indemnity without a loss, or a loss without an interest. However, before the recognition of the necessity of an interest vested in the insured, in the subject matter of the indemnity contract became apparent, these contracts came to be utilized in a manner not contemplated by the originators of such contracts and contrary to the true principles of insurance. Under the meager requirements of

1 Associated with National Life Ins. Co. of U. S. A.
2 Pritchet v. Insurance Co. of North America, 8 Pa. 458.

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the common law regarding indemnity contracts people were entering into such contracts with regard to all manner of goods in which, in the majority of cases, they had no interest whatsoever, the abuses of the indemnity contract finally becoming sufficiently serious to necessitate corrective legislation.

This legislation was enacted in the reign of George II in England in the year 1748, the statute reciting the mischiefs and inconveniences of the current method of permitting insurance contracts to be made without inquiry as to the existence of an insurable interest in the person insured and being designed to restore the original principles of insurance contracts which under the later common law had deteriorated, in a large measure, into mere wagering contracts. With the rise of life insurance it was found that persons having no interest in the life of the insured were securing contracts with the insurers with growing frequency, resulting in similar mischiefs and inconveniences as had arisen under the marine insurance laws, or rather lack of laws. These mischiefs also were eventually regulated by statute in the reign of George III in the year 1774. This statute, the first statutory recognition of the necessity of an insurable interest in life insurance, and the basis of the doctrine, reads as follows:

I. Whereas it has been found by experience, that the making of insurance on lives, or other events, wherein the assured shall have no interest, hath introduced a mischievous kind of gaming: For remedy whereof, be it enacted by the Kings most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that from and after the passing of this act, no insurance shall be made by any person or persons, bodies politic or corporate, on the life or lives of any person or persons, or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policy or policies shall be

3 19 Geo. II, c. 37.
4 14 Geo. III, c. 48.
made, shall have no interest or by way of gaming or wagering; and that every assurance made contrary to the true intent and meaning hereof, shall be null and void, to all intents and purposes whatsoever.

II. And be it further enacted, that it shall not be lawful to make any policy or policies on the life or lives of any person or persons, or other event or events, without inserting in such policy or policies the person or persons, name or names interested therein, or for whose use, benefit or on whose account, such policy is so made or underwrote.

III. And be it further enacted, that in all cases where the insured hath interest in such life or lives, event or events, no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured in such life or lives, or other event or events.

IV. Provided always, that nothing herein contained shall extend, or be construed to extend, to insurances bona fide made by any person or persons, on ships, goods, or merchandise; but every such insurance shall be as valid and effectual in the law, as if this act had not been made.

In a sense, there was nothing new to the doctrine of insurable interest declared by this statute, as it was in reality only a re-establishment of the old common law principles which had fallen into disuse, but the statute itself marks the turning point historically from which the rise of the doctrine may be considered.

The sound doctrines of the old English common law were made the basis of the legal system of the newly created United States of America, and of the several states themselves upon entering into the Union.

The State of Illinois in common with the several states adopted the common law rules in the same manner in which they had been adopted by the national legislature, and with them adopted the original provision with regard to the doctrine of insurable interest, on which the modern Illinois doctrine is based.

The modern doctrine is not a creature of statute however, the statutes of this state being curiously silent upon
the subject, and it is for this reason that the common
law rule takes on significance, the Illinois doctrine fol-
lowing that of the common law, except where the latter
has been abrogated by statute. The basis of the modern
document is the common law doctrine as originally ex-
pressed and reiterated by the statute of George III,
amplified and expanded by the judicial decisions of the
Illinois Supreme Court in the various cases which have
come before it for adjudication.

In Illinois today a contract of insurance is held to be
a contract of indemnity\(^5\) which is a virtual affirmation
of the common law rule, and the Supreme Court of this
state has constantly upheld this contention, even in the
face of contrary expressions of opinion from the deci-
sions of other states, where the courts have been unable
to overcome the inherent difficulty presented by the prac-
tical impossibility of determining the value of a human
life, and of answering the equally troublesome question
of when and under what circumstances one person will
sustain a loss by reason of the death of or injury to
another. Cooley, in his text,\(^6\) has pointed out that "if
a contract of life insurance is not one of indemnity there
would seem to be no reason for requiring an insurable
interest in the life insured to support the policy in the
absence of statutory provisions," which would seem to
uphold and justify the rule as expressed in this state as
being both sound as to the common law doctrine and
sound as to the better modern opinion, as the necessity
of an insurable interest is today everywhere admitted.

There is, however, a great deal of authority in other
states, as has already been suggested, which upholds a
view contrary to that established in this state with refer-
ence to the question of indemnity, and consequently, the
question being in dispute, it would be advisable to give
it further consideration at this time. As regards the
relationship of debtor and creditor, the latter is held to
have an insurable interest in the life of the former at

\(^5\) Healey v. Mutual Accident Ass'n, 133 Ill. 556.
\(^6\) 1 Cooley's Briefs on Insurance (2nd Ed.), p. 127.
least up to the amount of his debt, which is unquestionably a contract of indemnity, pure and simple. However, in the family relationships, particularly those where the insurable interest is based solely upon an assumed love and affection, the proposition becomes involved and confusing, because of the absolute impossibility of determining the sum which would indemnify, for example, a wife for the loss of her husband’s society, comfort and protection. In such a case there is a valid contract of life insurance granted to a person having a recognized but unascertainable interest in the life insured, who stands to lose an equally unascertainable and indefinable something upon the extinguishing of such life. Can the insurance contract in such case be considered a contract of indemnity? Or is it merely a contract to compensate the wife in some measure for a loss for which the compensation received is totally inadequate?

The relation of employer and employee affords a transitional relation between the two preceding relationships, as in some instances the exact worth of the latter to the former may be determined, and an insurance policy issued which is clearly an indemnity contract, while in other instances the value of the employee to the corporation or of a partner to a firm, which is a similar relation, may not be ascertainable or susceptible of a monetary value. However, inasmuch as it becomes an indemnity contract under some circumstances and under others a contract which requires a great stretch of the imagination to be considered as one of indemnity, it adds to, rather than alleviates the confusion. For a final determination the matter must be left to the supreme tribunal of each state and of the United States, and as it is susceptible of more than one interpretation, it is inevitable that the decisions in the various courts of last resort should be in conflict.

As previously stated, Illinois requires an insurable interest in every contract of life insurance, a proper compliance with this requirement being essential to every valid life insurance contract. The difficulty rests in the
interpretation of the questions as to what constitutes an insurable interest and in whom does such an interest rest in any given contract for life insurance. These questions are, of necessity, in the countless variety of circumstances which may arise, susceptible of innumerable answers, varying according to the circumstances surrounding each contract, and in order to ascertain the nature of the answers as they have been enunciated by the Illinois Supreme Court, it will be necessary to take up each different set of circumstances in detail.

Before attempting to discuss the more intricate problems presented by this subject, it would be advisable to dispose of the question of the insured himself and his rights with regard to the contract of life insurance and the necessity of an insurable interest in any beneficiary named by him in such contract.

The general doctrine in Illinois is that every person has an insurable interest in his or her own life and may procure a contract of life insurance on his or her own life without question, as there can be no doubt of an insurable interest where the insured himself is the party in interest. The proposition, however, has been carried further, and it has been held and is now the law that a person taking out insurance on his own life may take it out for the benefit of another having no insurable interest therein,7 a statement which has been qualified in some cases by the phrase, "Where the rules of the company permit."8

In general, it is a question of public policy which makes an insurable interest necessary in every contract of life insurance, such insurable interest to be present in the person who applies for the issuance of the policy, or at whose instigation and request the application is made. The question of public policy arises out of the fact that where there is no insurable interest present in the person requesting insurance on the life of another the contract

7 Bloomington Benefit Ass'n v. Blue, 120 Ill. 121, approved in Stake v. Stake, 228 Ill. 630; Colegrove v. Lowe, 343 Ill. 360.
8 Johnson v. Van Epps, 110 Ill. 551.
becomes a mere wager, and as such, void at its inception,\textsuperscript{9} because where there was no interest either pecuniary or of blood, in the continued existence of the person whose life was insured, the contract was a mere gamble as to how long the insured would live, with the added incentive to the person paying premiums to dispose of the insured if the wager should at any time appear to be going against him. There is no question in the mind of anyone but that such contracts are contrary to public policy and that the courts are justified in holding them to be void at their inception, the real difficulty arising only when attempting to determine whether there is an actual blood interest or pecuniary interest in the person to whom the insurance was granted.

Where an insurance policy is actually issued, whether at the instigation of the beneficiary or not, assuming the beneficiary to have an insurable interest in the life insured, and subsequently the beneficiary murders the insured or is instrumental in bringing about his death, the beneficiary cannot recover the proceeds of the policy, even where there was no intention to realize the benefit at the time the act was committed.\textsuperscript{10} The case in which the foregoing decision was given was one involving a benefit certificate, and the case further held that despite the fact that the beneficiary was not entitled to the proceeds of the policy, the insurer was not relieved from paying the claim. It is reasonable to suppose that the decision would be the same in the case of an old line life insurance contract, although the question has never arisen in this state, as the insurer has received everything to which it was entitled under the contract and consequently should be compelled to perform its part of the contract upon receipt of due proofs of the insured’s death, particularly where the insured himself has been paying the premium. The payment of the proceeds in such a case would properly be made to the insured’s estate.


The doctrine of insurable interest

The cases where the courts have held blood interests, with which are associated affinity interests, to be sufficient to support a contract of life insurance are surprisingly few, the majority of the circumstances which have been held to create a valid insurable interest arising out of the family, as for instance a wife is always held to have an insurable interest in the life of her husband.\(^1\) This rule is based upon two very sound principles which the courts recognize as being amply sufficient to create an insurable interest, the first being a natural fondness of the wife for the husband sufficient of itself to negative any criminal intent, the second being an expectation of support and pecuniary gain to be derived from a continuance of the husband's life. So far, this particular proposition appears to be perfectly sound and the authorities to be standing on firm ground, but it has been held that where a woman who is the beneficiary under a policy has been misdescribed as the insured's wife when in fact she was not his lawful wife, although acting in good faith under the belief that they were legally married, she has an insurable interest in the life of the insured.\(^2\) This decision seems to be carrying the proposition to an extreme which is unjustified, the decision apparently being based upon a presumption of lawfulness in that the woman bona fide believed herself to be the insured's wife. However, the weakness of that contention lies in the fact that the presumption creating the interest is based upon the bona fide belief in the existence of a marital status in the particular case, a belief which is itself difficult of any preponderance of proof.

With regard to the existence of an insurable interest in a child in the life of its father, it would appear that the mere relationship of itself does not create an interest, but that there must be present a reasonable expectation of pecuniary gain or benefit from the continuance of the father's life or a detriment to be suffered upon his

\(^{11}\) People, etc. for use of Schuchert v. Phelps, Admx., 78 Ill. 147; Pingree et al. v. Jones, 80 Ill. 177.

\(^{12}\) Columbian Circle v. Auslander, 302 Ill. 603; Burr v. Royal League, 193 Ill. App. 238.
death. The case of *Guardian Mutual Life Insurance Company v. Hogan*,\(^{13}\) which is authority for the preceding statement also holds that where a son works for his father without compensation after attaining his majority, making improvements on the father's land, evidence of these facts while admissible to help establish an insurable interest are not conclusive of the point.

As the case just cited holds that as between a son and a father the mere relationship of itself does not give the former an insurable interest in the life of the latter, there can be no question that a step-child, or an adopted child, would not be in any better position, and consequently would have to show a pecuniary interest in the life of the parent in order to establish an insurable interest which would support a contract of life insurance. There is a single case in Illinois holding that a step-child has no insurable interest in the life of a step-parent,\(^{14}\) but this case is not in point with the present discussion because the contract involved is a benefit certificate, in which the class of beneficiaries designated was construed not to include step-children. Consequently as a general rule, it is unquestionably safe to say that wherever children are concerned an insurable interest may be established by showing a reasonable expectation of pecuniary gain from the continuance of the parent’s life or a detriment to be suffered upon the parent’s death as held in the case of *Guardian Mutual Life Insurance Company v. Hogan*,\(^{15}\) which is synonymous with the familiar doctrine of dependence and support. The question of the existence of an insurable interest in illegitimate children has never been decided in Illinois and therefore any attempt to outline the probable policy which our courts will adopt when this matter is presented to them for adjudication must of necessity be based largely upon conjecture, but as the fundamental principles of the doctrine with reference to other relationships are firmly

\(^{13}\) 80 Ill. 35. See also Chicago Guaranty Fund Life Society v. Dyon, 79 Ill. App. 100.

\(^{14}\) Ptacek v. Pisa, 231 Ill. 522.

\(^{15}\) 80 Ill. 35.
established and the decisions handed down are consistent, it is only reasonable to presume that an illegitimate child would have an insurable interest in the life of either of its parents upon showing a benefit to be gained or a loss to be suffered from a continuation or extinction of the life insured. There is a Federal case holding that an illegitimate child has an insurable interest in the life of its parents, but it is probable that the Illinois courts would only follow this decision where a definite pecuniary interest is established as is required in the case of other classes of children.

Concerning the question of a parent's interest in the life of a child the courts are practically silent as the point does not appear to have been raised in this state up to the present time, with the exception of a single case, which holds that a mother has an insurable interest in the life of a minor son. The decision in this case was apparently induced by a consideration of the natural affection of the mother for the child which would be sufficient to take this particular case out of the class of those which would be contrary to public policy as being conducive to crime. This case appears to be founded on sound principles of insurance law and to follow the general trend of the decisions which have formulated the modern laws with regard to the subject of insurable interest, and that being the case, it seems reasonable to suppose that a similar decision would be reached with regard to the existence of an insurable interest in a father in the life of a minor son and of the existence of an insurable interest in either a father or mother in the life of a minor daughter. Had the question of an insurable interest in a parent in the life of a minor child arisen at common law, it is reasonable to suppose that those same keen-minded, common-sense men who laid down and formulated the basic principles of the common law as it exists today, would have decided that such an interest existed, especially when it is remembered that

16 In Re Cohen, 230 Fed. 733.
under the common law the parent was entitled to the earnings of a minor child. No other decision seems possible in the face of the strongest blood interests coupled with a pecuniary interest founded in the law itself.

The existence of an insurable interest of one child in the life of his or her sister or brother does not appear to have been determined by our courts, but the inference to be drawn from the relationship of father and child, as previously outlined, would seem to suggest that in such cases the mere relationship of itself would not be sufficient to establish such an interest. It should also follow from the same reasoning that where a pecuniary interest existed between two such children, the possessor of the pecuniary interest should have an insurable interest in the life of the other. One authority in treating this subject calls attention to the doctrine established in the Massachusetts courts which hold that an unmarried sister has an insurable interest in the life of a brother who is supporting her.18

A decision which is clearly based upon the existence of a prior pecuniary interest and consequently squarely in point with the established doctrine regarding father and son as determined by the cases of Chicago Guaranty Fund Life Society v. Dyon19 and Guardian Mutual Life Ins. Co. v. Hogan.20 The federal courts have carried this proposition a great deal further than the New York courts, however, as there is a Federal case holding that a sister has an insurable interest in the life of a brother even after her marriage, although not dependent upon nor a creditor of the brother,21 which seems to be too great a divergence from the strict requirements now in force, ever to find a counterpart in this state. There have been a few cases22 in Illinois where the insurable interest

18 Lord v. Dall, 12 Mass. 115.
19 79 Ill. App. 100.
20 80 Ill. 35.
22 National Union v. Keefe et al., 172 Ill. App. 101; Norwegian O. P. Home Society v. Wilson, 176 Ill. 94.
of a brother in a life insurance contract has been determined, but these are of little or no use in determining a regular practice to be followed, as they deal exclusively with benefit certificates, the right of the brother to the proceeds of the certificate being contested upon the ground that it was ultra vires the societies concerned to permit a brother to be named as beneficiary.

There is one further relationship which properly belongs under the problems of the immediate family. This is the question of the rights of husband and wife to an insurable interest in each other's lives as affected by a subsequent divorce. The general doctrine in such cases appears to be that the insurable interest remains unchanged where a policy has been issued prior to the divorce, but that there will be a cessation of such interest with regard to policies issued subsequent to the divorce, except in the single instance where there is a provision in the decree of the court for the payment of alimony by the husband to the wife. In such case it is held that the wife has an insurable interest in the life of the husband which will continue for a period at least equivalent to the length of time over which the alimony provided by the decree is payable. Here again the decision is based upon the existence of a pecuniary interest of the wife in the continued existence of the husband. The case of Begley v. Miller, which is authority for the preceding statement also affirms the case of Connecticut Mutual Life Insurance Co. v. Schaefer, with regard to the rights of a divorced wife in her husband’s policy, wherein she is named as beneficiary, the court saying, “the decree of divorce in no way affected the rights of the divorced wife in the policy as the beneficiary named in it, or her authority to demand and receive the amount payable in virtue of its terms.”

The law regarding the more distant relations of blood and affinity is only partially determined, but the general doctrine would again seem to be based upon the

24 Begley v. Miller, 137 Ill. App. 278.
existence of a pecuniary interest moving from the life insured to the distant relative procuring the insurance. One of the few cases which has been determined in this state is that of Bruce et al. v. Illinois Bankers Life Association,\textsuperscript{25} which was a case wherein the insured’s nephews advanced money to him to cover the payment of premiums, subsequent to the issuance of the policy, upon the consideration that a change of beneficiary should be made to the nephews. The court held in this case that such a change of beneficiary made at the request of the insured was not contrary to public policy and consequently was a valid and enforceable agreement. This case, however, does not go very far toward establishing anything of particular value for guidance in future cases, because the facts were too overwhelmingly one-sided to have sustained a contrary opinion, inasmuch as there was an undoubted pecuniary interest present in the nephews which was strengthened by the fact that the policy had already been bona fide issued to the insured himself prior to the disputed change of beneficiary, and the change of beneficiary made at the instance and request of the insured.

There do not appear to be any other cases in this state which have any bearing on the matter of the possession of an insurable interest in distant relatives, but there are a number of cases deciding questions of an analogous character. These cases establish general rules that are controlling under certain specific circumstances which have arisen and are the leading authorities in Illinois for the doctrines advanced by them. First, there is the leading case of Hawley v. Aetna Life Insurance Co.,\textsuperscript{26} which reaffirms the decision in Guardian Mutual Insurance Co. v. Hogan\textsuperscript{27} and holds that one having no insurable interest in a life may not procure a valid contract of insurance on such a life, such contract being void at its inception. This is fundamental and needs no further

\textsuperscript{25} 207 Ill. App. 555.
\textsuperscript{26} 291 Ill. 28.
\textsuperscript{27} 80 Ill. 35.
comment. Then there is the case of Bloomington Benefit Association v. Blue, which establishes the converse of the last proposition, that is, that one may insure one's own life for the benefit of another who has no insurable interest therein, this case being approved by the court in Stake v. Stake. Here, of course, the insurance is applied for by the insurer himself, the premiums payable under the contract being paid by him, the beneficiary having no interest in the policy other than to receive the amount payable under the terms of the contract upon its becoming a claim by reason of the insured's death.

The case of Dresen v. Metropolitan Life Insurance Co., is authority for three propositions regarding the question of insurable interest, the first holding that the payment of the first premium by the insured before delivery of the policy to the beneficiary named thereon, who in the contemplation of the parties is to make all subsequent premium payments, will not cure a lack of insurable interest which has existed in such beneficiary up to that time. The second proposition holds that a statement made in the application for a policy to the effect that the beneficiary is contributing to the insured's support, is not sufficient to create an insurable interest where it otherwise would not exist. The third holds that where payments of premiums are made by a beneficiary who has no insurable interest, the beneficiary will be construed to be the agent of the insured and consequently would not be entitled to a refund of the premiums so paid.

As far as the question of assignments is concerned under the doctrine of insurable interest, there is no change from the general rule which has already been discussed. The case of Peoria Life Association v. Hines

28 120 Ill. 121.
29 228 Ill. 630.
30 195 Ill. App. 292.
31 But see Middike v. Balder, 198 Ill. 590, where it was held that a beneficiary, ineligible by the rules of a benefit society, but who has paid premiums under the contract in good faith, can recover the proceeds of the benefit certificate in a court of equity.
32 132 Ill. App. 642.
clearly establishes the principle that a policy cannot be assigned to one not possessing an insurable interest, at the same time holding that a creditor has an insurable interest in the life of his debtor and consequently may be the recipient of a valid assignment. The doctrine of this case is supported by the older case of *Guardian Mutual Life Insurance Co. v. Hogan*,\(^3\) which holds that a mere moral claim does not give a creditor an insurable interest in the life of his debtor, the doctrine of insurable interest requiring a valid legal claim to support the creditor’s right, with the further provision that a properly established legal claim will only be sufficient where the amount of insurance procured on the debtor’s life shall not be grossly in excess of such claim.

The two cases cited in the preceding paragraph are in a measure sustained by the case of *Martin v. Stubbings*,\(^4\) which was a suit on an insurance policy arising out of the assignment of such policy to the plaintiff to secure a debt due upon the winding up of the affairs of a certain partnership. The debt was evidenced by a note and secured by the assignment of the life insurance policy in suit, the consideration for the note and assignment being the debt itself and a collateral agreement to enter into a new partnership. The court in its decision held that the consideration was sufficient to support the assignment and gave judgment in favor of the assignee. The important part of this opinion and the part which places the case squarely alongside of the cases of the *Peoria Life Insurance Co. v. Hines* and *Guardian Mutual Life Insurance Co. v. Hogan*, is the decision that there was a sufficient consideration in this case to support the disputed assignment, from which it may be deduced that had there not been a sufficient consideration, which is synonymous in this case with insurable interest, the assignment would not have been upheld.

This same case of *Martin v. Stubbings* is also authority for the proposition that a person having once pro-

\(^3\) 80 Ill. 35.

\(^4\) 126 Ill. 387, approved in Stake v. Stake, 228 Ill. 630.
cured a valid insurance on his own life may make an assignment of the policy so procured to a third person who has no insurable interest whatsoever in the life of the assignor. This proposition appears at first sight to be in conflict with the portion of the opinion cited in the preceding paragraph, but the two portions of the opinion may readily be reconciled when it is understood that the latter portion refers to the assignment of a valid policy already in existence to a third person in whom an insurable interest in the assignor is missing. The doctrine here advanced is analogous to the decision handed down in the case of Bloomington Benefit Association v. Blue, holding that one may insure one's own life for the benefit of another having no insurable interest therein, and consequently in accord with the general rule that a person once having obtained a policy on his own life on which he is personally fulfilling the contractual obligations, he may do with it as he pleases, within the four corners of the contract.

The case of Wohlberg v. Merchants Reserve Life Insurance Company is in accord with the latter portion of the decision in the case of Martin v. Stubbings, and forms a connecting link between that case and the case of Bloomington Benefit Association v. Blue, the court holding that where the insured takes out an insurance policy on his own life and pays the premiums himself, it is immaterial whether the beneficiary is a creditor of the insured or not, as such beneficiary can recover the proceeds without previously establishing the existence of an insurable interest in himself.

The basis of the decision with regard to assignments of life insurance policies as security, to creditors of the insured, rests on two fundamental principles, first that the policy must be originally taken out in good faith by the parties procuring the assignment, and second, that the assignment is made with the consent of all parties. Under these circumstances and where both of these con-

35 120 Ill. 121.
36 209 Ill. App. 176.
ditions are satisfied the courts of this state will hold the assignment to be valid and enforceable. While on the subject of consent, there is a decision which is still in force in this state which holds that a policy of life insurance cannot be assigned without obtaining the consent of the insurance company through which the policy was issued.\(^37\)

Apparently the amount of the debt owing from the insured to the creditor or the specific nature of such debt has no bearing upon the court’s decision, as it has been held in the case of *Chicago Title and Trust Co. v. Haxton*,\(^38\) that a debt which is barred by the Statute of Limitations is sufficient to vest an insurable interest in the creditor, presumably upon the ground that the debt may still be revived at law by a new promise to pay or by a partial payment on account. The statement that the amount of the debt has no bearing upon the question when brought under consideration is, however, not unqualified, as there is an exception to be made in the event of the amount of the debt being totally inadequate to the amount of insurance involved. A case in point is that of *Guardian Mutual Life Insurance Co. v. Hogan*,\(^39\) which holds that where the insurance procured is palpably in excess of the amount the creditor stood to lose, the contract will be construed to be a wagering contract and void as being contrary to public policy.

While on the subject of the existence of an insurable interest of a creditor in the life of a debtor, it is pertinent to consider the existence or non-existence of such interest in joint obligors on a single obligation in the lives of one another. The precise question has never arisen in this jurisdiction, but where the question has been decided, the authorities are unanimous in support of the contention that an insurable interest does exist, at least to the extent of the debt. It is probable Illinois would follow these decisions, since joint obligors un-


\(^{38}\) 129 Ill. App. 626.

\(^{39}\) 80 Ill. 35.
doubtedly have a pecuniary interest in one another’s lives, which would be consistent with the general doctrine already set forth.

As to the existence or non-existence of an insurable interest in partnerships and corporations, and, where such an interest does exist, as to the nature and scope of such interest, unfortunately, the law in Illinois is largely speculative, since up to the present time no cases have been decided from which a definite and pertinent doctrine may be established. However, the general trend of the decisions in the cases cited in the preceding pages, although dealing with the rights of individuals, affords a firm and substantial basis from which certain definite inferences may be drawn relating to the underlying doctrines to be applied in cases involving firms or corporations. In the first place, all insurance contracts in Illinois are considered as contracts of indemnity. This is fundamental, and undeniably would apply to contracts in favor of partnerships or corporations. From this doctrine it may be deduced, therefore, that the partnership or corporation asserting an insurable interest must stand to sustain some loss through the death of the person on whose life insurance is procured, and consequently that such person must be capable of performing services which are in a sense unique in character, that is, services of a nature which could not be supplied immediately by some other person without a measurable amount of loss or hardship resulting to the employer. From this it would appear that a co-partner or the several members of a partnership would have an insurable interest in the life of any other partner, and similarly, that a corporation would have an insurable interest in the life of any officer, director or employee who held his position by virtue of some special knowledge or particular ability.

The existence of an insurable interest in firms and corporations being established, the next question which arises is that of the extent of such interest. Has a corporation, for example, the right to procure insurance on
the life of an employee in an unlimited amount, assuming the corporation to have an insurable interest in the life of such employee? To answer this question, consideration must be given to the fundamental principles of insurable interest which have already been established, and to the nature of the relationship sustained by the insured to the life insured. Following out this reasoning it appears that the contract is one to indemnify the corporation for the loss which it will sustain should the employee die, an indemnification for a specific loss which is readily ascertainable—at least much more capable of ascertainment than are numerous other life insurance contracts that have been declared to be indemnity contracts. This being the case, it would logically follow that the corporation should be limited in the amount of insurance which might be obtained on the life of an employee to an amount covering, but not exceeding, the loss which might be sustained, and that any violation of this limitation would make the contract a wagering contract, contrary to public policy and void at its inception.

Where a policy of insurance is taken out by a corporation on the life of some officer or director, the question whether the corporation may pay premiums on the policy can only be determined by ascertaining whether the act is *ultra* or *infra vires* of the corporation. If the act is *infra vires*, the payment of premiums by the corporation will not void the contract, but the contrary is true where the payment is *ultra vires*, because in Illinois an *ultra vires* contract is absolutely void.\(^40\) While on the subject of the payment of premiums by a corporation-beneficiary, mention should be made of the recent case of *Wellhouse v. United Paper Co. et al.*,\(^41\) which decided that where a policy was acquired at the expense of a corporation for the benefit of such corporation and all premiums were paid by the corporation-beneficiary as

\(^40\) Mercantile Trust Co. v. Kastor, 273 Ill. 332, following the rule declared in *Central Transportation Co. v. Pullman's Palace Car Co.*, 139 U. S. 24.

\(^41\) 29 Fed. (2d) 886.
such, the corporation became the owner of the policy and the beneficiary of its provisions, including the right to change beneficiary, so that the person insured could not make a change of beneficiary of his own volition after severing his connection with the corporation.

In general, then, it may be said that the doctrines applicable to a corporate beneficiary are also applicable to an individual employer who is named as beneficiary in a policy issued under similar circumstances to those treated above on the life of an employee.

Where a contract of life insurance is issued to a person, in good faith, on his own life designating a specific beneficiary, or to a beneficiary possessing the necessary insurable interest in the life insured, the status of the beneficiary depends entirely upon the terms of the policy, construed according to the rules of construction and interpretation applicable to such contracts, and the beneficiary has no rights or privileges other than those specifically granted by the policy. Where the insured does not reserve the right to make any subsequent change of beneficiary, the beneficiary’s interest vests immediately upon the completion of the contract and the issuance of the policy, and subsequently cannot be defeated except with the beneficiary’s consent. However, in the majority of instances where policies are taken out by the insured himself, he also reserves the right to make a subsequent change of beneficiary, with the result that the beneficiary’s interest does not vest until the death of the insured. A New York case held the beneficiary’s interest, when so vested, to be superior to that of a prior assignee of the insured to whom the policy was assigned for the benefit of creditors, no subsequent change of beneficiary being made. Where a beneficiary under a life insurance policy predeceases the insured, and the insured has reserved the right to make subse-

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42 Glanz v. Gloeckler, 104 Ill. 573; Begley v. Miller, 137 Ill. App. 278.
quent changes of beneficiary, the proceeds automatically revert to the insured’s estate, there being nothing to the contrary in the policy.\footnote{45 Glanz v. Gloeckler, 104 Ill. 573.}

In certain cases involving benefit certificates where the beneficiary has been merely described as “wife,” a situation has arisen through the death of the wife who was living at the time the certificate in question was issued, and the remarriage of the insured, where there is a legal wife actually surviving the insured and yet who was not the “wife” within the contemplation of the parties when the contract was made, no subsequent change of beneficiary being executed to the second wife as such. Under these circumstances the courts have held that where no specific designation is made, the person occupying the relationship stated at the time of the insured’s death is entitled to receive the proceeds of the certificate.\footnote{46 Modern Woodman v. Allin, 301 Ill. 119; Pike County Mut. Life Ass’n v. Berry, 214 Ill. App. 316.}

Before leaving the subject of beneficiaries, there is one other situation which should be discussed, that of the effect of the death of both the insured and beneficiary in a common disaster. In this state there is no presumption of survivorship where persons die in a common disaster, and in the absence of actual proof of survivorship, no such presumption will attach to the relationship of insured and beneficiary. Consequently in a suit between different claimants arising out of the demise of an insured and beneficiary in a common disaster, the claimant upon whom the burden of proof falls, must fail.\footnote{47 Middeke v. Balder, 198 Ill. 590.} The case supporting the doctrine just outlined is also authority for the rule that where a contingent beneficiary was named in the insurance contract, the burden would be upon such contingent beneficiary to show that the insured survived the beneficiary and, therefore, that the right to the proceeds vested in the contingent beneficiary upon the insured’s death. The
case is clearly in accord with the Illinois doctrine with regard to survivorship and with the established rules of the doctrine of insurable interest and logically should be followed without hesitation in any future cases which might arise involving a similar state of facts.

The case of *Wellhouse v. United Paper Co. et al.*\(^4\)\(^8\) attracts attention to the rights of the insured under a policy of life insurance to make changes of beneficiary. This case is one involving a policy of life insurance procured by the defendant upon the life of one Wellhouse, an officer of the corporation, the defendant being named as beneficiary, and the policy containing the usual clause reserving the right to change beneficiary to the insured alone. Subsequently the insured severed his connection with the corporation and executed a change of beneficiary to his wife, and upon his death both the wife and the corporation claimed the right to receive the proceeds. As this is a very recent case, decided January 7, 1929, the decision of the court is of particular interest and is therefore quoted verbatim:

The insurance having been acquired at the expense and for the benefit of the paper company, that company was the owner of the policy and the beneficiary of its provisions, including the one as to changing the beneficiary. Whatever rights or privileges the insured had under the terms of the policy, he held in trust for the party from whom the consideration proceeded. The policy as a whole was an asset of the paper company. Nothing in the evidence as to the circumstance attending the issue of the policy furnishes any support for the contention that Alvin Wellhouse, before or after he ceased to have any connection with the paper company, had the right to change the beneficiary without the consent of the paper company. We conclude that he did not have that right, and that the court did not err in making the above mentioned ruling.

As a general rule it may be stated that in policies issued by fraternal benefit associations the insured has the right to change the beneficiary at any time when

\(^4\)\(^8\) 29 Fed. (2d) 886.
such a procedure might seem advisable to him, providing, of course, that the new beneficiary comes within a class designated in the contract as being eligible to become a beneficiary. However, this is not the rule with regard to insurance policies issued by standard insurance companies, the insured having the right to change beneficiary under these contracts only when such right is specifically reserved to him by the terms of the policy, and then only after a substantial compliance has been made with those terms.\textsuperscript{49} In this connection it has been held that where the terms of a policy specify that a change of beneficiary may only be effected upon written application to the insurer and a subsequent endorsement of the change upon the policy itself at the home office of the insurer, the insured cannot make a change of beneficiary thereunder, except by proper application and endorsement.\textsuperscript{50}

The case of \textit{Freund v. Freund}, which is authority for the preceding statement, is also authority for the rule that where the consent of the insurer is required by the terms of the contract, a court of equity cannot treat a change of beneficiary as completed where the insured's death occurs before consent is given by the insurer and an endorsement made upon the policy. It is interesting to note that the Federal cases bearing on this same particular topic deviate somewhat from the rule as laid down in the case of \textit{Freund v. Freund}, as it has been held in the Federal courts that the provisions of a policy providing for the effectiveness of a change of beneficiary only upon endorsement upon the contract of insurance is for the protection of the insurer alone, and that consequently, where a valid written request for change of beneficiary has been made to the insurer, it is the insurer's duty to endorse the change upon the policy.\textsuperscript{51} Similarly, the Federal court has held that where the insured has complied with all the conditions of the policy and has done everything within his power to accomplish the desired change, a court of equity will treat that as done

\textsuperscript{49} Begley \textit{v.} Miller, 137 Ill. App. 278.

\textsuperscript{50} Freund \textit{v.} Freund, 218 Ill. 189.

\textsuperscript{51} Navassa Guano Co. \textit{v.} Cockfield, 244 Fed. 222.
which ought to be done and declare the change of beneficiary effective.\textsuperscript{52}

The question of a non-compliance with the terms of a policy with reference to a change of beneficiary, may be raised only by the insurer as a general rule, with the possible exception of a case involving an insurance contract in which the beneficiary has a vested interest, where the question might properly be raised by the beneficiary as well as the insurer.\textsuperscript{53} As the insurer has the right to raise a question of non-compliance, so also the insurer may waive any stipulation contained in a policy, pertaining to a change of beneficiary, providing however that the existing beneficiary does not have a vested interest in such policy.\textsuperscript{54} Where the insured has specifically reserved to himself the right to make any subsequent change of beneficiary, it is obvious that the beneficiary’s interest is neither vested nor indefeasible during the insured’s lifetime, and consequently such interest as he has may be divested by the insured with the consent of the insurer alone and upon such conditions as the insurer may require, within the specifications of the contract, the beneficiary not being entitled to notice of any change which may be made in this manner.\textsuperscript{55}

Where a change of beneficiary has been secured upon a policy of life insurance by the fraudulent act of the new beneficiary, it is a general rule among the several states that the rights of the original beneficiary cannot be so cut off,\textsuperscript{56} although there is a California case holding that the original beneficiary cannot contest the change of beneficiary where the validity of the contract is not attacked by the insurer.\textsuperscript{57} The rule in Illinois is clearly stated in the case of \textit{Cellarius v. Junker},\textsuperscript{58} which holds that the original beneficiary may set aside a change of

\textsuperscript{52} Reid v. Durboraw, 272 Fed. 99.
\textsuperscript{53} Martin v. Stubbings, 126 Ill. 387.
\textsuperscript{54} Delaney v. Delaney, 175 Ill. 187; Ptacek v. Pisa, 134 Ill. App. 155.
\textsuperscript{55} Reid v. Durboraw, 272 Fed. 99.
\textsuperscript{56} Mitchell v. Langley, 143 Ga. 827.
\textsuperscript{57} N. Y. Life Ins. Co. v. Dunn, 46 Cal. App. 203.
\textsuperscript{58} 200 Ill. App. 399.
beneficiary on the grounds of fraud, undue influence and mental incompetency, and enjoin the payment of the proceeds to the new beneficiary, by bringing suit in equity.

There is one further matter with regard to the right to make a change of beneficiary which has been decided by the courts of this state, and which should receive attention at this time. This is the doctrine advanced in the case of *Bruce et al. v. Illinois Bankers Life Association*,\(^5\) which holds that where a change of beneficiary is made under a life insurance policy to persons having an insurable interest, and such change is attacked by prior beneficiaries on the ground of mental incapacity of the insured, the question of mental capacity is one of fact and should be submitted to the jury for determination.

The case of *Bruce v. Illinois Bankers Life Association* has opened up another phase of the law of insurable interest which it is now appropriate to consider, namely, the various questions of procedure that have been determined by our courts in the adjudication of the existing cases.

First of all, it should be understood that the question of insurable interest is a question of fact\(^6\) and that the question may be raised ordinarily only by the insurer.\(^6\) These two principles are supported by such an abundance of authority both within and outside of this state as to require no further comment. Secondly, any question involving the doctrine of insurable interest must be raised in the *nisi prius* court and comes too late when raised for the first time in the Appellate Court upon review.\(^7\)

The much cited case of *Guardian Mutual Life Insurance Company v. Hogan*,\(^8\) is also authority for two

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\(^5\) 207 Ill. App. 555.
\(^7\) Johnson v. Van Epps, 110 Ill. 551; Chicago Title & Trust Co. v. Haxtun, 129 Ill. App. 626.
\(^8\) Metropolitan Life Ins. Co. v. Quandt, 69 Ill. App. 649.
\(^9\) 80 Ill. 35.
doctrines governing the procedure to be observed in cases of this nature which it is well to have in mind. The first of these doctrines holds that an insurable interest need only be pleaded in a case where the policy was taken out by one claiming to have an insurable interest. The second is to the effect that facts tending to prove an insurable interest which have come to light in the course of a trial should not be declared by the court to constitute such an interest. Before leaving this case, some attention should be drawn to an instruction which was requested by the defendant and refused by the court, reading as follows:

You are further instructed that, though a party may have some insurable interest in the life of another, as creditor or otherwise, yet, if the amount of insurance procured upon such life appears palpably to be very largely in excess of any possible loss the assured can suffer from the death of the insured, then the presumption of a gambling or wager insurance arises, which calls upon the assured to show that such insurance was not procured as a mere cover for gambling, or a wager upon the life of the insured; and, in this case, if you believe from the evidence, that the plaintiff had some interest of an insurable character, as already defined, in his father’s life, at the date of his several applications for insurance, yet, if you find, from the evidence, that the amount procured was vastly disproportionate in its excess to any probable loss which Patrick might suffer from his father’s death, such circumstance has a tendency to prove that the insurance was procured for mere purposes of speculation, and as a cover for gambling, and if, from the evidence, you shall find that such was the fact, then the plaintiff cannot recover in this action.

The Supreme Court held that this instruction should have been given and that to refuse it was error.

A discussion of the application of the doctrine of insurable interest to life insurance in this state would not be complete without some reference to the legal consequences of the cessation or diminution of such insurable interest. The present doctrine regarding cessation and
diminution of insurable interest may be traced back to the third section of the English Statute, 14 Geo. III, c. 48, enacted in 1774, which was originally susceptible of two interpretations, the first holding that no greater amount could be recovered than the value of the interest at the time the policy was issued, and the second that the amount recoverable should be determined according to the value of the interest at the time the policy became a claim. This latter interpretation was originally preferred to the former on the authority of the case of Godsall v. Boldero, but that case has since been overruled by the case of Dalby v. The India and London Life Assurance Company, and the former interpretation of the statute established as the controlling doctrine.

From an examination of authorities it appears that the greater weight today is with the Dalby case and that the Illinois doctrine is in accord with the weight of authority, although there is no specific Illinois case which can be cited to prove this contention.

The great majority of cases, in which a cessation or diminution of interest becomes material today are those involving divorce, and in regard to the question raised in such cases the Illinois doctrine is clearly established by the case of Begly v. Miller, which provides that "the decree of divorce in no way affected the rights of the divorced wife in the policy as the beneficiary named in it, or her authority to demand and receive the amount payable in virtue of its terms." The inference to be drawn from this case is that it is obvious, that to be consistent with Begley v. Miller, the Illinois courts must adhere to the doctrine established by the case of Dalby v. The India and London Life Assurance Company, and follow the general rule holding that where an insurable interest is present at the time the policy is issued, such interest is not affected by a subsequent cessation or diminution thereof.

65 9 East 72.
66 15 C. B. 365.
67 137 Ill. App. 278.
In discussing this question of cessation or diminution of interest and the cases establishing the controlling doctrine, one cannot help but be impressed by the fact that here too, as was found in discussing the various other phases of the main subject, the old established doctrines of the common law have withstood the triumphal march of progress which has cast down the cherished theories of contemporary sciences, and one pauses to admire and do homage to the old masters whose genius and ability first gave these principles to the law.