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Insurance -- Insurable Interest in Life of Copartner

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It is submitted, in conclusion, that in deciding whether or not defendant's uncontradicted direct evidence should entitle him to a peremptory ruling, a court should first determine whether or not the particular presumption has a logical core, i.e. a basis in probability. If it does not, the ruling should be given, providing there is no shadow upon the credibility of the defendant's evidence. If the presumption does have a basis of probability, then the weight of this probability should be balanced against the evidence of the defendant, as in any other case of conflict between circumstantial evidence (not raising a technical presumption) and direct evidence, and a peremptory ruling for defendant given or refused upon the usual test of whether or not reasonable minds could reach only one conclusion.

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Insurance—Insurable Interest in Life of Copartner

A and *H*, partners in an insurance business, each took out a policy on his life for the benefit of the partnership. The premiums were paid out of the earnings of the business. There was a partnership dissolution, *A* selling all of his interest, except accounts and notes receivable. *H* surrendered the policy on *A's* life and demanded the cash surrender value. *A* made demand for his proportionate share. *Held:* that the policy, together with its cash surrender value, was a partnership asset which passed to *H*.[1]

The instant case seems undoubtedly correct on the basis that if a partner has an insurable interest in the life of his copartner, then a partnership has an insurable interest in the life of a partner.[2]

Wagering policies were abolished in England by statutes.[3] American courts have generally held, irrespective of statutes, that wager-

thermore, it is often difficult to decide when a witness is, in a legal sense, uncontradicted. He may be contradicted by circumstance as well as by statements of others contrary to his own. In such cases, courts and juries are not bound to refrain from exercising their judgment and to blindly adopt the statements of the witness, for the simple reason that no other witness has denied them, and that the character of the witness is not impeached." By Rapallo, J., Elwood v. Western Union Co., 45 N. Y. 549, 553 (1871).

[1] Allen v. Hudson, 35 F. (2d) 330 (C. C. A. 8th, 1929).

[2] If a partner has an insurable interest in the life of his copartner, he has it whether it is the whole or a fractional part of the beneficial interest in the policy. Since he has a fractional interest in the partnership, it would seem that he had an insurable interest.

[3] 19 Geo. II, c. 37 and 14 Geo. III, c. 48.

ing policies are against public policy.[4] An insurable interest in the life of another, which takes the policy out of the wagering class, has been defined as that interest arising by the relation of blood,[5] or marriage,[6] or business[7] which gives a reasonable expectation of securing benefit from the continuance of the life insured.[8] It is generally held that a partner has an insurable interest in the life of his copartner.[9]

The North Carolina case of *Powell v. Dewey*[10] is generally considered as contrary to the proposition that a partner has an insurable interest in the life of his copartner. But strictly speaking, that case is limited to the situation where there is no capital invested. The statement in *Powell v. Dewey* that it "is against the weight of authority" to assert that an insurable interest arises merely from the continuance of a partnership seems to be wholly unwarranted, and has no authority in support.[11] Moreover, *Powell v. Dewey* seems unwarrantedly to limit the effect of dictum in *Trinity College v. Insurance Co.*[12] The recent trend in the North Carolina decisions

[4] VANCE, INSURANCE (1904) 125, n. 128. New Jersey seems to be alone in holding to contrary. (1923) 32 YALE L. J. 296, comment on Howard v. Beneficial Assoc., 98 N. J. Law 297, 118 Atl. 449 (1922).

[5] Lincoln S. Cain, *Insurable Interest in Life* (1926) 6 BOSTON L. REV. 111, 120.

[6] *Supra* note 5.

[7] Mace v. Provident Life Association, 101 N. C. 122, 7 S. E. 674 (1888) (debtor-creditor); U. S. v. Supple-Biddle Hardware Co., 265 U. S. 189, 44 Sup. Ct. 546, 68 L. ed 970 (1924) (corporation has an insurable interest in life of an officer); Embry's Adm'r. v. Harris, 104 Ky. 61, 52 S. W. 958 (1899) (surety may insure life of his principal); International Life Ins. Co. v. Carrol, 17 F. (2d) 42 (C. C. A. 6th, 1927) (three insolvents, jointly and severally liable on sundry obligation made in joint real estate deals, had an insurable interest in the lives of each other).

[8] VANCE, INSURANCE (1904) 129.

[9] Connecticut Mutual Life Ins. Co. v. Luchs, 108 U. S. 498, 2 Sup. Ct. 949, 27 L. ed. 800 (1883); Adam's Adm'r. v. Reed, 18 Ky. Law Rep. 858, 38 S. W. 420 (1896); Rahders, Merritt & Hagler v. Peoples Bank of Minneapolis, 113 Minn. 496, 130 N. W. 16 (1911); Rush v. Howkins, 135 Ga. 128, 68 S. E. 1035 (1910); Atkins v. Cotter, 145 Ark. 326, 224 S. W. 624 (1920); Bevin v. The Conn. Mutual Life Ins. Co., 23 Conn. 244 (1854); Fleming v. Fleming, 194 Iowa 71, 184 N. W. 296 (1921). Texas and Colorado hold that insurable interest ceases at the dissolution of the partnership and recovery can not be had thereafter. Cheeves v. Anders, 87 Texas 287, 28 S. W. 274 (1894); Ruth v. Flynn, 26 Colo. App. 171, 142 Pac. 194 (1914).

[10] 123 N. C. 103, 31 S. E. 381 (1898).

[11] *Supra* note 9.

[12] 113 N. C. 244, 248, 18 S. E. 175, 176 (1893), which states: "Under certain conditions a partner has an insurable interest in the life of his copartner. Insurance Co. v. Luchs. 108 U. S. 498. So one who is interested pecuniarily in the future earnings of another under a contract with him as an insurable interest in his life."

seems to indicate a more liberal view toward validating life insurance policies.[13] A possible relaxation of the "partnership view" may perhaps be found in the construction of incontestable clauses.[14]

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Master and Servant—Liability for Injury to Invitee of Truck Driver

Is a truck owner liable for injuries to a boy who, invited to ride on the running board by the driver without authority, was injured when he was thrown off as the truck rounded a corner at a rapid rate? The court held that the driver exceeded the scope of his employment in inviting the boy to ride.[1] A similar result was reached in another case when the secretary-treasurer of a company invited plaintiff's intestate to ride in a company car which was wrecked at a street intersection.[2] No evidence was introduced to show that the secretary was given to the habit of carrying passengers without authorization. Had this been established, defendant company might have been charged with constructive notice of violation of its rule and hence, with its abrogation.[3]

It is generally conceded that a servant has no implied authority

[13] In Hardy v. Aetna Life Ins. Co., 152 N. C. 286, 67 S. E. 767 (1910), after a thorough review of Trinity College v. Ins. Co., *supra* note 12, Powell v. Dewey, *supra* note 10, Burbage v. Windley's Ex'rs., 108 N. C. 351, 128 S. E. 839, 12 L. R. A. 409 (1891), Hinton v. Mutual Reserve Fund Life Ass'n., 135 N. C. 314, 47 S. E. 474, 65 L. R. A. 161 (1904), it was decided that, although prior North Carolina cases seemed to refuse to allow the good faith assignment of life insurance to persons having no insurable interest, an assignment would be valid where it was not a cloak to a wagering contract or transaction. In American Trust Co. v. Life Ins. Co. of Va. *supra* note 7, the validity of N. C. Cons. Stat. Ann. (1919) §1126 (5) [passed as a result of Victor v. Louise Mills, 148 N. C. 107, 61 S. E. 648 (1908)] giving every corporation an insurable interest in the life of any officer or agent whose death would cause financial loss to the corporation, was recognized.

[14] In American Trust Co. Life Ins. Co. of Va., 173 N. C. 558, 560, 92 S. E. 706, 709 (1917), there is the following dictum: "There is authority for the position that the incontestable clause in a policy of insurance covers every defense except that there was no insurable interest at the time of issuing the policy (5 Elliott on Contracts, §4077), although the trend of modern authority is that the clause, when it takes effect within a reasonable time after the issue of the policy and not from the date, cuts off all defenses except those specially allowed by the clause itself."

[1] Cotton v. Carolina Truck Co., 197 N. C. 709, 150 S. E. 505 (1929).

[2] Collar v. Grocery Co., 150 S. E. 2 (W. Va. 1929).

[3] Hammond v. Coal Co., 105 W. Va. 423, 143 S. E. 91 (1928).