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court's addition to the statute by interpretation reaches a desirable end, in that it prevents one party from abandoning the other without cause and then taking advantage of his own wrong to secure a divorce.

The court further declared that to obtain a divorce under the 1931 act there must be a separation by mutual agreement, express or implied.[20] The question then arises, where a party has been wrongfully abandoned without any agreement, is that party to be denied a divorce? The answer is that under the older statute, passed in 1907, and already discussed herein together with its subsequent modifications, the divorce may be secured.[21]

It is hard to see any necessity for two separation statutes, with diverse and confusing interpretations. The next legislature should pass a single separation statute and expressly repeal the others.

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Insurance—Subrogation—Right of Insured Debtor and Creditor to Insurance Money.

X Company made a loan of $3,000 to *A* and took a mortgage on *A's* house as security. *A* conveyed the house to *B*, who assumed the mortgage, and as additional security the *X* Company took out an insurance policy on the life of *B*, paying the premiums therefor. Fifteen months later *B* conveyed to *C*, and *C* in turn to *D*, each assuming the mortgage. Title to the house remained in *D* until the death of *B* two and one-half year later. The *X* Company collected the insurance, kept an amount equal to the sum due on the mortgage, and sent the mortgate to *D* who cancelled it of record. The administratrix of *B* brought action for the surplus insurance and also asked to be subrogated to the position of *X* Company as to the mortgage, contending that the estate itself had satisfied the indebtedness. By agreement of the defendants, *X* company and *D*, the administratrix was allowed that portion of the insurance in excess of the debt. The court refused to allow subrogation, and thus allowed *D* to hold the property free from the mortgage indebtedness.[1]

[20] The words of the court are: "Where a husband and wife have lived separate and apart from each other for two years, following a separation by mutual agreement, express or implied, their marriage may be dissolved; but where they have lived separate and apart from each other for two years, without a previous agreement between them, neither is entitled to a divorce, under the statute, C. S. §1659(a)." Parker v. Parker, 210 N. C. 264, 266, 186 S. E. 346, 347 (1936). Hyder v. Hyder, 210 N. C. 486 (1936) followed Parker v. Parker.

[21] John A. Livingstone, *Grounds for Divorce*, The Raleigh *News and Observer*, September 13, 1936, at p. 3 discusses the case of Parker v. Parker. H. W. McGALLIARD, "WOMAN AND THE LAW" c. on Divorce, which shall soon be published by the N. C. Institute of Government.

[1] Miller v. Potter, 210 N. C. 268, 186 S. E. 350 (1936).

The practice of the creditor insuring his debtor is not a thing new or uncommon to the business world. In the usual situation the debtor takes out insurance, naming his estate as beneficiary, and then makes an assignment of the policy as collateral security to the creditor "as his interest might appear," the creditor thereafter paying the premiums. Inasmuch as a contract provision is involved the courts are uniform in allowing the estate of the insured the excess insurance.[2] Although the contract provision that the creditor take only to the extent of his interest be omitted, still the courts hold that the debtor is entitled to the surplus.[3] In the circumstance where the creditor takes out the policy and pays the premiums, the majority of the courts seem to say that the creditor will be allowed to retain only the insurance to the extent of his debt, the debtor's estate getting the remainder.[4] The courts reason that the policy, above the amount of the creditor's claim, is for the debtor's benefit and to hold otherwise the court would be supporting a wagering contract. However, it will be observed that in most of the cases that laid down the above rule, the evidence showed either an assignment by the debtor by way of collateral security or that the creditor had procured the insurance under an agreement with the debtor. In the absence of these factors there is good authority holding that the creditor may retain all, reasoning that the contract is one with which the debtor has no concern,[5] this seeming to be better from the logical standpoint. No case where the creditor took out the policy and the debtor paid the premiums has been found, but one textwriter, at least, intimates that the debtor would be entitled to the surplus.[6] Such

[2] Benes v. Bankers Life Ins. Co., 282 Ill. 236, 118 N. E. 443 (1917) (assignee had no interest, so he was not allowed to recover anything under the policy); Bush v. Kansas City Life Ins. Co., 214 S. W. 175 (Mo. 1919); Freeman v. Anding, 69 S. W. (2d) 822 (Tex. Civ. App. 1934).

[3] Deal v. Hainley, 135 Mo. App. 507, 116 S. W. 1 (1909); VANCE, INSURANCE (2d ed. 1930) §163; see Haberfield v. Mayer, 256 Pa. 151, 100 Atl. 587 (1917). *Contra:* Fitzgerald v. Rawlings Implement Co., 114 Md. 470, 79 Atl. 915 (1911).

[4] Tateum v. Ross, 150 Mass. 440, 23 N. E. 230 (1890); VANCE, *loc. cit. supra* note 3; see Warnocke v. Davis, 104 U. S. 775, 26 L. ed. 924 (1881) (assignment as collateral); Exchange Bank of Macon v. Loh, 104 Ga. 446, 31 S. E. 459 (1898) (assignment involved); Lanouette v. Laplante, 67 N. H. 118, 36 Atl. 981 (1892) (beneficiary took out policy with no interest in life of insured, but under agreement with insured, and the court allowed the estate of insured to recover entire policy, less premiums paid by the beneficiary); Roller v. Moore's Adm'r, 86 Va. 512, 10 S. E. 241 (1889) (*held:* assignee of insurance policy had no insurable interest above the debt).

[5] Grant's Adm'rs v. Kline, 115 Pa. 618, 9 Atl. 150 (1887) (insurance did not occupy the position of collateral security); Shaffer v. Spangler, 144 Pa. 223, 22 Atl. 865 (1891); VANCE, *loc. cit. supra* note 3; see Amick v. Butler, 111 Ind. 578, 12 N. E. 518 (1887) (assignment with agreement to reassign upon payment of debt, this condition not being met); Fitzgerald v. Rawlings Implement Co., 114 Ind. 470, 79 Atl. 915 (1911) (assignment, but provided that such was not to secure any indebtedness).

[6] MAY, INSURANCE (3d ed. 1891) §459(a).

a view seems to be in line with sound reasoning. The abandonment by the defendants in the principal case of their claim to the money not necessary to the satisfaction of the mortgage, puts them in the position of accepting the majority view.

The principal problem before the court involved subrogation. This doctrine is generally said to presuppose an existing indebtedness, and can only be invoked by one under liability.[7] Such a requirement was met in the instant case by an assumption of the mortgage by *B's* grantee, a principal-surety relationship arising.[8] In addition to the above, the party seeking to invoke subrogation must have paid the debt.[9] This prerequisite was not met since the facts of the case as stated in the court's decision indicate that *B* contributed nothing towards the insurance premiums. No right to subrogation could be invoked other than on this score.

However, under the facts as found by the referee, and to which no exceptions were filed, there appears to be an important omission in the opinion of the Supreme Court; namely, that although *X* company took out the policy, and paid the premiums, it was done with the insured's money, he having become liable for the premiums when he assumed the mortgage given by *A* to *X* Company.[10]

But, with the addition of these facts, can it be said that the money of plaintiff's intestate satisfied the mortgage indebtedness? In the recent case of *Russel v. Owen*[11] the beneficiary was surety for the insured upon an obligation secured by an assignment of the policy and a deed of trust. However, this policy, in fact, was not taken out on behalf of the beneficiary, but to secure the insurance company, it being the creditor. On the death of the insured the proceeds of the insurance were used in satisfying the obligation. The beneficiary brought an action to be subrogated to the rights of the creditor in the deed of trust and the court allowed her claim. The court reasoned that the beneficiary's interest became vested on the death of the insured and thus the beneficiary's money paid the obligation for which she was surety. The result reached is apparently in line with the conclusion reached by two other states.[12] But the decision has been criticized vigor-

[7] 1 BRANDT, SURETYSHIP AND GUARANTY (3d ed 1905) §363.

[8] 1 BRANDT, *op. cit. supra* note 7, §333; see (1935) 13 N. C. L. REV. 337 for a discussion of the problem of whether the mortgagor becomes a surety to the mortagee, when the mortgage is assumed by the grantee.

[9] 1 BRANDT, *op. cit. supra* note 7, §332.

[10] Record on Appeal 35, Miller v. Potter, 210 N. C. 268, 186 S. E. 350 (1936).

[11] 203 N. C. 262, 165 S. E. 687 (1932).

[12] Barbin v. Moore, 85 N. H. 362, 159 Atl. 409 (1932) (the insurance company was not the creditor); Katz v. Ohio Nat. Bank, 127 Ohio St. 531, 191 N. E. 782 (1934) (promisory notes involved, with no mortgage security); see Smith v. Wells, 72 Ind. App. 29, 122 N. E. 334 (1919) (subrogation allowed due to prior agreement).

ously.[13] due to its defeat of the evident intention of the insured, and at least one state has refused to override this intention.[14] In order to get a result in the principal case similar to the result reached above one assumption must be made; namely, that where a creditor takes out insurance on the debtor's life as security for his obligation, with the debtor paying the premiums, having in fact been under a liability to so do, the debtor's estate should be in substantially the same position as the beneficiary where a debtor takes out a policy of insurance, naming a beneficiary, and later assigns such policy to the creditor as collateral security for his obligation.

From the practical aspect of the principal case there seems to be no great dissimilarity between the two arrangements. The court had before it a very "close case," but subrogation "was invented to do substantial justice between the parties."[15] Therefore, since the deceased in effect has paid the premiums, and the creditor has been satisfied, the deceased's estate should receive the product of the insurance, namely, the satisfied mortgage.

J. WILLIAM COPELAND.

Parent and Child—Child's Right to Sue Parent for Support.

An infant of six years, by a next friend, instituted an action against her father for support and maintenance.[1] The parents of this minor child had been divorced and the custody awarded to the mother. The court held for the plaintiff.

The usual means of enforcing the obligation of a parent to support the child is an action by a third party against the parent for the value of necessaries furnished the child, or a decree for support of the child in a divorce suit, or criminal proceedings.[2] In allowing the child to sue its parent directly, the usual form of action being otherwise, the North Carolina court has shown itself most liberal in the treatment of the parent and child relationship.

At common law in England the duty of a parent to support his child was considered merely moral, and neither a suit by the child for support nor an action by a third party for necessaries was allowed.[3] In a great many of our jurisdictions the duty has been

[13] (1933) 11 N. C. L. REV. 169.
[14] Kash Ex'r v. Kash, 260 Ky. 508, 86 S. W. (2d) 273 (1935); Berger v. Berger, 264 Ky. 225, 94 S. W. (2d) 618 (1936).
[15] (1936) 14 N. C. L. REV. 295, 296.

[1] Green v. Green, 210 N. C. 147, 185 S. E. 651 (1936).
[2] Note (1920) 7 A. L. R. 1277.
[3] Mortimore v. Wright, 6 M. & W. 481 (1840); Shelton v. Springett, 11 C. B. 452 (1851); Bazeley v. Forder, L. R. 3 Q. B. 559 (1868).