

LIFE INSURANCE AND SUICIDE

It has been a common practice of life insurance companies to insert in life insurance policies a clause to the effect that the company will pay the insurance money to the personal representatives of the assured or to his assigns in the event of the death of the insured taking place by suicide after the expiration of a period of one, two or three years after the commencement of the insurance.

In some cases payment is to be made in the event of suicide whilst sane or insane; in other cases in the event of suicide whilst insane.

In the absence of any provision of the above nature, the personal representatives could not recover the insurance money in any case where the insured died by suicide, except only in cases where the act of self destruction was committed during insanity of such a kind that the insured did not know what he was doing and was incapable of appreciating the consequences of his act.

The insurance companies have adopted the practice of inserting the suicide clause for the express purpose of benefiting the estate of the assured in case of suicide.

The decision of the House of Lords in *Beresford v. Royal Insurance Corporation*, [1938] 2 All E.R. 62 has held that a claim under a policy of life insurance containing such a clause cannot be enforced by the personal representative of the assured who commits suicide for the reason that suicide is a crime, and consequently, the benefit accruing to the estate of the assured upon his death by suicide is a benefit to a person committing a crime which cannot be recovered by his personal representatives.

It should be borne in mind that this case dealt with a contract by the insurance company to pay the sum assured to the personal representatives of the assured in the event of the death of the assured by suicide whilst sane.

It does not touch the rights of a preferred beneficiary under the policy : it does, however, contain some *obiter dicta* for relieving the apprehensions of lenders and others having a bona fide interest under a policy acquired before the death of the assured.

It is to be assumed that the Canadian courts will follow the decision in the *Beresford Case* as well as the decisions upon

which it is based and the rules of public policy developed thereby. In Canada suicide is as much a crime as it is in England (*London Life Insurance Co. v. Lang Shirt Co. Trustees et al.*, [1929] S.C.R. 117.); and the Canadian Courts have so far followed the English cases dealing with contracts against public policy.

It has been said that public policy is an unruly horse and dangerous to ride and that this branch of the law should not be extended, as judges are more to be trusted as interpreters of the law than as expounders of what is called public policy : the determination of what is contrary to the so-called policy of the law necessarily varies from time to time.

It is obviously desirable that any element of uncertainty as to the respective rights and obligations under a policy of life insurance should be removed.

The Association of Superintendents of Insurance of the Provinces of Canada had under consideration at the 1938 Conference thereof proposals to amend the Insurance Law of the Provinces of Canada to make what is known as "the suicide clause" enforceable.

Two drafts were prepared and submitted at the Annual Conference of the Association which read as follows :

Draft No. 1.

"Unless it is expressly provided to the contrary in a contract of life insurance, it shall be no defence to any claim thereunder that the death of the person whose life is insured was caused by his own act or that the maturity of the contract was affected by that act."

Draft No. 2.

"Notwithstanding any law to the contrary an insurer may undertake to pay insurance money in the event that the person whose life is insured commits suicide, whether he be sane or insane at the time : provided that in the case of a contract made after the (30th) day of (June, 1939) the death shall not so occur until after two years from the date of the contract."

The Conference also considered section 168 of the Ontario Life Insurance Act (R.S.O. 1914, c. 50) which read as follows :

"Where a contract of insurance provides in terms or in effect that the contract shall be indisputable or incontestable it shall not be disputable or contestable on the

ground that the assured committed suicide unless in express terms it is so stipulated in the contract and is so stated in the application on which the contract is founded."

This section was first enacted by 1910, c. 26, s. 5, and was repealed by 1924, c. 183, commonly referred to as The Uniform Insurance Act. Further consideration of the matter and the appropriate language to be used in legislation to give effect to the proposal was deferred until the 1939 meeting of the Conference.

The power to legislate as to what contracts are or are not contrary to public policy in Canada, provided such contracts are not criminal, is clearly a matter of property and civil rights in each of its Provinces and is vested exclusively in the Provincial Legislatures.

The question as to whether or not the common law rules as expounded by the English Courts in the Beresford case and the other cases above referred to is one for the Legislatures: it is for them to decide whether any change is to be made, and if so, what those changes should be.

It is something of a shock to one's sense of justice that insurance companies should be permitted to issue policies containing an agreement whether express or implied which is unenforceable: if it is against public policy to enforce such a contract it would seem to be convenient to prohibit under penalty the issuance of such policies.

In case companies are to be permitted to issue life insurance policies whereby the sum assured is to be payable to the personal representatives of the assured upon his death by suicide, consideration might conveniently be given to the propriety from the point of view of public policy of legalizing such policies in respect of all cases of suicide, or of restricting such legalization to cases of suicide whilst insane.

If such policies are to be permitted only in the case of suicide whilst insane it should be borne in mind that it is likely that "suicide whilst insane" will be interpreted as meaning death caused by an act of self destruction committed at a time when the deceased did not realize the nature and consequences of that act (*Clift v. Schwabe* (1846), 3 C.B. 437; *Borradaile v. Hunter*, 5 M. & G. 639).

In case it is thought proper to prohibit or in the alternative to make unenforceable contracts of life insurance payable whilst sane, consideration should be given to the present prevailing

view of insanity in relation to criminal acts adopted by the courts and set out in *R. v. McNaghten*, 10 Cl. & F. 200.

It would seem that as the law now stands in the case of a policy providing for death by suicide whilst insane, a claim under the policy would be unenforceable by the personal representatives of the assured, if the act of self destruction was an intentional act of the assured committed when he was aware of its probable consequences and notwithstanding that he was not in the full possession of his senses or that he was suffering from some form of mental disease which impelled him to the act of self destruction : it might be possible to exclude claims such as that in the *Beresford Case*, and to include claims which are at the present time usually paid without demur, by providing that it should be lawful for an insurer to issue a life insurance policy containing a provision that the insurance money should be payable upon the death of the assured by suicide except only in case the assured committed suicide by means of an act of self destruction committed at a time when he was not suffering from any mental disease and with the intention of self destruction and with knowledge of the probable consequences of the Act.

Consideration might well be given to the desirability of providing by express enactment that any contract so legalized should be enforceable—

- (a) by the personal representatives of the assured; and
- (b) by the preferred beneficiaries under the policy to the extent of their respective interests; and
- (c) by persons who have acquired for value prior to the death of the assured a bona fide interest in the policy to the extent of that interest.

The drafts submitted to the Conference of Superintendents as well as section 168 of the Ontario Act above referred to, seem sufficient to legalize any term of a life insurance policy for the payment of insurance on the death by suicide of the assured and to empower any person entitled in any way under the policy to enforce his claim : they would even seem to legalize a policy of insurance under which the sum assured was payable in the event of the death of the assured by suicide and not otherwise : probably that is not the intention of the proposed legislation : the intention seems to be to legalize an

agreement contained in a life insurance policy under which the insurance money is to be paid in the event of death by suicide of the assured.

At the Conference of Superintendents of Insurance held in Montreal in August, 1939, the matter received further consideration, and the following clause was approved for enactment:

"An agreement by an insurer for the payment of insurance money in the event that the insured commits suicide shall be lawful and enforceful."

If this clause is embodied in the Insurance Act, the liability of an insurance company to carry out an agreement to pay insurance money in the event of the death of the insured by suicide will cease to be affected by any rule of public policy: possibly the clause ought to be limited to agreements contained in a policy of life insurance: as the clause now stands an agreement by an insurer to pay the insurance money in the event of the death of the insured by suicide and in no other event would be made both lawful and enforceful: it is questionable whether it is desirable or convenient to go to that extreme.

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