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Insurance: Policies: Construction of Terms

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ties of goods as the products of the plaintiff. *Fonotopia Limited* v. *Bradley,* 171 Fed. 951 (C.C.E.D. N.Y. 1909); *Prest-O-Lite Co.* v. *Davis,* 209 Fed. 917 (S.D. Ohio 1913).

In 1918 the Supreme Court chose to extend the scope of protecion afforded one of several business competitors against the others of the group, holding that no element of fraud was necessary to show unfair competition. *International News Service* v. *Associated Press,* 248 U.S. 215, 39 Sup. Ct. 68, 63 L.ed. 211, 2 A.L.R. 293 (1918). Both the litigants were engaged in the business of selling news, and the defendant was enjoined from selling, as its own, news taken from the bulletin issued by the complainant or from newspapers published by its members. The court, regarding news as quasi-property as between rival news agencies, apparently rested its decision on the fact that defendants practice constituted unfair competition in that there was appropriation without cost to itself of values created by the plaintiff. In 1913 the rule of the *International News* case, *supra,* was interpreted and extended so as to classify a news agency and a radio station as competitors. *Associated Press* v. *Sioux Falls Broadcast Ass'n.,* unreported (D.C. S.D. Mar. 14, 1933). The suit was brought to enjoin the radio station from broadcasting news allegedly "pirated" from a member newspaper. The facts of the case are similar to the instant case; the defense that plaintiff was also guilty of unfair competition was overruled and the District Court held that the defendant was guilty of unfair competition. The news published in the plaintiff's newspaper was found to be the "property" of the plaintiff for at least 24 hours after publication and the defendant was enjoined from broadcasting it during that time.

In the instant case, considering the subjective purpose of both corporations, viz., the making of profit through the medium of advertising, it hardly seems plausible that the court could find no unfair competition on the mere fact that the complainant's members receive a small fee for its newspaper while the radio station broadcasts gratuitously. The competition for advertising between the press and radio has been recognized by other courts. See *Sorenson* v. *Wood,* 123 Neb. 348, 243 N.W. 82 (1932); *Miles* v. *Louis Wasmer, Inc.,* 172 Wash. 466, 20 P. (2nd) 847 (1933). Unless the complainant failed to prove substantial damages or the court was over eager to protect public interest in the free distribution of news it seems contradictory to honest business to allow one without cost to reap the fruits of another's labors and thus create dangerous competition.

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INSURANCE—POLICIES—CONSTRUCTION OF TERMS.—Plaintiff beneficiary of a membership certificate in defendant fraternal beneficiary association sues to recover for the accidental death of the insured who was killed in a railway crossing collision. The trial court found the deceased negligent and denied recovery on the ground that the clause in defendant's constitution, which was made to apply to the contract, and which exempted the defendant from liability when the injuries were the result "of voluntary or unnecessary exposure to danger or to obvious risk of injury," controlled. On appeal, *Held,* judgment reversed; the word "or" in "voluntary or unnecessary exposure" must be construed conjunctively rather than disjunctively; "or" should be read as "and." *Vinograd* v. *Travelers' Protective Ass'n. of America* (Wis. 1935) 258 N.W. 787.

The instant case is the first one decided by a Wisconsin court on the subject. There seems also to be a dearth of authorities in other jurisdictions as to

the construction of the exact phrase involved. The few cases which are in point, however, appear to support the Wisconsin court in its decision. *Travelers' Protective Ass'n.* v. *Jones,* 75 Ind. App. 29, 127 N.E. 783 (1920); *Irwin* v. *Phoenix Accident & Sick Benefit Ass'n.,* 127 Mich. 630, 86 N.W. 1036 (1901); *Hunt* v. *U. S. Accident Ass'n.,* 146 Mich. 521, 109 N.W. 1042, 7 L.R.A. (N.S.) 938, 117 Am. St. Rep. 655 (1906). In the Irwin case, *supra,* however, the insured was held not negligent at all, while the court in the Hunt case, *supra,* held that the phrase applied only to cases where there was an obvious danger of injury, with the realization that an accident would in all probability occur.

An analogy may be drawn between the problem involved in the instant case and the situation in cases which hold that the words totally and permanently disabled from carrying on any occupation whatsoever, as used in health and accident policies, really mean temporarily and partially disabled from carrying on an occupation similar to that in which the insured was engaged. *McCutcheon* v. *Pac. Mut. Life Ins. Co.,* 153 S.C. 401, 151 S.E. 67 (1929); *Equitable Life Assur. Soc.* v. *Serio,* 155 Miss. 515, 124 So. 485 (1929). The reasoning employed by the courts in making such construction is much the same as that in the instant case. An insurance policy must be interpreted according to its true character and purpose, and in a sense in which the assured had reason to suppose it was understood. *Metropolitan Life Ins. Co.* v. *Blue,* 222 Ala. 665, 133 So. 707, 79 A.L.R. 852 (1931); *Provident Life & Accident Ins. Co.* v. *Harris,* 234 Ky. 358, 28 S.W. (2d) 40 (1930). The meaning to be ascribed to the words does not depend entirely upon their strictly literal significance, but the context and apparent purpose of the provision in which they are embodied must be taken into account. *Penn. Mutual Life Ins. Co.* v. *Milton,* 160 Ga. 168, 127 S.E. 140, 40 A.L.R. 1382 (1925). But, where words had a common or ordinary meaning, the insurer is entitled to the benefit of such. *Ginell* v. *Prudential Life Ins. Co.,* 237 N.Y. 554, 143 N.E. 740 (1923). In the Ginell case, *supra,* the court held that if the meaning given to the word "permanent" by the trial court was approved, the word could as well have been left out of the policy entirely, or the word "temporary" substituted.

The result of the decisions following the weight of authority, however, is to leave even the most explicit provisions of insurance policies which purport to limit the insurer's liability open to judicial construction whenever the court feels that such is in the interest of justice. The fact that in all cases the companies and their policy forms are subjected to strict supervision by the state governments seems to have made little difference in the treatment accorded the company in court, although in the case of standard form policies, the rule that insurance contracts are to be liberally construed in favor of the insured is said not to apply. See *Rosenthal* v. *Insurance Co.,* 158 Wis. 550, 149 N.W. 155 (1914). But it is suggested that there has been little or no change in the methods employed by the companies to induce private individuals to enter into contracts of insurance. The court no doubt considers that it was not the insured who took the active part in the taking out of the policy but that, in fact, his was a passive role. And so the courts, as indicated by the instant decision, are still reluctant to preclude themselves from intervening and adjusting the rights of parties to an insurance policy where, in their judgment, such intervention is required by the interests of justice.

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