Marquette Law Review

Volume 17
Issue 4 *June 1933*

Article 16

1933

Insurance - Exceptions to Liability - Suicide Clause

Clemens H. Zeidler

mony, parent, child, or co-heir—who is not a party to the action, and is not so interested in the event as to be directly bound by the action or to have the record serve as evidence for or against him in a subsequent action, is not rendered incompetent by virtue of the possibility of such subsequent action being brought against him, even though such action should find its inception in his testimony. *Nearpass* v. *Gilman,* 104 N.Y. 506, 10 N.E. 894 (1887). Again, the witness is not incompetent if the recovery of judgment would not absolutely bar an action against the witness, although the trend of the testimony would seem to make such an action impossible. *Connelly* v. *O'Connor,* 117 N.Y. 91, 22 N.E. 839 (1889). Proof that the event of the instant suit may lead to other litigation affecting the witness is not sufficient to justify preclusion of his testimony; it must be shown that the judgment will be evidence for or against the witness in such subsequent action. *Franklin* v. *Kidd,* 219 N.Y. 409, 114 N.E. 839 (1916). A witness who, for example, failed to prevent a judgment against his principal and is consequently sued by said principal may introduce in the subsequent action any defense he may have; he is not bound by the judgment, even though he failed in the prior trial to make the same defense good on behalf of his principal. *Nearpass* v. *Gilman,* supra. It must be borne in mind that before a witness can be bound by a judgment, he must have been placed by formal notice to defend, or something tantamount to such notice from the defendant, in a situation calling upon him to assume control of the action, or to aid in its defense as though a party, with the right to adduce testimony, cross-examine witnesses, and appeal from the judgment. *Wallace* v. *Strauss,* 113 N.Y. 238, 21 N.E. 66 (1889).

In the instant case, the court reasoned that while the witness was interested in the question, she was not interested in the event; the election of the husband as the sole debtor removed the possibility of a suit against the witness, and so her only interest was in preventing a suit against her by her husband for half the debt. Assuming the possibility of such an action by the husband, the witness would not be rendered incompetent thereby, nor would she be prevented by a judgment against her husband from proving payment in such assumed subsequent action.

It can only be said that the New York Court has proved consistent in applying a most liberal interpretation to an exceedingly controversial problem, and that, by and large, the results are just and the reasoning gratifyingly lucid.

VERNON ERBSTOESZER.

INSURANCE—EXCEPTIONS TO LIABILITY—SUICIDE CLAUSE.—Defendant insurance company issued a policy upon the life of deceased, which contained the provision: "If within two years from the date hereof the insured shall, either sane or insane, die by his own hand, the liability of the company shall be limited to the premiums paid." The policy herein was issued in 1931; in 1932 the insured fell out of a third story window, and as a result died. In an action on the policy the jury found that defendant was intoxicated at the time to such a degree as to be unable to understand that if he jumped or stepped through the window, such act might cause his death. Appeal from judgment for plaintiff; judgment affirmed. *Held,* death as a result of the insured's own act committed while intoxicated is not "suicide" or death "by his own hand", so as to pre-

clude recovery on a policy containing the "death by suicide" clause. *Ladwig* v. *The National Guardian Life Insurance Company,* (Wis. 1933) 247 N.W. 312.

The court placed this decision on the doctrine stated in two earlier cases: *Cady* v. *Fidelity Ins. Co.,* 134 Wis. 322, 113 N.W. 967, 17 L.R.A. (N.S.) 260 (1908), and *Pierce* v. *Traveler's Life Ins. Co.,* 34 Wis. 389 (1873). In the *Pierce* case the court decided that the words "death by his own hand" were synonymous with the term "suicide"; and the doctrine set forth in both the *Pierce* and *Cady* cases was that the use of the term "suicide" imports into the contract, "that one who dies as a result of his own act is not within the exception, unless the act was intentional, and committed by him at a time at which he was conscious of the nature of the act, and of its immediate and direct consequences, although without criminal or felonious intent."

By the great weight of authority the "suicide, sane or insane" clause excepts from liability the insurer in every case of self-destruction, *Bigelow* v. *Insurance Company,* 93 U.S. 284, 23 L.Ed. 918 (1876); *Streeter* v. *Society,* 65 Mich. 201, 31 N.W. 780, 8 Am. St. Rep. 883 (1887); *Penn Mutual Life Ins. Co.* v. *Blum,* 258 Fed. 901, 169 C.C.A. 621 (1919); *Moore* v. *Northwestern Mutual Life Insurance Co.,* 192 Mass. 468, 78 N.E. 488, 7 Ann. Cas. 656 (1906); *Illinois Bankers' Life Association* v. *Floyd* (Tex. Com. App.), 222 S.W. 967 (1920); see notes 7 Ann. Cas. 659; 35 A.L.R. 166; except where the death is accidental; *Union Mutual Life Insurance Company* v. *Payne,* 105 Fed. 172, 45 C.C.A. 193 (1900); *Parker* v. *Aetna Life Ins. Co.,* 289 Mo. 42, 232 S.W. 708 (1921); *Parker* v. *New York Insurance Co.,* 188 N.C. 403, 125 S.E. 6, 39 A.L.R. 1085 (1924); see 37 C.J. 553. In *Harten* v. *Sovereign Camp,* W.O.W., 124 S.C. 397, 117 S.E. 409 (1923), it is apparently held that even death by accident if self-inflicted, is within the clause.

This decision, then, is far from the weight of authority, which deviation the court expressly admits, along with the conclusion that the word "insane" is practically stricken from the policy thereby in Wisconsin. On this construction of the clause, however, Wisconsin does not seem to stand alone. See *Supreme Lodge* v. *Gelbke,* 198 Ill. 365, 64 N.E. 1058 (1902); *Zerulla* v. *Supreme Lodge,* 223 Ill. 518, 79 N.E. 160 (1906); *Vicars* v. *Aetna Life Insurance Co.,* 158 Ky. 1, 164 S.W. 106 (1914); and *New York Life Ins. Co.* v. *Dean,* 226 Ky. 597, 11 S.W. (2d) 417 (1928).

CLEMENS H. ZEIDLER.

MUNICIPAL CORPORATIONS.—ZONING—POLICE POWER.—Upon petition of the relator, and after the issue formed by return of an alternative writ had been tried, the circuit court issued a peremptory writ of mandamus, addressed to the inspector of buildings in the City of Milwaukee, commanding him to issue the necessary permit authorizing the erection of buildings and other improvements for a cut stone plant and yard upon certain premises owned by the relator in the City of Milwaukee. The building inspector appeals, justifying refusal of a permit under the city zoning ordinance, which restrained use of the relator's property to residential purposes, and made said property part of a residential area. *Held,* judgment affirmed. Defendant's property is a block of land in an industrial center, valuable for industrial purposes, condemned to a use for residential purposes, and for such purposes it is comparatively valueless. Ordinance, insofar as it places relator's property in a residential district, is utterly unreasonable and void. *State ex rel. Tingley* v. *Gurda,* (Wis. 1932) 243 N.W. 317.