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Article 8

Insurance - Debtor and Creditor - Exemptions

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RECENT DECISIONS

INSURANCE—DEBTOR AND CREDITOR—EXEMPTIONS—A married woman was the beneficiary in a life insurance policy carried by her husband on his own life. The wife had signed a note for her husband as a co-maker with him. This note was held by the creditor at the time of the husband's death. After his death the creditor sought to reach the proceeds of the insurance policy while the money was still in the hands of the insurance company. The trial judged dismissed the proceedings against the insurance company, the garnishee, holding that the proceeds from the policy while they were in the hands of the company were exempt from the claims of the wife's creditors. The Supreme Court reversed the judgment of the trial court with directions to enter an order denying the garnishee's motion to dismiss. *First Wisconsin National Bank of Milwaukee* v. *Strelitz,* 245 N.W. 74 (Wis., 1932).

It is within the power of the legislature to allow debtors to retain some of their goods free from the claims of creditors. The legislature's powers are broad but they are not unlimited. *Bank of Minden* v. *Clement,* 256 U. S. 126, 41 S. Ct. 408, 65 L. Ed. 857 (1921). Very probably the legislature could make such assets as those in question exempt from the claims of creditors arising as in this case. The Wisconsin legislature has never purported to allow such exemptions unless it has done so in section 246.09. Stats. That statute obviously is intended to protect in certain cases the proceeds and avails of a life insurance policy carried for a married woman against the creditors of the insured. If the court in this case had been considering the scope of this section for the first time the decision as finally given would scarcely be open to question. But the court had already decided that the legislature by this section (only in certain cases before the amendment of 1931) had intended to protect the cash surrender value of the policy before the death of the insured against the claim of a creditor holding the joint obligation of the insured and the married woman beneficiary. *Ellison* v. *Straw,* 116 Wis. 207, 92 N.W. 1094 (1903). The trial judge here apparently felt that the analogy between that case and the present one was close enough to support his decision. The Supreme Court, however, decided that the scope of the decision in the earlier case must be limited by the facts presented in the record of that case.

Once before the court was called upon to consider the effect of the dcision in the *Ellison* case. *Canterbury* v. *Northwestern Mut. Life Ins. Co.,* 124 Wis. 169, 102 N.W. 1096 (1905). There the court decided in favor of the company which had paid the proceeds of a policy to the assignee of the insured and beneficiary, a married woman, against the claim of the beneficiary which she was making after the insured's

death. In the *Canterbury* case the court called attention to the fact that some of the language in the opinion in the *Ellison* case was too broad for the decision which in fact the court had been called upon to make.

The analogy between the *Ellison* case and the present one is close but it is not complete. Whether the present creditor of the husband, the insured, or the present creditor of the wife, the beneficiary, will eventually be in a position to reach the proceeds of the policy will depend upon whether the beneficiary in fact survives the insured. Whether the wife survives the husband, or whether the husband survives the wife, may not affect in the end the claim of the creditor who holds the joint obligation of both. Logically, however, neither has any present interest which anyone as the creditor of either can reach.

The decision of the Supreme Court in the present case is plausible and understandable. Something might be said for the other view if the general understanding in the state had been that beneficiaries in the position of the married woman here have had the protection accorded her. It is suggested that there probably has not been any such general understanding. Very probably the question has not been presented before because the insurance companies have been writing policies in which the insured has retained the right to change the beneficiary even where the named beneficiary has been a married woman. Until the legislature amended section 246.09, Stats., it was not certain that the cash surrender value of a policy so written was free even from the claims of the insured's creditors before his death. See *In re Grant,* 21 F (2d) 88 (W. D., Wis., 1927).

Exemption statutes must be strictly construed. Too many other questions would soon have been presented to the court, perhaps to the legislature, had the exemption claimed in this case been allowed. Would the proceeds of such a policy be exempt from the claims of her creditors after payment to the beneficiary? Would any distinction be made between obligations incurred by the beneficiary before or after the insured's death? Would any distinction be made between the claims of ordinary creditors of the beneficiary and the claims of those creditors who became such by reason of the beneficiary's obligation as a co-maker on the insured's note? Could the legislature even purport to make any such classification of creditors with respect to exemption laws and not violate the privilege and immunity clause of the Fourteenth Amendment? The fixing of the exemptions to be allowed to any class of debtors is a matter for the legislature to settle. And the legislature must speak expressly. The matter ought not be left to be determined by judicial construction of a more or less general statute.

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