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Municipal Corporations - Zoning - Police Power

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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.

The validity of so-called zoning laws authorizing a municipality to prescribe zoning districts and of ordinances enacted pursuant thereto has been established beyond question. *State ex rel. Carter* v. *Harper,* 182 Wis. 148, 196 N.W. 451, 33 A.L.R 269 (1923). See also *Building Height Cases,* 181 Wis. 519, 195 N.W. 544 (1923). The policy and degree of such regulatory zoning measures is quite largely a matter of legislative discretion. Courts are not disposed to be hypercritical in construing such ordinances in practical operation. *Bouchard* v. *Zetley,* 196 Wis. 635, 220 N.W. 209 (1928). It has been well stated that "state legislatures and city councils who deal with the situation from the practical standpoint, are better qualified than the courts to determine the necessity, character, and degree of regulation which these new and perplexing conditions require; and their conclusions should not be disturbed by the courts unless clearly arbitrary and unreasonable." *Gorieb* v. *Fox,* 274 U.S. 603, 47 Sup. Ct. 770, 71 L.Ed. 1229 (1926).

Unless the ordinance passes the bounds of reason or exceeds the bounds of powers delegated to the city council, the courts are reluctant to declare it invalid. Thus classifications by a legislature permitting higher buildings in cities of the first class than in other urban centers, and exempting entirely certain types of structures have been upheld. *Building Height Cases,* supra. So-called curb setback provisions in zoning ordinances have also been upheld. *Bouchard* v. *Zetley,* supra. However, a zoning ordinance providing that "no building shall be erected" is construed as looking to the future and having no retroactive effect. *Rosenberg* v. *Village of Whitefish Bay,* 199 Wis. 214, 225 N.W. 838 (1929); *State ex rel. Klefisch* v. *Wis. Telephone Co.,* 181 Wis. 519, 195 N.W. 544 (1923). That such ordinances in some instances operate with harshness and seem oppressive does not render them invalid. *Hayes* v. *Hoffman,* 192 Wis. 63, 211 N.W. 271 (1927). Where the interest of the individual conflicts with the interest of society, such individual interest is subordinated to the general welfare.. *C. B. & Q. Railway Co.* v. *Drainage Comm'rs,* 200 U.S. 561, 26 Sup. Ct. 341, 50 L.Ed. 596 (1906). But like limitations must be imposed upon all neighbors. See *Piper* v. *Ekern,* 180 Wis. 586, 194 N.W. 159, 34 A.L.R. 32 (1923).

But it should be remembered that when the bounds of legislative discretion are exceeded, courts will deny validity to the offending ordinance. The case of *Village of Euclid* v. *Ambler Realty Co.,* 272 U.S. 365, 47 Sup. Ct. 114, 71 L.Ed. 302 (1926) points out the test for determining whether such bounds of legislative discretion have been overstepped, the court stating, "The line which in this field separates a legitimate from an illegitimate assumption of power is not capable of precise delimitation. It varies with circumstances and conditions. . . . . If the validity of the legislative classification for zoning purposes be fairly debatable, the legislative judgment must be allowed to control." Applying a similar test in a case where the general character of the surroundings was such that the appellate court could not say that the legislative body was not warranted in declaring the district residential, the Wisconsin Supreme Court did not disturb a finding that an undertaking parlor violated zoning restrictions. *LaCrosse* v. *Elbertson,* 205, Wis. 207, 237 N.W. 99 (1931).

The principal case well illustrates the limitation of "reasonableness" upon a municipality's power to declare a district residential in character. While the zoning power may be used to protect a residential area from the encroachments of business and industry, it may not be used to condemn to residential purposes property in an industrial locality, surrounded by property devoted to uses repugnant to use for residential purposes. Parkway and boulevard de-

velopments contemplated at some future time by a city planning commission do not justify such "utterly unreasonable" use of the zoning power. And, although city planners, before whose sometimes overzealous vision ugly industrial structures and unsightly factory sites vanish to be replaced by planned parkways and tree-lined boulevards, may regret the holding in the principal case, the logic of that decision will recommend itself to property owners whose more mundane interests are concerned with possible profitable uses and present sale values of their properties.

ROBERT W. HANSEN.

PATENTS—EMPLOYER AND EMPLOYEE—JURISDICTION OF COURTS.—Respondent is exclusive licensee of letters patents issued to D and L, who were employed, during the conception and development of the invention, in the Bureau of Standards, a Sub-Division of the Department of Commerce. D and L were employed in the radio section and engaged in research and testing in the laboratory. While performing their regular tasks they experimented at the laboratory in devising apparatus for operating a radio receiving set by alternating current with the hum incident thereto eliminated. The invention was completed December 10, 1921. Before its completion no instructions were received from and no conversations relative to the invention were held by these employees with the head of the radio section, or with any superior. They also conceived the idea of energizing a dynamic type of loud speaker from an alternating current house-lighting circuit, and reduced the invention to practice on January 25, 1922. March 21, 1922, they filed an application for a "power amplifier." The conception embodied in this patent was devised by the patentees *without suggestion, instruction,* or *assignment* from any superior. Suit to have the respondent declared trustee of the inventions for the United States and to require respondent to assign the patents therefore to the United States. Decree dismissing the bill affirmed on appeal, 59 F. (2) 381 (C.C.A 3d, 1932); writ of certiorari. *Held,* decree affirmed. It was conceded by respondent that the government had free but non-exclusive use of the patented inventions, by virtue of shop-rights. *United States* v. *Dubilier Condenser Corporation,* 53 Sup. Ct. 554, 77 L.Ed. 695 (1933).

The respective rights and obligations of employer and employee, touching an invention conceived by the latter, spring from the contract of employment. If the employment be general, albeit it covers a field of labor and effort in the performance of which the employee conceived the invention for which he obtained a patent, the contract is not so broadly construed as to require an assignment of the patent. *Dalzell* v. *Dueber Watch Case Mfg. Co.,* 149 U.S. 315, 13 Sup. Ct. 886, 37 L.Ed. 749 (1893). Where a servant during his hours of employment, working with his master's materials and appliances, conceives and perfects an invention for which he obtains a patent, he must accord his master a non-exclusive right to practice the invention, *McClurg* v. *Kingsland,* 1 How. 202, 11 L.Ed. 102 (1843); *Solomons* v. *United States,* 137 U.S. 342, 11 Sup. Ct. 88, 34 L.Ed. 667 (1890).

No servant of the United States has by statute been disqualified from applying for and receiving a patent for his invention, save officers and employees of the Patent Office during the period for which they hold their appointments, *Rev. St.* § 480, U.S. Code, tit. 35, § 4. In *Solomons* v. *U. S.,* supra, it was said: "The government has no more power to appropriate a man's property invested