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Article 12

Insurance - Constitutional Law - Impairment

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thereto and advising therein." In McGoon v. Irwin, 1 Pin. 526, the court said, "And when a parent permits a stranger to maintain, support and instruct his children, in no way objecting to the act, but rather assenting to and advising therein, the law will presume that he knows his obligations, excepts the services, and assumes to pay." In Monk v. Hurlburt, 151 Wis. 41, the court ruled that the law will imply a promise where a parent, who has full knowledge of all the facts and circumstances, allows and approves of his infant child being furnished necessaries by a stranger.

It is evident therefore, that the parent cannot escape his legal obligation of supporting his infant child merely because he has not expressly promised to pay the costs of such support and maintenance. His liability can be predicated from a fact situation out of which it is possible for the court to imply a promise to pay for such necessaries. Such a fact situation must show a "knowledge of and assent to the furnishing of such support," or some "cruelty, neglect, or other improper conduct on the part of the parent" which compells the infant to leave the home of the parent.

Parenthood may have its pleasures, but it also has its obligations. Some of these cannot be ignored: the support of the infant child is such a one.

C. J. SCHLOEMER.

INSURANCE—CONSTITUTIONAL LAW—IMPAIRMENT—*Filipowski v. Springfield Fire & Marine Ins. Co.* 238 N.W. 828 (Wis.)—One Joseph Filipkowski insured his farm household furniture, some produce, and farm machinery in the total sum of $5350.00 for a period of five years. During the term of the policy the plaintiff temporarily removed to the city of Milwaukee taking with him part of his furniture. The agent then, made an attempt to reduce the coverage of the policy, and issued a rider to be attached to the policy and mailed it together with $13.50 to cover return premium as a result of reduction of coverage. Insured refused to accept the premium. Plaintiff returned from Milwaukee brought new furniture with him and sought reinstatement of first policy which defendant's agent refused to give, but offered a new policy in another company. Plaintiff and defendant's agent did not come to an agreement and plaintiff got a policy with another company. Property insured was destroyed by fire. Defendant denies liability on ground that the issuance to plaintiff of another insurance policy relieved it.

1. The policy sued on is in the usual standard form and contains a provision to the effect that this particular company shall not be li-

able in case of loss in any instance where the insured shall have another contract of insurance, without the written consent of this company.

2. There was no such consent.

3. In spite of the fact that defendant's agent was aware of this provision and did not warn plaintiff judgment was awarded defendant.

Struebing v. American Insurance Co., 197 Wis. 487, 222 N.W. 831, is a case in point which settles the proposition by holding that the procuring of additional insurance, without the written consent of the company added to the policy of insurance, renders the policy void during the time that such other insurance was in existence. But the appellant's attorney brings to our attention 203.215 enacted by the legislature by Chapter 456—Laws of 1929 which provides: "That whereven a condition is included in any fire insurance policy issued in this state that unless provided by agreement in writing added thereto the insuring company shall not be liable for loss or damage occurring while the insured shall have any other contract of insurance, whether valid or not, on property covered in whole or in part by such policy such other or additional insurance, whether with or without knowledge of the insuring company, shall nevertheless not operate to relieve insuring company from liability for loss or damage occurring while insured shall have such other contract of insurance whether valid or not. Subject to all other items and conditions of its policy, each insuring company shall be liable for its proportionate share of any such loss or damage but in no event shall the insured be entitled to recover from any or all of such insuring companies a sum greater than his actual loss or damage." The policy sued on was issued in 1925, the above statute passed in 1929.

This statute does not apply to this situation and the ruling in the Struebing Case does. The statute could not apply to the above situation, for to maintain that it would, would be a flagrant violation of the Fourteenth Amendment providing in effect that statutes passed apply to future cases and not to past, except where the new law is remedial. To maintain that the above statute applies would be a further violation of the Fourteenth Amendment which provided against the impairment of contracts. A contract once entered into with all the requisite formalities observed, such a contract cannot be later abrogated on the ground that a subsequent law provides against it. The subsequent law applies to such acts that are entered into only after the law has passed with the usual exception where the law is remedial.

The fact that the agent did not inform the insurer that a further insurance of his property would be a violation of his policy and thereby vitiate it, is not maintainable. The agent of the insurance com-

pany had no legal duty so to do. The insurer is presumed to know the terms of his policy. It might have been a friendly and very commendable act of the agent to inform his customer that it was contrary to his policy to get another insurance policy elsewhere without the consent of the company but he was under no legal obligation so to do.

BENJAMIN SCHWARTZ.

PERSONS—SEPARATE MAINTENANCE—INSANITY. *Kaplan v. Kaplan,* Ct. of Appeals of New Work. Kaplan v. Kaplan 176 N.E. 426 (N. Y.). Lena Kaplan, insane wife of Isadore Kaplan commenced an action for separation through her guardian ad litem. The defendant by a motion for judgment on the pleadings, has raised the question whether an action for separation may be brought by an insane spouse through her guardien ad litem. The Civil practice Act of the State of New York, defines and regulates the right to bring an action for separation. The Act contains no provisions, authorizing a guardian ad litem to bring such actions. The court, deciding in favor of the action, points out that neither infancy nor insanity will deprive a person of appealing to the courts for the redress of wrongs. An infant, for instance, can without question, bring an action for seperation through a guardian ad litem. An insane spouse can also bring an action for separation through a guardian ad litem unless there can be found some implication of a contrary legislative intent. Now it is clear that the statutary remedy is equally as necessary to the insane spouse as to the sane spouse. It can not be presumed that the legislature intended to leave the insane spouse without a remedy and allow the other party to openly assert rights that have been lost, as when the other party has been guided of adultery, or to totally disregard martial obligations such as a failure to adequately provide support and maintenance. The court definitely deciding in favor of the insane person, granting her the right to maintain this action for separation, cites in support of this construction of the Statute, cases decided before the enactment of the statute, and, in particular the holding of the Ecclesiastical courts which granted annullment and limited divorces maintained in behalf of the lunatic. (Parnell v. Parnell 2, Phillimore 158); (Woodgate v. Taylor 2, Swabey & Tristam Rep. 512).

The position of the court as to an action for absolute divorce in behalf of an insane spouse is uncertain. Though not definitely deciding the point, the court says, "There is perhaps ground for inference that the legislature did not intend the statutory right, to bring an ac-