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Article 13

Persons - Separate Maintenance - Insanity

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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-

tion for the dissolution of a marriage, valid in its inception, and resting upon free consent, should be brought in behalf of an incompetent, who, if capable of expressing choice might prefer to hold even an unfaithful spouse, or who might indeed, in good conscience, regard the marriage bonds as in dissoluble."

In conclusion, the court holds that in the absence of a statute denying the right of the incompetent spouse to maintain an action for separation, such incompetent spouse can maintain such action through a guardian ad litem. Upon the question whether an action can be maintained for an absolute divorce the authorities are divided, but the general tendency is against allowing the insane to maintain such actions through a guardian ad litem.

AMBROSE NEWMAN.

PLEADING — CORPORATIONS — DISSOLUTION. *Marshal* v. *Wittig*, 238 N.W. 390 (Wis.), illustrates a settled doctrine in corporation law. In this case, an action was brought to recover balance of principal and interest due on a note. The original payee of the note was a corporation now non-existant. The three years allowed by statute (Wis. Stats. 1929, 181.02)[1] to wind up the affairs of the corporation after its dissolution had also lapsed. The action is therefore prosecuted by the plaintiff as a stockholder of the dissolved corporation. Though the case was argued largely on matters of pleading, the opinion clearly implies that the plaintiff could recover on behalf of the remaining stockholders.

It is well settled, in the absence of a statute as above cited, the effect of the dissolution of the corporation pending an action commenced by it, whether the dissolution be by expiration of the charter, repeal by legislative act, valid decree of a court, or otherwise, is, to abate the action, for a corporation cannot, any more than dead person,

[1] All corporations whose term of existence shall expire by their own limitation, or which shall be dissolved, shall nevertheless continue to be bodies corporate for three years thereafter for the purpose of prosecuting and defending actions, and of enabling them to settle and close up their business, dispose of and convey their property and divide their assets and for no other purpose; and when any corporation shall become so dissolved the directors or managers of the affairs of the corporation at the time of its dissolution shall, subject to the power of the courts to make a different provision, continue to act as such during said term, and shall be deemed the legal administrators of such corporation with full power to settle its affairs, dispose of and convey all its property, collect the outstanding credits, pay the debts owed by such corporation and the costs of such administration, and divide the residue of the money and other property among the stockholders or members thereof.