Insurance (Life)--Evidence--Privileged Communications (Rudolph v. John Hancock Mutual Life Ins. Co., 251 N.Y. 208 (1929))

St. John's Law Review

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RECENT DECISIONS

INSURANCE (LIFE) — EVIDENCE — PRIVILEGED COMMUNICATIONS.—Plaintiff sued as beneficiary under a policy issued to her son by defendant. The provisions of the policy required proofs of claim to be made upon blanks to be furnished by the company and to be completed by claimant, attending physician and other persons. The attending physician's statement, if allowed in evidence, would tend to show (a) that insured was treated by him two months prior to the issuance of the policy; (b) that his health had been impaired for two years before death; (c) that he had attended insured several years prior to the issuance of the policy for numerous causes, one of which was a contributory cause of the death. These facts, if proven, would tend to void the policy. At the trial, defendant attempted to introduce this statement in evidence but it was rejected. On appeal, held, for defendant. Rudolph v. John Hancock Mutual Life Ins. Co., 251 N. Y. 208, 167 N. E. 223 (1929).

Plaintiff contends that the statements contained in the certificate of the attending physician on the blanks furnished by the defendant constitute hearsay; that her act in supplying the certificate was involuntary and, therefore, does not constitute an admission by her of the facts therein stated; that it is privileged. A party's use of a document made by a third person will frequently amount to an approval of its statements as correct, and thus it may be received against him as an admission by adoption.\(^2\) A common instance of the application of this principle is a beneficiary's presentation of proofs of loss to the insurer. Such statements do not constitute hearsay.\(^2\) Plaintiff knew the contents of the certificate; it was submitted as part of her proofs of loss, and its production by her is, \textit{prima facie}, admission that the facts therein recited are true.\(^3\) It was a voluntary act, as she personally authorized the attending physician to answer for her.\(^4\) The reception in evidence of the certificate for the purpose of proving an admission of facts by the claimant would not constitute a violation of Sections 353 and 354 of the Civil Practice Act, relative to privileged communications. In the absence of express waiver at the trial, the attending physician could not be allowed orally to testify to the facts as stated in the certificate,\(^5\) nor is the paper competent original evidence. It operates, however, as an admission by claimant that the

\(^{2}\) Wigmore, Evidence (2d ed.), Sec. 1073.


facts are as stated. Its reception would violate no confidence for the confidence had already been violated by the joint action of the physician and claimant. A certificate is not conclusive against the beneficiary but is binding until corrected or explained.

E. H. L.

INSURANCE—HUSBAND AND WIFE—RIGHT OF CREDITOR OF DECEDENT TO REACH INSURANCE MONEYS PAYABLE TO WIDOW.—Decedent, at the time of his death, was insolvent and indebted to plaintiff. In his life-time he, or defendant, his wife, had caused his life to be insured in various insurance companies for her benefit. The premiums for such insurance were paid annually out of the property of the husband in an amount greatly in excess of $500 and at a time when he was insolvent and unable to pay his debts. Plaintiff contends that that portion of the insurance moneys which was purchased by excess of premium above $500 should be applied in payment of the decedent's debts. On appeal, held, for defendant. Chatham Phenix Nat. Bank v. Crosney, 251 N. Y. 188, 167 N. E. 217 (1920).

Prior to the enactment of Section 52 of the Domestic Relations Law and at common law, married women were under the disabilities of coverture. It was an open question as to whether a wife and children had an insurable interest in the life of the husband and father. Insurance taken by the husband was liable for his debts and left it impossible for those who needed assistance most to obtain it all. The purpose of the statute was to remedy this defect and to assure to the widow an insurable interest in the life of her husband, and, except when “excess” premiums were paid by him, neither the policies nor the proceeds thereof form any part of his estate upon his death,

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3 L. 1909, ch. 19. “A married woman may, in her own name, or in the name of a third person, with his consent, as her trustee, cause the life of her husband to be insured for a definite period, or for the term of his natural life. Where a married woman survives such period or term she is entitled to receive the insurance money, payable by the terms of the policy, as her separate property, and free from any claim of a creditor or representative of her husband, except, that where the premium actually paid annually out of the husband's property exceeds five hundred dollars, that portion of the insurance money which is purchased by excess of premium above five hundred dollars, is primarily liable for the husband's debts.”