Insurance--Husband and Wife--Right of Creditor of Decedent to Reach Insurance Moneys Payable to Widow (Chatham Phenix Nat. Bank v. Crosney, 251 N.Y. 188 (1920))

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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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8 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."
becoming the separate property of the wife free from the claims of creditors. The right of the wife does not, therefore, rest in contract but upon the legislative grant. It was found, however, that these provisions operated as a limitation upon the wife’s right to an insurance fund created by her husband, in that a stranger who was named as beneficiary could take the entire insurance fund free from claims of creditors. Section 55-a of the Insurance Law was enacted to remedy this situation and properly applies to the proceeds of all policies which are effected by any person on his own life, or another life in favor of a person other than himself, including policies effected by a husband in favor of his wife. Under this legislation the rights of creditors to the proceeds of such policies are properly confined to the amount of premium which may have been paid by the decedent in fraud of creditors.

E. J. D.

Real Property—Fixtures—Reservation of Title under Unrecorded Conditional Sale.—Defendant, owner of an apartment house, purchased a quantity of gas ranges under a conditional sale contract which reserved title therein to the seller. The ranges were placed in the several apartments of the building and attached by couplings to the gas service pipe which distributed gas to the various apartments. Thereafter defendant executed and delivered to plaintiff a mortgage upon the apartment house premises, “together with all fixtures and articles of personalty now or hereafter attached to or used in connection with the premises.” The mortgage was given to secure the repayment of a sum of money borrowed from plaintiff and was taken by her without knowledge of the provision of the conditional sale reserving title; it was recorded prior to the time when the contract had been filed in the appropriate public office. In an action by plaintiff

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7 Kittel v. Domeyer, 175 N. Y. 205, 67 N. E. 433 (1903).
8 L. 1927, ch. 468. "If a policy of insurance, whether heretofore or hereafter issued, is effected by any person on his own life or on another life, in favor of a person other than himself, or, except in cases of transfer with intent to defraud creditors, if a policy of life insurance is assigned or in any way made payable to any such person, the lawful beneficiary or assignee thereof, other than the insured or the person so effecting such insurance, or his executors or administrators, shall be entitled to its proceeds and avails against the creditors and representatives of the insured and of the person effecting the same, whether or not the right to change the beneficiary is reserved or permitted, and whether or not the policy is made payable to the person whose life is insured if the beneficiary or assignee shall predecease such person; provided, that, subject to the statute of limitations, the amount of any premiums for said insurance paid with intent to defraud creditors, with interest thereon, shall enure to their benefit from the proceeds of the policy."