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Murder of the Insured as a Defense to a Suit on a Life Insurance Policy

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MURDER OF THE INSURED AS A DEFENSE TO A SUIT ON A LIFE INSURANCE POLICY

A, THE beneficiary of insurance on the life of B, murders the latter. Is A or his estate or his assignee entitled to the insurance?

The question has arisen and been decided more frequently than might be supposed.

All the cases in point hold that neither the murderer nor anyone claiming under him, can recover.[1] The reason for the rule is that the court will not permit a wrong-doer to profit from his wrong. "It would be a reproach to the jurisprudence of the country, if one could recover insurance money payable on the death of a party whose life he had feloniously taken. As well might he recover insurance money upon a building that he had wilfully fired." [2] It is immaterial whether or not the anticipated recovery of the insurance motivated the crime; [3] the killing, however, must be felonious.[4]

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[1] Cleaver v. Mutual Reserve Fund Life Assoc., 1 Q. B. Div. 147 (1892); Metropolitan Life Insurance Co. v. Shane, 98 Ark. 132, 135 S. W. 836 (1911); Henry v. Knights and Daughters of Tabor, 156 Ark. 165, 246 S. W. 17 (1922); Knights & Ladies of Honor v. Menkhausen, 209 Ill. 277, 70 N. E. 567 (1904); Schmidt v. Northern Life Insurance Co., 112 Iowa 41, 83 N. W. 800 (1900); Slocum v. Metropolitan Life Insurance Co., 245 Mass. 565, 139 N. E. 816 (1923); Welch v. Travellers' Insurance Co., 178 N. Y. Supp. 748 (1919); Goldstein v. Metropolitan Life Ins. Co., Special Term, Part I, N. Y. County, N. Y. L. J., September 5, 1928; Goldstein v. Metropolitan, 133 Misc. 106, 231 N. Y. Supp. 161 (New York County, 1928); Robinson v. Metropolitan Life Ins. Co., 69 Pa. Super. 274; Anderson v. Life Ins. Co. of Va., 152 N. C. 1, 67 S. E. 53 (1910); Filmore v. Metropolitan Life Ins. Co., 82 Ohio State, 208, 92 N. E. 26 (1910); Equitable Life Ins. Co. v. Weightman, 61 Okl. 106, 160 Pac. Rep. 629 (1916); Murchison v. Murchison, 203 S. W. 423 (Texas, 1918); Johnston v. Metropolitan, 85 W. Va. 70, 100 S. E. 865 (1919); Hewitt v. Equitable Life Assurance Society, 8 Fed. (2d), 706 (C. C. A. 9th, 1925); Kascoutas v. Federal Life Ins. Co., 185 N. W. 125 (Iowa, 1921); see also New York Life Ins. Co. v. Davis, 32 S. E. 475 (Va., 1899).

[2] Mutual Life Ins. Co. v. Armstrong, 117 U. S. 591 (1886).

[3] Cleaver v. Mutual Reserve Fund Life Assoc., *supra* Note 1, where the murderer did not even know of the insurance, see decision of the Divisional Court, 44 Abb. L. J. 382, 64 L. T. R. 220. In most of the cases cited *supra* Note 1, there was no allegation that the murder was committed for the purpose of collecting the insurance.

[4] In Holden v. Ancient Order, 43 N. E. 772 (Ill. 1895), it was held that where a beneficiary is insane when he murders the insured, he does not forfeit the insurance.

An analogous situation is presented where a testator is murdered by a legatee or devisee or where an intestate is murdered by one of his heirs or next of kin. Shall the murderer participate in the estate of his victim? While all the cases are in accord that he should not, the courts in most of the states in which the question has arisen, have, in cases of intestacy, deemed themselves bound to apply literally the provisions of their statutes of descent and distribution.[5] The prevailing opinion of Earl, *J.*, in the New York case of Riggs v. Palmer [6] presents the view that the statutes should be read in the light of controlling fundamental principles of the common law,[7] while the dissenting opinion of Gray, *J.*, sets forth the opposing view that the courts are bound strictly by the letter of the statute though if "the decision of the question could be affected by considerations of an equitable nature" there would be no hesitation in assenting "to views which commend themselves to the conscience." [8]

When it comes to insurance, decision is not embarrassed by statutory considerations. The equitable principle that one may not profit by his wrong controls.[9]

The question then arises, what becomes of the insurance? Is the insurance company's undertaking to pay cancelled completely or does the insurance become payable to one other than the named beneficiary, and if the latter, to whom?

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[5] See cases cited, *infra* Note 7.

[6] 115 N. Y. 506, 22 N. E. 188 (1889).

[7] *Ibid.*, 508-515.

[8] *Ibid.*, 515-520. In England it seems to be settled that a murderer forfeits his rights and interests in the estate of his victim (see Cleaver v. Mutual Reserve, *supra* Note 1; Estate of Julian Bernard Hall, 1914, Probate 1). Similarly in Massachusetts (see Slocum v. Metropolitan 816, 817, *supra* Note 1), Missouri (see Perry v. Strawbridge, 209 Mo. 621, 108 S. W. 641 (1908)), and Tennessee (see Box v. Lanier, 112 Tenn. 393, 79 S. W. 1042 (1904). *Contra* are: Kansas (McAllister v. Fair, 72 Kan. 539, 84 Pac. 112 (1906)), Nebraska (Shellenberger v. Ransom, 41 Neb. 631, 59 N. W. 935 (1894)), reversing prior decision to the contrary in same case, reported in 31 Neb. 61, 47 N. W. 700 (1891)), North Carolina (Owens v. Owens, 100 N. C. 246, 6 S. E. 794 (1888)), Oklahoma (see Equitable Life Assurance v. Weightman, *supra* Note 1), Ohio (Deem v. Millikin, 6 Ohio Circ. Ct. R. 357), Pennsylvania (Carpenter's Estate, 170 Pa. 203, 32 Atl. 637 (1895)), West Virginia (Johnston v. Met., *supra* Note 1). The courts of Iowa came to the same conclusion (Kuhn v. Kuhn, 125 Iowa 449, 101 N. W. 151 (1904)), but the statutes of that state appear to have been subsequently changed so as to exclude murderers from participation in the estates of their victims (Code, Sec. 3386).

[9] Cases, *supra* Note 1.

The insurance companies have argued that the contract with the decedent was to pay the designated beneficiary, and where the latter forfeits his right to such payment, no other contract can be enforced in its place.

This position is obviously inequitable. Any particular designation of a beneficiary is purely accidental as far as the insurance company is concerned. It is a provision not vital to its part in the contract. The designation is wholly within the discretion of the person procuring the insurance and is a matter of utter indifference to the insurance company. To exempt the insurance company from payment because of the identity of the beneficiary seems wholly unjust. There is no reason why insurance companies "in such a case should be allowed to say, though they might have received premiums perhaps for thirty years and still retained the same, that public policy forbade their paying the sum of money which they had contracted to pay." [10]

The courts, refusing with almost complete unanimity to yield to the argument of the insurance companies, have held that in such a case the insurance is payable to the estate of the insured.[11] Some of the cases state the conclusion without reasoning, apparently in the belief that the conclusion is almost axiomatic.[12] Others have predicated the conclusion upon the theory that where the designated beneficiary is prohibited from taking the insurance money, a resulting trust arises in favor of the estate of the insured.[13] In three of the cases the courts held that payment to the estate of the insured followed as a matter of proper construction of the insurance contract.[14]

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[10] Lord Esher in Cleaver v. Mutual Reserve Fund Assoc., *supra* Note 1, at 153.

[11] Cases, *supra* Note 1. The only case to the contrary which the writer has been able to discover is Spicer v. New York Life, 268 Fed. 500 (C. C. A. 5th, 1920).

[12] Metropolitan v. Shane, Henry v. Knights and Daughters of Tabor, Welch v. Travellers, Anderson v. Life Ins. Co., Hewitt v. Equitable, *supra* Note 1.

[13] Cleaver v. Mutual Reserve, Schmidt v. Northern Life, Slocum v. Metropolitan, Equitable v. Weightman, Johnston v. Metropolitan, *supra* Note 1.

[14] Robinson v. Metropolitan, Goldstein v. New York Life, Kascoutas v. Federal Life Ins. Co., *supra* Note 1.

Apparently, the courts have experienced some difficulty in finding satisfactory legalistic support for the result so clearly dictated by their sense of justice.[15]

The "resulting trust" explanation, on first impression, appears to be strained and artificial. Yet it has substantial historical support.

In England [16] and also, at least, in Massachusetts,[17] the law had been established, prior to its change by statute, that the insured or his legal representative was the only person who could recover on a policy of life insurance, regardless of who was named beneficiary.

The payee named in or pursuant to the policy of insurance is a third party beneficiary who is neither party nor privy to the contract. Under the general rule that a person not privy to a promise made to another could not enforce it —a rule from which Lawrence v. Fox [18] was such a monumental departure—the beneficiary could not enforce the contract against the promisor. But the promisee—the insured or his legal representative—could after breach by the insurance company, recover the amount of the policy. The intent of the insured that the money should be received by the designated beneficiary was carried out by holding the amount recovered by the insured's legal representative a trust for the beneficiary's benefit. The ultimate disposition of the funds was a matter purely between the legal representative and the beneficiary and was of no concern in the legal representative's action against the insurance company. Under that state of the law, the cutting off of the beneficiary's rights could not possibly affect the legal representative's recovery against the insurance company; it eliminated only the beneficiary's rights over against the legal representative.

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[15] "The theory upon which this is allowed is not altogether clear. * * * However, whatever the reasoning may be upon which the doctrine is based, it is too widely recognized to be disregarded"—Judge Frankenthaler in Goldstein v. New York Life, *supra* Note 1.

[16] See Cleaver v. Mutual Reserve, *supra*.

[17] Wright v. Vermont Life Ins. Co., 164 Mass. 302, 41 N. E. 303 (1895), and cases therein cited; see also Slocum v. Metropolitan, *supra*. The writer has made no effort to ascertain in which, if any, of the other states similar doctrine obtained. Nor has the writer inquired into the present law of England on that subject.

[18] 20 N. Y. 268 (1859).

At the time of the *Cleaver* case,[19] in England, the beneficiary was still without right of action against the insurance company, except that by statute it was provided that where the insurance was payable to a wife and/or children, a trust was thereby created, and in such a case the insurance could be made payable to a designated trustee, who, it seems, would have, under the statute, a direct cause of action against the insurance company. The designated beneficiary in that case was the wife. Her murder of the insured was held to cancel the trust thus making the insurance collectible by the insured's legal representative just as if the insurance were payable to a person other than the wife. In that particular case the policy had failed to name a trustee, and so the money was recoverable by the executors of the insured, irrespective of whether or not the wife was ultimately entitled to receive it. "The defendants must pay the money to the executors, and then it will be for the executors to deal with it according to their duty as executors. They would be trustees of it for the wife if she had not forfeited it; but her interest being forfeited, it forms part of the insured's estate." [20] That was the reasoning of Lord Esher. Lord Fry, however, added that since "public policy prevents Florence Maybrick [the wife and designated beneficiary] from asserting any title as *cestui que* trust of the fund" there arises a "resulting trust in favor of the estate of the insured" because "Whenever there is property produced by the payments of A which is held in trust for B, and that trust fails or is satisfied, a resulting trust arises for A or his estate." [21] This line of reasoning was joined in by the other Judge, Lord Lopes.[22]

In Massachusetts, a beneficiary had no right of action against the insurance company until a statute enacted in 1894.[23] That statute is held to be merely permissive, so that the legal representative of the insured still has the right to collect the insurance where the beneficiary fails so to do.[24]

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[19] Cleaver v. Mutual, *supra* Note 1.

[20] *Ibid.* at 155.

[21] *Ibid.* at 158, 160.

[22] *Ibid.* at 160-1.

[23] See Slocum v. Metropolitan, *supra* Note 1.

[24] Brown v. Greenfield Life Assoc., 172 Mass. 498, 53 N. E. 129 (1899); Slocum v. Metropolitan Life Ins. Co., *supra.*

Where, the beneficiary is barred, as she was in the *Slocum* case by reason of her murder of the insured, her right of action is cut off and the legal representative's right of action thereby becomes exclusive. If under the statute the beneficiary's right of action were exclusive, the result would be the same because the beneficiary's loss of the right of action would bring into existence "a resulting trust in favor of the estate of the insured." [25]

The courts in both the *Cleaver* and *Slocum* cases seem to have anticipated situations where the right of action given to the beneficiary by statute would, in an ordinary case, exclude the right of action which the legal representative formerly had, and decided that a forfeiture by the beneficiary of his rights would vest them in the insured's legal representative as the *cestui que* trust of a "resulting trust."

The "resulting trust" theory is logical and sufficient in jurisdictions such as England and Massachusetts where funds collected under policies of life insurance were always associated with trusts. We have seen that though policies of life insurance provided that the payments be made to third parties, they were enforced by the courts in those jurisdictions by compelling payment to the legal representatives of the insured, because no right of action on a contract was recognized in a person not privy to the contract. The theory of a trust in the hands of the legal representative for the benefit of the beneficiary was resorted to in order to give effect to the directions of the insured. When a beneficiary, who by reason of statute, had the legal right to recover but by his acts forfeited his beneficial rights, it was natural for the courts to declare that there arose a trust in favor of the one who would have been entitled to recover but for the designation of the beneficiary aided by the statute which gave the latter the right of action. Underlying the entire field of development of this branch of the law was the recognition that the essence of the contract was the insurance company's undertaking to the insured that it would pay the stipulated sum to or for the benefit of whoever be entitled thereto—under his designation or by operation of law. The matter of who should ultimately receive the funds was a question

[25] Slocum v. Metropolitan Life Ins. Co., *supra.*

purely between the legal representative of the insured and claimants to the fund; the insurance company had no interest therein.

To lawyers who accept as a matter of course the right of a beneficiary to recover directly from the insurance company, the injection of theories of "trust" is quite foreign. In New York, from the earliest days of life insurance, it was taken for granted that the beneficiary had a right of action.[26] A policy of insurance was a contract, and the beneficiary enforced a contract right procured for his benefit. The obligation of the insurance company certainly was not a trust; and no trust ever arose upon or after the insurance company's payment because the payment was made to the person beneficially entitled thereto. Then, on what ground can payment be enforced to the legal representative of the insured when the contract provides that the payment should be made to a named beneficiary?

The same question is presented where the designation of the beneficiary is void or unlawful or lapses by reason of the prior death of the beneficiary. In all such cases, it is usually held that the insurance is payable to those who would have been entitled to it in the absence of any designation.[27] So too, where the policy or certificate provides that the money shall be payable to a person to be named in the insured's will and the will fails to designate such a person.[28] Similarly, where for some reason, an assignment fails during the lifetime of the insured, the policy is payable as if the assignment never were made.[29] And where the insurance company under the policy has the option to pay to either of a specified number of beneficiaries, and the insurance company fails to exercise that option, an action by the administrator

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[26] Hogle v. Guardian Life Ins. Co., 4 Abbts. Pr., N. S., 346, 29 Super. Ct. 567 (1868), where the court said, at 349: "The action is properly brought in her [the beneficiary's] name (Lawrence v. Fox, 20 N. Y. 265 (1859)), but whether this is so or not, the plaintiff is the real party in interest and can maintain the action (Code, Sec. 111)."

[27] Walsh v. Mutual Life Ins. Co., 133 N. Y. 408, 419, 31 N. E. 228 (1892); Schmidt v. Northern Life Ins. Co., *supra* Note 1, and cases cited therein.

[28] Newman v. Covenant Mutual Ins. Assoc., 76 Iowa 56, 61, 40 N. W. 87 (1888).

[29] Barry v. Brune, 71 N. Y. 261 (1877); Fowler v. Butterly, 78 N. Y. 68 (1879).

of the insured lies to recover the insurance.[30] Conversely, recovery of the insurance by the designated beneficiary does not preclude the insured's legal representative from recovering the insurance from the beneficiary if, as between them, the representative be entitled thereto.[31]

An analogous situation is presented where there is a bank account in the joint names of two persons payable to either and their survivor. Where one of the joint depositors murders the other, under the contract with the bank and between the two depositors, the bank's indebtedness is the property of the survivor. Since the law will not permit him to profit from his wrong, the contractual payee and owner is without right in the premises. It might be contended that, therefore, the bank need pay no one. Needless to say, in an actual case of this kind which was presented to the courts, the decision was that the money was payable to the estate of the victim.[32] The bank did not even urge that it was entitled to retain the money.

It is no anomaly to the law to enforce a contract other than in strict accordance with its terms. When a specific form of payment is agreed upon between the parties, and that form of payment becomes impossible or is unenforceable or is waived, the courts enforce the payment of an equivalent sum of money.[33] The doctrines of waiver and substantial performance are readily resorted to as a substitute for performance strictly in accordance with the letter of the contract.[34] And in realty cases where the contract day passes without tender or performance, performance is enforced at a subsequent day even at the instance of the defaulting party, except where the contract day is of the essence.

And so in these insurance cases the court separates the essential from the incidental of the contract. To whom pay-

[30] Wokal v. Belsky, 53 App. Div. 167, 65 N. Y. Supp. 815 (1st Dept. 1900).

[31] Pacific Mutual Life Ins. Co. v. Williams, 79 Tex. 633, 15 S. W. 478 (1891).

[32] *In re* Santourian's Estate, 125 Misc. Rep. 668, 212 N. Y. Supp. 116 (Rensselaer County, 1925).

[33] Day v. N. Y. Central, 51 N. Y. 583 (1873); Clark v. West, 137 App. Div. 23, 122 N. Y. Supp. 380 (2nd Dept. 1910); Hubbard v. Hubbard, 151 App. Div. 174, 135 N. Y. Supp. 908 (4th Dept. 1912).

[34] See Jacob & Young v. Kent, 230 N. Y. 239, 129 N. E. 889 (1921); Thomson v. Poor, 147 N. Y. 402, 42 N. E. 13 (1895).

ment should be made is not an essential, from the point of view of the insurance company. Its only obligation in the premises is to abide by the instructions of the insured when the instructions are binding upon it. Failure of an incident, that is, a particular designation, should not destroy the essence. And so the Court of Appeals of New York in one case stated that it could not conceive of a situation where the "obligation of the insurance company" would "fail for the want of a payee." [35] No "resulting trust" theory is necessary to justify the enforcement of the essential provision of a contract because of the failure of an incidental term in which the defendant has no real interest. The contract then stands as if the incidental were never in it, just as a particular provision in a contract that is void under the law is simply disregarded where it does not affect the essence of the contract.[36] The Pennsylvania Superior Court in Robinson v. Metropolitan Life Insurance Co.[37] predicated its decision on contract law:

> "The contract was made directly with Elmer Freeney. * * * In naming the wife as beneficiary it was manifestly in contemplation of the parties that she would not only be alive but capable of receiving the benefits of the policy. She voluntarily removed herself from the class of persons entitled to take, * * * any right of Mrs. Freeney ceased to exist coincidentally with the death of her husband. In effect, therefore, there was no named beneficiary when the obligation of the company to pay arose."

The same thought was expressed in a different form in a recent New York case: [38]

> "* * * the implied intention of the parties was that, if the beneficiary should be unable to take, the

[35] Walsh v. Mutual Life Ins. Co., *supra* Note 27.

[36] Central N. Y. Tel. & Tel. Co. v. Averill, 199 N. Y. 128, 140-1, 92 N. E. 206, 210 (1910).

[37] *Supra* Note 1.

[38] Goldstein v. New York Life, *supra* Note 1.

insurance should be paid to those who would take it in the absence of a beneficiary."

It frequently happens that a beneficiary is a next of kin of the murdered insured entitled to a share or the whole of the decedent's estate. In those jurisdictions where it is held that murder is a forfeiture of a distributive share of the estate of the victim, no difficulty is presented because under that rule there is no possibility of the murderer getting any part of the insurance money from the administrator or executor. "The same principle of public policy which precludes him from claiming directly under the insurance contract, equally precludes him from claiming under the statute of descent and distribution." [39]

A real problem is presented in those jurisdictions where the courts hold that murder does not alter the distribution and descent provided for by statute.[40] If the insurance money goes into the estate, the beneficiary, in those states, ultimately becomes entitled to all or a portion of the insurance money, depending upon the extent of the assets and liabilities of the estate and the existence of other distributees.

In a case decided in West Virginia,[41] the beneficiary named in the policy was the wife of the insured and there were no children and no creditors and under the laws of West Virginia she was entitled to the entire estate notwithstanding the fact that she murdered her husband. Therefore, "every dollar of the fund recovered by the administrator in his representative capacity must go to the murderer." That fact, it was held, necessitated denying recovery from the insurance company. That decision, however, presents the minority view. Under precisely similar facts, the Court of Civil Appeals of Texas [42] permitted a recovery. The question was presented also in Oklahoma,[43] where under the law of that state the murdering wife would participate in the victim's estate and by reason thereof would receive a portion

[39] Slocum v. Metropolitan, *supra* Note 1, at 570. To the same effect, Cleaver v. Mutual Reserve Fund Assoc., *supra* Note 1.

[40] *Supra* Note 7.

[41] Johnston v. Metropolitan, *supra* Note 1.

[42] Murchison v. Murchison, *supra* Note 1.

[43] Equitable Life v. Weightman, *supra* Note 1.

of the insurance money. The court there held "this coincidence cannot interfere with the reason of the general rule." [44]

In a recent New York case,[45] it was held at Special Term, that where an assignee of a policy of life insurance, as distinguished from a beneficiary, murders the insured, the policy need be paid to no one because "by virtue of the assignment the insured surrendered all his right, title and interest in the policies and his contractual relation with the company may be regarded as having terminated. * * * Under such circumstances" the Court could "see no ground for any implication that the parties intended that if the assignee, the sole owner of the policies, should be disqualified from taking, the insurance should be paid to the estate of the assured." What the Appellate Courts will say upon the position, remains to be seen. It may be suggested that the equities against the insurance company's not paying the amount of the policy are just as strong where the murder is committed by the assignee as where the murder is committed by the beneficiary. In either case the insurance company has received all that it was entitled to receive; and whether payment be directed by the designation of a beneficiary or by assignment is, as against the insurance company, more a matter of form than substance, although there may be a real difference as against the insured. Very frequently, too, the assignment is merely by way of collateral security or for a limited purpose or to a limited extent. The fact that the insured executed or filed with the insurance company an "assignment" does not necessarily mean that the insured surrendered all his rights thereunder or ceased to pay the premiums thereon. In any event, we have seen that where an assignment fails during the lifetime of the insured, the policy is payable as if the assignment never were made. Does it make any difference whether the assignment fails during the lifetime of the insured or by reason of the circumstances of his death? Just as in the case of a beneficiary, the rights of a murdering assignee cease "to exist coincidentally with the death" of the insured. Therefore, is it not true that, in contemplation of law, there is no assignee when the obligation of the company to pay arises?

[44] *Ibid.* at 112.

[45] Goldstein v. New York Life Ins. Co., *supra* Note 1.

If there be no assignee at the time of the death, then, of course, the insurance is payable to the estate of the insured.

Another phase of the subject is presented where the contract of insurance is made with and procured by the murderer on the life of the victim. For example, a wife procures the issuance of a policy on the life of her husband; she is the insured, the contract is between her and the insurance company, the premiums are paid by her, she is to receive the stipulated sum upon the maturity of the policy, and the husband's only connection with the policy is that he is the subject thereof, that is, it is payable upon his death. It would seem that an insured who murders the subject of a policy should be in no better position to recover under his (the murderer's) contract than a beneficiary who after murdering the insured should seek to recover under the victim's contract. Incontestability clauses and statutes, however, may result in a different holding, just as statutes of descent and distribution have been held to prevent a forfeiture by a murderer of his interest in his victim's estate. If, however, incontestability clauses or statutes should be held not to affect the result or in a case where the murder is committed before the period fixed in the incontestability statute or clause, the court would have to decide whether the murderer's forfeiture of his rights completely cancelled the insurance company's obligation, or whether the insurance should go to the estate of the victim, on some theory of subrogation, by way of indemnification for the insured's wrongful act.[46]

[46] But see New York, etc. Ins. Co. v. Armstrong, 117 U. S. 591, 6 Sup. Ct. 877 (1886). In that case, however, no incontestability clause or statute was involved, the murder having been committed within six weeks after the issuance of the policy. Moreover, several of the decisions of the United States Supreme Court affecting life insurance are in conflict with the holdings of the State Courts. For example, in Burt v. Union Central Life Ins. Co., 187 U. S. 362, 23 Sup. Ct. 139 (1902), and N. W. Mutual Life Ins. Co. v. McCue, 223 U. S. 234, 32 Sup. Ct. 220 (1911), the court held that where the insured meets his death as a result of execution by the state in punishment for a crime committed by the insured no recovery could be had on policies in which he was the insured, not only on the ground of public policy but also on the ground that "there is an implied obligation" on the part of the insured "to do nothing to wrongfully accelerate the maturity of the policy." The courts of Georgia, Illinois, North Carolina, Pennsylvania and Tennessee hold the contrary (see 37 C. J. 548). In Ritter v. Mutual Life Ins. Co., 169 U. S. 139, 18 Sup. Ct. 300 (1897) the court held that suicide by the insured excused the insurance company from paying the policy, also on the ground of public policy and the further ground that suicide was by implication an excepted risk. That case has been repudiated by the United States Supreme Court itself (N. W. Life Ins. Co. v. Jones, 254 U. S. 96, 41 Sup. Ct. 47 (1920).

The foregoing analysis of the authorities in this field of law results from the belief that the search for the logic of a rule of law which has been developed by the courts is more than "an intellectual passion for *elegentia juris,* for symmetry of form and of substance." [47] It brings to the fore an understanding of the problem and of the forces at work. "The demon of formalism tempts the intellect with the lure of scientific order." [48] A narrow view of a legal principle often leads to a consideration impossible in the perspective gained by a consideration of the setting in which the question arises.

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[47] Cardozo, The Nature of The Judicial Process, p. 34.

[48] *Ibid.* at 66.