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satisfaction of the builder's personal malice. Clearly the presence of malice here would cause the courts of this state to hold that the use was unreasonable and thus assert the superiority of the plaintiff's qualified right to light and air. No prolonged inquiry into the motive of the builder is required. Unless it appears that the structure is of economic benefit or reasonably necessary to the beneficial enjoyment of the property, its construction or maintenance must be either malicious or negligent.

It is often urged that malice can not make unlawful, that which is of its essence lawful. This is the law of Pennsylvania. This rule is in no way inconsistent with the law as interpreted above. Injury is of its essence unlawful. Factors which justify it in cases as the one under discussion, are economic gain and necessity to the reasonable enjoyment of property. If the use is unreasonable then the injury is unlawful. Malice here is but one of the factors bearing upon the reasonableness of the use. Malice prevents the act from being shown lawful rather than rendering the act unlawful.

The above then appears to be the state of the law in this Commonwealth regarding the qualifying effect of malice or negligence upon a man's right to enjoy his property. The great majority of the states condemn the Pennsylvania view as unsound. It appears that the reasons advanced for rejecting the Pennsylvania theory are based upon a misconception of the qualified character of these rights and a misinterpretation of the effect given the presence of malice or negligence upon those factors which qualify these rights.

Robert Lewis Blewitt.

CONSTRUCTION OF "DIRECTLY OR INDIRECTLY" EXEMPTION CLAUSE IN INSURANCE POLICIES

The case of *Runyon v. Western Life Ins. Co.*¹ presents an interesting problem involving the construction of a clause exempting the insurance company from liability in certain situations. R took out a life insurance policy on his own life which provided for double indemnity in case of accidental death unless "caused or attributed to as the result, *directly or indirectly*,² of any violation of law by the insured." R was convicted of a felony and was sentenced to the penitentiary. While there, serving as a cook, he was accidently

¹192 N. E. 882 (Ohio).

²Italics added.

burned and died of these burns. The insurance company refused to pay the beneficiary and, on suit, its position was upheld by the Ohio Supreme Court. The court found as the basis of its decision that R's violation of the law indirectly caused his death.

This decision is startling and, on analysis, clearly appears to be erroneous. In the first place, it is well to remember that any insurance contract is a speculative transaction. In return for an annual consideration, called the premium, the company wagers the amount of the policy against the possibility that the insured may die before he has paid in enough money to reimburse the company when it is compelled to pay the face value. Ordinarily, speculative contracts are illegal and the law will not intervene to enforce them.³ Insurance contracts, because they serve a useful social purpose, are enforced by the courts in spite of their speculative nature. To follow the ruling of the Ohio court would be to remove from insurance much of the benefit which it is intended to confer. Almost every act that a man does influences, to some extent, his later conduct. In many cases, it could be shown that, at some time in his life, the insured violated some law, and from that violation could be traced a chain of events ending eventually in his death. The principal case apparently would bar recovery in every such case, and thus the benefits of insurance would be withheld from every man who had, at some time, violated the law. Such a result is absurd. In fact, if the exemption clause recited is to be so construed, it might well be declared illegal.

Regardless of the exact wording of the clause, it is settled that there must be a causative connection between the violation of the law and the accidental death in order to relieve the insurance company from liability.⁴ This raises the further question as to what degree of causation is required in order for the exception to apply, and, in this connection, the terminology of the clause becomes material.

Where the policy reads that the insurer shall not be liable for death "caused by or while violating the law," or "in consequence of any violation or attempt to violate any criminal law," it is settled that violation of the law must be either the natural and probable⁵ or the proximate cause⁶ of the death.

³Knight v. Press Co., 227 Pa. 185, 187.

⁴17 A. L. R., 1005 note 14 R. C. L. 1226; Bloom v. Franklin Life Insurance Co., 97 Ind. 478; Standard Life & Accident Insurance Co. v. Fraser, 76 Fed. 705.

⁵Empire Life Insurance Co. v. Einstein, 77 S. E. 209 (Ga.); Accident Ins. Co. v. Bennet, 16 S. W. 723 (Tenn.).

⁶Kerr v. Minnesota Mutual Benefit Association, 39 N. W. 312 (Minn.); Conboy v. Ry. Officials and Employees Accident Association, 46 N. E. 863 (Ind.); Southern Ins. Co. v. Graham, 280 S. W. 30 (Tenn.).

It is not the purpose of this note to determine which of these two rules is adopted in Pennsylvania. The object in referring to these cases has been to point out the extent of the insurer's liability where the term "directly" or its equivalent is used in the exemption clause. The solution of our particular problem hinges upon the construction given to the term "indirectly" used in the clause under consideration, and upon which the principal case turns.

It is a general rule of construction, with regard to insurance policies, that where there is any doubt as to the meaning of the terms in the policy on which suit is brought, the construction of such terms should be resolved in favor of the insured.⁷ In *Doran v. Standard Life & Accident Ins. Co.*,⁸ in discussing an exemption clause using the word "indirectly," the court said:—

"The provision quoted from the policy excluded liability from any injury of which a violation of the law was the cause or condition producing it. It also expressly provides exemption from liability where violation of law is either the proximate or remote cause producing the injury. . . ."

Though the court then found that the violation of the law there was the proximate cause of the injury and, accordingly, laid down no test as to how far it would go in protecting the insurer against death "remotely" caused by the violation of the law, this excerpt indicates that the insurer does increase its protection by the use of the term "indirectly". To what extent is the protection increased?

The purpose of insurance companies in inserting such clauses in policies is to protect themselves from the increased risk of death to the insured resultant upon the commission of a crime.⁹ In view of this, it is submitted that the insurance company is protected only in those situations where the death is caused by an accident resulting from the increased risk attendant upon the commission of a crime. This conclusion is supported by two cases. In *Manufacturer's Accident Indemnity Co. v. Dorgan*,¹⁰ the insured, in his application for his insurance, stated that he was aware that the insurance would not extend to,

"Any bodily injury happening directly or indirectly in consequence of disease or to death caused wholly or in part by bodily in-

⁷*Krebs v. Philadelphia Life Ins. Co.*, 249 Pa. 330; *Nusbaum v. Hartford Fire Insurance Co.*, 276 Pa. 526.

⁸63 Vt. 437, 22 A. 530, 13 L. R. A. 637.

⁹*U. S. Bank & Trust Co. v. Switchmen's Union*, 256 Pa. 228.

¹⁰58 Fed. 945.

firmities or disease, or to any case where the accidental injury was not the proximate and sole cause of death."

The facts were that the insured suffered a fit, as a result of which he fell into a body of water and was drowned. Taft, J., said:—

"In our opinion, the adjective 'accidental' qualifies not only 'injuries' but 'death' and therefore an accidental death by drowning does result from, and is caused indirectly by fits, vertigo or other disease, *if the fall into the water from which drowning ensues is caused by such disease.*"¹¹

This is a plain application of the "increased risk of death" doctrine.

In *Coxe v. Employer's Corp.*,¹² the decision upon which the *Runyan* case greatly relies, the court specifically found that the excepted act—war—had placed the insured in a place of greater risk than if there had been no war and, consequently, did not allow recovery. The court, by way of illustration, said that if the insured had been killed by lightning while in camp, recovery could have been had, as lightning is not one of those unusual risks to which war exposes a man.

The usefulness to the insurer of the word "indirectly" in the exemption clause is illustrated by a comparison of the *Dorgan* case with *Winespear v. Insurance Co.*¹³ The facts of the two cases are the same. In both, the insured suffered a fit, fell into a stream and was drowned. The exemption clause in the English case provided that "it should not extend to any injury caused by or arising from natural disease or weakness." The court found that the proximate cause of the death was the drowning and allowed a recovery on the policy. In the *Dorgan* case, the court found that the term "indirectly" extended the insurer's protection and, had there been no other question involved there, would not have allowed recovery.

The rule advocated grants the insurer the protection which it seeks and at the same time is not so far-reaching in its effect as to militate against the public policy which insurance serves. Though we have referred to the rule in connection with exemption clauses referring to violation of law, it may be applied equally well to other exempted acts, as is apparent from the cases cited.

Edwin M. Buchen.

¹¹Italics added.

¹²(1916) 2 K. B. 629.

¹³6 Q. B. Div. 42.