INSURANCE - SUPERVISION BY THE STATE - WHAT CONSTITUTES THE INSURANCE BUSINESS

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Insurance — Supervision by the State — What Constitutes the Insurance Business — Plaintiff, a corporation, advertised that any person who bought goods from certain selected stores would be entitled to receive coupons, and when his coupons amounted to a certain sum he would be entitled to certain death and security benefits up to specified amounts. Plaintiff brought suit against the Insurance Commissioner of Pennsylvania to enjoin him from interfering with the plaintiff's business. Held, that the plaintiff was carrying on an insurance business and was subject to supervision by the Insurance Commissioner. Hunt v. Public Mutual Benefit Foundation, (C. C. A. 3d, 1938) 94 F. (2d) 749, certiorari denied (U. S. 1938) 59 S. Ct. 75.

The transaction in question whereby the holder of a certain number of coupons became entitled to certain benefits in the event of death or emergency appears to contain the essential elements of an insurance contract as established by textwriters and the cases. However, a reasonable inference from the facts is that the purpose of the undertakings was to stimulate business activity rather than to enter into insurance contracts. The case thus raises the problem of the extent to which a person may enter into transactions partaking of the nature of insurance for the purpose of stimulating other business activity in which he is primarily engaged, without complying with the statutes regulating the insurance business. It is well established that the insurance business is affected with the public interest, and subject to regulation for the purpose of protecting policy

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1 Vance, Insurance, 2d ed., 2 (1930), where the essential elements of a contract of insurance are enumerated as follows: (1) insurable interest in the insured; (2) insured subject to risk of loss through destruction or impairment of that interest by the happening of designated perils; (3) assumption of that risk by the insurer; (4) the assumption being part of a general risk distributing scheme; (5) consideration for the insurer's promise in the form of a ratable contribution called a premium.

2 "An insurance contract is one whereby, for a stipulated consideration, one party undertakes to compensate the other for loss on a specified subject by specified perils." Stockbridge, J., in Chicago Bonding & Ins. Co. v. Oliner, 139 Md. 408 at 410, 115 A. 592 (1921). See People ex rel. Kasson v. Rose, 174 Ill. 310, 51 N. E. 246 (1898), in which many definitions to the same effect are gathered.

holders. Subject to carrying out the purposes of the regulation, a reasonable latitude should be permitted business men in the use of promotional devices to increase sales and stimulate business activity. In recognition of this need are the cases holding that warranty undertakings in connection with the sale of goods, whereby the vendor undertakes to pay a sum of money or do some other act if the product is not as warranted, do not constitute insurance. Similarly, if there is no hazard or peril, as is usually contemplated in definitions of insurance, but a mere contract entitling certificate holders to services or goods at reduced prices, or to a return upon an investment accumulated by the monthly payment of small sums, the contract is not one of insurance. An incidental provision in a contract made in furtherance of the primary business activity of one of the parties by which, in the event of certain contingencies, an added benefit will accrue to the other party, does not constitute it an insurance contract subject to statutory regulation. The freedom with which such collateral undertakings may be employed is restricted by the disposition of the courts to look through any subterfuge under which an actual insurance business is being carried on, and by their desire to protect against fraud and overreaching. Where

4 Hartford Live Stock Ins. Co. v. Gibson, 256 Ky. 338 at 344, 76 S. W. (2d) 17 (1935), in which the court said: "The business of insurance so affects public welfare as to be a proper subject for reasonable regulation by the state through the elimination of ingenious and ambiguous provisions and the avoidance of disadvantages from which policy holders might suffer grievous injustice."

6 Cole v. Haven, (Iowa, 1880) 7 N. W. 383 (agreement by vendor of lightning rods to pay all damages to buildings occasioned by lightning held not insurance); Evans & Tate v. Premier Refining Co., 31 Ga. App. 303, 120 S. E. 553 (1933) (agreement by seller of oil to replace gears in automobiles of customers if they wore out while using his oil, held not insurance).

8 See notes 1 and 2, supra.

7 State ex rel. Fishback v. Universal Service Agency, 87 Wash. 413, 151 P. 768 (1915).


10 Where undertakers formed burial associations whose members paid annual dues and upon death were entitled to burial, the courts have generally held such transactions to be insurance. State ex rel. Atty. Gen. v. Witchita Mut. Burial Assn., 73 Kan. 179, 84 P. 757 (1906); Renschler v. State ex rel. Hogan, 90 Ohio St. 363, 107 N. E. 758 (1914); Oklahoma S. W. Burial Assn. v. State, 135 Okla. 151, 274 P. 642 (1928). In State v. Willett, 171 Ind. 296 at 304, 86 N. E. 68 (1908), the court
a contract creditor agrees to cancel the balance owing upon the contract in the event of the debtor's death before maturity of the debt, the transaction has commonly been held to be insurance. Such cases may be regarded as close, the obvious purpose of the insurance feature being to stimulate business; but where, in such a transaction, the debtor makes a covenant of good health, or agrees to submit to a medical examination, the holding that the creditor is carrying on a life insurance business seems justified. Similarly, where the promisor obligates himself to purchase some interest of the promisee, and it is reasonable to suppose that the option will not be exercised unless future contingencies subject the promisee to risk of loss, the transaction is held to be insurance. Some of the confusion existing in the cases arises out of the tendency of the courts to call a contract of insurance not insurance if there is no basis for regulation. Thus a transaction partaking of the nature of insurance may not be subject to regulation because it is a single transaction and not a course of business, or because not entered into for profit. Security to policy holders would appear to be afforded by regulation looking toward elimination of dishonest practices and the risk of insolvency of the insurer. In view of these requirements, it is said, "Some of the provisions are unreasonable, some unguarded, and others indefinite, and tend to expose the concern to the suspicion that the whole system is, in real design, but the scheme of an undertaker to promote his private business, largely at the expense of persons of small means. A wise public policy demands that the laws be liberally construed to circumvent any attempt, by such bodies, to evade the reasonable and beneficial restraints of the statute."

13 In re Hogan, 8 N. D. 301, 78 N. W. 1051 (1899) (contract whereby a farmer acquired option to sell crops at a specified figure per acre); Commonwealth ex rel. Schnader v. Fidelity Land Value Assurance Co., 312 Pa. 425, 167 A. 300 (1933) (contract corporated, in consideration of premium paid by land developer, to issue to purchasers of lots bonds to repurchase at a certain price after given period); Claflin v. United States Credit System Co., 165 Mass. 501, 43 N. E. 293 (1896) (contract to purchase at a fixed figure accounts which during a stated period should be unpaid and owing the promisee).
15 State v. Taylor, 56 N. J. L. 49, 27 A. 797 (1893); Cowan v. New York Caledonian Club, 46 App. Div. 288, 61 N. Y. S. 714 (1899). In these cases it was held that where in respect to funeral benefits the scheme of the society or association was purely charitable, from which it derived no pecuniary benefits, it was not subject to the insurance laws.
16 In Commonwealth v. Vrooman, 164 Pa. 306, 30 A. 217 (1894), the court said that security to policy holders required, through regulation, (1) permanence in the custody of the funds, (2) honest and competent administration of these
arguable that there is no need for regulation where the indemnity is in the form of cancellation of an obligation. But where the purchaser of goods is led to believe he thereby becomes entitled to certain insurance benefits, as in the principal case, it may be assumed that the consideration for the insurance is part of the purchase price of the goods, and a valid basis for regulation exists in the prevention of fraud and misrepresentation.

Thomas E. Wilson

funds, (3) restraint against the division of the profits of the business whenever such division would injuriously affect the security of the policy holders.

24 Col. L. Rev. 802 (1924).