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INSURANCE - REMAINDERMAN'S SHARE IN PROCEEDS OF LIFE TENANT'S POLICY

INSURANCE — REMAINDERMAN'S SHARE IN PROCEEDS OF LIFE TENANT'S POLICY — Buildings insured by the life tenant for their full value were totally destroyed and the insurance money paid over to the life tenant. The remainderman brought suit under a statute requiring the giving of security for the protection of the remaindermen by those having limited interests in personal property. *Held*, the remainderman has no interest in the proceeds of the policy and cannot compel the life tenant to render security. *In re Gorman's Estate*, (Pa. 1936) 184 A. 86.

It is clear that both the remainderman and life tenant will share in the proceeds of a fire insurance policy issued to their grantor or devisor, the loss occurring, of course, after the latter's death.[1] There is some disagreement as to the proper distribution, however, where, as in the principal case, the life tenant is the insured. Most of the courts deny any share to the remainderman [2] absent a contrary agreement with the life tenant or stipulation in the instrument creating the respective interests,[3] and absent a clearly expressed intent by the life tenant to benefit the remainderman.[4] These courts emphasize that the fire insurance policy is a "personal" contract of indemnity, insuring the policyholder, not the property; consequently, only he can partake of its fruits.[5] On the other hand, the extreme position has been taken by the South Carolina court[6]

[1] Cope v. Ricketts, 130 Kan. 823, 288 P. 591 (1930); Haxall's Exrs. v. Shippen, 10 Leigh (37 Va.) 561 (1839).

[2] Bell v. Barefield, 219 Ala. 319, 122 So. 318 (1929); Corder v. McDougall, 216 Cal. 773, 16 P. (2d) 740 (1932); Spalding v. Miller, 103 Ky. 405, 45 S. W. 462 (1898); Harrison v. Pepper, 166 Mass. 288, 44 N. E. 222 (1896) (only life tenant's interest insured); Blanchard v. Kingston, 222 Mich. 631, 193 N. W. 241 (1923); King v. King, 163 Miss. 584, 143 So. 422 (1932), noted in 19 VA. L. REV. 282 (1933); Underwood v. Fortune, (Mo. App. 1928) 9 S. W. (2d) 845; Addis v. Addis, 60 Hun. 581, 14 N. Y. S. 657 (1891); Miller v. Gold Beach Packing Co., 131 Ore. 302, 282 P. 764 (1929); Bennett v. Featherstone, 110 Tenn. 27, 71 S. W. 589 (1902); Thompson v. Gearheart, 137 Va. 427, 119 S. E. 67 (1923).

[3] See Convis v. Citizens' Mutual Fire Ins. Co., 127 Mich. 616, 86 N. W. 994 (1901).

[4] See In re Cameron's Estate, 158 Mich. 174, 122 N. W. 564 (1909). In Welsh v. London Assurance Corp., 151 Pa. 607, 25 A. 142 (1892), the court held that the life tenant's intent to protect the remainderman having been shown, he (the life tenant) could recover *from the insurer* the full value of the buildings destroyed, holding the excess above the value of his own interest, however, in trust for the remainderman.

[5] See, for example, the principal case, 184 A. 86 at 87.

[6] Green v. Green, 50 S. C. 514, 27 S. E. 952 (1897). Often quoted as in accord is Clark v. Leverett, 159 Ga. 487, 126 S. E. 258 (1924), noted in 20 ILL. L. REV. 383 (1926), where the remainderman was given the value of his interest. However, in that case the court stressed the fact that the fiduciary relation of guardian and ward existed between the parties.

that the remainderman owns the "corpus" of the insurance money, and the life tenant merely the income, even though only the latter's interest and not the full value of the property was insured.[7] The argument is that the life-tenant is a "trustee" or "quasi-trustee" of the premises for the benefit of the remaindermen, and that the insurance money represents the land, replacing it as the "trust res." [8] The "trust," so-called, is concededly not express, and it is difficult to justify the implication of a trust obligation [9] since the life tenant is under no duty to the remainderman to insure [10] nor is he obligated to replace property accidentally destroyed.[11] Indeed, the South Carolina court has itself held that one co-tenant cannot benefit from the policy of the other, yet surely the latter is as much a quasi-fiduciary as a life tenant.[12] Probably the true explanation of the minority view lies partly in a feeling that the remainderman ought not be entirely deprived of his reasonable and normal expectancy by fortuitous circumstances. However, the remainderman has an insurable interest [13] and his failure to protect himself against loss by fire should evoke little sympathy. A more cogent contention of the minority is that public policy is best served by thwarting whenever possible the making of a profit on a fire insurance policy. To this argument the answer of the principal case may be given: "Any argument based on public policy was for the insurers, and not the remaindermen. They have no greater claim to the excess than has the life

[7] Under this view, of course, the proper proportion of premiums paid by the life tenant would be deducted from the remainderman's share.

[8] It has also been argued by way of justification of the minority view that the fact that the life tenant has insured the *fee* shows an intent to protect the remainderman. See Clark v. Leverett, 159 Ga. 487, 126 S. C. 258 (1924). Such a theory cannot, of course, explain a case like Green v. Green, 50 S. C. 514, 27 S. E. 952 (1897), in which only the life tenant's interest was insured.

[9] In analogous situations in which a stranger to the insurance contract has nevertheless been allowed to benefit therefrom, the fiduciary relation has usually been quite clear. Thus, for example, the principal is usually given the benefit of the agent's policy—7 COOLEY, BRIEFS ON INSURANCE, 2d ed., 6265 (1928); the ward that of the guardian—Clark v. Leverett, 159 Ga. 487, 126 S. E. 258 (1924); and, in recent cases, the vendee that of his vendor, at least where the risk of loss is on the former—Brady v. Welsh, 200 Iowa 44, 204 N. W. 235 (1925); Brownell v. Board of Education, 239 N. Y. 369, 146 N. E. 630 (1925). On the other hand, where no such relation exists a contrary result has usually been reached. Roesch v. Johnson, 69 Ark. 30, 62 S. W. 416 (1900), lessee without share in policy of lessor; Webster v. Hanover Fire Ins. Co., 19 Pa. Dist. 369 (1910), life tenant without share in policy of remainderman, the converse of the situation in Green v. Green, 50 S. C. 514, 27 S. E. 952 (1897). The mortgagor-mortgagee situation is hardly distinguishable from that of vendee-vendor, yet it has been almost uniformly held that neither can share in the policy of the other, unless, of course, the policy contains a standard mortgage clause. VANCE, INSURANCE, 2d ed., §§ 170-171 (1930).

[10] Kearney v. Kearney's Exr., 17 N. J. Eq. 504 (1864).

[11] The South Carolina court itself has so held. Brooks v. Brooks, 12 S. C. 422 (1879).

[12] Annely v. De Saussure, 26 S. C. 497, 2 S. E. 490 (1887).

[13] In re Cameron's Estate, 158 Mich. 174, 122 N. W. 564 (1909).

tenant." [14] On the whole, it would seem that the majority view is better founded in both authority and reason.[15]

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[14] In re Gorman's Estate, 184 A. 86 at 88.

[15] An intermediate view was suggested in a dictum in Sampson v. Grogan, 21 R. I. 174, 42 A. 712 (1899), namely, that the remainderman should be entitled to the excess above the value of the life tenant's interest. This view, adopted by no other court, is objectionable in that it makes necessary the computation of the life tenant's expectancy, a speculative matter at best.

On the broad question of the respective rights of parties with limited interests, see 27 MICH L. REV. 683 (1929) and McClain, "Insurance of Limited Interests Against Fire," 11 HARV. L. REV. 512 (1898).