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BANKRUPTCY-DISPOSITION OF INSURANCE POLICY ASSIGNED TO BENEFICIARY

RECENT DECISIONS

BANKRUPTCY—DISPOSITION OF INSURANCE POLICY ASSIGNED TO BENEFICIARY—Mrs. Humphrey was the beneficiary in an insurance policy taken out by her husband on his own life. He assigned this policy to her at a time when it was pledged to the insurance company for loans slightly in excess of the cash surrender value. Mr. Humphrey died after Mrs. Humphrey had filed her voluntary petition in bankruptcy.[1] *Held*, the policy is not an asset of the bankrupt estate, but belongs to Mrs. Humphrey rather than the trustee. *Curtis v. Humphrey*, (C. C. A. 5th, 1935) 78 F. (2d) 73.

The controlling section of the Bankruptcy Act is section 70a:[2]

> "The trustee of the estate of a bankrupt . . . shall . . . be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all . . . (5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: *Provided*, That [3] when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate, or personal representatives, he may within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets. . . ."[4]

The Supreme Court in *Burlingham v. Crouse*[5] has construed this proviso as separate legislation (rather than a limitation upon the preceding clause), the effect of which was to pass to the trustee only the cash surrender value, and "otherwise to leave to the insured the benefit of his insurance."[6] The Court in that case said that while life insurance is property, it is a peculiar sort of property which would not pass to the trustee under subdivision (5) of section 70a because it was explicitly provided for under the proviso. *Burlingham v. Crouse* has been criticized as doing considerable violence to the language of section 70a,[7] but

[1] It is not clear from the report whether the death occurred before or after the adjudication of bankruptcy, but this is immaterial since the Supreme Court held in Everett v. Judson, 228 U. S. 474, 33 S. Ct. 568 (1913), that in spite of the language, "as of the date he was adjudged a bankrupt," in section 70a, the filing of the petition should be the determining date.

[2] 30 Stat. L. 565 (1898).

[3] The words "Provided, That" are omitted from this section as it is set out in 11 U. S. C., § 110. The writer could find no explanation for this variation.

[4] 68 A. L. R. 1215 (1930) contains a very good annotation concerning insurance as assets passing to the trustee under this section. Also see 46 L. R. A. (N. S.) 148 (1913) and the notes which it supplements.

[5] 228 U. S. 459, 33 S. Ct. 564, 46 L. R. A. (N. S.) 148 (1913).

[6] 228 U. S. 459 at 473, 33 S. Ct. 564 (1913).

[7] 3 REMINGTON, BANKRUPTCY, § 1244 (1923).

even if one accepts it on its facts (the bankrupt was the insured), he could find much reason for objecting to the instant case in which *Burlingham v. Crouse* was applied where the bankrupt was the beneficiary. By such an extension the Circuit Court of Appeals ignores the clear intention to limit the rule expressed in *Burlingham v. Crouse* by the language quoted above—"to leave to the *insured* the benefit of his insurance." Of course, life insurance is a peculiar sort of property to the insured because its purpose is not material return for himself, but provision for his dependents after his death; the purpose is the same whether the policy is payable to named beneficiaries or to his estate because in neither case does the policy produce until the insured's death. But what is peculiar about insurance as property to the beneficiary? A desire of Congress to provide an exemption for an effort to take care of one's dependents is understandable,[8] but what reason for exempting a right to have cash in hand simply because it is contingent or not yet matured? The court in the instant case cites a number of cases[9] holding that the beneficiary's interest passes to his trustee in bankruptcy where it is vested because the insured reserved no right to change the beneficiary, and distinguished those cases on the ground that in the instant case the beneficiary-bankrupt *owned* the policy. But there is no valid basis for a distinction between these two situations based on ownership. In the instant case, insured took out a policy on his own life and assigned it to the beneficiary. In the cases distinguished by the court, insured took out a policy on his own life without reserving the right to change the beneficiary. With such a policy the insured cannot change the beneficiary or surrender the policy without consent of the beneficiary,[10] so there is no cash surrender value for him. He has left only the right to continue payment of the premiums if he cares to. Can it be said that the beneficiary in such a policy owns less than the beneficiary in the instant case? If so, is there enough difference in ownership to justify this court's holding this policy to be within the proviso? The only justification for this decision is a literal reading of the proviso, "when any bankrupt shall *have* any insurance policy."[11] A court should be able to construe its way around this language saying that "have" means "have on his own life" because the policy factors make it so obvious that such was the intent of Congress. Then, since the beneficiary's interest is not treated under this proviso, it would pass to the trustee under sub-

[8] A distinction might be made between the case where the beneficiary is the insured's family and that where it is a creditor or a corporation, but this is not so sharp as the distinction between the bankrupt beneficiary and the bankrupt insured, and would be even harder to find in the language of section 70a.

[9] Including Clements v. Coppin, (C. C. A. 9th, 1932) 61 F. (2d) 552, which says at 558, "it is clear that the rule [of Burlingham v. Crouse] only applies to cases in which the bankrupt was the assured; whereas in the case before us the bankrupt was the beneficiary under the policy, and was never divested of his right to the proceeds."

[10] VANCE, INSURANCE, § 145 (1930).

[11] Judge Sibley concurred specially in the instant case, saying that he yielded to the literal wording of the statute as construed in Burlingham v. Crouse, but believed that Congress had in mind only the case of the bankrupt insured. To illustrate the weakness of the rule Judge Sibley gave the following hypothetical case: a bankrupt corporation which was beneficiary of a policy upon the life of its moribund president. He would hate to say that this policy would not go to the trustee in bankruptcy.

division (5). Whenever this point gets to the Supreme Court, it should have no trouble taking this step in view of the liberties it has already taken with the express language of section 70a in *Burlingham v. Crouse* and in *Everett v. Judson.*[12]

C. R. H.

[12] See note 1, supra.