Grigsby Vs. Russell

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Appellant : Grigsby

Respondent : Russell

Judgement :

Grigsby v. Russell - 222 U.S. 149 (1911)
U.S. Supreme Court Grigsby v. Russell, 222 U.S. 149 (1911)

Grigsby v. Russell

No. 53

Argued November 10, 13, 1911

Decided December 4, 1911

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CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

SYLLABUS

A condition in an insurance policy that it shall be void for nonpayment of premiums means only that it shall be voidable at option of the company.

The rule of public policy that forbids the taking out of insurance by one on the life of another in which he has no insurable interest does not apply to the assignment by the insured of a perfectly valid policy to one not having an insurable interest.

In this case, *held* that the assignment by the insured of a perfectly valid policy to one not having any insurable interest but who paid a consideration therefor and afterwards paid the premiums thereon was valid, and the assignee was entitled to the proceeds from the insurance company as against the heirs of the deceased.

A valid policy of insurance is not avoided by a cessation of insurable interest, even as against the insurer, unless so provided by the policy itself. *Conn. Mut. Ins. Co. v. Schaefer,* 94 U. S. 457 ; *Warnock v. Davis,* 104 U. S. 775 , distinguished.

Where there is no rule of law against paying to an assignee who has no insurable interest in the life of the insured, and the company waives a clause in the policy requiring proof of interest, the rights of the assignee are not diminished by such clause as against the insured's administrator.

Even though a court below might hesitate to decide against language of this Court referring to a debated point, if there has been no direct decision, this Court is not precluded by such references when the point is actually before it.

168 F. 577 reversed.

The facts are stated in the opinion.

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MR. JUSTICE HOLMES delivered the opinion of the Court.

This is a bill of interpleader brought by an insurance company to determine whether a policy of insurance issued to John C. Burchard, now deceased, upon his life shall be paid to his administrators or to an assignee, the company having turned the amount into court. The material facts are that, after he had paid two premiums and a third was overdue, Burchard, being in want and needing money for a surgical operation, asked Dr. Griggsby to buy the policy, and sold it to him in consideration of $100 and Griggsby's undertaking to pay the premiums due or to become due, and that Griggsby had no interest in the life of the assured. The circuit court of appeals, in deference to some intimations of this Court, held the assignment valid only to the extent of the money actually given for it and the premiums subsequently paid. 168 F. 577.

Of course, the ground suggested for denying the validity of an assignment to a person having no interest in the life insured is the public policy that refuses to allow insurance to be taken out by such persons in the first place. A contract of insurance upon a life in which the insured has no interest is a pure wager that gives the insured a sinister counter-interest in having the life come to an end. And

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although that counter-interest always exists, as early was emphasized for England in the famous case of Wainewright (Janus Weathercock), the chance that in some cases it may prove a sufficient motive for crime is greatly enhanced if the whole world of the unscrupulous are free to bet on what life they choose. The very meaning of an insurable interest is an interest in having the life continue, and so one that is opposed to crime. And, what perhaps is more important, the existence of such an interest makes a roughly selected class of persons who, by their general relations with the person whose life is insured, are less likely than criminals at large to attempt to compass his death.

But when the question arises upon an assignment, it is assumed that the objection to the insurance as a wager is out of the case. In the present instance, the policy was perfectly good. There was a faint suggestion in argument that it had become void by the failure of Burchard to pay the third premium *ad diem,* and that, when

Grigsby paid, he was making a new contract. But a condition in a policy that it shall be void if premiums are not paid when due means only that it shall be voidable at the option of the company. *Knickerbocker Life Insurance Company v. Norton,* 96 U. S. 234 ; *Oakes v. Manufacturers' Fire & Marine Ins. Co.,* 135 Mass. 248. The company waived the breach, if there was one, and the original contract with Burchard remained on foot. No question as to the character of that contract is before us. It has been performed and the money is in court. But, this being so, not only does the objection to wagers disappear, but also the principle of public policy referred to, at least in its most convincing form. The danger that might arise from a general license to all to insure whom they like does not exist. Obviously it is a very different thing from granting such a general license to allow the holder of a valid insurance upon his own life to transfer it to one whom he, the party most concerned, is not afraid to trust. The law has no

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universal cynic fear of the temptation opened by a pecuniary benefit accruing upon a death. It shows no prejudice against remainders after life estates, even by the rule in *Shelley's Case.* Indeed, the ground of the objection to life insurance without interest in the earlier English cases was not the temptation to murder, but the fact that such wagers came to be regarded as a mischievous kind of gaming. St. 14 George III, c. 48.

On the other hand, life insurance has become in our days one of the best recognized forms of investment and self-compelled saving. So far as reasonable safety permits, it is desirable to give to life policies the ordinary characteristics of property. This is recognized by the Bankruptcy Law, 70, which provides that, unless the cash surrender value of a policy like the one before us is secured to the trustee within thirty days after it has been stated, the policy shall pass to the trustee as assets. Of course, the trustee may have no interest in the bankrupt's life. To deny the right to sell except to persons having such an interest is to diminish appreciably the value of the contract in the owner's hands. The collateral difficulty that arose from regarding life insurance as a contract of indemnity only (*Godsall v. Boldero,* 9 East 72), long has disappeared (*Phoenix Mutual Life Ins.*

Co. v. Bailey, 13 Wall. 616). And cases in which a person having an interest lends himself to one without any, as a cloak to what is in its inception a wager have no similarity to those where an honest contract is sold in good faith.

Coming to the authorities in this Court, it is true that there are intimations in favor of the result come to by the circuit court of appeals. But the case in which the strongest of them occur was one of the type just referred to, the policy having been taken out for the purpose of allowing a stranger association to pay the premiums and receive the greater part of the benefit, and having been assigned to it at once. *Warnock v. Davis,* 104 U. S. 775 .

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On the other hand, it has been decided that a valid policy is not avoided by the cessation of the insurable interest, even as against the insurer, unless so provided by the policy itself. *Connecticut Mutual Life Ins. Co. v. Schaefer,* 94 U. S. 457 . And expressions more or less in favor of the doctrine that we adopt are to be found also in *Aetna Life Ins. Co. v. France,* 94 U. S. 561 *Mutual Life Ins. Co. v. Armstrong,* 117 U. S. 591 . It is enough to say that, while the court below might hesitate to decide against the language of *Warnock v. Davis,* there has been no decision that precludes us from exercising our own judgment upon this much debated point. It is at least satisfactory to learn from the decision below that, in Tennessee, where this assignment was made, although there has been much division of opinion, the supreme court of that state came to the conclusion that we adopt in an unreported case, *Lewis v. Edwards,* December 14, 1903. The law in England and the preponderance of decisions in our state courts are on the same side.

Some reference was made to a clause in the policy that "any claim against the company arising under any assignment of the policy shall be subject to proof on interest." But it rightly was assumed below that, if there was no rule of law to that effect, and the company saw fit to pay, the clause did not diminish the rights of Griggsby as against the administrators of Burchard's estate.

Decree reversed.

MR. JUSTICE LURTON took no part in the decision of this case.