# SOME POINTS IN LIFE ASSURANCE LAW

**Paper by Alexander Bruce, K.C., Solicitor Canada Life Assurance Co., read before the Insurance Institute of Toronto, February 27, 1906**

I must preface my remarks with an explanation which is in the nature of an apology, and that is that I deferred preparing this paper too long, and that when I took up the matter I was very fully occupied with other business, which has prevented my doing justice to the subject.

In my remarks I will not attempt to deal with the whole subject of life insurance, as there are sufficient text-books which do so, and time would only permit of my skimming over the surface, and it may be better to say something of a practical character on some of the special portions of the subject and deal with the law in relation thereto.

A life insurance policy issued by a joint stock company is not like a fire insurance policy, a contract of indemnity. In the case of the fire policy, the insured is only entitled to be indemnified for what he may lose by the damage to, or destruction of the property insured, and can recover no more than his loss, while under a policy on the life of A. B. for $10,000, if the company be liable at all, the full amount contracted for must be paid, although the life of A. B. be productive of no pecuniary or any other benefit of any character to anyone, but may be very much to the contrary. The old Statute, 14 Geo. III, Cap. 48, against wager policies having been passed before 1791, when the Province of Upper Canada was given its Parliament and the English law then existent was imported into the province, was, and still is, in force in Ontario, but we had no legislation dealing specially with life insurance in Canada until the passage of the first Act, providing for life insurance for the benefit of wives and children by the late Province of Canada in 1865, and now the law on the subject in Ontario is contained in the R.S.O., Cap. 203, Secs. 147 to 165, both inclusive, and subsequent amendments. In that Act it is declared that insurance shall include any contract made on consideration of a premium, and based on the expectancy or expectation, or probability of life; or any contract made on such consideration and having for its subject the life, safety, health, fidelity or insurable interest of any person, whether the benefit under the contract is primarily payable to the assured or to a donee, grantee, or assignee, or to trustees, guardians, or representatives, or to (or in trust for) any beneficiary, or to the assured by way of indemnity, or insurance against any liability incurred by him by or through the death or injury of any person.

Section 151 (1) of that Act is as follows:—"Every person of the full age of twenty-one years shall be deemed to have an unlimited insurable interest in his own life, and may effect bona fide at his own charge insurance or insurances of his own person for the whole term of life, or any shorter term, for the sole or partial benefit of himself or his estate, or any other person, persons or corporation whatsoever, whether such other beneficiary has or has not an insurable interest in the life of the assured. The insurance money may be made payable to any person, either for his own use, or as trustee for another person."

This is a very full and satisfactory declaration, and removes by legislation any question as to the validity of a policy taken out by A. B. on his own life, but payable to C. D., a person (not a creditor), whom A. B. wishes to benefit, which was the subject of an action about twenty years ago, where the insurance company claimed that under the Act, 14 Geo. III, Cap. 48, the policy was void, and sought after the death of the assured to have the same cancelled. The case was carried to the Supreme Court of Canada, who confirmed the decisions of the Courts below, upholding the validity of the policy. The old statute is, however, still in force in Ontario, and has been quite recently invoked, and in the case in the Supreme Court just referred to, Sir Henry Strong says that even if the statute had not been in force, he should, had the facts warranted, have felt no difficulty in holding that a wager policy effected by a person having no interest in the life was at Common Law against public policy, and so void.

After Confederation a question arose in the case of certain policies issued by fire insurance companies, covering property in Ontario (known among lawyers as "The Parsons Cases"), whether the Ontario Insurance Act, then in force, which imposed the statutory conditions in the case of fire policies, was within the legislative powers of the Ontario Legislature, and after much contest in the Courts of Canada—the judges in the Courts of Queen's Bench and Appeal in Ontario being unanimous in favor of such powers, and the judges in the Supreme Court standing three to two in their favor—the validity of the statutory conditions was sustained by the Privy Council, 7 Appeal Cases, 96.

It follows that in the cases of persons domiciled in Ontario and insured under life policies, whether issued in Ontario or not, that the rights of such persons are to be decided according to the laws in force in Ontario.

I may mention two English decisions bearing somewhat on this law, which are of interest.

Lee *vs.* Abdy, 17 Queen's Bench Division, 309, was a case where the assured, while domiciled in Cape Colony, assigned the policy issued by an English company to his wife, and on his death she brought an action against the company, and it was held that the action could not succeed, as under the law of that Colony such an assignment was void by reason of the alleged assignee being the wife of the assignor.

Ex Parte Dever, 18 Queen's Bench Division, 660, was a case where a policy was issued by the Equitable Life Assurance Society through their branch in London, whereby the Society promised to pay the sum assured to the wife for her sole use, if living, in conformity with the Statute, the Statute referred to being a Statute of the State of New York, which provided that in certain contingencies the creditors of the husband should be entitled to a proportion of the amount secured by the policy, and it was held that the New York Statute was not incorporated in the policy.

The Dominion Parliament, however, while it does not regulate insurance contracts, has much to do with insurance companies and insurance legislation, but I am not going into that subject, and shall confine myself pretty much to questions relating to life insurance for the benefit of wives and children.

The provision by life insurance for the benefit of wives and children is, perhaps, the most important branch of life insurance business, and it is of comparatively recent origin.

There was no legislation on the subject in Great Britain until the year 1870, when a section was introduced into the Married Women's Property Act of that year.

In 1863, Arthur Scratchley, an English barrister, with others, had presented a petition to the House of Commons