

28. If, however, it shall be proved that all or any of the premiums were paid, at a time when the person whose life was insured was insolvent, in fraud of the rights of creditors, such creditors shall be entitled to recover and to receive out of the insurance money, an amount equal to the premiums so paid; and in such case, the share of each person, when more than one are benefited, will be proportionately reduced.

29. Nothing contained in this act shall be held or construed to restrict or interfere with any right otherwise allowed by law to any person to effect or transfer a policy for the benefit of a wife or children; nor shall apply to insurance made in favor of or transferred to any wife under her marriage contract.

LEGAL DECISIONS IN INSURANCE CASES.

COMPILED BY

MESSRS. MONK & RAYNES, ADVOCATES, MONTREAL.
COURT OF APPEALS, MONTREAL.

JAMES G. BOYCE,

Plaintiff, Appellant;

vs.

THE PHENIX MUTUAL LIFE INSURANCE CO.,

Defendant, Respondent.

Life Insurance.—Change of Habits.—Warranty in Application.

This was an action brought by J. G. Boyce as Assignee of a Life Insurance policy issued by the Respondent on the life of one William Albert Charlebois for the sum of \$3,000, on the 27th September, 1876. The policy having been transferred by Charlebois in the first place to a Mrs. Lefevre, and by her to the present Plaintiff.

Charlebois died on the 17th September, 1882.

The Defendant refused to pay the amount of the policy on the ground that after the issuing of the policy the risk had been increased by a change in the habits of the assured.

They based their plea on certain clauses and representations contained in Charlebois' application. One of the clauses being as follows:

"It is hereby agreed that this application shall form the basis of the contract of insurance herein applied for, and the same shall form part of said contract as if therein recited, and that all answers and declarations contained in this application are and shall be taken to be strict warranties, and that should the applicant become as to habits so far different from the condition in which he is now represented to be as to increase the risk on the life insured the policy shall become null and void, and all payments made thereon shall be forfeited."

And in the same application in answer to questions contained therein Charlebois declared that his habits were temperate, sober, and that he was not then and had never been addicted to the use of any spirituous or malt liquors, opium or other narcotics.

By the policy itself it was declared that it was issued on certain express conditions, one of which was as follows:

"If any of the declarations or statements made in the application for this policy (upon the faith of which this policy is issued), shall be found to be in any respect untrue, then and in such case this policy shall be null and void."

Charlebois subjected himself to these conditions by his subscription to the application.

The contract thus entered into was held by the majority of the Court of Appeal to be perfectly valid and binding upon Charlebois and his assignees; and the case became reduced to a mere question of evidence as to whether the alleged violation of the condition as to change of habits was proved or not.

The Judge in the Superior Court who tried the case came to the conclusion that it was proved.

It is to be remarked (as stated by Hon. Mr. Justice Cross in rendering judgment in appeal) that the question is not whether the life of Charlebois was really shortened by a change of his habits. The question is whether a change of his habits took place which in its nature increased the risk of his dying.

The risk may have greatly increased, and yet he may have died of a malady wholly unconnected with intemperance; yet the increase of risk in such case, by the terms of his contract would have vitiated his policy.

The evidence of Dr. Hingston, Charlebois' medical attendant and a family physician, of W. F. Johnson and of Charlebois' wife, Josephine Mondou, now Mrs. Germain, leave no doubt in my mind that not only did Charlebois so change his habits, after effecting the insurance in question, as to increase the risk of his dying, but that his death was accelerated by his confirmed habits of intemperance, commencing from the death of his wife in the summer of 1881, and continuing up to the time of his own decease. Dr. Hingston says he was aware of his temperate habits and was of opinion that he died of disease of the liver caused in a great measure by the habits of intemperance. He more than once urged Charlebois to be temperate, and is distinctly of opinion that the risk upon his life was materially increased by his intemperate habits.

Mrs. Germain, formerly his wife, speaking of the two last years of Charlebois' life, being asked: "Etait-il ivrogne d'habitude?" answers "Il était souvent sous l'influence de la boisson." Q. "Et avez-vous eu occasion de lui reprocher ses habitudes d'intempérance?" A. "Oui." Q. "Pourquoi faisiez-vous des reproches à Mr. Charlebois?" "A. "Parce que ce n'était pas bon pour sa santé."

An eminent judge in a case resembling the present remarked: "It is scarcely possible to imagine intemperance not injurious to health."

The majority of the Court are of opinion, therefore, that the change in habits is proved to have been such as to increase the risk of Charlebois dying, and the judgment is accordingly confirmed.

Hon. Mr. Justice Ramsay dissented from this judgment on the ground that when the company refused payment of the policy, and alleged that the assured had changed his habits so as to increase the risk of his dying, it was incumbent upon them to prove it in the most satisfactory manner, and beyond any doubt. This he held they had not done.

Hon. Mr. Justice Baby also dissented.

Mr. E. Webb who has been Acting-Cashier of the Union Bank of Canada has been appointed Cashier of that institution. A well merited appointment.

Cents have lately been introduced into San Francisco. The smallest coin in use a short time ago was a dime, and subsequently the nickel.

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SUN LIFE

ASSURANCE COMPANY

OF CANADA.

BUSINESS OF 1885.

Income, \$319,987.05. Assets, \$1,411,004.33. New Life Applications, \$2,608,071.48. Life Policies in force, \$7,930,878.77.
Increase, 41,607.40. Increase, 136,60.09. Increase, - - 707,229.30. Increase, - - 1,086,474.73.

R. MACAULAY,
Manager, Director.

THOMAS WORKMAN,
President.

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