FEATURES OF QUEBEC INSURANCE LAW

Clear Exposition of Intricate Subject by J. Armitage Ewing, K.C.

(Concluded.)

In concluding the address on Quebec's insurance law, portions of which have been printed in previous issues of *The Monetary Times*, Mr. J. Armitage Ewing, K.C., said:—

In the case of companies governed by the Dominion Insurance Act lending to their own married women policyholders who are separate as to property on the security of their policies, about the only risk they run is the loss of interest should the women have borrowed for their husbands, assuming that the loan agreement follows the form provided in article 95 (g), of the insurance act. While the transaction is called a loan, it is strictly speaking not a loan at all, because one of the essentials of the contract of loan is missing, that is the obligation to repay. The party borrows a certain sum on which she binds herself to pay interest at a certain rate, but enters into no obligation to return the money, though she has the right at any time to do so. The matter is more in the nature of a part payment in advance (though not even that, inasmuch as the assured has the right to repay at will) in consideration of which she undertakes the payment of interest. As the prohibition is only against a woman binding herself for her husband the contract if tainted with nullity would only be void to the extent of her obligation and that is to pay interest. As she has the right to receive her own property, including money owing to her, the fact that she handed the money advanced by the company over to her husband would not give her the right to demand, on the policy falling due, that the company pay her the full proceeds thereof as though the so-called contract of loan had not been entered into.

Surrender by Married Women.

A married woman is free to surrender her policy made payable to herself, but as this is an act beyond administration, authorization is required.

If the policy is payable to a named beneficiary or named beneficiaries, payment is made accordingly; if payable to the assured's estate, the money is handed to his personal representatives. If he leaves a will his executors, if he appoints any, or his residuary legatees, or the one to whom the policy is specially bequeathed, if no executor is named, can give a discharge. If he leaves no will, much trouble is often caused to the insurance company. There is no provision in the law of Quebec for the appointment of an administrator to an intestate succession, so debts are payable to the legal heirs direct. If these be all of age and available, and not too many, little difficulty is experienced. But if, as is frequently the case, the heirs are numerous, and scattered, and some of them minors, the company is put to much trouble before the last claimant is settled with.

Changing the Beneficiary.

I will briefly touch upon another feature of Quebec law which is peculiar and that is the right to change the beneficiary. If the beneficiary is a preferred beneficiary, wife or child, the assured may make whatever changes he likes within the family circle. In that respect Quebec does not differ from the other provinces, but if the beneficiary is outside this circle—father, brother, or stranger—it depends on whether or not the beneficiary has accepted the contract made in his favor. There is nothing in the law of insurance regulating this point, so as insurance is a contract we fall back on the common law of contract. Article 1029 of the Code says: "A party may stipulate for the benefit of a third person, when such is the condition of the contract which he makes for himself, or of a gift which he makes to another; and he who makes the stipulation cannot revoke it if the third person have signified his assent to it." Quebec has not the vested interest doctrine which prevails in the majority of the United States, but if a beneficiary have accepted the contract made in his favor it is irrevocable, and a new beneficiary cannot be substituted, without his consent. It is therefore always necessary to enquire whether or not the beneficiary has accepted. At first sight this seems easy. Did he sign the application with the assured? If so, he accepted it. Did he serve a written notice on the company that he accepted? If so, he has a vested interest. But there is more to enquire into than this.

The court of appeal in the case of D[illegible]on vs. Lemieux has decided that acceptance by a beneficiary need not be in writing at all, but may be made tacitly. That is to say his conduct and actions may be sufficient to constitute acceptance. How is the insurance company to know whether there is any such conduct signifying acceptance? It cannot; and it is a pity that such a doctrine has been laid down. The only safeguard for the company is to take such precautions as it can and I suggest this rule: Require a solemn declaration from the assured stating that the beneficiary named in the policy did not know that he was made a beneficiary, and that he never had possession of the policy which always remained in the hands of the assured, and if the assured cannot say that the beneficiary did not know of his having been so appointed, to at least ask him for a solemn declaration stating that the beneficiary never accepted or signified his acceptance of the benefit of the stipulation, either expressly or tacitly. Another article of the Code (1145) says that payment made in good faith to the ostensible creditor is valid, although it be afterwards established that he is not the rightful creditor; so where such a solemn declaration is made I submit that a new beneficiary, assuming that he survive the assured and no further change be made, is, under the circumstances, an ostensible creditor, and payment to him will free the insurance company.

INTERNED SOLDIER WANTS USED POSTAGE STAMPS

The Monetary Times some months ago received a postcard from John Corthals, a Belgian soldier interned in Holland with his little daughter, ten years old. She is collecting picture postcards, and the father asked readers of *The Monetary Times* to send a card now and again. Many of our readers have done this, duly receiving acknowledgment. Private Corthals now asks for used postage stamps "for to pass the longness of my captivity."

The Monetary Times previously made inquiries of the British consul at Amsterdam, who (while accepting no responsibility in the matter) stated that, according to the information given to him by the Dutch military authorities, Mr. Corthals "is a very suitable person, who belongs to an honorable family. He is employed at the post-office of the internment depot, where his employers are very well pleased with his work."

The soldier's name and address are: John Corthals, Belgian soldier, Internment Camp, Amersfoort, Holland.

Investors in Canada and the United States will find some attractive municipal bond offerings in the December list of Messrs. A. E. Ames Company, Toronto.