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GARRETT V. ROBERTS-

[Co, Ct

Cas 189. Not only is the case itself very far from being in point, but even the language cited was intended to have no application to The posia case like that in controversy. tion assumed by the learned judge is, that where a policy is bona fide and founded upon an insurable interest, the assignment or a gift of it to a friend or other person is no fraud upon the insurance company by which it was This however is a position not controverted in the suit now under considera-Therefore admitting this dictum to be authority in a case proper for its application, It is certainly not so in the case at hand." The court then review the Rhode Island and Federal cases, not citing any others, and con-Clude: "These authorities, in connection with our own, remove all hesitation concerning the rectitude of the judgment of the court below. If however the question were one of first impression, and to be settled on the ground of public morality and judicial Policy, we could hardly fail to reach the same conclusion. So fraught with dishonesty and disaster, and so dangerous even to human life has this life insurance gambling become, that its toleration in a court of justice ought not for one moment to be thought of."

There is however a line of cases, even in Massachusetts and Indiana, holding that one may insure his life, and in the policy direct the proceeds to be paid to another having no interest in his life, and that the beneficiary For example, under such a policy will take. in Lemon v. Phanix Mutual Life Ins. Co., 28 Conn. 294, the court said: "Surely Mr. Peterson had an insurable interest in his own life, and he obtained the insurance on it; and we know of no law to prevent him from making the policy payable in case of his death to the person to whom he was affianced; and if such policy is delivered as a gift to the party to whom payable, we know no law to prevent such gift from being effectual. In Rawles v. American Life Ins. Co., 27 N. Y. 282, Judge Wright says: 'If the contract is with the party whose life is insured, he may have the loss payable to his own representatives, or his Assignee or appointee.'" To the same effect Campbell v. New England Mut. Life Ins. Co., 98 Mass. 381; Guardian Mutual Life Ins. Co. v. Hogan, 80 Ill. 35; Providence Life Ins. and Investment Co. v. Baum, 29 Ind. 236; Langdon v. Union Mutual Life Ins. Co., 14 Fed. Rep. 272. This latter doctrine is denied in the Pennsylvania case, and that case has at

least the merit of consistency. It is difficult

to see the distinction between appointment and assignment. If it is impolitic and dangerous to allow a man who has insured his own life to assign the policy to another who has no interest in his life, it must be equally impolitic and dangerous to allow the insured to effect the same purpose by appointing the same person beneficiary in the policy. is the same want of interest and the same inducement to make the policy available by killing the insured.

The weight of authority is unquestionably in the negative of the question, but we think the better reason is with the affirmative.

---Albany L. J.

REPORTS

ONTARIO.

(Reported for the LAW JOURNAL.)

COUNTY COURT OF NORTHUMBER-LAND AND DURHAM.

GARRETT V. ROBERTS.

Dominion Election Act—Refusal of returning officer to receive good vote-Penalty.

At an election for the House of Commons one S., a tenant, tendered his vote; some one present asserted that his tenancy had ended, and without further enquiry the returning officer assumed that to be true, and refused the vote, unless the voter should take the oath to the effect that he had not left the electoral district, as required from tenants whose tenancy had ended. As a fact it had not ended, and S. being improperly deprived of his vote, it was

Held, that the returning officer was liable to the penalty imposed by sec. 180 of the Dominion Election Act, whether he acted in good faith or not.

[Cobourg, Sept 4.

This action was tried before His Honour Judge Clark, without a jury, at the last June sittings. The facts on which the plaintiff relied were set out in his statement of claim as follows :--

- 1. On the 27th February, 1883, an election was holden for a member of the Legislative Assembly of Ontario, to represent in said Assembly the West Riding of Northumberland.
- 2. At such election the defendant was a deputy returning officer, duly appointed for polling sub-division number one, in the town-