a person passing a legal right to another, and converting himself into an equitable owner. Before the Judicature Act, 1873, such a thing might have been done . . . and I cannot see that that Act has created any objection to such a course."

UNITED STATES CIRCUIT COURT, WESTERN DISTRICT OF MISSOURI, JUNE 8, 1891.

Dozier v. Fidelity and Casualty Co. of New York.*

Insurance—Accidental—" Sun-stroke."

" *Sun-stroke or heat prostration," contracted by the decedent in the course of his ordinary duty as a supervising architect, is a disease, and does not come within the terms of a policy of insurance against bodily injuries, sustained through external, violent and accidental means," but expressly excepting " any disease or bodily infirmity."*

At law. On demurrer to petition. This is an action on an accident insurance policy. The assured, Willoughby L. Dozier, on the 26th day of April, 1890, took out a policy of insurance in the defendant company, which by its terms would expire on the 26th day of April, 1891. The assurance was "against bodily injuries sustained through external, violent and accidental means." It did not cover " any disease or bodily infirmity." The insured was by occupation a supervising architect. The petition by his wife, the named beneficiary, alleges that the assured, while in the discharge of his ordinary avocation, and without any voluntary exposure on his part, came to his death on the 23d day of June, 1890, " by sun-stroke or heat prostration." To this petition the defendant demurs, on the ground that the petition does not state facts sufficient to constitute a cause of action, in that it shows on its face that the alleged injury was not accidental, within the meaning of the policy.

Philips, J. The question to be decided is whether or not death resulting from sun-stroke or heat prostration comes within the means of injury insured against. This pre-

cise question does not appear to have been passed upon by any American court, but it is not too much to say perhaps that it may be regarded as settled in the negative in England by the opinion of Chief Justice Cockburn in *Sinclair* v. *Insurance Co.*, 3 El. & El. 478. The policy there assured against " any personal injury from, or by reason or in consequence of, any accident which should happen to him upon any ocean, sea, river or lake." The assured was master of the ship *Sultan*, and in the course of his voyage he arrived in the Cochin river, on the south-west coast of India, and in the usual course of his vocation he was smitten by a sun-stroke, from the effect of which he died. On full consideration it was held that his death must be considered as having resulted from a natural cause, and not from accident, within the meaning of the policy. The policy there did not, as here, contain the words " external, violent," and yet the learned chief justice held that the term "accident" as used in the policy, involved necessarily some violence, casualty or *vis major*. He says :

" We cannot think disease produced by the action of a known cause can be considered as accidental. Thus disease or death engendered by exposure to heat, cold, damp, the vicissitudes of climate, or atmospheric influences, cannot we think properly be said to be accidental, unless at all events the exposure is itself brought about by circumstances which may give it the character of accident. Thus, by way of illustration, if from the effects of ordinary exposure to the elements, such as is common in the course of navigation, a mariner should catch cold and die, such death would not be accidental; although if, being obliged by shipwreck or other disasters to quit the ship, and take to the sea in an open boat, he remained exposed to wet and cold for some time, and death ensued therefrom, the death might properly be held to be the result of accident. It is true that in one sense disease or death through the direct effect of a known natural cause, such as we have referred to, may be said to be accidental, inasmuch as it is uncertain beforehand whether the effect will ensue in any particular case. Exposed to