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THE BENEFICIARY'S INTEREST IN A LIFE INSURANCE POLICY

WILLIAM REYNOLDS VANCE
Professor of Law, Yale University

The term beneficiary might well enough be applied to any person designated in the contract of insurance as the one to receive the benefits of the insurer's performance of his promise, whether a party to the contract or not. But in the law of insurance it is customarily given the meaning of sole beneficiary, or donee beneficiary, as those terms are used in general contract law.¹ The beneficiary as discussed in this paper is, therefore, the person, not a party to the contract, to whom the insurer agrees, subject to specified conditions, to pay the amount stipulated in the policy upon its maturity. Generally the beneficiary has paid no consideration for the designation, though he usually is so closely related to the one whose life is insured as to have an insurable interest in that life. Such interest, however, is not essential to the validity of the policy.²

It is quite true that those cases in which the beneficiary appears as formal promisee-party to the contract procured by the insured, who also pays the premiums, do not substantially differ from those in which the beneficiary is a stranger to the contract as well as to the consideration, and under the English rule which gives no right of action to a promisee when the consideration for the promise moves from a stranger,³ the beneficiary would take no greater interest in the one case than in the other. But in the United States the courts have been easily

¹ 1 Williston, *Contracts* (1920) sec. 357; Anson, *Contract* (Corbin's ed. 1919) sec. 288.

² *Brogi v. Brogi* (1912) 211 Mass. 512, 98 N. E. 573.

³ *Dunlop Tyre Co. v. Selfridge* [1915, H. L.] A. C. 847.

satisfied with such a beneficiary's participation in the contract⁴ and have not hesitated to allow him to sue in his own name and to exercise as full control over the policy as over any other chose in action, subject, of course, to the rights of creditors of an insolvent insured to subject the proceeds in excess of such amount as may by statute be secured to the beneficiary, to the repayment of premiums paid by the insolvent.⁵ This paper concerns itself only incidentally with the rights of such a promisee beneficiary, its main interest being centered upon the third party beneficiary.

Courts and text writers unite in saying that the right of a beneficiary in an old line life policy is vested.⁶ This is true of every state in the Union except Wisconsin, and in that state, by statute enacted in 1891,⁷ the general American rule has been extended to policies for the benefit of married women. By saying that the beneficiary's right is "vested" is meant that the beneficiary has a right to receive such sum as may become payable in accordance with the terms of the policy, coupled with an immunity from destruction of that right by any modification or cancellation of the policy by the agreement of the insured and insurer to which the beneficiary does not consent. It has been extended in a few cases, to deprive the insurer when sued by the beneficiary of a defence arising from the breach by the insured of a condition, express or implied, in the policy on the ground that no act of the insured could defeat the right of the beneficiary.⁸ But such a position is untenable, since the beneficiary's right is to receive what is payable under the policy, and necessarily is subject to all its conditions. As expressed by the Supreme Court of the United States,⁹ "the policy is the measure of the rights of everybody under it."

This interesting and important rule of law is peculiar to the United States, and one is almost justified in saying that in the United States

⁴ *Continental Life Ins. Co. v. Palmer* (1875) 42 Conn. 60; Anson, *op. cit.* sec. 287.

⁵ *Lehman v. Gunn* (1900) 124 Ala. 213, 27 So. 475; *Stigler v. Stigler* (1883) 77 Va. 163; *Kittel v. Domeyer* (1903) 175 N. Y. 205, 67 N. E. 433. But see *Washington Cent. Bank v. Hume* (1888) 128 U. S. 195, 9 Sup. Ct. 41; Williston, *Can an Insolvent Debtor Insure his Life for the Benefit of his Wife?* (1891) 25 AM. L. REV. 185.

⁶ See Cooley, *Briefs on Insurance* (1905) 3755, and cases cited.

⁷ Wis. Laws, 1891, ch. 376. *Boehmer v. Kalk* (1913) 155 Wis. 156, 144 N. W. 182. In *Tweeddale v. Tweeddale* (1903) 116 Wis. 517, 93 N. W. 440, the Court makes apology for its peculiar rule, which it nevertheless mournfully adheres to.

⁸ See *Patterson v. Insurance Co.* (1898) 100 Wis. 118, 75 N. W. 980; *Seiler v. Association* (1898) 105 Iowa, 87, 74 N. W. 941.

⁹ *Northwestern Mut. Life Ins. Co. v. McCue* (1912) 223 U. S. 234, 252, 32 Sup. Ct. 220, 224. But the insured cannot by collusion with the insurer, cause the lapse of the policy for non-payment of premiums, so as to profit himself and defeat the rights of the beneficiary. *Barry v. Brune* (1877) 71 N. Y. 261; *Nat. Life Ins. Co. v. Haley* (1886) 78 Me. 268, 4 Atl. 415.

it is peculiar to the contract of insurance; for while the general right of the third party to sue in his own name on a contract made for his sole benefit is now recognized in a majority of the States, it can scarcely be yet said to be settled that even in such states the parties have lost all control over the contract because of the vested interest of the sole beneficiary.¹⁰

Despite some careless statements to the contrary occasionally to be seen,¹¹ it is believed that in England the doctrine of the vested right of the beneficiary has received no recognition whatever, except in the Statute of 1882,¹² which created a trust in favor of the insured wife or children to whom the policy is made payable.¹³ Apart from this Statute the mere designation of a third person, not a party to the contract or the consideration, as the beneficiary of a life policy gives to him no right whatever, either at law or in equity, prior to the maturity of the insurer's promise.¹⁴ It is not sufficient evidence of the intent of the insured to hold the insurer's promise in trust for the beneficiary, though of course it is quite competent for the insured to make a declaration of such an intent if he wishes,¹⁵ and during his lifetime the insured retains complete control over the contract, which he may assign or surrender as he sees fit. After the death of the insured, and the promise of the insurer to pay to the beneficiary has become absolute, the right of action is in the personal representatives of the insured, but since a payment to the beneficiary would discharge the insurer, surely a recovery by the representatives of the insured would be in trust for the beneficiary.

¹⁰ Page, *Contracts* (2d ed. 1920) sec. 2394; Anson, *op. cit.* sec. 297.

¹¹ See 3 A. & E. Enc. Law, 980. In support of the text is cited *Weston v. Richardson* (1882, Ch.) 47 L. T. R. 514, in which a father effected insurance upon his own life payable to his daughter, who, however, appeared as party to the contract. The insured retained possession of the policy until his death but never attempted to dispose of it, or otherwise treat it as his own. It was held that the insured had made a complete gift to the daughter, vesting both legal and beneficial title in her. Obviously this is not at all inconsistent with the English rule which declines to recognize the vested right of the sole beneficiary.

¹² 45 & 46 Vict. c. 75, sec. 11. The rights in trust secured to married women by the earlier act of 1870 were much more restricted. 33 & 34 Vict. c. 93, sec. 10. See Porter, *Insurance* (6th ed. 1921) 333.

¹³ See *In re Davies' Policy Trusts* [1892] 1 Ch. 90; *In re Seyton* (1887) L. R. 34 Ch. Div. 511. Such married woman beneficiary cannot, however, sue in her own name. *Ex parte Dever* (1887) L. R. 18 Q. B. Div. 660.

¹⁴ *Holt v. Everall* (1876) L. R. 2 Ch. Div. 266; *Cleaver v. Mut. Reserve Fund Life Assoc.* [1892, C. A.] 1 Q. B. 147.

¹⁵ *Fortescue v. Barnett* (1834, Ch.) 3 Myl. & K. 36; *Weston v. Richardson*, *supra* note 11. *Burridge v. Row* (1842) 1 You. & Coll. Ch. 183; *Godsal v. Webb* (1837) 2 Keen Ch. 99. But the intention to declare a trust must be clear. Mellish, L. J., in *Holt v. Everall*, *supra* note 14, at p. 275, said that it was doubtful, in the absence of statute, whether "a simple declaration on the face of the policy that it was for the benefit of his wife and for his children would have been sufficient to make a trust for the wife and children."

Intimations to the contrary by Lord Esher in the *Maybrick Case*¹⁶ can scarcely be law. As the executors of the insured have no substantial interest in such a policy, the insurer could with impunity refuse to make any payment at all if it be held that the beneficiary has no equitable right.

It seems that the law in the English-speaking Dominions of the British Empire is to the same effect, though the influence of the American decisions is easily seen in the Canadian reports.¹⁷

In French law it is now fully accepted that life insurance policies payable to a third person are governed by Article 1121 of the Code Napoleon, though that Code was drafted long before life insurance was relieved from the ban of illegality early placed upon it in France. That article translated reads as follows:¹⁸

"A party in like manner may stipulate for the benefit of a third person, when such is the condition of a 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 has signified his assent to it."

Under the provisions of this Article it is held that the sole beneficiary of a life policy takes a legal interest in the policy, but that interest is revocable by the insured party to the contract at any time before acceptance by the beneficiary, but after acceptance the right of the beneficiary becomes irrevocable.¹⁹

In German law the sole beneficiary is given under section 330 of the

¹⁶ *Claever v. Mut. Reserve Fund Life Assoc.*, *supra* note 14. In this case Lord Esher, M. R., at p. 152, said: "Apart from the statute, what would be the effect of making the money payable to the wife? It seems to me that as between the executors and the defendants it would have no effect. She is no party to the contract. . . . It does not seem to me that, apart from the statute, such a policy would create any trust in favor of the wife. . . . no interest would have passed to the wife by reason of her merely being named in the policy. . . . it would have passed to his executors." In *Cornwall v. Halifax Banking Co.* (1902) 32 Can. Sup. Ct. R. 442, where it was held that the executors of the insured recovering upon a policy payable to his wife took the insurance money in trust for the wife, designated as beneficiary, the language of Lord Esher, as quoted above, was criticized.

¹⁷ *Faulkner v. Faulkner* (1893) 23 Ont. 252; *Abbinett v. N. W. Life Ins. Co.* (1881) 21 New Bruns. 216; Lavery, *Insurance Law of Canada* (1911) 675, 676. Statutes creating trusts in favor of married women and children when made beneficiaries of insurance contracts appear to exist throughout the Dominion of Canada. See *Cornwall v. Halifax Banking Co.*, *supra* note 16. In Quebec the French law is in effect. See *infra*, note 19; Lavery, *Insurance Law of Canada* (1911) 670.

¹⁸ 2 Fuzier-Herman, *Code Civil Annoté* (1896) 986. This article of the Code Napoleon is copied in article 1029 of the Quebec Civil Code, and substantially adopted in article 1890 of the Louisiana Civil Code.

¹⁹ Although life insurance was illegal in France at the time the Code Napoleon was drafted, Article 1121 has uniformly been held to govern the rights of the bene-

Civil Code the right to enforce the contract in his own name, but the insured during his lifetime retains unrestricted control over the policy. He can revoke the nomination of the beneficiary and substitute another; he can change the contract or surrender it, or he can assign or pledge it, wholly without reference to the wishes of the beneficiary even though that beneficiary be wife or child.²⁰

The origin of the American doctrine that the beneficiary takes a vested right in the policy as soon as it is issued, thus seen to be so unique in general jurisprudence, though relatively recent, is none too clear. To one contemplating the enormous volume of the present law of life insurance it seems incredible that it can be so very new. In the preface to the first edition of Bliss on *Life Insurance*, published in 1872, the author states with some pride that while the United States Digest, published in 1846, contained but one life insurance case,²¹ and that decided in 1815, his book, published only sixteen years later, cites no fewer than 119 such cases. He thinks he sees signs that insurance companies are becoming more litigious! None of the English writers on insurance prior to 1872 had even mentioned the problem as to the nature of the beneficiary's right, nor had Angell, an exceptionally careful American writer, the second edition of whose work on life insurance was published in 1855. Even the fifth edition of Phillips' classic treatise,²² published as late as 1867, entirely ignores it. But in 1872 Bliss, in his work on life insurance, first published in that year, made the following statement:²³

"We apprehend the general rule to be that a policy, and the money to become due under it, belong the moment it is issued to the person or

fiary and the insured under life policies, first legalized in 1820. See 2 Le Fort, *L'Assurance sur La Vie* (1920) 153 *et seq.*; 2 Fuzier-Herman. *op. cit.* 990 *et seq.*

The same construction has been given in the Province of Quebec to the corresponding Article 1029 of the Quebec Civil Code. See Laverty, *op. cit.* 670 *et seq.* As in France, while the beneficiary takes a right in the policy as soon as issued, and the policy is no part of the "patrimony," or estate of the insured, yet that right is freely revocable by the insured until "acceptance" by the beneficiary. *Rees v. Hughes* (1894) Queb. 3 Q. B. 443; *Baron v. Lemieux* (1908) Queb. 17 K. B. 177; Laverty, *op. cit.* 673. Acceptance need not be formal, but must be unequivocal. Thus in *Baron v. Lemieux*, *supra*, it was held that when a policy was made payable to the insured's mother, the fact that she kept possession of the policy and paid the premiums was not sufficient evidence of acceptance to invalidate the insured's gift of the policy by will to his subsequently taken wife.

²⁰ 2 Kühlenbeck, *Staudinger Kommentar zum Bürgerlichen Gesetzbuche*, 302, 305; *Das Bürgerliche Gesetzbuch mit Kommentar von Reichsgerichtsräten*, sec. 330, pp. 364, 367. Section 330 of the German Civil Code may be translated in part as follows: "If it is provided in a life insurance or annuity policy that the insurance sum or the annuity shall be paid to a third party, then it is to be assumed, in the absence of express provision, that the third party acquires the right directly to demand the performance due."

²¹ *Lord v. Dall* (1815) 12 Mass. 115.

²² Phillips, *Insurance* (5th ed. 1867).

²³ Bliss, *Life Insurance* (1872) sec. 317.

persons named in it as the beneficiary or beneficiaries, and that there is no power in the person procuring the insurance by any act of his, or hers, by deed or by will, to transfer to any other person the interest of the person named. The person designated in the policy is the proper person to receipt for and to sue for the money. The legal representatives of the insured have no claim upon the money and cannot maintain an action therefor, if it is expressed to be for the benefit of some one else."

This declaration was bold and successful. It was bold, for the decisions supporting it were few, and even these were of doubtful significance and of little inherent strength, while opposing authorities, though few in number, were far more consistent with analogies to be drawn from cases on contract and on trusts. It was successful, because it was immediately seized upon by the courts and so frequently quoted with approval that presently, before an ordinary common-law doctrine could have gotten in the way of being seriously discussed, Mr. Bliss' declaration soared from the pages of his text book, cast off its quotation marks, and took its place in the opinions of the most respected courts as the accepted statement of a settled rule of law.²⁴

It is interesting now to consider how far Bliss' bold declaration was supported by cases decided prior to its date. As we have seen, it found no support whatever in the English precedents. It is true that in America the decision of *Lawrence v. Fox*²⁵ recognizing a right of action in a third party beneficiary, creditor of the promisee, was thirteen years in the past, but the extension of the doctrine of that famous case to sole beneficiaries had as yet made little headway among American courts.²⁶ But in any event, that doctrine, when extended to include donee beneficiaries, as has since occurred in a majority of the states,²⁷ by no means necessitates the conclusion that the designation of a person as beneficiary of a conditional promise to pay money at a future date gives that person a vested right in the promise.²⁸ It is wholly a question of the promisee's intent.²⁹ He may intend to retain entire control over the benefit of the promise until his death and that the beneficiary shall take

²⁴ See for example *Washington Central Bank v. Hume* (1888) 128 U. S. 195, 206, 9 Sup. Ct. 41, 44. Bliss' statement, word for word, is run into the body of the opinion without a suggestion of quotation.

²⁵ (1859) 20 N. Y. 268.

²⁶ See the cases cited in 1 Williston, *op. cit.* 694, n. 70.

²⁷ Anson, *op. cit.* sec. 288.

²⁸ Gray, J., writing the opinion of the Court in *Lawrence v. Fox*, *supra* note 27, was in doubt whether the promisee in that case might have released the promisor. Comstock, J., dissenting, was emphatic in the assertion that he might not have done so. See also *Foster v. Gile* (1880) 50 Wis. 603, 7 N. W. 555. So it is generally held that the beneficiary designated in the certificate of a mutual benefit association, though allowed to sue on the contract, takes no right whatever until the death of the insured. See *infra* note 88.

²⁹ See *Hutchings v. Miner* (1871) 46 N. Y. 456.

nothing until that event, or that the beneficiary shall assume a present right to demand in future performance of the promisor, reserving to himself, however, the power to extinguish that right at will, or he may intend to make an irrevocable gift by way of declaration of trust. In the case of insurance contracts this intent may be clearly expressed, as where an express trust in favor of the beneficiary is declared,³⁰ but it is usually necessary to determine it by implication from the words of the contract taken in connection with the circumstances under which it was made.

Our question then is, how did the American courts happen to hold, in opposition to the courts in other civilized lands, that where A procured from the B Insurance Company a policy whereby the Company, in consideration of premiums paid by B, promised B to pay C a certain sum of money, he thereby evidenced an intention to give C the benefit of the promise, together with immunity from its revocation?

In 1840 the New York Legislature enacted a statute³¹ authorizing a married woman in her own name, or through another as trustee, to insure the life of her husband, for her sole use; and declaring that in case she survived her husband, the insurance money should be payable to her for her own use, free from the claims of her husband's representatives or creditors; "but such exemption shall not apply where the amount of the premium annually paid shall exceed three hundred dollars." The last sentence, as quoted, seems to justify the inference that this Statute was passed to enable a married woman to contract for insurance on her husband's life, which otherwise she could not have done, and to safeguard her, to the amount indicated, in the possession of the proceeds as her separate estate.³² There was probably no intent to create a new kind of trust in favor of the wife. This Statute appears in Massachusetts in 1844 in a much expanded form.³³ There it declared that any policy procured for the benefit of a married woman by any person upon any life, should "enure to her separate use and benefit and that of her children, if any, independently of her husband and of his creditors and representatives, and also independently of any other person effecting the

³⁰ 1 Williston, *Contracts* (1920) sec. 355; *Otis v. Beckwith* (1868) 49 Ill. 121; *Gould v. Emerson* (1868) 99 Mass. 154; *Mass. Mut. Life Ins. Co. v. Robinson* (1881) 98 Ill. 324; *Harley v. Heist* (1882) 86 Ind. 196; *Garner v. Germania Life Ins. Co.* (1888) 110 N. Y. 266, 18 N. E. 130. But, as shown in note 15 *supra*, it has been doubted in England whether a promise to pay the insured's representatives for the use and benefit of a third party, is a sufficient declaration of a trust intent.

³¹ N. Y. Laws, 1840, ch. 80.

³² See the discussion of this Statute in *Eadie v. Slimmon* (1862) 26 N. Y. 9, 17, by Denio, C. J.; also *Kerman v. Howard* (1868) 23 Wis. 108, where the purpose of a similar statute was considered.

³³ Mass. Laws, 1844, ch. 82. Section 1 of this Act is set out in full in *Burroughs v. State Mut. Life Ins. Co.* (1867) 97 Mass. 359, 360.

same in her behalf" A second section of the same Act provided that the proceeds of a policy payable to another than the one procuring it should be payable to the named beneficiary from the claims of creditors of the person effecting the insurance.

These Statutes, particularly that of Massachusetts, were extensively copied in other states, and undoubtedly materially affected the development of the case law with respect to the right of beneficiaries. Apparently it was not till 1855 that reference was made in any reported case to the possible immunity of the beneficiary from the extinguishment of her right at the will of the promisee insured. The Supreme Court of Tennessee adverted to the problem in *Rison v. Wilkerson*,³⁴ in which it held that a statute similar to the New York Act referred to above did not apply to a policy in which the insured husband was named as the payee, and hence the husband's assignment of the policy before death passed the whole interest to the assignee, so that the wife took no interest in the proceeds. The question seems to have been squarely presented for the first time,³⁵ in 1860, to the Supreme Court of Wisconsin. In *Clark v. Durand*³⁶ that Court held that a mother who had taken out a policy on her own life payable to her son might assign the policy still retained in her possession to a third party and thereby cut off all rights of the beneficiary. The Court denied the existence of a trust in favor of the beneficiary, since the insured was under no duty to preserve the policy by continued payment of premiums. Two years later, in *Eadie v. Stimson*,³⁷ the New York Court of Appeals held that an assignment by a wife of a policy upon the life of her husband taken out by her and payable to her if she survived her husband, otherwise to her children,

³⁴ (1856, Tenn.) 3 Sneed, 565. *McCord v. Noyes* (1855, N. Y.), 3 Brad. 139, upholding the validity of an assignment of a life policy to a trustee for the use of the insured's wife, referred to the policy of N. Y. Laws, 1840, ch. 80, and intimated that the same result might have ensued if the insured had originally made the policy payable directly to his wife.

³⁵ *Fraternal Mut. Life Ins. Co. v. Applegate* (1857) 7 Ohio St. 292, though sometimes cited, does not involve the question under consideration. There a policy on the life of the husband having been validly taken out by his wife under the provisions of an Ohio statute (Swan's Rev. Sts. 480), was without authority surrendered by the husband. Manifestly the rights of the wife were not thereby affected.

³⁶ (1860) 12 Wis. 223. The proceeding was equitable in its nature. The policy was taken out by a mother on her own life, payable to the defendant to the use of plaintiff, the insured's son. During the insured's lifetime she delivered and assigned the policy to the defendant, to hold in his own right. The plaintiff sought to compel the defendant to account for the proceeds. In affirming judgment for the defendant the Court, at p. 233, said: "He (plaintiff) has no vested right in the policy or the moneys secured by it, and could have none until the death of Mrs. Clark, he surviving her; and then only in the event of the contract, and the intention of the parties remaining the same, of her, or some other person in his behalf, having kept up the premiums."

³⁷ (1862) 26 N. Y. 9.

when made during the lifetime of the insured, was inoperative to defeat her right to receive the proceeds of the policy after the insured's death. This case, though often cited, has no bearing upon the rights of the donee beneficiary, since the wife was a party to the contract, and her assignment was held void for the not very convincing reason that an insurance policy was not such a property right as might be assigned by a *feme covert* under the New York law. The case of *Swan v. Snow*,³⁸ decided in Massachusetts in 1865, also involved a policy issued to the wife as a party to the contract. The rather obvious decision that the policy was payable to the administrator of the wife rather than to that of the husband, who had survived his wife and paid the premiums after her death, is important principally because it rested, in part at least, upon the Statute declaring such a policy to be the wife's separate estate. In 1867 the same Court held in *Burroughs v. State Mut. Life Ass. Co.*³⁹ that the assignee of a policy taken out by a husband on his own life, payable to the insured, his personal representatives and assigns, for the use of his wife and children, might maintain an action at law on the policy, even though, under the Statute of 1844,⁴⁰ he might be required to account to the surviving child of the insured for the amount recovered. In the following year this intimation was acted upon in *Gould v. Emerson*,⁴¹ where under a similar policy an equitable beneficiary was allowed to recover in assumpsit her share of the insurance money paid to the assignee of the policy, taking under the will of the insured. Again the decision was based squarely upon the equitable right created by the Statute of 1844.

In *Connecticut Mut. Life Ins. Co. v. Burroughs*,⁴² decided in 1867, it was held that equitable rights of a donee beneficiary, created under a statute of similar import, were not affected by an attempted assignment of the policy, though assented to by both parties to the contract. The current of opinion thus seen to set so strongly towards the establishment of a statutory trust in favor of the sole beneficiary was broken in 1868 by the dissent of the Supreme Court of Wisconsin in *Kerman v. Howard*.⁴³ Under facts bringing the policy clearly within the terms of the Wisconsin Statute, almost identical with that in Massachusetts, it was held that no trust was created by the Statute in favor of the designated beneficiary, wife of the insured, and that the insured had by

³⁸ 11 Allen, 224.

³⁹ 97 Mass. 359.

⁴⁰ *Supra* note 33.

⁴¹ (1868) 99 Mass. 154.

⁴² (1867) 34 Conn. 305. The Statute is found in Conn. Gen. Sts. 1866, tit. 13, ch. 2, sec. 26. The case was followed in *Chapin v. Fellowes* (1869) 36 Conn. 132. The same result was reached, on almost identical facts, in *Knickerbocker Life Ins. Co. v. Weitz* (1868) 99 Mass. 157.

⁴³ (1868) 23 Wis. 108. The Statute involved is Rev. Sts. 1858, ch. 95, sec. 5.

will effected a valid change of beneficiaries. Of the cases mentioned above the Court cited only *Clark v. Durand*,⁴⁴ which it re-affirmed, and *Eadie v. Slimmon*.⁴⁵

But despite this check, the current soon gathered new strength. Prior to 1871 no claim that any right was vested in the sole beneficiary of an insurance policy, except in so far as given by statute, appears to have been set up in any reported case save *Clark v. Durand*,⁴⁶ and there, as we have seen, it had been denied. But in that year a new departure was made. A vested right in the sole beneficiary of an insurance contract was recognized independently in three different states, wholly without the aid of any statute. Of the cases so holding the most often cited is *Lemon v. Phoenix Mut. Life Ins. Co.*,⁴⁷ which may be regarded as the real source of the American rule as announced by Bliss. In that case a policy taken out by the insured, and made payable to the plaintiff, his fiancée, was delivered to her brother on her account. Subsequently, without consent of the plaintiff, the insured got possession of the policy and surrendered it to the insurer in return for another made payable to a brother of the insured, who thereafter paid the premiums. The plaintiff paid no premiums, and gave no other consideration for the interest she claimed under the contract. Upon the death of the insured the plaintiff filed her bill against the insurer and the assignee to compel payment of the amount of the insurance to her. The Court did not base its judgment for the plaintiff on the Statute on which the *Burroughs Case*⁴⁸ rested, for it applied only to married women beneficiaries, nor on the theory that the policy evidenced a declaration of trust in her favor, but rather on the ground of an executed gift of the policy completed by delivery to the plaintiff's brother on her account. The Court said it was conceded that so long as the insured retained the policy in his possession, he might control it as his own.

In *Succession of Kugler*,⁴⁹ decided in Louisiana, where there was no statute giving married women beneficiaries any special rights, it was held, without any discussion of the point, and in seeming disregard of some provisions of the Louisiana Civil Code, adopted from the Code Napoleon, that a policy taken out by a husband on his own life, and payable to his wife and children, was the property of the named beneficiaries before the death of the insured.

In New Jersey, where likewise no aiding statute was in force, it was held in *Landrum v. Knowles*⁵⁰ that a policy taken out by a married woman upon the life of her husband, and payable to her infant children, to whom no delivery was made, constituted a valid gift, by way of declara-

⁴⁴ *Supra* note 36.

⁴⁵ *Supra* note 36.

⁴⁶ *Supra* note 42.

⁵⁰ (1871) 22 N. J. Eq. 594.

⁴⁵ *Supra* note 37.

⁴⁷ (1871) 38 Conn. 294.

⁴⁹ (1871) 23 La. Ann. 455.

tion of trust, but only to the extent of the value of the policy at the time of its assignment to a stranger, the remainder of the interest passing to the assignee who paid all subsequent premiums.

It should further be noted that in some of the cases just considered the courts were aided in finding a declaration of trust in favor of the beneficiary not only by the statutes making insurance payable to a married woman her separate estate, but by the form of several of the policies involved in which the promise was to pay to the insured, his representatives and assigns, "for the use and benefit of" the married woman.⁵¹ In *Gould v. Emerson*,⁵² as shown above, the assignee of the insured was thought so clearly a trustee of the insurance money that the beneficiary was allowed to recover it by an action in assumpsit.

The summary given of cases decided before 1872 shows clearly that Bliss' statement far outran its support from American precedents.⁵³ Most of them merely recognized trusts created by statute, and sometimes expressly declared on the face of the policy, while the most extreme of those that proceeded without the aid of a statute, expressly confined its scope to cases involving such a delivery of the policy as would effect a valid gift of a chose in action. But the courts rapidly came up to his support. In 1880 the Minnesota Supreme Court,⁵⁴ without the aid of any statute, and upon practically no authority save the statement quoted from Mr. Bliss' book, held that where the insured took a policy payable to his wife, and in case she did not survive him, to his children, his subsequent surrender of the policy after the death of the wife, and the taking of a substituted contract payable to his second wife, did not defeat the rights of the children which vested under the first policy upon the death of the first wife. It is to be noted that this decision finds no support in the *Lemon Case*,⁵⁵ which was expressly based upon the delivery of the policy to the beneficiary, for here the insured retained possession of the policy. The Court upheld the gift as a declaration of trust.

Other cases quoting Bliss' statement, and going to the full extent of its broad language, followed in bewilderingly rapid succession.⁵⁶ Occasionally a court has been compelled to make some inquiry as to the nature and origin of the rule, as where the Supreme Court of Louisiana,

⁵¹ See cases cited *supra* note 30.

⁵² *Supra* note 41.

⁵³ In *Hubbard v. Stapp* (1889) 32 Ill. App. 541, 544, counsel attacked Bliss' rule as misleading and erroneous, but the Court expressed its satisfaction with it.

⁵⁴ *Ricker v. Charter Oak Life Ins. Co.* (1880) 27 Minn. 193, 6 N. W. 771. The New York Court had held in the previous year that, apart from the Statute, the beneficiary's interest could not be defeated by the insured's assignment without the beneficiary's consent. *Fowler v. Butterly* (1879) 78 N. Y. 68.

⁵⁵ *Supra* note 47.

⁵⁶ See cases cited in Cooley, *Briefs on Insurance* (1905) 3755; 3 A. & E. Enc. Law, 980; Bacon, *Life and Accident Insurance* (4th ed. 1917) sec. 377.

having once declared the interest of the beneficiary was a donation,⁵⁷ was obliged later to declare that it was not a donation, but merely an "innominate right," in order to escape a statute that made donations between spouses revocable.⁵⁸ Some find a valid gift upon actual delivery of the policy,⁵⁹ while others liken the policy to a will, call the beneficiary's interest a testamentary gift,⁶⁰ and even go so far as to find in statutes relating to lapsed bequests and devises a rule of construction for determining the recipients of insurance moneys.⁶¹ For the most part, however, the rule is now accepted and applied without question or inquiry. It has logically been extended to endowment policies, whether payable to the beneficiary in any event,⁶² or only in the event the insured dies before the expiration of the endowment period.⁶³ In the latter case the vested right of the beneficiary is divested by the insured's survival of the endowment period, and all rights arising from the policy shift to the insured.⁶⁴

⁵⁷ *Pilcher v. N. Y. Life Ins. Co.* (1881) 33 La. Ann. 322.

⁵⁸ *Lambert v. Penn Mut. Life Ins. Co.* (1898) 50 La. Ann. 1027, 1038, 24 So. 16, 21. In this case it was vigorously argued that the *Pilcher* Case, *supra* note 57, was decided without reference to La. Civil Code, art. 1749 (Art. 1096 Code Napoleon) which makes all donations between spouses irrevocable, but an inspection of the record showed such was not the case, and the conclusion of the *Pilcher* Case that the interest of the beneficiary wife could not be revoked, was affirmed. But in *New York Life Ins. Co. v. Neal* (1905) 114 La. 652, 38 So. 485, Breaux, C. J., said: "Practically there is no difference between a donation, a gratuitous stipulation *pour autrui*, and gratuitous insurance." The French and Quebec courts have consistently held that life insurance is a "stipulation *pour autrui*," governed by Art. 1121 Code Napoleon and not within the intent of Art. 1096 of that Code making "donations" between spouses revocable. See 2 Fuzier-Herman, *Code Civil Annoté* (1896) 937; Laverty, *Insurance Law of Canada* (1911) 671; *Montreal Coal & Towing Co. v. British Empire Ass. Co.* (1903, Super. Ct.) 5 Queb. Prac. Rep. 302. It is difficult to perceive how the Louisiana Courts have escaped the conclusion reached by the courts of France and Quebec that the rights of the beneficiary are governed by Art. 1121 of the Code Napoleon (La. Civil Code, art. 1890), but, as stated by Monroe, C. J., in *Succession of Desforbes* (1914) 135 La. 49, 61, 64 So. 978, 982: "Whatever uncertainty there may have been as to the classification of the contract whereby a wife, named as the beneficiary, acquires her interest, as such, in a policy of insurance issued on the life of her husband, it is settled beyond doubt" that it is vested.

⁵⁹ See *McEwen v. N. Y. Life Ins. Co.* (1919, Calif. App.) 183 Pac. 373; *Lemon v. Phoenix Mut. Life Ins. Co.*, *supra* note 47. *Neary v. Metropolitan Life Ins. Co.* (1918) 92 Conn. 488, 103 Atl. 661.

⁶⁰ *Dunn v. New Amsterdam Casualty Co.* (1910) 141 App. Div. 478, 126 N. Y. Supp. 229; *Robinson v. Duwall* (1880) 79 Ky. 83; *Continental Life Ins. Co. v. Palmer* (1875) 42 Conn. 60; see Bacon, *Life and Accident Ins.* (4th ed. 1917) sec. 397.

⁶¹ *Sup. Council v. Densford* (1900) 21 Ky. L. R. 1574, 56 S. W. 172.

⁶² *Succession of Desforbes* (1914) 135 La. 49, 64 So. 978; *Aetna Life Ins. Co. v. Mason* (1884) 14 R. I. 583.

⁶³ *Pingrey v. Nat. Life Ins. Co.* (1887) 144 Mass. 374, 11 N. E. 562; *Preston v. Conn. Mut. Life Ins. Co.* (1902) 95 Md. 101, 51 Atl. 838.

⁶⁴ *Tennes v. N. W. Mut. Life Ins. Co.* (1879) 26 Minn. 271, 3 N. W. 346.

COROLLARIES OF THE VESTED INTEREST RULE

Certain consequences that would seem necessarily to result from the rule that the "policy belongs" from the moment it is issued to the beneficiary, now require consideration.

1. If the "ownership" of the policy is in the beneficiary, it ought to follow that the insured promisee takes no rights with respect to it,⁶⁵ having only the privilege of paying premiums and keeping the policy alive if he sees fit. This inference is consistent with the prevailing rule that the beneficiary has the right to pay the premiums in case the insured does not,⁶⁶ and also with the rule, apparently well-settled, that in an action by the beneficiary, declarations by the insured made after the issue of the policy are not admissible either as declarations against interest or as admissions, since the declarant had no interest in the contract.⁶⁷ But the conclusion that the insured has no interest in the policy is inconsistent with those cases which hold that upon the wrongful repudiation of such a policy the right of action is in the insured,⁶⁸ who may recover substantial damages, variously fixed as the aggregate of premiums paid,⁶⁹ the reserve value of the policy,⁷⁰ or such sum as would put the insured in as good position as if the repudiation had not taken place.⁷¹ These cases require that we say that the insured, in addition to the mere privilege of paying premiums, has the substantial right that the contract shall not be repudiated. The possession of such a right is manifestly inconsistent with the rule making his declarations with reference to the policy inadmissible for lack of a pecuniary interest therein. With the origin of the beneficiary's right in a declaration of trust in

⁶⁵ His administrator cannot maintain an action upon it. *Bomash v. Sup. Sitting, etc. Order* (1889) 42 Minn. 241, 44 N. W. 12. But of course prior to St. 1894, ch. 225, it was otherwise in Massachusetts, where the insured's representatives could sue, as the beneficiary's interest was only equitable. *Pingrey v. Nat'l. Life Ins. Co.* (1887) 144 Mass. 374, 11 N. E. 562. So in Vermont it has been held that the insured's representatives, and not the beneficiary is the proper party to sue on an insurance contract under seal. *Morrill v. Catholic Order* (1907) 79 Vt. 479, 65 Atl. 526.

⁶⁶ *Langford v. Nat'l. Life Ins. Co.* (1915) 116 Ark. 527, 173 S. W. 414; *Mut. Life Ins. Co. v. Schaeffer* (1876) 94 U. S. 457; *Western & Southern Life Ins. Co. v. Grimes* (1910) 138 Ky. 338, 128 S. W. 65, to the contrary, is ill-considered. It seems that payment of premiums even by a beneficiary subject to change gives a lien on the policy. *Stockwell v. Mut. Life Ins. Co.* (1903) 140 Calif. 198, 73 Pac. 833.

⁶⁷ *McEwen v. N. Y. Life Ins. Co.* (1919, Calif. App.) 183 Pac. 373. See the admirable note on this case in (1920) 4 MINN. L. REV. 359, where the authorities are collected.

⁶⁸ *Day v. Conn. Gen. Ins. Co.* (1878) 45 Conn. 480. But see *Kelly v. Sec. Mut. Life Ins. Co.* (1900) 186 N. Y. 16, 78 N. E. 584 which denied any right of action for mere repudiation.

⁶⁹ See case collected in Vance, *Insurance* (1904) 244.

⁷⁰ *Lovell v. St. Louis, etc. Ins. Co.* (1884) 111 U. S. 264, 4 Sup. Ct. 390.

⁷¹ *Ebert v. Mut. Res. etc. Assoc.* (1900) 81 Minn. 116, 83 N. W. 506, 834.

mind, it would seem more in accordance with principle to hold that the insured, recovering in such cases for breach of contract, should hold the amount recovered in trust for the beneficiary.⁷²

The trust theory of the beneficiary's right also enables us to dispose of the troublesome cases in which the policy is matured by the beneficiary's murder of the insured. The beneficiary's right, equitable in its origin, having been destroyed by her felonious act, a trust results to the representatives of the insured, whose money "bought" the policy.⁷³

2. Since the "vested right" of the beneficiary is property, it is not, in the absence of pertinent conditions in the policy, destroyed by her divorce from the insured,⁷⁴ or the termination of any other relation that may have induced the procurement of the policy; nor can it be claimed as assets by the insured's trustee in bankruptcy.⁷⁵

3. If the beneficiary's right in the policy does indeed vest as soon as it issues, it would seem to follow necessarily that even before the insured's death it could be transferred by the beneficiary, by assignment or by will,⁷⁶ or could, in the absence of special exemption statutes, be seized for her debts,⁷⁷ and that upon her death intestate before that of the insured, it would pass to her administrators for the benefit of her creditors and distributees. And such is the prevailing rule,⁷⁸ but especially with respect to the last point, many courts decline to accept the logical conclusion from the already accepted premise that the beneficiary

⁷² There is some authority recognizing the right of the beneficiary to sue for anticipatory breach of the contract. See *Brooklyn Life Ins. Co. v. Weck* (1881) 9 Ill. App. 358; *Clemmitt v. N. Y. Life Ins. Co.* (1882) 76 Va. 355.

⁷³ *Johnston v. Metropolitan Life Ins. Co.* (1919) 85 W. Va. 70, 100 S. E. 865; *Equitable Life Assurance Soc. v. Weightman* (1917) 61 Okla. 106, 160 Pac. 629; *Sharpless v. Grand Lodge* (1916) 135 Minn. 35, 159 N. W. 1086. It is interesting to note that in these cases the American courts arrive at the same result, and by very much the same process of reasoning as do the English courts, who recognize only equitable rights under the married women's act in sole beneficiaries. See *Cleaver v. Mut. Reserve Fund Life Assoc.* [1892, C. A.] 1 Q. B. 147. In *Spicer v. New York Life Ins. Co.* (1920) 268 Fed. 500, the Circuit Court of Appeals, Fifth Circuit, refused to recognize such a trust relationship. See NOTES (1920) 34 HARV. L. REV. 788 and (1920) 7 A. L. R. 828.

⁷⁴ *Filley v. Illinois Life Ins. Co.* (1914) 91 Kan. 220, 137 Pac. 793. The cases are collected in notes found in 39 L. R. A. (N. S.) 370 and 38 L. R. A. (N. S.) 474, 478. In Texas divorce terminates the wife's interest as beneficiary. *Hatch v. Hatch* (1904) 35 Tex. Civ. App. 373, 80 S. W. 411.

⁷⁵ *In re Steele* (1899, S. D. Iowa) 98 Fed. 78. The same rule holds as to married women beneficiaries in England. *Holt v. Everall* (1876, C. A.) L. R. 2 Ch. Div. 266.

⁷⁶ *Conn. Mut. Life Ins. Co. v. Westervelt* (1879) 52 Conn. 586; *Harvey v. Van Cott* (1893) 71 Hun, 394, 25 N. Y. Supp. 25.

⁷⁷ *Troy v. Sargent* (1882) 132 Mass. 408; *Amberg v. Manhattan Life Ins. Co.* (1902) 171 N. Y. 314, 63 N. E. 111.

⁷⁸ *Harley v. Heist* (1882) 86 Ind. 196; *Hooker v. Sugg* (1889) 102 N. C. 115, 8 S. E. 919.

has the whole interest and the insured none. Such courts insist upon the testamentary nature of the insurance policy, and that due regard must be paid to the insured's intention. They say the insured could hardly have intended that upon the death of the beneficiary selected as the object of his bounty, the benefit of his premium payments should pass to her representatives who may have no claim to his bounty or interest in his life. Hence they hold that upon the death of the beneficiary the rights vested in her revert to the insured as a lapsed trust, thus enabling him to select a new beneficiary, or in default of such new appointment, permitting the benefit of the insurance to pass to the estate of the insured.⁷⁹ These exceptional decisions based upon such reasoning merely indicate a qualified dissatisfaction with the general rule.

4. When by the terms of the policy the insurer promises to pay to the designated beneficiary "if surviving," otherwise to some other, usually the representative of the insured, does a right vest in the beneficiary subject to defeasance by condition subsequent, or is her survival a condition precedent to the accrual of any right whatever? The question arises most frequently in cases where both insured and beneficiary have perished in a common disaster under circumstances that afford no evidence as to which survived. If the right of the beneficiary to the benefit of the policy is vested, subject to be divested by her dying before the insured, it is manifest that the one who denies the right of the beneficiary's representatives bears the burden of showing that the beneficiary did not survive the insured, whereas the burden is shifted if the right of the beneficiary does not come into existence until the death of the insured during her lifetime. There is much diversity of judicial opinion on this point,⁸⁰ and it is clear there is no such tendency to favor

⁷⁹ *Ryan v. Rothweiler* (1893) 50 Ohio St. 595, 35 N. E. 679; *Mut. Ben. Life Ins. Co. v. Atwood* (1874, Va.) 24 Gratt. 497; *Smith v. Metropolitan Life Ins. Co.* (1908) 222 Pa. 226, 71 Atl. 11.

⁸⁰ The theory that under such circumstances the beneficiary takes a vested right which can be divested only by affirmative proof that she predeceased the insured is well presented in *U. S. Casualty Co. v. Kacer* (1902) 169 Mo. 301, 69 S. W. 370, and *Supreme Council v. Kacer* (1902) 96 Mo. App. 93, 69 S. W. 671. The first case involved an old line policy, the second a mutual benefit certificate. In both contracts the insurance was payable to the daughter of the insured if living, otherwise to the estate of the insured. Both insured and beneficiary perished in the same disaster. It was held that the representatives of the beneficiary took by reason of her "vested right" under the old line policy, but not under the mutual benefit certificate, in which she took at best a right contingent upon her survival, which could not be proved. But the reasoning of the Court in the former case was disapproved in *McGowan v. Menken* (1918) 223 N. Y. 509, 119 N. E. 877, in which it was held that the beneficiary's representatives could recover from the insurer only upon proving that the two conditions upon the insurer's duty to pay had happened, viz., the death of the insured, and the survival of the beneficiary. It should be noted, however, that in the case last cited the policy contained a clause

the vesting of the beneficiary's right as is so noticeable in cases involving the vesting of estates in land.⁸¹ It is believed, however, that it is more consistent with the probable intent of the insured to retain the benefit of the insurance for the substitute beneficiary in case it is not to be enjoyed by the one first designated, to hold that no duty is owed to the beneficiary until she satisfies the condition of survival; and such appears to be the prevailing rule of decision.

RESERVATION OF POWER TO CHANGE BENEFICIARY

It is highly probable that the rule that the beneficiary takes a vested interest, ultimately resting, as we have seen, upon the assumed intent of the insured to part with all beneficial interest in the promise of the insurer, does violence to the actual intent of the insured. This is indicated by the fact that after the general rule became known persons procuring insurance have frequently expressly declared their intention of retaining control over the policy by reserving in the contract the power to change the beneficiary at will. What is the effect of such a reservation upon the interest of the designated beneficiary? Manifestly there are two views that may be taken. First, it may be considered that by reserving control over the policy, the insured clearly indicates his intention to retain the beneficial ownership of the policy during his life, and to give nothing to the beneficiary; that the designation of the beneficiary is nothing more than an instruction to the insurer as to insured's then desire in regard to the payment of the sum to become payable at his death; that the method prescribed in the policy for changing the beneficiary merely fixes the form, agreed upon for the benefit of the insurer, which such further instructions as the insured may desire to give shall take, with which the designated beneficiary has no concern; and that the insurer owes no duty to the beneficiary whose only legal relation to the insured is that shadowy one sustained by the designated legatee in a draft will to the living testator, and known as an expectancy.⁸²

The second view is that the reservation of the power to change the beneficiary merely gives to the insured the power to divest the right that vests in the beneficiary in accordance with the general rule, and to vest the same right in such new beneficiary as he may appoint. Under this view the insured takes no rights in the policy, but only a general power of appointment, which he can exercise only in the manner stipulated in the policy.

empowering the insured to change the beneficiary, and the Court proceeded on the theory that the beneficiary took a mere expectancy prior to the insured's death. The cases are set out and well analyzed in a note in (1920) 5 A. L. R. 797.

⁸¹ See *Fuller v. Linsee* (1883) 135 Mass. 468.

⁸² *Hicks v. N. W. Mut. Life Ins. Co.* (1914) 166 Iowa, 532, 147 N. W. 883; *McGowin v. Menken*, *supra* note 80; *McEwen v. N. Y. Life Ins. Co.*, *supra*, note 67; *Mut. Ben. Life Ins. Co. v. Swett* (1915, C. C. A. 6th) 222 Fed. 200.

Under the latter view any attempted assignment or surrender⁸³ of the policy by the insured not complying with the provisions for change of beneficiary is inoperative to affect the rights of the beneficiary not consenting. The policy cannot be seized by the insured's creditors, but after much uncertainty it has been decided by the Supreme Court of the United States⁸⁴ that such policies, having a surrender value, are assets in case of the insured's bankruptcy, under that clause of the Federal Bankruptcy Act⁸⁵ which provides that powers which might have been exercised by the bankrupt for his own benefit shall vest in his trustee. Perhaps the strongest statement of this theory of the rights taken by the beneficiary under such a policy is made by Rugg, C. J., in *Tyler v. Receiver General*,⁸⁶ in which it was held that the beneficiary's right vested before the death of the insured, and therefore the proceeds passing to the beneficiary on the death of the insured were not subject to the succession tax.

Undoubtedly the great weight of authority is with the view first stated⁸⁷ and that view is clearly the sound one when considered in the light of the history of the beneficiary's legal relations under the policy. The cases holding that the beneficiary under such a policy takes merely an expectancy of possible benefit, but no right in his relation either to the insured or the insurer, are greatly strengthened by the vast volume of cases involving the certificates of mutual benefit associations, which are ordinarily treated apart, but which, in principle, belong in the same group with the old line policies with power to change the beneficiary reserved. With practical unanimity the courts hold that the beneficiary designated in such a certificate takes only an expectancy,⁸⁸ and that, subject to such restrictions as may be found in the association's charter and by-laws, the insured retains entire control over the contract until his death, when a right to receive payment accrues to the person then having the designation of beneficiary. Indeed, on account of the cir-

⁸³ *Roberts v. N. W. Nat. Life Ins. Co.* (1915) 143 Ga. 780, 85 S. E. 1043; *Indiana Nat. Life Ins. Co. v. McGinnis* (1913) 180 Ind. 9, 101 N. E. 289; *Holder v. Prudential Ins. Co.* (1907) 77 S. C. 299, 57 S. E. 853; *Lloyd v. Royal Union Mut. Ins. Co.* (1917, N. D. Iowa) 245 Fed. 162; *Sullivan v. Maroney* (1909) 76 N. J. Eq. 104, 73 Atl. 842.

⁸⁴ *Cohen v. Samuels* (1917) 245 U. S. 5, 38 Sup. Ct. 36. As to the uncertain course of previous decisions, see Bacon, *Life and Accident Insurance* (4th ed. 1917) sec. 392.

⁸⁵ Act of July 1, 1898 (30 Stat. at L. 544, 565) ch. 541, sec. 70-a.

⁸⁶ (1917) 226 Mass. 306, 115 N. E. 300.

⁸⁷ It is interesting to note that in French law when the power to change the beneficiary is reserved, such beneficiary takes no interest in the policy until the death of the insured. See 2 Fuzier-Herman, *Code Civil Annoté* (1896) 993, sec. 85; Laverty, *Insurance Law of Canada* (1911) 674, 675.

⁸⁸ Bacon, *Life and Accident Insurance* (4th ed. 1917) secs. 398 *et seq.*; 29 Cyc. 126; Cooley, *Briefs on Insurance* (1905) 3756. See also *Sup. Court of Royal Arcanum v. Behrend* (1917) 247 U. S. 394, 38 Sup. Ct. 522.

cumstances attending the issue of such certificates, it is generally held that even though no power to change the beneficiary is expressly given either by the terms of the certificate or the laws of the association, no intent to make a present gift is implied, and the control of the contract remains with the insured until his death.⁸⁹

The conclusion seems to be that the doctrine of vested rights in the beneficiary, having its origin in statutes intended primarily to safeguard the interests of married women and children in the proceeds of insurance carried for their benefit by their protector, when expanded to cover all cases of insurance for the benefit of a third party, has proved unsuited to the needs of the community and destructive of the actual intention of most persons procuring insurance, and that by dint of express stipulation in policies, and very slow judicial retreat, we shall return to the view that seems both just and reasonable; that, with the exception of such special interests as may be secured to married women and children by statute, no rights should be held to accrue to a sole beneficiary until the policy has matured.

⁸⁹ *Noble v. Police Beneficiary Assoc.* (1909) 224 Pa. 298, 73 Atl. 336; *Sup. Coun. of Royal Arcanum v. Behrend*, *supra* note 88. But there are a few cases which hold that the interest of the beneficiary in such absolute certificates is vested. See *Knights of Pythias v. Long* (1915) 117 Ark. 136, 174 S. W. 1197; *Carruth v. Clawson* (1910) 97 Ark. 50, 133 S. W. 178; *Weisert v. Muehl* (1883) 81 Ky. 336; *Hill v. Groesbeck* (1901) 29 Colo. 161, 67 Pac. 167.