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Published monthly during the Academic year, by students of the Yale Law School.  
P. O. Address, Box 893, Yale Station, New Haven, Conn.

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## GOOD FAITH IN WARRANTIES OF HEALTH IN LIFE INSURANCE POLICIES.

The recent decision of the Supreme Court of Massachusetts in the case of *Barker v. Metropolitan Life Ins. Co.*, 74 N. E. 945, clearly sets forth the distinction between a warranty of sound health in an insurance policy and a condition precedent in the policy providing that no obligation is assumed by the insurer unless the insured is in sound health at the date of such policy. The above case has been criticized as supporting the doctrine that a breach of such warranty avoids the policy, although the insured acted in perfect good faith. A careful examination of the decision will show, however, that the court was not concerned with the latter point at all. The Massachusetts statute on the subject provides, in substance, that no oral or written representation or warranty by the insured shall avoid the policy unless made with intent to deceive. *Rev. Laws, Mass. c. 118. sec. 21.* The policy sued upon in *Barker v. Ins. Co.* contained a condition precedent as above described. The court, reversing the decision of the trial court, holds that this statute has no relation to a condition in the policy itself. The decision in *Metropolitan Life Ins. Co. v. Howle*, 62 O. St. 204, construing a similar Ohio statute, is to the same effect.

In the absence of statutory provisions, the decisions in the various states show an entire lack of harmony upon the question as to whether a warranty of sound health should be placed on the same basis as an ordinary warranty, or whether "sound health"

is, at best, often a matter of opinion, and, therefore, good faith is all that should be required. In some jurisdictions it is contended that the warranty, although absolute in its terms, is only to the effect that such is true to the best of the insured's knowledge and belief. *Schwarzbach v. O. V. Protective Union*, 25 W. Va. 622; *Knights of Honor v. Dickson*, 102 Tenn. 251. In *Mouler v. American Life Ins. Co.*, 111 U. S. 335, Mr Justice Harlan lends his powerful support to this view, holding that the insured, if suffering from a latent disease, should not have the responsibility placed upon him of proving that which, perhaps, no one, however skilled, could discover. The language in this case is approved in *Northwestern Mut. Life Ins. Co. v. Woods*, 54 Kan. 663, while in *Knights of Honor v. Dickson, supra*, the court says: "Falsehood may be predicated of a misstatement of fact, but not of a mistaken opinion as to whether a man has a latent disease." However cogent this reasoning may appear, it must be conceded that it does not find favor in the majority of our state courts. In *Maine Benefit Association v. Parks*, 81 Me. 79, the court goes to the extent of declaring the policy is void if the statements are in fact untrue, whether such statement is to be regarded as a representation or a warranty. The majority view, however, merely asserts that, in case the answer is made a warranty by the terms of the policy, the good faith of the insured is altogether immaterial. *Baumgart v. Modern Woodmen*, 85 Wis. 546; *Continental Life Ins. Co. v. Young*, 113 Ind. 159. The theory that the insured shall be held responsible for that which he does not know, and has, perhaps, no means of finding out, certainly does not appeal to our sense of justice. The ability of the insurer to command the best of medical skill in the making of its examination should render it unnecessary to place any such burden upon the insured. We are inclined to agree with Mr. Vance in his statement that the minority view is based upon the sounder reasoning, and it is hardly just to hold that, by an agreement of warranty, the insured intended to assume the hazard of stating, as an ascertained fact, that which in its nature can often be only the subject of opinion. *Vance on Insurance*, p. 294.

#### STATE LIQUOR LAWS AS REGULATIONS OF INTERSTATE COMMERCE.

The course of legislation and judicial decision on questions relating to the regulation of interstate liquor traffic by the states has produced a rather curious result. This question first reached the Supreme Court in the cases of *Bowman v. Chicago Ry.*, 125 U. S. 465, and *Leisy v. Hardin*, 135 U. S. 100, and it was decided that a state could not prohibit the importation of liquor from other states and its sale in the original package within the prohibitory state. These decisions aroused a demand that the states be given the necessary power by Congress, as without such power their prohibitory laws could be of little practical value. Congress complied with the demand, and enacted, by the Wilson act of 1890,

that all liquors transported into any state or territory should, upon arrival therein, be subject to the laws of such state or territory enacted *in the exercise of its police power*, 26 Stat. at L. 313. It is worthy of note that this statute was passed with no thought of enlarging the taxing power of the states.

This statute was held to give immediate effect to the prohibitory statute of Iowa, which had thitherto been void, so that the Iowa statute required no re-enactment. *In re Rahrer*, 140 U. S. 545. The term "arrival," as used in the Wilson act, was construed to mean delivery to the consignee within the prohibitory state, so that the local liquor laws could not be applied to imported liquors while in transit from another state and before delivery to the consignee. *Rhodes v. Iowa*, 170 U. S. 412. And, at the same term, the Supreme Court decided that, while South Carolina had the power, under the Wilson act, to take charge, in behalf of the state, of the sale of liquor within the state, it could not impose burdens on the right to ship liquors from another state to a resident of South Carolina if such liquors were intended for his own use and not for sale within the state. *Vance v. Vandercook*, 170 U. S. 438. Quite recently, in *American Express Co. v. Iowa*, 196 U. S. 133, the construction affixed to the Wilson act in the previous cases was applied, and the power of the state of Iowa to control the sale of liquors shipped from another state into that state, after their delivery to the consignee, was upheld.

Up to this point, the decisions seem to have kept within the real purpose of the Wilson act. But by a five-to-four decision in the case of *Pabst v. Crenshaw*, 25 Sup. Ct. 552, the court has apparently opened the way for state taxation of interstate commerce in liquors. Here it was *held* that a state statute imposing an inspection fee upon beer and other malt liquors shipped from other states into that state, and held there for sale and consumption therein, must, although producing a large revenue, and not providing for more than a nominal inspection, be deemed enacted by the state "in the exercise of its police powers," within the meaning of the Wilson act, where the highest state court has upheld as a valid police regulation so much of the statute as imposes the same fee on beer of domestic manufacture over the objection that it is a revenue measure and not an inspection law.

The trenchant criticism of Mr. Justice Brown, dissenting, carries much force. In concluding, he says: "If the states may, in the assumed exercise of police powers, enact inspection laws, which are not such in fact, and thereby indirectly impose a revenue tax on liquors, it is difficult to see any limit to this power of taxation, or why it may not be applied to any other articles brought within the state, and the cases of *Minn. v. Barber*, 136 U. S. 313, and *Brimmer v. Rebman*, 138 U. S. 78, be practically overruled. The Wilson act does not give the legislature any greater authority with respect to the inspection of liquors than with respect to other imported articles, and, as already observed, it leaves the question of inspection exactly where it found it. If the Wilson act receive

its natural application,—that is, of meeting the exigency created by our decision in *Leisy v. Hardin*, and enabling the states to enforce their prohibitory liquor laws upon the arrival of the liquor within the state, as we have repeatedly held,—the law has a definite and distinct value, and is readily understood." In view of the strong dissent, we may find some justification for the thought that the court, in its desire to give the states free rein, has perhaps raised a cause of interstate friction which federal control might have prevented.

LEGISLATIVE ALTERATION OF CONTRACT RELATIONS AMONG  
STOCKHOLDERS.

The case of *Dartmouth College v. Woodward*, 4 Wheat. 518, while it decided that the charter of a private corporation constitutes a contract beyond the power of a state to impair, nevertheless did not analyze that contract, nor point out its parties. Three distinct sets of contractual relations might have been regarded by that court as the basis of their decision, namely: (1) A contract between the state and the incorporators; (2) The contract of the incorporators among themselves; (3) The contracts of trust created by donors to the College, as these donations necessarily involved reliance on the charter-granted rights. Of these three contracts, the first two were involved in the formation of business corporations, and, in construing clauses which reserved a right to amend or repeal, the courts soon differed as to whether such clauses applied solely to the contract between the state and the incorporators, or whether they applied to the mutual agreements of the incorporators as well.

The recent case of *Hinckley v. Schwarzschild Co.*, 34 N. Y. Law J. 89, (App. Div.), illustrates a tendency in New York to extend the scope of such a clause and allow the legislature to alter very considerably the interrelations of shareholders. Here it was held that the Statute of 1901 (chap. 354), dispensing with the previous requirement of unanimous consent for the issuance of preferred stock in a corporation, and allowing such issuance on a two-thirds vote of the stockholders, applies to pre-existing corporations, impairs no contract or vested right of a protesting minority shareholder, and is a valid exercise of the power reserved by the constitution to alter or repeal charters of corporations. The decision is expressly based on authority rather than on principle.

This case seems to go further than the case of *Payson v. Withers*, 5 Biss. 269, in which it was held that a charter fixing the capital stock of a corporation at \$1,000,000 and providing for its increase to not over \$5,000,000 at the discretion of the stockholders, might be amended by statute so as to authorize the board of directors to increase the capital stock at their discretion, and that such an amendment did not release a prior subscription to the stock. This holding was endorsed in *Payson v. Stoeber*, 2 Dill. 427.

This line of authority seems to place no limit on the reserved

power to amend, save where injury to property rights will clearly result from the amendment. Thus an amendment giving municipalities preference over other stockholders of a railroad in the distribution of its assets on dissolution, was *held* not within the reserved power, in *Hill v. Glasgow Ry. Co.*, 41 Fed. 610 (C.C.).

An opposing line of decisions holds that the power to amend is reserved solely for the benefit of the state, and that amendments are not valid under this power if they alter the mutual contract of the shareholders without serving some clearly public purpose. The power to amend should certainly be limited to amendments pertinent to the business and objects for which the corporation was organized. *Blatchford v. Ross*, 54 Barb. 42. A law altering the voting power of the shareholders in a corporation, and so impairing their control over their own enterprise, would clearly be unconstitutional. *State v. Greer*, 78 Mo. 188. In New Jersey, the view that the object of the reserved power was to give the majority of the corporators control over the minority, with the consent of the legislature, has never been adopted. There the legislature may, within limits, *impose* alterations deemed necessary for the public good, but cannot otherwise *permit* alterations in the contract among the stockholders without the consent of all parties thereto. *Zabriskie v. Hackensack Ry. Co.*, 18 N. J. Eq. 178, 191, 192. Possibly the frank recognition in such cases as *Hinckley v. Schwarzschild Co.*, *supra*, that the New Jersey doctrine rests on a better basis of principle, may lead to a solution of the conflict over the extent of the power to amend.