INSURANCE

By EDGAR HUNTER WILSON*

The insurance opinions handed down during the survey period have dealt largely with questions of interpretation and have introduced no new doctrine.

In *Hulsey v. Interstate Life & Accident Ins. Co.*[1] the beneficiary of an accidental death policy sued the insurer. The policy provided coverage among other situations if the accidental death occured on a steamship while the insured was traveling on a pass or as a fare-paying passenger. The plaintiff alleged that the insured was "lawfully" aboard a motor launch going out to the U.S.S. Kearsage when the accident occurred. The defendant company demurred and the Court of Appeals affirmed the sustaining of the demurrer.[2] The Supreme Court affirmed the decision of the Court of Appeals on the ground that the petition failed to show that the accident was within the coverage of the policy. Subsequent to the Supreme Court decision but before the remittitur was sent down, plaintiff amended his petition in the trial court to allege that insured was a member of the Marine Corps riding the launch on a pass and that the launch was an integral part of the equipment of the U.S.S. Kearsage. The defendant again demurred and was overruled. Thus, once again, the case was before the Court of Appeals.[3] This time is was held that the amendments corrected the defects pointed out in the Supreme Court opinion and brought the accident within the policy coverage.

The plaintiff sued on a theft policy for the loss of her automobile in *American Fire and Casualty Co. v. Barfield.*[4] The plaintiff insured had married one Berry who it was later discovered was already lawfully married to another. But before this revelation, plaintiff and Berry drove to another town in plaintiff's automobile. They registered at a hotel and left the automobile keys at the desk for the use of both plaintiff and Berry. Berry later told plaintiff that he was going to take the automobile to a garage for certain repairs. Plaintiff subsequently learned that the automobile had been sold by Berry rather than taken to a repair shop. On this evidence there was a judgment at the trial for plaintiff. The defendant claimed that there had been a conversion within the meaning of the policy and thus the loss was not covered. The policy contained the following provision: "This policy does not apply . . . to loss due to conversion, embezzlement, or secretion by any person in lawful possession of the automobile under a bailment lease, conditional sale, mortgage or other encum-

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1. 207 Ga. 167, 60 S.E.2d 353 (1950).
2. Interstate Life & Accident Ins. Co. v. Hulsey, 81 Ga. App. 276, 58 S.E.2d 463 (1950), discussed in Wilson, *Insurance*, 2 MERCER L. REV. 124 (1950).
3. Interstate Life & Accident Ins. Co. v. Hulsey, 82 Ga. App. 559, 61 S.E.2d 783 (1950).
4. 81 Ga. App. 887, 60 S.E.2d 383 (1950).

brance." The court held that the provision was not applicable to the present case because it obviously referred to persons with an interest in the automobile which Berry clearly did not have. As a matter of fact, the instructions were more favorable to defendant than they should have been. The trial court instructed the jury to return a verdict for defendant if they found that Berry was in possession without an intent to steal and later converted the property. Even under these circumstances the plaintiff would be entitled to recover because, as the court pointed out, it would constitute larcency after trust which would come within the meaning of "theft" as used in the policy.

In *Gulf Life Ins. Co. v. Moore*[5] the Court of Appeals sustained a judgment for the plaintiff on an accidental death policy. The insured had been shot and killed by a person with whom he had had no prior dealings. The policy provided: ". . . shall become null and void if the insured's death results from the intentional act or acts of any person or persons." There was some evidence that the killer was insane which would support recovery on the policy. Also the court pointed out that the plaintiff made a prima facie case of accidental death and the burden was on defendant to show the death was intentional. The defendant failed to carry that burden.

Sun Life Assur. Co. of Canada v. Kiester[6] was an action by the beneficiary of a life insurance policy which provided for double indemnity in case of accidental death. The policy stipulated that double idemnity ". . . does not extend to or include death resulting from participation, either as a passenger or otherwise, in aviation or aeronautics." Insured, who was not a pilot, was riding in the rear compartment of a government airplane as a passenger at the time of his death. The court held that insured was not "participating" in aviation at the time of the accident and therefore plaintiff was entitled to double indemnity. The word "participation" was thought to be ambiguous and thus was construed most strongly against the insurer. This decision is a good example of the liberal construction in favor of the insured that courts often place on insurance policies.

In *Life & Casualty Ins. Co. of Tenn. v. Benion*[7] the beneficiary of an accident policy brought suit to recover for the death of insured which occurred when he lost control of the automobile he was driving in a stock car race. The policy provided for the payment of benefits when death was ". . . effected solely by external, violent and accidental means . . . by the collision of or by any accident to any private horse drawn vehicle or private motor driven automobile in which insured is riding or driving. . ." The company's contention that an automobile being used in a stock car race was not an automobile within the meaning of the policy was rejected. The court stated that if the company wanted to restrict the use of the automobile it could have done so by an express provision. It was also decided that engaging in automobile races was not so dangerous and certain of producing injury as to take this collision outside of the meaning of "accidental."

Genone v. Citizens Ins. Co. of New Jersey[8] was an action to determine

5. 82 Ga. App. 136, 60 S.E.2d 547 (1950).
6. 83 Ga. App. 87, 62 S.E.2d 660 (1950).
7. 82 Ga. App. 571, 61 S.E.2d 579 (1950).
8. 207 Ga. 83, 60 S.E.2d 125 (1950).

the rights of the parties under an automobile liability policy. The insurer disclaimed any duties under the policy on the ground that it had exercised the right reserved in the policy to cancel. The policy provided that the insurer might cancel "by mailing to the named insured at the address shown in this policy written notice. . . . That mailing of the notice as aforesaid shall be sufficient proof of notice. . . ." The company mailed a notice but it was not received by the insured. It was decided that, in the absence of a controlling statute, the parties were free to make mailing, rather than actual receipt, notice if they so desired. The insured also claimed that the attempted cancellation was not effective because unearned premiums were not returned. The court, however, interpreted the clause in the policy dealing with return of premiums as making the refund a consequence of cancellation rather than a condition precedent.

In *National Life & Accident Ins Co. v. Moore*[9] the petition alleged that the plaintiff's husband had applied for and been issued a policy of life insurance by the defendant naming plaintiff as beneficiary. A binding receipt was issued to the husband at the time application was made. The binder provided:

> . . . That when such deposit is equal to the full first premium on the policy applied for and such application is approved at the Home Office of the Company . . . then, without affecting the issue date and anniversaries as set forth in the policy, the amount of insurance applied for will be in force from the date of this receipt, but no obligation is assumed by the Company unless and until such application is so approved. . .

The binder was issued on June 10, 1949, and the insured died on June 12, 1949. The court pointed out that the insurance would be effective even if the approval of the company was given after the death of the insured. It was found that the application had been approved by reason of certain markings and initials appearing on the application.

A life insurance policy in *Rivers v. Provident Indemnity Life Ins. Co.*[10] provided that it would lapse if premiums were not paid within twenty-eight days after due date. In such case the policy could only be reinstated upon meeting certain formalities. The policy also contained a clause denying power in all except certain officers of the insurer to waive or modify provisions of the policy. The insurer was claiming as a defense that the policy had lapsed prior to insured's death even though overdue premiums had been received by insurer's agent. The Court of Appeals ruled that it was error to sustain a demurrer to the petition because the premium payment record showed that at several other times premiums had been accepted after the expiration of the grace period and without requiring formal reinstatement. Thus, the jury might find that this course of dealings with the insured indicated that had death not occurred the insurer would have continued the insurance in force.

In *Jefferson Standard Life Ins. Co. v. Nelson*[11] the plaintiff was suing for certain disability benefits and a waiver of premiums provided for in a life insurance policy in the event of the insured's permanent disability. The defendant insurer had waived premiums and paid benefits for a period

9. 83 Ga. App. 289, 63 S.E.2d 447 (1951).
10. 83 Ga. App. 340, 63 S.E.2d 607 (1951).
11. 83 Ga. App. 667, 64 S.E.2d 373 (1951).

of eight months but had refused to consider the premiums waived or to pay benefits after that period. The policy provided that if certain requisites therein set forth had been met ". . . the company by endorsement in writing upon this contract will agree to waive the premiums which shall become payable. . ." The defendant claimed that it was under no obligation to perform the duties requested by plaintiff because the policy had not been endorsed. The court agreed that this endorsement was a condition precedent to the plaintiff's right to sue but held that the condition had been waived by the earlier payments made by defendant without requiring endorsement. The reasoning of the court is sound enough but an even more obvious justification for the result is that the company would be under an obligation to endorse the policy if all the requisites were present. It would be a breach of contract for the defendant to refuse to endorse if plaintiff was entitled to the endorsement by the terms of the policy.

The plaintiff in *Moseley v. Mutual Benefit Health & Accident Ass'n. of Omaha*[12] operated a medical clinic. Plaintiff received a patient who claimed to have hospitalization coverage with defendant association. The patient notified defendant that he was hospitalized and gave the number of his policy. An agent of defendant answered this letter and enclosed forms to be executed on release from the hospital. The letter closed with the following statement, ". . . we shall endeavor to take some action as promptly as possible." Actually the patient's policy was not in force at the time the patient was hospitalized. Plaintiff, on the strength of the patient's claims and the letter from defendant, released the patient without receiving payment of the bill or security therefor. It was plaintiff's contention that the defendant had misled plaintiff and was estopped to deny that the policy was in force. The court held defendant's statement was not sufficient to constitute an estoppel and since there was no contractual relation between the parties, the demurrer to the petition was correctly sustained.

The following decisions deserve mention: *New Amsterdam Casualty Co. v. Mathis*[13] held an action would not lie on a police officer's surety bond for injuries received by plaintiff in an automobile collison with the police officer while he was on official business. It was held in *Cole v. Foster*[14] that a statute establishing a commission to receive and disburse funds of a peace officer's annuity fund was not an unconstitutional conferring on a commission of corporate power to conduct an insurance business. In a syllabus opinion *Thorton v. Life Ins. Co. of Georgia*[15] held a petition on an insurance policy subject to demurrer where it failed to show who procured the policy and that plaintiff's assignor had an insurable interest.

Three statutes affecting the law of insurance were passed during the survey period. Prior to amendment, Code Section 56-226 provided generally that insurance companies could not hold more than ten percent of the securities of a single corporation. The amendment[16] makes an exception

12. 82 Ga. App. 68. 60 S.E.2d 564 (1950).
13. 82 Ga. App. 421. 61 S.E.2d 422 (1950).
14. 207 Ga. 416, 61 S.E.2d 814 (1950).
15. 83 Ga. App. 831, 64 S.E.2d 693 (1951).
16. Ga. Laws 1951, p. 278.

if the securities acquired are issued by an insurance company incorporated in Georgia and the Insurance Commissioner gives his approval.

The Motor Vehicle Safety Responsibility Act,[17] which repeals the earlier act,[18] indirectly affects insurance law in that liability coverage in certain amounts satisfies responsibility requirements of the act. Further, the act vests power in the Insurance Commissioner to approve a plan for apportionment among the insurers operating in this state risks that are entitled to insurance but can not otherwise get coverage. The act also provides that the director may designate as "self-insurers" persons in whose name twenty-five or more vehicles are registered.

Finally a statute was enacted increasing the license fee of fraternal benefit societies and making a change in the license years of insurance companies.[19]

17. Ga. Laws 1951, p. 565.
18. Ga. Laws 1945, p. 276, GA. CODE ANN. § 92A-601 *et seq.* (Supp. 1947).
19. Ga. Laws 1951, p. 664.