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INSURANCE

J. Denson Smith*

The supreme court had before it during the period in question three cases involving the law of insurance. In *Bankston v. Mutual Benefit Health and Accident Association*¹ it permitted recovery by a plaintiff on a sick and accident policy over objection by the defendant that materially false answers had been made; that the disability antedated the policy; that it was the result of insanity; that it did not confine the defendant indoors within the terms of the policy. The case of *Clesi v. National Life and Accident Insurance Company*² was distinguished on the ground that in the case before the court, the plaintiff was incapacitated from pursuing any gainful occupation notwithstanding that he was occasionally permitted to leave home to visit the doctor and to take exercise necessary to prevent physical deterioration. This feature of the case seems to be a realistic application of the provision in question. The case is not entirely convincing, however, in its treatment of the defense that the disability was the result of insanity. On this point the court seemed to be influenced by the fact that the plaintiff had periods of lucidity notwithstanding that he had suffered hallucinations and delusions. The court recognized expert opinion to the effect that paresis generally progressively deteriorates the brain tissues and will end in insanity if it is not arrested by proper treatment. This leads one to wonder if the possibility that such a condition might develop should not have justified some effort to protect the defendant against that sort of contingency, inasmuch as in the policy provision dealing with insanity there was no limitation based on the manner in which it might be brought about.

In *Burke v. Massachusetts Bonding and Insurance Company*³ the cases of *Williams v. Pope Manufacturing Company*⁴ and *Matney v. Blue Ribbon*⁵ allowing non-resident married women to sue the insurer of the husband under Act 55 of 1930 where the accidents occurred in Louisiana were held not to justify suit by a resident married woman under the authority of the act in question where the accident occurred in Mississippi. The theory applied by the court was that the act creates a sub-

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1. 208 La. 1008, 24 So.(2d) 59 (1945).

2. 195 La. 736, 197 So. 413 (1940).

3. 209 La. 495, 24 So.(2d) 875 (1946).

4. 52 La. Ann. 417, 27 So. 851 (1900).

5. 202 La. 505, 12 So.(2d) 253 (1942).

stantive right in favor of a married woman only if the accident occurs here. This was based on the rule that the law of the place where the accident occurs determines the substantive rights arising therefrom. The court's disposition of the case is believed to be a consistent application of the original holding that the act created a cause of action in favor of the wife.

The State Department of Highways was held to be a "person" and therefore entitled to a direct action against the insurers of a steamship company under the provision of Act 253 of 1918 as amended by Act 55 of 1930, in *Department of Highways v. Lykes Brothers S. S. Company, Incorporated*.⁶ The general rule was applied that the word "person" as used in a statute is to be held to include corporations where such bodies fall within the reason and purpose of the act.

VI. PROCEDURE

*Henry G. McMahon**

Original Jurisdiction

*Glover v. Mayer*¹ presents interesting but futile efforts of plaintiff to resist the force of defendant's exception to the jurisdiction *ratione personae* of the trial court. A suit to recover plaintiff's share under an alleged profit-sharing agreement for the operation of defendant's plantation was instituted in the parish where the latter was situated, rather than that where defendant was domiciled. Defendant's exception was resisted by plaintiff through the arguments: (1) that the alleged contract constituted a partnership between the two litigants, and hence the suit was properly brought in the parish where the partnership was established;² and (2) that the action was one to recover for "labor performed" on a plantation within the intendment of the statute³ permitting such suits to be brought in the parish where the plantation was situated. In affirming the decision maintaining defendant's exception, the appellate court swept both contentions aside through the application of the principle that exceptions to the general rule of suit at defendant's domicile were strictly construed. Since the petition alleged no facts show-

6. 209 La. 381, 24 So.(2d) 623 (1945).

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1. 209 La. 599, 25 So. (2d) 242 (1946).

2. Art. 165 (2), La. Code of Practice of 1870, as last amended by La. Act 282 of 1940.

3. La. Act 16 of 1886 [Dart's Stats. (1939) § 5143].