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Insurance - Warranties and Representations - La. R.S. 22:619

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donations by the father to his acknowledged children. These are the two main instances where rights are conferred or denied solely on the basis of acknowledgment or lack of it.

Article 242 permits an illegitimate to sue for alimony if he has been acknowledged or if his filiation has been determined by a judgment. As has been shown, this article once referred to "natural child" instead of "illegitimate." But the child's having been considered a "natural child" was not the basis for his possessing this right, and no substantive change resulted when the term "illegitimate" was substituted for the term "natural child," in the Revision of 1870.

Thus, it is seen that it is not necessary to speak of a natural child as one acknowledged by the father, as Article 202 does. The existing confusion can therefore be avoided by disregarding the term altogether, and speaking instead of an illegitimate child, acknowledged or unacknowledged, as the case may be.

James M. Dozier, Jr.

INSURANCE—WARRANTIES AND REPRESENTATIONS—

LA. R.S. 22:619¹

In a suit brought by plaintiff beneficiaries of a life insurance policy, defendant insurance company sought avoidance of the policy, alleging that the deceased had given false and fraudulent answers to questions asked by the examining physician. These answers had been recorded on an application form which was made part of the policy. The evidence indicated that the answers concerning a heart disease and visits to a physician were false, and the trial court rendered judgment in favor of the defendant. On appeal, *held*, affirmed. The insurer may avoid the policy, because the answers given by the insured on the application form were false and material. *Flint v. Prudential Ins. Co.*, 70 So.2d 161 (La. App. 1954).

Under the common law rules of insurance² whether a par-

mate brothers or sisters or descendants from such brothers and sisters; and one-third, if he leaves only more remote collateral relations."

1. LA. R.S. 22:219 (1950), pertaining to health and accident insurance, is similar to LA. R.S. 22:619 (1950), but a comparison of the two provisions is beyond the scope of this discussion.

2. For a discussion of these principles, see VANCE, HANDBOOK OF THE LAW OF INSURANCE 386 *et seq.* (2d ed. 1951), and collected cases therein; APPLEMAN, INSURANCE LAW AND PRACTICE § 7291 *et seq.* (1943).

ticular statement is a warranty or a representation depends upon the intention of the parties. Statements offered as inducements to enter into a contract are usually considered representations; those intended to be part of the contract itself are considered warranties. The insurer is allowed to avoid the contract if there is a false warranty or a false, material representation. A warranty is considered false if not literally true. A representation is considered false if not substantially true³ and material if it influenced the insurer to accept the risk on the specified terms when he would not have accepted had he known the truth.

Article 619(B),⁴ the pertinent provision of the Louisiana Insurance Code, provides:

"In any application for life or health and accident insurance made in writing by the insured, all statements therein made by the insured shall, in the absence of fraud, be deemed representations and not warranties. The falsity of any such statement shall not bar the right to recovery under the contract unless such false statement was made with actual intent to deceive or unless it materially affected either the acceptance of the risk or the hazard assumed by the insured."

If there is no fraud, the effect of the article is to classify any false statement of fact as a representation, and the sole question should then be whether the representation is material. This was the result reached by the courts in interpreting the Louisiana law⁵ in force before Article 619(B) was enacted. If there is fraud, the common law rules should be applied by the courts⁶ in determining whether to allow the avoidance of an insurance contract.⁷ However, some courts, both here and in other states, have suggested that the implication of this type statute is that all fraudulent statements are to be treated as warranties,⁸ either ma-

3. This rule is also discussed in these Louisiana cases: *Valesi v. Mutual Life Ins. Co.*, 151 La. 405, 91 So. 818 (1922); *Boisblanc v. Louisiana Equitable Life Ins. Co.*, 34 La. Ann. 1167 (1882).

4. La. R.S. 22:619(B) (1950).

5. La. Acts 1906, No. 52, p. 86; La. Acts 1916, No. 227, p. 492.

6. LA. CIVIL CODE of 1808, 3.12.1, p. 420, declared that contracts of insurance "are foreign from this code." See also *Barry v. Louisiana Ins. Co.*, 12 Mart.(o.s.) 493 (La. 1822), which held the common law applied to insurance contracts.

7. See note 2 *supra*.

8. See *Goff v. Mutual Life Ins. Co.*, 131 La. 98, 59 So. 28 (1912); *Fitzgerald v. Metropolitan Life Ins. Co.*, 90 Vt. 291, 98 Atl. 498 (1916), and other cases cited in VANCE, *INSURANCE* 388, n. 5 (3d ed. 1951). But "a diligent search among the authorities fails to disclose a single case in which a contract was actually avoided because of a false representation that was really immaterial. In each such case in which the rule is stated, it will be found

teriality or fraud would in that case serve as grounds for avoidance whether the statement were a warranty or a representation. This interpretation is supported by the language of the second sentence of Article 619(B), not found in earlier, similar Louisiana statutes. Such an interpretation would impose the hardship on the insured of allowing the insurer additional grounds for the avoidance of the contract; but the purpose of enacting such a statute is to relax the common law rule.⁹ The correct interpretation therefore seems to be that an immaterial misrepresentation, although fraudulent, does not give the insurer the privilege of avoiding the contract.

In the instant case, the insurance company's "practically admitting the absence of fraud" left to be decided only the question of whether or not the insured's statements concerning medical treatment for a heart disease were material. The finding that the insured's false statements were material seems consistent with the Louisiana jurisprudence on that subject;¹⁰ a finding that a false statement is material would seem to give the insurer the privilege of avoiding the contract whether the statement be fraudulent or not.¹¹

Maynard E. Cush

LOUISIANA PRACTICE—APPLICATION FOR SUPERVISORY WRITS—EFFECT ON TRIAL COURT PROCEEDINGS

Plaintiff, seeking review of a ruling made by the trial judge during the course of the trial, invoked the supervisory jurisdic-

that the fraud complained of had injuriously affected the insurer." *VANCE INSURANCE* 388 (3d ed. 1951).

9. *Hartford Life Ins. Co. v. Stalling*, 110 Tenn. 1, 72 S.W. 960 (1903); *Penn Mut. Life Ins. Co. v. Mechanics' Savings Bank & Trust Co.*, 73 Fed. 653 (6th Cir. 1896); *APPLEMAN, INSURANCE LAW AND PRACTICE* § 7253 (1943).

10. In *Lee v. New York Life Ins. Co.*, 144 La. 445, 80 So. 652 (1919) (insured consulted doctor for a minor ailment and the doctor found on examination the patient had Bright's disease) and *Jefferson Standard Life Ins. Co. v. Stevenson*, 70 F.2d 72 (5th Cir. 1934) (major lung disease), concealment of the consultation was held to be material although the seriousness of the disease had been concealed from the insured.

The insured made statements about receiving medical treatment for the ailments indicated: *Mataya v. Delta Life Ins. Co.*, 71 So.2d 139 (La. App. 1954) (common cold); *Carrroll v. Mutual Life Ins. Co.*, 168 La. 953, 123 So. 638 (1929) (indigestion); *Cunningham v. Penn Mut. Life Ins. Co.*, 152 La. 1023, 95 So. 110 (1922) (nongonorrheal prostatitis); *Goff v. Mutual Life Ins. Co.*, 131 La. 98, 59 So. 28 (1912) (malaria); *Cole v. Mutual Life Ins. Co.*, 129 La. 704, 56 So. 645 (1911) (minor throat ailment). In all these cases the statements were held immaterial.

11. See *Rhodes v. Metropolitan Life Ins. Co.*, 172 F.2d 183 (5th Cir. 1949).