Washington Law Review

Volume 6 | Issue 1

2-1-1931

Recent Cases

F. G. H.

WASHINGTON LAW REVIEW

Published Quarterly by the Law School of the University of Washington
Founded by John T Condon, First Dean of the Law School

SUBSCRIPTION PRICE $2.50 PER ANNUM, SINGLE COPIES $1.00

RECENT CASES

INSURANCE—FALSE STATEMENT IN APPLICATION—INTENT TO DECEIVE—EVIDENCE. Plaintiff's deceased husband consulted a doctor on Sept. 6, 1927, concerning pains in the region of the appendix, the doctor diagnosing the trouble as sub-acute appendicitis and advising an operation. Six weeks later, on Oct. 18, deceased applied to defendant insurance company to reinstate his lapsed policy and in the application stated that he had had no illnesses or consulted no physicians since April 1, 1927. Less than a month later he was successfully operated upon for appendicitis and had entirely recovered before dying on Nov 27, 1928, of a disease of the heart. No further evidence as to deceased's intent in making the false statement was adduced by either party to the action. *Held*, it could not have been properly decided by the court as a matter of law that deceased made the false statement in his application for reinstatement of the policy with intent to deceive the company Tolman, J., dissenting. *Houston v. New York Life Ins. Co.*, 59 Wash. Dec. 47, 292 Pac. 445 (1930)

By statute in Washington, no such misrepresentation "shall be deemed material or defeat or avoid the policy or prevent it attaching, unless such misrepresentation or warranty is made with the intent to deceive." Rem. Comp. Stat., Sec. 7078. Hence, under the Washington statute, it is not enough to find that the representations were false, in order to avoid the policy. It must further be found that they were made with intent to deceive. *Brigham v. Mutual Life Ins. Co.*, 95 Wash. 196, 163 Pac. 380 (1917) Since the avoidance of an insurance policy is an affirmative defense, the

burden of establishing such fraudulent intent is upon the insurance company. *Askey v. New York Life Ins Co.*, 102 Wash. 27, 172 Pac. 887 (1918). Therefore, in Washington, in order to establish the affirmative defense of avoidance on the ground of misrepresentation, the insurance company has the burden of proving that the insured made the false statements with intent to deceive.

Although the jury found as a matter of fact, in the instant case, that the deceased had knowledge of the falsity of the statement, there are cases where the knowledge suppressed is so important and obviously so well in the recollection of the applicant that merely withholding it raises the presumption that the applicant had knowledge of its falsity, such as the failure to disclose deafness, *Madsen v. Maryland Casualty Co.*, 168 Cal. 204, 142 Pac. 51 (1914) or disease of the throat, *John Hancock Mutual Life Ins. Co. v. Houpt*, 113 Fed. 572 (1901) or consultation with a doctor three or four months before applying for insurance, *Whitney v. West Coast Life*, 177 Cal. 74, 169 Pac. 997 (1917) Both as a matter of fact, then, and as a matter of presumption, the deceased made the statements with knowledge of their falsity.

It is the general rule that false statements, made with knowledge of their falsity, give rise to the presumption that the false statements were made with intent to deceive. *Spaulding v. Mutual Life Ins. Co. of New York*, 96 Vet. 67, 117 Atl. 376 (1922) *Stiegler v. Eureka Life Ins. Co. of Baltimore*, 146 Md. 629, 127 Atl. 397 (1925) *Whitney v. West Coast Life Ins. Co., supra.* KERR ON FRAUDS (Am. Ed.) 55. This rule has been adopted in Washington in reference to false statements in insurance applications. *Quinn v. Mutual Life Ins. Co.*, 91 Wash. 543, 158 Pac. 82 (1916) *Day v. St. Paul Fire & Marine Ins. Co.*, 111 Wash. 49, 189 Pac. 95 (1920) *Hayes v. Automobile Ins. Exchange*, 126 Wash. 487, 218 Pac. 252 (1923) *Walker v. Met. Life Ins. Co.*, 132 Wash. 615, 232 Pac. 694 (1925) Where this presumption of fraudulent intent arises, a *prima facie* case of avoidance is made out, shifting the burden of going forward with the evidence upon the plaintiff. *Hayes v. Automobile Ins. Exchange, supra, Mutual Life Ins. Co. of New York v. Hurni Packing Co.*, 260 Fed. 641 (1919), *Mutual Life Ins. Co. v. Hilton-Green*, 241 U. S. 613, 36 Sup. Ct. Rep. 60, 676 L. Ed. 1202 (1916) *New York Life Ins. Co. v. Wertheimer et al.*, 272 Fed. 730 (1920) *Stiegler v. Eureka Life Ins. Co. of Baltimore, supra, Boddy v. Henry*, 126 Iowa 31, 101 N. W 447 (1904) An examination of the brief in the present case fails to reveal any evidence tending to contradict this presumption.

This presumption is not overcome by the unsupported declaration of the applicant that no such intent existed in his mind at the time. *Day v. St. Paul Fire & Marine Ins. Co., supra.* Nor is the plaintiff's burden maintained by simply remaining silent. *Hayes v. Automobile Ins. Exchange, supra.* It is the general American rule, followed in Washington, that where such presumption of intent to deceive arises, and there is no contradictory evidence, the court should take the case from the jury upon a motion to nonsuit or for a directed verdict for the defendant. *Spaulding v. Mutual Life Ins. Co. of N. Y., supra, Northwestern Ins. Co. v. Montgomery*, 116 Ga. 799, 43 S. E. 79 (1902) *Stiegler v. Eureka Life Ins. Co. of Baltimore, supra, Quinn v. Mutual Life Ins. Co., supra.* In all Washington cases which have held that the question of fraudulent intent should have been submitted to the jury, although the statement was made with knowledge of its falsity, there was a substantial conflict in the testimony upon that point, such as the contradictory testimony of two doctors, *Goertz v. Continental Life Ins. & Investment Co.*, 95 Wash. 358, 163 Pac. 938 (1917) *Brigham v. Mutual Life Ins. Co.*, 95 Wash. 196, 163 Pac. 380 (1917) or where the application is made out by the agent of the insurance company, *Small v. Standard Accident Ins. Co.*, 144 Wash. 523, 258 Pac. 33 (1927) and see, *Askey v. New York Life Ins. Co.*, 102 Wash. 27, 172 Pac. 887 (1918) *Devenny v. Automobile Owners Inter-Ins. Ass. of Wash.*, 124

Wash. 453, 214 Pac. 833 (1923) *Eaton v. Nat. Casualty Co.*, 122 Wash. 477, 210 Pac. 779 (1922)

Thus it would seem that the Washington court, in the instant case, by not permitting it to be held, as a matter of law, that the insured made the false statement in his application with intent to deceive the company although the insured had knowledge of its falsity at the time, and although the presumption of fraudulent intent thus arising was rebutted by no contradicting evidence, has abandoned the previous rule laid down in Washington, and generally recognized in this country that fraudulent intent should be found as a matter of law under such circumstances. It would seem better to follow the general rule, not only to maintain the logic of our law of evidence, but because such distant determinations of intent, when rendered contrary to the inferences which experience naturally gives rise to, would seem to endanger a just result being reached in many cases.

F G. H.

WILLS—REVOCATION—MARRIAGE. Anna Hall died testate. The will, executed prior to marriage, containing the following provision, "In the event that I should remarry my husband shall take nothing of my separarate property" was admitted to probate. Her husband contested the will, but did not allege in his petition that testatrix had him in mind when she executed the will. *Held*, the will was not revoked on the death of testatrix by the subsequent marriage under Rem. Comp. Stat. 1399, which provides that the will is revoked by subsequent marriage unless some one of the three following situations is presented. (1) That the surviving spouse was provided for by a marriage settlement; or (2) unless such survivor was provided for in the will, or (3) mentioned therein in such a way as to show an intention not to make provision for him. The court held that the survivor was "in such a way mentioned" in the will so as to show an intention not to make provision for him. *In re Hall's Estate*, 59 Wash. Dec. 111, 292 Pac. 401 (1930).

The problem under the principal case is whether a will can be made in contemplation of the possibility of a future marriage and hence would not require a specific mention of the surviving spouse. If the statute requires the will to be made in contemplation of marriage, then it seems that there must be a specific mention of the survivor in his or her character as such. *Gillman v. Dressler* 300 Ill. 175, 133 N. E. 186 (1921) *Ingersoll et al. v. Hopkins et al.*, 170 Mass. 401, 49 N. E. 623, 40 L. R. A. 191 (1898) At common law and under 1 Vict. Ch. 26, Sec. 18, the rule was that the will of a woman was revoked, although made expressly in contemplation of marriage. 1 JARMAN ON WILLS (6th Ed. 1893) 146. In Washington, under Rem. Comp. Stat. 1399, the rule is that the will need not be made in contemplation of marriage; the limitation is not found in the statute and the court refused to "write it in." *In re Adler's Estate*, 52 Wash. 539, 100 Pac. 1019 (1909) The California court under a statute identical with the statute in Washington (Cal. Civ. Code 1928) followed and quoted extensively from the opinion of *In re Adler's Estate, supra. In re Appenfelder's Estate*, 99 Cal. App. 330, 278 Pac. 473 (1929) See also, *In re Kurtz' Estate*, 190 Cal. 146, 210 Pac. 959 (1922) The construction applied in the principal case finds support in the construction placed upon the same statute by the California court in that the latter holds, "It is not necessary to name her to include her, as she was included in the description of a class." The class was described as "any person whomsoever who if I died intestate would be entitled to any part of my estate." *In re Kurtz' Estate, supra.* However, there may be a distinction on the facts. See 11 CAL. LAW REV. 210. It is certain, however, that the language used by the court sustains the principal case.

It is to be noted that the principal case finds support in analogy and principle. The words "my husband" are as specific as the words used to describe after-born children as a class. *Gehlen v. Gehlen*, 77 Wash. 17, 137 Pac. 312 (1913) *Appeal of Blake*, 95 Conn. 194, 110 Atl. 833 (1920)

Logan et al. v. Bean's Adm'r, 120 Ky. 712, 87 S. W 1110 (1905). The word "mentioned" means "referred to" rather than designated by name under a statute referring to after-born children. *Pearce v. Pearce*, 104 Tex. 73, 134 S. W 210 (1911). Wills are ambulatory in nature and generally speak only as of the time of the death of the testator unless the language of the will shows a different intention. *In re Ziegner's Estate*, 146 Wash. 537, 264 Pac. 12 (1928) *Canfield v. Boswick*, 21 Conn. 550 (1852) *Gallaway v. Darby*, 105 Ark. 558, 151 S. W 1014, Ann. Cas. 1914D 712, 44 L. R. A. (n.s.) 782 (1912). If there is no person answering the description in the will when it is executed, then it applies to the person answering the description at the testator's death unless the will evidences a contrary intention. *Ranford v. Willis*, L. R. 7 Ch. 7. Hence the words "my husband" in the principal case will apply specifically to the surviving spouse at the death of the testatrix. Also, the rule of statutory construction that the intent of the testator should be given full force and effect should apply. *Close v. Farmer's Loan and Trust Co.*, 195 N. Y. 92, 87 N. E. 1005 (1909) *In re Hite's Estate*, 155 Cal. 436, 101 Pac. 443, 21 L. R. A. (n.s.) 953, 17 Ann. Cas. 993 (1909) THOMPSON ON CONSTRUCTION OF WILLS, sec. 41ff (1928).

It was held in the case of *Koontz et al. v. Koontz*, 83 Wash. 180, 145 Pac. 201 (1915), that "The clear object of the statute touching revocation is to prevent a capricious or inadvertent disherison of the surviving consort." The holding of the principal case seems to be consonant with the objects state in *Koontz et al. v. Koontz, supra.* R. D. C.

COMMERCE—HAULING ACROSS BOUNDARY ON PRIVATE ROAD TO CARRIER—TIME OF COMMENCEMENT OF TRANSIT, AND OF DELIVERY. The plaintiff, a logger, owns timber land, lying partly in northern Washington and partly in British Columbia. It maintains a private logging road, a private carrier loading logging trucks furnished by the defendant to be hauled to the connecting track of the defendant, who takes over the trucks there and transports them to the plaintiff's mill at Bellingham. A part of the logs carried by plaintiff are hauled through British Columbia, and across the border into Washington, where they are turned over to the defendant. Defendant claims this is a matter of interstate commerce, and findings made by the Department of Public Works of Washington on the injustice of the rate charged are therefore not binding; basing its contention on the theory that transit originally began in British Columbia, before the logs were put on its tracks to carry. *Held*, that the transportation of the logs was not in interstate commerce, and, therefore, the decree of the Department of Public Works is binding. *Campbell River Mills Co., Ltd., et al. c. Chicago, M. & St. P R. Co.*, 42 Fed. 775 (1930).

The defendant's right to the higher rate must rest on his proof that the shipment was one of interstate commerce; for the Interstate Commerce Act, in article 1 (U. S. Comp. St. No. 8563), provides that the act will not apply to the handling of property wholly within one state. Interstate commerce exists where there are goods shipped from one state into another state. *United States v. Colorado & N. W R. Co.*, 13 Am. Cas. 893, 157 Fed. 321, 85 C. C. A. 27, 15 L. R. A. (n.s.) 167 (1907) *Hogan v. Intertype Corp.*, 136 Ark. 52, 206 S. W 58 (1918). If the shipment is interstate commerce, the rules and rates of interstate commerce apply, and the intrastate rules are void as to such goods. *Lusk v. Atkinson*, 268 Mo. 109, 186 S. W 703 (1916). Had the plaintiff been a public carrier, the case would have been clearly interstate shipment, throughout, for every part of a transaction of transportation from one state to another is considered interstate commerce. *United States v. Colorado & N. W R. Co., supra*, the same case holding this rule applied even to one carrier, of a series, whose carriage was wholly intrastate. This plaintiff, however, was found to be a private carrier, not indulging in interstate commerce by hauling the logs along its private road, the court applying the rule laid down in *Atlantic Coast Line R. Co. v. Railroad Commission of Georgia*,

281 Fed. 321 (1922). To have a case of interstate commerce here, it must be found that the transit began on the plaintiff's road in British Columbia, and was continued to, and over, the defendant's road, in Washington, and to determine whether transit began in British Columbia or Washington, one must find when the defendant company became a party carrier to the transportation of the goods. Two theories must be considered in determining this question. whether the companies could be said to be engaged in a common or continuous enterprise of shipment of these logs; and whether, if they were not, there was an actual delivery of the logs to the defendant company within or without the state.

The court based its holding on the fact that a hauling of the logs across the boundary line over the private logging road was not under the regulation of the Interstate Commerce Act; and that there was no joint arrangement or common control between the plaintiff and the defendant carrier, which would bring the hauling of the logs within the act. Where successive carriers exercise a common control and management of the goods through several states, the transaction as a whole becomes interstate commerce, even as to those carriers who would not ordinarily be engaged in that type of commerce, under the facts of the case. *Standard Oil Co. of New York v. United States*, 179 Fed. 614, 103 C.C.A. 172 (1910) There is no circumstance to show that the defendant had any common interest with the plaintiff in the management of his line, or that he had any control of the operation of the line of the plaintiff. The mere intention to take goods along a private road, across the border to a carrier for shipment, cannot be held controlling. Such a transaction creates no relationship with the carrier, because of which it can be said to be engaging in interstate commerce; there is no condition of transit to which the Interstate Commerce Act can apply

The question of the time of delivery must also be resolved against the defendant. The plaintiff's spur track connected with that of the defendant, and the plaintiff did all its hauling along the track, to the connecting point, in Washington, the only act in which the defendant could claim any part until the goods were brought to the junction was the furnishing of the empty cars for the plaintiff. To have a contract of carriage with the defendant, there must be actual delivery to the carrier, at the point where he is to assume carriage of the goods. *Marcus v. Chicago, M. & St. P Ry. Co.*, 167 Ill.. App. 638 (1912) The facts showed here that the delivery to the carrier for his carriage was at the end of the plaintiff's line, in Washington, and not at any earlier point. Until delivery, the facts proved were that the plaintiff had the management of the hauling of the logs, along its own line. To have a delivery to the carrier, the carrier must be given the complete control of the goods. *Gulf C. & S. F Ry. Co. v. Lowerey*, 155 S. W 992 (Tex. Civ App.) (1913) *W F Bogart & Co. v. Wade*, 132 Ark. 49, 200 S. W 148 (1918). Statements of the facts of decided cases show that the strictness of the requirements for delivery of the control to the carrier. The court found no delivery where the company had placed a car on a spur track, and there was no notice given by the shipper that it was ready to move, after loading, in *Matthews v. St. Louis, I. M. & S. Ry. Co.*, 123 Ark. 365, 185 S. W 461, L. R. A. 1916 E 1994 (1916) In this case, where the company not only loaded the cars at the siding, but hauled them up onto its own tracks, and assumed complete control over their management and motivation until it again brought them down to the defendant's tracks, the situation is even more strongly against any contention of control by or delivery to, the company at any point except the Washington junction with the spur.

Finding no delivery to the defendant, and therefore no transit under commercial regulations of carriers, until the goods had reached Washington and therefore finding the whole line of transit within the State of Washington, the court must conclude the Interstate Commerce Act can not apply to the case. W J. P

SCHOOLS AND SCHOOL DISTRICTS—CONTRACTS—EMPLOYMENT OF TEACHERS —POWER OF SCHOOL BOARD. Defendants, as directors of Seattle School District No. 1, adopted a resolution to the effect that no person shall thereafter be employed in the district as a teacher while a member of the American Federation of Teachers or any local thereof; and that before any election shall be considered binding, the applicant must sign a declaration stating that he is not a member of the aforesaid Federation or any local thereof, and will not become a member during the term of the contract. The plaintiff association seeks to enjoin the enforcement of the said resolution on the ground that it is an arbitrary and unlawful denial of employment to all teachers, who decline to sign such declaration or who are members of the said association, however otherwise eligible or qualified and that the rule promulgated by the board is in excess of the powers granted it by the legislature. *Held*, judgment dismissing the action at the close of plaintiffs' evidence, affirmed, on the ground that while, by the terms of the statute, the power to discharge depends upon the existence of sufficient cause, the power to employ is unqualified and is to be exercised at the will and discretion of the board, and unless limited by statute in some way, the court will not interfere with the discretion of the board in the future employment of teachers, the board being entitled to the right of freedom of contract, as much so as the teachers are. *Seattle High School Chapter No. 200 of the American Federation of Teachers v. Sharples*, 59 Wash. Dec. 279, 293 Pac, 994 (1930).

It seems to be the almost unanimous holding of the authorities that the courts will not interfere with the discretion of school boards or officers in matters which the law has conferred to their judgment, in the absence of any showing that their action is fraudulent or in bad faith, or that it amounts to an abuse of the discretion so conferred upon them; and this is so, although the powers vested in such officials or boards are *quasi* judicial, as well as administrative. 21 Mich. L. R. 820; 7 Minn. L. R. 355, 5 N. Car. L. R. 73; *Christian v. Jones*, 211 Ala. 161, 100 So. 99, 32 A. L. R. 1340 (1924).

This general rule has been applied, *inter alia*, to the following acts: adoption of text books, *Tanner v. Nelson*, 25 Utah. 226, 70 Pac. 984 (1902) allowance of supervised dancing in a school building, *Brooks v. Elder*, 108 Neb. 761, 189 N. W 284 (1922) closing and abandoning of schools, *Rhodes v. Dunbar* 57 Penn. 274, 98 Am. Dec. 221 (1868) creation and maintenance of school districts, *Baker v. Davis* (Tex. Civ. App.) 227 S. W 534 (1921) division of township into school districts, *Pickler v. Davie County Board of Education*, 149 N. Car. 221, 62 S. E. 902 (1908) forbidding attending moving picture shows, *Mangum v. Keith*, 174 Ga. 603, 95 S. E. 1 (1918) granting of a teacher's certificate, regular or provisional, *Clay v. Cedar Falls Independent School District*, 187 Ia. 89, 174 N. W 47 (1919) letting of contracts for buildings or supplies, *Baltimore v. Weatherby*, 52 Md. 442 (1879) location of a school or of a school building, *Tenn. Reams v. McMinnville*, 153 Tenn. 408, 284 S. W 382 (1926) trial and dismissal of teachers, *Young v. Dudney* (Tex. Civ. App.), 141 S. W 116 (1911) designation of separate schools for white and colored children, *Moore v. Porterfield*, 125 Okl. 217, 257 Pac. 307 (1927) marriage as a ground for non-appointment or dismissal of a teacher, *note*, L. R. A. 1916C 795, freedom from affiliation with labor unions a condition of employment, *Frederick v. Owens*, 35 Ohio C. C. Repts. 538 (1915).

However, a few courts have held that the discretionary power can be exercised in an unlimited and absolute manner, and the court cannot review the action of the board nor question its propriety. *People ex rel. Fursman v. City of Chicago*, 278 Ill. 318, 116 N. E. 158, L. R. A. 1917E, 1069 (1917) *Security National Bank of Mason City v. Bagley*, 202 Ia. 701, 210 N. W 947, 49 A. L. R. 705 (1926), *Baird v. School District No. 25*, —— Wyo. —— 287 Pac. 308 (1930) *Zimmerman v. Board of Education of Buncombe County*, 199 N. Car. 259, 154 S. E. 397 (1930). The grounds upon which these cases base their holdings are, first, that the board is respon-

sible for its action only to the people of the municipality who elect them; and second, the government of our schools may be impaired and the position of the school board rendered precarious, if such finding of the board may be reviewed and revised by a court or jury

The Washington Supreme Court has heretofore followed the general rule in the propriety of judicial interference where the action of the administrative board is so arbitrary, fraudulent, or grossly unjust as to constitute an abuse of discretion. *Columbia River Timber & Logging Co. v. Commissioners of Diking District No. 2*, 108 Wash. 148, 195 Pac. 134 (1919) *In re Drainage District No. 10*, 119 Wash. 8, 204 Pac. 1050 (1922) *School District No. 88 v. Morgan*, 147 Wash. 321, 266 Pac. 150 (1928) *State ex rel. Lukens v. Spokane School District No. 81*, 147 Wash. 467, 266 Pac. 189 (1928) *State ex rel. Hartley v. Clausen*, 150 Wash. 20, 272 Pac. (1928) *In re Chelan Electric Co.*, 152 Wash. 412, 278 Pac. 171, 65 A. L. R. 1520 (1929) The action is not arbitrary or capricious when exercised honestly and upon due consideration where there is room for two opinions, however much it may be believed that an erroneous conclusion was reached. *Sweitzer v. Industrial Insurance Commission*, 116 Wash. 398, 199 Pac. 724 (1921)

In the principal case, the majority opinion cites and relies upon the case of *Frederick v. Owens, supra*, and the case of *People ex rel. Fursman v. Chicago, supra*, the only two other decisions dealing with the same state of facts, decided in this country up to the date of the instant case. While the Chicago case admittedly supports the broad rule laid down in the majority opinion, in the Owens case we find this specific statement: "The question here is—there being no showing that any teacher appointed is incompetent to perform the duties of the position, can the superintendent and the board of education be held to have *abused their discretion* in making selections, because they selected the ones they did, instead of others who might have been chosen?" It will be noted that the principal case did not consider the question as to whether the resolution passed by the board was arbitrary and an abuse of discretion, but laid down the broad and unqualified rule that the courts will not interfere with the discretion of the board in the future employment of teachers. Thus it would seem that a classification according to height, weight, color of hair or eyes, though clearly arbitrary would be upheld. While it is true that the point decided, namely that a board of education may make freedom from affiliation with labor unions a condition of employment, is sustained by the cases in point, this is due to the fact that conceivably the membership of teachers in a federation or local union might produce some slight degree of insubordination in the schools; at least, it might have some relation to the good of the schools. Farmer and Carter, J.J., specially concurring in *People ex rel. Fursman v. Chicago, supra*. The decision in the instant case, therefore, adopts the minority line of reasoning and departs from the heretofore well established rule in this state, though the actual holding seems to be correct. P R. G.

TORT—DEATH—PROXIMATE CAUSE—SUICIDE AS AFFECTING THE SAME. Deceased was injured in an automobile collision with the servant of the defendant. As a result of head injuries he became insane, and while insane inflicted a mortal wound upon himself, from which wound he died. His personal representative brings suit for damages against the person causing the death, under a statute allowing such action. *Held*: The suicide was such an intervening cause as to prevent the collision from being the proximate cause of the death. *Arsnow v. Red Top Cab Co.*, 59 Wash. Dec. 25, 292 Pac. 436 (1930)

In basing the decision on proximate cause the Washington court was applying the test relied upon in this jurisdiction whenever subsequent injuries are traceable to an original wrongful act. *Hoseth v. Preston Mill Co.*, 49 Wash. 682, 96 Pac. 423 (1908) (the plaintiff was permitted damages for a fracture resulting from a fall due to a broken leg resulting from

the wrongful act of the defendant). In applying this test the court is in line with the American decisions on the point. *Larson v. Boston Elevated Ry. Co.*, 212 Mass. 262, 98 N. E. 1048 (1912), (accident held to be the proximate cause of tuberculosis induced by the injury). See also *Oehler v. Bamberger*, 4 N. J. Misc. 1003, 135 Atl. 71 (1926). The court follows *Daniels v. N. Y. N. H. and H. R. Co.*, 183 Mass. 393, 67 N. E. 424, 62 L. R. A. 751 (1903) *Scheffer v. Rd. Co.*, 105 U. S. 249 (1881) *Salsedo v. Palmer et al.*, 778 Fed. 92 (1921), which consider suicide due to insanity resulting from an injury and which uniformly deny recovery, unless the suicide is accomplished in a moment of frenzy or delirium induced by the injury.

It is asserted in Green, Rationale of Proximate Cause (1927) that attempts to translate such problems as that presented in the instant case into a problem of causation instead of a problem of the scope of the protection afforded by the rule invoked by the plaintiff have greatly obscured the problems. Thus, in *Franklin v. Houston Electric Co.*, 286 S. W 578 (Tex. Civ. App. 1926), the plaintiff alleged that the defendant failed to stop its street car on signal and because of the dust stirred up, an automobile following the car struck the plaintiff. The court held that the automobile was an intervening cause and there was no causal connection between the act of the defendant and the injury. In fact there was close causal connection. The real problem was whether the rule invoked by the plaintiff, i. e., the statute requiring the car to stop, afforded protection against this sort of hazard. The same problem of translating the determination of the scope of the protection afforded the plaintiff into a question of whether or not the negligence of the defendant was in law the cause of the injury, arises also in suits based on common law rules. Thus, in *Central of Ga. Rwy. v. Price*, 106 Ga. 176, 32 S. E. 77 (1898) the plaintiff was carried past her destination and forced to spend the night in a hotel, where she was burned by a lamp. The injuries were held not to be the proximate result of the negligence of the defendant. Clearly, the negligence was a cause, but the interest of being carried to her destination was not given absolute protection. And in the suicide cases the problem has invariably been translated into a problem of causation instead of one of duty. The meaning of the decisions is simply that suicide is not within the protection afforded by the rule of law relied upon by the plaintiff; suicide as a result of a deranged mental condition is not a risk which the defendant incurs by negligently hurting another.

In any tort action one of the chief problems is, did the plaintiff have an interest which was protected by a rule of law which the conduct of the defendant violated? *Green, supra* 3 If the scope of protection given to the plaintiff is first determined, it may not be necessary to consider whether the wrongful act caused the injury. In many cases, as in the instant one, there is a question of causation, but it is a question for experts to determine as to whether the accident caused the insanity and the insanity was the reason for the suicide. After this determination there is nothing for the court to consider as regards causation. The court should only consider whether there is protection against an act which must work through such a chain of causation to cause injury. *Lang v. N. Y. Central R. R.*, 255 U. S. 455, 41 S. Ct. 381, 65 L. E. 729 (1921). At common law the scope of protection is usually one of policy, while under statutes it is of legislative intent. Assuming that there may be two approaches to such problems as the instant one, the difference being mainly one of terminology, the result reached in many cases will not be different under either approach. The decision reached in the instant case is probably correct, whether decided on the ground that the negligence was not a cause or on the ground that the act of the defendant did not incur liability for the suicide of the plaintiff. But where the wrongful act is intentional it is doubtful whether the boundaries of the legal rule invoked have been correctly marked out. Probably the scope of protection should be enlarged when the injury is intentionally, rather than negligently, inflicted. *Waas v. Ashland Day and Night Bank*, 201 Ky. 469, 257 S. W 29, 35 A. L. R. 1441 (1922). However,

the main advantage in the approach advocated is that such problems as presented by cases in this note will be decided as a matter of law, rather than being submitted to juries under instructions from the court. In their decisions courts tend to work out rules with precisely defined limits. Compared to these judicial patterns, the various decisions of juries on questions of fact are uncertain and comparatively inadequate. If the scope of protection afforded by the rule invoked by the plaintiff is considered before arriving at the problem of whether the alleged wrongful act was a cause of the injury courts will be deciding problems as they logically arise and will attain a desirable certainty in limiting the extent to which a plaintiff may go in seeking protection. *Palsgraf v. Long Island R. Co.*, 248 N. Y. 339, 162 N. E. 99 (1928) D. W

VENDOR AND PURCHASER—RIGHT OF TRUSTEE IN BANKRUPTCY TO RECOVER REAL PROPERTY FROM PURCHASER UNDER EXECUTORY CONTRACT. A trustee in bankruptcy of the vendor under an executory contract for the sale of real property sought to enforce the title, which he claimed he had from the vendor by virtue of the bankruptcy proceedings, against the claims of an assignee of the vendor and of the vendees in possession. The court, denying the trustee recovery held that the vendee under such a contract of purchase has a right enforceable against the land which is subject to the contract; a right which cannot be taken away by either grantor in the contract or by anyone with notice of the contract, claiming under, by or through the grantor, unless for a breach of the conditions of the contract by the grantee. *Culmback v. Stevens*, 58 Wash. Dec. 484, 291 Pac. 705 (1930)

The decision indicates a continued recognition by this court of the rights of a vendee under an executory contract for the sale of real estate, in spite of the broad statements to the contrary in *Ashford v. Reese*, 132 Wash. 649, 233 Pac. 29 (1925). That decision was qualified by the statement in *Pratt v. Rhodes*, 142 Wash. 411, 253 Pac. 640 (1929) that it was not meant in the *Ashford Case* that an executory contract for the sale of land vests no rights in the vendee, nor was it held that the contract is a nullity and if equity justice, and good conscience require it, specific performance will be decreed. Again, in *Oliver v. McEachern*, 149 Wash. 433, 271 Pac. 93 (1928) the court said that although under *Ashford v. Reese*, the vendee had no interest, it had not said that he had no rights, and, therefore, a vendee in possession was held to have the right of possession and a right to acquire title in accordance with the terms of the contract, which rights, though not amounting to title, are substantial. And in the later case of *State ex rel. Oatey Orchard Co. v. Superior Court for Chelan Co. et al.*, 154 Wash. 10, 280 Pac. 350 (1929) the vendee in possession of lands under an executory forfeitable contract of sale was held to have such rights as come within the designation of "real property" for the purposes of attachment. These cases have, therefore, received due comment in this publication. 1 WASH. LAW REV. 9 (1925) 2 WASH. LAW REV. 1 (1926) 2 WASH. LAW REV. 205 (1927) 3 WASH. LAW REV. 1 (1928) 3 WASH. LAW REV. 80 (1928) 4 WASH. LAW REV. 85 1929) 5 WASH. LAW REV. 79 (1930)

Further, the holding of the *Culmback Case*, *supra*, recognizes the doctrine of equitable conversion, and the nature of the vendor's title is set forth. The court cites with approval *Church v. Smith*, 39 Wis. 492 (1876) to the effect that "the vendor in a land contract, who assigns that contract or right to payments thereunder to another, holds legal title in the land in trust for the two parties under that contract, and such trust persists and accompanies the legal title wherever it may go, unless, indeed, into hands of a bona fide purchaser for value. Of course, when the payment is completed the trust is solely and exclusively for the purchaser, who thereby gains complete equitable title to the land." And, as to the nature of the vendors' title, it is declared that, after the execution of the contract, there remains in them only a naked legal title to the property in trust, first for the assignee of the contract, and second, for the vendees in case they perform.

This is in accord with the established doctrine of equitable conversion,

but it would seem can only be accepted in Washington by setting aside the broad language of *Ashford v. Reese, supra,* to the effect that the vendee under such a contract has no right, title or interest. That the court has finally done so is indicated by its statement that "whatever this court may have said heretofore on the question of the effect of such contracts in *Schaeffer v. Gregory Co.,* 112 Wash. 408, 192 Pac. 968; *Ashford v. Reese,* 132 Wash. 629, 233 Pac. 29· or *In re Kuhn's Estate,* 132 Wash. 678, 233 Pac. 293, we now say, that it creates a right enforceable against the land which is the subject of the contract." The full import of these words can be seen when read with the rest of the opinion, and with those intermediate decisions mentioned *supra,* the tendency of which has been to recognize one by one the vendee's rights under an executory contract for the sale of realty. With the possible exception of risk of loss cases, the instant recognition of the vendee's rights in the land, concurred in by the full court, would seem to conclude the question so far as the law of Washington is concerned.

H. R. M.