Washington Law Review

Volume 13 | Issue 4

11-1-1938

Life Insurance Proceeds as Community Property

Russell V. Hokanson

tion states, ". . . subscribed *and* sworn to or affirmed . . ."

Thus, in Minnesota, the deposition, for purposes of the perjury statutes, is complete when it is subscribed, *or* when it is sworn to, *or* when it is affirmed, in each case with the requisite intent. In Washington, it is complete only when subscribed *and* sworn to, or when it is subscribed *and* affirmed, with the necessary intent.

Upon reflection, the instant case is seen to be an excellent illustration of the inferiority of Remington's Revised Statutes Section 2356, to statutes of the California or the Minnesota types.

The 1939 session of the legislature should amend Section 2356 as suggested by this comment in order to remedy the present defect.

JOHN N. RUPP.

LIFE INSURANCE PROCEEDS AS COMMUNITY PROPERTY

The past year has witnessed the closing by judicial decision of two important gaps in the Washington community property law, both relating to life insurance proceeds. The first case in point of time, *Occidental Life Insurance Company v. Powers,*[1] announced the rule that where the husband changes the beneficiary of a life insurance policy which is the property of the community because issued on the life of the husband during marriage and paid for with community funds, without the consent or knowledge of the wife, the former beneficiary, the attempted gift by the husband is ineffective and the wife may recover the entire proceeds.

The second case, *In re Coffey's Estate,*[2] solves a problem not touched upon in the *Powers* case, namely the status of a policy issued before marirage to a husband, the premiums for which are paid partly by the separate funds of the husband and partly by community funds. There the policy was held to be community property in the proportion that premiums were paid by community funds. The wife's one-half share of the community proportion so determined was held not subject to the state inheritance tax.

Most of the community property jurisdictions are in accord with respect to two other common insurance situations. By statute in Washington[3] and by judicial decision in other community property states,[4] if the wife is the designated beneficiary of any life insurance policy, the proceeds go to her separate estate, not to the community estate. Conversely, it is the settled rule of these jurisdictions that the proceeds are community property where the hus-

[1]192 Wash. 475, 74 P. (2d) 27 (1937).

[2]95 Wash. Dec. 315, 81 P. (2d) 283 (1938).

[3]REM. REV. STAT. § 7230-1.

[4]Succession of Bofenschen, 29 La. Ann. 711 (1877); Succession of Hearing, 26 La. Ann. 326 (1874); Succession of Clark, 27 La. Ann. 269 (1875); Davis v. Magnolia Petroleum Co. (Tex. Civ. App.), 105 S. W. (2d) 695 (1937); Johnson v. Cole (Tex. Civ. App.), 258 S. W. 850 (1924); In re Dobbel's Estate 104 Cal. 432, 38 Pac. 87 (1894); In re Castagnola's Estate, 68 Cal. App. 732, 230 Pac. 188 (1924); In re Lissner's Estate, — Cal. —, 81 P. (2d) 448 (1938).

band takes out a policy on his life during marriage and pays premiums out of community funds, naming his estate as beneficiary.[5] This is to prevent the husband from building up his separate estate to the disadvantage of the community.

There is, however, no such uniformity in the solution of the life insurance problems involved in the above cases.[6] In the variety of situations which may be presented, two separate problems must be distinguished. One is the method of determining the status of the policy, that is, whether it is a community asset or part of the husband's separate estate. The other is the power of the husband to divest the wife of whatever interest she may have in the policy and its proceeds by changing the beneficiary. The lack of agreement among the jurisdictions over these questions is a result of variations among the states in the respective rights of the husband and wife in the community property and in the concepts of the nature of life insurance contracts.

I. Status of the Policy—How Determined

The question of the status of the policy may arise where it is issued to the husband before marriage and subsequent premiums are paid with community funds. In such cases the problem is whether ownership of the policy is fixed at the date of issue, whether a shifting ownership depending on the source of premium payments results from the nature of the contract, or whether interests in the policy should be measured alone by the relative amounts contributed toward premium payments. Again it may arise when the community is dissolved by divorce. Here the wife's interest might be terminated or retained, subject in either case to adjustment according to premiums paid or not paid out of community funds.

In Texas, the husband or wife, when named as beneficiary, acquires the whole of the proceeds of a policy on the life of either, not as community property, but as payee of the policy. The avails of the policy become property and are "acquired" only upon the death of the insured in the lifetime of the payee, and as it cannot become the property of the husband or the wife during the lifetime of both, it cannot be considered community property.[7] This solution eliminates the problems normally created by acquisition before marriage and by divorce, since the proceeds will not derive as community property in any event.

An insurance policy in Louisiana is treated as "property" when "acquired" and hence whether it is separate or community property is determined by the marital status of the assured when the

[5]Succession of Buddig, 108 La. 406, 32 So. 361 (1902); Succession of Le Blanc, 142 La. 27, 76 So. 223 (1917); Martin v. Moran, 11 Tex. Civ. App. 509, 32 S. W. 904 (1895); Rowlett v. Mitchell, 52 Tex. Civ. App. 589, 114 S. W. 846, 847, 848 (1908); In re Castagnola's Estate, *supra* note 4; In re Brown's Estate, 124 Wash. 273, 214 Pac. 10 (1923).

[6]See 114 A. L. R. 545 for a collection of cases on the application of community property system to problems arising in connection with life insurance policies.

[7]Martin v. McAllister, 94 Tex. 567, 63 S. W. 624, 56 L. R. A. 585 (1901); Jones v. Jones, (Tex. Civ. App.), 146 S. W. 265, 269 (1912).

policy is issued.[8] Were not this so, said one court, subsequent acts would have retroactive effect.[9] When the application of this rule labels a policy the separate property of the husband, the wife is protected by being allowed to recover from the beneficiary, one-half the amount of community funds paid out as premiums.[9a, 10]

A third approach to this problem is adopted in California.[11] There a policy may partake of both a separate and community character at once, depending on the amounts contributed by the respective estates. That is, although a policy be taken out before marriage, it changes into community property in the proportion that it is paid for with community funds.[12] Thus if the husband had maintained a policy for one year prior to his marriage, and thereafter the community had paid the premiums for two years, the proceeds would fall one-third to the husband's separate estate, and two-thirds to the community estate. In the event a divorce is granted without any disposition of community property, the husband and wife become tenants-in-common of such property.[13] While the wife's interest is not immediately affected by this change in status, it will nevertheless be diminished proportionately by premium payments made thereafter out of the husband's separate funds, since the ratio principle obtains here also.[14]

The status rules of the three foregoing jurisdictions were evolved from factual situations which called for an examination of the doctrine to be applied in the light of its effects upon the rights of the wife, as well as its relationship to the community property theory of the particular jurisdiction. Interestingly enough, the rule now established by the *Coffey* case in Washington, resulted not from a studied effort to protect the wife from an abuse of the husband's power, but from an application of the State Inheritance Tax law to life insurance proceeds. Two months before the decision was rendered in the *Coffey* case, the Supreme Court of the United States in *Lang v. Commissioner of Internal Revenue*,[15] a case arising in Washington, ruled that the proceeds of a policy of life insurance issued to the deceased before marriage, the early premium payments being made from his separate funds and post-nuptial payments from the community funds, were subject to the Federal

[8]Succession of Verneuille, 120 La. 605, 45 So. 520 (1908); Estate of Moseman, 38 La. Ann. 219 (1886); Succession of Le Blanc, *supra* note 5; Berry v. Franklin State Bank & Trust Co., 186 La. 623, 173 So. 126 (1937).

[9]Succession of Verneuille, *supra*.

[9a]Succession of Verneuille, *supra*.

[10]The wife retains a vested interest in one-half of a community policy and its proceeds after a divorce, unless decreed otherwise by the divorce court, subject to the right of the beneficiary to recover the premiums paid separately by the husband subsequent to the divorce. Berry v. Franklin State Bank & Trust Co., *supra* note 8.

[11]These problems have apparently not yet arisen in the remaining community property states.

[12]In re Webb's Estate, Myrick's Probate, 93 Cal. (1875); Modern Woodmen of Am. v. Gray, 113 Cal. App. 729, 299 Pac. 754 (1931); McBride v. McBride, 11 Cal. App. (2d) 521, 54 P. (2d) 480 (1936).

[13]McBride v. McBride, *supra* note 12.

[14]McBride v. McBride, *supra* note 12.

[15]304 U. S. 264, 82 L. Ed. 927 (1938).

Estate Tax law after deduction of one-half the amount represented by premiums paid from community funds. The Treasury Regulations applicable, made only such proportion of the proceeds taxable as the decedent had paid for. Hence under Washington community property law, one-half of the community proportion of the proceeds was paid for by the wife and thus not subject to the tax. With a similar policy involved, the *Coffey* decision cites the *Lang* opinion and adopts the same rule without discussion. Policies issued during marriage were held taxable only to the extent of one-half the proceeds, the decision resting on the wife's ownership of one-half the policy and not as in the *Lang* case, on payment of one-half the premiums. Thus the development of a new rule of community property law in this state is seen to be, if not based upon, at least strongly influenced by, the application of Federal Treasury Regulations to a community property insurance policy.[16]

Another view of such a policy, that of Louisiana, might well have been taken had the Washington court considered the insurance contract in its analogy to other forms of property. An insurance policy is recognized as property in Washington.[17] The separate or community status of property is determined as of the date of its acquisition.[18] Nor does enhancement of value by improvements during coverture affect its separate character.[19] This test has been applied to an insurance policy taken out during coverture.[20] Not so when determining the status of a policy issued before marriage.[21] The unique nature of an insurance contract, comparable in some respects to a chattel being purchased on a conditional sales contract yet possessing intangible qualities not suitable to classification, perhaps justifies the adoption of a double standard. Yet there are rights acquired at the time a policy is issued which logically support the application of the acquisition date test to all insurance policies.[22] The size of premium payments is determined by the age of the applicant. Many benefits such as dividends, the borrowing capacity, the power to default payments for a period without loss of coverage, etc., depend merely on the length of time the policy has been in force. And it can be said that premium

---

[16]In Shields v. Barton, 60 F. (2d) 351 (C. C. A. 7th Circ.) (1932), the court applied the California test to a policy issued in Washington, holding that the premiums paid by the wife out of her separate funds on the policy before her marriage entitled the beneficiary to one-fifth of the proceeds, the remainder being community property, one-half of which the insured could bequeath as by will. However, the Washington court expressly repudiated this decision in the Powers case.

[17]May v. Rudell, 149 Wash. 393, 270 Pac. 1041 (1928); Mass. Mut. Life Ins. Co. v. Bank of Cal., 187 Wash. 565, 60 P. (2d) 675 (1936); Occidental Life Ins. Co. v. Powers, *supra* note 1.

[18]Walker v. Fowler, 155 Wash. 631, 285 Pac. 649 (1930) (and cases cited).

[19]Ball v. Woodburn, 190 Wash. 141. 66 P. (2d) 1138 (1937).

[20]Johnston v. Johnston, 182 Wash. 573, 47 P. (2d) 1048 (1935). Although the status was not put in issue, the court premised its community property conclusion on the well established rule that the separate or community character of property is determined by the date of acquisition.

[21]In re Coffey's Estate, *supra* note 2.

[22]See Catlett, *Status of the Proceeds of Life Insurance Under the Community Property System* (1930) 5 WASH. L. REV. 45.

payments after issuance are only conditions necessary to keep alive existing rights, the failure of which operate as a condition subsequent.[23]

Reliance on the real property analogy might have led to the adoption of the Texas rule. That is, in Washington under the *Ashford v. Reese* doctrine, real property is not acquired until the full purchase price is paid, since no title can pass before that time.[24] Applied to an insurance contract, it would mean that no property right could vest before the death of the insured, and that status would be established at that point regardless of rights acquired when the policy was issued. The effect of such a rule would be undesirable, since it would leave the wife unprotected.

However, the apparently adventitious adoption of the California rule in Washington is not an unhappy one. A comparison of the practical operation of this and the alternative Louisiana rule may be enlightening:

Many of the insurance cases have been litigated only because of the premature death of the husband. Take a typical case. A $10,000 policy is issued on a man's life two years before his marriage. Assume he pays an annual premium of $300, or a total of $600 altogether on the policy from his separate funds. Then after marriage, the community pays the premiums for four years prior to his death. The wife's share in California and in Washington will be based upon the percentage of the proceeds that the community premiums paid for, namely two-thirds of $10,000, or $6,666. Her recovery would be one-half of this amount, or $3,333. In Louisiana under the same facts the wife could recover only one-half the premiums paid by the community funds, in this case $600. The greater protection afforded the wife in California and Washington here will not always result when applying the same formula. In what is perhaps a more unusual case, the effect of the rules may be reversed. Thus if we assume a policy of the same size and premium rate, taken out and maintained by the community for one year before divorce, after which time the husband makes the payments separately for five years prior to his death, the California wife's recovery will be one-half of one-sixth of the proceeds, or approximately $833. But here the Louisiana rule favors the wife and she will recover one-half the total proceeds after the premiums paid from the husband's separate estate have been deducted, or a total of $4,250. A more normal situation than is represented by either of the foregoing illustrations, exists where the insured after a comparatively short period of ante-nuptial payments, marries and pays the policy with community funds for the remaining years of a lifetime of average length. In such cases the total amount of premiums paid out before death will tend to approximate the face value of the policy, and consequently there will be little difference in benefit to the wife whichever rule is followed.

---

[23]It has also been argued in some of the cases that each payment of the premiums is in effect a renewal of the policy. See Succession of Verneuille, *supra* note 8; McBride v. McBride, *supra* note 12.

[24]Kuhn v. Kuhn, 132 Wash. 678, 233 Pac. 293 (1925). The absence of a forfeiture clause in such cases would presumably change the result in accordance with the Washington rule on equitable conversion.

II. The Power of the Husband Over the Policy and Its Proceeds

When the status of the policy has been established, the question of what limits are imposed on the husband's power of disposition by the wife's community interest, if any, arises. If the policy is a community asset, are the incidents of that ownership subject to the same rules that control other community property? It may be stated generally that in the community property states the power to make a gift of insurance is co-extensive with the gift power over chattels. But the results cannot always be ascertained by a simple reference to that analogy.

It is clear that the husband may name whom he chooses without consulting his wife if the policy is his separate property. However, when the policy is community property, the question is whether the husband by changing the beneficiary without the wife's consent or knowledge, thereby makes a gift of the total proceeds, or of his one-half interest, or as in the *Powers* case, the gift is void as to the whole. Again, divorce may affect the respective rights and powers of both husband and wife.

We have seen that insurance proceeds, in Texas, cannot be community property. As a result, a policy may be taken out by the husband during coverture and kept up with community funds for the benefit of anyone he names. The only recourse the wife might have is a suit for her share of the premiums paid out, and these may be recovered only if she can show that there was an intent to defraud her, since in Texas the husband, having the control of the community property, may dispose of it as he pleases, "squander it in riotous living" if he will, as long as there is no intent to defraud the wife.[25] Upon divorce, the wife's insurable interest in her husband is ended, and due to a rule of public policy, she ceases to be even a beneficiary if the policy has named her as such.[26]

Louisiana recognizes the power of the husband to change the beneficiary if the policy reserves this right, notwithstanding a failure to get the wife's consent.[27] But the proceeds of a community policy are deemed community assets and the wife may recover her one-half share although the husband has named another beneficiary.[28] If divorce dissolves the community, the wife may still claim one-half the proceeds despite a change of beneficiary.[29] She has no claim to avails, of course, when the policy is acquired before marriage, but she may recover one-half the premiums paid with community funds.[30]

In California, gifts of community property made by the husband

[25]Jones v. Jones, *supra* note 7.

[26]Whiteselle v. N. W. Mut. Life Ins. Co. (Tex. Com. App.), 221 S. W. 575 (1920).

[27]Berry v. Franklin State Bank & Trust Co., *supra* note 8.

[28]Berry v. Franklin State Bank & Trust Co., *supra* note 8; Succession of Le Blanc, *supra* note 5.

[29]Berry v. Franklin State Bank & Trust Co., *supra* note 8. Her recovery is subject to a deduction of the amount paid out in premiums by the husband after the divorce. This sum is of course deducted from the total proceeds before the one-half community share is computed.

[30]Succession of Verneuille, *supra* note 8.

without the wife's consent are not void, but are voidable as to the wife's one-half and valid as to the husband's one-half.[31] Since this rule is applied to insurance, if the husband has changed the beneficiary of a community-owned policy the wife may recover back one-half the proceeds.[32] This right to one-half is retained even though her interest be changed to that of a tenant-in-common by divorce.[33] However, her interest after divorce is measured by the percentage of the proceeds paid with funds of the community, and she is entitled to one-half of such percentage when the change of beneficiary is made without her consent.

Although there have been no insurance cases as yet on the divorce problem in Washington, the result is indicated by the settled rule in this state that all community property not disposed of by the divorce decree becomes common property.[34] Since there is no rule restricting the power of a tenant-in-common from disposing of his share, the husband should be able to change the beneficiary and confer thereby at least his one-half interest in the proceeds upon the new beneficiary.

Turning to the *Powers* case, we find that Washington has refused to follow Louisiana and California in granting the husband the power to make a gift of his one-half of the insurance. There the policy had been issued during the existence of the community, the wife being the designated beneficiary, and later the husband had changed the beneficiary without the wife's knowledge or consent, naming his aged mother and his private secretary instead. The wife recovered the entire proceeds as against the beneficiaries. Under Washington community property law, the wife has a vested property right in the community property equal with that of her husband. Although the husband has the management and control of the community property, he is only the statutory agent of the community and has no power to make substantial gifts of the community property without the consent of the wife.[35]

On these premises the court found the naming of the new beneficiaries to be a gift *inter vivos* made without the knowledge or consent of the wife, and constituting a fraud upon her rights. Inasmuch as all the premiums were paid out of community funds the gift was wholly void. This conclusion, while not departing from the strict gift doctrine which has developed by judicial construction in Washington, is not without its theoretical difficulties.[36] It

[31] Trimble v. Trimble, 219 Cal. 340, 26 P. (2d) 477 (1933).

[32] New York Life Ins. Co. v. Bank of Italy, 60 Cal. App. 602, 214 Pac. 61 (1923); In re Castagnola's Estate, *supra* note 4, at p. 190, 230 Pac.; Blethen v. Pac. Mut. Life Ins. Co., 198 Cal. 91, 243 Pac. 431 (1926); Dixon Lumber Co. v. Peacock, 217 Cal. 415, 19 P. (2d) 233, 234 (1933); Travelers Ins. Co. of Hartford, Conn. v. Fancher, 219 Cal. 351, 26 P. (2d) 482 (1933); Beemer v. Roher, 137 Cal. App. 293, 30 P. (2d) 547 (1934); McBride v. McBride, *supra* note 12.

[33] McBride v. McBride, *supra* note 12.

[34] Schneider v. Biberger, 76 Wash. 504, 136 Pac. 701, 6 L. R. A. 1056 (1913); Ambrose v. Moore, 46 Wash. 463, 90 Pac. 588, 11 L. R. A. (N.S.) 103 (1907); Harvey v. Pocock, 92 Wash. 625, 159 Pac. 771 (1916).

[35] Marston v. Rue, 92 Wash. 129, 159 Pac. 111 (1916); Schramm v. Steele, 97 Wash. 309, 166 Pac. 634 (1917); Parker v. Parker, 121 Wash. 24, 207 Pac. 1062 (1922); Nimey v. Nimey, 182 Wash. 194, 45 P. (2d) 949 (1935).

[36] Among the community property jurisdictions Washington has long

may be doubted whether the rules governing the gift of chattels are applicable to insurance. If a fraud was perpetrated on the rights of the wife, when did it take place? Presumably it occurred at the time the beneficiary was changed. Yet would it be said that all premiums paid subsequent to that time were recoverable from the insurance company upon discovery of the change? The statutory authority given to the husband comprehends the power to invest the community funds and as between the insurance company and the community there should be ample consideration to obviate such an extension of the wife's rights. It must be remembered that the right to the proceeds is not the only benefit of an insurance policy; other valuable assets, including the cash surrender value, the loan value, the right to assign and the dividend benefits, constitute incidents unimpaired by a change in beneficiary. If the husband was within his rights in making the payments, the fraud must have occurred at the time the benefits of the policy vested, viz., upon the death of the husband. Moreover, this conclusion is fortified by the well settled rule that the right of the beneficiary is never vested where the right to change is reserved in the policy.[37] Such a right is no more than an expectancy. It follows that the unauthorized gift to the mother and the secretary was not completed before the death of the insured. On this assumption the wife should be entitled to no more than her one-half share, since she may be limited to this amount by testamentary disposition.[38] The denial of the right to dispose of property by insurance

---

been recognized as according the most complete interest to the wife. Confronted with the California cases on similar facts, the court justified its departure by distinguishing the wife's rights in the two jurisdictions. In Washington the wife's right in the community property is vested, said the court, while in California she has a mere expectancy or "a secured right to a moiety until dissolution of the community". However accurate this may have been at one time, it may be urged that such a descriptive difference today will not alone uphold the distinction drawn. Since 1927 the wife in California is said to have a "vested right" in the community property. U. S. v. Malcom, 282 U. S. 792 (1931), (division of community income for tax purposes allowed); Britton v. Hammell, 4 Cal. (2d) 690, 52 P. (2d) 221 (1935); see also Kirkwood, *Ownership of Community Property in California*, (1933) 7 So. CALIF. L. REV. 1; Hooker, *Nature of Wife's Interest in Community Property in California* (1927) 15 CALIF. L. REV. 302. The right of the wife is similarly described in Texas and Louisiana. Texas v. Hopkins, 282 U. S. 122 (1930); Bender v. Pfaff, 282 U. S. 127 (1930) (division of community income for tax purposes allowed).

[37]Schade v. Western Union Life Ins. Co., 125 Wash. 200, 215 Pac. 521 (1923); Buckner v. Ridgely Protective Assn., 131 Wash. 174, 229 Pac. 313 (1924); Seattle Assn. of Credit Men v. Bank of California, 177 Wash. 130, 30 P. (2d) 972 (1934); Jory v. Supreme Council, 105 Cal. 20, 38 Pac. 524 (1894); Hoeft v. Supreme Lodge, Knights of Honor, 113 Cal. 91, 45 Pac. 185 (1896); Blethen v. Pac. Mut., *supra* note 32. See also 12 WASH. L. REV. 147.

[38]Under REM. REV. STAT. § 1342, governing the descent of community property, one-half of the community property is subject to "testamentary disposition". In Shields v. Barton, *supra* note 16, the federal court interpreted this to include insurance bequests, pointing out that the use of the generic term by the legislature was significant and that the similarity between bequest by will and by insurance compels this construction. The Powers case rejects this interpretation and limits "testamentary disposition" to disposition by will.

when it may be done by will seems without justification. This hardship may become more real than it is apparent when one considers that frequently an estate may not be sufficiently large to warrant the costs of probate, an expense which may be largely avoided by the insurance device.[39]

The *Powers* case leaves in its wake many problems as yet unanswered. In the future, the insurance companies will no doubt feel compelled to obtain the written consent of the wife in order to protect themselves whenever a husband seeks to change the beneficiary of a policy on his life.[40] There remain, however, those policies in which a change of beneficiary was made before the precautions now required by the *Powers* decision were deemed necessary. May the insurance company rely on the apparent authority of the husband in such cases, or must it interplead the wife.[41] If the company may not so rely, an additional burden is imposed upon it, *i. e.*, the investigation of the marital status, past and present, of the insured, in order to determine the necessary parties to the interpleader action.

Also the question of whether the wife took as beneficiary or heir was not decided by the *Powers* case, since there the wife took all the community estate under his will. This question must be answered nevertheless, in any case where the insured dies intestate leaving children, or where he attempts to change the policy in favor of his heirs, *e. g.*, by changing it from his wife to his estate. Under a policy in which the estate of the insured is the designated beneficiary, would a subsequent change to some third person without the wife's consent be void even though she could receive no more than her one-half share[42] by the original designation? Moreover, if the wife as beneficiary dies first, do her heirs succeed to her power of avoiding any unauthorized change in beneficiary by the husband?

Nor does the *Powers* case expressly define or limit the extent of the wife's rights with respect to the incidents of the policy during the life of the husband. If the husband is prohibited from giving

[39]In the principal case the dissenting opinion differed on the general power of the husband to make a gift, not on the theoretical grounds urged herein. Admittedly the husband may assign a policy for a community debt or change the beneficiary without the wife's consent, for an adequate consideration running to the community. Seattle Assn. of Credit Men v. Bank of California, *supra* note 37; Johnston v. Johnston, *supra* note 20. The dissent failed to see anything inimical to the interest of the community in a provision for a dependent mother or a loyal employe where the wife was adequately provided for by other insurance and under the will. Apparently under the majority view, protection of the community reputation or advancement of its business interests by acknowledgment of its moral obligations will not suffice as consideration for a gift by the husband.

[40]As a matter of practice, the insurance companies will no doubt also require the wife's consent to a policy loan or a surrender of the policy for cash.

[41]See Blethen v. Pac. Mutual Life Ins. Co., *supra* note 32, where the insurance company having fulfilled its contract with the insured before notice of adverse claim by the wife, was held not liable to the wife.

[42]*E. g.*, where there are children surviving and the husband dies intestate, or where the husband has devised his half of the community estate to other persons.

away his one-half by a change of beneficiary, may he obtain the cash surrender value, and if so, bequeath one-half by will? May he borrow on the policy without the wife's consent and if so, are his rights to deal with such money equally circumscribed by the doctrine of the *Powers* case? If the husband threatens to lapse the policy upon the wife's refusal to consent to a change in beneficiary, may she compel him to keep up the community premium payments and thereby avoid a loss on her insurance investment?

How far does the rule of this decision apply to a mixed policy such as the one in the *Coffey* case, if at all? That is, would a change of beneficiary by the husband be effective to the extent of his separate ownership, to the extent of his combined separate and community ownership, valid as to all but voidable by the wife as to her share, or void as to all? The author makes no attempt to answer these and other questions which now perplex insurance companies and policyholders alike, and which remain to be solved by the court or the legislature. Life insurance as a form of investment might now seem somewhat less attractive to the husband who may devise his one-half share of other community property by will, and who, as manager of the community, may control other investments in any manner not inimical to the community.

RUSSELL V. HOKANSON.