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Insurance

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to inscribed chattels. The general policy here seems to be that the trial court is allowed a broad discretion in questions of whether secondary evidence concerning an inscribed chattel is to be admissible as opposed to a requirement of introduction of the inscribed chattel itself.[6] It has been suggested by at least one text writer than the trial court also be given this broad discretion in factual situations illustrating the second problem area, *e.g.*, where a party seeks to introduce a subsequent recording where the original recording has been lost or destroyed.[7] One court has held directly contrary to such a suggestion.[8] It would seem that an analogy might well be made from the rules applied in the case of an inscribed chattel, to the situation in the *Lyskoski* case.

The *Lyskoski* case indicates an extension by the Washington court of the rule regarding photographs to the situation of original and transcribed recordings. However, as pointed out above, this indicated extension does not constitute a holding on the facts present in the case. Though this is true, the result reached by the court is altogether reasonable. It is suggested however, that the two tests set out in the cases of problem area two be met before such a result is reached. That is:

1. It should appear that the "secondary" evidence is clearly equal in probative value to the primary proof, and
2. It should appear that fraud or imposition is not to be reasonably feared.

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INSURANCE

Insurance—Effect of a Divorce Decree. In *United Benefit Life Insurance Co. v. Price*[1] the Washington court kept alive one more aspect of the unfortunate doctrine handed down originally in *Occidental Life Insurance Co. v. Powers.*[2] The facts in the case were these:[3]

[6] See, *e.g.*, State v. Lewark, 106 Kan. 184, 186 Pac. 1002 (1920); Mattson v. Minn. & N.W. R. Co., 98 Minn. 296, 108 N.W. 517 (1906).
[7] MCCORMICK ON EVIDENCE, p. 412, n.5 (1954 ed.).
[8] People v. King, 101 Cal. App. 2d 500, 225 P.2d 950 (1950). See criticism of this case in 64 HARV. L. REV. 1369.

[1] 46 Wn.2d 587, 283 P.2d 119 (1955).
[2] 192 Wash. 475, 74 P.2d 27 (1937). The errors inherent in this doctrine have not gone unnoticed by members of the Washington court. In Aetna Life Insurance Co. v. Brock, 41 Wn.2d 369, 249 P.2d 383 (1952), an eight man court was evenly divided on the question of overruling it completely. See also the dissenting opinion of Mallery, J., in Small v. Bartyzel, 27 Wn.2d 176, 177 P.2d 391 (1947).

the wife was beneficiary of the policy in question on the life of the husband, which was conceded to be community property,[4] having been taken out during marriage; it had a provision permitting the insured to change the beneficiary. In contemplation of divorce, the parties entered into a property settlement agreement, purporting to settle all their property rights. The settlement, *inter alia*, awarded to the husband "(a) All insurance policies on the defendant's [husband's] life," and "(b) All other property . . . free of any claims of the plaintiff [wife] thereto." The divorce decree approved the property settlement, and the court copied its language in the decree. The husband kept the policy in his possession. Although there was some evidence that he had intended to change the beneficiary from his former wife to his fiancee, he had not done so at the time of his death, five months and twenty days after the decree had been rendered.

Both the insured's former wife, the named beneficiary, and his administrator claimed the proceeds; the insurance company filed an action of interpleader. The court based its decision, in favor of the administrator, on the finality of the divorce decree's disposition of the couple's property, saying that, as the statute[5] requires that all property of the parties be disposed of upon divorce, the superior court must have included the proceeds of the policy in the decree. The wife was "divested of any interest she might have had as the beneficiary under the insurance policy conceded to be community property and awarded to the husband."[6]

This decision is based upon the approach taken in the *Powers* case which failed to recognize any distinction between the present rights of ownership in a policy of life insurance and the contingent interest of the beneficiary in the proceeds thereof. By that decision, both interests are community property; hence, both interests must be disposed of upon divorce. However, it is generally recognized in most jurisdictions (indeed, even in Washington[7] in cases not involving the community property aspect of insurance) that the interests of the beneficiary, where the insured has the power and right to change the beneficiary,

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[3] As the opinion failed to state any of the facts of the case, they are taken from the Statement of Facts in the Appellant's Brief, with which respondent agreed.

[4] *In re* Brown's Estate, 124 Wash. 273, 214 Pac. 10 (1923); *In re* Coffey's Estate, 195 Wash. 378, 81 P.2d 283 (1938).

[5] RCW 26.08.110.

[6] 46 Wn.2d at 589, 283 P.2d at 121.

[7] Seattle Association of Credit Men v. Bank of California, 177 Wash. 130, 20 P.2d 972 (1934); Schade v. Western Union Life Insurance Co., 125 Wash. 200, 215 Pac. 521 (1923).

is incapable of present ownership, being a mere expectancy;[8] no rights vest until the death of the insured.[9] It is also recognized that the death of the husband terminates the marital community. Hence, at the time the rights of the beneficiary vest, the community is no more, and the proceeds, if so taken, can not be community property.

In most states the insured is the present owner of such a policy: he has the corresponding rights, depending upon the terms of the various policies, to surrender it for its cash value, to exchange it for a paid-up policy, to borrow on it, to change the beneficiary, to control the method of payment to the beneficiary, to receive all dividends earned, to change it into an endowment policy, etc.[10] None of these rights are held by the beneficiary, who is not a party to the contract and is not the owner thereof.[11]

It does not follow that because a state is under the community property system the nature of a life insurance policy is different from that in other states. The two distinct interests remain, with the qualification that the wife shares with the husband the rights of present ownership,[12] whether or not she is the designated beneficiary of the proceeds.[13] Once the insured dies, all rights of present ownership in the policy cease; all that remains is the right, now vested, of the beneficiary to take the proceeds under the insurance contract. The proper analysis, where the wife is designated as beneficiary, is that the husband, upon death, has made a gift to the wife of his half of the proceeds, just as in any other insurance case.[14] If the wife is the designated beneficiary, she takes the proceeds into her separate estate. This is effected in Washington by statute,[15] but, indeed, would logically follow without the benefits of such a statute, as it has in other community property states,[16] because there is no community which exists when this right vests.

At the same time, it should be recognized that a substantial com-

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[8] Merchants' National Bank v. Hubbard, 220 Ala. 372, 125 So. 335 (1929); Jacoby v. Jacoby, 69 S.D. 432, 11 N.W.2d 135 (1943).

[9] Jorgenson v. Deviney, 57 N.D. 63, 222 N.W. 464 (1931); Baird v. Wainwright, ——Okla.——, 260 P.2d 1060 (1953).

[10] Mutual Benefit Life Insurance Co. v. Clark, 81 Cal. App. 546, 254 Pac. 306 (1927).

[11] Simmons v. Miller, 171 Cal. 23, 151 Pac. 545 (1915).

[12] All community property, both real and personal, is owned by both spouses equally. Bortle v. Osborne, 155 Wash. 585, 285 Pac. 425 (1930).

[13] *Cf. In re* Towey's Estate, 22 Wn.2d 212, 155 P.2d 273 (1945).

[14] *In re* Lissner, 27 Cal. App.2d 570, 81 P.2d 448 (1938); Travelers'Insurance Co. v. Francher, 219 Cal. 351, 26 P.2d 482 (1933).

[15] RCW 48.18.410. *Cf. In re* Killien's Estate, 178 Wash. 335, 35 P.2d 71 (1934).

[16] *Cf. In re* Dobbel's Estate, 104 Cal. 432, 38 Pac. 87 (1894); Johnson v. Cole, 258 S.W. 850 (Tex. Civ. App. 1924).

munity investment is often made in life insurance on the life of the husband, and the wife's interests should be afforded some protection. This may be accomplished without stretching the concept of property as the Washington court has done. The owner of a policy, as a normal incident of ownership, has the control of its disposition. Though the husband is nominally full owner of the policy, under the Washington property system the wife is the owner, to the same degree as her husband, of one-half of the policy, and controls the disposition of that half. The husband can not give away all the proceeds by changing the beneficiary without the wife's consent, because he can not dispose of that which is not his to give away. Any change of beneficiary by him should be effective, but only as to his half. This, in effect, is the result of the California decisions.[17]

If this premise is correct, the holding in the *Price* case is a *non-sequitur*. A divorce decree which gives to the husband " all insurance policies" on his life can not divest the wife of her interest in the proceeds, because it is not a property right; there is nothing of which she may be divested, except her share in the present ownership and her present right to demand protection for her half of the fruits of the community investment by control of its disposition.[18]

For the proposition that the right of the beneficiary is not property there is ample authority.[19] "In order to constitute a vested interest, it is necessary that there be 'an immediate fixed right of either present or future enjoyment,' and a mere expectancy would not suffice. And when the power to change the beneficiary is retained by the insured, the interest of the beneficiary can not be considered either to be vested *or to be a property right*, at least until the death of the insured."[20]

It is submitted that when a divorce decree sets over to the husband the policy, it merely makes him full owner. The wife gives up her

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[17] Bazzell v. Endriss, 41 Cal. App.2d 463, 107 P.2d 49 (1940); McBride v. McBride, 11 Cal. App. 2d 521, 54 P.2d 480 (1936); North West Life Insurance Co. v. Bank of Italy, 60 Cal. App. 602, 214 Pac. 61 (1923).

[18] *See* Jenkins v. Jenkins, 112 Cal. App. 402, 297 Pac. 56, 59 (1931): "If we concede that Hilda Jenkins, the plaintiff, lost any and all community right that she may have had in the proceeds of the policy by reason of the decree in divorce, it means nothing more than that her right as a partner in the community to demand a proportionate share of the proceeds of the policy, regardless of who might be beneficiary, was lost."

[19] Where it was contended that the divorce decree cut off the wife's interest, even though it did not specifically mention the policies, the court replied that as the wife had no vested interest, there was no occasion for the court to make any order connected with it; it was nothing that had to be set off to the wife; it belonged to the husband and he had the power of disposition. Thromp v. National Reserve Life Insurance Co., 143 Kan. 98, 53 P.2d 831 (1936). *Cf.* Jorgenson v. De Viney, 57 N.D. 63, 222 N.W. 464 (1931). See also notes 8 and 9 *supra*.

[20] 2 APPLEMAN, INSURANCE § 901 (1941).

community interest in the policy, including her right to demand protection for one-half of the proceeds for which she has paid, something separate and distinct from that part of the policy providing for payment to her as beneficiary, which has now become a revocable designation as to the whole. The husband may change the beneficiary at will; he may surrender the policy for its cash value, or do any other act in regards to it consistent with ownership. His failure to revoke the beneficiary designation in favor of his former wife should be no diferent in this case than in any other involving the effect of a divorce upon life insurance.[21]

Certainly, it is well-settled that the interests of a wife who has been named beneficiary of a life insurance policy on the life of her husband are not cut off by a divorce.[22] A policy valid at its inception is not avoided by the cessation of the insurable interest in the beneficiary, unless such be the necessary effect of the provisions of the policy itself.[23] This rule is recognized in every American jurisdiction,[24] except Texas.[25] Thus, it requires something more than a divorce to cut off the wife's interest in the policy.

That this is the Washington rule[26] was reaffirmed last year in *North West Mutual Life Insurance Co. v. Perrigo*.[27] In that case the divorce decree made no mention of the community's paid-up policy on the husband's life. This did not mean, however, that the policy was unaffected by the divorce. The statute requires that all property be disposed of upon divorce; this may be done by the court's order in the decree, or by the mere fact of divorce. Community property not included within the terms of the decree is held by the members of the now non-existent community as tenants-in-common.[28] Each as to his or her half is as much the owner of that half as one of them would be of the whole, if the decree specifically awarded the entire policy to either of them, with the qualification that the incidents of tenancy-in-common attach. But this, again, refers only to the rights of present

[21] Grimm v. Grimm, 26 Cal. 2d 173, 157 P.2d 841 (1945).
[22] 2 APPLEMAN, *op cit. supra* note 20, at § 804.
[23] Connecticut Mutual Life Insurance Co. v. Schaefer, 94 U.S. 457 (1876).
[24] Annot., 52 A.L.R. 386 (1928); Annot., 175 A.L.R. 1220 (1948).
[25] In Texas it is held to be against public policy for a divorced wife to be the beneficiary of her former husband's policy. She loses all "insurable interest" in the husband's life, and it becomes a mere wagering contract. Cole v. Browning, 187 S.W.2d 588 (Tex. Civ. App. 1945); Northwest Mutual Life Insurance Co. v. Whiteselle, 188 S.W. 22 (Tex. Civ. App. 1916); Hatch v. Hatch, 35 Tex. Civ. App. 373, 80 S.W. 411 (1904).
[26] Teed v. Brotherhood of American Yeomen, 111 Wash. 367, 190 Pac. 1005 (1920); Humphrey v. Mutual Life Insurance Co., 86 Wash. 672, 151 Pac. 100 (1915).
[27] 147 Wash. Dec. 261, 287 P.2d 334 (1955).
[28] Mende v. Mende, 148 Wash. 432, 269 Pac. 494 (1928).

ownership, including the right to change the beneficiary (as to the half now owned). The interest of the beneficiary of each half remains the same, if the designation is not revoked. Upon the husband's death, if he has failed to so revoke the designation of his former wife, she should take the whole amount, one-half because she is the owner of one-half the policy and has the right to control its disposition; one-half as the beneficiary of her husband's half. This is exactly what the Washington court held in the *Perrigo* case.

It is submitted, that, although public policy does not favor leaving a divorced couple in the position of tenants-in-common as to former community property,[29] where this situation results, the effect is no different than where the court has disposed of the policy by decree. The nature of the present ownership remains the same, whether it is as to one-half of the policy or its entirety; the nature of the beneficiary's interest remains the same.

The fact that the insurance policy was mentioned in the property settlement agreement in the *Price* case does not change this result. As the beneficiary's interest is only an expectancy, it may only be contracted away by means of an equitable assignment of future rights. Courts generally refuse to find such an assignment unless this result is unavoidable, being expressly included in the contract's terms or by necessary implication,[30] the California authorities cited by the Washington court in the *Price* case notwithstanding.[31]

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[29] Thompson v. Thompson, 100 Wash. 671, 171 Pac. 1005 (1918).

[30] Grimm v. Grimm, 26 Cal.2d 173, 157 P.2d 841 (1945). It is interesting to notice that the language of the settlement seemed to cover all possibilities. The Washington court, in distinguishing this case, made much of the fact that the settlement specifically gave the husband the right to change the beneficiary, indicating that it was not intended that this be done by the contract itself. Yet the settlement stated that the wife "transfers, releases and relinquishes to the first party all interest in and to said policy of insurance and the premiums paid thereunder *and the avails thereof*," at p. 844. The case held that a contract "is an equitable assignment or renunciation of an expectancy only if it expressly or by necessary implication so provides. General expressions or clauses are not to be construed as including an assignment of expectancies, and the beneficiary retains his status if it does not clearly appear that in addition to the segregation of the property of the spouses, it was intended to deprive either of the right to take the property under a will or insurance policy.... [Failure of the husband to change the beneficiary] ordinarily indicates that he did not wish to effect a change so that in effect his failure to act amounts to a confirmation of the will or the designation of the wife in the insurance policy," at p. 843.

[31] The California cases cited by the Washington court all recognize the general rule as announced in the Grimm decision, *supra* note 31, but each is distinguishable from both the Grimm and Price cases in the comprehensive wording of the agreements. In Thorp v. Randazzo, 41 Cal. 2d 770, 264 P.2d 38 (1953), the settlement stated that the wife hereby waives "all claims to any *benefits* that she may have at present, *or which may hereafter be derived* from the... life insurance policies...." at p. 39. The same is true in Mehrin v. Mehrin, 99 Cal. App. 2d 596, 222 P.2d 305 (1950), also cited by the Washington court. Sullivan v. Union Oil Co. of California, 16 Cal. 2d 229, 105 P.2d 922 (1940) was distinguished from this factual situation by the court in the Grimm

Nor is this result changed by the additional factor of a merger of the property settlement agreement in a divorce decree,[32] unless the terms thereof specifically or by necessary implication include the interest of the wife as beneficiary.[33] Especially is this so in a community property state where the wife may give up an interest in the policy (the right of present ownership in one-half), retain her interest as beneficiary, and still come within the rather general terms of the decree awarding "all insurance policies" to the husband. But even in non-community property states, where the wife has no such interest to give up, and the words of the decree often become meaningless unless they are taken to mean her interest as beneficiary, the courts have generally held that she retains this interest.[34] Indeed, many opinions have declared that as the beneficiary's interest is not property, nor vested, it can not be the subject of a disposition of the spouses' property,[35] and that "there was no occasion for the court to make any order connected with it."[36]

The closest case on its facts to the *Price* case is an Oklahoma decision[37] in which the decree "set over" to the husband the policy in question; it ordered that "Plaintiff [wife] should have no interest in the policy." The husband died only a month after the decree had been rendered. The court held that the decree vested all present rights in the contract, including the corollary right to change the beneficiary at will, in the husband. It "did not attempt to make any disposition of the proceeds in the event of his death." The opinion raises one further problem as to a divorce court's power to so dispose of the interests of the beneficiary. It declared,

> Clearly the court could not and did not cancel out Mrs. Mabry as beneficiary ... The court did not, as indeed it could not, disturb the contractual rights and obligations as between the insuror and the

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case. The closest case cited by the court is Metropolitan Life Insurance Co. v. Richardson, 27 F.Supp. 791 (W.D. La. 1939), but this case follows Texas law, and Texas is the only state in the Union wherein the wife can never be beneficiary after a divorce; see note 25, *supra*.

[32] Parrish v. Kaska, 204 F.2d 451 (10th Cir. 1953), applying California law. The decree approved the settlement which stated that the wife "hereby sells, assigns, transfers and sets over unto the first party as and for his sole and separate property all her right, title, interest, and estate of, in and to these certain policies of insurance." The court awarded the proceeds to the wife. *Cf.* Andrews v. Andrews, 97 F.2d 485 (8th Cir. 1938).

[33] *Cf.* Mabbitt v. Wilkinson, 220 Ark. 270, 247 S.W.2d 201 (1952).

[34] *See* notes 8 and 9 *supra*.

[35] Mayfield v. Fidelity and Casualty Co., 16 Cal. App. 2d 611, 61 P.2d 83 (1936); Sandrosky v. Prudential Insurance Co. of America, 217 Cal. 578, 20 P.2d 325 (1933); Wolf v. Jebe, 242 Wis. 650, 9 N.W.2d 124 (1943).

[36] Thromp v. National Reserve Life Insurance Co., 143 Kan. 98, 53 P.2d at p. 833 (1929).

[37] Baird v. Wainwright, ——Okla.——, 260 P.2d 1060 (1953).

> insured on the one hand, and the obligations under the policy as between the insured and the beneficiary. Concededly Mrs. Mabry had no interest in the policy during Dr. Mabry's lifetime, but, as the named beneficiary, she had a contingent right that accrued into a vested right upon the death of her former husband.[38]

It is not the writer's contention that a court cannot dispose of the wife's future interest as beneficiary, but only that this was not done in the *Price* case. Clearly, the court could have done what the parties, by executing an equitable assignment, could have done. But this must be accomplished by ordering the wife to assign all her future claims against the company, or ordering the husband to change the beneficiary. Perhaps the most practical solution in many cases would be to order the parties to surrender the policy, and distribute the cash as community property.[39] It is difficult to comprehend how the court can order the insurance company, not a party to the divorce action before it, to pay a person other than the named beneficiary. The company knows little about the marital relations of its policy holders. Even if it did, there is nothing it can do but continue to perform the contract, or to be ready to perform it, according to its terms. Ambiguity, uncertainty, and failure to order the parties to act in regards to the designation of the beneficiary, a common shortcoming in divorce courts' dispositions of policies, can only result in increased trouble and expense to the insurance companies.[40] It is suggested that the courts, in determining *all* rights to insurance policies, specifically order what shall be done, rather than invite additions to the already voluminous records of litigation between claimants.

The *Price* decision makes it rather difficult for a divorced husband to leave his former wife as beneficiary of his insurance policies. It is not infrequent that the affections of spouses for each other may survive divorce; even if this is not the case, the husband may feel an obligation towards his former wife to see that she is fully provided for. Be that as it may, it is not for the court to inquire into the husband's motives. "All [the court] may assume is that he left the policy where he wanted it."[41] This holding actually constitutes a trap for the unwary; if he wanted his former wife to be the beneficiary, it would be natural for him to suppose that his intention would be fulfilled if he merely left

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[38] ——Okla. at——, 260 P.2d at 1063.
[39] Womack v. Womack, 141 Tex. 299, 172 S.W.2d 307 (1943).
[40] Mooney, *Insurance in Divorce Cases: Unsettled Rights Mean Future Litigation*, 41 A.B.A.J. 315 (1955).
[41] Thromp v. National Reserve Life Insurance Co., *supra* note 36, 53 P.2d at p. 836.

the designation unchanged (indeed, that this is so is confirmed by the facts of the principal case). But the court has here held that the mere mention of "insurance" in the decree automatically cuts off the wife's future rights; it eliminates her as beneficiary, regardless of the husband's intentions, even though he now has full power of disposition of the proceeds.

> To adopt such a theory would be to hold that policies of life insurance mean nothing, and by such a holding the usefulness of life insurance would be at an end and this form of insurance would pass. Such a holding would necessarily mean that every insurance company would be restrained from paying out on any life insurance policy until a decree determining heirship had been entered... The designation of beneficiary would mean nothing, and the beneficient objects of life insurance would be thwarted.[42]

IRWIN L. TREIGER

Interpretation of Omnibus Clause in Auto Liability Insurance. *K's* policy provided that "With respect to the insurance policy for bodily injury liability and for property damage liability the unqualified word 'Insured' includes... (1) any person while using an automobile owned by the Named Insured... provided that the actual use is with the permission of the Named Insured." He loaned his car to *J*, a fellow soldier at Fort Lewis, to "go to Tacoma." After a short stay in Tacoma, *J* proceeded to Seattle, and was involved in a collision, injuring plaintiff, seventeen miles north of Tacoma. Plaintiff seeks to recover from the insurer, claiming that *J* was an additional insured under the quoted clause. *Held:* judgment for plaintiff. The court, recognizing a three-way split of authority, found that the deviation from the granted permission was not material. "As regards the breadth to be given the word 'permission', as used in a clause of the character herein considered—*where one asks for and receives permission to use the car for a purpose indicated by him in his request,* it will not be held that any deviation or departure from that purpose so indicated by him annuls the permission and puts him in the position of unlawfully using the car." *Wallin v. Knudtson,* 46 Wn.2d 80, 83, 278 P.2d 344, 346 (1955).

This was the first occasion in which the Washington court has been squarely faced with the problem. Two other cases, *Yurick v. McElroy,* 32 Wn.2d 511, 202 P.2d 464 (1949) and *Cypert v. Roberts* 169 Wash. 33, 13 P.2d 55 (1932), have dealt with the problem, but in neither of them could the driver come within the omnibus clause under any view, and the court deferred judgment on which view to adopt. There are two positions in addition to that taken by the Washington court: the strict conversion rule, that actual permission for the particular use is necessary (greatly modified by findings of "implied permission" in many cases); and the liberal rule, that "permission" means only consent to take or use the car in the first instance. Both the latter rule and the more flexible middle stand taken by the Washington court are consistent with the familiar rule that where clauses in an insurance policy are ambiguous, or susceptible of two interpretations differing in import, that interpretation which will sustain the claim of the policy-holder and cover the loss should be adopted. The Washington rule also seems more consistent with the risks actually contemplated by

[42] Jenkins v. Jenkins, *supra* note 18, 297 Pac. at p. 60.

the insurer (those of accidents while a car is being driven by another than the named insured, whether it is driven for ten blocks or ten miles) and the intentions of the named insured. It does, however, present much more serious problems of application than either of the other rules. Where the line is to be drawn between a material and an immaterial deviation is sure to plague the courts in years to come. See the excellent discussions of the problem in notes, 72 A.L.R. 1375 (1931) and 6 A.L.R. 2d 600 (1949).

NEGOTIABLE INSTRUMENTS

Bills and Notes—Corporate Endorsement. In the case of *Glaser v. Connell*,[1] plaintiff sued on a promissory note claiming to be a holder in due course, alleging that the payee had endorsed the note. The defendant was the maker of the note and denied that the note was validly endorsed and alleged that the payee had secured the note by fraudulent means. The note in question was made payable to the order of the "Holdorf Oyster Corporation." The inscription on the back of the instrument, which the plaintiff alleged constituted the endorsement of the payee, was as follows:

"Pres. Dwight Holdorf"
"Sec. Opal Holdorf"

The trial court found that the payee had not endorsed the note and that the plaintiff had no standing to sue thereon, and the action was dismissed. On appeal the judgment was affirmed. The supreme court held that since the name of the payee did not appear on the back of the instrument the purported endorsement was defective and the plaintiff could not possibly be a holder in due course.

The vital issue in the case was whether or not the note was endorsed by the payee. In the pleadings, the plaintiff had alleged that he was a holder in due course, thus to recover he had to prove that the note was endorsed by the payee.[2]

There are a number of older cases, decided prior to the enactment of the N.I.L., holding that the payee's name need not appear in the endorsement.[3] The rule of these older cases is succinctly stated in 8 C.J., *Bills & Notes* § 312 as follows: "Bills and notes may be transferred by an agent of the owner by an endorsement in his individual name

[1] 147 Wash. Dec. 559, 289 P.2d 364 (1955).
[2] Willett v. Central Yakima Ranches Co., 126 Wash. 587, 219 Pac. 20 (1923).
[3] McIntire v. Preston, 10 Ill. 48 (1848) (note payable to "Ocean Insurance Company" and inscribed on the back "Without recourse, Joel Scott, Sec'y." was held to be validly endorsed); Merchants' Bank v. McCall, 19 N.Y. Super. 473 (1860) (note payable to order of "Globe Insurance Company" and inscribed on the back "L. Gregory, Pres't., Jas. W. Elwell & Co." was held to be validly endorsed); Clark v. Titcomb, 42 Barb (N.Y.) 122 (1864) (note payable to order of "Commercial Mutual Maine Insurance Company of Massachusetts" and inscribed on the back "George H. Folger, President" was held to be validly endorsed).