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alleged by plaintiff to be proven, there was a valid assignment of the policy to plaintiff by means of delivery; consequently, deceased insured had lost the right⁵ to change the beneficiary, and therefore a constructive trust should be imposed on the proceeds. The legislature in amending section 31 of the Personal Property Law,⁶ did not intend to abrogate the well established doctrine applicable to express

The dissenting opinion claimed that the statute⁸ was passed to avoid any such parol trusts.⁷

assignments as this, and that the constructive trust doctrine could not be used to overcome the statute. In the cases cited by the dissent the circumstances did not warrant consideration of a constructive trust.⁹ It does not seem so patent that the legislature intended to do away with the constructive trust doctrine by the amendment of section 31 where the facts alleged indicate some confidential relationship together with other equitable considerations, and are sufficiently proven. The abolition of such an old, commonly used common law doctrine would seemingly have been more explicit.

Appraisal Provisions Not Enforceable

Insured applied for an order pursuant to section 1450 of the New York Civil Practice Act¹⁰ to compel insurers to comply with a provision for appraisal contained in a fire insurance policy. The trial court granted the order to proceed to appraisal; this was reversed by the Appellate Division.¹¹ The Court of Appeals

5. The policy reserved to insured the right to change the beneficiary provisions at any time. In *Bernstein v. Prudential Ins. Co. of America*, 204 Misc. 775, 124 N. Y. S. 2d 624 (1953), the Court held that insured, after naming a beneficiary and delivering a policy to her, had lost the right to change the beneficiary. The first named had by the delivery become the owner; her consent was necessary. The same result was reached in *John Hancock Mut. Life Ins. Co. v. Sandrissor*, 95 N. Y. S. 2d 399 (1950).

6. Amended in 1943 to add subd. 9, pertaining to the assignment of policies and the agreement to name a beneficiary.

7. In *Blanco v. Velez*, 295 N. Y. 224, 66 N. E. 2d 171 (1946), the court held that it was not within the purview of §31, subd. 9. Here a constructive trust was imposed on proceeds of a policy in which one of several sisters was named as beneficiary. The sisters had orally agreed to pay the premiums and to share the proceeds, even though only one sister was named as beneficiary. See also, *Foreman v. Foreman*, 251 N. Y. 237, 167 N. E. 428 (1929).

8. Note 1, *supra*.

9. In *Goldberg v. Colonial Life Ins. Co. of Am.*, 284 App. Div. 678, 134 N. Y. S. 2d 865 (2d Dep't. 1954), the agreement was between agent and insured. There was no confidential relationship on which to impose a constructive trust. In *In re Keeler's Estate*, 186 Misc. 20, 53 N. Y. Supp. 61 (1954), the oral agreement was ante-nuptial and was never executed. In *Fischer v. N. Y. Savings Bank*, 281 App. Div. 747, 118 N. Y. S. 2d 742 (1st Dep't. 1953), deceased orally agreed to name a creditor as beneficiary. *Held*: there being no delivery and no confidential relationship, the actually named beneficiary takes the proceeds.

10. This section provides for court enforcement of arbitration agreements.

11. *In re Delmar Box Co.*, 285 App. Div. 398, 137 N. Y. S. 2d 491 (3rd Dep't 1955).

held,¹² an agreement for appraisal is not the same as an agreement for arbitration, and the courts cannot order the parties to comply with such an agreement.¹³

The insured must present his case in an action at law; the 1941 amendment to §1448¹⁴ did not make the section applicable to appraisal agreements; these can be enforced only by preventing the insured from bringing an action on the policy if they are not complied with. The amendment of 1952¹⁵ is inapplicable; neither in this amendment nor in that of 1941 is there exhibited any legislative intent to change this rule.

Policy Interpretation

In *Harris v. Allstate Ins. Co.*¹⁶ the Court decided that an automobile insurance policy which covered loss caused by water but excluded loss resulting from collision did not cover damage caused by a pool of water which pulled an automobile from its course. The policy stated that "loss caused by . . . water, flood . . . shall not be deemed loss caused by collision or upset." However, the Court considered that there was a considerable reduction in the premium rate because of the non-coverage of loss due to collision, and that the parties could not reasonably have expected coverage of a collision with water.¹⁷ The majority claimed that, according to the principle of *noscitur a sociis*, the word "water" must be read in the light of the other words in that same grouping, viz., "missiles, falling objects, explosion, earthquake, windstorm, hail, water, flood, vandalism, riot or civil commotion," which are said to be causes included in policy coverage. All these "causes" are active agents which cause damage by falling against the object damaged. In this case, the car's collision with the water caused the damage; i.e., it was not the water's peculiar properties that caused the damage. It is true that water was one of the exceptions to things excluded from coverage but, even though a policy must be interpreted most strongly against the insurer where there

12. 309 N. Y. 60, 127 N. E. 2d 808 (1955).

13. In *Syracuse Savings Bank v. Yorkshire Ins. Co.*, 301 N. Y. 403, 194 N. E. 2d 73 (1950), the Court of Appeals held the section is not so applicable.

14. This says that an arbitration contract "may include questions arising out of . . . appraisals . . . collateral . . . to any issue between the parties."

15. Which included ". . . appraisals . . . independent of any issue between the parties."

16. 309 N. Y. 72, 127 N. E. 2d 816 (1955).

17. *Bird v. St. Paul Fire & Marine Ins. Co.*, 224 N. Y. 47, 120 N. E. 86 (1918), where, concerning a fire insurance policy, it was held that fire under freight cars, which caused an explosion which caused a concussion of the air which damaged the insured vessel, was not the proximate cause of the damage and not what was contemplated by the parties as within the coverage. Judge Cardozo said: "Our guide is the reasonable expectation and purpose of the ordinary business man when making an ordinary business contract."