The Presumption against Suicide in Insurance Cases

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If the clause excepts "intentional injuries" or "injuries intentionally inflicted", the insured will be protected if the injury was accidentally or mistakenly inflicted upon him, but if the exception relates to injuries from "intentional acts", he will be excluded from recovery if the third party has performed an intentional act.

A. F. G.

THE PRESUMPTION AGAINST SUICIDE IN INSURANCE CASES

The exact date of the origin, or the place or decision in which the presumption against suicide was first applied to a specific case seems to be unknown. In the early days of the common-law system suicide was not only a felony but was considered a more heinous crime than murder in those times when the rigors of the laws punishing crimes were in no sense comparable to the standards of the present.\footnote{Hartman, The Presumption Against Suicide as Applied in Insurance Cases (1935) 19 Marq. L. Rev. 20.} As described by Blackstone, the suicide was given an ignominious burial by the highway, with a stake driven through his body; moreover, all his goods and chattels were forfeited to the Crown.\footnote{4 Bl. Comm.} This severity of penalties meted out by the English law to restrain the practice of self-destruction fell heavily upon the family of the suicide, and it is easy to see how the lawyers of the day would seek to devise some method to ease this burden cast upon the guiltless. Thus, seemingly, arose the oft-utilized presumption against suicide in case of an otherwise unexplained violent death. This presumption has suffered strange and illogical abuses; so it is not to be wondered at that some courts have taken the attitude that it has outlived its usefulness.\footnote{Grand Lodge v. Bannister, 80 Ark. 100, 96 S. W. 472 (1906); Van Norman v. Modern Brotherhood, 143 Iowa 536, 121 N. W. 1080 (1900); Green v. N. Y. Life Ins. Co., 192 Iowa 32, 182 N. W. 808 (1921); Vicars v. Aetna Life Ins. Co., 158 Ky. 1, 164 S. W. 106 (1914); Massachusetts Protective Ass'n v. Cranford, 187 Miss. 878, 102 So. 171 (1924); Wharton v. N. Y. Life Ins. Co., 178 N. C. 135, 100 S. E. 286 (1919); Lamb v. Union Ry., 195 N. Y. 260, 88 N. E. 371 (1909).} That this presumption against suicide has become rather firmly embedded in our law is not to be doubted.\footnote{4} In the language of the courts it is based upon two principles: First, that man's natural instinct is to avoid injury and to preserve life, and it would be highly improbable that he
would take his own life.\textsuperscript{5} Second, that since suicide was long considered a crime and a felony, and at present an act involving moral turpitude, it cannot be presumed that a man will commit a crime.\textsuperscript{6}

On the assumption that the presumption exists, the next problem with which the court is confronted is its nature and function, the answer to which must be found in the nature of presumptions in general. Presumptions are most commonly placed into two categories or classifications, \textit{viz.}, presumptions of fact and presumptions of law. As Mr. Wigmore in his able work puts it, "The distinction between presumptions 'of law' and presumptions 'of fact' is in truth the difference between things that are in reality presumptions . . . and things that are not presumptions at all. A presumption . . . is in its characteristic feature a rule of law laid down by the judge, and attaching to one evidentiary fact certain procedural consequences as to the duty of production of other evidence by the opponent."\textsuperscript{7} Presumptions of fact, commonly treated as a head of presumptive evidence, cannot be truly treated as such at all. They are mere arguments, whose major premise is not a rule of law, and depend upon their own natural force and efficacy in generating in the mind a belief or conviction, irrespective of any legal relations.\textsuperscript{8} Owing to this they have no significance upon compelling the other party to produce evidence, but the jury may give them whatever force it thinks best. The peculiar effect of the presumption of law (real presumption) is a rule of law compelling the jury or other fact finding agency to reach the conclusion indicated in the presumption in absence of evidence to the contrary.\textsuperscript{9} But upon production of appreciable rebutting facts the true presumption disappears and has no probative force as evidence.\textsuperscript{10} As Mr. Justice Holmes stated in \textit{Greer v. United States,}\textsuperscript{11} "A presumption upon a matter of fact, when it is not a disguise for some other principle, means that common experience shows the fact to be so generally true that courts may notice the truth." Every presumption of law,

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\item \textsuperscript{5} E. E. Walsh Co. v. Industrial Com’n, 290 Ill. 536, 125 N. E. 331 (1920); Bear v. Sovereign Camp W. O. W., 207 Mo. App. 82, 226 S. W. 299 (1921).
\item \textsuperscript{6} Sovereign Camp W. O. W. v. Dennis, 17 Ala. App. 642, 87 So. 616 (1921); Almond v. Modern Woodmen, \textit{etc.}, Co., 133 Mo. App. 382, 113 S. W. 695 (1908).
\item \textsuperscript{7} 5 Wigmore, \textit{Evidence} (2d ed. 1923) § 2491.
\item \textsuperscript{8} 1 Greenleaf, \textit{Evidence} (16th ed. 1899) § 44.
\item \textsuperscript{9} N. Y. Life Ins. Co. v. Gamer, 55 S. Ct. 500, 52 L. Ed. 480 (1938); Travellers’ Ins. Co. v. McConkey, 127 U. S. 661, 8 S. Ct. 1360, 32 L. Ed. 308 (1893).
\item \textsuperscript{10} Del Vecchio v. Bowers, 296 U. S. 280, 56 S. Ct. 190, 80 L. Ed. 168 (1935); Brunswick v. Standard Ins. Co., 278 Mo. 154, 213 S. W. 45, 7 A. L. R. 1213 (1919); see also Note (1935) 103 A. L. R. 185.
\item \textsuperscript{11} 245 U. S. 559, 38 S. Ct. 209, 62 L. Ed. 469 (1917).
\end{itemize}
unless a procedural expedient, has been merely an inference of fact and has grown in reason and experience so as to be elevated to a legal maxim.\(^3\) So long as the inference remains an inference it may have a probative effect as evidence; however, the real presumption, being only of procedural consequence, can never have such an effect. It is not designed to have weight as substantive evidence, for upon its rebuttal the presumption disappears, and the fundamental facts are evaluated.\(^4\) Statutory presumptions of the strongest type are not immune from the rebuttal attack, and even they must fall in the face of evidence introduced to the contrary.\(^5\)

As to presumptions as evidence, our West Virginia court in a recent decision\(^6\) involving the presumption against suicide has adopted the view that a presumption is not evidence at all. This would seem to be the better view as to presumptions in general, and, as to the presumption against suicide, has been proclaimed to be the weight of authority.\(^7\) When death by unexplained violence is shown, a defendant who seeks to avoid liability on the ground of suicide has the burden of going forward with the evidence, or the issue of suicide will go against him, but if he offers such evidence, the burden of persuading the jury\(^8\) that death resulted from accident independent of suicide and all other causes remains with the plaintiff, if it rested upon him at the beginning, as in suit upon an accident insurance policy.\(^9\) The important thing is that there is no longer in force any ruling of law requiring the jury to

\(^{12}\) Death presumed from seven years absence, gifts made in less than two years before death presumed to have been made in contemplation of death, and like presumptions.


\(^{15}\) United States v. Wells, 283 U. S. 162, 51 S. Ct. 32, 75 L. Ed. 867 (1930) (statutory presumptions that gifts made within two years of death were made in contemplation of death).

\(^{16}\) McDaniel v. Metropolitan Life Ins. Co., 195 S. E. 597 (W. Va. 1937). Action upon life insurance policy, suicide being an exception to liability. Evidence was conflicting upon deceased’s mental attitude, but was found to be very moody. On day of his death he appeared despondent, and made one or two remarks directed so as to leave impression of contemplating death. Deceased was found dead from bullet wound in an upstairs room, the weapon lying on the floor, and no evidence of anyone else having been there. Held, that there is a presumption against suicide, but that it may not be used to give added weight to the evidence.

\(^{17}\) See Note (1935) 103 A. L. R. 185 for collection of cases.

\(^{18}\) As to the effect of presumption on the burden of persuasion, see Morgan, Some Observations Concerning Presumptions (1931) 44 Harv. L. Rev. 906.

find according to the presumption, because its function was to settle the matter only provisionally, and to cast upon the opponent the duty of producing evidence, and this duty and this legal rule have been satisfied.\textsuperscript{20} Obviously, the presumption cannot continue to exist in the face of facts to the contrary, for as Lamm, J., in \textit{Mackovich v. Kansas City, etc. Railway Company,}\textsuperscript{21} figuratively but strikingly put it, "Presumptions may be looked upon as the bats of the law, flitting in the twilight but disappearing in the sunshine of actual facts."

Leaving generalities as to presumptions as a whole, and considering the specific presumption against suicide, we come to ascertain its immediate effect upon the insurer in the insurance contract where suicide is made an exception to liability and where death by violent, external, and accidental means is insured against. It has but recently been decided that where death occurs in an unknown manner there is a presumption of law, \textit{i.e.}, a real presumption, against suicide.\textsuperscript{22} The mere showing of death, however, should not relieve the plaintiff of his original burden of proof of showing a death insured against. In a carefully considered opinion Cornish, J., in \textit{Grosvenor v. Fidelity & Casualty Company}\textsuperscript{23} said, "The burden was and remained upon the plaintiff to prove his case.\ldots\ Without evidence being produced by the plaintiff to show that the death was not intentional, the jury would be left to mere conjecture for determining the actual facts. It will not do to say that as long as there is room for doubt as to the intent the defendant must offer evidence. Rather the contrary. The burden is upon the plaintiff to show that the death was accidental; or, in other words, that it was not suicidal. This he must do by evidence of the actual facts or a situation from which accident is the reasonable inference, not a reasonable inference or possible one." The presumption against suicide is not a presumption that death was accidental.\textsuperscript{24} It goes without saying that, in order for the plaintiff to recover, there must be a showing that the event insured against occurred conducing to the injury. The fact is susceptible of proof, as any other given fact, and it may properly be deducible by inference from the facts proven, as other pertinent facts may be established under the rules.

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\item \textsuperscript{20} \textit{Wigmore, Evidence} § 2487.
\item \textsuperscript{21} 196 Mo. 559, 571, 94 S. W. 256 (1906).
\item \textsuperscript{22} Stuckum v. Metropolitan Life Ins. Co., 277 N. W. 891 (Mich. 1938); Basham v. Prudential Ins. Co., 113 S. W. (2d) 126 (Mo. 1938).
\item \textsuperscript{23} 162 Neb. 629, 168 N. W. 96 (1918).
\item \textsuperscript{24} United States Fidelity & G. Co. v. Blum, 270 Fed. 946 (C. C. A. 9th, 1921); Brunswick v. Standard Accident Ins. Co., 278 Mo. 154, 213 S. W. 45 (1919).
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of evidence; but the presumption against suicide alone cannot be used as evidence to establish the plaintiff's case. The Supreme Court of the United States in a recent decision, after steering a careful course amidst the complexities and confusion surrounding presumptions and burden of proof and interpreting the puzzling dictum of Travellers' Insurance Company v. McConkey, plainly decided that under the insurance contract the insurance was payable only upon proof of the event insured against. The burden was held to be upon the plaintiff to allege and prove that fact by a preponderance of the evidence. The complaint alleged "accident" and negativized self-destruction. The answer denied accident and alleged suicide. Thus the field was narrowed to the issue of accidental death. According to the Thayer-Wigmore theory the burden of proof, or risk of nonpersuasion, does not shift.  

Granting that the presumption is now in existence and should be confined to the functions outlined above, if it is to be treated as a true presumption, is this not a presumption that has outlived its usefulness? Danger of the state's confiscating the property of the suicide has long since ceased to exist. The social need for the rule for the protection of the innocent family cannot forcefully be said to demand such a presumption to supply evidence which could not otherwise be secured. Moreover, considerable danger may result from instruction upon this presumption, for it is well known that the juror hangs upon every word of the trial judge, perceiving him to be the only unbiased party in the litigation, and thus the jury may be unduly swayed in arriving at the verdict. Furthermore, it might even be said that, if anything, the presumption against suicide is anti-social in that it acts, not as a deterrent, but as an inducement to self-destruction.

Is this ancient presumption to be clung to in spite of the present-day statistics upon the so-called crime of self-murder? By these criteria suicide is becoming alarmingly more prevalent in America. The year 1932 witnessed more than twenty thousand suicides in the United States and more than twice as many at-

25 Ibid. See also Note (1919) 7 A. L. R. 1213.
27 127 U. S. 661, 667, 8 S. Ct. 1360, 32 L. Ed. 308 (1888).
29 THAYER, PRELIMINARY TREATISE ON EVIDENCE (1898) 353 et seq.; 5 WIGMORE, EVIDENCE §§ 2485, 2486.
Suicide has become a pronounced evil of our twentieth century social order. Who now is stunned when the coroner's jury brings in a finding of self-inflicted death? It is upsetting of course, but it does not carry the stigma of yesteryear, and some of the nation's most prominent citizens have died by their own hands. Realizing the vast influence of suicide upon the mortality rate, the insurance companies have made suicide a very important factor in fixing their rates. Is there, then, a sufficient reason why this ancient device should be used to give an unwarranted effect to only one side of the scientific investigation of fact?

H. G. W.

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31 As said in Watkins v. Prudential Ins. Co., 315 Pa. 497, 506, 173 Atl. 644, 649 (1934), "Accidental death as opposed to self inflicted death is no more legally to be presumed than suicide is to be presumed as against homicide. There are thousands of homicides annually, still more suicides, and the number of the latter is surpassed by the number of fatal accidents. Yet it might easily happen in some years that the ratios would be reversed."