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Insurance--Construction of Exceptions--Storage in Public Garage Held Within Theft Coverage

the child *en ventre* as in being,[8] and in fact, mere absence of disadvantage being enough in one case.[9]

It seems that this posthumous child was within "the reason and motive of the gift"[10] which was clearly intended to provide for grandchildren, therefore it is submitted that the distinction drawn by the court is unreasonable on the facts of the case, and inconsistent with the probable intention of the testator to provide directly or indirectly for her grandchildren.

INSURANCE — CONSTRUCTION OF EXCEPTIONS — STORAGE IN PUBLIC GARAGE HELD WITHIN THEFT COVERAGE. — In a recent West Virginia case a recovery was sought under an automobile theft insurance policy which excluded a recovery if the car was voluntarily placed by the owner in the possession of another. *Held,* that a delivery of the automobile to a public garage for the purpose of storage is not such a delivery of possession as will preclude a recovery when the car is stolen by an employee of the garage. *Gibson v. St. Paul Fire and Marine Insurance Campany.*[1]

This decision, placing West Virginia in accord with the majority of cases in other jurisdictions, expressly overrules the earlier West Virginia case of *Shelton v. Insurance Company.*[2] In the latter case a delivery of a car to another to be washed and returned was held such a voluntary relinquishment of possession as would preclude a recovery. The principal case distinguishes the *Shelton* case however, on the ground that statements made therein concerning delivery of possession was dictum and unnecessary to the verdict.

The principal case, in accordance with the weight of authority, differentiates between delivery of possession and delivery of custody.[3] Most courts hold that delivery of possession within the

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[8] Groce v. Rittenberry, 14 Ga. 232 (1853); Bedon v. Bedon, 2 Bailey 231 (S. C. 1831).
[9] Kimbro v. Harper, 113 Okla. 46, 238 Pac. 840 (1925).
[10] See Trower v. Butts, 1 Sim. & Stu. 181, 185 (Ch. 1823).

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[1] 184 S. E. 562 (W. Va. 1936).
[2] Shelton v. National Fire Ins. Co., 115 W. Va. 268, 174 S. E. 887 (1934).
[3] Emerson v. State, 33 Tex. Cr. 89, 25 S. W. 289 (1894); Tripp v. United States Fire Ins. Co. of N. Y., 141 Kans. 897, 44 P. (2d) 236 (1935); Allen v. Berkshire Mutual Fire Ins. Co., 105 Vt. 471, 168 Atl. 682 (1933); Miller v. Newark Fire Ins. Co., 12 La. App. 315, 125 So. 150 (1929); Security Ins. Co. v. Sellers-Sammons-Signor Motor Co., 235 S. W. 617 (Tex. Civ. App. 1921).

meaning of the insurance policy must be something more than a limited or special custody and must be of a permanent nature, coupled with an interest in the property.[4] Other courts hold that since the word possession is capable of two constructions,[5] there is no delivery of possession because an ambiguous provision of an insurance policy is to be most strongly construed against the insurer.[6]

It is suggested that the construction in both cases is grounded in the concept that the courts will attempt wherever possible to prevent a forfeiture of the policy.[7] Despite the probable intent of the insurance company that a delivery for the purpose of custody should constitute a delivery of possession, it would appear from this and similar decisions that more apt and definite language must be used to except such a risk from the insurance policy.

PRIVATE CORPORATIONS — BANKS AND BANKING — PLEDGE OF BANK ASSETS HELD *Ultra Vires.* — Receiver of insolvent state bank contracted with national bank whereby national bank's assets were pledged to secure the state bank receiver's deposit. *Held,* that national banks have no power to pledge their assets to secure a private deposit. *Harrell v. Lawhead.*[1]

Although courts generally have held that a bank has the power to pledge its assets to secure public deposits,[2] rarely indeed has a court permitted a bank to pledge its assets to secure private deposits.[3] The decisions[4] and statutes[5] upholding a bank's right to

[4] *Supra* n. 3.

[5] In National Safe Deposit Co. v. Stead, 232 U. S. 58, 34 S. Ct. 209 (1914), Mr. Justice Lamar said, "There is no word more ambiguous in its meaning than possession." Also see Tripp v. United States Fire Ins. Co. of N. Y., *supra* n. 3.

[6] Samson v. United States Fidelity & Guaranty Co., 131 Kans. 59, 289 Pac. 427 (1930); Tripp v. United States Ins. Co. of N. Y., *supra* n. 3; Security Ins. Co. v. Sellers-Sammons-Signor Motor Co., *supra* n. 3.

[7] Security Ins. Co. v. Sellers-Sammons-Signor Motor Co., *supra* n. 3.

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[1] 13 F. Supp. 298 (1936).

[2] 12 U. S. C. A. § 90; 4 MICHIE, BANKS AND BANKING (1931) § 19, at 22; Snider v. Fulton, 44 Ohio App. 238, 184 N. E. 839 (1932). Note, 87 A. L. R. 1456 (1933). *Contra,* Divide County v. Baird, 55 N. D. 45, 212 N. W. 236 (1927); Commercial Bank & Trust Co. v. Citizens' Trust & Guaranty Co., 153 Ky. 566, 156 S. W. 160 (1913).

[3] Leonard Co-op. Creamery Ass'n v. First State Bank, 168 Minn. 28, 209 N. W. 631 (1926); Peurifoy v. Westminster Loan & Tr. Co., 148 S. C. 100, 145 S. E. 706 (1928).

[4] Baltimore & O. R. Co. v. Smith, 56 F. (2d) 799 (1932); State Bank of Brockport v. Stone, 261 N. Y. 175, 184 N. E. 750, 87 A. L. R. 1449 (1933).

[5] W. VA. REV. CODE (1931) c. 31, art. 4, § 7; amended W. VA. REV. SUPP. (1933) c. 31, art. 4, § 7, 12 U. S. C. A. § 90.