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Insurance--Construction of Policy

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ership and liability for debts in case of controversy, and to preclude the assertion of secret claims of ownership against creditors of him who has conducted the business, possessed the property and appeared to be the owner. *Chesapeake Shoe Company* v. *Selner,* 122 Fed. 593; *General Electric Company* v. *Martin, et al.,* 99 W. Va. 519, 130 S. E. 299. If the object of the statute be to preclude the assertion of secret claims, recording the contract setting out the claim should take the case from the operation of the statute. Of course if the principal leaves his car for sale with an agent who does not buy, but merely sells cars for others, the agent would not be a "trader" and, consequently the statute would not apply. *Cable Company* v. *Mathers,* 72 W. Va. 811, 79 S. E. 1079; *Brown Manufacturing Company* v. *Deering,* 35 W. Va. 255, 13 S. E. 383; *In re New York, etc. Company,* 98 Fed. 711; *In re Tontine Surety Company,* 116 Fed. 401.

—FRED L. DAVIS.

INSURANCE—CONSTRUCTION OF POLICY.—In a recent case of interest the insured was the holder of a policy issued by defendant company commonly known as an accident policy, which provided for "triple indemnity" in the event the insured sustained injury "by being struck or run down by a conveyance while walking on or across any public highway." At the time of the accident the insured was standing behind a railroad depot upon ground abutting a county road. The space behind the depot was used for driving to and from the station, for shipping yards, and by the public generally for parking and turning automobiles. A saddle horse, from which the rider had temporarily dismounted, kicked the insured, which ultimately caused his death. A jury was waived, and the court held the defendant company liable for triple indemnity. *Gatewood* v. *Continental Life Insurance Company,* 23 F. (2d) 211.

It is customary to confine the Student Note and Recent Case section of the Quarterly to decisions of our local state courts, but the principal case is deemed sufficiently interesting and important to mention, for two reasons: (1) what

appeared to be a parking space was held to be a public highway, and (2) being kicked by a standing horse was "struck or run down by a conveyance." As to the first proposition the Supreme Court of Minnesota decided (1911) that a platform of a railway depot was a "public highway" within the terms of an accident insurance policy. This appears to be the only decision of an appellate court defining the phrase "public highway" as used in an accident insurance policy, prior to the principal case. *Rudd* v. *Great Eastern Casualty Company*, 114 Minn. 512, 131 N. W. 633, 34 L. R. A. [N. S.] 1204. As to the second proposition, it is probable the parties had in mind an injury sustained from a moving object, a conveyance in the process of conveying. As defined in the principal case a conveyance means any vehicle or instrument other than the legs of man. Other analogous situations can be imagined, therefore, which come within the rule of the principal case, such as a parked automobile exploding, for example.

Insurance policies should be construed according to the rules applied in the construction of other kinds of contracts. Courts do not generally consider them on the basis of a strict technical interpretation. However, when there is an ambiguity in the language used, they are liberally construed in favor of the insured. COOLEY, BRIEFS ON THE LAW OF INSURANCE, Vol. 6, pp. 198-201 and cases cited; BACON, LIFE AND ACCIDENT INSURANCE, Vol. I, p. 376; 32 C. J. 1147. The West Virginia court is in accord with the general liberality of construction in favor of the insured. *Tucker* v. *Colonial Fire Insurance Company*, 58 W. Va. 30, 51 S. E. 36; *Hogl* v. *Aachen Insurance Company*, 65 W. Va. 437, 64 S. E. 441; *Bowling* v. *Continental Insurance Company*, 86 W. Va. 164, 103 S. E. 285; *Booher* v. *Farmers Mutual Fire Association of West Virginia*, 91 W. Va. 468, 113 S. E. 754. The conclusion reached in the principal case seems correct. The day may come when a horse will cease to be a conveyance, but apparently that day has not yet arrived.

—KENDALL H. KEENEY.