

Case No. 1,178. IN RE BEAB ET AL.
[1 Cent. Law J. 607; 11 N. B. R. (1875,) 46.]

District Court, S. D. Mississippi.

BANKRUPTCY—INSURANCE POLICY—RIGHTS OF WIFE AND ASSIGNEE.

- [1. Where the husband insures his life for the benefit of his wife, the legal title to the policy is in her; so that, upon his becoming bankrupt, it is not necessary that he should surrender such policy, or list it in his schedule of assets.]
- [2. Payments of premiums thereon by the husband after he becomes insolvent, however, constitute a fraud on his creditors, whether made with fraudulent intent or not, to the extent that the assignee in bankruptcy is entitled to recover from the wife out of the proceeds of the policy, when it shall have been paid, the amount so advanced by the husband, with interest.]
- [3. This claim on the part of the assignee, when its amount is ascertained, may be sold by him, and will pass to the purchaser a contingent right in the proceeds of the policy.]
[In bankruptcy. In the matter of the bankruptcy of Bear and Steinberg.]

Harris & George, for creditors.

Wharton & Johnstons, for bankrupts.

HILL, District Judge. This case is now submitted upon the exception of the creditors to the schedules of the bankrupts, upon the ground that they do not contain, and the bankrupts have not surrendered therein, a life policy taken out by each for the benefit of his wife. The question, upon examination, I find one of no little difficulty, and have postponed its decision for the purpose of obtaining all the light on the question attainable. But as it may be important to the parties in interest to have it settled without further postponement, I proceed to its examination. It is admitted that the policies are upon the lives of the husbands for the benefit of their wives; this being so, the question is, to whom do they belong? I am inclined to the opinion that the legal title is in the wife, and not the husband. The value of the policy depends upon the payment of the premiums as they fall due. This may be done by the wife out of her own means, or may be advanced by a friend other than her husband; if advanced by the husband it is but an advancement, settlement, or provision made by him for her benefit out of his estate, which, if solvent at the time the advance was made, he could do without any violation of the rights of creditors-provided

it was reasonable in amount when considered in connection with his estate and liabilities and certainly would be valid as to subsequent creditors; indeed, a suitable provision for one's household is not only not condemned, but sanctioned by law, both human and divine. I am of opinion that the title to a life-policy of the kind mentioned, both legal and equitable, is in the wife, and cannot be controlled or assigned by the husband. It is otherwise when taken out by him for his own benefit, or for the benefit of his estate, as in the case of *Catchings v. Manlove*, 10 George, [39 Miss.] 655, cited by creditors' counsel; hence the necessity of the assignment to his wife and children in that case, which, being made when the husband was insolvent, was properly declared void as against his creditors, but was valid as against other parties. Whilst I am satisfied the policies in the case now submitted belong to the wives of the bankrupts, and are not subject to be surrendered by the bankrupts, yet any payments which they may have made, out of either their individual or partnership effects, after they became insolvent, were a fraud whether so intended or not, so far as to entitle the assignee to recover from the wife the amount advanced, with interest, out of the policy when it shall have been paid, and this claim when ascertained may be sold by the assignee, and will pass the contingent right to the purchaser. The Case of Erben, [Case No. 1,315,] referred to by counsel, was a claim upon the part of the bankrupt, for whatever interest he had in the policy to be set off as exempt under the statute of Pennsylvania, which was allowed, which, if it was property in the sense of the statute, was properly set off, and did not raise the question as between the creditors' and right of the wife, and is not authority upon the question now presented. The other cases referred to by the distinguished and able counsel of the creditors, will be found when closely examined, I am of opinion, not in conflict with the conclusion above stated. The register will take proof as to the amount paid by the bankrupts, if any, after they became insolvent, and out of that fund paid, which claim, when ascertained, will be sold for cash by the assignee, as provided for the sale of other debts or choses in action.