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## Case No. 11,851.

RINKER v. MANHATTAN LIFE INS. CO.

{1 Tex. Law J. 337.}

District Court, E. D. Texas. June 18, 1878.

LIFE INSURANCE—SUICIDE—QUESTIONS FOR JURY.

Action {by Mary Rinker against the Manhattan Life Insurance Company} to recover money upon policy of insurance.

MORRILL, District Judge (charging jury). On the morning of June 18, 1877, Selim Rinker was found in his office in Galveston, lying on a lounge, his left hand lying on his stomach, and his right hand resting on the floor of the room, and about eight or ten 819 inches from his right hand was a pistol of two barrels, one of which was empty. His head was punctured with something that passed through his brain, entering at the temple on the right side, and stopped at the left side by the skull, which showed an internal pressure upon it. He was divested of his hat and coat, which was suspended in the room, and from the wound blood was running down on his right shoulder, and thence on his right arm to the floor. He gasped for a very few seconds and life was extinguished. He had a set of false teeth, which were lying upon his shirt, near his right shoulder.

The issues presented by the pleadings in this case present one question for your consideration, and for you to answer by your verdict, which is, did Mr. Rinker shoot himself? That Mr. Rinker died from this wound, inflicted by some sort of firearms, that he was shot in the recumbent position in which he was found, and that the person that did the shooting, if this shooting was not done by Mr. Rinker, must have been in the room where he was at the time of pulling the fatal trigger, there can be no doubt. The

defendant insists that Mr. Rinker did the shooting, and to sustain this position has introduced testimony the object of which was to show that he was in such a mental condition, brought about by his actions, as would cause suicide. You will consider this testimony, and if you believe that he acted in such a way as would go to show that the was not in his right mind, or, if in his right mind, that a reflection upon the consequences of his acts would naturally cause him to despair, and prefer to die than live; and if it has been further proved to your satisfaction that he had the means at his command to bring about self-destruction, you can decide whether it was possible that Mr. Rinker committed suicide. The plaintiff had introduced testimony for the purpose of showing that a certain named party had acquired great influence over him, and had been the cause at least in part of Mr. Sinker's fatal descent to the abyss in which he was by his act of polygamy, and that it was this person who added the crime of murder to others not odious. Assuming that it is not possible that Mr. Rinker was killed accidentally, you must further assume that whoever killed Mr. Rinker had both the intention and ability to do so without being discovered. If you are satisfied that the party referred to as Mr. Rinker's evil genius, had both the inclination and ability to take his life at the time and place and in the manner that it was taken, and not being detected in doing so, you can then decide whether it was possible that he did do it If you decide that the killing of Mr. Rinker by either Mr. Rinker himself or the other named party is within the bounds of possibility, the next inquiry would relate to the greater probability as to which of the two parties committed the deed. If it shall appear to your satisfaction from the testimony that it is more probable that Mr. Rinker killed himself, you will find for the defendant; but if from the testimony it appears

equally or more probable that Mr. Rinker was killed by some other person, you will find for the plaintiff.

So far, gentlemen, I have given you the law of the case, by which you will be governed But as this case is somewhat of an unusual character, and as the supreme court of the United States has declared that it is the duty of a judge, in order to assist them in forming their verdict, "to recall the testimony, to their recollection, to direct their attention to the most important facts by elucidating the true points of the inquiry, and by showing the bearing of its several parts and their combined effect stripped of every consideration which might otherwise mislead them," for the purpose of assisting you in your labors, and not for influencing you in your opinion, I will add a few words to the charge. You are not trying any one for murder or any other crime. When the death of a suicide is announced in the papers, it is generally followed by something announcing the fact of his troubles and afflictions as a cause, or that it takes the community by surprise, as family relations and finances suggest no probable cause. In fact, severe afflictions and suicide are regarded as cause and effect. When everything around us is dark, cloudy and tempestuous; when the miser has all his money and effects stolen; when the religious enthusiast conceives that he or she has committed the unpardonable sin; when the respectable man of society finds that he has acted in such manner as causes him to believe that he will be an outcast; when the poor laborer perceives nothing but starvation to himself, and those more dear than himself,—he mentally or vocally exclaims, in the language of the first murderer, "My punishment is greater than I can bear." More persons than we are aware of have said to themselves, "To be or not to be; that is the question."

If you believe the testimony in this case is such as to cause Mr. Rinker to consider and believe, taking into consideration the kind of man he was and the

crime he had committed, that "it is better for me to die than to live;" if you believe that there had been men in similar circumstances who have committed suicide, then you are authorized to infer that he conceived sufficient cause to take his own life; and if other circumstances show that he was shot in the most fatal place, and in a way and manner that he could do it himself more fatally than any other one could or would do; if, in fact, you find that Mr. Rinker had both the inclination and ability to commit suicide—then you are authorized to say it is probable he did murder himself. But there are different degrees of probability. And while it may be probable that he may have done so, we must 820 next look at another side of the case. If you believe that another person also had an inclination to kill Rinker, and had as good an opportunity so to do; if, for instance, Rinker and this other person were in the same room, and each had equal power, ability and inclination to do the killing, in that case, as the probabilities would be equal, we would have to look at other circumstances to ascertain which of the two did the deed. If Rinker had been shot in a part of his person that another would be more likely to shoot at than himself, either because it would present a larger mark, and he would therefore be less likely to miss his fatal aim, then the probabilities that the other and not Rinker committed the fatal deed would be greater. If, again, both of the parties were in the room at the time of shooting, and other facts show that the pistol when discharged was at a greater distance than could be if used by Rinker, then this fact would show that it is more probable that the other person did the shooting. But if there is no testimony going to show that any other person was present than Rinker when he was killed, and if surrounding circumstances do not repel the idea that suicide was committed, it is for you to decide whether you have sufficient testimony to say that the probabilities that Rinker killed himself are

greater than are those that any other person did the deed.

NOTE. The authority referred to by his honor, Judge Morrill, is embraced in the following extract from the opinion of the supreme court of the United States in the case of Nudd v. Burrows, 91 U. S. 439, decided in 1875: "Questions of law are to be determined by the court; question of fact, by the jury. No question of fact must be withdrawn from the determination of those whose function it is to decide such issues. The line which separates the two provinces must not be overlooked by the court. Care must be taken that the jury are not misled into the belief that they are alike bound by the views expressed upon the evidence and the instruction given as to the law. They must distinctly understand that what is said as to the facts is only advisory, and in no wise intended to fetter the exercise finally of their own independent judgment Within these limitations is the right and duty of the court to aid them by recalling the testimony to their recollection, by collating its details, by suggesting grounds of preference where there is contradiction, by directing their attention to the most important, facts, by elucidating the true points of inquiry, by resolving the evidence, however complicated, into its simplest elements, and by snowing the bearing of its several parts, and their combined effect, stripped of every consideration which might otherwise mislead or confuse them. How this duty shall be performed depends in every case upon the discretion of the judge. There is more importance resting upon those who preside at jury trials. Constituted as juries are, it is frequently impossible for them to discharge their function wisely and well without this aid. In such cases, chance, mistake, or caprice may determine the result."