

the United States." *Third.* A writ of *ne exeat* was granted in the suit numbered 231, which was a creditor's bill, filed in aid of the original judgment in suit No. 221. The decree in suit No. 231 was rendered May 20, 1881. The defendant gave bonds, and the writ was discharged, and the defendant released from custody on December 9, 1881. The defendant has thus been under bonds not to leave this state for more than seven years. During all that time he has remained within the jurisdiction of this court. The writ of *ne exeat* is in its nature a temporary and provisional remedy. It is not intended to operate as a perpetual and life-long restraint upon the defendant's freedom of movement. To grant it in this suit (if the court had power to do so) for an indefinite period would be equivalent to committing the defendant to jail, the jail limits being the boundaries of the northern district of California. An injunction may issue, not as prayed for in the bill, but as granted in the original judgment on which this suit is founded. The counsel for defendant may draft and submit a decree in accordance with this opinion. He may also take such steps as he may be advised to compel the receiver to report the sums collected by him from the estate of Harris Lewis under the judgment rendered against him or the assignment executed by him to the receiver, and also the sums paid out by him for expenses, etc., for collection, to the end that the amount to be credited to Lewis on the judgment against him may be ascertained and liquidated. These accounts, as well as those of the assignee, should be closely scrutinized. The court cannot avoid noticing that the total amount of debts in the bankrupt's schedule is stated to be about \$44,257.25. The amount of debts proved is \$29,770.73. The sums received by the assignee and receiver amount to at least \$62,419.63, no part of which has been distributed to creditors.

RICHARDSON v. TRAVELERS' INS. CO.

(Circuit Court, N. D. Illinois. June 22, 1891.)

LIFE INSURANCE—LIABILITY—DEATH FROM INHALING GAS.

Under an insurance policy which exempts the company from liability in case of death caused by inhaling gas, recovery cannot be had in case of death caused by the inhalation of illuminating gas, where it is uncertain whether the death was result of an accident or of suicide.

At Law.

Runyan & Runyan, for plaintiff.

C. C. Bonney and Lyman M. Paine, for defendant.

BLODGETT, J. This is a suit on a policy issued by defendant, whereby it assured the life of Frederick Richardson, the husband of plaintiff, against death by accident, in the sum of \$6,000, payable to plaintiff. The proof shows that Mr. Richardson died at the Hotel Grace, in the

city of Chicago, on the 12th day of September, 1889, and while the policy was in full force, and that his death was caused by inhaling illuminating gas. The proof shows that he was a guest of the hotel, was assigned a room to which he retired during the evening, and the next morning was found dead in his room, with illuminating gas escaping freely from one of the gas burners in the room; and it is conceded that he died from the inhalation of this escaping gas, and that there was no visible mark of violence or injury upon his body. It is also conceded that due notice and proof of his death was given defendant in apt time, as required by the terms of the policy. Defendant denies liability, on the ground that the death of the assured did not occur from a cause which makes it liable under its contract of assurance. The policy, in terms, insures against death resulting alone from external, violent, and accidental means, and making the liability of defendant subject to certain exceptions and conditions, among which are the following:

"(4) This insurance does not cover disappearances; nor suicides, sane or insane; nor injuries of which there is no visible mark upon the body; nor accident, nor death, nor loss of limb or of sight, nor disability, resulting wholly or partly, directly or indirectly, from any of the following causes, or while so engaged or affected: * * * Taking poison; contact with poisonous substances; inhaling gas."

It seems very clear to me that, on the admitted facts in this case, defendant cannot be held liable. It is admitted that the death of the assured was caused by the inhalation of illuminating gas. There was no visible sign of violence or external injury on his body. The proof shows that, when found dead, he was lying upon his side in his bed, as if asleep, with no distortion of limb or features, or other evidence of violence, pain, or suffering. Plaintiff relies for recovery entirely on *Paul v. Insurance Co.*, 112 N. Y. 472, 20 N. E. Rep. 347, where, under a policy precisely like this in its terms, the court held that the defendant, "in expressing its intention not to be liable for death from inhaling of gas, can only be understood to mean a voluntary and intelligent act by the insured, and not an involuntary and unconscious act. Read in that sense, and in the light of the context, these words may be interpreted as having reference to medical or surgical treatment in which, *ex vi termini*, would be included the dentist's work, or to a suicidal purpose." The reasoning by which that court reached its conclusion is not satisfactory to my mind. The language of the policy is so clear as to require no construction. The words are unequivocal that the defendant does not insure against death caused by inhaling gas. There is nothing in the terms of the policy intimating or suggesting that the inhalation of gas must be voluntary or involuntary in order to exempt defendant from liability. That the defendant had the right to so limit its liability there can be no doubt. All the plaintiff's rights in this action arise under the policy. It constitutes the only relation between the parties. If the policy does not, by the fair and natural import of its words, give a right of action under the facts, then the plaintiff has no right of action. It seems to me, and that, too, without regard to the testimony which de-

fendant has put into the case, that the clause under which defendant claims exemption from liability was expressly adopted because of the impossibility, in most cases of death by the inhalation of gas, to decide whether the death was occasioned by the inhalation of gas with suicidal intent or whether it occurred accidentally. What I mean is, that a suggestion from the attorney of the defendant that this was the reason for inserting this clause in the policy is as persuasive to the mind as the sworn testimony which defendant has offered as to such reason, because it suggests a reasonable explanation why the clause is there. This case can also, as I think, be differentiated from the case cited by plaintiff, in this: that in that case it was found as one of the facts that the death of the assured was occasioned by accidental means. Here the proof will allow no such finding. It leaves the fact wholly unsettled as to whether the death of Mr. Richardson was the result of accident, or whether it was occasioned by his suicidal act and intent. The issue is found for the defendant.

FARRIS *et al.* v. MAGONE.

(Circuit Court, S. D. New York. April, 1891.)

CUSTOMS DUTIES—CLASSIFICATION—REMELTING STEEL.

A metal imported from Sweden, being in the form of cakes or slabs from 24 to 36 inches in length by 12 to 14 inches in width, and from an inch to an inch and a half thick, with the upper surface nicked into rectangular or oblique angular "caramels," about an inch and a quarter square, invoiced as "remelting steel in cakes," was classified for duty by the collector of the port of New York as "steel in slabs, forty-five per cent. *ad valorem*," under Schedule C of the tariff act of March 3, 1883. (Heyl's Tariff Ind., New, 177, 183.) which classification was sustained in this case by the jury finding a verdict in favor of the defendant, collector.

At Law.

Action by the plaintiffs, importers, to recover duties alleged to have been illegally exacted by the defendant, collector of the port of New York. The merchandise involved in the present suit was imported by the plaintiffs from Sandviken, Sweden, and entered at the port of New York, February 10, 1888. The invoice described the metal as "remelting steel in cakes; nicked rectangular; nicked oblique angular;" and the defendant, then the collector of customs at said port, classified the same for duty as "steel in slabs, #23, forty-five per cent. *ad valorem*," under the provision in Schedule C of the tariff act of March 3, 1883, (Tariff Ind., New, par. 177,) for "steel ingots, cogged ingots, blooms and slabs, by whatever process made." Against this classification the plaintiffs duly protested, claiming that the merchandise was a metal compounded of iron, carbon, and other elements, and was dutiable under Schedule C of said tariff act—"First, as unwrought metal at twenty per cent. *ad valorem*; or, second, at three-tenths cent per pound by similitude to pig-iron, spiegeleisen, wrought and cast scrap-iron, and scrap-steel; or, third, it should not pay above thirty-five per cent. under the provision for iron in slabs,