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New Jersey State Library

Notice of Appeal.

(Filed, December 4, 1930.)

10

IN CHANCERY OF NEW JERSEY.

Between:

METROPOLITAN LIFE INSURANCE
COMPANY, a corporation,
Complainant,

and

JOHN J. HAGGERTY and CATHERINE
A. HAGGERTY,
Defendants.

On Bill of
Interpleader.
Notice
of Appeal.

20

The defendant, John J. Haggerty, hereby appeals from so much of the final decree made in the above entitled cause by the Chancellor upon the advice of Vice Chancellor James F. Fielder, on the 24th day of November, 1930, as directs and decrees the defendant, Catherine A. Haggerty, to be entitled to and receive one-half of the sum of \$1,337.27 deposited with the Clerk of the Court of Chancery by the complainant, Metropolitan Life Insurance Company, a corporation, on the 24th day of March, 1930, and that portion of the final decree which allows the defendant, Catherine A. Haggerty, her costs and counsel fee of \$100.00 to be paid out of the sum due to the de-

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Notice of Appeal.

defendant, John J. Haggerty, to the Court of Errors and Appeals in the Last Resort in All Causes.

Dated, December 3, 1930.

10

ARCHIE ELKINS,
Solicitor for and of Counsel with
Defendant, John J. Haggerty.

I conceive there is good cause for appeal in the above entitled cause.

ARCHIE ELKINS,
Solicitor for and of Counsel with
Defendant, John J. Haggerty.

20

A true copy.
FERD. GARRETSON,
Clerk.

Service of a copy of the within notice is hereby acknowledged this 3rd day of December, 1930.

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PAUL J. DUFFY,
Solicitor for Defendant,
Catherine A. Haggerty.

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Petition of Appeal.

10 this respect, to wit, that the said decree adjudges that the defendant, Catherine A. Haggerty, be entitled to and receive one-half of the sum of \$1,337.27 deposited with the Clerk of the Court of Chancery by the complainant, Metropolitan Life Insurance Company, a corporation, on the 24th day of March, 1930, and which allows the defendant, Catherine A. Haggerty, her costs and counsel fee of \$100.00 to be paid out of the sum due to the defendant, John J. Haggerty.

20 2. And petitioner appeals from that part of the decree of the Chancellor which decrees as aforesaid, upon the ground that the same is erroneous in that:

(a) The Court of Chancery erred in finding and adjudging that one-half of the sum of \$1,337.27, the proceeds of a twenty-year endowment policy of insurance issued by the complainant, Metropolitan Life Insurance Company, to the defendant, John J. Haggerty, and paid into Court, belonged to the defendant, Catherine A. Haggerty.

30 (b) The decree was erroneous in according to the defendant, Catherine A. Haggerty, costs and a counsel fee of \$100.00 to be paid out of the sum due to the defendant, John J. Haggerty.

40 (c) The Court of Chancery erred in not finding and adjudging that the sum of \$1,337.27, the entire proceeds of a twenty-year endowment policy issued by the complainant, Metropolitan Life Insurance Company, to the defendant, John J. Haggerty, and paid into Court, belonged to the de-

Petition of Appeal.

fendant, John J. Haggerty, and was due and owing from the complainant to said John J. Haggerty.

(d) The Court of Chancery erred in finding as a matter of fact that the defendant, Catherine A. Haggerty, proved that a gift was made by the defendant, John J. Haggerty, to her of one-third of the proceeds of the insurance policy, which proceeds were filed with the Clerk of the Court of Chancery; and that no donative intent was proven on the part of the donor, to wit, John J. Haggerty, nor was there any evidence indicating any intent to make a gift, but on the contrary, the possession of the policy by the defendant, Catherine A. Haggerty, was merely for safe keeping.

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Petitioner, therefore, prays that the said decree of the said Chancellor may be, in the particulars aforesaid reversed, set aside and for nothing holden, and that petitioner be given the right to receive all of the proceeds of the fund deposited with the Clerk of the Court of Chancery, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

ARCHIE ELKINS,
Solicitor for and of
Counsel with Defendant,
John J. Haggerty.

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Bill of Complaint.

(Filed, March 13th, 1930.)

IN CHANCERY OF NEW JERSEY.

10 To the Honorable EDWIN ROBERT WALKER, Chan-
cellor of the State of New Jersey:

The complainant, Metropolitan Life Insurance Company, a corporation of the State of New York, duly authorized to transact business in the State of New Jersey, and having an office at 15 Exchange Place, Jersey City, N. J., respectfully says that:

20 1. It is engaged in the business of life insurance and is duly authorized to transact such business in the State of New Jersey.

30 2. On the 5th day of January, 1910, complainant issued a policy of insurance #662447-A on the life of John J. Haggerty, which policy was known as a 20-year endowment contract and designated Mary A. Haggerty, mother of the said John J. Haggerty, as beneficiary with the right of revocation of the said beneficiary reserved in said John J. Haggerty.

40 3. On the 17th day of October, 1921, the said insured, John J. Haggerty, exercised the right of revocation reserved to him in said policy of insurance and revoked the designation of his said mother, Mary A. Haggerty as beneficiary, and instead thereof named his wife Catherine A. Haggerty as beneficiary in said policy.

4. That in and by the terms of said policy, complainant agreed in consideration of the annual

Bill of Complaint.

premiums to be paid to it and the payment of a like annual premium each year after the issue of said policy until twenty full years' premiums should have been paid, or until the prior death of the insured, the said John J. Haggerty, it, the said complainant would pay to the said John J. Haggerty, in said policy called the insured, on the 5th day of January, 1930, if the said John J. Haggerty be then living, or upon receipt at the Home Office of the complainant in the City of New York of due proof of the prior death of the said John J. Haggerty, to his wife, Catherine A. Haggerty, the sum of \$1,200.00 less any indebtedness on said policy due to the complainant company and any unpaid portion of any premium for the then current policy year.

5. Complainant shows and expressly charges the fact to be that the payment made by it under this said contract of insurance was expressly stipulated in said policy to be due and payable only upon the surrender of said policy of insurance properly receipted.

6. Complainant further shows that on the said 5th day of January, 1930, the said policy matured and that there was payable to the said John J. Haggerty, if living, upon the surrender of said policy properly receipted and provided said policy was not assigned to some other person, the maturity value of said policy, namely the sum of \$1,337.27, being the amount of the face of said policy, namely \$1,200.00 increased by a maturity dividend of \$120.00 and an annual dividend of \$17.20.

Bill of Complaint.

7. That under the terms of said policy of insurance the said sum was payable by complainant only upon surrender of the policy of insurance properly received.

10 8. Complainant further shows that in the month of July, 1928, the defendant, John J. Haggerty, notified the complainant company that he was no longer in possession of said policy of insurance, and that shortly after the 5th day of January, 1930, the maturity date of said policy, the beneficiary named in said policy, Catherine A. Haggerty, the wife of said John J. Haggerty, notified complainant that she was the owner of
20 said policy by assignment and that she had in her possession the original policy of insurance, and demanded payment from complainant to her of the maturity value of said policy.

9. Complainant is informed and believes it to be true, that the said John J. Haggerty denies that he had made an assignment of said policy of insurance, but notified complainant that he had lost the original policy of insurance and was no longer
30 in possession thereof and did not know where the same was.

10. That on the 4th day of February, 1930, said John J. Haggerty instituted suit against the complainant in the Hudson County Court of Common Pleas by the issuance and service upon complainant of a subpoena and of a complaint, in and by which complaint the said John J. Haggerty claims that he is the holder of the said policy
40 of insurance #662447-A issued by complainant on the 5th day of January, 1910, and further

Bill of Complaint.

claims that on the 5th day of January, 1930, the said policy matured and that there is due to the said John J. Haggerty the sum of \$1,337.27 and makes demand upon complainant for the payment of said sum to him.

10

11. Complainant is informed and believes it to be true that the said Catherine A. Haggerty is in possession of said policy of insurance, and claims to own the same by virtue of an assignment thereof to her made by the said John J. Haggerty, and the said Catherine A. Haggerty is threatening to institute suit against complainant thereon.

20

12. Complainant further shows that although both John J. Haggerty and Catherine A. Haggerty have demanded payment from complainant of the said sum of \$1,337.27, the money due on said policy of insurance, neither of said persons has surrendered the said policy to complainant, and that said policy is now in the physical possession of the said Catherine A. Haggerty.

30

13. By reason of the terms and conditions of said policy, the said John J. Haggerty claims to be entitled to the proceeds thereof and has instituted suit against complainant therefor as hereinabove set forth, and that said Catherine A. Haggerty claims to be entitled to the proceeds of said policy by virtue of the terms thereof and by virtue of an assignment to her of said policy, and possession by her of the same.

14. That the total money due on said policy of insurance is the sum of \$1,337.27 and this com-

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Bill of Complaint.

10 plainant has always been ready and willing and still is ready and willing to pay the said sum of \$1,337.27 to such person as is lawfully entitled to receive the same and to whom this complainant can pay the said sum with safety, and complainant hereby offers to pay the said sum of \$1,337.27 into this Court.

This complainant is without adequate remedy in the Court of Law and therefore prays:

20 1. That the said John J. Haggerty and Catherine A. Haggerty, defendants in this suit, may answer this bill of complaint and each statement herein made.

2. That the said defendants may interplead and settle their rights to the said sum of \$1,337.27.

3. That upon payment of the said sum of \$1,337.27 into this Court, the said John J. Haggerty may be enjoined and restrained from proceeding with his suit in the Hudson County Court of Common Pleas.

30 4. That upon payment of the said sum of \$1,337.27 into this Court, the defendants, John J. Haggerty and Catherine A. Haggerty be enjoined and restrained from instituting or proceeding in any other suit at law or in equity, for the recovery of the said sum against this complainant.

40 5. That this complainant, upon payment into this Court of \$1,337.27 and upon procuring the said defendants to interplead and settle their

Bill of Complaint.

rights to the said sum of money agreeable to law and the practice of this Court, may be ordered, adjudged and decreed to be discharged from all liability to the said defendants or either of them in the premises.

10

6. That this complainant may have such other and further relief as may be agreeable to equity and good conscience.

PERKINS & DREWEN,
Solicitors for and of Counsel
with the Complainant, Metropolitan
Life Insurance Company.

State of New Jersey, }
County of Hudson, } ss.:

20

Frank Perilla, deponent, being duly sworn according to law, upon his oath deposes and says:

1. I am acting manager of the Metropolitan Life Insurance Company, the complainant in the foregoing bill of complaint and am authorized to make this affidavit. The bill of complaint in this cause has been filed without any fraud or collusion between the complainant and the defendants, or either of them, and is not exhibited by this complainant at the request of the said defendants, or either of them, and the complainant has not been indemnified by the said defendants or either of them; but said bill of complaint is exhibited by the complainant with no other intention than to avoid being sued or molested by the defendants touching the matters in said bill of complaint contained.

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Bill of Complaint.

2. The matters and things set forth in the bill of complaint are true to the best of deponent's knowledge, information and belief.

10 3. On the 4th day of February, 1930, the defendant, John J. Haggerty instituted suit against the Metropolitan Life Insurance Company in the Hudson County Court of Common Pleas on policy number 662447-A, being the policy of insurance set forth in the bill of complaint, and filed therein a complaint demanding the sum of \$1,337.27 from the Metropolitan Life Insurance Company. The policy of insurance sued on and mentioned in the bill of complaint is, by its term, payable only
20 upon surrender of the policy properly received.

4. The policy described in the bill of complaint has not been surrendered to the complainant by the said John J. Haggerty or the defendant Catherine A. Haggerty, or either of them, and deponent is informed and believes it to be true that said policy is in the possession of the defendant, Catherine A. Haggerty who claims to be the owner thereof and by virtue of an assignment from the
30 said John J. Haggerty or by virtue of some other title thereto.

FRANK PERILLA.

Subscribed and sworn to before me
this 11th day of March, 1930, at
Jersey City, N. J.

40 LEONA L. PISKORSKI,
Notary Public of
New Jersey.

Interlocutory Decree.

(Filed, March 24th, 1930.)

IN CHANCERY OF NEW JERSEY.

(78-167)

Between:

THE METROPOLITAN LIFE INSUR-
ANCE COMPANY, a corporation,
Complainant,

and

JOHN J. HAGGERTY and CATHERINE
A. HAGGERTY,
*Defendants.*On Bill of
Interpleader.Interlocutory
Decree.

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This matter being opened to the Court by John Drewen of Perkins and Drewen, solicitors for and of counsel with the complainant; and it being made to appear to the Court by affidavit that service of the order to show cause made herein and of the bill of complaint and affidavit thereto attached, was duly made upon Archie Elkins, solicitor for the defendant John J. Haggerty, and upon Paul J. Duffy, solicitor for the defendant Catherine A. Haggerty; and this matter now being opened upon return of the order to show cause made herein on the 13th day of March, 1930; and the Court having heard the proofs and the arguments of counsel, and having considered the same; and it appearing to the Court that the complainant holds the fund of \$1,337.27, mentioned in the bill of complaint filed herein, for

30

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Interlocutory Decree.

the true owner thereof, without having or claiming any right or interest therein; and it further appearing to the Court that the said bill of interpleader is properly brought by said complainant and that the complainant is entitled to the relief prayed for;

10

It is on this 24th day of March, 1930, ORDERED, ADJUDGED and DECREED that the complainant is a disinterested stakeholder as to the said fund, and that it do pay into the office of the Clerk of this Court the said sum of \$1,337.27, being the amount of the proceeds due under the policy of insurance mentioned and designated in the said bill of complaint; and that upon such payment the said complainant be discharged of and from all liability by reason of the said sum, due as aforesaid under and by virtue of the said policy of life insurance;

20

AND IT IS HEREBY FURTHER ORDERED, ADJUDGED and DECREED that the defendants and each of them, as well as their attorneys or representatives or anyone acting in their behalf, be and they hereby are restrained and forever enjoined from instituting or proceeding with any action or claim against the complainant for or by reason of the moneys so ordered to be paid into this Court as aforesaid;

30

AND IT IS HEREBY FURTHER ORDERED, ADJUDGED and DECREED that the clerk of this Court do pay to the complainant, or its solicitors, out of the fund paid into Court under this order, its costs to be taxed, and a counsel fee of \$100.00.

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Interlocutory Decree.

AND IT IS HEREBY FURTHER ORDERED, ADJUDGED and DECREED that the defendants interplead and state their rights to the sum of money ordered as aforesaid to be deposited into this Court.

10

E. R. WALKER,

C.

Respectfully advised,

JOHN J. FALLON,

V. C.

A True Copy.

PERKINS & DREWEN,

Solicitors for Complainant.

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Statement of Claim of John J. Haggerty,
Defendant.

(Filed, March 29th, 1930.)

IN CHANCERY OF NEW JERSEY.

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(78-167.)

Between:

THE METROPOLITAN LIFE INSUR-
ANCE COMPANY, a corporation,
Complainant,

and

20 JOHN J. HAGGERTY and CATHERINE
A. HAGGERTY,
Defendants.

On Bill of
Interpleader.
Statement of
Claim of
John. J.
Haggerty,
Defendant.

The statement of the claim of the defendant John J. Haggerty, of the City of Jersey City, County of Hudson and State of New Jersey, is:

30 1. This defendant purchased from The Metropolitan Life Insurance Company, the complainant herein, a certain life insurance policy known as Policy #662447-A.

2. This defendant is the sole owner of the aforesaid policy of insurance.

40 3. The defendant, Catherine A. Haggerty, has no right, title nor interest in the aforesaid life insurance policy.

*Statement of Claim of John J. Haggerty,
Defendant.*

4. The aforesaid policy matured on or about the 5th day of January, 1930.

5. Prior to the maturity of the aforesaid policy of insurance, the defendant, Catherine A. Haggerty, purloined the said policy, and this defendant is informed that she now has the said policy in her possession. 10

6. This defendant says that the aforesaid policy was never assigned, conveyed nor given as a gift to the said defendant, Catherine A. Haggerty.

7. The possession of the said policy by the defendant, Catherine A. Haggerty, is illegal. 20

8. This defendant says that he is entitled to the entire fund deposited by the complainant in this cause.

ARCHIE ELKINS,
Solicitor for Defendant,
John J. Haggerty.

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**Statement of Claim of Defendant
Catherine A. Haggerty.**

(Filed, September 13th, 1930.)

IN CHANCERY OF NEW JERSEY.

10

78-167

Between:

METROPOLITAN LIFE INSURANCE
COMPANY, a corporation,
Complainant,

and

JOHN J. HAGGERTY and CATHERINE
A. HAGGERTY,
Defendants.

On Bill of
Interpleader.
Statement of
Claim of
Defendant
Catherine A.
Haggerty.

20

The statement of the claim of the defendant, Catherine A. Haggerty, of the City of Wilkes Barre, State of Pennsylvania, is:

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1. Complainant on the fifth day of January, 1910, issued a policy of insurance No. 662447-A, on the life of John J. Haggerty, which policy was known as a twenty-year endowment contract, in the amount of \$1,200.00, and designated Mary A. Haggerty, mother of the said John J. Haggerty, as beneficiary, with the right of revocation of the said beneficiary reserved in said John J. Haggerty.

40

2. On the 17th day of October, 1921, defendant John J. Haggerty exercised this right of revocation reserved in him in said policy and re-

*Statement of Claim of Defendant
Catherine A. Haggerty.*

voked the designation of his said mother, Mary A. Haggerty, as beneficiary, and named his wife, the defendant Catherine A. Haggerty, as beneficiary.

10

3. On or about the said seventeenth day of October, 1921, the defendant John J. Haggerty agreed to and with this defendant, Catherine A. Haggerty, that in the event that he should be alive at the maturity of this aforesaid policy of insurance, that she would be entitled to a one-half share in the proceeds thereof, and he did thereupon give, grant and set over unto the said defendant, Catherine A. Haggerty, a one-half interest in the proceeds of said policy.

20

4. That on or about the aforesaid 17th day of October, 1921, defendant John J. Haggerty did assign to the defendant Catherine A. Haggerty a one-half interest in the aforesaid policy of insurance.

5. On or about the aforesaid 17th day of October, 1921, defendant John J. Haggerty turned over and delivered to the defendant Catherine A. Haggerty said policy of insurance and suggested that she retain it in her safekeeping for her own protection.

30

6. On or about the fifth day of January, 1930, the said policy matured.

7. This defendant, Catherine A. Haggerty, is still in possession of the said policy of insurance

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Order of Reference.

and has refused to deliver her possession of same unless and until one-half of the proceeds thereof be paid to her in accordance with her agreement with the defendant, John J. Haggerty.

10

PAUL J. DUFFY,
Solicitor for Defendant,
Catherine A. Haggerty.

Order of Reference.

(Filed, May 13th, 1930.)

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IN CHANCERY OF NEW JERSEY.

Between:

METROPOLITAN LIFE INSURANCE
COMPANY, a corporation,
Complainant,

and

30

JOHN J. HAGGERTY and CATHERINE
A. HAGGERTY,
Defendants.

On Bill, etc.

Order of
Reference.

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This matter being opened to the Court by Archie Elkins, solicitor for and of counsel with the defendant, John J. Haggerty, and it appearing that due notice of this application has been given to the solicitor for the defendant, Catherine A. Haggerty;

It is, thereupon, on this 13th day of May, 1930,

Order of Designation.

ORDERED, that the above stated cause be referred to the Honorable James F. Fielder, one of the Vice Chancellors of this Court, to hear the same for the Chancellor and report to him what order or decree should be made therein.

E. R. WALKER,
C.

10

A True Copy.
FERD GARRETSON,
Clerk.

Order of Designation.

(Filed, May 26th, 1930.)

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IN CHANCERY OF NEW JERSEY.

Between:
METROPOLITAN LIFE INSURANCE
COMPANY, a corporation,
Complainant,

and

JOHN J. HAGGERTY and CATHERINE
A. HAGGERTY,
Defendants.

On Bill, etc.

Order of
Designation.

30

Application being made to fix a time and place for the hearing of the above stated cause, by Archie Elkins, Esq., solicitor of defendant, John J. Haggerty, and by consent with Paul J. Duffy, 40

Order of Designation.

Esq., solicitor of defendant, Catherine A. Haggerty;

It is, on this 26th day of May, 1930,

10 ORDERED, that Thursday, the 18th day of September, 1930, at the hour of ten o'clock in the forenoon (Daylight Saving Time), at the Chancery Chambers, at Jersey City, be and the same is hereby designated as the time and place for the hearing of the said cause.

JAMES F. FIELDER,
V. C.

20 I hereby consent to the making of the above order.

PAUL DUFFY,
Solicitor of Defendant,
Catherine A. Haggerty.

30

40

John J. Haggerty—For Defendants—Direct.

Testimony.

IN CHANCERY OF NEW JERSEY.

Between: METROPOLITAN LIFE INSURANCE COMPANY, <i>Complainant,</i> and JOHN J. HAGGERTY and CATHERINE HAGGERTY, <i>Defendants.</i>	}	On Bill, etc. 10
		20

Transcript of shorthand notes of testimony taken on final hearing in above stated cause, September 18, 1930, at Chancery Chambers, Jersey City, before his Honor James F. Fielder, Vice Chancellor.

APPEARANCES:

ARCHIE ELKINS, Esq., for defendant John J. Haggerty.
 PAUL J. DUFFY, Esq., for defendant Catherine Haggerty. 30

JOHN J. HAGGERTY, defendant, sworn as a witness in his own behalf, testifies as follows:

Direct Examination by Mr. Elkins:

Q. Where do you live? A. 2758 Hudson Boulevard, Jersey City. 40

John J. Haggerty—For Defendants—Direct.

Q. How long have you lived in Jersey City? A. About five years.

Q. Did you have a policy of insurance with the complainant in this suit, the Metropolitan Life Insurance Company? A. Yes.

10 Q. What kind of a policy? A. Twenty-year endowment.

Q. Do you know when the policy was purchased? A. January 5, 1910.

Q. At that time who was the beneficiary? A. My mother.

Q. Subsequent to that date did you get married? A. Yes.

Q. To whom? A. Catherine Augusta Berth.

20 Q. After the marriage was there any change made in the policy? A. Yes.

Q. What change? A. I made her my beneficiary.

Q. When did you get married? A. In 1916.

Q. You lived together subsequently? A. Yes; until 1925.

Q. What happened then? A. My wife deserted me.

Q. Where? A. In the Bronx, New York City.

30 Q. When she left did she take anything with her? A. Yes; she took all my furniture and everything. The place was deserted.

Q. What about your personal papers? A. After that I missed the policy.

Q. Was the policy in your home before she took all the things? A. Yes.

Q. After she left were you able to find it? A. No.

40 Q. Do you know whether anybody took it other than your wife might have taken it? A. No; I don't know who took it.

John J. Haggerty—For Defendants—Direct.

Q. Now, after 1925 you have lived alone; is that correct? A. Yes; with my mother.

Q. When did this policy mature? A. In 1930—January 5, 1930.

Q. Did you make application for the proceeds of the policy? A. Yes. 10

Q. What was the amount of the proceeds of the policy? A. It was \$1,200; there was some interest on it.

Q. Did you get the money? A. No.

Q. Why not? A. Because they said that I did not have the policy.

Q. Did you make an effort to get the policy? A. I made an effort to find out who had it, and I found out my wife had my policy—my ex-wife. 20

Q. Did you voluntarily give the policy to her? A. No.

Q. At any time? A. No.

Q. How do you account for her possession of the policy? A. She took it.

Q. When? A. When she left me in 1925.

The Court: That is mere suspicion on his part. 30

By the Court:

Q. Did you ask her for it when the company refused to pay you? A. I was not living with her.

Q. Did you ask her for the policy? A. No.

Mr. Elkins: I wrote to her for the policy in behalf of Mr. Haggerty, and I think I have a letter. 40

John J. Haggerty—For Defendants—Cross.

By Mr. Elkins:

Q. Mr. Haggerty, did you make any arrangements with your wife concerning the division of the proceeds of this insurance policy? A. No.

10 Q. Did you ever agree with her, particularly in October, 1921, that she was to have half of the proceeds of this policy? A. No.

Q. Did you ever agree with her that she was to have anything of the proceeds? A. No.

Q. Who paid the premiums on the policy? A. I did.

Q. All of them? A. Everyone.

20 Q. As I understand, you have never signed off to give your wife any of the proceeds of this insurance policy? A. No.

Q. You are now divorced from her; is that right? A. Yes.

Q. You got your divorce in New Jersey? A. Yes.

Cross Examination by Mr. Duffy:

30 Q. When were you married? A. September 21, 1916.

Q. Your wife left you or, as you say, deserted you when? A. October 28, 1925.

Q. Is that the first time your wife ever left you? A. No.

Q. When last before that had she left you?

The Court: What has that to do with her right to the proceeds of the policy?

40 Mr. Duffy: I want to show what occurred with reference to the policy at that time they were reconciled.

John J. Haggerty—For Defendants—Cross.

Q. Was your mother living when you changed the beneficiary? A. Yes.

Q. Why did you change the beneficiary? A. Because I had been married in the mean time.

Q. You were married in 1916? A. Yes.

Q. You changed the policy when? A. I don't know the date of it. 10

Mr. Elkins: I ask them to produce the policy. I think that will show the date.

The Court: Maybe if you show the policy to Mr. Elkins, Mr. Duffy, you and he will agree to the date of change.

Mr. Elkins: The date appears to be October 24, 1921.

The Court: Do you agree on that date? 20

Mr. Duffy: I do.

Q. Does that refresh your memory—October 24, 1921? A. No; I just know the place I was living in; I don't know the date.

Q. Was it about that date? A. Yes.

Q. Your monther is still living? A. Yes.

Q. Why did you change the beneficiary five years after you were married? 30

Mr. Elkins: Objected to.

The Court: Objection sustained.

Q. You say that you did not know who had the policy? A. No; I didn't know.

Q. When did you find out who had it? A. When my lawyer told me she had it.

Q. How did he find out? A. He wrote a couple of letters. 40

John J. Haggerty—For Defendants—Cross.

Q. That is the first intimation that you had?

A. Yes—that I was sure.

Q. Didn't you write your wife any letters after she left you asking for this policy?

10

Mr. Elkins: I object.

The Court: Objection overruled.

A. Maybe I did.

Q. Don't you know? A. I might have mentioned it in a letter, if she had the policy, but she never said she did.

20

Q. Didn't you ever write her a letter and ask her to return the policy to you? A. Probably I did. I don't remember that, but I wanted to find out where it was.

Mr. Elkins: I desire to offer the policy of insurance in evidence.

(Marked Exhibit C-1.)

Mr. Elkins: I desire to offer in evidence copy of letter I wrote to Herman J. Goldberg who represented Mrs. Haggerty at that time.

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Mr. Duffy: I will admit that Mr. Elkins wrote a letter to Mr. Goldberg.

The Court: What is the date of the letter?

Mr. Elkins: January 8, 1930. My recollection is that I wrote a letter directly to the defendant Mrs. Haggerty, although I cannot find a copy of it.

Defendant John J. Haggerty rests.

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Catherine Haggerty—For Defendants—Direct.

CATHERINE HAGGERTY, one of the defendants, sworn as a witness in her own behalf, testifies as follows:

Direct Examination by Mr. Duffy:

Q. Where do you live? A. 10 East Main Street, Wilkes-Barre. 10

Q. You married the defendant John J. Haggerty in 1916? A. Yes.

Q. And you lived with him in New York? A. Yes.

Q. Until when? A. I lived there until 1920. Then I left him and went back again.

Q. When did you go back to him again? A. 1921. 20

Q. Do you know anything about this life insurance policy which is in question here? A. Yes.

Q. When did you first learn about it? A. Why, I don't know exactly when, but it was shortly after we were married I seen the policy.

Q. Do you know who the beneficiary was at that time? A. His mother was.

Q. You knew that? A. Yes.

Q. When you came back to him in 1921 did your husband speak to you with reference to this policy? A. He said he was going to change the policy. 30

Q. Did he change it? A. He did.

Q. What did he do? A. He gave me the policy when it was changed.

Q. What did he say? A. He told me to put it away with my other papers.

Q. Is that all? A. To keep it; keep it safe; and that is what I did. 40

Catherine Haggerty—For Defendants—Direct.

Q. Did he say anything with—

The Court: Don't lead. You may ask her if that is all he said.

10 Q. Is that all that you remember that Mr. Haggerty said with respect to the policy at that time?

A. No; he told me if he was living when the policy matured he would give me half of it.

Q. What did you do with the policy? A. I put it in a little box where I put all my other papers.

Q. Then you left your husband again in what year? A. 1925.

Q. Since that time has he ever requested you to return the policy? A. Yes.

20 Q. How many times? A. I don't know exactly, but several times. He knew I had it.

Q. How do you know he knew you had it? A. Why, he asked he if I had it and I told him yes.

Q. In what way did he ask you? A. He said: "Have you got my insurance policy?" I said: "Yes."

Q. In what form did he ask; what were his means of communication? A. Why, I have a couple of letters. Mr. Goldberg has the letters.

30 Q. Is that the only manner in which he asked you for the return of the policy? A. I met him on the street and he asked me.

Q. Where did you meet him on the street? A. Over in New York.

Q. When? A. Well, about three years ago.

Q. And at that time what did he say with respect to the policy? A. He just asked me to send him his policy.

40 Q. What did you say? A. I told him I wasn't going to.

Catherine Haggerty—For Defendants—Cross.

Cross Examination by Mr. Elkins:

Q. When you left him in 1925, you took the policy with you; is that correct? A. Yes.

Q. He gave you the policy at the time of the change of beneficiary for the purpose of safe-keeping? A. Yes. 10

Q. And that was the end of the conversation with reference to the policy? A. No. When the policy matured I would get half of it.

Q. But the fact is that when he gave you the policy it was for safe-keeping? A. Yes.

Q. And that was the important part of turning it over to you?

Mr. Duffy: I object. 20

The Court: Objection sustained.

Q. With reference to the matter of half of the proceeds of the policy, how did that come about?

A. He turned the policy over to me so that in case of his death the child and I would be provided for.

Q. You were the beneficiary, and if he died you would get the proceeds. A. Yes; and if he were alive, I would get half of it. 30

Q. Why didn't he give you all, instead of half? Was there any specific reason? A. No reason at all.

Q. It was not because of any quarrel or any particular understanding by you that you were to get half? A. Well, I had just become reconciled with him. We had been separated. 40

Conclusions of Vice Chancellor.

(Filed, October 30, 1930.)

IN CHANCERY OF NEW JERSEY.

78-167.

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(Not to be published in any report.)

October 20, 1930.

20	Between: METROPOLITAN LIFE INSURANCE COMPANY, <i>Complainant,</i> and JOHN J. HAGGERTY, et al., <i>Defendants.</i>	}	On Bill of Interpleader. Conclusions.
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Mr. ARCHIE ELKINS for defendant John J. Haggerty.

Mr. PAUL J. DUFFY for defendant Catherine A. Haggerty.

30 FIELDER, V.-C.:

The complainant has paid into court the amount due under its policy of insurance, dated January 5, 1910, on the life of the defendant John J. Haggerty and the question to be determined is whether the entire amount should be ordered paid to him or one-half thereof and the other half to his former wife Catharine A. Haggerty, the other defendant.

40 By the policy the complainant, in consideration of an annual payment to be made for twenty years, or until the prior death of the insured, agreed

Conclusions of Vice Chancellor.

to pay \$1,200 to the insured if he should then be living or, in case of his prior death, to his mother. The defendants became husband and wife September, 1916, and separated in 1920. They resumed living together in October, 1921, and the husband then revoked the designation of his mother as beneficiary and named his wife in her stead. The defendant wife testified that he then told her that if he lived to the maturity of the policy she should have one-half of the proceeds and that he then gave her the policy for safe keeping and for her protection. The defendant husband testifying denied such promise and said he never gave her the policy. They separated again in October, 1925, she taking the policy with her and he subsequently obtained a divorce from her. He paid all the annual premiums and when the policy matured in January, 1930, he requested her to surrender it to him and she refused and both made demand on the complainant for payment, whereupon the complainant filed its bill of interpleader herein.

Reference is made to the following provisions of the policy: First, the right is reserved to the insured to change the beneficiary, any such change to be made by filing written notice with the insurer, accompanied by the policy, the change to take effect upon endorsement on the policy. Second, no assignment of the policy shall be binding on the insurer unless filed with it. Except for making the change in the policy whereby the insurance was made payable to his wife instead of his mother, the insured attempted no change in beneficiary and made no assignment of the policy in writing.

Conclusions of Vice Chancellor.

The policy provision concerning change in beneficiary has no application, no such change having been attempted. The provision concerning assignment was an agreement between the insurer and the insured alone and because the insurer has paid the insurance money into court, said provision has no bearing upon the controversy between the two defendants. As between them a valid gift of the policy, or of an interest therein, could be made without written assignment or notification of assignment to the insurer. It could be effected in the manner in which the defendant wife claims it was made, namely, by delivery of the policy to her accompanied by words indicating an intention to make a gift and the subsequent retention of the policy by the wife (*Prudential Ins. Co. vs. Deyerberg*, 101 N. J. Eq., 90).

The two defendants were the only witnesses sworn and each gave meager testimony, each denying the other's claim. For the first five years of their married life the husband's mother continued to be the beneficiary under the policy in the event of the insured's death and his wife had no interest therein. The defendants separated in 1920 and it was not until they got together again in October, 1921, that the husband made the wife beneficiary and she claims it was then he handed her the policy and told her she was to receive half the proceeds on its maturity. They had just become reconciled and she says he made the gift because of that fact. It appears from her testimony that when she agreed to live with him again she gave consideration to the future for herself and their child, in the light of the past, and it would be only natural for him, upon making her

Conclusions of Vice Chancellor.

the beneficiary under the policy in the event of his death, to deliver the policy to her and it would also be natural at such a time, to show his desire that their future might be happy by agreeing that she should receive half the policy proceeds if he and she lived to its maturity. Thereafter the defendants lived together for four years and when they separated again she had possession of the policy and took it with her. He says she also took personal property belonging to him and that although he then discovered the policy was missing, he did not know she had it until after it had matured. Knowing that she had taken his personal property and missing the policy, he must at least have suspected she had taken it. She says he spoke to her about the policy several times before it matured and that she told him she had it. I am satisfied he knew she had taken the policy with her when she left him, yet if she was not entitled to it, he took no steps to obtain possession of it, or to make a change in beneficiary, but continued to keep the policy in force by paying the annual premiums as they fell due after 1925. It may be argued that he could not change the beneficiary without surrendering the policy for endorsement. By its terms he had the absolute right to revoke the designation of beneficiary and if, in consideration of their reconciliation in 1921, or for some other reason, he had not promised to make her the beneficiary in case of his death and to give her a half interest in the proceeds in the event he survived the maturity date of the policy and she, therefore, had no right to the policy, he could have demanded its return to him and upon her refusal to surrender it, he could have given

Final Decree.

formal notice to the insurer of a change in beneficiary and stated the reason why he could not produce the policy for endorsement.

10 I conclude that the defendant wife's possession of the policy and her testimony as to how and why it came into her possession, supported by the circumstances and probabilities, establishes her claim to one-half of the fund in court and that the same should be ordered paid to her and the other half ordered paid to the defendant husband.

Final Decree.

20 (Filed, November 25, 1930.)

IN CHANCERY OF NEW JERSEY.

78-167.

30	Between: METROPOLITAN LIFE INSURANCE COMPANY, a corporation, <i>Complainant,</i> and JOHN J. HAGGERTY and CATHERINE A. HAGGERTY, <i>Defendants.</i>	} On Bill of Interpleader. } Final Decree.
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40 This cause being opened to the Court by Paul J. Duffy, solicitor of the defendant Catherine A. Haggerty, and it appearing that by an interlocu-

Final Decree.

tory decree made in the above entitled cause on the 24th day of March, nineteen hundred and thirty, it was ordered that the defendants, John J. Haggerty and Catherine A. Haggerty, interplead as to the fund deposited with the Clerk of this Court in this cause by the complainant, and it appearing that said defendants, John J. Haggerty and Catherine A. Haggerty, thereafter duly filed with the Clerk of this Court statements in writing of their several claims to the said fund; and this cause coming on to be heard in the presence of Archie Elkins, solicitor of the defendant John J. Haggerty, and Paul J. Duffy, solicitor of the defendant Catherine A. Haggerty, and the Court having examined the pleadings and having taken proofs orally and in open Court, and having heard and considered the arguments of counsel thereon, and it appearing to the satisfaction of the Court that the defendant Catherine A. Haggerty is entitled to receive one-half of the fund so deposited in this Court, and the defendant John J. Haggerty is entitled to receive the other half of such fund so deposited;

And it further appearing that the said fund, amounting to the sum of \$1,337.27, was at the time of the making and filing of the interlocutory decree heretofore referred to, paid by the complainant into this Court, and that the same together with accumulated interest thereon since accrued but less the costs of said complainant, still remains deposited in this Court and subject to the order and direction thereof;

It is thereupon on this twenty-fourth day of November, nineteen hundred and thirty, ORDERED, ADJUDGED and DECREED that the

Final Decree.

10 said defendant Catherine A. Haggerty was and now is entitled to one-half and that the said defendant John J. Haggerty was and now is entitled to the other one-half of the said sum of \$1,337.27 so paid into Court, together with all accumulations of interest thereon, after deducting from said fund the counsel fee and costs allowed to the complainant and the lawful commissions of the Clerk of this Court.

20 It is further ORDERED, ADJUDGED and DECREED that the said defendant Catherine A. Haggerty be and she hereby is allowed her costs in this cause to be taxed, including a counsel fee of one hundred dollars (\$100.00), which is hereby allowed the said defendant Catherine A. Haggerty, and the Clerk of this Court is hereby directed to deduct said costs and counsel fee out of the one-half share of the defendant John J. Haggerty and to pay the same to the solicitor for the defendant Catherine A. Haggerty.

30 And it is further ORDERED that the balances due respectively to the defendants Catherine A. Haggerty and John J. Haggerty be paid to them or their solicitors.

E. R. WALKER,
C.

Respectfully advised,
JAMES J. FIELDER,
V. C.

New Jersey Court of Errors and Appeals

Between

METROPOLITAN LIFE INSURANCE
COMPANY, a Corporation,
Complainant,

and

JOHN J. HAGGERTY,
Defendant-Appellant,

and

CATHERINE A. HAGGERTY,
Defendant-Appellee.

On Bill, Etc. 10

On Appeal
from Court
of Chancery.

BRIEF ON BEHALF OF DEFENDANT- APPELLEE

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Statement of Facts

This is a contest over the disposition of a fund paid into the Court of Chancery by the Metropolitan Life Insurance Company as the proceeds of a policy of insurance No. 662447-A on the life of John J. Haggerty, which policy was known as a Twenty-Year Endowment Contract, in the amount of Twelve Hundred (\$1200.00) Dollars and on which sum Three Hundred Thirty-Seven Dollars and Twenty Cents (\$337.20) has accrued in dividends. Originally the policy designated Mary A. Haggerty, mother of John J. Haggerty, as beneficiary, with the right of revocation of beneficiary reserved in said John J. Haggerty. On or about October 24th, 1921, John J. Haggerty exercised this right of revocation and designated

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his wife, Catherine A. Haggerty, as beneficiary in said policy. By its terms this policy matured on the fifth day of January, 1930, at which time the amount due thereon became payable to the said John J. Haggerty, if living, or to the beneficiary named therein upon proof of his prior death. Meanwhile, on or about October 24th, 1921, or at the same time that he changed the beneficiary under the policy, John J. Haggerty turned over the said policy to Catherine A. Haggerty and, as contended by her, assigned her a one-half interest therein of such monies as might become due and payable to him upon maturity of the policy, in the event that he survived such maturity.

Upon this maturity date Catherine A. Haggerty, who still retained possession of the policy, refused to deliver up the same unless and until the one-half interest claimed by her should be paid, and the defendant, John J. Haggerty, who was still alive, demanded payment to him of the entire proceeds of the policy, whereupon the insurance company interpleaded to the end that these defendants, John J. Haggerty and Catherine A. Haggerty, now separated and divorced, the wife having obtained a divorce in Pennsylvania and the husband having obtained one in New Jersey, came into the Court of Chancery and established their respective claims.

This hearing was had and the Court of Chancery (on the advice of Vice Chancellor Fielder) decreed that one-half of the proceeds of the said policy should be paid to Catherine A. Haggerty and the other one-half to John J. Haggerty, from which decree the defendant, John J. Haggerty, has taken this appeal.

Point I.

The Court of Chancery properly found an assignment to Catherine A. Haggerty of the one-half interest in this endowment policy.

The terms of the insurance policy itself with respect to the form and validity of assignments thereof do not control the rights of these two claimants as against each other. Whether or not the insurance company would recognize the assignment claimed by Catherine A. Haggerty is not an issue in this case. The question is whether as between these two claimants there was a valid assignment by John J. Haggerty to Catherine A. Haggerty of a one-half interest in the proceeds of the policy at its maturity. The failure of the insured to comply with the policy provision that any assignment must be in writing cannot avail him here, because such provision was between the insured and the insurer alone, which the latter waived by paying the proceeds of the policy into court. (*Prudential Insurance Company vs. Deyenberg*, 137 Atl. Rep. 785.)

It is respectfully urged that the reasoning in the above case is applicable to the present controversy. The fact that the policy herein involved is an endowment, whereas the other was a straight life contract, does not interfere with the analogy. The question of named beneficiary need not be considered in this case, except that the designation of Catherine A. Haggerty as such beneficiary after the reconciliation in 1921 is additional evidence of the donative intent or state of mind of John J. Haggerty.

The proposition that a gift or assignment may be made of a policy of insurance appears to be

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incontrovertibly established. Furthermore, it is not necessary that such gift or assignment be made by written assignment or by any other form of writing.

Travelers Insurance Co. vs. Grant, 33 Atl. 1060.

10 *Metropolitan Ins. Co. vs. Clanton*, 73 Atl. 1052.

Prudential Ins. Co. vs. Deyerberg, supra.

In his brief counsel for the appellant refers to a line of well-considered cases on the subject of gifts *inter vivos*. Most of them deal with bank accounts.

20 An important case which deals more directly with the assignment of a life insurance policy is the case of *Travelers Insurance Co. vs. Grant*, supra. In a lengthy opinion Vice Chancellor Pitney says (on page 62):

20 "The sensible rule is that the delivery must be such a tradition as the nature of the subject admits of. Surely the delivery of the form of writing which evidences the debt and forms the foundation of the right of action is the best and only delivery of which the subject is capable."

Later, on the same page, he says:

40 "If the mere delivery of a common money bond, or of a promissory note not payable to bearer, without assignment of the one or the endorsement of the other, but accompanied with words of gift, is sufficient to entitle the donee, as against the donor and his representatives, to demand and receive the money from the obligor or prom-

of the assignor, then I am unable to see any reason why, under like circumstances, the donee of a life insurance policy should not be vested with like rights. The authorities so hold."

The foregoing has since been considered the law in this state and has been treated as such in many subsequent decisions. It is referred to as the law of New Jersey by the Supreme Court of Errors of Connecticut in *Travelers Insurance Co. vs. Mayo*, 139 Atl. 379 (p. 382), and by the Court of Appeals of Maryland in *First National Bank of Cumberland vs. Liberty Trust Co.* in 134 Atl. 210 (p. 213). 10

It appears from the decisions of our courts that they take liberal views in relation to gifts of choses in action. In *re Currans Estate*, 129 Atl. 820. 20

The question then is not whether or not such a gift could have been made but whether or not it was made. The evidence adduced by each claimant was meager, the claimants being the sole witnesses in support of their own respective claims.

In his pleading John J. Haggerty chivalrously charged that his wife had stolen the policy.

(State of Case, p. 17, ll. 10 and 11.) 30

The wife says that he gave it to her in 1921 when she returned to him after a separation.

(State of Case, p. 29, ll. 30 to 40.)

And that he promised her that if he were alive when the policy matured that she should have half the proceeds.

(State of Case, p. 31, ll. 24 to 31.)

The reason for this action was brought out by counsel for the appellant on cross-examination: 40

“Q. It was not because of any quarrel or any particular misunderstanding by you that you were to get half? A. Well, I had just become reconciled with him. We had been separated.”

(State of Case, p. 31, ll. 35 to 38.)

10 It is a fair inference from the testimony that the naming of Catherine A. Haggerty as beneficiary under the policy and the assignment to her of one-half the value thereof upon its maturity if the husband were still living was one of the inducing causes toward the re-establishment of domestic felicity. Evidently one product of her previous marital experience was caution and she, therefore, accepted possession of the policy it-
 20 self and retained it. Unquestionably Mr. Haggerty knew where the policy was and he could have taken proper steps to recover it. He could also have ceased paying the annual premium, in which event Mrs. Haggerty would have been obliged to continue such payments in order to protect her interests in the policy.

Point II.

30 **The finding of the Chancellor should not be set aside if sustained by the evidence, except for manifest error.**

The above rule is no new doctrine in this Court.

Pittis vs. Pittis, 93 Atl. 639.

Cartan vs. Phelps, 109 Atl. 291.

40 While the foregoing rule imposes no restraint on the power of the reviewing court to ascertain by full investigation and analysis of the evidence, what the facts are and whether the general find-

ing is sustained therewith, nevertheless, on appeal from a decree of the Court of Chancery great weight is given to a finding upon a question of fact, because the Chancellor who hears the case in the court below and sees the witnesses and heads them testify has better opportunity to judge their credibility than has the reviewing court.

In the case of *Riddle vs. Clabby*, 44 Atl. 859, this court says (page 863):

“* * * as the evidence was extremely contradictory and as the decision thereon must have depended upon the credit given to the witnesses, I feel unable to say that the Vice Chancellor who saw and heard the witnesses was wrong in his conclusion * * *”

Certainly the same situation presents itself in this case. The claimants were their own respective witnesses. Their testimony was contradictory, to put it mildly. Vice Chancellor Fielder heard them testify and had the opportunity to judge of their respective capacities for telling the truth. His conclusion that Mrs. Haggerty is entitled to one-half the proceeds of the policy as well as a counsel fee of \$100.00 out of the other one-half due to Mr. Haggerty is a product of his reflection upon the testimony of the witnesses and upon his consideration of the law, and this defendant, Catherine A. Haggerty, respectfully urges that it should be upheld.

PAUL J. DUFFY,

*Solicitor for and of counsel with
Defendant-Appellee, Catherine A.
Haggerty.*

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THE HISTORY OF THE
CITY OF BOSTON

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New Jersey Court of Errors and Appeals 10

Between METROPOLITAN LIFE INSURANCE COMPANY, a corporation, <i>Complainant,</i> and JOHN J. HAGGERTY, <i>Defendant-Appellant,</i> and CATHERINE A. HAGGERTY, <i>Defendant-Appellee.</i>	}	On Bill, etc. On Appeal from Court of Chancery. 20
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BRIEF ON BEHALF OF DEFENDANT-APPELLANT.

Statement of Facts. 30

The defendant-appellant, John J. Haggerty, purchased a twenty year endowment policy of insurance from the complainant in January, 1910, which policy matured on January 5, 1930. At the issuance of the aforesaid policy of insurance, the defendant-appellant's mother was the beneficiary named therein. In the year 1916 the defendant-appellant, John J. Haggerty, married the defend- 40

ant-appellee, Catherine A. Haggerty; and on or about October 24, 1921, the beneficiary in the said policy of insurance was revoked and changed from the mother of John J. Haggerty to his wife, Catherine A. Haggerty. The defendant-appellee, Catherine A. Haggerty, now contends that she is entitled to one-half of the proceeds of the said policy of insurance as the same was given to her as a gift in October, 1921. The defendant-appellant, John J. Haggerty, denied that he ever made a gift of one-half of the proceeds of the policy of insurance, aforesaid, and that the same was taken from him by his former wife, the defendant-appellee, without his knowledge or consent when she left him in the year 1925. The defendant, John J. Haggerty, commenced a suit for divorce in this State against the defendant, Catherine A. Haggerty, prior to the inception of the present litigation and prior to the date of maturity of the policy of insurance which forms the basis of the present dispute.

POINT I

THE COURT OF CHANCERY ERRED IN FINDING THAT A GIFT OF ONE-HALF OF THE PROCEEDS OF A TWENTY YEAR ENDOWMENT POLICY WAS MADE BY THE DEFENDANT, JOHN J. HAGGERTY, TO THE DEFENDANT, CATHERINE A. HAGGERTY.

The elements, or more properly termed, the essentials which constitute a gift "inter vivos" have been defined by our Courts in clear and positive language. Thus it was expressed in the case of *East Rutherford Building & Loan Association vs. McKenzie*, 87 N. J. Eq., 379. "There must be a donative intention, a delivery of the gift, or what amounts to a delivery, and the donor must rid himself of all control over the subject matter."

Each of the elements mentioned in the foregoing decision must be proved and the burden of proving these essentials rests upon the party alleging a gift.

In *Andreas vs. Andreas*, 84 N. J. Eq., 368, affirmed by the Court of Errors and Appeals in 85 N. J. Eq., 211, was a contest between husband and wife wherein the wife alleged that one half of certain securities deposited in a safe deposit box in their joint names was given to her as a gift by her husband. This was denied by the complainant and contended that the defendant had surreptitiously removed the securities from the safe deposit box. In considering the evidence adduced, the Court held that there was no gift to the wife, for although it appeared that there was a donative intent, there was no proof of a delivery. And the Court went on to say that in cases relating to gifts not only must there be shown that there was a donative intention on the part of the donor, but that there was also a delivery of the thing given. Thus it is apparent that the proof of one element is not sufficient to establish the right of a self-acclaimed donee to the property of another by the proof of a delivery alone without the donative intention, or the proof of an intention to give, without a delivery of the subject matter.

It is the contention of the defendant-appellant, John J. Haggerty, that there was neither a donative intent on his part to give, nor a delivery of the subject matter with a purpose to divest himself of his interest in the property delivered. Confining ourselves to the first element, namely, the intention to make a gift, it is quoted in 28 C. J., page 627, Section 19:

“A clear and unmistakable intention on the part of the donor to make a gift of his property is an essential requisite of a gift *inter vivos*.”

10 Citing with approval *Bailey vs. Orange Memorial Hospital*, 102 Atl., page 7; *Andreas vs. Andreas*, 84 N. J. Eq., 368; *McCullough vs. Forrest*, 84 N. J. Eq., 101, in which latter decision the Court goes on to say:

“There must be a donative intention, that is, a design presently to part with the ownership and in conjunction with it a complete surrender by the donor of all control over the thing given.”

20 To the same effect is *Stevenson vs. Earl*, 65 N. J. Eq., 721, and the case of *Taylor vs. Coriell*, 66 N. J. Eq., 262. In the last cited case the Court expresses itself in the following language:

30 “In order to make the gift effective, the evidence should show an intention on the part of the donor to divest himself of the possession and control of his property and it should be inconsistent with any other intention.”

In *McGee vs. McGee*, 78 N. J. Eq., 431, the Court in a voluminous decision said:

“The singular element of intent is the paramount inquiry.”

40 In the case of *Commercial Trust Company of New Jersey vs. White*, 132 Atl., 761, Vice Chancellor Fielder, delivering the decision of the Court of Chancery, said:

“Where moneys belonging to one person are by him deposited in a savings bank in the joint names of himself and another, the question whether or not the act of deposit accomplished a then present transfer to the donee of an interest in the money in bank depends upon the intent with which the donor made such deposit.”

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The case of *Dunn vs. Houghton*, 51 Atl., 71, Vice Chancellor Stevenson, in speaking whether or not a gift was accomplished, said:

“The question whether there was a gift or not is determined in each case solely by the purpose of the alleged donor.”

In *Burns vs. Nolette*, 144 Atl., 849, decided by the Supreme Court of New Hampshire, citing with approval Vice Chancellor Stevenson’s decision of *Dunn vs. Houghton*, supra, states:

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“In order that money, whether a deposit in a savings bank or right to money in the hands of another, should pass as a present gift or trust, it must appear that a gift or trust was intended.”

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“And the intention to establish the making of a gift inter vivos must be a present intention.”

McCullough vs. Forrest, 84 N. J. Eq., 101.

An intention to give in the future does not create the donative intention which the law will recognize or enforce. Thus it is more accurately

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expressed in 28 C. J., page 627, Section 19, where that learned treatise in speaking of the intent to make a gift expresses that intention to be as follows:

10 “Moreover, the intention required is a present intention; a mere intention to give in the future, however well shown, gives rise to no obligation which the law will recognize or enforce.”

And on page 647, Section 42, reads as follows:

20 “Gifts inter vivos have no reference to the future and go into immediate and absolute effect, and a gift of property to take effect at some future date is void.”

Corpus Juris, citing *Matthews vs. Hoagland*, 48 N. J. Eq., 455, wherein the Court held:

30 “To constitute a valid gift inter vivos, there must be such a transfer of the subject matter as will pass the donor’s title at once to the donee, absolutely and irrevocably divesting the former of, and investing the latter with, all of the donor’s right or title therein, and control and dominion thereof.”

To determine the question, and which appears to be the paramount question, the matter of *intention* on the part of the donor to make a gift, we must resort to the testimony of the party litigants and see whether or not it evinces words from which there can be extracted from the donor an intention to divest himself of his property.

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The direct testimony of defendant-appellant,
John J. Haggerty (S. C., p. 24, lines 30 to 40):

“Q. When she left (referring to defendant,
Catherine A. Haggerty), did she take any-
thing with her? A. Yes; she took all my fur-
niture and everything. The place was de-
serted. 10

Q. What about your personal papers? A.
After that I missed the policy.

Q. Was the policy in your home before she
took all the things? A. Yes.

Q. After she left were you able to find it?
A. No.”

(S. C., p. 25, lines 20 to 30:)

“Q. Did you make an effort to get the 20
policy? A. I made an effort to find out who
had it, and I found out my wife had my policy
—my ex-wife.

Q. Did you voluntarily give the policy to
her? A. No.

Q. At any time? A. No.

Q. How do you account for her possession
of the policy? A. She took it.

Q. When? A. When she left me in 1925.” 30

(S. C., p. 26, line 10:)

“Q. Mr. Haggerty, did you make any ar-
rangements with your wife concerning the
division of the proceeds of this insurance
policy? A. No.

Q. Did you ever agree with her, particu-
larly in October, 1921, that she was to have 40

half of the proceeds of this insurance policy?

A. No.

Q. Did you ever agree with her that she was to have anything of the proceeds? A. No.”

10 The foregoing testimony of the defendant-appellant, John J. Haggerty, is certainly dispositive of any intention on his part to make a gift of one-half of the proceeds of the policy of insurance, to the defendant-appellee, Catherine A. Haggerty, and manifestly shows that he never delivered the policy of insurance to her as a gift; and is devoid of the slightest expression of an intention to impart a gift to the defendant-appellee, Catherine A. Haggerty.

20 To controvert the testimony of the defendant-appellant, John J. Haggerty, we have only the uncorroborated testimony of the defendant-appellee, Catherine A. Haggerty.

The direct testimony of the defendant, Catherine A. Haggerty, the donee, is as follows (State of Case, p. 29):

“Q. Did he change it? (Meaning the policy.) A. He did.

30 Q. What did he do? A. He gave me the policy when it was changed.

Q. What did he say? A. He told me to put it away with my other papers.

Q. Is that all? A. To keep it; keep it safe; and that is what I did.”

(State of Case, p. 30:)

40 “Q. Is that all that you remember that Mr. Haggerty said with respect to the policy at

that time? A. No; he told me if he was living when the policy matured he would give me half of it."

On cross examination the following question was asked of Mrs. Haggerty (State of Case, p. 31):

"Q. He gave you the policy at the time of the change of beneficiary for the purpose of safe-keeping? A. Yes." 10

It is upon the aforesaid inquiries and the answers thereto that the defendant, Catherine A. Haggerty, contends that she has established the burden of proving that a gift was made to her of one-half of the proceeds of the said policy of insurance. The question to be determined is whether her testimony spells out an intention on the part of the defendant, John J. Haggerty, to give to the defendant, Catherine A. Haggerty, a present gift. It seems from her testimony, and giving it the most favorable interpretation that her language permits, that the physical act of giving the policy to her was not to give a gift of the policy of insurance, but to deposit it with her for safe-keeping. It was clearly the intention of the defendant, John J. Haggerty, and from Catherine A. Haggerty's own testimony, that she should keep the policy safe,—that she should be made simply a depository of the policy and that the same should remain his property. It manifestly follows that the mere act of placing the policy in her hands for safe keeping was inoperative to vest in her any proprietary rights. It was only upon further questioning that the solicitor for the defendant, Catherine A. Haggerty, finally elicited from her the following statement: 20 30 40

“He told me if he was living when the policy matured he would give me half of it” (S. C., p. 30).

10 In the entire testimony of the defendant, Catherine A. Haggerty, the aforesaid words are the only expression on her part of any evidence of an intention on the part of the defendant, John J. Haggerty, to invest in her a one-half interest in the said policy of insurance. The question to be answered is whether or not those words were an expression of a present intention to give on the part of the donor as the law expresses in the foregoing decisions. It is apparent that it is not. The words used by the defendant, Catherine A. Haggerty, in its most favorable light, evince nothing more than a blanket promise on the part of the defendant, John J. Haggerty, to take effect in the future, and are lacking in words, signifying a present intention to give.

A gift must be absolute and unconditional. 28 C. J., 645.

A mere promise or executory agreement to make a gift of property does not amount to a gift inter vivos and is not enforceable as such. 28 C. J., 629.

30 **POINT II**
THE BURDEN OF PROVING A GIFT IS UPON THE DEFENDANT, CATHERINE A. HAGGERTY, AND THE ESTABLISHMENT OF THE GIFT MUST BE BY PROOF OF A CLEAR AND UNMISTAKABLE NATURE.

In *Bardo vs. Bardo*, 92 N. J. Eq., 106, the Court held:

40 “A gift of personal property from a husband to a wife must be clearly proved. There must be clear and convincing evidence of a

delivery of the property with the intention of divesting himself of all dominion and control of it, and of vesting it in his wife.”

To the same effect is the case of *Farrow vs. Farrow*, 72 N. J. Eq., 421, decided by the Court of Errors and Appeals.

In 30 C. J., page 703, Section 299, wherein the question of proof required on the part of the wife to establish herself as a donee, is treated, it is said: 10

“Where the wife claims a gift from the husband, she has the burden of proving it. The burden of proving the essential elements of the gift, such as an intent to give, and the execution of that intention, rests upon her.” 20

And on page 740, in dealing with the same subject, the matter of proof, that erudite treatise says:

“Clear and convincing evidence is required in order to establish a gift from husband to wife.”

And in the case of *Dilts vs. Stevenson*, 17 N. J. Eq., 407, in dealing with evidence on the part of the wife who alleged herself to be the donee, the Court said with reference to her testimony, 30

“She must adduce evidence beyond suspicion.”

The purpose of the foregoing requirement is quite apparent, for it would jeopardize one's own property at the slightest overture of an inten- 40

tion to divest oneself of his property in favor of another. It would require persons in close relationship with others to be restrained in their dealings for fear that the slightest expression of words indicating an intention to give would subject one to a suit at the hands of an alleged recipient, and thus one would not be assured of his own interest in his own property. Mindful of the havoc which would result, the Courts have required clear, convincing and most certain evidence on the part of the alleged donee to establish his rights and claims to the property of an asserted donor. It certainly cannot be said that from the testimony of the defendant, Catherine A. Haggerty, the essential proof to establish a gift can be deduced therefrom. The evidence of the defendant, Catherine A. Haggerty, is uncorroborated and certainly falls short of establishing a gift to her of a one-half interest in the policy of insurance, and is certainly lacking in the element of establishing a delivery, tantamount to such a delivery as to divest the defendant, John J. Haggerty, of any control over the policy of insurance.

The learned Vice-Chancellor, in his opinion, in considering the evidence of the parties hereto, found that an assignment or gift of the policy could be made in the manner as alleged, by the defendant, Catherine A. Haggerty, and cites the case of *Prudential Ins. Co. vs. Deyerberg*, 101 N. J. Eq., 90, a case which was decided by Vice-Chancellor Fielder, who delivered the opinion in the case now on appeal. The case cited has no bearing with the matters in dispute in the case before the Court. In the present contest, in consideration before the Court the issue is, was there

a gift of one-half of the proceeds of the twenty year endowment policy to the defendant, Catherine A. Haggerty, by the defendant, John J. Haggerty? Query, are the essential elements which constitute a gift inter vivos proved to the satisfaction of this Court by the defendant, Catherine A. Haggerty? In the case cited by the learned Vice-Chancellor the issue was as to the correctness and the validity in making an assignment of a certain life insurance policy. In that case Vice-Chancellor Fielder said, "Upon the evidence I find that on Christmas Day, 1921, the assured made a gift of the policy to Mrs. Elschepp by delivering it into her hands and saying to her that he gave it to her as a present." She returned it to the assured for safe-keeping and he gave her a letter addressed to the company that in case of his death, the money shall be paid to Helene Elschepp, and the same was signed by the assured. The contest was between the donee, Helene Elschepp, and the executors of the Estate of Mr. Deyerberg. The executors contended that there was not a proper assignment of the policy to Helene Elschepp. The contention of the executors was denied; the Court holding that such an assignment of a policy payable to the estate of the assured could be assigned by a delivery with words, constituting or spelling out an intention to make a present gift.

Therefore, the defendant, John J. Haggerty, contends that the case cited has no bearing upon the case before this Court on appeal as the method of transferring an interest to the defendant, Catherine A. Haggerty, is not in dispute or in question, but whether the words and the conduct following the alleged act of delivery of the policy

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to Catherine A. Haggerty as asserted by her did constitute or signify an intention to give a one-half interest of the proceeds of the insurance policy to the alleged donee, Catherine A. Haggerty. In the case before the Court there is no evidence showing that the policy was given to the defendant, Catherine A. Haggerty, as a present, nor is there any language or conduct signifying such an intention, but that the same was given as contended by the defendant, Catherine A. Haggerty, when she said (State of Case, p. 29): "He told me to put it away with my other papers, to keep it; keep it safe, and that is what I did." Showing that she herself intended that she was to be merely a depository of the said policy of insurance.

20 The learned Vice-Chancellor in his conclusions says:

"They had just become reconciled and she says he made the gift because of that fact. It appears from her testimony that when she agreed to live with him again she gave consideration to the future for herself and their child, in the light of the past."

30 I am obliged to take issue with the learned Vice-Chancellor in respect to the same, as a careful perusal of the testimony does not evince any such intention on her part as giving consideration to the future. It was the duty of the defendant, Catherine A. Haggerty, to return to John J. Haggerty, her husband. She was doing what she was legally bound to do and it would be a great injustice to her to say that she manifestly returned
40 to her husband because of the consideration of

one-half of the proceeds of the said policy of insurance; that she was bartering her love and affection for her husband and for the giving of her child the paternal protection that it needs in return for one-half of the proceeds of a \$1,200.00 insurance policy. The learned Vice-Chancellor further expresses in his opinion that he believes it was the intention of John J. Haggerty to give to his then wife, the defendant, Catherine A. Haggerty, a one-half interest of the proceeds of the policy in order that their future might be happy. In due respect to the learned Vice-Chancellor, I must again take issue with his analysis and interpretation of the testimony of the party litigants. Here, the alleged reconciliation took place in 1921, the policy did not mature until 1930, at which time the parties would be entitled to the proceeds thereof. A period of nine years would have to elapse from the time of the making of the alleged promise until its consummation. Surely, this would not be a means to effectuate happiness for the future, and certainly would not show any benevolence on the part of her husband who requests his wife to wait a period of nine years before bestowing upon her a gift which will amount at the end of nine years to some odd \$600.00. It seems to me it would be more logical and more appropriate for an occasion as alleged in the opinion of the Vice-Chancellor, that the husband if he be benevolently inclined, would bestow upon his wife, the defendant, Catherine A. Haggerty, the entire proceeds.

On cross examination, the defendant, Catherine A. Haggerty (State of Case, p. 31, lines 30 to 40), says in explaining why she received one-half of the proceeds of the matured policy:

“Well, I had just become reconciled with him. We had been separated.”

10 It is upon this statement alone, it is apparent, that the learned Vice-Chancellor determines a motive, a purpose or the grounds upon which a donative intention could be recognized on the part of the defendant, John J. Haggerty. I contend that such a mere scintilla of evidence is not sufficient in face of the other surrounding testimony of the defendant, Catherine A. Haggerty, wherein she stated (State of Case, p. 29, line 40) :

“To keep it, keep it safe, and that is what I did.”

20 But for the sake of argument, granting that a motive for making a gift may have arisen because of their reconciliation, and bearing in mind the conditional manner in which the defendant, Catherine A. Haggerty, alleges that the words of donative intention were expressed (State of Case, p. 30, line 10) :

“He told me if he was living he would give me half of it.”

30 In face of these words, which are of a conditional character, is it not reasonable to say in fairness to the defendant, John J. Haggerty, that if a gift of one-half of the proceeds was given to the defendant, Catherine A. Haggerty, on the contingency that the defendant, John J. Haggerty, live at the maturity of the policy, that it was also understood, as a condition of making the aforesaid gift
40 at the time of reconciliation, that the parties understood that the consummation of the said al-

leged gift and its taking effect depended upon the continuance of the parties remaining together as husband and wife; and that upon her leaving her husband in 1925 (State of Case, p. 31, lines 10 to 20) there was a breach of the condition, and hence, the defendant, Catherine A. Haggerty, was not entitled to receive one-half of the proceeds of the policy of insurance. It is not unreasonable to assume the above facts or condition, for if the reconciliation induced him to make the alleged gift to his wife, the defendant, Catherine A. Haggerty, in order to make it more propitious for her to stay with him; then the defendant, John J. Haggerty, certainly must have taken precaution that in the event that his wife should again leave him, that her rights to any interest in the policy, that is, assuming that he had given her an interest therein, would be forfeited. And this the defendant, Catherine A. Haggerty, must have known and understood. Aside from these conjectures, or inferences or probabilities that may be assumed, the real issue before this Court is to determine whether or not the defendant, John J. Haggerty, made a gift of one-half of the proceeds of the policy of insurance to the defendant, Catherine A. Haggerty, and whether the defendant, Catherine A. Haggerty, satisfactorily proved her claim to one-half of the proceeds thereof by establishing the essential elements which constitute a gift *inter vivos*.

The mere fact that there are several intentions that can be deduced from the conduct of the parties hereto, defeats any contention of an alleged gift. *Taylor vs. Coreill*, 66 N. J. Eq., 262.

The fact that the alleged words of the creation of a gift as stated in the testimony of the defend-

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ant, Catherine A. Haggerty, are words signifying an intention to give in the future and not in the present, defeats the allegation that a gift *inter vivos* was effectuated between the parties. In fact that the same was conditional, bars the defendant, Catherine A. Haggerty, to her claim of one-half of the proceeds of the policy of insurance as a gift to her. The fact that the defendant, Catherine A. Haggerty, states (State of Case, p. 29) that the policy was given to her, "to keep it; keep it safe; and that is what I did," shows that there was no delivery to her of the policy of insurance so as to divest the donor of all control and dominion over the aforesaid policy of insurance.

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CONCLUSION.

For the reasons stated I respectfully submit to the Court that the Court of Chancery erred in finding and adjudging that one-half of the proceeds of the twenty-year endowment policy of insurance issued by the complainant, Metropolitan Life Insurance Company, to the defendant, John J. Haggerty, belonged to the defendant, Catherine A. Haggerty; that the Court of Chancery erred in not finding and adjudging that the entire proceeds of the twenty-year endowment policy aforesaid belonged to the defendant, John J. Haggerty; that the Court of Chancery for the aforesaid reasons erred in according to the defendant, Catherine A. Haggerty, costs and a counsel fee of \$100.00 to be paid out of the sum due to the defendant, John J. Haggerty, and the Court of Chancery erred in finding as a matter of fact that the defendant, Catherine A. Haggerty,

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proved that a gift was made by the defendant, John J. Haggerty, to her of one-half of the proceeds of the insurance policy aforesaid.

ARCHIE ELKINS,
Solicitor for and of counsel with
Defendant, John J. Haggerty.

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