Gérald Robitaille *Appellant*;

and

Marie-Jeanne Hins-Dion *Respondent*;

and

New York Life Insurance Company *Mis en cause.*

1978: October 26; 1978: November 21.

Present: Pigeon, Dickson, Beetz, Estey and Pratte JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR QUEBEC

Exemption from seizure — Bankruptcy — Benefit of an insurance policy — Exemption from seizure clause — Stipulation for the benefit of a third party — Civil Code, arts. 597, 735, 1028 — Code of Civil Procedure, art. 553(3) — Supplemental Pension Plans Act, S.Q. 1965, c. 25, s. 31 — Husbands and Parents Life Insurance Act, R.S.Q. 1964, c. 296.

Respondent, who assigned her property on November 28, 1975, asked the Superior Court sitting in bankruptcy to declare that the benefit of a life insurance policy, payable to her as universal legatee of her husband, who died on December 25, 1974, was exempt from seizure. The Superior Court held that this benefit could be seized in satisfaction of any debts of the debtor subsequent to the opening of the legacy, but was exempt from seizure in satisfaction of any debt prior to opening of the legacy. The trustee, the appellant in this Court, asked the Court of Appeal to reverse the latter part of the Superior Court decision. His appeal was dismissed and he appealed to this Court.

Held: The appeal should be allowed.

Respondent's rights to the benefit of the insurance policy derive from the will, which makes her the universal legatee of her husband. The universal legacy cannot be regarded as the designation of a beneficiary under a stipulation for the benefit of a third party, since a person's heir is not a third party but the continuation of his legal personality. As respondent is not a beneficiary in the proper sense, she cannot rely on the exemption from seizure in the insurance policy, or on art. 553(3) of the *Code of Civil Procedure.*

APPEAL against a decision of the Court of Appeal of Quebec[1] affirming a judgment of the Superior Court sitting in bankruptcy. Appeal allowed.

Louis Guimont, for the appellant.

Raynold Bélanger, Q.C., for the respondent.

The judgment of the Court was delivered by

PIGEON J.—This is an appeal, by leave of this Court, from the decision of the Court of Appeal of Quebec, [1977] C.A. 468, affirming the judgment of the Superior Court sitting in bankruptcy declaring that the benefit under a life insurance policy in the amount of $20,000 could be seized in satisfaction of any debts of the debtor, respondent Dame Dion, subsequent to the opening of the universal legacy made in her favour by her husband Marcel Dion, who died on December 25, 1974. Respondent is deemed to have made an authorized assignment on November 28, 1975, the proposal she filed on that day having been subsequently rejected. Appellant is her trustee in bankruptcy. He claimed from the mis en cause payment of the amount of the policy issued on the life of respondent's husband. Respondent thereupon asked the Court to reverse the trustee's decision.

The policy in question names as "beneficiary":

[TRANSLATION] First executors, administrators or assignees of the insured.

Under the heading "GENERAL PROVISIONS" there is the following clause:

[TRANSLATION] 17. Protection against creditors

To the extent permitted by law, and subject to the terms and conditions of this policy, all benefits and all money available or paid to any person whatsoever and in any way connected with this policy shall be exempt and free from all debts, contracts and commitments of the person in question and from legal proceedings aimed at taxing or seizing them.

It was on the basis of this provision that the Superior Court and the Court of Appeal held that there was a partial exemption from seizure, relying on para. 3 of art. 553 of the *Code of Civil Procedure*, which reads as follows:

[1] [1977] C.A. 468.

553. The following are exempt from seizure:

. . .

3. Property declared by a donor or testator to be exempt from seizure, which may however be seized by creditors posterior to the gift or to the opening of the legacy, with the permission of the judge and to the extent that he determines.

The Superior Court said concerning the exemption from seizure clause in the policy:

[TRANSLATION] . . . In view of clause 17, he intended to provide for an exemption from seizure in favour of the beneficiary on his death. This is a stipulation for the benefit of a third party (art. 1029 *C.C.*) (*Hallé v. The Canadian Indemnity Co.*, [1937] S.C.R. 368).

To this the Court of Appeal added:

[TRANSLATION] . . . by the will the designated legatee is invested with all the rights under this policy which had already been the subject of the insured's intention when the policy was issued. Since the latter had chosen to subscribe to an insurance policy providing for exemption from seizure on the one hand and designation of the beneficiary by will on the other hand, the property is "declared by a testator to be exempt from seizure", as required by the present art. 553(3) *C.C.P.* In determining the rights of respondent beneficiary in the case at bar, the insurance contract cannot be excluded from the will any more than the will which designates the beneficiary can be excluded from the insurance contract. It is these two documents taken together which, being interrelated, specify the rights to the benefits under the policy and the conditions governing their exercise.

With respect, I must say that respondent definitely cannot be considered as the "beneficiary" of the policy. The will from which she derives all her rights makes her the universal legatee of her husband; she is therefore his legal representative, she succeeded him by accepting the universal legacy in her favour. It is an error to view this as the designation of a beneficiary. The universal legacy cannot be regarded as the designation of a beneficiary under a stipulation for the benefit of a third party. Towards her deceased husband, the person insured by the mis en cause, respondent is not a third party, but his heir (art. 597 *C.C.*). In order for there to be a stipulation for the benefit of a third person, a benefit must be stipulated for a third party. In the eyes of the law a person's heirs are not third parties. Stipulating for one's heirs

and legal representatives is stipulating for oneself, as stated clearly in art. 1028 *C.C.*:

> Art. 1028. A person cannot, by a contract in his own name, bind any one but himself and his heirs and legal representatives; . . .

In this Court counsel for the respondent contended that effect should be given to the exemption from seizure clause even towards the insured and his estate, because this would not be prohibited. He cited no authority in support of this submission which is quite simply untenable. It is quite clear that one cannot by a contract protect one's property from seizure by one's creditors except under a special enactment such as in the *Supplemental Pension Plans Act* (S.Q. 1965, c. 25, s. 31). Thus it is perfectly clear that one cannot make a bank deposit stipulating that the money will be exempt from seizure. It is also clear that, as a result of art. 735 *C.C.*, it is not possible to bequeath one's property so as to protect it from seizure by one's creditors. The provision for exemption from seizure found in the policy can therefore have effect only in favor of a true beneficiary, that is, a third party on whom the benefit is conferred. As this is not the case here, it is not necessary to consider whether a benefit thus conferred is in fact property declared by a donor to be exempt from seizure within the meaning of art. 553(3) cited above.

Should it nonetheless be said, as in the Court of Appeal, that the stipulation is to be considered as part of the will? This appears impossible to me, since for a legacy to give rise to an exemption from seizure it must be "property declared by a donor or testator to be exempt from seizure", or, in the French version, "sous condition d'insaisissabilité". Here the testator did not stipulate this condition. For the reasons already set out, this condition of the policy can only apply to a beneficiary in the proper sense, that is a third party, not a successor of the insured.

It should be noted, moreover, that in any event such exemption from seizure is necessarily ineffective towards the creditors of the deceased. Regarding respondent's own creditors, the Superior Court decided that, in the circumstances, the exemption from seizure should be completely eliminated with

respect to all debts subsequent to the devolution of the legacy, that is, the date on which respondent's husband died. Thus, even if there were an exemption from seizure as a condition of a legacy to respondent, the latter would be able to take advantage of it only against her own creditors for debts contracted by her while her husband was alive.

The insurance policy with which we are concerned in the case at bar is not governed by the *Husbands and Parents Life Insurance Act* (R.S.Q. 1964, c. 296), since the deceased did not make an "appropriation" for the benefit of his wife as is necessary if that Act is to apply. However, some provisions concerning exemption from seizure are well worth quoting. They show that as long as the policy belongs to the insured, as was clearly the case here, there is no exemption from seizure:

> 30. Policies effected or appropriated under this act, shall be exempt from seizure for debts due either by the insured or by the persons benefitted.
>
> The insurance money, while in the hands of the company, shall be free from and be unseizable for the debts either of the insured or of the persons benefitted, and shall be paid according to the terms of such policies, or of any declaration of appropriation, or of any revocation relating to the same.
>
> Such exemption shall not apply to any policy or to part thereof, which may have reverted to and be held by the insured. . . .

I conclude that the decision of the Court of Appeal and the judgment of the Superior Court should be set aside and respondent's petition for a declaration that some assets are exempt from seizure should be dismissed with costs throughout.

Appeal allowed with costs.

Solicitors for the appellant: Garneau, Tourigny, Doyon & Guimont, Quebec.

Solicitors for the respondent: Bélanger & Turgeon, Quebec.