1722.

INSURANCE—INSTALLMENT SALE OF FURNITURE AMOUNTS TO INSURANCE.

SYLLABUS:

Where a furniture company in Ohio sells furniture on the installment plan and, at the time of the sale, makes an agreement with the purchaser that, in the event the purchaser dies before the furniture is completely paid for, the company will cancel the debt for such furniture and give the purchaser's estate a receipt in full for the balance of the account remaining unpaid, the transaction is a contract "substantially amounting to insurance" within the meaning of Section 665, General Code.

COLUMBUS, OHIO, February 17, 1928.

HON. WILLIAM C. SAFFORD, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—This will acknowledge receipt of your recent communication requesting my opinion as follows:

> "The attention of this Department has been called to the operations of certain mercantile houses which are working on a plan similar to the following:
>
> A furniture company sells furniture on the installment plan, and at the time of purchase makes an agreement with the purchaser that in the event the purchaser should die before the furniture is completely paid for, the company will give his estate a receipt in full for the furniture and wipe the debt from its books.
>
> Is such a contract a contract of insurance? And does such an operation bring this company under jurisdiction of the State Insurance Department?"

Section 665, General Code, provides as follows:

> "No company, corporation, or association, whether organized in this state or elsewhere, shall engage either directly or indirectly in this state in the business of insurance, or enter into any contracts substantially amounting to insurance, or in any manner aid therein, or engage in the business of guaranteeing against liability, loss or damage, unless it is expressly authorized by the laws of this state, and the laws regulating it and applicable thereto, have been complied with."

In Corpus Juris, Vol. 32, page 975, insurance is defined as follows:

> "Broadly defined, insurance is a contract by which one party, for a compensation called the premium, assumes particular risks of the other party and promises to pay to him or his nominee a certain or ascertainable sum of money on a specified contingency."

In Cooley's second edition on the Law of Insurance, at page 6, the author gives the following definition:

"Insurance has been defined in general terms as a contract by which one party undertakes to indemnify another against loss, damage or liability arising from an unknown or contingent event."

On page 7, the same author says:

"The insurer, in return for a consideration paid to him by the insured, assumes this risk, and when such a risk is assumed by one of the parties to the contract, whatever form the contract may take, it is in fact a contract of insurance. Risk is essentially the subject of the contract."

The same author, at page 32, says:

"A contract whereby, on the payment of stipulated installments by one party, the other agrees to advance money for the purchase or erection of a home for the first party, with a proviso that in the case of total disability or death of the first party the promisor will discharge the indebtedness and convey to the beneficiary of such first party a clear title to the property, is in effect a contract of life insurance. It is a valuable promise made to the contract holder for consideration, contingent on his death or disability, within the general definition of a life insurance contract."

In addition to the information contained in your letter, I am informed that the company referred to in your letter is a domestic corporation engaged in the general business of selling household furniture, carpets and similar articles, in large part, on the installment plan. This plan contemplates delivery to the purchaser of the property bargained for, upon payment by him of a substantial sum of money and the execution of a contract, whereby the customer has the right to the possession and use of the articles purchased, provided he makes certain definite payments at different times, title being retained by the company until all payments are made when the title finally vests in the purchaser. It is further provided that in case of death of the person signing the contract before the whole amount of the contract price is paid, the company will cancel the debt and give the purchaser's estate a receipt in full for the furniture. This feature of the contract and method of operation is advertised by the company and no doubt is a persuasive argument in the acquisition of contracts.

I do not find any adjudicated cases in Ohio bearing on this subject. A like question, however, was before the Supreme Court of Massachusetts and was considered and decided by it in the case of *Attorney General* vs. *C. E. Osgood Company*, 249 Mass. 473, on June 12, 1924. The headnotes of this case read as follows:

"A Massachusetts corporation, engaged in the business of selling household furniture on the installment plan, included in a contract of conditional sale called a 'lease' the following clause: 'In case of the death of the person signing this lease before the whole amount of the lease is paid, we will receipt the balance due us on this account in full, provided the person signing this agreement is the principal wage earner of the family, and provided all the payments have been made according to the terms agreed to in this contract; but it is distinctly understood that this agreement does not apply on any account of five hundred dollars or more.' In an information by the Attorney General at the relation of the insurance commissioner under St. 1922, c. 417, Section 1, to restrain the corporation

from soliciting, making, or advertising relative to such contracts, it was *held,* that

(1) The consideration for the contract was single both for the personal property sold and the agreement as to cancellation of the debt in case of the customer's death;

(2) The quoted clause was part of the initial contract of the defendant with its customer, was supported by the consideration of that contract, and was binding upon the defendant;

(3) The clause respecting cancellation of the balance of the debt necessarily implied transfer of title to the property by the defendant to the estate of its customer on the death of the latter;

(4) The contract constituted insurance within the meaning of the statutory definition;

(5) Whether the quoted clause was ancillary to its chief business or was mainly for advertising ends, was not relevant in view of the absolute prohibition in G. L. c. 175, Section 3, against the making of contracts for insurance except by companies and in the manner authorized by law;

(6) The statute was violated and the defendant should be enjoined."

On page 476 the Court cites the statute of that state in its opinion and uses the following language:

"The question to be decided is whether this so called lease constitutes a contract of insurance. A contract of insurance is defined by G. L. c. 175, Section 2, to be 'an agreement by which one party for a consideration promises to pay money or its equivalent, or to do an act valuable to the insured, upon the destruction, loss or injury of something in which the other party has an interest.' This definition is intended to be comprehensive of all kinds of insurance, including life, fire, accident, fidelity, health, title, and liability, because it is the definition of the chapter in which all these varieties of insurance are regulated. This statutory definition does not differ in any essential from the common law definition. *Commonwealth* vs. *Wetherbee,* 105 Mass. 149. *Claflin* vs. *United States Credit System Co.* 165 Mass. 501.

It is manifest that the defendant does not receive so far as the face of its lease is concerned any particular sum of money for the part of the agreement which relates to the cancellation of the debt in case of the death of its customer. The consideration for the lease or contract appears to be single both for the personal property and the agreement as to cancellation of the debt in case of the customer's death. It is equally plain that the defendant is bound by the terms of its contract to cancel the balance of debt due it in case of the death of its customer, and to cause the title to personal property to vest in his estate. Its contract is not like an unsealed agreement to discharge an overdue debt on payment in cash of less than its full amount. The quoted clause of the lease is part of the defendant's initial contract with its customer, is supported by the conconsideration of that contract and is binding upon the defendant. The clause respecting cancellation of the balance of the debt necessarily implies transfer of title to the property by the defendant to the estate of its customer on the death of the latter.

> This constitutes insurance within the meaning of the statutory definition. The cancellation of the debt is the equivalent of the payment of money to the estate of the customer. The transfer of title to the personal property delivered on lease is a right valuable to the customer. The cancellation of the debt and the transfer of title to the personal property spring out of the agreement and are in performance of its terms. The customer pays to the defendant the consideration for the doing of these things in the money handed to it as deposit and as the partial payments made from time to time. The cancellation of the debt and the transfer of the title to the personal property occur upon the death of the customer. That loss of his life is plainly something in which the customer has an interest. Every element of the statutory definition of insurance is present."

There is no statutory definition of insurance in Ohio as in Massachusetts. It is, therefore, necessary to go to the general definition as to what constitutes insurance. The books contain many definitions of insurance, substantially like those above given. As stated in the Massachusetts case above quoted the definition contained in the Massachusetts statute "does not differ in any essential from the common law definition," and in my opinion this definition is as satisfactory as any.

Under the terms of the contract in question, upon the death of the customer the debt is canceled in whatever sum there might be remaining unpaid at the time. The title to the personal property is relinquished to the estate of the customer. This is all in performance of the terms of the contract. Under the holding of the Supreme Court of Massachusetts the contract here under consideration is clearly one of insurance.

However, by the express terms of Section 665, supra, in order to come within the provisions of this and related Sections of the General Code, it is unnecessary that the contract be one of strict insurance. The statute prohibits, unless the insurance laws of the state be complied with, a company, corporation or association from entering into any contract "*substantially* amounting to insurance." This language is much broader and more inclusive than the phrase contract of insurance, and I have no difficulty in reaching the conclusion that contracts like the one here involved come within the provisions of the statutes.

Specifically answering your question, it is my opinion that where a furniture company in Ohio sells furniture on the installment plan and, at the time of the sale, makes an agreement with the purchaser that, in the event the purchaser dies before the furniture is completely paid for, the company will cancel the debt for such furniture and give the purchaser's estate a receipt in full for the balance of the account remaining unpaid, the transaction is a contract "substantially amounting to insurance" within the meaning of Section 665, General Code.

Respectfully,
EDWARD C. TURNER,
Attorney General.