which held that a person who fell and broke his arm, upon being attacked by a mad dog, could be reimbursed by the county commissioners for medical and surgical expense.

It is stated in the 1926 opinion that:

> "A person may thereby be injured by an animal afflicted with rabies without being bitten or scratched. The fact that by the use of the Pasteur treatment no injury is thereafter apparent, would not of itself take such cases without the statutes."

In 1926 the same provision was contained in section 5851, General Code, for reimbursement of medical expenses incurred by reason of a person being bitten or injured by an animal afflicted with rabies. Although this section has been amended several times during the period from 1926 to date, the provision defining the nature of the injury has not been changed.

The purpose of sections 5851 and 5852, General Code, is to make available Pasteur or other similar treatments to all persons who have been exposed to animals afflicted with rabies. It is necessary that these treatments be administered immediately after the person is exposed to the germs. These treatments are precautionary measures to prevent hydrophobia and it is impossible to tell for sometime after the exposure whether the person has been inoculated with the germs. The treatment is purely for the protection of the individual and it was the intent of the legislature that all the precautionary measures be taken to prevent this dreaded disease and, by virtue of these sections, has made possible these treatments to all persons, regardless of their financial status, who have been exposed to the germs of animals afflicted with rabies.

A person who has handled an animal afflicted with rabies, and who at the time had scratches upon his hands caused by briers, thereby becoming inoculated with the virus from the dog, has, in my opinion, sustained an injury within the meaning of section 5851, General Code.

In specific answer to your inquiry, I concur in the conclusion reached by the 1926 opinion, and it is my opinion that the county commissioners by virtue of sections 5851 and 5852, General Code, are required to recognize and allow a duly verified claim for Pasteur treatment rendered to a person who has handled an animal afflicted with rabies, such person at the time having scratches upon his hands caused by briers.

Respectfully,
JOHN W. BRICKER,
Attorney General.

1609.

LIQUIDATION OF INSURANCE COMPANY—INSURANCE POLICIES ASSIGNED BY MEMBERS TO INCORPORATED CHURCH CANNOT BE OFFSET AT FULL CASH VALUE AGAINST MORTGAGE INDEBTEDNESS OF CHURCH TO INSURANCE COMPANY.

SYLLABUS:

Insurance policies assigned by members of a congregation to an incorporated church after the insurance company has been taken over by the Superintendent of Insurance for liquidation, cannot be offset at their full cash value against the mortgage indebtedness of such church to the insurance company.

COLUMBUS, OHIO, September 25, 1933.

HON. CHARLES T. WARNER, *Superintendent of Insurance, Columbus, Ohio.*

DEAR SIR:—I am in receipt of your recent communication which reads as follows:

> "I am confronted by the following proposition upon which I would like your opinion.
>
> The Union National Life Insurance Co. is being liquidated by myself as Superintendent of Insurance, has a mortgage on the Memorial Baptist Church for $9,950.00 which is due in about six months. Several of the members of said congregation hold policies in the said insurance company which have cash values of approximately Three or Four Thousand Dollars of which $2,330.00 has been assigned by the holders thereof to said church with the understanding that same be applied on said mortgage indebtedness to said insurance company. * * *
>
> While I do not now see how this arrangement might be carried out since it would be a preference to some policy-holders in that their claims would be paid in full if allowed at this time. If the assignment was for what would be due them at the end of liquidation I presume there would be no objection to same."

I am informed that the Memorial Baptist Church of Dayton, Ohio, is incorporated under the laws as a corporation not for profit. Since this is true it is self-evident that in law the church is a separate legal entity, having a separate existence as a person distinct in law from all its members. The incorporated church has a distinct and independent existence and capacity in legal contemplation, so that it may contract or be contracted with, sue or be sued by any of its members. The Union National Life Insurance Company, being insolvent, has been taken over for liquidation by the Superintendent of Insurance, and the proposed assignment of policies by the members of the congregation to the church is subsequent to the insolvency and subsequent to the time the Superintendent of Insurance took over the Union National Life Insurance Company for liquidation.

To allow the policies assigned to the church to be set-off by the church at their full cash value against the mortgage indebtedness of the church would have preferential results in the distribution of the assets of the insolvent insurance company.

It seems to be universally agreed that no offset will be allowed against an insolvent corporation of a claim purchased after the assets of the corporation have passed out of the insolvent corporation's possession, whether the assets are taken under bankruptcy or insolvency laws, assignment for the benefit of creditors, equity proceeding for a receiver or other liquidation proceedings. In 40 A. L. R., page 1096, it is stated:

> "The reasons for such rules are: First, that after insolvency is established a creditor has only the right to file his claim and to share rateably in the distribution of assets, and when he assigns his claim to another after such insolvency is established, *the assignee acquires no other nor higher right than had his assignor; and second, that the impartial distribution of the assets without any preference of one creditor at*

> *the expense of others would be defeated* if a debtor to the insolvent estate should be permitted to buy up claims against it and use them to pay his debt.
>
> The allowance as a set-off of a claim acquired prior to the insolvency proceedings is based upon the idea that where the right of set-off exists at such time the debtor equitably owes only the balance over and above the amount which the insolvent owes him, and this is the debt that passes to the trustees in insolvency, assignee for creditors, or receivers; and hence that the allowance of the set-off does not amount to a preference." (Italics the writer's.)

Cases are legion in support of the proposition that claims assigned to a debtor after the insolvency of the creditor corporation cannot be offset by the debtor. In *Long* vs. *Penn. Insurance Company,* 6 Pa. St. Reports 421, the following rule is as disclosed by the syllabus:

> "* * * The (Insurance) Company having become insolvent, A took an assignment from a stranger of an unpaid balance, due on a policy of insurance by the company. He could not set-off more than the pro rata dividend of the company upon the losses." (Parenthesis the writer's.)

The case of *Hichcock* vs. *Rollo, assignee of the Merchants Insurance Company,* 3 Biss. 278 (7th Circuit) held as disclosed by the head note:

> "The assignee of a claim against an insolvent insurance company for loss under its policies, assigned after notice of insolvency, cannot set it off against his previous indebtedness to the company. * * * Such set-off would be unjust and inequitable."

At page 229 of this opinion it is stated:

> "We confess that we go quite far enough, which we do in obedience to authority, when we admit that a man may borrow a part, or even the whole, of the capital of an insurance company, and then take out policies of insurance, * * * and in case of loss and insolvency of the company, set-off the loan against the loss on the policy, even though it may leave other creditors with nothing. There may be instances where this can be done, when it would be difficult to reconcile it with our notions of sound morality, or with that rule which requires us to do to others as we would have them do to us.
>
> But we do not feel inclined to go further, and adopt a rule which would permit the debtor of a bankrupt company thus to realize, * * * the full amount of their claims on the company, while other creditors thereby go empty-handed."

In *Franzen, assignee,* vs. *Zimmer,* (N. Y.) 90 Hun. at page 108, it is stated:

> "The right of set-off must attach at the time of the making of the assignment. (For the benefit of the creditors.) It cannot arise afterwards, for the reason that the claim in favor of the estate had passed

to the assignee, and to allow a set-off would be to the prejudice of other creditors." (Parenthesis the writer's.)

The following cases are also in line with this authority: *Crane* vs. *Baillio,* 2 La. 82; *Smith* vs. *Hill,* 8 Gray. 572; *Brown* vs. *Colt,* 12 Gray. 233;*Kennedy* vs. *New Orleans Sav. Bank,* 36 La. Ann. 1; *Enter* vs. *Quesse,* 30 S. C. 126; *Sawyer* vs. *Hoag,* 17 Wall, 610. See also volume 14 R. C. L., page 656, which lays down the following proposition:

> "One indebted to an insolvent will not be permitted to interpose as an offset a claim owed by the insolvent which he purchased after the insolvency."

This universal rule against such set-off is also laid down in many bank liquidation cases. The proposition followed in such cases is that the right of the set-off which is available to a debtor is fixed and determined at the time the bank becomes insolvent and is turned over to a receiver for liquidation. A person indebted to a bank will not be permitted to set-off against its receiver or assignee a deposit which the debtor acquired by assignment after the insolvency of the bank, since to do so would amount to giving an unlawful preference. See the following cases: *Ingwerson* vs. *Bucholz,* 88 Ill. App. 73; *McLaren* vs. *Pennington,* 1 Paige (N. Y.) 102; *Van Dyck* vs. *McQuade,* 85 N. Y. 616; *Hamilton's Assignment,* 26 Ore. 579; *Venango National Bank* vs. *Taylor,* 56 Pa. St. 589; and *Scott* vs. *Armstrong,* 146 U. S. 499, C. F. D. 368.

In *Yardly* vs. *Philler,* 167 U. S. 360 the court said:

> "Obviously the right to set-off recognized in *Scott* vs. *Armstrong,* 146 U. S. 499, is to be governed by the state of things existing at the moment of insolvency, and not to conditions thereafter created."

In *Felton and Olmstead* vs. *Bank* 9 O. D. 229, at page 234 it is stated:

> "Of course it cannot be contended that after the insolvency the debtor company thereby acquires, by purchase or otherwise, an obligation against the insolvent creditor, which it did not hold, either primarily or conditionally, against the creditor before the insolvency. This is evidently what the Supreme Court meant in the language used in *Yardly* vs. *Philler, supra.*"

Specifically answering your inquiry it is my opinion that the insurance policies assigned by the members of the congregation to the Memorial Baptist Church after the insolvency of the Union National Life Insurance Company cannot be offset at their full cash value against the mortgage indebtedness of such church to the National Life Insurance Company. However, I see no objection to such assignment to the Memorial Baptist Church for the amounts due on such policies as determined at the end of the liquidation proceedings.

Respectfully,
JOHN W. BRICKER,
Attorney General.