however, reason that such a constitutional provision prevents attachment where the defendant is unable to comply with the terms of the decree, but not where he is able to comply but refuses, as in the present case. It is said in the latter case the imprisonment is not for the debt but for the contempt in refusing to pay. *Hurd v. Hurd*, 63 Minn. 443, 65 N.W. 728 (1896). Such an analysis leads to the conclusion that the equity courts' power is not in reality restricted, for inability to comply with a decree traditionally purged a defendant of contempt. *Blake v. People*, 80 Ill. 11 (1875); *Davison v. Davison*, 125 Kan. 807, 266 Pac. 650 (1928); *Lakewood Trust Co. v. Lawshane Co.*, 102 N.J.Eq. 270, 140 Atl. 334 (1928); but see Cook, Powers of a Court of Equity, 15 Col. L. Rev. 106, 112, n. 18 (1915).

Even if it is assumed that the imprisonment for debt provision restricts the power of a court of equity to enforce money decrees, it is generally held that the obligation to pay alimony is not a debt within the meaning of the constitutional provision. *Wightman v. Wightman*, 45 Ill. 167 (1867); *White v. White*, 233 Mass. 39, 123 N.E. 389 (1919); *contra, Coughlin v. Ehbert*, 29 Mo. 285 (1866). And the nature of the obligation should not be altered when the original alimony decree is merged in the decree in the present suit. *White v. White*, 233 Mass. 39, 123 N.E. 389 (1919).

HOWARD SIEGEL

Insurance—Sunstroke as Death by Accidental Means—[Federal].—The petitioner as beneficiary sought recovery upon two insurance policies providing for payment upon death from "external, violent and accidental means"; one policy excluded liability if death resulted "wholly or partly from disease or physical or mental infirmity." The declaration alleged that insured suffered a sunstroke while playing golf and that there was, unknown to him, a "temporary disorder or condition of his body not amounting to a physical or mental infirmity." *Held*, that the order sustaining the demurrer be affirmed. *Landress v. Phoenix Mut. Life Ins. Co.*, 54 Sup. Ct. 461 (1934). Cardozo, J., dissenting.

Doubtless the insurer in using the term "death by external, violent and accidental means" rather than "accidental death" intended to limit liability to cases in which some accidental *means* caused the death, as distinguished from situations where the *result* alone is accidental and the act constituting the *means* is intentional. See Vance, Insurance (2d ed. 1930), 871, § 258. This distinction between "accidental means" and "accidental result" has been universally recognized, *U.S. Mutual Assn. v. Barry*, 131 U.S. 100, 9 Sup. Ct. 755, 33 L. Ed. 60 (1889), but courts have differed in their application of it. In sunstroke cases involving facts similar to the present case, apparently all the federal courts and a number of the state courts refuse recovery because the sun's rays do not constitute a mishap or accident, and the subjection to them is voluntary. *Nickman v. N.Y. Life Ins. Co.*, 39 F. (2d) 763 (C.C.A. 6th 1928); *Paist v. Aetna Life Ins. Co.*, 54 F. (2d) 393 (D.C. Pa. 1931): *Harloe v. Cal. State Life Ins. Co.*, 206 Cal. 141, 273 Pac. 560 (1929); *Continental Casualty Co. v. Pittman*, 145 Ga. 641, 89 S.E. 716 (1916); *Semancik v. Continental Casualty Co.*, 56 Pa. Super. Ct. 392 (1914). If by accident a person is subjected to the sun's rays and dies from sunstroke, recovery is allowed; the accident is treated as the means of the death. *Richards v. Standard Accident Ins. Co.*, 58 Utah 622, 200 Pac. 1017 (1921), see *Sinclair v. Maritime Passengers Assur. Co.*, 3 El. & El. 487, 7 Jurist (N.S.) 367 (1861). The other state decisions adopt an interpretation of "accidental means" broader than that intended by the insurer, and hold that if the

result is accidental, it has been caused by accidental *means*. *Continental Casualty Co. v. Bruden*, 178 Ark. 683, 11 S.W. (2d) 493 (1928); *Tate v. Benefit Assn. of Ry. Employees*, 186 Minn. 538, 243 N.W. 694 (1932), 17 Minn. L.Rev. 216 (1933); *Lower v. Metropolitan Life Ins. Co.*, 111 N.J.L. 426, 168 Atl. 592 (1933).

If there is a natural and reasonable difference of import between the two terms, "accidental death" and "accidental means," that difference will be given effect. *Imperial Fire Ins. Co. v. Coos County*, 151 U.S. 452, 14 Sup. Ct. 379, 38 L. Ed. 231 (1894); *Hawkeye Comm. Men's Assn. v. Christy*, 294 Fed. 208 (C.C.A. 8th 1923). To the layman the words "external, violent and accidental means" would seem to suggest that the means be accidental as well as the result, and thus would support the view of the majority in the present case. See Cooper, Accidental Means Insurance, 25 Ill. L. Rev. 673 (1931). Mr. Justice Cardozo in urging the opposite interpretation bases his argument on the layman's conception of an accident, rather than the layman's conception of the wording of the policy after careful perusal; and many of the cases he relies upon can be distinguished on the exact wording of the policies involved. In some cases the policy includes sunstroke as a bodily injury and seems to leave open the question of accidental means; but it may be inferred that the policy does include death by sunstroke since it is difficult to conceive of sunstroke being brought on by other than intended means. *Higgins v. Midland Casualty Co.*, 281 Ill. 431, 118 N.E. 11 (1917); *Eslev v. Fidelity & Casualty Co.*, 187 Ind. 447, 120 N.E. 42 (1918), *Gallagher v. Fidelity & Casualty Co.*, 221 N.Y. 664, 117 N.E. 1067 (1914); *Continental Casualty Co. v. Clark*, 70 Okla. 187, 173 Pac. 453 (1918); *Bryant v. Continental Casualty Co.*, 107 Tex. 582, 182 S.W. 673 (1916). It also might be said that the express mention of sunstroke would lead a man to believe the policy did cover that cause of death, and, in case of ambiguity, it should be construed in favor of the insured. *Harris v. Am. Casualty Co.*, 83 N.J.L. 641, 85 Atl. 194 (1912); *Weiss v. Union Indemnity Co.*, 107 N.J.L. 348, 153 Atl. 508 (1931). In other cases, express provisions provide for liability if death is caused by sunstroke. *Pack v. Prudential Casualty Co.*, 140 Ky. 47, 185 S.W. 496 (1916); *Mather v. London Guarantee & Accident Co.*, 125 Minn. 186, 145 N.W. 963 (1914).

While sunstroke technically is and has been treated in some cases as a disease, *Dozier v. Fidelity & Casualty Co.*, 46 Fed. 446 (C.C.Mo. 1891); *Sinclair v. Assurance Co.*, 2 El. & El. 478, 7 Jurist (N.S.) 367 (1861), almost all of the later cases regard it as an accident. See *Lower v. Metropolitan Life Ins. Co.*, 111 N.J.L. 426, 168 Atl. 592 (1933). The clause in one of the policies excluding the insurer from liability if death should result partially from a disease seems of no importance whether sunstroke is treated as a disease or as an accidental injury, since diseases attributable solely to an external force and not existing in the insured at the time of the accident are not regarded as causes of the death, but as effects of the accident. The disease is considered only a link in the chain of causation and the accident is looked upon as the actual cause of the death. *Western Comm. Trav. Assn. v. Smith*, 85 Fed. 401 (C.C.A. 8th 1898); *Aetna Life Ins. Co. v. Allen*, 32 F. (2d) 490 (C.C.A. 1st 1929); *Paist v. Aetna Life Ins. Co.*, 54 F. (2d) 393 (D.C.Pa. 1931).

RICHARD LINDLAND

Mortgages—Claim of Junior Mortgagee to Prior Lien for Payment of Taxes on Premises—[New York].—In an action for the foreclosure of a prior mortgage, junior mortgagees interposed a defense and counterclaim for taxes and water rents which they had paid, claiming equitable subrogation to the rights and remedies of the taxing body,