reference was made to that section of the statute which exempts annuities. And the Tennessee Supreme Court has been liberal in construing its exemption statutes. *Rose v. Wortham*, 95 Tenn. 505, 32 S.W. 458 (1895). See *In re Stansell*, 8 F. (2d) 363 (D.C. Tenn. 1925).

The statutes of most states exempt only life insurance. But most courts under these statutes have exempted not only the proceeds of the insurance on the insured's death but also the cash surrender value of the policy during his life even though the statutes are ambiguous. *In re Stansell*, 8 F. (2d) 363 (D.C. Tenn. 1925); *In re Phillips*, 7 F. Supp. 807 (D.C. Pa. 1934); *Contra, In re Grant*, 21 F. (2d) 88 (D.C. Wis. 1927). In these jurisdictions there is some probability that the life insurance exemption will be stretched to include disability insurance because (1) disability deprives the insured of the capacity to earn a living which is detrimental to himself, his dependents and the community; (2) by exempting the cash surrender value of life policies, these courts have already construed these statutes as making available to the insured a sum of money free from the claims of his creditors; (3) exemption statutes are to be construed liberally (*Hickman v. Hanover*, 33 F. (2d) 873 (C.C.A. 4th 1929)); (4) disability insurance, in the form of a supplementary contract to a life policy might be considered so integrated with the life policy that the disability insurance takes on the character of life insurance. *Baranovich v. Horwatt*, 113 Pa. 467, 173 Atl. 676 (1934). But see *contra*, *Cravens v. Robbins*, 8 Tenn. App. 435 (1928); *Chattanooga Sewer Pipe Works v. Dumler*, 153 Miss. 276, 120 So. 450 (1929); *Baxter v. Old Nat'l City Bank*, 46 Ohio App. 533, 189 N.E. 514 (1933).

In many endowment policies the insured pays premiums until a certain date at which time he becomes the beneficiary of an annuity; and if he dies before that time a third person gets only the amount of premiums paid in plus interest. Such contracts are not life insurance, but investments (Vance, Insurance 153 (2d ed. 1930)) and have been held not to come within a statute exempting only life insurance. *Moskowitz v. Davis*, 68 F. (2d) 818 (C.C.A. 6th 1934). But where an endowment policy provided that on the death of the insured before the endowment matured, the beneficiary was to get a stated sum irrespective of the amount of premiums paid in by the insured, the policy was held to be life insurance and so within the exemption statute. *In re Weick*, 2 F. (2d) 647 (C.C.A. 6th 1924). The cash surrender value of such a policy is greater than that on a straight life policy because premiums paid are building up a future annuity. This excess represents an investment which, if standing alone, would go to creditors under *Moskowitz v. Davis, supra*. If the mere fact that the investment feature is combined with a life insurance feature will exempt an annuity, certainly a matured disability policy which is incidental to a life policy should be exempt. But see *Baxter v. Old Nat'l Bank*, 46 Ohio App. 533, 189 N.E. 514, 517 (1933) (same statute but analogy not raised).

Business Trusts—Liability of Trust Estate on *Ultra Vires* Contracts—Unjust Enrichment—[Massachusetts].—The plaintiff, under a contract with one of two trustees, installed the plumbing in an apartment building belonging to a business trust. The co-trustee authorized the construction work but did not sign the contract. The contracting trustee failed to insert a clause exempting himself from personal liability as directed by the recorded trust instrument. When the contracting trustee became insolvent, the plaintiff sued in equity to reach the trust estate. *Held*, recovery denied;

the plaintiff knew that he was dealing with a trustee and therefore had "constructive" notice of the *ultra vires* nature of the contract. *Downey Co. v. 282 Beacon Street Trust*, 197 N.E. 643 (Mass. 1935).

Ordinarily the trustee and not the trust estate is liable at law for debts contracted in the administration of a trust. 3 Bogert, Trusts and Trustees §§ 712, 713 (1935); Restatement, Trusts §§ 262, 266 (1935). If the trustee is insolvent or a non-resident, a creditor is usually allowed, in equity, to stand in the position of the trustee and collect from the trust estate on the trustee's right of exoneration. Restatement, Trusts § 268 (1935); 3 Bogert, Trusts and Trustees § 716 (1935); *Mason v. Pomeroy*, 151 Mass. 164, 24 N.E. 202 (1890); *King v. Stowell*, 211 Mass. 246, 98 N.E. 91 (1911); *Norton v. Phelps*, 54 Miss. 467 (1877); *Gates v. McClenahan*, 124 Iowa 593, 100 N.W. 479 (1904). But if the trustee has acted in excess of his authority in incurring the debt he is, ordinarily, not entitled to either exoneration or reimbursement from the trust estate, and hence the creditor has no derivative right. 3 Bogert, Trusts and Trustees § 716 (1935); *Tuttle v. First Nat. Bank of Greenfield*, 187 Mass. 533, 73 N.E. 560 (1905); *Marshall Field v. Himelstein*, 253 Mich. 355, 235 N.W. 181 (1931); *Bagnell v. Ives*, 184 Fed. 466 (1911); *Bauerle v. Long*, 187 Ill. 475, 58 N.E. 458 (1900); *Dunham v. Blood*, 207 Mass. 512, 93 N.E. 804 (1911). However, some courts have allowed the trustee reinbursement on a quasi-contractual theory where he acted *ultra vires* but in good faith, limiting his recovery to the extent that the trust estate was benefited. *Rathbun v. Colton*, 15 Pick. (Mass.) 471 (1834); *Grayson v. Hughes*, 166 Ark. 173, 265 S.W. 836 (1924) (*semble*); *Smith v. Keteltas*, 70 N.Y.S. 1065, 22 Misc. 588 (1901); *In re Parry's Estate*, 244 Pa. 93, 90 Atl. 443 (1914) (*semble*); *contra, Booth v. Bradford*, 114 Iowa 562, 87 N.W. 685 (1901); 3 Bogert, Trusts and Trustees § 718 (1935); Restatement, Trusts § 245 (1935). It has been proposed that the creditor in the *ultra vires* contract, whose funds have benefited the trust estate, be allowed to stand in the trustee's position and avail himself of this quasi-contractual remedy. Restatement, Trusts § 268, comment *e* (1935). *De Concilio v. Brownrigg*, 51 N.J. Eq. 532, 25 Atl. 383 (1893); *In re Pumfrey*, 22 Ch. D. 255 (1882). Some courts have allowed the creditor a direct (as opposed to derivative) quasi-contractual remedy against the trust estate to the extent that the creditor's performance has benefited the estate, where, because of the *ultra vires* nature of the contract, plus insolvency or unavailability of the trustee, the creditor is without other remedy. *Thomas v. Provident Life & Trust Co.*, 138 Fed. 348 (C.C.A. 9th 1905); *Fansher v. People's Trust and Savings Bank*, 204 Iowa 449, 215 N.W. 498 (1927); *Dunne v. Deery*, 40 Iowa 251 (1875); see *Farmers and Traders Bank of Shelbyville v. Fidelity & Deposit Co. of Md.*, 108 Ky. 384, 56 S.W. 621 (1900). The direct right is preferable to the derivative, since the former unlike the latter does not depend upon whether the trustee is in default to the trust estate; *In re Manning's Estate*, 134 Iowa 165, 111 N.W. 409 (1907); *Thomas v. Provident Life and Trust Co.*, 138 Fed. 348 (C.C.A. 9th 1905); *Stillman v. Holmes*, 9 Ohio N. P. (N.S.) 193 (1909) criticizing *De Concilio v. Brownrigg*, 51 N.J. Eq. 532, 25 Atl. 383 (1893); a few decisions are *contra*. *Austin v. Parker*, 317 Ill. 348, 148 N.E. 19 (1925). For the same problem in *intra vires* contracts, see Stone, A Theory of Liability of Trust Estates for the Contract or Torts of the Trustee, 22 Col. L. Rev. 527 (1922). Likewise the direct right, unlike the derivative right, would not depend on the good faith of the trustee in incurring the liability. If the creditor had actual notice of the terms of the trust, and therefore knew that the liability to him was improperly incurred, he should not be

allowed to recover on either a direct or indirect quasi-contractual theory. But most courts hold that mere "constructive" notice to the creditor is not sufficient to prevent his recovery and have granted quasi-contractual recovery even where a reasonable inquiry by the creditor would have divulged the extent of the trustee's powers. *Thomas v. Provident Life and Trust Co.*, 138 Fed. 348 (1905); *Fansher v. People's Trust and Savings Bank*, 204 Iowa 449, 215 N.W. 498 (1927); *In re Pumfrey*, 22 Ch. D. 255 (1882). However, Massachusetts courts, anxious to penalize participation in breaches of trusts (3 Bogert, Trusts and Trustees § 725 (1935)) have uniformly denied the creditor recovery where he knew he was dealing with a trustee and where the trustee knew that he was exceeding his powers. *Tuttle v. First Nat. Bank of Greenfield*, 187 Mass. 533, 73 N.E. 560 (1905); *Hines v. Levers and Sargent Co.*, 226 Mass. 214, 115 N.E. 252 (1917); *Donnelly v. Alden*, 229 Mass. 109, 118 N.E. 298 (1918).

In the instant case, the court followed the Massachusetts rule, found constructive notice to the creditor and therefore denied recovery. This result seems unjust. Although the contracting trustee failed to obtain the signature or assent of his co-trustee to the particular contract, the co-trustee had authorized the construction of the apartment building which was the purpose of the trust. If the contracting trustee's failure to stipulate against personal liability in the contract was a breach of trust, it at least gave the trust estate additional protection and was therefore evidence of good faith. Apparently then, the contracting trustee acted in good faith and might have been entitled to reimbursement from the trust estate had he paid the plaintiff. See *Rathbun v. Colton*, 15 Pick. (Mass.) 471 (1834). It would seem that the creditor should not be held to a more rigorous standard of good faith than that required for the trustee. The cases cited above, where the trustee acted in bad faith, were clearly distinguishable. The result seems more harsh in the light of the fact that this was a business trust. It is likely that the trust instrument contained the usual provision for liability of the trust estate. See 6 Bogert, Trusts and Trustees §§ 1101, 1104 (1935);Fletcher,Corporation Forms, Form 2220 (1928). A few courts have held that where, as in the usual business trust, the instrument provides that the trust estate shall be liable for claims of creditors and where the estate has benefited from the creditors' performance, the creditor has a direct right against the trust estate even upon an *ultra vires* contract. *Gisborn v. Charter Oak Ins. Co.*, 142 U.S. 326 (1892); *Roberts v. Hale*, 124 Iowa 296, 99 N.W. 1075 (1904); see *Willis v. Sharp*, 113 N.Y. 586, 21 N.E. 705 (1889); *Mathews v. Stephenson*, 6 Pa. 496 (1847); *Laible v. Ferry*, 32 N.J. Eq. 791 (1880); Restatement, Trusts § 270, comment *a* (1935). Such cases involve application to the business trust of a rule developed by many courts in cases of corporations. See Carpenter, Should the Doctrine of *Ultra Vires* Be Discarded?, 33 Yale L. J. 49, 55 (1923).

Conflict of Laws—Enforcement of Tax Judgments of Sister States in Federal Courts—[United States].—The defendant, an Illinois corporation, was granted a license to do business in Wisconsin. After carrying on a profitable business in Milwaukee, it withdrew its business and all of its property from the state, leaving unpaid a state income tax levied on its Wisconsin business. Thereafter, suit was brought by Milwaukee County on behalf of itself and the state, in a Wisconsin state court, to recover the tax due. Personal service was obtained on the defendant in Wisconsin. A default judgment was rendered against the defendant for $52,165.84. There being no