[IN THE COURT OF APPEAL.]

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Jan. 22;
March 2.

GRIFFITHS *v.* FLEMING AND OTHERS.

Insurance (Life)—Husband and Wife—Insurance by Husband on Wife's Life—Insurable Interest—Life Assurance Act, 1774 (14 *Geo.* 3, *c.* 48), *ss.* 1, 3—*Married Women's Property Act*, 1882 (45 & 46 *Vict. c.* 75), *s.* 11.

A husband has as such an insurable interest in his wife's life; and, therefore, it is not necessary in order to establish the validity of a policy of insurance effected by a husband upon the life of his wife to give affirmative evidence as to the existence and extent of a pecuniary interest of the husband in the life of his wife. The interest is presumed to the extent of the amount insured by the policy.

A husband and his wife effected with an insurance association a policy whereby, in consideration of a premium of which each paid part, a sum of money was made payable upon the death of whichever of them should die first to the survivor. The wife having died, the husband brought an action upon the policy to recover the policy money:—

Held, upon the footing that the policy was an insurance by the husband upon the life of the wife, that, notwithstanding the provisions of the Life Assurance Act, 1774, it was not necessary, in order to maintain the action, that the plaintiff should prove that he had any pecuniary interest in the life of his wife.

By Farwell L.J. and Kennedy L.J., the policy might also be regarded as a valid insurance under the Married Women's Property Act, 1882, s. 11, by the wife of her own life expressed to be for the benefit of the husband, contingently on his surviving her.

APPEAL from the judgment of Pickford J. in an action tried before him without a jury.

The action was brought by the plaintiff, George Edward Griffiths, against the defendants, as trustees of the United Kingdom Temperance and General Provident Institution, upon a policy of life insurance granted by the institution on October 8, 1907, to recover the sum of 500*l.* as having become payable under the policy upon the death of the plaintiff's wife. The policy, so far as material, was as follows: "This policy witnesseth that the grantees named in the first schedule hereto have become members of the United Kingdom Temperance and General Provident Institution (hereinafter called the Institution), and that, in consideration of the payment already made of the first premium for the assurance effected by this policy, and of the subsequent premiums, if

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any, payable as provided by the said schedule, the funds of the Institution shall be liable to pay at its principal place of business in London the sum assured mentioned in the said schedule to the person or persons to whom the same is therein expressed to be payable, upon satisfactory proof having been received and allowed by the directors of the Institution of (1.) the happening of the event mentioned in that behalf in the said schedule, (2.) the title of the claimant or claimants, and (3.) the age of the life assured if such age has not been admitted." The first schedule to the policy, which was to be deemed to be part of the policy and of the contract between the institution and the grantees, stated, inter alia, the following particulars under the following headings: "Name, address, and occupation, if any, of the grantees: George Edward Griffiths, mining prospector, and Emma Griffiths his wife, both of Oaklands, Turnbull Road, Longsight, Manchester: Name, address, and occupation, if any, of the lives assured: The same: Date of proposal and declaration, and by whom made: 3rd of October, 1907, and made by the assured: Sum assured: Amount: To whom payable: 500*l.*: to the survivor of the grantees: Event on which the sum assured by this policy is to become payable: On the death of such of the lives assured as shall first die: Age next birthday of lives assured as stated in the proposal: 36 and 31 respectively: Premium: Amount: How payable and when due: Period during which payable: 21*l.*: annually 1st October: until the death of the first of the lives assured."

It appeared that the plaintiff and his wife had, before the granting of the policy, each of them filled up and signed a separate proposal for assurance of the proposer's life, in the form issued by the institution, respectively giving therein, in answer to questions, certain particulars with regard to the proposer's age, residence, occupation, and other personal matters, and stating that the sum to be assured was, in the case of the wife, "500*l.* jointly with my husband," and, in the case of the husband, "500*l.* jointly with my wife," to be "payable at death. Table 9." Each proposal concluded with the following declaration: "I hereby declare that the above statements are true, and I agree that these statements, together with those made, or to be made to the

Institution's medical examiner, and signed by me, shall be the basis of the contract between me and the Institution: and that I will be bound by the rules of the Institution, and rest every claim by virtue of this assurance on the observance thereof." The prospectus published by the institution contained various tables giving the respective rates of premium payable in respect of different modes of life insurance. One of these was as follows: "Joint Lives Assurances. Table IX. Policies may be effected on joint lives, the sum being payable and the premium ceasing on the first death. This form of policy is specially suitable for partners in business to replace capital withdrawn on the decease of either of them, or to provide for those who may have been dependent on him. Annual premiums to assure 100*l.* with profits on the first death." Then followed the table setting forth the different rates of premium payable according to the ages of the respective lives at their next birthdays.

The wife of the plaintiff committed suicide shortly after the granting of the policy.

In their defence the defendants pleaded (inter alia) that the plaintiff had no insurable interest in the life of his late wife as required by the Life Assurance Act, 1774.

The plaintiff in reply pleaded (inter alia) that by virtue of the said policy, which was issued jointly to George Edward Griffiths and Emma Griffiths, the lives of the said George Edward Griffiths and Emma Griffiths were jointly assured, and the sum payable under the said policy was to be paid to the survivor of the grantees on the death of such of the lives assured as should first die, and by virtue of such assurance Emma Griffiths had an insurable interest in the life of the said George Edward Griffiths, and George Edward Griffiths had an insurable interest in the life of his said wife; and, alternatively, that the plaintiff would contend that by the said policy the plaintiff insured his life in favour of his wife, the said Emma Griffiths, and the said Emma Griffiths insured her life in favour of the plaintiff, her husband, and that on the death of the said Emma Griffiths the sum insured became payable to the said plaintiff.

There was evidence to the effect that the wife had contributed 10*l.* to the premium of 21*l.* which was paid before the policy was

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issued, the husband finding the remainder. It appeared that the wife had rendered services to the plaintiff by doing housework and looking after their children, and that, in consequence of her death, he had been obliged to hire some one else to perform these services in her place.

The case at the trial appeared to have been conducted on the understanding that, if the plaintiff had any insurable interest which would support the policy, he was entitled to recover the whole of the policy money.

Pickford J. held that, inasmuch as the wife had performed household services for her husband, and through her death he had in fact sustained loss by reason of having to hire some one to perform those services in her place, he had an insurable interest which would support the policy. The learned judge therefore gave judgment for the plaintiff for the amount claimed.

Jan. 22. *Simon, K.C.*, and *J. B. Porter*, for the defendants. The plaintiff cannot recover on this policy, not having had any insurable interest in his wife's life. This policy cannot be treated as may be suggested by the plaintiff, namely, as two separate insurances, one by the husband on his own life and another by the wife on her own life, for the payment of a sum of money on the death of the one who does not survive to the survivor; for to treat a policy like this as valid upon such a construction of it would to a great extent nullify the provisions of the Life Assurance Act, 1774 (14 Geo. 3, c. 48), inasmuch as in this way any two persons who wished to gamble upon one another's lives could do so. It is one insurance, and not two separate insurances on different lives, although there may have been separate proposals. In the case of separate insurances the premiums on each would continue payable until the particular life dropped. Here on the dropping of the first life the whole insurance determines and the policy money becomes payable. The validity of the insurance must depend on the substance of the thing, and not upon the forms which may have been gone through by the parties. It could not be that two persons who had no interest in each other's lives could validly effect a policy like this on the ground that it was an insurance by each of his own life.

This cannot be regarded as a valid insurance within the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 11. It is not an insurance effected by the wife for her separate use within the first part of that section, nor is it within the second part of the section, for it is not expressed to be either for the benefit of the wife or for the benefit of the husband, but for the benefit of the survivor of them. An insurance under that part of the section has the special effect of creating a trust in favour of the object or objects therein named, and the section provides that, as long as any object of the trust remains unperformed, the policy moneys shall not form part of the estate of the insured, or be subject to his or her debts. It is submitted that to come within that section the insurance must comply strictly with its terms, and must be expressly for the benefit of one or more of the objects therein named.

Pickford J. held that the husband had an insurable interest in the wife's life by reason of the household services which the wife rendered, such as looking after the children; but such matters are too vague and undefinable to constitute an insurable interest within the meaning of 14 Geo. 3, c. 48. By s. 3 of that statute it is provided that "in all cases where the insured hath interest in such life or lives, event or events, no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured in such life or lives, or other event or events." That section points to some interest of a definite pecuniary character which can fairly be estimated in money. It is impossible for this purpose to estimate the pecuniary value of a matter of such an undefinable character as household services of a wife, which are not matters of legal but only of moral obligation. The value of the interest must be estimated as at the date of the insurance. How would it be possible to estimate prospectively the value of the wife's services at that date? The assured in this case were in humble life; but take the case of persons in a higher sphere. Suppose the wife was an accomplished musician, and able to instruct her daughters in music, could it be said that, because in the event of her death the husband might have to engage a governess for the purpose, he had an insurable interest on her life within the statute? A

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mere expectation of benefit without any pecuniary interest is not an insurable interest under 14 Geo. 3, c. 48: *Halford* v. *Kymer* (1); *Hebdon* v. *West.* (2) There is a dictum of Lord Kenyon to the effect that a wife must be presumed to have an interest in the life of her husband: see *Reed* v. *Royal Exchange Assurance Co.* (3); but there is really no authority to the effect that a husband has an insurable interest in his wife's life. The husband is under a legal obligation to support his wife in the sense that, if he does not provide for her, she can pledge his credit. The wife is under no such obligation towards her husband. *Barnes* v. *London, Edinburgh, and Glasgow Life Insurance Co.* (4) is not binding on this Court and was wrongly decided.

Langdon, K.C., and *F. Cuthbert Smith,* for the plaintiff. This insurance is valid even upon the assumption that the husband had no insurable interest in his wife's life. Having regard to the proposal forms, which are made the basis of the policy, there is here in reality an insurance by each of the parties of his or her own life respectively, which by the terms of the insurance is in effect expressed to be for the benefit of the other party. Both the husband and wife passed a medical examination, and they each of them signed a proposal form for an insurance on his or her life respectively, by which a sum of money was to become payable in the event of his or her death, as the case might be, to the survivor, and each contributed a proportional part of the money payable as premium. The contract is in effect that, if the wife shall survive her husband, the company will pay a certain sum to her, but, if the husband shall survive the wife, the company will pay a certain sum of money to him. It is a question for the Court whether in such a case there is really a bona fide intention on the part of each party to insure his or her own life, as the case may be, and to transfer the benefit of the insurance to the survivor, or whether the transaction is a mere cloak for gambling by some person on the life of another in which he has no interest.

This is a valid insurance within s. 11 of the Married Women's Property Act, 1882. The objects of the trust to be created under

(1) (1830) 10 B. & C. 724.
(2) (1863) 3 B. & S. 579.
(3) (1795) Peake, Add. Cas. 70.
(4) [1892] 1 Q. B. 864.

that section are sufficiently expressed where, as in the present case, the terms of the transaction sufficiently indicate them. The difference between the terms of s. 10 of the Married Women's Property Act, 1870, and s. 11 of the Married Women's Property Act, 1882, is material in this respect. By the former section the policy had to be "expressed upon the face of it" to be for the benefit of the persons in whose favour the trust was to be created, but the words "upon the face of it" are omitted in s. 11 of the later Act. Here there is an insurance of his or her life by each of the parties, expressed to be for the benefit of the other, because it is expressed to be for the benefit of the survivor.

[FARWELL L.J. The section says that, in default of any appointment of a trustee, the policy is to "vest in the insured and his or her legal personal representatives in trust for the purposes aforesaid. That being so, can the husband recover without taking out administration to the wife? Does not that create a difficulty in this case?]

If that be so, the Court could allow an amendment to meet the difficulty in point of form.

Thirdly, Pickford J. was right in holding that the husband had in this case a sufficient insurable interest in his wife's life. It has been said that the interest contemplated by 14 Geo. 3, c. 48, is a pecuniary interest. A "pecuniary interest" for this purpose includes any interest of which the value can be fairly estimated in money. The value of the wife's services to the husband is capable of such estimation. Sect. 3 of 14 Geo. 3, c. 48, speaks of the "amount or value of the interest of the insured in such life." The word "value" as contrasted with "amount" clearly indicates that the interest contemplated need not be one of a definite or liquidated amount, but may include any interest the value of which is capable of being estimated in money.

[VAUGHAN WILLIAMS L.J. Can an obligation which is merely moral be measured in money?]

In the present case the husband had more than a mere expectation of benefit; he was actually enjoying the advantage of his wife's services in possession; and that advantage was capable of being measured in money. Marriage creates a status, and the husband was in actual possession of advantages thereunder by

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reason of his wife's assistance in household matters. An insurance on her life is not like the gambling contracts aimed at by the statute. The husband has an interest in the wife's life from which he enjoys de facto advantages, and the termination of which involves him in pecuniary expense. Since the Married Women's Property Act, 1882, the position of affairs has been altered in respect to this question. The wife was under the common law regarded as one person with the husband and had no power to contract or hold property. She is now capable of earning money by her own work, and of holding and disposing of property. If she acquires property, she is under the obligation of maintaining her husband: see Married Women's Property Act, 1882, s. 20. The possibility of her earning money during coverture may be considered as giving the husband an interest in her life.

[VAUGHAN WILLIAMS L.J. The obligation of the wife under s. 20 is an obligation to the parish, not the husband.]

[They also cited *McFarlane* v. *Royal London Friendly Society* (1); *Wilson* v. *Jones* (2); *Lucena* v. *Craufurd.* (3)]

Simon, K.C., in reply cited *Anctil* v. *Manufacturers' Life Insurance Co.* (4); *In re Lambert's Estate* (5); *Holt* v. *Everall.* (6)

Cur. adv. vult.

March 2. VAUGHAN WILLIAMS L.J. read the following judgment:—This is an appeal from the judgment of Pickford J. I have come to the conclusion that the appeal must be dismissed, though I do not propose to base my judgment upon the same grounds as those upon which the learned judge acted. The claim is against the defendants, as trustees of the United Kingdom Temperance and General Provident Institution, by the plaintiff as the surviving grantee of a policy of insurance dated October 8, 1907, effected by the plaintiff and his late wife, Emma Griffiths, with the said institution on the joint lives of the plaintiff and the said Emma Griffiths, the said Emma Griffiths being now deceased,

(1) (1886) 2 Times L. R. 755.
(2) (1867) L. R. 2 Ex. 139.
(3) (1802) 3 Bos. & P. 75; (1806) 2 Bos. & P. N. R. 269; (1808) 1 Taunt. 325.
(4) [1899] A. C. 604.
(5) (1888) 39 Ch. D. 626.
(6) (1876) 2 Ch. D. 266.

for 500*l.* and profits, in consideration of a premium paid by the plaintiff and the said Emma Griffiths. I may mention here that to the extent of 11*l.* the premium was paid by the husband, and to the extent of 10*l.* it was paid by the wife, and those payments seem to have corresponded with the respective ages of the husband and wife. The defence is (1.) that, at the time of the making of the policy mentioned in the statement of claim, the plaintiff had no insurable interest in the life of his late wife, Emma Griffiths, as required by the Life Assurance Act, 1774; (2.) the plaintiff's said wife committed suicide, being of sound mind (this defence was abandoned); (3.) the directors of the above-mentioned institution had not received satisfactory proof of the title (if any) of the plaintiff pursuant to condition 2 contained in the said policy; (4.) the whole of the first and only premium in respect of the said policy was paid by the plaintiff. This, as I have said, was not the case. The reply of the plaintiff is as follows. [His Lordship read the reply, and continued:—] In short, the reply alleges that the lives of George Edward Griffiths and Emma Griffiths were jointly assured, and that the sum payable under the policy was to be paid to the survivor of the grantees on the death of such of the lives as should die first, and that by virtue of such assurance Emma Griffiths had an insurable interest in the life of George Edward Griffiths, and George Edward Griffiths in the life of his wife, Emma Griffiths. And then, alternatively, the reply sets up that the plaintiff insured his life in favour of his wife, and the wife her life in favour of her husband.

So far as this case is concerned it does not matter much which contention of the plaintiff is right—that is to say, whether the effect is that the husband had an insurable interest in the life of his wife, or whether, the wife having an insurable interest in her own life, the right to the moneys payable under the policy has become vested or may become vested in him on his taking out letters of administration. One way or the other, the Court will construe the policy so as to make it effective.

As to the question of the husband's interest in the life of his wife, the case is not covered by authority. In *Halford* v. *Kymer* (1)

(1) 10 B. & C. 724.

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Lord Tenterden laid down, in the case of a policy effected by a father in his own name on the life of his son, that the word "interest" in 14 Geo. 3, c. 48, ss. 1 and 3, means a pecuniary interest, and that therefore the policy was void in a case where the father had no pecuniary interest. And s. 3 says that "in all cases where the insured hath interest in such life or lives, event or events, no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured in such life or lives, or other event or events." It would seem from the words of the statute, and the decision to which I have referred, as if in every case the proof of the pecuniary interest and the extent of it were essential to the validity of the policy. But there are two classes of cases in which the law presumes the pecuniary interest and does not go into the extent of the sum assured. The one case is that of the interest of a man in his own life. The authority for this is *Wainewright* v. *Bland* (1), in which Lord Abinger at nisi prius laid down that in his own life a person's insurable interest is considered to be sufficient to entitle him to recover whatever sum he may have insured it for, and that this is so if the insurance is for a portion of his life only. That case went to the Court of Exchequer upon a motion for a new trial (2), but the motion was disposed of on the ground that the policy was voided by false representations, and this question of the insurable interest of every one in his own life was not raised. The second exception is that a wife making an insurance on her husband's life need not prove that she was interested therein. Lord Kenyon, in *Reed* v. *Royal Exchange Assurance Co.* (3), said, "It was not necessary, as it must be presumed that every wife had an interest in the life of her husband." But it is said that a husband is presumed to have such an interest in the life of his wife. I can find no decision that there is or is not a presumption of an interest of a husband in the life of his wife such as there is of the interest of a wife in the life of her husband so as to enable her to insure his life without any proof of actual interest or the extent thereof. *Halford* v. *Kymer* (4) is cited

(1) (1835) 1 Moo. & R. 481.
(2) (1836) 1 M. & W. 32.
(3) Peake, Add. Cas. 70.
(4) 10 B. & C. 724.

in the text-books (see Porter's Laws of Insurance, 5th ed. p. 42) as an authority that a husband is not presumed to have an insurable interest in his wife's life. But it does not expressly decide this. Moreover, in *Huckman* v. *Fernie* (1) the Court of Exchequer, in an action brought by a husband on a policy effected by him on the life of his wife, on a motion for a new trial, raised no question as to the husband having an interest in his wife's life, though there does not seem to have been any evidence of pecuniary interest. It has been suggested by Mr. Montague Lush in his book on Husband and Wife, 2nd ed. p. 213, that, now that the husband and wife are placed on equal terms as to their rights in and powers of disposition over property, it would be reasonable to consider that each party has a presumable interest in the life of the other without the necessity of affirmatively proving it. But it is curious that the point has never been raised, although the power of the wife to contract and to acquire and hold and dispose of property was effected by the Act of 1882. I suppose that the learned author means that, now that a husband may reasonably look for pecuniary aid from his wife, just as formerly she looked for pecuniary aid from him, the husband plainly has a reasonable expectation, in case of need, of assistance from a wife in case she acquires and holds property, and that in such a case the same reason for not requiring affirmative proof of the existence and extent of the pecuniary interest arises where the husband is the insurer of his wife's life as arises in the case where the wife insures the husband's life.

It is to be observed that there is a practical reason for construing these joint insurances by husband and wife as insurances by each of the other's life, and not as an insurance by each of his or her own life, namely, that these joint insurances in practice are generally effected by partners, so as to afford protection against the loss to the surviving members of the firm likely to arise from the withdrawal of the capital of the deceased partner; and in such case the nature of the loss provided against seems to negative the construction which would treat the policy as being on the life of each insuring partner.

(1) (1838) 3 M. & W. 505.

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Nevertheless it is desirable to consider the question of how things would stand if it were held that the husband had no presumable interest in his wife's life and the policy were treated as one by the deceased wife on her own life. The question depends on the construction and meaning of s. 11 of the Married Women's Property Act, 1882, which is as follows: "A married woman may by virtue of the power of making contracts hereinbefore contained effect a policy upon her own life or the life of her husband for her separate use; and the same and all benefit thereof shall enure accordingly. A policy of assurance effected by any man on his own life and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts." In my judgment the effect of this provision, so far as the wife is concerned, is that she may effect a policy on her own life or the life of her husband for her own separate use, and that the same and all benefit thereof will enure accordingly; and that, if such policy is expressed to be for the benefit of her husband or her children or any of them, the policy shall create a trust in favour of the objects therein named. This provision creating a trust is the same in the case of the husband and the wife, and in the case of the husband the obligation to name the objects of the trust seems to have been introduced to protect creditors, and we have to consider whether it can be properly said that this joint policy so names the husband as to make a trust in his favour, a trust named within the meaning of the section. I have great doubt as to this, and I think the preferable construction is to treat the policy as by the husband on his wife's life, because I am inclined to think that he has now an interest in his wife's life which ought to be presumed. Treating the policy in this way, I think it was unnecessary to go into evidence to shew a pecuniary interest in the husband as was done before the learned

judge at the trial. I agree with his ultimate decision, but on the ground that the husband is to be presumed to have an interest in the wife's life in such a sense that it is unnecessary to give affirmative evidence as to the existence of an interest. The result is that in my judgment the appeal fails.

KENNEDY L.J. read the following judgment, written by FARWELL L.J., in which he concurred:—The appellants' contention is that the policy sued on is an insurance by the plaintiff on his wife's life and that he had no insurable interest in her life. The two questions to be determined are, therefore, (1.) is the policy an insurance by the husband on the wife's life, and (2.) had he an insurable interest in her life?

The proposals have been put in and used by both sides, and, although they could not be used in an action on the policy in order to construe the policy, they could, of course, be used in an action to rectify, and both parties desire to have their rights ascertained irrespective of the form of action.

Taking, then, the proposals which were accepted by the company, it is plain that the husband proposes to insure his own life and the wife to insure her own life for the benefit in each case of the survivor of them; there is nothing to shew any intention to carry these intentions out by a single policy, unless it be the reference to table 9, which is the table relating to joint policies. It is, however, for the company to prepare the policy, and it is their duty so to prepare it as not to contravene the Act, if the proposals be such as are not necessarily in contravention thereof. In *Collett* v. *Morrison* (1) Turner V.-C., after citing Lord Hardwicke's decision in *Motteux* v. *London Assurance Co.* (2), says (3): "This case appears to me fully to establish that if there be an agreement for a policy in a particular form, and the policy be drawn up by the office in a different form, varying the right of the party assured, a Court of Equity will interfere and deal with the case upon the footing of the agreement and not of the policy." If, then, the company are correct in contending that this is a single contract

(1) (1851) 9 Hare, 162. (2) (1739) 1 Atk. 545.
(3) 9 Hare, at p. 173.

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whereby each insures not only his or her life, but also the life of the other, then, in my opinion, this is not in accordance with the proposals, for there is no proposal by either to insure any but his or her own life; the only point in making it a joint policy is to ensure the payment of the aggregate premiums so as not to allow one policy to drop and the other to remain; but this could readily have been accomplished by an express proviso, and the company cannot be allowed to set up the form of policy prepared and tendered by themselves as a ground for defeating their own liability after they have taken the benefit of the premium. There is here no question of any device for enabling a husband to insure his wife's life; each contributed a fair proportion of the premium, the husband, who was three years older than his wife, contributing 11*l.*, and the wife 10*l.* If, then, the true effect of the policy is that each spouse insures the other's life as well as his or her own, this is the result of a conveyancing blunder of the company, and not in accordance with the proposals.

Then it is argued that this policy cannot be regarded as an insurance by the wife within the Married Women's Property Act, 1882, inasmuch as it is neither for her own separate use within the first paragraph of s. 11, nor "expressed to be for the benefit of her husband" within the second, and that apart from the Act she could not insure. I am of opinion that this argument is untenable. The policy on its face provides for payment of the sum assured "to the person or persons to whom the same is therein" (i.e., in the first schedule) "expressed to be payable." The company have themselves shewn what they mean by these words "expressed to be payable" by inserting in the schedule against the words "to whom payable" the words "to the survivor of the grantees." I fail to understand why this is not "expressed" to be the husband if he survives his wife. The section is dealing with the creation of trusts, and provides that the insurance "expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects" insured. The distinction between express and implied trusts is well settled, and the Act is simply excluding implied trusts. No one could

argue that a trust declared of 1000*l.* given to trustees by deed or will for the survivor of husband and wife is an implied and not an express trust. The inclusion of children in the Act shews that this is the intention of the Act, for a class of future children cannot be named, and the usual form of trust for children in a marriage settlement is for such as attain twenty-one, or marry under that age. I am therefore of opinion that this policy should be read distributively as an insurance by the wife on her own life expressed to be for the benefit of her husband contingently on his surviving her, and by the husband on his own life for the benefit of his wife contingently on her surviving him, and that such an insurance is perfectly legal; but inasmuch as the wife's insurance takes effect under s. 11 of the Married Women's Property Act, 1882, the husband would have to take out administration to her estate in order to comply with the section before he could give a valid receipt for the sum assured, if the appeal be decided on this ground.

Pickford J. decided the case in the plaintiff's favour on another ground, namely, that the husband in this case, by reason of the value of his wife's services to him, had an insurable interest in her life. If the case rested on this alone, I should have great difficulty in reconciling it with the older cases, although the case of *Barnes* v. *London, Edinburgh, and Glasgow Life Insurance Co.* (1) is to some extent in favour of the learned judge's view. The Lord Chief Justice in *Harse* v. *Pearl Life Assurance Co.* (2) appears to have doubted that decision, and I think it difficult to support. But I have come to the conclusion that the decision of Pickford J. can be supported on a broader ground, and I desire to rest my judgment on it, namely, that a husband has as such an insurable interest in his wife's life. The contrary appears to be stated in some of the text-books, but the proposition is affirmed in Bullen and Leake, 2nd ed. p. 161. The learned authors say: "The interest in this statute means in general pecuniary interest. The interest of a father in the life of a child is not sufficient alone to support an insurance on the child's life. But a wife may insure her husband's life, and the husband his wife's." There is no reported case in the books against this;

(1) [1892] 1 Q. B. 864. (2) [1903] 2 K. B. 92, at p. 96.

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the only reported case is *Huckman* v. *Fernie* (1), where the husband's interest was assumed to be legal by counsel and Court; and this latter is important, because the objection of illegality, if it were possible, could hardly have been overlooked, and certainly ought to have been taken by the Court if they thought it a sound objection: see per Lord Eldon in *Evans* v. *Richardson*. (2) But I have come to this conclusion on the construction of the Act itself. The Act is expressed to be aimed at "a mischievous kind of gaming," and it forbids an insurance "by any person" on the life of "any person," "wherein the person for whose benefit the policy is made shall have no interest." The 2nd section makes it unlawful to effect a policy on the life of "any person" without inserting in the policy the name of the person for whose benefit it is made; and the 3rd section provides that "where the insurer hath interest in such life, ... no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured in such life." This latter section has been held to mean "pecuniary interest" measured by the loss that would be suffered by the beneficiary if the life dropped at the date of the policy. Lord Blackburn says in *Wilson* v. *Jones* (3): "I know no better definition of an interest in an event than . . . . that, if the event happens, the party will gain an advantage, if it is frustrated he will suffer a loss." And the interest must be a legal interest, not a mere chance or expectation: *Hebdon* v. *West* (4); *Halford* v. *Kymer*. (5) It is to be observed that the words of s. 1 are assurance "by any person on the life of any person," not "on the life of any other person," and s. 2 applies to an insurance effected by a man on his own life: *McFarlane* v. *Royal London Friendly Society*. (6) I find it difficult, however, to see what pecuniary interest, in the sense of pecuniary loss arising from the loss of some legal interest, a man can be said to lose on his own death, and it has been held in *Wainewright* v. *Bland* (7) that every man is presumed to have an interest in his

(1) 3 M. & W. 505.
(2) (1817) 3 Mer. 469, at p. 470.
(3) L. R. 2 Ex. 139, at p. 150.
(4) 3 B. & S. 579.
(5) 10 B. & C. 724.
(6) 2 Times L. R. 755.
(7) 1 Moo. & R. 481.

own life and in every part of it, and that an executor suing on a policy effected by his testator on two years of his life is not bound to shew that such testator had any special reason for making such limited assurance. But this must be on the ground that an insurance by a man on his own life is not within the mischief of the Act. A man does not gamble on his own life to gain a Pyrrhic victory by his own death. I cannot persuade myself that such an insurance is of a pecuniary interest or within Lord Blackburn's words—that if the man dies he will gain an advantage, if he lives he will suffer a loss. The loss is in both cases his own, being either of his life or of his premiums; the pecuniary gain is his executor's. In *Reed* v. *Royal Exchange Assurance Co.* (1) Lord Kenyon went a step further and held that a wife as such has an insurable interest in her husband's life, and he refused to allow evidence to be given by her that her late husband was entitled to a life interest of large amount. This shews that he regarded the husband and wife in the same position as the individual insured, for he would otherwise have been bound to take the evidence in order to satisfy s. 3 of the Act. If the wife's insurable interest depended on her right to necessaries at her husband's expense or on the possession by the husband of a life interest, the judge could not of his own motion have excluded all evidence to shew the age of the spouses at the date of the insurance and the value of the interest or necessaries according to the station in life of the parties as compared with the sum assured. The case is very shortly reported, but in my opinion Lord Kenyon excluded the evidence on the same grounds on which evidence of insurable interest in the insurer for his own benefit would be excluded, namely, that the case was not within the mischief of the Act. If this be so, it follows, in my opinion, that the same principle must be applied to the insurance by the husband of the wife's life; a husband is no more likely to indulge in "mischievous gaming" on his wife's life than a wife on her husband's. It is not a question of property at all; it is that for this purpose husband and wife stand on the same footing and that the ruling of Lord

(1) Peake, Add. Cas. 70.

Kenyon a century ago in favour of the wife's claim ought now to be applied in favour of the husband's.

Further, the Act 14 Geo. 3, c. 48, appears to apply to Scotland as well as to England. The Act of 14 Geo. 3, c. 78 (Fire Insurance), contains provisions that led Lord Selborne and Lord Watson to doubt whether that Act applied to Scotland: *Westminster Fire Office* v. *Glasgow Provident Investment Society* (1); but there are no similar provisions in the present Act, and, if so, it is very desirable that the same interpretation should be put on the Act in both countries. In *Wight* v. *Brown* (2) it is said: "The Lord Ordinary does not question the right of husband or wife to make a valid provision for or settlement on each other after death by life assurance. . . . . This was just a common insurance effected by a husband stante matrimonio on the life of his wife, the premium of which, for aught that appears, was paid out of the goods in communion." Again (3): "In this instance the policy was made payable on the death of his wife, of course without any intention to provide for her. There is no difference between such a policy and one opened on the husband's own life. The policy here was entirely at the husband's disposal, and the selection of an insurance on the wife's life seems to create no other peculiarity than might have been founded on, if the husband had opened a policy on any other life in which he had an insurable interest." It is true that the interlocutor was altered on appeal, but on grounds which in no way affect the statements of general law quoted above. And Lord Moncreiff says (4): "He" (the husband) "by annual payments in fact invests a sum of money in such a form that it can only become payable to himself six months after his wife's death. There is no fraud nor unfairness in such an investment by insurance. But the intention plainly is that, when his wife shall die, a sum of money shall become payable to himself for his own purposes after that event. . . . . He invests a portion of his funds or gains upon a contingent contract, that, if he shall have the misfortune to lose his wife and be then less able for labour than he has been before, he may

(1) (1888) 13 App. Cas. 699.
(2) (1849) 11 D. 459, at p. 460 n.
(3) Ibid. at p. 461.
(4) Ibid. at p. 470.

have a fund to be paid to him for his support, or for the settlement of his affairs when he himself comes to die. The husband's interest in the wife's life, which renders the insurance legitimate, is that it shall be preserved; but the event of its failing is that against which he makes the insurance for his own safety. . . . . The substance of the transaction is a contingent contract for his own benefit which can take no effect till after the marriage has been dissolved by the death of the wife. . . . . But he had still a deep interest in the life of his wife, and I cannot see any reason why he might not with perfect bona fides, and with full effect, secure to himself, by insurance, such a sum of money, of which he could never demand payment as long as the marriage subsisted." This interest appears to me to be the personal interest founded on affection and mutual assistance, and not a pecuniary interest. The actual decision in the case was that the policy money belonged to the husband and was not part of the estate in community, but the judges appear to have treated the insurable interest of the husband in his wife's life as clear.

On these grounds I am of opinion that the appeal fails and should be dismissed with costs, and, as I prefer to put it on the latter ground, the husband need not administer to his wife's estate, because he recovers on his own contract and not on hers.

Appeal dismissed.

Solicitor for plaintiff: *Isadore Goldman, for A. V. Hammond, Bradford.*

Solicitors for defendants: *Francis Howse & Eve.*

E. L.