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* Mar. 3, 4, 5.
* Apr. 21.

NATHAN GROBSTEIN (PETITIONER).....APPELLANT;

AND

KHALIL A. KOURI AND DAME N. KOURI (CONTESTANTS) ..... } RESPONDENTS;

AND

THE NEW YORK LIFE INSURANCE COMPANY AND THE BANK OF MONTREAL (MISES-EN-CAUSE).

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL SIDE, PROVINCE OF QUEBEC.

Bankruptcy—Insurance, life—Joint life insurance policy—Both lives not insured—Death of one insured—Other insured becoming bankrupt—Right of the trustee to the proceeds of the policy—Transfer of policy to a third person—Insured party to transfer—Validity of the transfer—Bankruptcy Act, R.S.C. [1927], c. 11, section 2, ss. ff—Husbands' and Parents' Life Insurance Act, R.S.Q., 1925, c. 244.

On February 4, 1927, one Aboosamra Kouri and his son, Khalil Kouri, one of the respondents, insured their lives jointly with the New York Life Insurance Company, the policy being what is known as a "joint life insurance policy." Under this policy, issued on two applications made individually by the father and the son, both were called the insured; and the insurance company agreed to pay to the survivor of them the sum of $24,947, upon receipt of due proof of the death first occurring of either of the insured, whereupon the contract would cease and determine. The premiums were payable during the joint lifetime of the insured. Shortly after the issue of the policy, on February 18, 1927, the respondent Khalil Kouri signed a letter addressed to his father, declaring he had no interest in the policy and stating that, in the event of his father's death before his, he renounced in favour of his mother, the other respondent, the full amount of the policy; and the latter concurrently accepted in writing the benefit of her son's interest in the policy. In each of the applications attached to the policy and so forming part of the contract, each insured had reserved unto himself the right and power "to change the beneficiary from time to time"; and accordingly, on March

* PRESENT:—Rinfret, Cannon, Crocket, Davis and Kerwin JJ.

8, 1934, the father and the son joined in signing a document by which the wife of one and the mother of the other respondent was designated as beneficiary under the policy; such appropriation was duly noted and endorsed on the policy by the insurance company. The father also, by his will dated December 24, 1931, bequeathed all his life insurance policies to his wife. On March 19, 1930, the respondent Khalil Kouri went into bankruptcy and the appellant was appointed trustee. On June 10, 1934, the father died; and the proceeds of the policy were deposited into court by the insurance company, after satisfying a lien of the Bank of Montreal, to which both the insured had assigned the policy as security for a loan. The appellant trustee in bankruptcy then brought the present action to effect a cancellation of the transfer of the policy by the son to his mother and to claim the proceeds of the policy.

Held, affirming the judgment appealed from (Q.R. 60 K.B. 114) but for different reasons, that the appellant was not entitled to claim any right to the proceeds of the insurance policy.

Per Rinfret, Cannon and Kerwin JJ.—The bankrupt debtor had not really a right under the policy; he held a mere chance of benefit, a mere possibility; and neither that chance of benefit nor that possibility came *within* the definition of property as contained in subsection *ff* of section 2 of the *Bankruptcy Act;* consequently, it did not pass to the appellant trustee. The trustee might have claimed the proceeds of the policy, if the insolvent son were still the beneficiary at the death of his father; but the latter exercised his right to change the beneficiary and the mother then became the sole beneficiary in the event of the death of her husband. The fact that the son joined his father in signing the appropriation document whereby the latter revoked him as his beneficiary could not and did not affect the validity of the document. At the time the new appropriation was made, the father enjoyed full liberty to make it, and it does not matter that his son was then bankrupt and undischarged or even that the father would have been moved to act as he did precisely because his son was then bankrupt; the creditors were not thereby deprived of anything to which they could make a valid claim.

Per Davis J.—The appellant cannot succeed on the ground raised by him, that the proceeds of the policy belong to the insolvent son's estate because the policy was not within the *Husbands' and Parents' Insurance Act,* it being a "joint insurance policy" of father and son. Under such a policy, the two lives of the father and the son were not insured; but one of them; that of the one who died first. The policy by its terms came to an end with the death of that one. That one in this case was the father who predeceased his son. The son's life was only conditionally insured in the event of his predeceasing his father and the father's life was insured conditionally in the event that he predecease the son; and that event happened. Accordingly this case should be decided, as would be decided the simple case of a father insuring his life in favour of his son and subsequently designating his wife as preferred beneficiary; there would be no doubt of the right of the widow to the proceeds of the insurance policy.—A "joint insurance," as the one in this case, should be construed as an insurance "by each of the other's life and not as an insurance by each of his * * * own life." Vaughan Williams L.J. in *Griffiths* v. *Fleming,* ([1909] 1 K.B. 805, at 815).

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APPEAL from the judgment of the Court of King's Bench, appeal side, province of Quebec (1), affirming the judgment of the Superior Court, Boyer J. and dismissing the petition of the appellant, trustee in bankruptcy, to have the proceeds of a life insurance policy declared the property of a bankrupt estate.

The material facts of the case and the questions at issue are stated in the above head-note and in the judgments now reported.

I. M. Babrove for the appellant.

W. F. Chipman K.C. and *L. H. Ballantyne K.C.* for the respondents.

The judgment of Rinfret, Cannon and Kerwin JJ. was delivered by

RINFRET J.—This case has been the occasion for a considerable variety of arguments which, it seems to us, was quite unnecessary and irrelevant.

The respondent Khalil Kouri went into bankruptcy on March 19, 1930, and the appellant, Nathan Grobstein, was appointed trustee.

As such, the appellant claimed the right to the proceeds of an insurance policy, issued by the New York Life Insurance Company, on February 4, 1927, less a certain amount due to the Bank of Montreal, to which the policy had been assigned.

The policy was what is known as a "joint life insurance policy," issued on two applications made individually by Khalil Kouri, the respondent, and Aboosamra Kouri, his father.

Under this policy, both applicants were called the insured; and the insurance company agreed to pay to the survivor of them the sum of $24,947, upon receipt of due proof of the death first occurring of either of the insured, whereupon the contract would cease and determine.

The policy provided for a number of benefits and provisions including: Participation in surplus, dividends, loan values, surrender values, additional methods of settlement, and other benefits and provisions. The premiums were payable during the joint lifetime of the insured.

(1) (1936) Q.R. 60 K.B. 114; [1936] 1 D.L.R. 373.

We will now state the facts in the order of their occurrence, although, in the view we take of the case, most of them have no bearing upon the decision, but so that we may have a complete story of the happenings.

On February 18, 1927, the policy was assigned to the Bank of Montreal by both the insured as security for a loan. By consent of all parties, the balance due on that loan was paid to the bank out of the proceeds of the insurance policy; and the bank has no further interest in the matter. There remains in the hands of the insurance company a balance of $16,687 available to whoever will be declared entitled to it as a result of the present litigation.

On February 18, 1927, Khalil Kouri, so it is asserted by the respondents, signed a letter addressed to his father, Aboosamra Kouri, declaring

he had no interest in the policy of the New York Life Insurance Company issued jointly on his life and that of his father;

and stating that, in the event of his father's death before his, he renounced in favour of Mrs. Aboosamra Kouri, his mother, the full amount of the policy.

The validity of this renunciation, and, in fact, the authenticity of the letter itself was strenuously contested by the appellants upon several grounds. The trial judge implicitly held it good and valid. The majority of the Court of King's Bench (1) did not pass upon that point, having decided the case upon a ground which made it immaterial whether the renunciation was effective or not.

On December 24, 1931, the father, A. Kouri, made his will before a notary and instituted his wife, Mrs. Kouri, his universal legatee and testamentary executrix, bequeathing unto her

all the property * * * of any nature whatsoever without exception, which I may die possessed of and which will compose my estate and succession, including the proceeds of all insurance policies existing on my life, to hold, use and enjoy and dispose thereof as her own forever from and after my decease.

On March 8, 1934, Aboosamra Kouri and Khalil Kouri joined in signing the following document:

Know all men by these presents that we, the insured under policy no. 9738981 issued by the New York Life Insurance Company do hereby declare, pursuant to the statutes of Quebec in that behalf, that said policy and all advantages to be derived therefrom shall be appropriated to and accrue for the sole benefit of Najla Zakaib Kouri, whose relationship to

(1) (1936) Q.R. 60 K.B. 114.

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us is that of wife and mother respectively. This appropriation is subject to existing assignment. And we hereby revoke any previous directions to the contrary or inconsistent therewith.

Dated and signed at Montreal, Que., this 8th day of March, 1934.

(Sig.) ABOOSAMRA KOURI.
(Sig.) KHALIL KOURI.

Sworn to & subscribed
before me this 8th day
of March, 1934.

(Sig.) J. A. VILLEMAIN, N.P.

The New York Life Insurance Company, in accordance with its rules, has retained the duplicate copy of this appropriation, but assumes no responsibility for its validity.

New York, Mar. 28, 1934.

FREDERICK M. JOHNSTON,
Secretary,
Per Trincke.

Aboosamra Kouri died on June 10, 1934.

Thereupon the insurance proceeds became payable to the beneficiary under the terms of the policy.

Subsequently, on September 17, 1934, the appellant, as trustee of the estate of Khalil Kouri, held a meeting of the inspectors, at which he conveyed to them the information, which he stated to have received on the 13th of the same month, to the effect that Khalil Kouri had an interest in the life insurance policy in question and that Khalil Kouri had transferred his interest in the said policy over to his mother. In the result, the appellant was authorized to take legal action to effect a cancellation of the transfer and pray that the New York Life Insurance Company be ordered to pay to the estate the difference between the amount of the policy and the amount due to the bank.

Both the Bankruptcy Court and the majority of the Court of King's Bench dismissed the petition of the trustee appellant mainly on the ground that the insurance policy was governed by the provisions of the *Husbands' and Parents' Life Insurance Act* (c. 244 of R.S.Q. 1925); that, by the terms of the said Act, insurance policies effected or operated under it were exempt from seizure for debt due either by the insured or by the persons benefited; that, by reason of the foregoing, the said policy of insurance did not fall into the bankrupt estate of Khalil Kouri; and that, as a result, the appellant herein had no interest in the said policy, or the proceeds thereof.

Before this Court, the appellant strongly urged that the particular insurance policy under discussion could not possibly fall under the provisions of the *Husbands' and Parents' Life Insurance Act,* because it was a joint life insurance policy obviously, as it was contended, taken out by the insured parties for the purposes of the business in which they were both engaged, and not in any sense of the word a policy taken out by a father for the protection of his child, which is the evident object of the insurance policies contemplated by the Quebec statute.

The view of the majority of the learned judges of the Court of King's Bench was that the purpose of the Quebec Act

> was to create an exception to the general rule in all cases where a parent insured his life in favour of his children, and that a parent can no longer deal with insurance otherwise than as indicated in (that) statute and that all such policies are unseizable for debts due either by the insured or the beneficiary. The Act indicates no exceptions. It sets up no machinery to enable a person to decide whether he is under this Act or any other law. The purpose of the Act seems to be to make all insurance by a husband in favour of his wife, or by a parent in favour of his children, a matter of public policy and to allow such insurance with the full knowledge that the proceeds will not be seizable.

In the opinion of the majority, it did not matter whether the policy was a joint life policy or whether it could be classified as what the appellant styled a policy for business purposes.

Although, in truth, all logical arguments tend in the direction of the above solution, it must be admitted that the question presents difficulties, by no means the slightest of which is the declaratory provision contained in section 2 of the Act, whereby

> nothing contained in (it) shall be held or construed to restrict or interfere with any right *otherwise* allowed by law to any person to effect or transfer a policy for the benefit of a wife or children * * *

But we feel greatly relieved that we do not find it necessary to express any opinion upon that point so as to decide this case.

In order to be successful, the appellant had to overcome a great many obstacles; and, in our view, he failed at the first hurdle.

It was incumbent upon him to show that, as trustee of the bankrupt estate, he had a right to the insurance moneys.

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Now, under the *Bankruptcy Act,* a trustee takes the property of the debtor only subject to all the rights and equity to which it was subject while it was held by the debtor. The trustee is the legal representative of the debtor; and generally speaking succeeds only to such rights as the debtor himself would have had, if not bankrupt, and to no other rights. There are, of course, exceptions to that principle, whereby the trustee is vested for the benefit of the creditors with certain additional rights not available to the bankrupt debtor; but this is not a case where these exceptions come in.

Whether the insurance policy, in this case, is looked upon as a double contract of insurance contained in one document or as a single contract of insurance upon the joint life of the two insured; whether it is envisaged as a gratuitous contract on the part of the father or an onerous contract mutually agreed upon by the father and the son, there is no question that the rights of Khalil Kouri, the bankrupt debtor and the respondent in the present case, stand to be determined by the contract itself, unless it should be decided that the contract itself is prohibited by the statutory law of Quebec.

If it be true to say that, under that law, a father cannot insure his life for the benefit of his children, except under the provisions of the *Husbands' and Parents' Life Insurance Act,* there can follow only two results in respect of the insurance policy now under consideration: 1. Either that policy was made in accordance with the provisions of the Act, in which case section 30 of the Act applies; and then the proceeds thereof are exempt from seizure for the debts due by the insured or by the persons benefited, and, therefore, under no circumstances, do the proceeds of the insurance policy fall into the bankrupt estate and in the hands of the trustee; 2. Or the insurance policy was not made in accordance with the provisions of the Act; and, in such a case, it would be illegal and inoperative; and the appellant would take nothing by his petition.

On the other hand, if the policy issued by the New York Life Insurance Company on the 4th February, 1927, be a transaction legally authorized in the province of Quebec, as being "allowed by law * * * otherwise" than by the *Husbands' and Parents' Life Insurance Act,* it must be interpreted as all other contracts; and we can see no reason

why the parties to it should not be bound by the terms to which they have agreed.

It is a term of the policy that

the policy and the applications therefor, copy of which is attached hereto, constitute the entire contract.

(Sec. 4.—other benefit provisions: miscellaneous provisions).

In each of the applications attached to the policy and so forming part of the contract, we find that Aboosamra Kouri and Khalil Kouri have each subscribed to the following condition:

5. I designate as beneficiary to receive the proceeds of the policy in event of death and reserve the right to change the beneficiary from time to time:

(Here the name of the beneficiary is printed in full, with the address of his residence and his relationship to the insured). Consequently, each insured had fully reserved unto himself the right and power "to change the beneficiary from time to time." This was a condition of the contract, whatever be its character, to which each had subscribed and which was expressly accepted by each.

It follows that any right deriving from the policy to one or the other of the contracting parties was necessarily contingent upon the will of either of them that his beneficiary should remain the same as had been designated in the policy. The right to change the beneficiary unqualifiedly vested in each of the insured who, without the intervention of the other beneficiary and quite independently of him, could modify that clause, revoke it and confer the benefit of the insurance on some other person and any other person at his will. (*Meunier* v. *Metropolitan Life Insurance Company* (1).

Assuming that the letter of Khalil Kouri, addressed to his father, on February 18, 1927, was not effective as a renunciation to his rights under the policy, the most that subsisted in his favour when he became bankrupt was a conditional right to the benefits of the policy, provided his father did not revoke him as a beneficiary, which his father had the absolute right to do. The appellant trustee, when he became vested with Khalil Kouri's property, as a result of the bankruptcy order, could take only what the bankrupt was entitled to, and that is to say: the conditional interest in question and no more. (*Rees* v. *Hughes*) (2).

(1) (1923) Q.R. 35 K.B. 164.

(2) (1894) Q.R. 3 Q.B. 443, at 452, 453.

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In our view, the bankrupt debtor had not really a right under the policy. He held a mere chance of benefit, a mere possibility. And neither that chance of benefit nor that possibility came *within* the definition of property in the *Bankruptcy Act* (Subs. *ff* of Sec. 2). Consequently it did not pass to the appellant trustee.

The trustee might have claimed the proceeds of the insurance policy if the father had allowed it to remain in its original form and Khalil Kouri were still the beneficiary at the death of his father.

But, on March 8, 1934, the father exercised the right which he had reserved unto himself to change the beneficiary under the policy; and, by a document in due form, he appointed as his beneficiary his wife, Mrs. N. Kouri (the other respondent), to whom he appropriated all the advantages to be derived from the policy.

As a consequence, Khalil Kouri ceased to be the beneficiary in case his father died before him; Mrs. N. Kouri, ever since the 8th March, 1934, became the sole beneficiary in the event of the death of her husband; and the appropriation was duly noted and endorsed on the policy by the New York Life Insurance Company.

In passing, it may be said that this new appropriation was made in accordance with all the provisions of the *Husbands' and Parents' Life Insurance Act* and fully complied with all the requirements thereof. (1925, R.S.Q., ch. 244, ss. 12 and 13).

It is true that Khalil Kouri joined his father in signing the appropriation document whereby the latter revoked him as his beneficiary. But this was quite unnecessary; for the father, under the terms of the policy and as a result of the right which he had reserved unto himself, had complete and unrestrained power to make the change, notwithstanding any objection that Khalil Kouri might have raised against that move.

Obviously, the participation of Khalil Kouri in that document could not and did not affect its validity. At the time this new appropriation was made, Aboosamra Kouri enjoyed full liberty to make it. It does not matter that his son was then bankrupt and undischarged. It does not matter even if the father was moved to act as he did precisely because his son was then bankrupt. The father had complete control of his part of the policy and he could yet

designate his beneficiary as he pleased. Any hope of benefit which Khalil Kouri might have had under it was wholly subject to the possibility that his father might change his name as beneficiary; and that is exactly what happened. His creditors were not thereby deprived of anything to which they could make a valid claim. It is quite out of the question to think that they would have had the right to prevent Aboosamra Kouri from appointing a new beneficiary.

This is our view of the case before us; and it would also appear to have been that of the English Court of Appeal (composed of Lord Esher, M.R., Bowen and Fry, LL. JJ.) in the case of *Ex parte Dever,* in *re Suse and Sibeth* (1); see particularly the reasons of Bowen, L.J., at pp. 667 and 668 and of Fry, L.J., foot of p. 669 and p. 670.

The conclusion which we have reached is none the less satisfactory because, upon the evidence, and throughout the life of the policy, the premiums were always paid by the father, Aboosamra Kouri. Even if the admissibility of the verbal evidence to that effect should be disputed, the fact is nevertheless clearly established by the circumstances. Khalil Kouri went into bankruptcy in March, 1930; and it is evident that the trustee never paid anything on the premiums between the date of the bankruptcy and the death of the father, since admittedly he never heard of the existence of this life insurance policy until "the 13th day of September, 1934."

For these reasons, and without expressing any opinion upon the very interesting arguments submitted to us on other points, we think the appeal fails and ought to be dismissed with costs.

CROCKET J.—I agree that this appeal should be dismissed with costs.

DAVIS J.—On February 4, 1927, Aboosamra Kouri and his son, residents in the province of Quebec, insured their lives jointly with the New York Life Insurance Company. The obligation of the policy was as follows:

> New York Life Insurance Company agrees to pay to the survivor of the insured $24,947 upon receipt of the due proof of the death first occurring of either Aboosamra Kouri (the father) or Khalil A. Kouri (the son) and thereupon this contract shall cease and determine.

(1) (1887) L.R. 18 Q.B.D. 660.

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The father died on June 10, 1934, and the son survived him. On March 19, 1930, however, the son had become bankrupt but it is alleged that shortly after the issue of the policy, that is, on February 18, 1927, he had renounced in writing his interest in it to his mother who concurrently accepted in writing the benefit of her son's interest in the policy.

The father by his will had given all his life insurance to his wife and by a declaration signed by him March 8, 1934, and delivered to the insurance company in his lifetime, had designated his wife as beneficiary of the policy. The insurance company honoured the death claim and the proceeds of the policy, after satisfying a lien of the Bank of Montreal, have been paid into court, there being a contest between the widow and the trustee in bankruptcy of the son's property.

The contract of insurance was made in the province of Quebec. Article 1265 of the Civil Code prohibits husband and wife benefiting each other during marriage by acts *inter vivos*

except in conformity with the provisions of the law, under which a husband may, subject to certain conditions and restrictions, insure his life for his wife and children.

By sec. 3 (2) of the *Husbands' and Parents' Life Insurance Act,* R.S.Q. 1925, c. 244,

a father * * * may insure his * * * life or appropriate any policy of insurance held by himself on his life * * * for the benefit and advantage of his * * * children, or of one or more of them.

By sec. 4

the insurance mentioned in sec. 3 may be effected, either for the whole life of the person whose life is insured, or for any definite period; and the sum insured may be made payable upon the death of such person or upon his or her surviving a specified period of not less than ten years.

Then by sec. 12,

any person who has effected an insurance or who has appropriated a policy of insurance, for the benefit of a wife or of a wife and child or children, or of a child or children, at any time and from time to time thereafter, may revoke the benefit conferred by such insurance or appropriation, either as to one or more or as to all of the persons intended to be benefited, and may declare in the revocation that the policy shall be for the benefit only of the persons not excluded by the revocation, or for the benefit of such persons not excluded, jointly with another or others, or entirely for the benefit of another or others, not originally named or benefited. Such other or others must be a person or persons for whose benefit an insurance may be effected or appropriated under these provisions.

By sec. 13

such revocation may be made either by an instrument to be attached to the policy * * * or by will * * *

and by sec. 30

policies effected or appropriated under this Act shall be exempt from seizure for debts due either by the insured or by the persons benefited.

These provisions are substantially the same as the preferred beneficiary provisions of the life insurance statutes in the common law provinces.

If the case were as simple as a father insuring his life in favour of his son and subsequently designating his wife as the preferred beneficiary, there would be no doubt of the right of the widow to the proceeds of the insurance. It is contended by the son's trustee in bankruptcy that the proceeds of the policy in this case belong to the son's estate upon the ground amongst others that the policy was not within the *Husbands' and Parents' Life Insurance Act* because it was what is commonly called a "joint insurance policy" of father and son. Does this make any difference? The two lives were not insured; but one of them; that of the one who died first. The policy by its terms came to an end with the death of that one. That one in this case was the father who predeceased his son. The son's life was only conditionally insured in the event of his predeceasing his father. It is equally true that the father's life was insured conditionally on the event that he predecease the son but that event happened.

Vaughan Williams, L.J., in *Griffiths* v. *Fleming* (1), said:

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.

In that case husband and wife were jointly insured with the event on which the sum assured by the policy was to become payable being stated as "on the death of such of the lives assured as shall first die." The husband and wife had, in that case, the same as the father and son had in this case, before the granting of the policy, each filled up and signed a separate proposal for assurance of the proposer's life, in the form issued by the insurer, respectively giving therein, in answer to questions, certain particulars

(1) [1909] 1 K.B. 805, at 815.

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with regard to the proposer's residence, occupation and other personal matters. In the *Griffiths* case (1) the wife's proposal stated that the sum insured for was "£500 jointly with my husband" and, in the case of the husband, "£500 jointly with my wife" to be "payable at death. Table 9." The prospectus published by the insurer in that case contained various tables giving the respective rates of premiums payable in respect of different modes of life insurance, and Table 9 dealt with

> Joint Life Assurances. 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.

In the present case the only reference to the insurance of the joint lives is in the words "Joint Life" being written in pen and ink across the top of each of the two application forms and the printed words at the foot of the first page of the policy itself, which words are,

> Joint Life Insurance payable at death. Premiums payable during joint lifetime.

The policy states that

> The policy and the application therefor, copy of which is attached hereto, constitute the entire contract.

In the *Griffiths case* (1) the wife committed suicide shortly after the granting of the policy and the insurer in an action brought by the husband upon the policy 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 the lives of husband and wife were jointly assured and that by virtue of such assurance each had an insurable interest in the life of the other; and, alternatively, that the plaintiff insured his life in favour of his wife and the wife insured her life in favour of the plaintiff and that on the death of the wife the sum insured became payable to the plaintiff. There was evidence to the effect that the wife had contributed to the premium an amount which corresponded with the difference in their ages and it further 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 to perform these services in her place.

(1) [1909] 1 K.B. 805.

Pickford J. at the trial 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, the plaintiff had an insurable interest which would support the policy. The learned judge therefore gave judgment for the plaintiff for the amount claimed. Upon appeal, it was 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. Vaughan Williams, L.J., thought the preferable construction was to treat the policy as by the husband on his wife's life, because he was inclined to think that the husband had an interest in his wife's life which ought to be presumed, and treating the policy in that way he did not think it necessary to go into the evidence to shew a pecuniary interest in the husband as was done before by the learned judge at the trial. I have quoted above the words of Vaughan Williams, L.J., as to the practical reason for treating these joint insurances as insurance by each of the other's life. Farwell, L.J., with whom Kennedy, L.J., concurred, thought it plain, from the separate proposals which were accepted by the company, that the husband proposed to insure his own life and the wife to insure her own life for the benefit in each case of the survivor of them and that there was nothing to shew any intention to carry these intentions out by a single policy, unless it were the reference to Table 9, which is the table relating to joint policies. He was of the opinion that the 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 was perfectly legal; but inasmuch as the wife's insurance would take effect under sec. 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 were decided on that ground, and

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he preferred, he said, to rest his judgment upon the ground that the husband as such had an insurable interest in his wife's life and was entitled to recover on his own contract and not on his wife's.

The *Griffiths* case (1) was not mentioned during the argument and it is the only authority I have been able to find on the true construction of a joint insurance policy. It is interesting to observe that the case involved consideration of the construction and meaning of sec. 11 of the *Married Women's Property Act,* 1882, which permitted a married woman to effect a policy of insurance upon her own life or the life of her husband for her separate use and provided that a policy of insurance 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, should create a trust in favour of the objects therein named, and the moneys payable under any such policy could not, so long as any object of the trust remained unperformed, form part of the estate of the insured or be subject to his or her debts. There is a striking similarity in the general language of that section of the *Married Women's Property Act* with the general language of the *Husbands' and Parents' Life Insurance Act* of the province of Quebec, the construction and meaning of which were discussed before us. Here we have a father and son engaged in business, though it is not shewn that the son was actually a partner of his father in the business, and it is plainly indicated by the words "Joint Life" written in ink across the top of each of the separate applications for the insurance and by the words "Joint Life Insurance payable at death. Premiums payable during joint lifetime," which appear upon the face of the policy itself, that the parties here did intend to effect joint insurance. The fact that almost at the time of its delivery the policy was assigned to the Bank of Montreal as security for the indebtedness of the business to the bank shews that it was intended to be used for a protection of the business. In the event that happened I should construe the policy as by

(1) [1909] 1 K.B. 805.

the son on the father's life. That being so, the policy does not come within the provisions of the *Husbands' and Parents' Life Insurance Act.* In that view the proceeds of the policy would not be affected by either the father's will or his change of beneficiary from his son to his wife. On March 8, 1934 (the son's bankruptcy was March 19, 1930, the father's death June 10, 1934) father and son, by an instrument in writing delivered to the insurance company on March 28, 1934, appropriated the proceeds of the policy, subject to the existing assignment to the Bank of Montreal, to the wife and mother, who claims the moneys in court being the balance of the proceeds of the policy after satisfying the bank's claim thereon. But her counsel does not rely upon this document as a transfer from the son to his mother because of the difficulty that would be presented by the prior bankruptcy of the son. Reliance is put upon a document purporting to have been executed by the son on February 18, 1927, whereby the son renounced his interest in the full amount of the policy in favour of his mother and a document purporting to be of the same date from the mother to the son in acceptance of the son's renunciation in her favour of his interest in the proceeds of the policy. Those documents gave rise to the real contest in the case. They had not been delivered to the company or notice thereof given to the company before the father's death and much evidence at the trial was directed to shew that what purports to be the signature of the father as witness to the mother's acceptance of her son's renunciation was a forgery. A great deal of evidence was given at the trial on this phase of the matter and the trial judge came to the conclusion that it was not a forgery. The majority of the Court of King's Bench, while putting the policy under the protection of the *Husbands' and Parents' Life Insurance Act,* expressly declined to follow the learned trial judge in his conclusion as to the absence of proof of forgery. Where a trial judge has seen the witnesses and examined the documents as he heard the witnesses give their evidence and cannot find a serious charge of forgery to have been proved, an appellate court should in my view be very cautious in finding such a charge to have been proved. The matter was discussed before us at some length and I am not only inclined to agree with the finding of fact in this regard by the trial judge but am certainly

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not satisfied that he was in error in the conclusion he reached. That being so, the son effectively transferred his interest in the policy to his mother by the document of February 18, 1927, nearly three years before his bankruptcy occurred. There is no suggestion that at that date there was any attempt on the part of the son to defeat creditors and the transfer is not impeached by counsel for the appellant upon the ground of it being a fraudulent conveyance in that sense.

In the result, though for different reasons, I would dismiss the appeal from the judgment of the Court of King's Bench with costs.

If, however, the policy is to be treated in the event that happened as the father's policy on his own life in favour of his son, then the policy came under the provisions of the *Husbands' and Parents' Life Insurance Act* and the father effectively changed the beneficiary from his son to his wife, and I would agree entirely with the reasons of my brother Rinfret, who arrived at the same disposition of the appeal along different lines.

I can see the objection that can be taken to my own preference of dealing with the policy in the way that Vaughan Williams, L.J., did in the *Griffiths* case (1) because of the words of reservation of change of beneficiary in each of the applications. But a finely printed sentence on a general form of application, obviously intended for individual policies, may be disregarded in my view as inconsistent with the pen and ink words "Joint Life" specially written across the top of each application and equally inconsistent with the words of obligation in the policy itself which was accepted by the insured as a compliance with their applications. That obligation was definite: to pay to the survivor of the two insured upon the death first occurring of either of the insured.

Appeal dismissed with costs.

Solicitor for the appellant: *Isidore M. Bobrove.*

Solicitors for the respondent: *Brown, Montgomery & McMichael.*

(1) [1909] 1 K.B. 805.