

DISTRICT COMMISSIONER, LOMAIVITI (ADMINISTRATOR OF THE ESTATE OF MING KUM FONG SAM) v. SEE TOO YIN CHIEN & OR.

[Civil Jurisdiction (Corrie, C.J.) August 30, 1937.]

Life Assurance Ordinance, 1880¹—s. 3—interest in life policies exempt from execution etc.—whether proceeds of insurance policies in hands of administrator are available for payment of debts—whether bonus additions protected.

The estate of the deceased Ming Kum Fong Sam included two life insurance policies taken out by deceased in 1927—one on his own life and one on his son's. Deceased died in 1935 and the question arose in the administration of his estate as to whether moneys in the hands of the administrator received from the policies was available for payment of debts.

HELD.—(1) The protection of s. 3 of the Life Assurance Ordinance, 1880,¹ extends to moneys actually received by the personal representative of a deceased policy holder as proceeds of a life insurance policy and (except as to the quantum restriction under s. 4) such moneys are not assets available for payment of debts.

(2) Dissenting from *R. v. Tait* (N.S.W. Rep. Vol. 10), moneys payable as bonus additions or profit are within the protection afforded by s. 3 of the Life Assurance Ordinance 1880.

Cases referred to :—

(1) *R. v. Tait* N.S.W. Rep. Vol. 10.

(2) *Anderson v. Egan* (Aust) C.L.R. Vol. 3.

ORIGINATING SUMMONS issued upon the applications of an administrator for determination of whether proceeds of life insurance policies in his hands were available for payment of debts. The facts are fully set out in the judgment.

J. S. M. Park for the District Commissioner, Lomaiviti. (Administrator of the Estate of Ming Kum Fong Sam deceased) plaintiff.

G. F. Grahame for See Too Yin Chien (widow) a defendant.

R. A. Crompton for Morris Hedstrom Limited (representing creditors) a defendant.

CORRIE, C.J.—This summons is issued upon the application of the District Commissioner, Lomaiviti, as Administrator of the Estate of Ming Kum Fong Sam deceased for the determination of the following question :—

Whether the administrator may apply the proceeds of an insurance policy on the life of the deceased in the National Mutual Life Association of Australasia Limited and the proceeds of an insurance policy on the life of one Arthur Fong Sam in the said society, or so much of the insurance moneys as may be required, in payment of the debts owing by the said deceased.

The answer to the question raised by the summons depends entirely upon the meaning of s. 3 of the Life Assurance Ordinance 1880 which reads as follows :—

“ The property and interest of every person who has effected or shall hereafter effect any policy or contract with any insurance company for an assurance bona fide upon the life of himself or any other person in whose life he is interested or for any future endowment for himself or any other such person and the property and interest of the personal representatives of himself or such other person in such policy or contract or in the moneys payable thereunder or in respect thereof shall be exempt as is hereinafter provided from any law now or hereafter in force relating to bankruptcy or to be seized or levied upon by or under the process of any court whatever ”.

This provision has no counterpart in English law but similar provisions have been enacted in parts of the Commonwealth of Australia, and on comparing the section with those enactments, from one of which the section appears to have been derived, it is clear the section should be construed as if the words “ from liability ” had been inserted therein after the word “ exempt ”. The words “ as hereinafter provided ” refer to the limitations of the exemption contained in s. 4 and 5 of the Ordinance. Subject to the provisions of those sections, to which I shall refer later, the effect of s. 3 as regards the policy of assurance effected by the deceased upon his own life is that the property and interest of the personal representative of the deceased therein or in the moneys payable thereunder or in respect thereof shall be exempt from liability to be seized or levied upon by or under the process of any Court whatever.

The question that has to be determined is for what period does that exemption continue. *Mr. Grahame* on behalf of the widow has argued that the exemption exists so long as the moneys payable under the policy remain in the hands of the personal representative ; that in consequence the deceased’s creditors, although they may obtain judgment for their debts, cannot execute against such moneys ; and hence that the administrator is not entitled to apply such moneys in paying debts which cannot be recovered against the assets in question.

On the other hand it is argued that the section can only have the meaning attributed to it by *Mr. Grahame* if the words “ the moneys payable thereunder or in respect thereof ” are given the meaning “ payable or paid thereunder or in respect thereof ”, and that it would be contrary to the ordinary rules of construction of statutes to read the words “ or paid ” into the section. To this *Mr. Grahame* replies that unless the section is construed in the manner in which he suggests, it would mean that upon payment of the policy moneys either to the insurer himself or to his personal representatives, such moneys would forthwith become liable to be seized or levied upon at the instance of a judgment creditor of the assured ; and hence the section would afford no protection whatever to the insurer or to the persons entitled to his estate upon his death ; and in consequence the object of the Ordinance which is “ An Ordinance to encourage and protect life insurances and other like provident arrangements for the benefit of insurers their wives and families ” would be entirely defeated.

In determining the meaning of the section it is to be observed that sections containing almost identical provisions have on more than one occasion been construed by judgments of Australian Courts; and although such judgments are not binding upon this Court they are not lightly to be disregarded, particularly where, as in the present instance, they relate to statutory provisions which have no counterpart in English law.

The first judgment to which the attention of this Court has been drawn is that of Owen J. in the *King v. Tait and others* (N.S.W. Reports Vol. 10).

That was a case under the Australian Mutual Provident Society Incorporation Act, s. 14 of which provides that the property and interest of every member or of his personal representatives in any policy or contract made or entered into bona fide for the benefit of such member or his personal representatives or in the moneys payable under or in respect of such policy or contract (including every sum payable by way of bonus or profit) shall be exempt from liability to any law now or hereinafter in force relating to bankruptcy or insolvency or to be seized or levied upon by the process of any Court whatever.

One Francis Tait having effected a policy of insurance upon his life for £1,000 with the society and having died otherwise insolvent, the question for determination was to whom the policy moneys were payable; and the learned judge held "that the money devolves in the case of an intestacy to his (i.e. the member's) administrator and in the case of his having made a will to his executor and must be applied by them in the same manner as the rest of the estate, with the exception that it is not liable to the payment of the debts of the testator or intestate. Accordingly if the executor or administrator were to apply this money in paying debts he would be committing an act of *devastavit* by paying debts which could not be enforced, that rule being subject to but one exception, viz. debts barred by the Statute of Limitations".

The other case which has been cited is *Anderson v. Egan* heard in the High Court of Australia on appeal from the Supreme Court of Western Australia (Commonwealth Law Reports Vol. 3.)

S. 33 of the Life Assurance Companies Act 1889 of Western Australia provides as follows:—

"The property and interest of every policy holder in any policy or policies (including every sum payable by way of bonus or profit) shall be exempt from liability to any law now or hereafter in force relating to bankruptcy or insolvency or from liability to be seized or levied upon by the process of any Court whatever".

The question to be determined was whether certain moneys received by the plaintiff, who was administrator with the will annexed of the estate of one G. S. Anderson, under a policy of life assurance effected with the Australian Mutual Provident Society upon the testator's life was exempt from liability to be applied in payment of the testator's debts or whether they were assets in the hands of the administrator available for the payment of debts. Upon this question Griffith C.J. in the course of a reasoned judgment said: "for these reasons I think

that the decision of the Supreme Court was wrong and that the money in question is exempt from liability to be applied in payment of the testator's debts and is not assets in the hands of the administrator for the payment of the debts". In this judgment, Barton and O'Connor J. J. concurred.

In view of these judgments I feel bound to hold that moneys payable under a policy of insurance upon the life of the insurer are protected by s. 3 of the Life Assurance Ordinance 1880 for so long as they remain in the hands of the personal representative of the insurer and are not assets in his hands available for the payment of the insurer's debts.

As regards the policy upon the life of Arthur Fong Sam, it appears from the affidavit of Chia Tung Tsiang, Chinese Vice-Consul in Suva, that the said Arthur Fong Sam is described in the policy as the son of Ming Kum Fong Sam by whom the policy was effected. The fact that Arthur Fong Sam was the deceased's son is not contested and it follows that the policy was effected upon the life of a person in whose life the insurer was interested and accordingly the policy comes within the provision of s. 3 of the Ordinance.

The summons does not state whether any part of the moneys payable under either of the policies represents bonus additions, but it is desirable that I should deal now with the question of such additions, having regard to the fact that in the judgment of Owen J. in *The King v. Tait* which has already been cited, the learned judge held that "the bonus additions are not protected by the Statute and are therefore available for distribution amongst the creditors of the testator". Now the Statute in question affords protection to "the moneys payable under or in respect of such policy or contract (including every sum payable by way of bonus or profit)"; and I am at a loss to know how, in view of those words, the learned judge came to the decision which he did upon that point.

The section which I have to interpret contains no mention of sums payable by way of bonus or profit, but I have no doubt that such sums are included in the moneys payable under or in respect of the policy and I hold accordingly that such sums are entitled to the benefit of the protection afforded by the section.

I have now to refer to the restrictions imposed by s. 4 and 5 of the Ordinance upon the protection conferred by s. 3.

S. 5 restricts that protection so as to exclude from its benefit assignees.

S. 4 prescribes the amount to which protection is to extend, based upon the period for which the policy has endured.

The policies now in question were effected on the 24th August, 1927 and the 28th September, 1927 respectively. Hence on the 6th August, 1935, when the insurer died, both policies had endured for more than seven years but neither had endured for ten years.

It follows that under s. 4 each policy is protected to the extent of £1,000 : and as the moneys secured by the policies did not in either case exceed that sum, the whole of the moneys payable in respect of the two policies are within the protection conferred by s. 3. Accordingly there will be a declaration that no part of the moneys payable under either policy is applicable in payment of debts owing by the deceased and that such moneys are to be paid (subject to payment of the costs of the administration) to the persons entitled to the estate of the deceased upon his death intestate.

The costs of all parties as between solicitor and client are to be paid out of the estate.
