relating to the employment antecedent to June 1905." *Order so varied affirmed.*

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THE COLLIERY EMPLOYES FEDERATION OF THE NORTHERN DISTRICT, NEW SOUTH WALES (INDUSTRIAL UNION OF EMPLOYES) *v.* BROWN.

Solicitor, for the appellants, *W. A. Reid.*
Solicitors, for the respondents, *Sparke & Millard.*

C. A. W.

[HIGH COURT OF AUSTRALIA.]

ANDERSON . . . . . APPELLANT;
DEFENDANT,

AND

EGAN . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF WESTERN AUSTRALIA.

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PERTH, *Oct.* 20, 26.

Griffith C.J., Barton and O'Connor JJ.

Life Assurance Companies Act 1889 (53 *Vict. No.* 12) (*W.A.*), *sec.* 33*—*Protection given to policies—Personal representatives—Executor and administrator—Next of kin.*

Under the *Life Assurance Companies Act* 1889 (W.A.), sec. 33, the proceeds of a policy of life assurance, in the hands of an executor or administrator, are exempt from liability for payment of testator's debts.

The relationship of the beneficiaries under the will to the testator is immaterial.

Decision of the Full Court of Western Australia reversed.

King v. *Tait*, 10 N.S.W. L.R. (Eq.), 232, approved.

In re Adams, 15 N.S.W. L.R. (B. & P.), 135, dissented from.

Sec. 33 of the *Life Assurance Companies Act* 1889 (W.A.) (53 Vict. No. 12), is as follows :—

"33. The property and interest of every policy-holder in any policy or policies, or in the moneys payable

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APPEAL from an order of the Supreme Court of Western Australia (30th August, 1905).

On 24th November, 1904, an originating summons was taken out by the respondent and directed to the appellant for the determination of the following questions:—

(1) Whether the moneys received by the administrator from the Australian Mutual Provident Society under the policy of assurance effected upon the life of the . . . deceased, or any and what portion thereof, are or is exempt from liability under sec. 33 of the *Life Assurance Companies Act* 1889, or

(2) Whether such moneys are assets in the hands of the administrator available for payment of the debts of the deceased.

The appellant was administrator with the will annexed of one George Staniforth Anderson, who died on 5th September, 1903,

under or in respect of such 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. Provided that no policy for a life assurance or endowment shall be so protected until it shall have endured for at least two years, but that after an endurance of two years such protection shall be afforded to the extent of two hundred pounds of assurance or endowment, and to the contributions made towards the same; and after an endurance of five years, to the extent of five hundred pounds; and after an endurance of seven years, to the extent of one thousand pounds; and after an endurance of ten years, to the extent of two thousand pounds; and that no policy for providing an annuity, nor the contributions made towards the same, shall be protected until the payments made on behalf of such annuity shall have extended over a period of six or more years, or unless it shall have been purchased at a date more than six years prior to the commencement of the annuity, and that such annuity shall not exceed the sum of one hundred and four pounds per annum. Provided also, that the protection hereby afforded shall, in the case of an annuity, accrue only to the benefit of the policy-holder himself and only to such part thereof as shall be payable after he shall have attained the age of fifty years; and, in case of an endowment, for the benefit of the nominee only; and, in the case of a life assurance, for the benefit of the personal representatives only of the policy-holder, and in no case for any assignee of the policy-holder.

"In case any policy-holder, or in case of the death of any policy-holder his personal representative, entitled to protection under the preceding section has an interest in a policy or policies to an amount greater in the whole than the sums thereunder protected, he shall be entitled after execution has issued, or a bankruptcy petition or order has been presented and granted, to elect by a writing under his hand, notice of which shall be given to the company and also to the sheriff in case of execution issued, and to the trustees of the estate in case of bankruptcy, which of such policies or what part of such policies up to the limit of the values specified in the preceding clause, shall be so protected. Provided that if he should fail or from any cause be unable so to elect within ten days after being called upon so to do by notice in writing signed by the sheriff or by such trustee as the case may require, the sheriff or such trustee may then proceed to elect in like manner as the policy-holder could have done, and to have his title to such policy or policies, being in excess of value over the sums protected by the preceding section, registered in due form by the company.

leaving him surviving the respondent (then Ethel Anderson), his widow, and two children. The estate of the deceased consisted solely of a sum of £1253 3s. 2d., which became payable to his legal representatives under a policy of assurance effected with the Australian Mutual Provident Society upon the life of deceased. Respondent was a creditor upon the estate for £420 13s. 2d. Appellant declined to pay the amount due by the estate of the deceased to respondent upon the ground that the moneys payable under the policy were exempt from liability for payment of debts to the extent of £1000 under the *Life Assurance Companies Act* 1889 (Western Australia), sec. 33. The Full Court of Western Australia, affirming the decision of *McMillan* J., held that such moneys were not so exempt on the ground that the exemption enured only for the benefit of the personal representatives of the testator, which term they thought meant next of kin and not the legal personal representatives.

From this decision the defendant now appealed to the High Court.

Pilkington, (with him *Durston*), for appellant. The proceeds of the policy are protected in the hands of the appellant, the administrator with the will annexed. The *Life Assurance Companies Act* 1889 (Western Australia), 53 Vict. No. 12, sec 33, exempts from liability under any laws relating to bankruptcy or execution under any process of the Court, the property and interest of every policy-holder in the moneys payable under or in respect of such policy or policies, and provides that the protection afforded shall in the case of a life assurance accrue only for the benefit of the personal representatives of the policy-holder. The administrator is the personal representative of the deceased. "Personal representatives" are technical words with an ordinary meaning.

Primâ facie the words mean executors and administrators: *Williams on Executors* (10th ed.), 890; *Stockdale* v. *Nicholson* (1). The ordinary meaning is in no way altered by the Act in question: *King* v. *Tait* (2). The intention of the Act was to encourage life assurance, and not to protect the next of kin after the death of the assured. *In re Adams* (3) was wrongly decided. There "interest of executors," &c., was construed as meaning

(1) L.R. 4 Eq., 359. (2) 10 N.S.W. L.R. (Eq.), 232.
(3) 15 N.S.W. L.R. (B. & P.), 135.

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beneficial interest, instead of interest in a mere official capacity, which is the real meaning: *e.g. Williams on Executors*, 9th ed., pp. 551, 563; *Walker and Elgood on Administrators*, p. 115; *Comyn's Dig.*, sub. tit. "Administrator," B., 10; In *In re Adams* (1). *Manning* J. relied chiefly on *Surman* v. *Wharton* (2).

[GRIFFITH C.J.—That case decides that "personal representatives" are the persons who stand in the shoes of the deceased *quoad* the property in question.]

That is the interpretation appellant asks for here.

[BARTON J. referred to *Palin* v. *Hills* (3).]

The *Life Assurance Companies Act* 1889 (Western Australia) was passed shortly after the decision of *Owen* J. in *King* v. *Tait* (4). When the legislature has reproduced in a subsequent Statute words on which the Court has already placed a construction, that construction must be deemed to have been adopted by the legislature: *Clark* v. *Wallond* (5).

Northmore, for respondent. *Primâ facie* the expression "personal representatives" means executors or administrators, but is sufficiently flexible to be construed as meaning next of kin. That is the construction the legislature intended the expression to bear, and the more literal construction of a Statute ought not to prevail if it is opposed to the intentions of the legislature as apparent by the Statute: *Caledonian Railway Co.* v. *North British Railway Co.* (6). The object of the proviso in sec. 33 of the Act is to cut down the general protection given by the earlier portion of the section. But for the proviso, the executor or administrator would have taken the proceeds exempt from the payment of testator's debts. If that were not so, the proviso would have been unnecessary. The object of the legislature was to benefit not the executors or administrators, but rather those who in the ordinary course would benefit by the thrift of the assured. In this Statute, where executor or administrator is meant, those precise words are used: *e.g.*, sec. 62.

Pilkington, in reply.

(1) 15 N.S.W. L.R. (B. & P.), 135.
(2) (1891) 1 Q.B., 491.
(3) 1 Myl. & K., 470.
(4) 10 N.S.W. L.R. (Eq.), 232.
(5) 52 L.J., Q.B., 321, *per* Mathew J., at p. 322.
(6) 6 App. Cas., 114, *per* Lord Selborne, L.C., at p. 122.

GRIFFITH C.J. This is an appeal from the decision of the Supreme Court upon an originating summons taken out to determine 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, are exempt from liability to be applied in payment of the testator's debts, or whether they are assets in the hands of the administrator available for the payment of debts. The learned Judges in the Supreme Court have held that the moneys are not exempt, but are assets in the hands of the administrator. The question depends upon the construction to be given to sec. 33 of the *Life Assurance Companies Act* 1889, which provides that [His Honor read the section, and continued:] In construing this section it is first desirable to consider the subject matter with which it deals. The subject matter is policies of assurance, which, by the interpretation clause, are defined to mean any contract for assurance, endowment, or annuity on human life. It is well known to everyone familiar with life assurance that these are the three most usual forms of assurance. The most common form of life assurance is what is called a whole life policy, that is, a contract by which the company promises to pay to the executors or administrators of the assured a specified sum of money within a certain time after proof of his death. In that case the only contract is to pay to the executors or administrators. What is called an endowment policy is usually a policy by which a sum of money is to be paid to the assured or his nominee on survival to a certain age, or to someone else in the event of earlier death. This, then, being the subject matter of the section, what is the nature of the protection which it gives? It begins by saying that the property and interest of every policy holder in any policy shall be exempt from liability to be taken for payment of debts. Stopping there, and applying the words distributively, it means that, in cases of annuity, the annuity cannot be intercepted in payment of debts, and, that in cases of endowment the sum of money payable cannot be taken in satisfaction of the debts of the assured. In the third case, namely, that of a whole life policy, the property and interest is also protected, but the protection in

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this case is given with regard to a sum of money which is payable only to the executors or administrators of the assured. The provision that it shall be exempt from liability to be taken in payment of debts must necessarily refer to the debts of the assured. So far there appears to be no difficulty of construction. And, so far, there is nothing to deprive the policy holder of his full power of disposition over it. He can alienate the policy by lawful contract while he is alive; he can give it away by a proper instrument; and he can dispose of the policy moneys by his will. He has absolute power of disposition over the policy and the moneys payable under it in the same way as over any other property, but his creditors have no claim upon so much of the policy money as is protected. Now, is there anything else in sec. 33 which takes away that power of disposition? In *King* v. *Tait* (1), decided in 1889, *Owen* J. held that there was nothing in a similar section in the New South Wales Act to take away the right of disposition by will. A difficulty is, however, said to arise from the use of the term "personal representative" in the second proviso, which says that in the case of an annuity the protection shall accrue only to the benefit of the policy holder himself, and only to such part as shall be payable after he has attained the age of fifty years; and, in the case of an endowment, for the nominee only; and, in the case of a life assurance, for the benefit of the personal representatives only of the policy holder, and in no case for any assignee of the policy holder. No difficulty arises in the first two cases. It is admitted that the term "personal representatives" means *primâ facie* executors or administrators, but that the context may be such as to show that it bears some other meaning. The exact literal meaning is the persons who stand in the place of the deceased person with respect to his personal estate.

It is suggested, however, that the term "personal representatives" in sec. 33 means next-of-kin, and not the executors or administrators. This view found favour to some extent with *Manning* J. in New South Wales in 1894, he being of opinion that in the corresponding section in the New South Wales Act the term "personal representative" meant next-of-kin. So that, if

(1) 10 N.S.W. L.R. (Eq.), 232.

the assured by his will gives the policy moneys to a person who is not one of the class of next-of-kin, the protection is lost. This would be a strange result. Up to the moment of his death he might have disposed of the moneys in any way he pleased. And why should the objects of his bounty declared by his will be in a worse position than the objects of bounty declared by act *inter vivos?*

I can see no reason why the term should not have its *primâ facie* meaning. The money protected is money which is only payable to the executors or administrators. Why then should we say that the Act, when referring to the interest of the "personal representatives" in money which by the contract is payable to executors or administrators, meant someone else? In my opinion, the object of the proviso is to exclude a possible construction of the term "policy holder." That term might perhaps have been held to mean the person who has the legal right or property in the policy for the time being, including a person who has lent money upon a policy and has taken an assignment of it as security. The protection contemplated by the legislature was clearly not intended to extend to assignees, nor was it intended that the proviso that the immunity from seizure should be an incident of property attaching to the policy and policy moneys irrespective of the person to whom they were payable. That the Act contemplated that the personal representative should be a specific person is shewn by the last part of the section, which gives him a right to elect by notice to the sheriff which policy or what part of a policy shall be protected. Such a right could not be exercised by next-of-kin, settled perhaps over the world. Reference to previous Australian legislation on the subject makes, to my mind, this conclusion quite clear. The first Act passed was that of the Australian Mutual Provident Society's Act of New South Wales, passed in 1857. By sec. 14 of that Act the property and interest of every "member" of the society or his personal representatives in any policy or contract with the society were made exempt from liability for payment of debts. The words of that section are very apt and clear. The property and interest in the case of annuities and endowment policies are properly described as the property and interest of the

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member, while in the case of whole life policies the property and interest is properly described as that of the personal representatives, because the right to the money does not come into existence until after the death of the assured. In 1862 a General Act was passed in New South Wales, which used somewhat different language. The protection given by the Act of 1857 was to members of the Australian Mutual Provident Society only, and sec. 14 contained a proviso that the protection should be for the benefit of the member, or his nominee in the case of endowment, and in no case for the assignee of a member. That was a necessary provision, because under the constitution of the Australian Mutual Provident Society an assignee of a member became himself a member. The General Act of 1862 was passed for the purpose of extending this protection to persons insuring in other companies, and it therefore did not describe the assured as a "member," which is a term very apt for a mutual company. The language (sec. 2) is: "The property and interest of every person who has effected or shall hereafter effect any policy or contract with an insurance company for an assurance *bonâ fide* upon the right of himself or any other person in whose right 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." There again the reference to the personal representatives is apt to deal with the case of whole life policies, as well as with the case of endowment policies when the assured dies before the appointed day of payment. Then followed a proviso similar to that in the Australian Mutual Provident Act, but using the word "assured" in describing the person who was to be entitled to the benefits. Then the Act of Western Australia was passed, being, no doubt, modelled on the New South Wales Act of 1862; but the phraseology was changed, and for the term "every person" were substituted the words "policy holder," those words being deemed by the legislature, or the draughtsman, to cover the case of the money payable to the personal representatives of the assured after his death. On a review of these

Statutes I can see no reason for departing from the conclusion at which I arrived on the bare words of sec. 33, namely, that the intention of the proviso was merely to say that the privilege was a personal one given to thrifty persons, so that the money coming to them or their personal representatives under the contract was to be protected from debt. I cannot see anything in the context requiring a departure from the *primâ facie* interpretation; and I think that full effect is given to every word of the section by giving it that meaning. 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 debts. The appeal should be allowed.

BARTON J. I concur.

O'CONNOR J. In this case the whole matter for determination is whether the words "personal representatives" in sec. 33 of the *Life Assurance Companies' Act* 1889 is to be interpreted in the ordinary sense of "executors or administrators," or whether it is to be interpreted in the sense of "next-of-kin." It is admitted that in its ordinary meaning the term is equivalent to executors and administrators, but it is said that in this case it cannot be allowed to have that meaning, because to adopt that meaning would be to defeat the object and intention of the legislature. It is one of the first rules of construction that the words of a Statute should be given their ordinary meaning if possible, but if the giving them their ordinary meaning would result in some contradiction of the context or in the defeat of the obvious intention of the Act to be gathered from the Act itself, then some other meaning of which the words are capable will be sought by which the intention of the legislature may be given effect to. It is said in this case that the object and intention of the legislature was to protect the policy moneys for the benefit of the next-of-kin. There is only one way in which we can properly gather the intention of the legislature, that is from the Act itself. There is no section in the Act which deals with

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this subject except sec. 33, nor is there any other section from which the intention of the legislature can be gathered. When I look at sec. 33 I find there is no word there which indicates that there is to be a special protection over these moneys when they are left to the next-of-kin, and no protection when they are left to any other object of the testator's bounty. To adopt the construction contended for by the respondent would be to assume that the legislature intended to apply, in the administration of the estates of deceased persons in West Australia, a principle entirely new in England and in New South Wales from which this Statute was taken. There are some countries in which a man's discretion to dispose of his property after death is controlled by law, where he is not allowed to leave his property away from those whom the law considers to be the proper objects of his bounty. In Western Australia such is not the law. In that State a man may select the object of his bounty, and may leave his property by will to whomsoever he thinks fit; if he makes no will then it goes by operation of law to the next-of-kin. If the object and intention of the legislature were to protect policy moneys only when they went to the next-of-kin, the effect would be to deprive all objects of a testator's bounty, no matter how deserving, of all the benefits of this Act, unless they came within the degrees of affinity included in "the next-of-kin." I cannot see any reason on the face of this Statute why we should infer that the legislature ever intended to make such a wide departure from the existing law as to give this protection to the object of the testator's bounty only if they were next-of-kin, and deprive them of it if they were not. There is another reason which makes it impossible, in the view I take, to interpret these words as they have been interpreted by the Supreme Court, and that is to be found on consideration of the last proviso of sec. 33. The words "personal representative" are also used there. It is, of course, quite possible that words may be used with a different meaning in different parts of the one section, but the words "personal representative" in the latter part of the earlier proviso are to my mind evidently used in the same sense as the words "personal representative" in the later proviso now under consideration. By the latter the "personal representative" of the

deceased assured has under certain circumstances there mentioned the right of election as to what part of the policies shall be protected, and if he fail to elect then, in case of execution or of bankruptcy of the estate, the sheriff or the trustee in bankruptcy may, after a certain notice, make the election. If the meaning of "personal representative" is to be taken to be "next-of-kin" in the earlier proviso to sec. 33, it has the same meaning in the later proviso. The benefit is conferred upon next-of-kin whoever they may be, and no one but the next-of-kin would have any right to make the election. If there were more than one of the next-of-kin the right would be vested in them jointly. If that were the meaning it is quite evident that it would be impossible to carry out the section at all. It would, in many cases, be impossible to give notice to the whole of the next-of-kin who might be in different parts of the world, and therefore I think that, if the proviso were read in that way, it would make the Act unworkable. All these reasons are strong against departing from the ordinary meaning which is to be placed upon the words "personal representative," and I can see no reason in favour of departing from the ordinary meaning "executors and administrators." The other portions of the section have been dealt with by His Honor the Chief Justice, and I agree with what he has said. As to the authorities, there were only two cited, one supporting the appellant's and another the respondent's views. *Manning* J., in *In re Adams* (1), was of opinion that the same words in the New South Wales Act meant next-of-kin; *Owen* J. in the case of *King* v. *Tait* (2), taking a contrary view, being of opinion that the words meant "executors and administrators." I prefer to follow the decision of *Owen* J. because it seems to me that the words of the section under consideration can only bear that interpretation. In my opinion the Supreme Court of Western Australia were in error in the conclusion at which they arrived, and the question submitted must be answered in the terms noted by my learned brother the Chief Justice.

Appeal allowed. First question answered in affirmative to extent of £1000.

(1) 15 N.S.W. L.R. (B. & P.), 135. (2) 10 N.S.W. L.R. (Eq.), 232.

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Second question answered in negative except as to amount above £1000. Costs of both parties in the Supreme Court and on appeal to be paid out of the estate exclusive of the £1000 protected. Administrator's costs to have priority. Costs already paid to be repaid.

Solicitors for appellant, *Speed & Durston.*
Solicitors for respondent, *Northmore, Lukin & Hale.*

[HIGH COURT OF AUSTRALIA.]

S. A. JOSEPH AND RICKARD LTD. . . APPELLANTS; PLAINTIFFS,

AND

LINDLEY AND OTHERS . . . . RESPONDENTS. DEFENDANTS,

ON APPEAL FROM THE SUPREME COURT OF NEW SOUTH WALES.

H. C. OF A. 1905.

SYDNEY, *Nov.* 27, 28, 29.

Griffith C.J., Barton and O'Connor JJ.

Principal and agent—Representative committee of combine—Liability to account—Delegation with assent of principals—Intention of parties.

Practice—Verdict for plaintiff by consent—Verdict set aside where upon documents and admitted facts defendant entitled to judgment.

A number of persons formed a combine for the purpose of controlling the local market for imported maize, and agreed to be bound by certain rules. A committee was appointed to carry out the executive and financial work of the combine in connection with the sale and disposal of the maize and the distribution of the proceeds of sales amongst the members, and to act practically as directors of the combine. The members bound themselves by agreement with the committee to complete a contract of sale to the committee of the amount of maize which they respectively undertook to supply, and to deliver the maize at the order of the committee to the various purchasers. By