

ORIGINAL CIVIL.

Before Lord-Williams J.

HARI DASEE DEBEE

v.

MANUFACTURERS LIFE INSURANCE
COMPANY, LTD.*

1936
Dec. 18.

Inconsistent Acts—Repeal by implication—Principle—Official Trustees Act (XVII of 1864), s. 10—Official Trustees Act (II of 1913), ss. 6, 7, 25—Indian Trustees Act (XXVII of 1866)—Married Women's Property Act (III of 1874), s. 6.

Of two inconsistent Acts of the legislature, the later Act is to be read as having impliedly repealed the former.

The Official Trustee created by the Act of 1913 is a corporation sole, and is not the same legal person as an Official Trustee appointed under the provisions of Act XVII of 1864.

By the repeal of Act XVII of 1864 by the Official Trustees Act of 1913, the office of Official Trustee referred to in s. 6 of the Married Women's Property Act of 1874 as so constituted has ceased to exist, and to that extent the provisions of that section have become inoperative.

To enforce the provisions of s. 6 of the Married Women's Property Act of 1874 regarding any insurance policy issued under it, trustees should be appointed either by deed executed by the husband during his life-time, or in the event of the Official Trustee refusing the trust, by the Court under the provisions of the Indian Trustees Act. In such cases it is not necessary to add the Official Trustee as a party to the suit.

ORIGINAL SUIT.

Application by the Official Trustee for directions under s. 25 of the Official Trustees Act of 1913.

In this case the plaintiff, the widow of the assured, filed this suit against the defendant insurance company claiming to recover the policy money under a policy taken out by her husband. In their written statement the defendant company disputed all liability under the policy on the ground *inter alia* that the same was void for fraudulent misrepresentation made by the assured at the time of his application for the policy. At the first hearing of the suit,

1936

Hari Dasee Debee
v.
Manufacturers
Life Insurance
Company, Ltd.

the defendant company, having raised the plea that this suit was not maintainable by the plaintiff, but that special trustees should be appointed, the suit was adjourned. Thereupon, the plaintiff had a special trustee appointed by the Court. Thereafter, at the next hearing of the suit, the defendant company, having raised the plea that the Official Trustee must be appointed, the suit was again adjourned, the Court expressing the view that the Official Trustee should be approached. Accordingly, the plaintiff's solicitor requested the Official Trustee to undertake the trust under s. 6 of the Married Women's Property Act of 1874. The Official Trustee, after making enquiries, informed the plaintiff's solicitor that he was agreeable to do so upon the plaintiff putting him in funds to safeguard him against any order for costs or damages that might be passed against him in the suit. This the plaintiff failed to do. Hence the Official Trustee, of his own motion, and not as a party to the suit, made this application for directions under s. 25 of the Official Trustees Act of 1913.

R. Westmacott for the Official Trustee.

P. C. Ghose and *J. N. Mazumdar* for the plaintiff.

S. N. Banerjee (Sr.) and *Surita* for the defendant company.

LORT-WILLIAMS J. In this suit, as originally instituted, Sm. Hari Dasee Debee, a Hindu widow, was the plaintiff and the Manufacturers Life Insurance Co., incorporated in Canada, a limited liability company, carrying on its business in India, were the defendants. The plaintiff claimed a sum of money under a policy of insurance effected by her husband upon his own life and expressed to be for the benefit of his wife, the plaintiff; that is to say, it was a policy issued under the provisions of s. 6 of the Married Women's Property Act (III of 1874).

After the institution of the suit, the defendants raised the point that, even if the policy money were payable, it could not be paid to the plaintiff, because s. 6 provides that any such money shall be deemed to be a trust for the benefit of the wife. Consequently, an application was made to Panckridge J. to appoint a special trustee within the meaning of the section. This application was granted and a special trustee was appointed by the Court and added as a co-plaintiff. The application was made *ex parte*. That order stands, but the defendants have raised another point, namely, that the learned Judge had no power to make such an order under the terms of the section and that the Official Trustee is the only person to whom the defendants are under any obligation to pay the money, if indeed the money has become payable to anybody. Thereupon an application was made on behalf of the plaintiff to the Official Trustee asking him to undertake this trust and prosecute the suit on behalf of the plaintiff, the only beneficiary under the trust. The Official Trustee pointed out that he had no funds available to meet any decree for costs which might be given against him or to instruct attorney and counsel on behalf of the plaintiff beneficiary, and that he was unwilling to undertake the trust unless the plaintiff beneficiary secured him to the extent of Rs. 10,000, which the plaintiff beneficiary was unable to provide.

1936
 ———
Hari Dasce Debee
 v.
Manufacturers ;
Life Insurance
Company, Ltd.
 ———
Lord-Williams J.

At first sight I was under the impression that the Official Trustee could not refuse a trust apparently imposed by s. 6 upon him, but, after further consideration, it seems to me obvious that there are inconsistencies between the provisions of s. 6 of the Married Women's Property Act and the Official Trustees Act of 1913. Under s. 7 of the latter Act, the consent of the Official Trustee is required before any trust can be imposed upon him. He may act as trustee only if he thinks fit, and, under sub-section (iii), he may decline any trust either absolutely or

1936
 Hari Dasec Debee
 v.
 Manufacturers
 Life Insurance
 Company, Ltd.
 Lort-Williams J.

except on such conditions as he may impose. Sub-section (vii) provides that he shall be the sole trustee. These provisions obviously are inconsistent with the provisions of s. 6 of the Married Women's Property Act, because those provisions are mandatory, and, with reference to any such sum as is the subject matter of the present suit, it is provided that he shall stand in the same position as if he had been duly appointed trustee thereto by the High Court under Act XVII of 1864, s. 10; that is to say, his consent is to be assumed, because it is to be assumed that he has been duly appointed trustee.

Now the rule of interpretation with regard to inconsistent statutes is that where two Acts are inconsistent the latter will be read as having impliedly repealed the earlier: Craies on Statute Law, 4th Edn., p. 310. Therefore, applying this principle, the provisions of the Official Trustees Act override in this respect s. 6 of the Married Women's Property Act. But, in my opinion, the real explanation of this apparent inconsistency is that s. 6 of the Married Women's Property Act (III of 1874) does not apply to the corporation sole which has been created under the provisions of the Official Trustees Act of 1913; that is to say, the Official Trustee mentioned in s. 6 of the Married Women's Property Act is not the legal person referred to in the Official Trustees Act of 1913, which is a corporation sole. The Official Trustee referred to in s. 6, who was appointed under the provisions of s. 10 of Act XVII of 1864, ceased to exist. That office as so constituted no longer exists and to that extent the provisions of s. 6 of the Married Women's Property Act cannot be put into operation.

The result is that to enforce the provisions of that section with regard to any policy which is issued under it, trustees should be appointed either by deed executed by the husband in his life-time, or, in the

event of the Official Trustee refusing the trust, by the Court under the powers which it has to appoint trustees under the Indian Trustees Act.

1936

Hari Dasee Debee
v.
Manufacturers
Life Insurance
Company, Ltd.

Lort-Williams J.

At first sight it looks as if the meaning of s. 6 is that the expression "special trustees" refers only to trustees appointed by the husband in his life-time. If, however, that had been intended, in my opinion, the words would have been "have been duly appointed" instead of "are duly appointed". The latter expression would cover an appointment made after the death of the husband, and such an appointment can only be made by the Court. The section refers to special trustees in the plural. In the present case only one trustee has been appointed by the Court, but there is nothing in the Act providing that any number of trustees must be appointed, and s. 13 of the General Clauses Act provides that, unless there is anything repugnant in the subject or context, words in the singular shall include the plural and *vice versa*.

I hold, therefore, that a trustee has been properly appointed within the meaning of the section and that it is not necessary to appoint the Official Trustee, that is to say, the holder of the office created under the provisions of the Official Trustees Act of 1913.

I doubt whether it was necessary to appoint any trustee or to add him as a party, for the purpose of this suit. The plaintiff, Sm. Hari Dasee Debee, obviously is the sole beneficiary under the trust, if any trust exists, and, therefore, is the person who has the chief interest in prosecuting this suit. The suit, therefore, could have proceeded without adding a trustee. But it is true that, if the decision had been in favour of the plaintiff, the defendants could have raised the point that they were under no obligation to pay the sum decreed, except to trustees duly appointed within the meaning of the section.

1937

Hari Dasee Debee

v.

*Manufacturers
Life Insurance
Company, Ltd.**Lord Williams J.*

In the circumstances the suit may now proceed, and in the event of the plaintiff succeeding, the sum decreed will be paid to the trustee who will hold it in trust as provided by s. 6.

In view of the opinion which I have formed, neither of the questions raised by the Official Trustee of Bengal in his petition arises, and it is unnecessary to give any further direction to the Official Trustee.

The defendant company will pay to the plaintiff the costs of hearing of this preliminary issue incurred on the 17th November and to-day, which will be treated as one day's costs.

Attorney for plaintiff: *Raj Kumar Basu.*

Attorneys for defendant company: *Orr, Dignam & Co.*

Attorneys for Official Trustee: *Sandersons & Morgans.*

A. K. D.