the fact that numerous appeals have been consolidated, and I accordingly fix it at Rs. 150.

The appellant's Counsel asks me to leave it open to him to enforce his right, if any, against the first defendant, on the ground that the rent properly belonging to him was wrongly received by the latter. I wish to make it clear that my judgment is not intended to affect any such right.

A.S.V.

ORIGINAL CIVIL.

Before Mr. Justice Madhavan Nair.

IN THE MATTER OF THE MARRIED WOMEN'S PROPERTY ACT (III OF 1874).

ABHIRAMAVALLI AMMAL, PETITIONER,

1931, April 30.

v.

THE OFFICIAL TRUSTEE OF MADRAS AND OTHERS, RESPONDENTS.*

Married Women's Property Act (III of 1874), sec. 6—Life insurance policy—Sum insured payable to the assured or his wife if he predeceases her—Effect of.

A life insurance policy, in the column headed "to whom payable", contained the following words, viz., "the assured or his wife if he predeceases her".

Held that the said words express on the face of the policy that the same is for the benefit of his wife and as such it enures and is deemed to be a trust for the benefit of the wife, within the meaning of section 6 of the Married Women's Property Act (III of 1874).

JUDGE'S summons under section 25 of the Official Trustees Act (II of 1913) to show cause why the

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* Application No. 861 of 1931.

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Official Trustee, Madras, be not directed as trustee of the petitioner, Abhiramavalli Ammal, to recover on her behalf the amount due under the life insurance policy of R. Srinivasa Ayyar, deceased, effected with the United India Life Insurance Company, Limited, and why the Official Trustee, Madras, be not directed to pay the same to the petitioner.

S. Jagadesa Ayyar and *T. V. Ramiah* for petitioner.

Official Trustee (*S. Rangaswami Ayyangar*) first respondent in person.

S. Duraiswami Ayyar for *V. Sundararajan* for second and third respondents.

Cur. adv. vult.

JUDGMENT.

This is an application to show cause why the Official Trustee of Madras be not directed as trustee of the petitioner herein to recover on her behalf the amount due under Policy No. 6033 of R. Srinivasa Ayyar, deceased, effected with the United India Life Insurance Company, and to pay the same to the petitioner. The petitioner, Abhiramavalli Ammal, is the widow of R. Srinivasa Ayyar who was the Headmaster of St. Antony's Secondary School, Negapatam. The petition is opposed by his two brothers. The late Mr. Srinivasa Ayyar insured his life for a sum of Rs. 1,000 with the United India Life Assurance Company, Madras. The policy so far as is material is as follows:—

"This policy . . . witnesseth that in consideration of the payment already made to the Company . . . as stated in the sub-joined schedule . . . the Company doth hereby agree that, upon proof satisfactory to the Directors of the happening of the event or events on which the sum assured is to become payable as described in the said schedule and of the title of the person or persons who may be entitled to receive the same, it will pay the sum stated in such schedule as the sum assured, to such person or persons."

The schedule to the policy stated, *inter alia*, the following particulars under the following headings :—

Name, address and calling of the assured—R. Srinivasan Esq., Headmaster.

Sum assured—Rupees one thousand only.

Amount to whom payable—The assured or his wife, Abhiramavalli, if he pre-deceases her.

The petitioner's right to recover the amount is based on section 6 of the Married Women's Property Act of 1874 which runs as follows :—

"A policy of insurance effected by any married man on his own life, and expressed on the face of it to be for the benefit of his wife, or of his wife and children, or any of them, shall enure and be deemed to be a trust for the benefit of his wife, or of his wife and children, or any of them, according to the interest so expressed, and shall not, so long as any object of the trust remains, be subject to the control of the husband, or to his creditors, or form part of his estate."

This language is in material particulars identical with the language of section 10 of the English Married Women's Property Act of 1870. In England the Act of 1870 was repealed by the Married Women's Property Act of 1882. Section 11 of that Act corresponding to section 10 of the previous Act and section 6 of our Act is as follows:—

"A policy of assurance effected by any man on his own life, and expressed to be for the benefit of his wife, or of his children, or of his wife and children, or any of them, or by any woman on her own life, and expressed to be for the benefit of her husband, or of her children, or of her husband and children, or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured, or be subject to his or her debts."

It will be observed that in two particulars the terms of section 11 of the Act of 1882 differ from the terms of section 10 of the Act of 1870. The words "on the face of it" appearing in section 10 are omitted in section 11 of the later Act, and for the words "shall

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. . . be deemed to be a trust" appearing in section 10 of the Act of 1870 we have the words "shall create a trust in favour of the objects therein named, etc.", in section 11 of the Act of 1882.

Relying on section 6 of the Married Women's Property Act of 1874 it is argued on behalf of the petitioner that, by using the words that the sum is payable to "the assured or his wife, Abhiramavalli, if he pre-deceases her," it is expressed on the face of the policy that it is for the benefit of the wife of Srinivasa Ayyar if he pre-deceases her, and so, the policy "shall enure" and "be deemed to be a trust for the benefit" of the petitioner within the meaning of that section. On the other hand, the argument of the respondents is that the words used in the policy are not specific enough to show that it is expressed on the face of it that it is for the benefit of his wife and that the policy shall enure and be deemed to be a trust for her benefit within the meaning of the section. According to this argument, in order that a policy may be deemed to be a trust in favour of the wife within the meaning of section 6 of the Act, it must appear on the face of the document in express words that the insurance was intended by the deceased for the benefit of his wife. I do not think that the language of section 6 warrants the contention urged on behalf of the respondents. That section states that the policy shall on the face of it express that it is to be for the benefit of the wife, and if it is so expressed, then it says the policy shall be deemed to be a trust for the benefit of the wife. There is nothing in the language of the section to show that the words "for the benefit of his wife" or other words corresponding to these should appear in the policy to enable us to infer a statutory trust in favour of the wife within the meaning of the section. If on reading the words used in the policy it appears that the assured has intended, in the event of

his death, that the policy should enure to the benefit of his wife, then I think the policy may be deemed to be a trust for her benefit. I shall now consider how far the authorities brought to my notice support the respective contentions.

The only Indian decision bearing on the point is *Srinivasachariar* v. *Ranganayaki Ammal*(1). In that case *R* insured his life in *S* Company and died in 1914. Under the terms of the policy the amount assured was payable to *R* or to his wife in case of his death earlier. It was held that the sum insured did not form part of the deceased's estate but that the widow was the beneficiary who became entitled to the beneficial interest in that sum on her husband's death. The exact terms of the policy making the amount payable to the wife in the case of the husband's death do not appear in the judgment, but from the facts stated by the reporter it would appear that the terms were as general as the terms used in the present policy. This decision supports the petitioner. Another decision which supports the argument of the petitioner may be found in *Fleetwood's Policy, In re*(2), a decision under the English Act of 1882. In that case a husband took out an insurance policy for £500 on his life, and by the terms of the policy the insurance company agreed to pay that sum to the insured's wife, if she were living at his death, or in the event of her prior death to pay it to the insured's executors, administrators, and assigns. It was held that the policy came within section 11 of the Married Women's Property Act, 1882, and created a trust in favour of the wife in certain events. Though the words "for the benefit of his wife" did not appear in the terms of the policy, the learned Judge pointed out that "the policy is, in the

(1) (1915) 3 L.W. 466. (2) [1926] 1 Ch. 48.

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terms of the section, a policy of assurance effected by a man on his own life, and expressed to be for the benefit of his wife." Using similar language, I think we may say in this case that the language used in the policy, "to the assured or his wife, Abhiramavalli, if he pre-deceases her", shows that it is a policy of assurance expressed to be for the benefit of his wife though the express words "for the benefit of his wife" do not appear in the terms of the policy. Mr. Duraiswami Ayyar for the respondents drew my attention to a series of cases under the English Act of 1870, the language of section 10 of which, as I have already stated, is identical with that of section 6 of the present Act. These cases are *In re Mellor's Policy Trusts*(1), *In re Adam's Policy Trusts*(2), *In re Seyton, Seyton* v. *Satterthwaite*(3) and *In re Griffiths' Policy*(4). In all these cases the terms of the policy contained the words "for the benefit of his wife". On the strength of these decisions it is contended that, unless these words appear on the face of the policy, the policy cannot be deemed to be a trust within the meaning of section 6 of the Act. I do not think this conclusion necessarily follows from these decisions. Of course, if these words appear on the face of the policy, then there can be no difficulty at all with regard to the solution of the question whether a statutory trust in favour of the wife has been created or not; but these cases do not say that, unless these words are used, no statutory trust within the meaning of the section can be inferred. It is well known that in England documents are drawn up with greater precision than in this country. It is clear that, in the cases referred to, the draftsmen, to avoid all difficulties of construction, have obviously introduced

(1) (1877) 6 Ch.D. 127; 7 Ch.D. 200.
(2) (1883) 23 Ch.D. 525. (3) (1887) 34 Ch.D. 511.
(4) [1903] 1 Ch. 739.

the very words of the statute in the documents themselves. If a similar procedure is adopted in India also by insurance companies in drawing up the terms of the policy in cases where the assured intends to create a trust in favour of his wife in the event of his death, there will be no scope for arguments like the one now urged on behalf of the respondents. In *Griffiths* v. *Fleming*(1), a case strongly relied on by Mr. Duraiswami Ayyar, a husband and his wife effected with an insurance association a policy whereby, in consideration of a premium of which each paid a part, a sum of money was made payable upon the death of whichever of them should die first to the survivor. The wife having died, the husband brought an action upon the policy to recover the policy money. Under the heading "The amount . . . to whom payable" in the policy it was stated "£500 to the survivor of the grantees." It was argued against the contentions of the husband's counsel by Sir John Simon K.C. that to come within section 11 of the Married Women's Property Act of 1882 "the insurance must comply strictly with its terms, and must be expressly for the benefit of one or more of the objects therein named". This argument found favour with VAUGHAN WILLIAMS L.J. But KENNEDY L.J., with whom FARWELL L.J. concurred, did not accept it. This case is more an authority for the petitioner than one for the respondents. In this connection I may state that, having regard to the second point of difference between the language of section 11 of the English Act of 1882 and the language of section 10 of the Act of 1870 which I have already pointed out, the argument advanced in the English case is somewhat plausible; but the language of the Indian Act is identical with the language of the English Act

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

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of 1870 which in my opinion does not lend any support to the respondents' arguments.

For the above reasons I hold that the terms of the insurance policy in the present case fall within the language of section 6 of the Married Women's Property Act of 1874, and so a statutory trust in favour of the petitioner has been created under the Act. She is therefore entitled to claim the money. Her prayer in the petition is granted with costs which I fix at Rs. 75.

G.R.

APPELLATE CRIMINAL.

Before Mr. Justice Jackson.

1931, April 23.

IN RE MARWADI GANESH MULL (ACCUSED), PETITIONER.*

Alternative charges—Statement in the committing Court contradicted in the Sessions Court—Statement in Sessions Court true—Sessions Judge, if competent to complain that one or the other of the statements must be false—Practice.

When a person makes a statement in the Committing Court and contradicts it in the Sessions Court, the Sessions Judge can complain in the alternative that one or other of the statements must be false, even though the statement in the Sessions Court is true, since the false statement at the committal stage which eventuates in a trial is "in relation to the trial".

By way of superabundant caution, in these alternative cases, it is well to have complaints from both the Courts.

PETITION under sections 435 and 439 of the Code of Criminal Procedure, 1898, praying the High Court to revise the judgment of the Court of Session of the Anantapur Division in Criminal Appeal No. 45 of 1930 preferred against the judgment of the Court of the Joint Magistrate, Hospet, in Calendar Case No. 51 of 1930.

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* Criminal Revision Case No. 61 of 1931.