APPELLATE CIVIL—FULL BENCH.

Before Sir Lionel Leach, Chief Justice, Mr. Justice Madhavan Nair and Mr. Justice Varadachariar.

V. E. R. M. K. KRISHNAN CHETTIAR BY AGENT RAMA AYYANGAR (PETITIONER), APPELLANT,

1938, March 15.

v.

VELAYEE AMMAL (RESPONDENT), RESPONDENT.*

Married Women's Property Act (III of 1874), sec. 6—"Policy" in—Meaning of—Document, such as proposal, incorporated in policy, if part thereof—Reference to such document to find out to whom insurance money payable—Permissibility—Trust in favour of wife within meaning of section—Words sufficient to create—Contingent trust—Validity of.

Held by the Full Bench.—The word "policy" in section 6 of the Married Women's Property Act means the document or documents evidencing the contract. If the document known as the policy stands alone and does not incorporate in it any other document, only that document can be looked at, but, if it does expressly incorporate another document, that document must be deemed to be part of "the policy".

A Hindu submitted to an insurance company a proposal for a policy of insurance on his own life, the proposal being for an endowment policy for Rs 5,000 payable in fifteen years. In clause 12 of the proposal, which was intended to contain the name of the person nominated to receive the sum assured and his or her relation with the proposer, the words entered were, "self or wife Velayeeammal". The proposal was accepted and a policy was issued. There were no words in the policy indicating to whom the money should be paid, but there was a provision in the body of the policy itself and there was a similar provision in the schedule making the proposal part of the policy.

Held that the proposal must be treated as part of the policy of insurance and that the proposal must be looked to to discover to whom the insurance money was payable.

* Appeal Against Order No. 427 of 1935.

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The statements in the proposal must be read as being incorporated in the policy. The parties to the contract were at liberty to make such a provision.

Champsey Bhara & Co. v. *Jivraj Balloo Spinning and Weaving Co.*(1) and *F. R. Absalom, Ltd.* v. *Great Western (London) Garden Village Society*(2) relied upon

Bengal Insurance & Real Property Co., Ltd. v. *Velayammal*(3) approved.

Krishnamurthy v. *Anjayya*(4) and *Venkatasubramania Sarma* v. *United Planters' Association of South India*(5) considered.

Held further that the words, " self or wife Velayeeammal ", in clause 12 of the proposal, which formed part of the policy, created a trust in favour of the wife, Velayeeammal, within the meaning of section 6 of the Married Women's Property Act.

The only reasonable interpretation to be placed upon the words in question is that the policy was to be for the benefit of the assured or, in the event of his death before the policy matured, it was to be for the benefit of his wife. There was, therefore, a trust created in favour of the wife in the event of the husband dying before the policy matured, and there can be a contingent trust.

Srinivasa Chariar v. *Ranganayaki Ammal*(6) and *Abhiramavalli* v. *Official Trustee, Madras*(7) approved.

APPEAL against the order of Court of the Subordinate Judge of Coimbatore in Execution Petition No. 168 of 1935 in Original Suit No. 175 of 1929.

The appeal originally came on for hearing before BURN and VENKATARAMANA RAO JJ. when their Lordships made the following

ORDER OF REFERENCE TO A FULL BENCH :—

BURN J.—In view of the difference of opinion expressed in the decision in *Venkatasubramania Sarma* v. *United Planters' Association of South India*(5) and in *Bengal Insurance & Real Property Co., Ltd.* v. *Velayammal*(3) I think this appeal

(1) (1923) I.L.R. 47 Bom. 578 (P.C.).
(2) [1933] A.C. 592.
(3) I.L.R. [1937] Mad. 990.
(4) (1936) 71 M.L.J. 39.
(5) I.L.R. [1938] Mad. 335.
(6) (1915) 3 L.W. 466.
(7) (1931) I.L.R. 55 Mad. 171.

should be laid before his Lordship the Chief Justice in order that if his Lordship approves a Full Bench may be constituted to consider the matter. This is a matter of frequent occurrence and of general importance and it is desirable that there should be an authoritative interpretation of section 6 of the Married Women's Property Act. In our decision in *Venkatasubramania Sarma* v. *United Planters' Association of South India*(1) LAKSHMANA RAO J. and I held that the words "on the face of it" occurring in section 6 of the Married Women's Property Act of 1874 mean "on the face of the policy of assurance" strictly so called and that for the purpose of section 6 of the Married Women's Property Act it is not permissible to look into the proposal or declaration or any other document which may for certain purposes be considered to form part of the contract of assurance between the assured and the company. In the present case it is clear that in the policy strictly so called there are no words expressing that the policy was for the benefit of the wife or children of the assured. But in *Bengal Insurance & Real Property Co., Ltd.* v. *Velayammal*(2) this very policy was considered by CORNISH and KING JJ. and they held that a trust in favour of the wife was created in this case. It is urged on behalf of the appellant that the decision of this point by CORNISH and KING JJ. was *obiter* since the point did not arise in the pleadings in the suit. Without expressing an opinion whether the decision is *obiter* or not I feel that it is not possible to disregard the decision of a Bench relating to this actual policy. The decision is nevertheless in direct conflict with the decision of LAKSHMANA RAO J. and myself.

For these reasons I think the matter should be placed before a Full Bench.

VENKATARAMANA RAO J.—I agree with my learned brother that this matter should be placed before a Full Bench.

The whole question turns upon the meaning to be given to the term "policy of insurance" in section 6 of the Married Women's Property Act and to the words "expressed on the face of it" in the said section. The view taken by my learned brother and LAKSHMANA RAO J. in *Venkatasubramania Sarma* v. *United Planters' Association of South India*(1) is that the policy of insurance must be construed as meaning

(1) I.L.R. [1938] Mad. 335.

(2) I.L.R. [1937] Mad. 990.

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the particular document in and by which the company agrees to pay a particular sum to the assured on the conditions mentioned therein and it is not permissible to look into the proposal or the declaration for finding out whether a trust has been created in favour of the wife or child. It may be argued that in that case as also in the case reported as *Krishnamurthy* v. *Anjayya*(1) which my learned brothers purported to follow the policy itself states that the money was to be payable to the persons legally entitled to it. In the present case the policy does not state to whom the money is payable but in the opening paragraph of the policy it is stated that the proposal and declaration are made part of the contract. It is further stated that the conditions and privileges mentioned in the schedule should also form part of the contract. The question then arises whether the declaration, proposal and schedule also, by reason of the provision that they should form part of the contract, should not be taken as part of the policy of insurance itself. In this view, there must be deemed to be a trust for the benefit of the wife within the meaning of section 6 of the Act. The view of CORNISH and KING JJ. in *Bengal Insurance & Real Property Co., Ltd.* v. *Velayammal*(2) is that by reason of the provision that the proposal and declaration form part of the contract it must be taken that they form part of the policy of insurance itself. They purported to follow the decision in *Re Norwich Equitable Fire Assur. Soc., Claim of Royal Insur. Co.*(3) where a very wide connotation was given to the term "policy of insurance." It will be a question for argument whether the same connotation should be given to the same term "policy of insurance" in section 6 of the Act or not.

This is a matter which arises very frequently and it is not desirable that there should be any doubt in regard to it. I would therefore agree in the order proposed by my learned brother.

The appeal came on for hearing in pursuance of the aforesaid Order of Reference before the Full Bench constituted as above.

ON THE REFERENCE—

V. Rajogopala Ayyar (*T. V. Ramiah* with him) for appellant.—No trust will be created within the meaning of section 6

(1) (1936) 71 M.L.J. 39.
(2) I.L.R. [1937] Mad. 990.
(3) (1887) 57 L.T. Rep. 241.

of the Married Women's Property Act of 1874 unless the three conditions specified in that section are fulfilled. In the present case, even if the proposal is taken as part of the contract, no trust is created. The proposal, in the column intended to contain the name of the person nominated to receive the sum assured and his or her relation with the proposer, says, "self or wife Velayeeammal". There are no words of trust at all there. Further, even if it could be held that a trust was created, there would be an uncertainty as to the person in whose favour the trust was created.

[VARADACHARIAR J.—You do not suggest that on this point there is any difference between the English and the Indian law. Under the English law there can be a contingent trust. See *In re Fleetwood's Policy* (1).]

No such trust has been created in the present case. In all the English cases upon that point the wife was specifically stated to be the beneficiary and the question was discussed as to what should happen in the event of her death. In *Abhiramavalli* v. *Official Trustee, Madras* (2) the creation of a trust was clear from the policy itself. Where the word "self" occurs in the column "to whom payable", section 6 of the Married Women's Property Act will not apply. [Reference was made to *Dinbai* v. *Bamanshaji*(3).]

[The CHIEF JUSTICE.—That case does not discuss the question. See *Cleaver* v. *Mutual Reserve Fund Life Association* (4).]

[Reference was made to *In re Engelbach's Estate. Tibbetts* v. *Engelbach* (5).]

[VARADACHARIAR J.—In that case the Court proceeded upon the view that the case was not governed by the Married Women's Property Act of 1882 at all. Look at the policy.]

The beneficiary in the case was the daughter.

[The CHIEF JUSTICE.—But the case did not come within the Married Women's Property Act. The father had taken out an endowment policy on the life of his own daughter and for her benefit.]

The language of section 11 of the English Act is the same as that of the Indian Act.

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(1) [1926] 1 Ch. 48.
(2) (1931) I.L.R. 55 Mad. 171.
(3) (1933) I.L.R. 58 Bom. 513, 519.
(4) [1892] 1 Q.B. 147.
(5) [1924] 2 Ch. 348.

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K. V. Ramachandra Ayyar for respondent.—[Reference was made to the definition of "policy" in section 2 (6) of the Indian Life Assurance Companies Act, 1912, and in Smith's book on Mercantile Law.] In clause 8 of the policy in the present case the proposal is also referred to as forming part of the entire contract between the company and the assured. "In the face of the policy" means also on the face of the documents incorporated by reference into the policy; *F. R. Absalom, Ld.* v. *Great Western (London) Garden Village Society*(1) and *Champsey Bhara & Co.* v. *Jivraj Balloo Spinning and Weaving Co.*(2). [*Dawsons, Ld.* v. *Bonnin*(3) was referred to as to the meaning of "basis of assurance".] In *In re Ioakimidis' Policy Trusts. Ioakimidis* v *Hartcup*(4) and *In re Fleetwood's Policy*(5), *In re Engelbach's Estate. Tibbetts* v. *Engelbach* (6) was referred to and distinguished on the ground that that was not a case falling within the English Act.

LEACH C.J.

The JUDGMENT of the Court was delivered by LEACH C.J.—This appeal raises the question of what is meant by the word "policy" in section 6 of the Married Women's Property Act, 1874. The respondent is the widow of one Sengetiah Goundan, who died on 16th August 1928. On 24th August 1927 the deceased submitted to the Bengal Insurance and Real Property Company, Limited, a proposal for a policy of insurance on his own life. The proposal was for an endowment policy for Rs. 5,000 payable in fifteen years.

Clause 12 of the proposal is intended to contain the name of the person nominated to receive the sum assured and his or her relation with the proposer. In this case the words entered were, "self or wife Velayeeammal" (the name of the respondent). The proposal was accepted and a policy

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(1) [1933] A.C. 592, 611, 612.
(2) (1923) I.L.R. 47 Bom. 578, 582 (P.C.).
(3) [1922] 2 A.C. 413, 432.
(4) [1925] 1 Ch. 403.
(5) [1926] 1 Ch. 48, 50.
(6) [1924] 2 Ch. 348.

was issued on 5th May 1928. The policy contained *inter alia* the following clause :

" This policy of assurance granted by the Bengal Insurance and Real Property Company, Limited (hereafter called 'the Company') witnesseth that proceeding upon the proposal and declaration subscribed by Subraia Goundar Sengottayya Goundar in and dated 24th August 1927 which is hereby made a part of this contract and in consideration of the payment already made to the Company of the first premium or the first instalment thereof as stated in the subjoined schedule and of the subsequent premiums or instalments of premiums to be paid as therein provided 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 and or other benefits accrue as described or referred to in the said schedule and of the title of the claimant or claimants under this policy it will pay the sum stated in the schedule as the sum assured and provide the other benefits, if any."

Clause VIII of the schedule also has bearing on the question which falls for decision. It is in these words :

" This policy which together with the schedule and privileges and conditions endorsed thereon, and the proposal and declaration and answers hereto, constitutes the entire contract between the company and the assured shall become indisputable after two years from the date of issue of this policy provided the premiums shall have been regularly paid and the age correctly stated, and provided also that no fraud or wilful misrepresentation has been made by the assured."

On her husband's death the respondent demanded payment from the company of the amount of the policy. The company declined to pay on the ground that there had been a material misrepresentation with regard to the health of the assured. This resulted in the respondent filing Original Suit No. 134 of 1933 of the Court of the Subordinate Judge of Coimbatore against the insurance company and the deceased's brother Ramaswami Goundan, who had set up a claim

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that the amount due under the policy constituted a part of the joint family estate. The company raised the issue of material misrepresentation and also contended that the Court had no jurisdiction to try the suit. The respondent succeeded and a decree was passed on 24th September 1934 in her favour for the amount stated in the policy. An appeal followed to this Court, but it was dismissed. The present appellant obtained a decree against the estate of Sengotiah for a sum of Rs. 9,707–2–8 with interest and costs on 28th February 1931 and in execution of that decree applied to the Court of the Subordinate Judge of Coimbatore for attachment of the respondent's decree against the insurance company. The Subordinate Judge held that the application did not lie, and the present appeal is from that decision.

The appellant contends in the first place that this case does not fall within the provisions of section 6 of the Married Women's Property Act, because there is nothing on the face of the policy itself which creates a trust in favour of the respondent. The Subordinate Judge held that the proposal must be deemed to form part of the policy. In the second place the appellant says that even if the proposal can be deemed to form part of the policy the words therein "self or Velayeeammal" cannot constitute a trust in her favour. The case has been placed before the Full Bench as there has been a conflict of opinion on the interpretation to be placed on section 6 of the Married Women's Property Act. Clause 1 of that section states :—

"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."

When the appeal arising out of the respondent's suit against the insurance company was before this Court (CORNISH and KING JJ.) the question whether the proposal and declaration could be construed as being part of the policy arose and it was held that they formed part of the policy: *Bengal Insurance & Real Property Co., Ltd.* v. *Velayammal*(1). On the other hand VENKATASUBBA RAO J. in *Krishnamurthy* v. *Anjayya*(2) and BURN and LAKSHMANA RAO JJ. in *Venkatasubramania Sarma* v. *United Planters' Association of South India*(3) have held that the word "policy" means the document described as the policy and that it cannot be deemed to include any other document. VENKATASUBBA RAO J. said that the words used must be plain and unambiguous and for the purposes of the section the only document that can be looked into is the policy. I would here point out that that case differed very much from the case we are now concerned with. There was there no clause making the proposal part of the policy. BURN and LAKSHMANA RAO JJ. quoted with approval this decision of VENKATASUBBA RAO J. but here again there was no clause incorporating the proposal in the policy. All that the policy stated was that the proposal and the declaration made by the assured should be the basis of the insurance. On the other hand, the policy contained an express provision that the money should

(1) I.L.R. [1937] Mad 990, 998.
(2) (1936) 71 M.L.J. 39. (3) I.L.R. [1938] Mad. 335.

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be paid to the legal heirs of the assured. In the present case, there are no words in the document issued on 5th May 1928 indicating to whom the money shall be paid, but we have, as I have already indicated, a provision in the body of the policy itself and a similar provision in the schedule making the proposal part of the policy, and we have to look to the proposal to discover to whom the insurance money is payable. It seems to us that in these circumstances the Court must read the statements in the proposal as being incorporated in the policy. The parties to the contract were at liberty to make such a provision.

In *Champsey Bhara & Co.* v. *Jivraj Balloo Spinning and Weaving Co.*(1) the Privy Council had to construe what was meant by an error on the face of an award. The question was whether a document referred to in the award could be read as part of the award. Lord DUNEDIN who delivered the judgment of their Lordships observed (page 586 of the report) :

> "An error in law on the face of the award means, in their Lordships' view, that you can find in the award or a document actually incorporated thereto, as for instance, a note appended by the arbitrator stating the reasons for his judgment, some legal proposition which is the basis of the award and which you can then say is erroneous."

The House of Lords considered the same question in *F. R. Absalom, Ld.* v. *Great Western (London) Garden Village Society*(2). There the award recited the contract between the parties and referred to the provisions of condition 30 thereof. The House of Lords held that condition 30 was incorporated into and formed part of the award just as if the arbitrator had set it out *verbatim* and had then proceeded to state the construction which he

(1) (1923) I.L.R. 47 Bom. 578 (P.C.). (2) [1933] A.C. 592.

placed upon it. The same principle applies here. The policy of insurance stated expressly that the proposal and the declaration were "made part of the contract". That being so the Court must look at them to find out the full terms of the contract. Moreover section 2 (6) of the Indian Life Assurance Companies Act, 1912, defines a "policy of assurance on human life" as meaning

"any instrument by which the payment of money is assured on death (except death by accident only) or the happening of any contingency dependent on human life or any instrument evidencing a contract which is subject to payment of premiums for a term dependent on human life".

The instruments which evidence the contract between the parties and therefore constitute the policy are the proposal, the declaration and the document which was issued by the insurance company when the proposal was accepted. We wish it to be clearly understood that we are dealing here with a case where the policy does expressly incorporate the proposal. We have no criticism whatever to offer of the decisions in *Krishnamurthy* v. *Anjayya*(1) and *Venkatasubramania Sarma* v. *United Planters' Association of South India*(2) on the facts of those cases, but the learned Judges who decided those cases did use words which might be held to apply to a case like this. If that was their intention we must express our dissent. The word "policy" in section 6 of the Married Women's Property Act means the document or documents evidencing the contract. If the document known as the policy stands alone and does not incorporate in it any other document, only that document can be looked at, but if it does expressly incorporate another document,

(1) (1936) 71 M.L.J. 39. (2) I.L.R. [1938] Mad. 335.

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as in this case, the document must be deemed to be part of "the policy". For the reasons indicated we consider that the learned Subordinate Judge was right in treating the proposal as part of the policy of insurance in this case.

This brings me to the contention of the learned Advocate for the appellant that the words used in answer to question No. 12 of the proposal, "Self or wife Velayeeammal", cannot be construed as constituting a trust in favour of the respondent. He would attach no meaning at all to those words. The answer to the question is certainly not as full as it might have been, but it is an answer, and the words can be construed as meaning that the policy was to be for the benefit of the assured or, in the event of his death before the policy matured, it was to be for the benefit of his wife. It seems to us that this is the only reasonable interpretation to be placed upon the words, and placing this interpretation upon them it means that there was a trust created in favour of the respondent in the event of the husband dying before the policy matured. That there can be a contingent trust is accepted in England, and, as the Married Women's Property Act of 1874 followed similar legislation in England, English decisions are directly applicable. In *In re Fleetwood's Policy*(1) TOMLIN J. had to consider a case where the terms of the policy provided that the money was to be paid to the wife of the insured if she were living at his death or, in the event of her prior death, to his executors, administrators and assigns. The learned Judge observed :

"A number of cases has been cited to me, and my attention has also been called to section 11 of the Married

(1) [1926] 1 Ch. 48.

Women's Property Act, 1882. In my view that section applies to this policy. The policy is, in the 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. It is true it is expressed to be for the benefit of his wife in a certain event only; but the fact that the benefit is of a limited or contingent character does not prevent it from being a benefit within the meaning of this Act. I think, therefore, that the policy creates a trust in favour of the wife, but only in the terms of the trust."

Another case which has a bearing on this question is that of *Cleaver* v. *Mutual Reserve Fund Life Association*(1). This case followed the conviction of Florence Elizabeth Maybrick for the murder of her husband. Her husband, James Maybrick, effected an insurance on his life in favour of his wife. The policy was made payable to the wife if she was living at the time of his death; otherwise the money was to go to his legal representatives. The Court of Appeal, consisting of LORD ESHER M.R. and FRY L.J. and LOPES L.J., held that there was here a trust created by the policy in favour of the wife under section 11 of the Married Women's Property Act, 1882; but it became incapable of being performed by reason of her crime. No doubt was expressed as to the policy creating a trust in her favour under that section. The same view has been taken in this Court in *Srinivasa Chariar* v. *Ranganayaki Ammal*(2) and *Abhiramavalli* v. *Official Trustee, Madras*(3). In the latter case, which was decided by MADHAVAN NAIR J., the policy was payable to the "assured or his wife if he predeceases her" and my learned brother held that these words

(1) [1892] 1 Q.B. 147. (2) (1915) 3 L.W. 466.
(3) (1931) I.L.R. 55 Mad. 171.

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operated to create a trust in favour of the wife within the meaning of section 6.

The learned Advocate for the appellant has placed great reliance on *Dinbai* v. *Bamanshaji*(1) and *In re Engelbach's Estate. Tibbetts* v. *Engelbach*(2). In the former case a Bench of the Bombay High Court had before it an endowment policy of insurance which was payable at the death of the assured or at the age of fifty-five and was made payable to the wife provided she survived him. Failing her it was to be paid to the assured, his executors, administrators or assigns. The Court did not consider the English authorities and came to the decision that there was no trust created in favour of the wife within the meaning of section 6 of the Married Women's Property Act, on the wording of the section. As I have already stated, the Indian Act follows the English Act and the English cases are directly applicable. When these cases are considered there seems to be no doubt that in a case like the present a trust is created. *In re Engelbach's Estate. Tibbetts* v. *Engelbach*(2) was a case in which a father had taken out an endowment policy on the life of his own daughter and for her benefit. It was held that in such circumstance, no legal estate was created in the daughter and that there was no trust for her benefit. The Court treated this case as being outside the Married Women's Property Act, 1882, as it was, because under that Act, as under the Indian Act, the policy must be on the life of the husband or the father. As there can be a contingent trust and as we construe the words in the proposal,

(1) (1933) I.L.R. 58 Bom. 513. (2) [1924] 2 Ch. 348.

which forms part of the policy, as creating a contingent trust in favour of the respondent, we must also reject the second contention of the learned Advocate for the appellant.

For these reasons this appeal fails and must be dismissed with costs.

A.S.V.

APPELLATE CIVIL.

Before Sir Lionel Leach, Chief Justice, and Mr. Justice Madhavan Nair.

SUKKIRA GOUNDAN AND EIGHT OTHERS (RESPONDENTS 1 TO 3 AND 6 TO 11—DEFENDANTS 1 TO 3 AND 6 TO 11), PETITIONERS,

v.

PALANI GOUNDAN (APPELLANT—PLAINTIFF), RESPONDENT.*

1938, March 2.

Code of Civil Procedure (Act V of 1908), sec. 110, cl. 2—Question respecting property worth more than Rs. 10,000—Meaning and test of—Joint Hindu family—Partition—Suit for—Decision of High Court to the effect that the plaintiff was a coparcener and was as such entitled to property of value of Rs. 5,000 odd—Appeal to Privy Council against—Right of—Entire joint family estate of value of more than Rs. 10,000.

The respondent, claiming to be a member of a joint Hindu family, sued for the partition of the estate of the joint family. The petitioners, the defendants in the suit, denied that the respondent was a coparcener, and their defence prevailed in the trial Court. On appeal to the High Court, however, it was held that the respondent was a coparcener and was entitled to have delivered to him property of the value of Rs. 5,000 odd. The petitioners applied for leave to appeal to His Majesty in Council against the judgment of the High Court. The value

* Civil Miscellaneous Petition No. 4682 of 1937.