

## FULL BENCH (CIVIL).

*Before Sir Mya Bu, Kt., Offg. Chief Justice, Mr. Justice Mosely,  
and Mr. Justice Ba U.*

1939

Aug. 25.

## THE OFFICIAL ASSIGNEE

v.

MA HNIN SAN.\*

*Insurance policy—Life policy taken out by Burmese Buddhist husband during  
coverture—Insolvency of husband—Official Assignee's claim to the policy  
money—Wife's interest in the policy—Jointly acquired property.*

A Burmese Buddhist husband took out two life insurance policies in his name during his coverture with his wife. The husband was adjudicated insolvent. There was no evidence to show whether the premia were paid by the husband out of his salary or the wife contributed anything towards it.

*Held*, that the policies were not property which came into existence only on the death of the assured, but they were property which could be dealt with in the life time of the assured by way of mortgage, surrender or otherwise. The rule of Burmese Buddhist law of equal interest of husband and wife in all property acquired during coverture applied and therefore the wife's half share in the policies did not vest in the Official Assignee on the insolvency of the husband.

What was really acquired during coverture was not the proceeds of the property, but the right to obtain the proceeds of the policies which was a right contingent, by nature of the contract itself, on the death of the assured, that is on the death of one of the persons who jointly "acquired" the right to the policies.

In Insolvency Case No. 6 of 1937 of this Court the question arose as to the rights of the Official Assignee on the one hand and of the Burmese Buddhist wife of the insolvent on the other hand as regards the life-policies taken out by the husband during coverture. The order of the Insolvency Judge was as follows :

DUNKLEY, J.—This application raises what, to my mind, is a very important question as to the rights of the Official Assignee on the adjudication of a Burmese Buddhist married man.

The estate of U Kyaw Zan (deceased) is being administered by the Official Assignee under the provisions of section 108 of the

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\* Civil Misc. Appeal No. 18 of 1939 from the order of this Court on the Original Side in Insolvency Case No. 6 of 1937.

Rangoon Insolvency Act ; but, as at present advised, it seems to me that the position would be exactly the same even if U Kyaw Zan were an insolvent and these particular policies had been endowment policies which had fallen due for payment, or policies which had been surrendered for their surrender value. The facts are admitted. U Kyaw Zan had, during his lifetime, taken out two policies of insurance on his life for Rs. 5,000 and Rs. 3,000 respectively and, after U Kyaw Zan's death, the policies were handed to the Official Assignee by the present applicant, Ma Hnin San, who is U Kyaw Zan's widow, and she, at that time, made a claim to half the net amount due on these policies, and requested the Official Assignee to collect the amounts due from the Insurance Company. The Official Assignee has done so, but, in regard to Ma Hnin San's claim to a half of the net amount realized, the Official Assignee declined to make payment to her without an order of the Court. I say at once that I think he was fully justified in the course which he took, as the question raised is by no means a simple one. My own view, however, is that Ma Hnin San must be held to own a half share in these policies, which were, even during U Kyaw Zan's lifetime, property belonging to him and his wife, and that, therefore, she is entitled to a half share of the amount realized from the policies after his death.

U Kyaw Zan was a superintendent in the Government Press and, although there is no evidence on this point, presumably the premia on the two policies were paid out of his salary. Now, the salary earned by U Kyaw Zan during his coverture with Ma Hnin San was *lettetpwa* property of their marriage. That is admitted, and it is admitted also that these policies were taken out by U Kyaw Zan during his coverture with Ma Hnin San. Although the question whether a wife is entitled to a half share of her husband's earnings when he is engaged in a profession or employed on a salary has been raised, there has been no decision on this point, and, consequently, the general rule that the husband and wife shall have an equal interest in property acquired during coverture must be the rule in regard to such earnings. Consequently, Ma Hnin San was equally interested with U Kyaw Zan in the monies paid by way of premia for these policies and, therefore, she was equally interested with him in these policies. I am quite clear in my mind that, if the policies had been surrendered during U Kyaw Zan's lifetime, Ma Hnin San would have been entitled to an equal share with U Kyaw Zan in the surrender value ; that being so, I cannot see that the position can be any different

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when the amount due under the policies becomes payable on U Kyaw Zan's death. Half of this amount only belongs to U Kyaw Zan's estate, to which Ma Hnin San succeeds as his heir, but half is her own property independently of U Kyaw Zan. That being so, in the present circumstances, only half the amount due under the policies will enure to the Official Assignee for the benefit of the creditors of U Kyaw Zan, and the other half is the property of Ma Hnin San and must be paid to her.

The application of Ma Hnin San must, therefore, be allowed, and the Official Assignee is directed to pay to her one half of the amount which he has received from the Insurance Company in respect of these two policies, less all expenses which he has incurred in obtaining payment from the Insurance Company.

The question of the expenses of the funeral of U Kyaw Zan has been raised. This is an amount which is properly debitable against his estate and not against Ma Hnin San's property, and, therefore, the whole of this amount is payable as a preferential debt from the half of the insurance monies which now belong to the Official Assignee as representing U Kyaw Zan's estate. Under the circumstances, as I think that the Official Assignee was fully justified in bringing this matter before the Court, I shall not make any order as to the costs of this application.

The Official Assignee appealed.

*Ba Han* for the appellant. The question at issue is whether the money payable on a life policy at the death of the assured is property acquired during the coverture of the Burmese Buddhist husband and his wife. A life policy stands on a different footing from an endowment policy in that the money in the former case is only payable on the death of the assured. Such money cannot be deemed to be acquired during coverture, and the wife has a half interest only in property which is acquired during coverture. She may become entitled to the money as an heir, but in such a case she would take it subject to the payment of debts. In her own right, if she had any, she would take a half interest, and she would not be liable for her husband's debts.

During coverture the husband alone can deal with the policy. Buddhist law comes into operation only when the property is acquired. See *U Pe v. U Maung Maung Kha* (1).

Again there is nothing to show that the wife paid any portion of the premia due on the policy. Consequently even if it be held that the wife had an interest in the policy the rule of *missiya* and *nissita* should apply, and the wife's share would be one third. See *Ma Kin v. Maung Po Sin* (2).

*Hay* (with him *Myo Kin*) for the respondent was not called upon.

MOSELY, J.—This is an appeal from an order of the Judge exercising insolvency jurisdiction on the Original Side of this Court passed in connection with the estate of *U Kyaw Zan*, deceased, a Burman Buddhist, late Superintendent in the Government Press, whose estate is being administered by the Official Assignee under the provisions of section 108 of the Rangoon Insolvency Act.

The order was that *U Kyaw Zan's* widow, *Ma Hnin San*, was entitled in her own right to half the proceeds of two policies of insurance on *U Kyaw Zan's* life for Rs. 5,000 and Rs. 3,000 respectively, and that the Official Assignee be directed to pay her one half of the amount which he had received from the insurance company in respect of these two policies, less any expenses incurred by him.

It was admitted in argument before the learned Judge that these policies were taken out by *U Kyaw Zan* during his coverture with *Ma Hnin San*. It was presumed, though there were no pleadings on the subject and no evidence at all was recorded, that the premia on

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(1) I.L.R. 10 Ran. 261, 268.

(2) I.L.R. 6 Ran. 1, 3.

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the two policies were paid out of U Kyaw Zan's salary. The salary of U Kyaw Zan, earned during his coverture with Ma Hnin San, was admittedly of course *lettetpwa* property of their marriage.

The learned Judge considered that the fact that the proceeds of these two policies,—whole life policies,—were only payable after U Kyaw Zan's death was immaterial, and that the position was the same as if the surrender value of the policies during U Kyaw Zan's life-time had been in question, and held that Ma Hnin San was equally interested with U Kyaw Zan in the monies paid by way of premia for these policies and was therefore equally interested with him in the policies themselves. As regards the *quantum* of her interest, it was said that though the question whether the wife is entitled to a half share of her husband's earnings when he is engaged in a profession or employed on salary has been raised there has been no decision on this point, and consequently the general rule that the husband and wife shall have an equal interest in property acquired during coverture must be the rule in regard to such earnings. It was therefore declared that Ma Hnin San's interest in the policies and the proceeds of them was one half.

In appeal the learned advocate for the Official Assignee has raised two questions :

- (1) Whether the money payable on a whole life policy at the death of the assured is property acquired during the coverture of the assured and his wife ?
- (2) If so, whether in the present instance the surviving spouse's interest should not be one-third only on principle of *nissiya* and *nissita* ?

As regards the first question, it is argued that the proceeds of a whole life policy are only payable at the

death of the assured, and, consequently, those proceeds cannot be property jointly acquired during the coverture.

This argument appears to me to be untenable. The policies were "acquired" in the sense that they were paid for by payment of the premia out of the joint funds during the coverture. These policies were not property which could only come into existence at the death of the assured. Before the assured's death these policies were themselves property which could be dealt with. The policies could be sold or mortgaged, made security for loans to a bank or a building society, or surrendered for a cash value or for a paid-up policy. It is true that the contract with the insurance company was in the name of the deceased only, but that does not mean that it was not a contract made for the joint benefit of himself and his wife. In fact, one of the commonest reasons for such policies is the making of provision at the death of the assured for the assured's dependents.

At the death of the assured it is true that the insurance company would normally pay the proceeds of the policies to the assured's heirs. That is the custom of the business. It is usual for the company to demand that the heir take out letters of administration before the proceeds are paid to him. But because the money is payable or usually paid to the heir or heirs of the person in whose name the policy is taken out that does not necessarily mean that that person or his heirs *qua* heirs are the only persons entitled to the beneficial interest in the proceeds.

It appears to me that what was really acquired during the coverture was not the proceeds of the policy, but the right to obtain the proceeds of the policy,—which was a right contingent, by the nature of the contract itself, on the death of the assured, *i.e.*, on the death of

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one of the persons who jointly "acquired" the right to this policy. I do not see that there can be any difference between the acquisition of the right to draw these proceeds at the death of the assured and the acquisition of other kinds of property during the life time of both husband and wife.

As regards the question of *nissiya* and *nissita*, I do not think that it can be presumed that the premia on the policies were paid out of the husband's salary. There is no evidence whatever as to whether the wife (or her relatives perhaps) had ever contributed towards the maintenance of the couple or not. No presumption can be drawn to the contrary. It may be remarked that the husband died in debt to the tune of some Rs. 18,000, and I do not know what he spent his salary on, or from what funds the premia on these policies were paid. It could not, therefore, be held, in default of any evidence in this case, that the relationship of *nissiya* and *nissita* could apply, and it is unnecessary to consider the law on the subject which was referred to, though not decided, in *Ma Kin v. Maung Po Sin and three* (1).

This appeal will accordingly be dismissed with costs, advocate's fee ten (10) gold mohurs.

MYA BU, OFFG. C.J. and BA U, J. concurred.