

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
The Attorney-General for New South Wales
v. The Curator of Intestate Estates, from the
Supreme Court of the State of New South
Wales ; delivered the 31st July 1907.*

Present at the Hearing :

THE LORD CHANCELLOR.

LORD ASHBOURNE.

LORD MACNAGHTEN.

SIR ARTHUR WILSON.

SIR ALFRED WILLS.

[Delivered by Sir Arthur Wilson.]

The facts necessary for the disposal of this Appeal are few and are not in dispute. One Andrew Mattson was in October 1902 admitted, as an insane patient, to the Hospital for the Insane at Callan Park, in New South Wales, and he there remained until his death, on or about the 5th July 1904. He had, on the 16th February 1893, effected an insurance on his own life for the sum of 200*l.* with the Colonial Mutual Life Assurance Society. The policy was payable at the expiration of 20 years, or sooner death of the deceased. Mattson died without issue, unmarried, and intestate. His nearest relatives appear to be brothers and sisters, residing some in Sweden and some in America.

The Respondent, who is the Curator of Intestate Estates, obtained an order from the Supreme Court in its Probate Jurisdiction, on the 22nd August 1904, to collect the estate of the deceased Mattson, and under that authority he

received the proceeds of the policy which has been mentioned, Mattson having left no other estate.

During the time that Mattson was in the Asylum he was maintained out of the public revenue, and a sum of 68*l.* 2*s.* 2*d.* is due to the Crown in that behalf. The Master in Lunacy, on behalf of the Crown, claimed from the Curator that sum of 68*l.* 2*s.* 2*d.* The Curator refused to allow the claim, on the ground that the proceeds of the policy were protected from the claim by the provisions of the Life, Fire, and Marine Insurance Act, 1902. Thereupon the Attorney-General, at the instance of the Master in Lunacy, petitioned the Supreme Court for an order directing the Curator to pay the amount claimed out of the funds in his hands.

The Petition was heard before Walker J., who held that the proceeds of the policy were protected against debts, and that this protection applied to debts of the Crown as well as to those of ordinary creditors, and accordingly he rejected the Petition. The Attorney-General appealed against this decision to the Full Court, and in the Full Court the learned Chief Justice and Pring J. affirmed the decision of Walker J., Cohen J. dissenting. Against that decision the present Appeal has been brought, special leave to appeal having been granted.

The section of the Life, Fire, and Marine Insurance Act, 1902, relied upon for the Curator of Intestate Estates is s. 4, which runs thus :—

“ The property and interest of every person who has effected or shall hereafter effect any policy for an insurance *bonâ fide* upon the life of himself or any other person in whose life 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 in the moneys payable thereunder or in respect thereof and in the contributions made towards the same, shall be exempt from any law now or here-

after in force relating to insolvency or bankruptcy or from being seized or levied upon by or under the process of any court whatever."

The rights of the Crown in such a case, unless they be affected by the provisions of the Act, are clear and indisputable. The Crown is entitled not only to be paid, but, by virtue of its prerogative, to be paid in priority to all other creditors. The law applicable to such cases is explained, in the judgment of this Board, in *Commissioners of Taxation for New South Wales v. Palmer*, 1907, A.C. 179.

The question therefore arises whether the present Act binds the Crown. The Crown is not named in it, nor can their Lordships see any clear indication of an intention to bind the Crown. *Prima facie*, therefore, the Crown is not affected by it.

Mr. Wills, who appeared for the Respondent, in his able argument, endeavoured to show that the rule exempting the Crown from the operation of a statute which does not name the Crown, or show a clear intention to bind the Crown, is not applicable to a statute which would not have the effect of imposing a burden on the Crown, or interfering with its property, or with some prerogative right belonging the Crown and not shared by the subject; and he sought to show that what the Insurance Act did was to protect the proceeds of insurance, and prevent their being made applicable to the payment of debts generally contrary to the general rule of law, interfering thus with the right, common to the Crown and the subject, to claim payment of the debts of the deceased out of his assets.

Their Lordships think it unnecessary to follow the legal argument of the learned Counsel further, because if the present Act be held to bind the Crown, it would directly take away not only the

right to claim payment of a debt, but the clearly prerogative right to priority of payment. Their Lordships are of opinion that, according to the settled principle applicable to such cases, the statute in question does not bind the Crown.

Another question was discussed during the argument before their Lordships, whether, apart from the prerogative of the Crown, and assuming the claim to have been one by a subject, the Act, properly construed, affords the degree of protection which has been contended for, to the proceeds of insurance policies ; whether section 4 has not a much narrower effect than section 8, the language of which is very different. By reason of the view which their Lordships have expressed on the other part of the case, it is unnecessary that they should consider this question.

Their Lordships will humbly advise His Majesty that the Appeal should be allowed, and that the judgments of Walker J. and of the Full Court should be set aside, and an order made for payment by the Curator out of the funds in his hands to the Master in Lunacy of the sum of 68*l.* 2*s.* 2*d.*, and to the Attorney-General of his costs in both Courts in the Colony.

There will be no order as to the costs of this Appeal.
