

The facts were shortly that Fauntleroy, whose life was insured, committed a forgery of which he was found guilty, and subsequently he was executed. The vice-chancellor decided, upon the narrow ground which Sir C. Russell has put forward again in the present case, that in order to make a policy void the act must be one done fraudulently, and one which causes the policy to attach. That case subsequently came before the House of Lords, and Lord Lyndhurst, although he does not appear to attach much importance to the fact that the policy attached in consequence of an act of the man himself, says in very clear language at the end of his judgment. "It appears to me that this resolves itself into a very plain and simple consideration. I suppose that, in the policy itself, this risk had been insured against. That is, that the party insuring had agreed to pay a sum of money year by year upon condition that, in the event of his committing a capital felony, and being tried convicted and executed for that felony, his assignees shall receive a certain sum of money—is it possible that such a contract could be sustained? Is it not void upon the plainest principles of public policy?" When we apply that reasoning to the present case, it is clear that a person murdering another does bring about death in a manner not contemplated by the policy. The judgment of Lord Lyndhurst then goes on: "Would not such a contract (if available) take away one of those restraints operating on the minds of men against the commission of crimes, namely, the interest we have in the welfare and prosperity of our connections? Now if a policy of that description with such a form of condition inserted in it, in express terms, cannot, on grounds of public policy, be sustained, how is it to be contended that in a policy expressed in such terms as the present, and after the events which have happened, we can sustain such a claim? Can we, in considering this policy, give to it the effect of that insertion which if expressed in terms would have rendered the policy, as far as that condition went at least, altogether void?" Applying again that sort of reasoning to the present case, you must insert in this policy a clause, saying that the wife or trustees on her behalf may recover

the amount due upon the policy, even if she feloniously caused the death of the person insured. The law would clearly not allow such a thing, and a policy with such a clause in it would be void. It is certainly against public policy that this action should succeed, and upon that ground I think judgment should be given for the defendants.

WILLS, J. I am of the same opinion. The policy of insurance in this case was upon the life of James Maybrick, and was made in favor of his wife, and we must assume, for the purpose of deciding the questions submitted to us, that his wife murdered James Maybrick. It is clear from the provisions of the Married Women's Property Act of 1882, that the effect of the policy was to create a trust in favor of the wife. If any money was paid upon the policy, it would have to be paid over to Mrs. Maybrick. It has been suggested that the plaintiff, Cleaver, as administrator under 33 and 34 Victoria, chapter 23, section 9, had other trusts to which the money might be applied besides paying it over to the wife, but that is not a point which arises here. The executors of James Maybrick are really the persons who are trying to recover this money, and they are doing so on behalf of Mrs. Maybrick. The question is whether it is an answer to their claim to say that Mrs. Maybrick murdered her husband. Upon the ground of the claim being against public policy I think that it is, because the action is brought to recover money on a policy on the death of a person whom she has murdered. I cannot imagine a case in which a defence upon the ground of public policy could be stronger. It is true that, in the case which has been principally relied upon, many of the observations do not apply to this case, because they depend upon the fact that the person who committed the act which caused the policy to attach knew at the time of committing such act that the policy had been effected. Nothing I think depends upon the question as to whether Mrs. Maybrick knew of the existence of the policy. And although it has been said that she did not know of it, it is almost impossible to say what a person in that position did or did not know. It is a broad principle of law that a person who commits a murder shall