

was subsequently commuted on the ground that the evidence at the trial did not conclusively prove that the said James Maybrick died from the administration of arsenic or other poison administered to him by her. The official record relating to the same is as follows:

"Her majesty having been graciously pleased to extend her royal mercy to the said offender on condition that she be kept in penal servitude for the remainder of her natural life, and such condition of mercy having been signified to this court by the Right Hon. Henry Matthews, one of her majesty's principal secretaries of State, this court hath allowed to the said offender the benefit of a conditional pardon, and it is therefore ordered that the said Florence Elizabeth Maybrick be kept in penal servitude for the remainder of her natural life."

The questions of law to be decided by the court were as follows: (1) Whether if it be proved that the said James Maybrick died from poison intentionally administered to him by the said Florence Elizabeth Maybrick, that would afford a defence to this action, (a) as against the plaintiff, Richard Stewart Cleaver, as assignee of the said policy from the said Florence Elizabeth Maybrick; assuming the assignment to be proved (b) as against the plaintiff Richard Stewart Cleaver, as administrator, under 33 and 34 Victoria, chapter 23, section 9, (c) as against the plaintiffs, Thomas Maybrick and Michael Maybrick, as executors of the said James Maybrick, deceased. (2) Whether if the conviction of the said Florence Elizabeth Maybrick be proved in this action, such conviction will be, (a) conclusive of her guilt, and an answer to this action as against any or either, and which of the plaintiffs, (b) admissible in evidence in this action. (3) Whether either the commutation of the sentence on the grounds stated, or the conditional pardon, if proved, will afford an answer to the alleged conviction.

The policy of insurance stated that James Maybrick, for the consideration therein mentioned, had become a member of the Mutual Reserve Fund Association, and that "there shall be payable to Florence E. Maybrick, wife, if living at the time of the death of the

said member, otherwise to the legal personal representatives of the said member, the sum of £2,000 sterling within ninety days after the receipt of satisfactory evidence to the association of the death of the said member."

Sir C. Russell, Q. C., Pickford and A. G. Steel for plaintiffs.

Sir E. Clarke (Sol. Gen.), and Hextall, for defendants.

DENMAN, J. In this case the question put to us must I think be answered in favor of the defendants. The action is brought in the names of several plaintiffs, but has been argued only upon the strongest point, viz: as to the right of Thomas and Michael Maybrick to recover the amount alleged to be due upon this policy. Thomas and Michael Maybrick are the legal personal representatives of James Maybrick, deceased, and for the purposes of this case it must be assumed that he was in May, 1889, murdered by his wife Florence Maybrick. These two plaintiffs bring their action not as the legal personal representatives of the deceased for the benefit of his estate, but because, as being such legal personal representatives, they become under the provisions of the Married Women's Property Acts, trustees for the wife, Florence Maybrick. It is clear that they are in no better position than the party for whom they are trustees would be, and if there is any fatal objection to that party suing, the same objection would be fatal to the executors suing on her behalf. It is not necessary that I should go through all the provisions of the Married Women's Property Acts, but it is sufficient for me to say that the plaintiffs are the proper persons to bring this action, according to the terms of section 11 of the act of 1882 (45 and 46 Vict. chap. 75), and the result is the same whether the wife is plaintiff or the executors are. The objection has been taken that the plaintiffs cannot sue for the benefit of the wife, because the death of her husband was caused by her felonious act. The only case that has any bearing upon the present is *Bolland v. Disney*, 3 Russ. 351, which is also reported under the name *Amicable Society v. Bolland*, 4 Bligh, 194. That case first came before Leach, V. C., who held that the action was maintainable.