

SELECTIONS.

not take a part of the capital with the sanction of the court. As the applicant was a widow, and proved to be in poor circumstances, he should hold that the money might be distributed as in the case of an intestacy."

For six years the question slumbered. But in 1883 it came again to the fore, in *Re Adam's Policy Trusts* (48 L. T. Rep. N. S. 727; 23 Chy. Div. 525). There the husband effected a policy for the benefit of his wife and the children of their marriage. He died intestate and insolvent, his wife and one child of the marriage having predeceased him. There was no intention of taking out administration to the husband's estate. The seven surviving children, three of whom were infants, petitioned the court for the appointment of a trustee of the moneys payable under the policy, for a declaration of the rights and interests of the petitioners in the moneys, and for an order upon the trustee to hold the moneys when received in trust for the children equally. Mr. Justice Chitty took a view of the Act which has not been adopted in the latest case. It appeared to him that the effect of the policy and of the Act taken together was to constitute a declaration of an executed trust, and that all the court has to do is to express its views of the construction of the two instruments taken together. Now there were only two possible constructions. One was, that the wife took for life, with remainder to the children; and the other was, that the wife and children took as joint tenants. The judge expressed his opinion that, upon a fair construction of the policy, the wife took a life interest, and this for two reasons: First, the Act says that the policy expressed upon the face of it to be for the benefit of the man's wife, or of his wife and children, shall be deemed "a trust for the benefit of his wife for her separate use and of his children, or any of them, according to the interest so expressed." If the wife took as a joint tenant, the words of the Act, so far as they give her an interest "for her separate use," would have no meaning at all. Assuming a joint tenancy, the wife has a right of severance immediately upon the fund falling in, or before the money is received, and the money is usually payable by the insurance office six months after the death of the

assured; but it could scarcely be said that the Legislature contemplated the re-marriage of the wife within that period of six months, and that therefore the words "separate use" are intended to apply to so short a period. Secondly, in the 11th section of the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75) the words "separate use" are omitted, because by sec. 1 (3) the presumption in future as to all married women is that their property is held for their separate use. For these two reasons the order in *Re Adam's Policy Trusts* was prefaced with an expression of opinion that the representatives of the wife and deceased child were not necessary parties to the petition, and that the surviving children took jointly. Mr. Justice Chitty characterized the first decision in *Re Mellor's Policy Trusts* (*ubi sup.*) as inexplicable, and confessed that he was unable to discover on what ground the Vice-Chancellor proceeded when the case came before him the second time, and he held that the fund ought to be distributed as in the case of an intestacy. The Vice-Chancellor was, he said, much too good a lawyer to hold that a fund held on trust for a wife and children should go as on an intestacy; and the only ground for his reference to the Statute of Distribution seemed to have been that the widow was in poor circumstances.

Now, however, the decision of Vice-Chancellor Malins has been explained. In *Re Seyton; Seyton v. Satterthwaite* (*ubi sup.*) the policy contained a recital that the husband was desirous of assuring his life under the provisions of the Married Women's Property Act, 1870, for the benefit of his wife and of the children of their marriage. And it certified that under the provisions of the Act his wife and the children of their marriage, whom failing, the heirs, executors or administrators of the husband, should be entitled to receive out of the funds of the institution at the end of six months after the decease, the sum of £4,000. There were issue of the marriage seven children; one died before the policy was effected, another died an infant in the lifetime of the assured, a third died shortly after his death under age. The other four were all infants, and defendants to a summons taken out by the widow, as sole executrix of her husband, devisee, and legatee of all his estate, and