CASES

ARGUED AND DETERMINED

UPON WRIT OF ERROR

IN THE

EXCHEQUER CHAMBER,

AND IN THE

HOUSE OF LORDS.

IN

Trinity Vacation,

IN THE NINTH AND TENTH YEARS OF THE REIGN OF VICTORIA.

CLIFT and Another *v.* ELIZA SCHWABE, Administratrix, with the Will annexed, of LOUIS SCHWABE, deceased. *June* 16.

A. effected a policy on his own life, subject, amongst others, to the following conditions—that the policy should become void, if the assured should die on the high seas, or should go beyond the limits of Europe, or enter the military or naval service, except with the permission of the assurers—and that "every policy effected by a person on his or her own life should be void, if such person should *commit suicide*, or die by duelling or the hands of justice."

A. died in consequence of having voluntarily, and for the purpose of killing himself, taken sulphuric acid, but under circumstances tending to show that he was at the time of unsound mind.

In an action by the administratrix of A. upon the policy, the defendants pleaded that A. *did commit suicide*, whereby the policy became void; and at the trial the judge directed the jury, "that, in order to find the issue for the defendants, it was necessary that they, the jury, should be satisfied that A. died by his own voluntary act, *being then able to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing, so as to be a responsible moral agent;* that the burden of proof, as to his dying by his own voluntary act, was on the defendants; but, that being established, the jury must assume that he was of sane mind, and a responsible moral agent, unless the contrary should appear in evidence."

Held, upon a bill of exceptions, that this direction was erroneous; for, that the terms of the condition included all acts of voluntary self-destruction, and, therefore, that, if A. voluntarily killed himself, it was immaterial whether he was or was not at the time a responsible moral agent—*dissentientibus Pollock*, C. B., and *Wightman*, J.

ASSUMPSIT, upon a policy of assurance. The first count of the declaration stated that, theretofore, and in the lifetime of the said Louis Schwabe, and also in *the lifetime of one Henry Barrett, since also deceased, [*438
to wit, on the 4th of July, 1836, by a certain memorandum in writing called a policy of insurance, then made and subscribed by the defendants below and the said Henry Barrett—after reciting that the said Louis Schwabe was desirous of effecting an assurance with the *Argus*

Assurance Company, in the sum of 999*l.*, upon his own life, and had signed and caused to be delivered into the office of the said company, a declaration or statement in writing, bearing date the 25th of June, 1836, declaring that the age of the said Louis Schwabe did not exceed thirty-eight years, that he had been vaccinated, that he had not had the gout, that he had not been afflicted with asthma, fits, convulsions, spitting of blood, or rupture, and that he was not afflicted with any disorder which tended to the shortening of life, and that the assured agreed that such declaration or statement should be the basis of the contract between him and the said company; and further reciting that the said Louis Schwabe had paid to the said company 17*l.* 2*s.* 6*d.*, as a premium for the assurance of the said sum of 999*l.* for twelve calendar months, commencing that day, to wit, the said 4th of July, 1836, being the day on which the said policy of assurance bore date, and terminating the 3d of July, 1837, both inclusive, the receipt whereof was thereby acknowledged—it was witnessed, that the three directors of the said company whose names were thereunto subscribed, to wit, the defendants below and *the said Henry Barrett, who then were directors of the said company, and whose names then were subscribed to the said policy of assurance, did thereby agree, that, in case the said Louis Schwabe should die at any time within the term of twelve calendar months, commencing on the said 4th of July, 1836, and terminating on the 3d of July, 1837, both inclusive; or, if the said Louis Schwabe or his assigns should, in the event of his living beyond the said term of twelve calendar months, pay or cause to be paid to the said company on or before the 4th of July in each and every subsequent year during the life of the said Louis Schwabe, the following premiums, that is to say, &c., the funds or property of the said company should, according to the provisions of the deed of settlement of the said company, be subject and liable to pay and satisfy, within three calendar months after satisfactory proof should have been received at the office of the said company, of the death of the said Louis Schwabe, unto his executors, administrators, or assigns, 999*l.*; provided always, that, if any thing averred by the said Louis Schwabe in the declaration thereinbefore mentioned to have been made by him, was untrue, that policy should be null and void, and all premiums and other moneys paid in respect thereof, should be forfeited to the said company: provided also that that policy, and the assurance thereby effected, were and should be subject to the several conditions and regulations thereupon endorsed, so far as the same were or should be applicable, in the same manner as if the same respectively were repeated and incorporated in that policy: Averment, that, at the time of the making and subscribing of the said policy as aforesaid, there were endorsed thereon the conditions and regulations following, that is to say—First: No policy shall be considered in force beyond twenty-one days after the expiration of the year, unless the premium then due shall have been paid *at the office of the com-

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pany, or to some one of the agents of the company; but, should proof be given to the satisfaction of the board of directors, that the party or parties whose life or lives hath or have been assured, continue in good health, the policy may be revived at any period within six calendar months, on payment of a fine to be fixed by the board of directors, not exceeding 10*s.* per cent. on the sum assured, or at any time within twelve calendar months, on the payment of such fine as the board of directors may think reasonable—Second: Policies will become void, if the parties whose lives have been assured *shall die on the high seas*, except in passing, in decked vessels, or in steamboats, from one part of the united kingdom of Great Britain and Ireland, to another part of the same kingdom, and to and from the islands of Guernsey, Jersey, Alderney, Stark, and Man; and also, in time of peace, in King's ships and packet or passage vessels or steamboats, from or to any part of Great Britain, to or from any part of the Continent situate between Hamburgh and Bordeaux, both inclusive; or *shall go beyond the limits of Europe*, or, being or becoming military or naval men, shall be called into actual service; unless in each case of going upon the seas, or beyond the limits of Europe, or into actual service, permission shall have been granted by the board of directors, and such premium or premiums on account of the extra risk be paid as shall be required by the board of directors—Third: All claimants, upon the decease of any person whose life shall have been assured by the company, must, if required, make proof thereof, and give such further information respecting the same, as the board of directors shall require—Fourth: Reasonable proof will also be required of the time of the birth, unless the fact shall have been previously established, in which case the same will be admitted on the policy—Fifth: If the age of any person whose life shall be assured by any policy, shall [*441 exceed the age stated in the declaration, the person assured thereby shall, except in case of fraud, be entitled under such policy to such a sum as would, according to the rate or rates at which the assurance was effected and continued on such policy, have been assured thereby for the annual or other premium or premiums actually paid in respect thereof, if the age of the person whose life shall be assured thereby was correctly stated in the declaration—Sixth: Every policy effected by a person on his or her own life shall be void, *if such person shall commit suicide, or die by duelling or the hands of justice;* but, if any policy effected by a person on his or her own life shall afterwards be actually assigned to any person or persons by way of mortgage, or for the benefit of any creditor or creditors, or charged with any sum or sums for the benefit of any mortgagee or mortgagees, or creditor or creditors, and the person on whose life the assurance shall have been effected shall commit suicide, or die by duelling or the hands of justice, then the policy so assigned or charged shall not be void to the extent of the principal sum or sums and interest secured by the assignment or charge; or, if any policy effected by any person on his

or her own life shall afterwards be absolutely assigned to a purchaser for valuable consideration, in any transaction, (except that of settlement upon or after marriage, or any other occasion,) and the person on whose life the assurance shall have been effected shall commit suicide, or die by duelling, or by the hands of justice, then the policy so assigned shall continue in full force, notwithstanding such suicide or death—Seventh: To avoid all possibility of protracting or defeating equitable and just claims of the assured on the company, by the delay and expenses attendant on legal
*442] contests, it shall be competent for the assured, at all *times, if they shall think proper, to require the board of directors to submit the subject of dispute to two indifferent persons, one to be nominated by the board of directors, and the other by the assured; and the referees so nominated shall, previously to undertaking the reference, agree upon an umpire, whose decision shall be final between the parties, in case such referees disagree; but, if the assured shall have actually commenced a suit against the company, and shall afterwards require a reference, it can only be consented to by the board of directors, upon condition of their being reimbursed the law expenses which they have previously incurred—Eighth: In all cases where any policy issued by the company shall, either originally, or at any time afterwards, be or become subject to any trust or trusts whatsoever, the receipt of the trustee or trustees for the time being, for the sum assured by such policy, shall, notwithstanding any equitable claim or demand whatsoever of the person or persons beneficially entitled to the policy, be an effectual discharge to the company, and the proprietors thereof—Ninth: According to the deed of settlement, the funds or property of the company for the time being remaining unapplied and undisposed of, and inapplicable to prior claims and demands, in pursuance of the trusts, powers, and authorities therein contained, are alone made answerable for the claims and demands of persons assuring with the company, and their annuity-creditors; and the directors signing the policies, or the instruments securing the annuities, are to be personally liable to the persons to whom the policies shall be given, or annuities granted, for the application of the said funds or property in discharge of the money secured by the policies, and of the said annuitants, and not further or otherwise; and neither in respect of the persons claiming under the said
*443] policies, or of the persons entitled to the said *annuities, or in respect of the directors who may have signed policies or instruments securing annuities, or any of their heirs, executors or administrators, are the proprietors at large of the company to be answerable, indirectly or directly, further or otherwise than as to their respective shares, not subject to prior claims or demands, in the company's capital of 300,000*l.*; it being the true intent and meaning of the deed of settlement, that no claim upon any policy, or upon any instrument securing any annuity, shall be enforced against any one or more of the directors, his or their heirs, executors, or administrators, to a greater extent than the funds or property of the com-

pany at the time of recovering upon such policy or instrument securing such annuity shall be competent to reimburse him or them: Averment, that afterwards, and in the lifetime of Louis Schwabe, and also in the lifetime of the said Henry Barrett, to wit, on the said 4th of July, 1836, in consideration that the said Louis Schwabe, at the request of the defendants below and Barrett, had then paid to the said company 17*l.* 2*s.* 6*d.* as a premium for the assurance of the said sum of 999*l.* for the said space of twelve calendar months commencing on the said 4th of July, 1836, and had promised the defendants below and Barrett to observe, perform, and fulfil all things in the said policy of assurance contained on the part and behalf of the assured, the defendants below and Barrett promised the said Louis Schwabe that all things in the said policy contained on the part and behalf of the assignees should be observed, performed, and fulfilled, according to the tenor and effect of the said policy: Averment of the due payment of the premiums in respect of the policy in each year down to and including the year 1844; and that, after the making of the policy, and in the lifetime of Louis Schwabe, to wit, on the 4th of July, 1836, the time of the birth of the said Louis Schwabe was established *and then admitted on the said policy. [The declaration then set out four other policies of assurance, each bearing date the same day, and effected for the same sum and upon the same terms and conditions as the above.] Averment, that, within the term of twelve calendar months commencing on the 4th of July, 1844, and whilst the said several policies of assurance and each and every of them were and was in full force and virtue, and before the 4th of July, 1845, to wit, on the 11th of January, 1845, the said Louis Schwabe died; whereof, more than three calendar months before the commencement of this suit, to wit, on the 10th of March, 1845, satisfactory proof was received at the office of the said company; and, although nothing averred by the said Louis Schwabe in the declarations in the said policies respectively mentioned to have been made by him, or in any or either of those declarations, was untrue; and although at the time of the said death, and thenceforth continually hitherto the funds and property of the said company for the time being remaining unapplied and undisposed of, and inapplicable to prior claims and demands in pursuance of the trusts, powers, and authorities in the said deed of settlement contained, were and had been and remained sufficient to satisfy and discharge all the several sums of money in and by the said policies of assurance respectively assured, and all other claims and demands of persons assuring with the said company, and the annuity-creditors of the said company; and although, after the death of the said Louis Schwabe, to wit, on the 12th of April, 1845, administration with the last will and testament of the said Louis Schwabe, deceased, annexed, &c., in due form of law was granted to the plaintiff in his behalf,—of all which premises the defendants below, (having then survived Barrett,) and the said company, before the commencement of this suit, to wit, on the 13th of June, 1845, had

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*445] *notice, and then were requested by the plaintiff below, as administratrix as aforesaid, to pay or cause to be paid to her, as administratrix as aforesaid, the said five several sums of 999*l.* each, in and by the said several policies of assurance respectively mentioned and assured; yet neither the defendants below, nor the said company, nor any or either of them, nor any person or persons on their or his behalf, did or would, then, or at any time, pay to the plaintiff below, administratrix as aforesaid, the same several sums of money in and by the said several policies of assurance mentioned and assured as aforesaid, or any or either of them, or any part thereof; and all the said several sums of 999*l.* each in and by the said several policies of assurance respectively mentioned and assured, were and remained wholly due and unpaid to the plaintiff as administratrix as aforesaid; contrary to the tenor and effect, true intent, and meaning of the said policies of assurance and the promises of the defendants below and Barrett, and to the damage of the plaintiff, as administratrix as aforesaid of 10,000*l.*, &c. Profert of the letters of administration.

The defendants below pleaded as follows:—"that, though true it is, that the said several policies of insurance in the declaration mentioned were so made, and that the defendants promised as in the declaration is mentioned, and that the said Louis Schwabe died as in the said declaration also is alleged; yet, for plea to the said declaration, the defendants say, that, after the making of the said several policies and the said promises respectively, to wit, on the 10th of January, 1845, the said Louis Schwabe *did commit suicide;* whereby the said policies respectively became and were void; and this the defendants are ready to verify," &c.

Upon this plea, issue was taken and joined.

The cause came on for trial before CRESSWELL, J., at the Liverpool summer assizes in 1845.

*446] *On the part of the defendants below, it was proved that Louis Schwabe, the assured, on the 10th of January, 1845, voluntarily took and swallowed a quantity of sulphuric acid, sufficient to occasion death, for the purpose of killing himself, and that he died on the following day, by reason of the taking and swallowing of such acid; and the witnesses who gave such evidence, on cross-examination by the plaintiff's counsel, gave evidence tending to show that Louis Schwabe, when he took the sulphuric acid, was of unsound mind.

The learned judge thereupon directed the jury—that, in order to find the said issue for the defendants, it was necessary that they, the jury, should be satisfied that Louis Schwabe died by *his own voluntary act, being then able to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing, so as to be a responsible moral agent;* that the burden of proof as to his dying by his own voluntary act, was on the defendants, but, that being established, the jury must assume

that he was of sane mind, and a responsible moral agent, unless the contrary should appear in evidence.

To this direction, the counsel for the defendants below excepted, insisting that the learned judge ought to have charged the jury, as matter of law, that, if Louis Schwabe voluntarily took the sulphuric acid, for the purpose of destroying life, being conscious of the probable consequences of the act, and having, at the time of so taking it, sufficient mind to will to destroy life, he had committed suicide, within the meaning of the sixth condition of the policy.

The jury returned a verdict for the plaintiff below, damages 5140*l.* 13*s.* 9*d.* Judgment having been entered up for that sum, and costs, the defendants below brought a writ of error. The exceptions came on for argument in the Exchequer Chamber on the 4th of December, *1846, [*447 before POLLOCK, C. B., PARKE, B., ALDERSON, B., PATTESON, J., ROLFE, B., WIGHTMAN, J., and COLERIDGE, J.

Sir *F. Kelly*, Solicitor-General, (with whom were *Martin* and *Unthank*,) for the plaintiffs in error.(*a*) The learned judge was clearly wrong in the construction put by him upon the words of the condition in question—"every policy effected by a person on his or her own life, shall be void, *if such person shall commit suicide, or die by duelling or the hands of justice.*" The words "shall commit suicide" do not possess any definite technical meaning; the real question is, what was the meaning of the contracting parties—whether the office intended to provide against an event of frequent occurrence, or merely against the crime of felonious self-slaughter? The law upon the subject recently underwent very full discussion in the case of *Borradaile* v. *Hunter*, 5 M. & G. 639, 5 Scott, N. R. 418. There, the policy contained a proviso, *inter alia*, that, in case "the assured should *die by his own hands*, or by the hands of justice, or in consequence of a duel," the policy should be void. The assured threw himself into the Thames, and was drowned. Upon an issue, whether the assured died by his own hands, the jury found that he "voluntarily threw himself into the water, knowing *at the time that he should thereby [*448 destroy his life, and intending thereby to do so; but that, at the time of committing the act, he was not capable of judging between right and wrong." It was held by COLTMAN, ERSKINE, and MAULE, Js., *dissentiente* TINDAL, C. J., that the policy was avoided, as the proviso included all acts of voluntary self-destruction, and was not limited by the accompanying provisoes to acts of *felonious* suicide. It may be conceded, that

(*a*) The point marked for argument on the part of the plaintiffs in error, was—"that, according to the true construction of the expression in the sixth condition of the several policies, 'shall commit suicide,' if the assured by his own voluntary act put himself to death, intending, at the time of committing the act, to cause his own death, and being conscious that such would be the probable effect of the means employed by him for that purpose, the condition attached, and the several polices became forfeited, although, at the time of so killing himself, he might be of unsound mind, and incapable, by reason of such unsoundness, of distinguishing between right and wrong; and that the jury ought to have been directed accordingly."

the word "suicide," in the sense in which it is here used, does not embrace self-killing by accident, or unintentional self-destruction. But there is nothing in the context to restrain it to a *felonious* killing. Suicide may be felonious or otherwise, according to the circumstances, just as homicide may be felonious, or excusable, or justifiable. In 3 Inst., c. viii. p. 54, Lord COKE says: "*Homicidium, ex vi termini*, comprehendeth petit treason, murder, and that which is commonly called manslaughter; for, *homicidium est hominis cædium*, and *homicidium est hominis occisio ab homine facta*. Therefore, the right division of homicide is,—that, of homicides or manslaughter, some be voluntary and of malice aforethought; as, petit treason, and murder of another, and murder of himself; of manslaughters, some be voluntary, and not of malice forethought: of these, some be felony, and some be no felony; of which, some be in respect of giving back inevitably in defence of himself, upon an assault of revenge, and some without any giving back, as, upon the assault of a thief or robber upon a man in his house or abroad: some, upon the assault of one that is under custody, as, the sheriff or jailer assaulted by his prisoner. Some, in respect that he is an officer or minister of justice, without any assault, in execution of his office, or lawful warrant. And, lastly, some homicides that be no felony be neither forethought *449] *nor voluntary, as, manslaughter by misadventure, *per infortunium*, or *casu*." In *Borradaile* v. *Hunter* it was insisted, on the part of the plaintiff, at the trial, that, to bring it within the condition of the policy, the act of suicide, or "dying by his own hands," must have been the intentional act of a sane man, having the control of his will; but the learned judge who presided,(a) laid it down—most unexceptionably, as it is conceived—"that, if the assured, by his own act, intentionally destroyed his own life, not only being conscious of the probable consequences of the act, but doing it for the express purpose of destroying himself voluntarily, having at the time sufficient mind to will to destroy his own life, the case would be brought within the condition of the policy; but that, if he was not in a state of mind to know the consequences of the act, then it would not come within the condition." Insurance offices do not guarantee a man's sanity. [POLLOCK, C. B. It would be easy for them to say so.] MAULE, J., in his judgment in *Borradaile* v. *Hunter*, says: "A policy by which the sum insured is payable on the death of the assured in all events, gives him a pecuniary interest that he should die immediately, rather than at a future time, to the extent of the excess of the value of a present payment over a deferred one, and offers therefore a temptation to self-destruction to this extent. To protect the insurers against the increase of risk arising out of this temptation, is the object for which the condition in question is inserted. It ought, therefore, to be so construed as to include those cases of self-destruction in which, but for the condition, the act might have been committed in

(a) Erskine, J.

order to accelerate the claim on the policy, and to exclude those in which the circumstances, supposing the policy to have been unconditional, *would show that the act could not have been committed with a view to pecuniary interest. This principle of construction requires, and accounts for, the exclusion from the operation of the condition of those cases, falling within the general sense of its words, to which it is admitted not to apply—such as those of accident and delirium." [POLLOCK, C. B. Delirium is not inconsistent with the existence of intention. The question is, whether, in order to exclude the case from the condition, there must not be an entire absence of will or intention and understanding. If the party is not a responsible moral agent, can the act be said to be his act?(a)] ERSKINE, J., in delivering his opinion, in *Borradaile* v. *Hunter*, says: "Looking simply at that branch of the proviso upon which the issue was raised, it seems to me that the only qualification that a liberal interpretation of the words, with reference to the nature of the contract, requires, is, that the act of self-destruction should be the voluntary and wilful act of a man having at the time sufficient powers of mind and reason to understand the physical nature and consequences of such act, and having at the time a purpose and intention to cause his own death by that act; and that the question whether at the time he was capable of understanding and appreciating the moral nature and quality of his purpose, is not relevant to the inquiry, further than as it might help to illustrate the extent of his capacity to understand the physical character of the act itself. [POLLOCK, C. B. The effect of that *dictum* seems to be this; that the act must be the *voluntary* act of the party, as opposed to *involuntary*, and that it must be the act of a being sufficiently intelligent to know what he is *doing.] If the party voluntarily ended his life, knowing that such would be the consequence of the act he was committing, and intending to produce that result, it is quite immaterial, in the construction of this condition, whether he was or was not a responsible moral agent. [POLLOCK, C. B. How can *intention* be predicated of a man *non compos mentis?*] If the construction of the policy depended upon the sanity or insanity of the assured, there would have been no necessity for putting to the jury the question that was put by ALEXANDER, C. B., in *Garrett* v. *Barclay*, 5 M. & G. 643(a), 5 Scott, N. R. 422; for, in his direction, his lordship observes that *beyond all doubt* the assured was insane. It is one thing to say that a man is not a responsible moral agent, and another to say that he is incapable of volition. In *Kinnear* v. *Borradaile*, 5 M. & G. 644 (b), 5 Scott, N. R. 424, as in *Garrett* v. *Barclay*, the words of the condition were the same as those in the present case. In *Kinnear* v. *Nicholson*, 5 M. & G. 644 (c), 645 (a), 5 Scott, N. R. 425, the words were the same as those in the policy in *Borradaile* v. *Hunter;* and yet, so slight was thought to be the distinction between

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(a) His lordship referred to Erskine's defence of the prisoner, in *Hadfield's case*, Howell's State Trials, vol. xxvii. p. 1281, 1307, in terms of the highest eulogy.

them, that it was agreed between the parties that *Kinnear* v. *Nicholson* should abide the event of *Kinnear* v. *Borradaile*. [POLLOCK, C. B. Mr. Justice ERSKINE seems to have considered the difference of expression to be important: for, he says—"When I find the terms 'shall commit suicide,' that have been popularly understood and judicially considered *as importing a criminal act of self-destruction*, exchanged for terms not hitherto so construed, it may, I think, be fairly inferred that the terms adopted were intended to embrace all cases of intentional self-destruction, unless it can *452] be collected from the immediate context, that the *parties used them in a more limited sense." Two of the judges, therefore, in that case, would have been in favour of the plaintiff, if the words of the condition had been the same as those here used.] If the act be intentional, though the result of a perverted will, it is still suicide within the meaning of this policy. Lord Coke,(*a*) Hale,(*b*) Hawkins,(*c*) and Blackstone,(*d*) in treating of suicide, all consider the term applicable equally to self-slaying feloniously, or *per infortunium*, or otherwise. With regard to the rule of construction that was somewhat relied on by TINDAL, C. J., in *Borradaile* v. *Hunter—noscitur a sociis*—even assuming it to be applicable here, it does not aid the argument; for, acts that are lawful,—such as going upon the high seas, or beyond the limits of Europe,—are in this proviso placed in juxta-position with unlawful acts. [ALDERSON, B. A man may die by the hands of justice, and yet he may not be justly condemned.(*e*)] Exactly so. Some force will also be attempted to be given to the word "commit," which, it will probably be said, implies criminality. There are, however, many instances of the use of that word in a manner in no degree importing criminality or illegality: for instance, in pleading, a man is said to *commit a trespass* in the assertion of a right of way, or to *commit an assault* in protection of himself or of some one he is bound to protect.

J. Henderson, (with whom were *Knowles* and *Crompton*,) for the defendant in error. The main question in this case is, what is the true construction of the words "shall commit suicide," as used in this instrument. *453] If *they necessarily import an act of criminality, the direction of the learned judge to the jury cannot be impeached. The word "suicide" is a word of comparatively modern introduction. Most of our text-writers use it as synonymous with *felo de se*. Thus in Hale's Pleas of the Crown, c. 31, p. 411, 412, it is said: "*Felo de se, or* suicide, is, where a man of age of discretion, and *compos mentis*, voluntarily kills himself by stabbing, poisoning, or any other way. No man hath an absolute interest of himself: but, 1. God Almighty hath an interest and property in him, and therefore self-murder is a sin against God. 2. The king hath an interest

(*a*) 4 Inst. c. 8.
(*b*) Hale, P. C., c. 31, pp. 411, 412.
(*c*) Hawk. P. C. 68.
(*d*) 4 Bla. Com. 189.
(*e*) Suppose A., the subject of insurance, to be executed after a *reprieve*, or by the *mistake* of the sheriff, who supposes him to be B., the party really under sentence of death.

in him, and therefore the inquisition in case of self-murder is *felonicè et voluntariè seipsum interfecit et murdravit, contra pacem Domini Regis.* If he loses his memory by sickness, infirmity, or accident, and kills himself, he is not *felo de se*, neither can he be said to commit murder upon himself or any other. If a man gives himself a mortal stroke while he is *non compos*, and recovers his understanding, and then dies, he is not *felo de se;* for, though the death completes the homicide, the act must be that which makes the offence. It is not every melancholy or hypochondriacal distemper that denominates a man *non compos;* for, there are few who commit this offence but are under such infirmities; but it must be such an alienation of mind that renders them to be madmen or frantic, or destitute of the use of reason: a lunatic killing himself in a fit of lunacy, is not *felo de se.*" And he adds: "It must be simply voluntary, and with an intent to kill himself." So, Lord Coke says:(*a*) "If a man lose his memory by the rage of sickness or infirmity, or otherwise, and kill himself while he is not *compos mentis*, he is not *felo de se:* for, as he cannot commit murder upon another, so in that case he cannot commit murder upon himself. If one during the time *that he is *non compos mentis* give himself a mortal wound, whereof he, when he hath recovered his memory, dieth, he is not *felo de se:* because, the stroke which was the cause of his death, was given when he was not *compos mentis: et actus non facit reum, nisi mens sit rea.*" And Blackstone says:(*b*) "A *felo de se* is he that deliberately puts an end to his own existence, or commits an unlawful malicious act, the consequence of which is his own death: as if, attempting to kill another, he runs against his antagonist's sword; or, shooting at another, his gun bursts and kills himself. The party must be of years of discretion, and in his senses, else it is no crime" [ALDERSON, B. *Felo de se* no doubt is included in suicide; but the question is whether the expression here used is confined to criminal suicide or *felo de se.*] In Dr. Johnson's Dictionary, "suicide" is defined "self-murder; the horrid *crime* of killing oneself." Putting a fair and reasonable construction upon the whole of this instrument, it is impossible to hold that any thing short of a criminal act or self-destruction was in the contemplation of the parties. The very form of the expression, to "commit suicide," imports a deliberate and rational exercise of the will: it is as if the words had been "commit *the crime of* suicide." In the eye of the law, an insane person can have no will or intention. The civil law, it is true, makes a distinction between *demens* and *furiosus;* but the law of England knows no degrees of insanity. "The law," as was observed by Sir J. JEKYLL, in *The Duchess of Cleveland's case,*(*c*) "will not measure the sizes of men's capacities, so as they be *compotes mentis.*" [POLLOCK, C. B. If a man is *non compos mentis*, he is beyond the reach of the law. How can it be predicated of one insane person that he is

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(*a*) 3 Inst. c. 8, p. 54. (*b*) 4 Bl. Comm. 189.
(*c*) Cited, Howell's State Trials, vol. xxvii. p. 1310.

*455] capable of willing *to do an act, and of another that he is not? The imperfection of language compels us to use expressions that are very inapt. ALDERSON, B. An insane person is one who has no dominion over his will.(a)] The argument on the other side,—that the policy is avoided, if the assured, at the time of committing the act which terminated so fatally, had mind enough to know what he was about, and to contemplate and intend the consequence that resulted,—suggests a distinction which the law repudiates. [PARKE, B. Lord Hale distinctly points out the degrees of insanity.(b)] The learned judge in this case adopted the test suggested by the opinion of the majority of the judges delivered to the House of Lords, in answer to the question arising out of *M'Naughton's case*, 8 Scott, N. R. 595. If any doubt arises from the ambiguity of the instrument, the inconvenience must be borne by the assurers, whose language it is. The opinions of two of the judges in *Borradaile* v. *Hunter*, upon the import of the words here used, support the direction in this case; and those of the other two are not at all inconsistent with it. The test there proposed by MAULE, J., is that which should guide the decision of the present case. "In construing these words," says that learned judge, "it is proper to consider, first, what is their meaning in the largest sense which, according to the common use of language, belongs to them; and, if it should appear that that sense is larger than the sense in which they must be understood in the instrument in question, secondly, what is the object for which they are used. They ought not to be extended beyond their ordinary sense, in order to com-

*456] prehend a case within their object; for, that would *be to give effect to an intention not expressed; nor can they be so restricted as to exclude a case both within their object and within their ordinary sense, without violating the fundamental rule which requires that effect should be given to such intention of the parties as they have used fit words to express. The words in question, in their largest ordinary sense, comprehend all cases of self-destruction, and certainly include the case of the present testator; but, as it is admitted, that, in their largest sense, they comprehend many cases not within their meaning as used on the present occasion, it is to be considered whether the case of the testator falls within the object for which they are used in this policy." The cases of *Garrett* v. *Barclay*, *Kinnear* v. *Borradaile*, and *Kinnear* v. *Nicholson*, have little or no bearing upon the present.(c)

Sir *F. Kelly*, Solicitor-General, in reply. Lord Hale treats both suicide and homicide as including a killing *per infortunium*. As well might it be said that homicide, in the abstract, can only mean felonious homi-

(a) An insane person, *demens*, (*qui ex parte tantum mentis errore discitur*,) frequently exercises dominion over the will under the influence of hope and fear. The definition appears to be more applicable to the case of the *furiosus* (*qui mentis ad omnia lumine caret.*)

(b) 1 Hale, P. C., c. 4, p. 29.

(c) And see *The Amicable Society* v. *Bolland*, Selw. N. P. 10th edit. p. 1033, 4 Bligh, N. S. 194, 2 Dow. & Cl. 1.

cide, as that suicide can only mean *felo de se*. If dictionaries are to be relied on, Richardson distinctly puts it in the alternative; for, he defines "suicide" as "the slaying of himself, *or* self-murder." The word "commit" clearly does not advance the argument on the part of the defendant in error. It is not necessarily confined to the doing a thing that is criminal or unlawful. [POLLOCK, C. B. Suicide *per infortunium* is clearly not intended by this policy. Hale's view excludes suicide by a reasonable man.] The whole extent of the doctrine laid down by Hale, is, that a man who is *non compos mentis*, cannot be *felo de se*.

Cur. adv. vult.

*There being a difference of opinion amongst the judges who were present at the argument, their judgments were given *seriatim*, as follows:— [*457

WIGHTMAN, J. I am of opinion, upon the best consideration I can give to this case, that the direction of the learned judge to the jury upon the trial of the cause was right, and that the deceased Louis Schwabe did not, under the circumstances found by the jury, commit suicide, within the meaning of the policy of assurance upon his life. The exception or proviso in the policy is in these terms:—"Every policy effected by a person on his own life shall be void if such person shall commit suicide, or die by duelling or the hands of justice." The defendants below pleaded that Schwabe, whose life was insured by himself, did commit suicide; which was denied by the plaintiff in the action. The evidence was, that the deceased voluntarily took poison in sufficient quantity to cause death, for the purpose of killing himself, but that he was, when he took the poison, of unsound mind. The learned judge told the jury, that, to find a verdict for the defendants below, they must be satisfied that the deceased died by his own voluntary act, being then able to distinguish between right and wrong and to appreciate the nature and quality of the act that he was doing, so as to be a responsible moral agent. To this direction a bill of exceptions was tendered, it being contended on behalf of the defendants, that it was sufficient to entitle them to a verdict, if the deceased had sufficient mind to intend to kill himself, and to know that the poison would probably have that effect, and that he took the poison with that intent, though he might be unable to distinguish between right and wrong, or to appreciate the nature and quality of the act he was doing, so as to be a responsible moral agent. The question therefore is, whether by the word "suicide," *as used in the policy, a criminal killing of himself, such as could only be committed by a responsible moral agent, was intended; for, if it was, the direction of the learned judge and the verdict of the jury were right, otherwise not. [*458

The term "suicide" has no technical or legal meaning: it is derived from the Latin: but the compound word "*suicidium*," from which the English word is said to be derived, is not to be found in any Latin dic-

tionary or glossary, that I have met with.(a) It is admitted that the word is not to be understood in the largest sense of which it is capable, as that would include an accidental or unintentional killing of himself. We must, therefore, consider the ordinary meaning of the word in the English language, and connect such ordinary meaning with the apparent object and intent of the proviso in the policy in which it occurs. In all the English books in which it occurs, legal or other, it is almost invariably used to denote a criminal act. In Johnson's Dictionary "suicide," when used as denoting an act, is said to mean, "self-murder," "the horrid crime of destroying oneself;" and when used as denoting a person, is said to mean "a self-murderer." In Webster's Dictionary the same meaning is given: and so in Rees's Encyclopædia, and in the Encyclopædia Britannica. Blackstone, in the 4th volume of his Commentaries, p. 189, uses the term "suicide" as meaning a *felo de se*. He says: "As the suicide is guilty of a double offence, one spiritual, and the other temporal, the law has ranked it amongst the highest crimes." Innumerable instances might be given to show that the word "suicide" is almost invariably used in the English language in a criminal sense, and that such is the meaning of the word in its general and ordinary acceptation. If that *be so, is *459] there any thing in the policy, or the terms of it, to show that it is used in the proviso in question, not in the general and ordinary sense, but in another, of which it is capable, though unusual.

The word is used in a disqualifying proviso, by which, under certain circumstances, the insurance and the premiums paid are forfeited, and the benefit of the policy lost. The usual rule is, to look strictly at the terms of such provisoes, and not to extend them beyond their ordinary meaning; but, in the present case, if the ordinary meaning of the term "suicide" were more uncertain than it seems to be, the terms used in the proviso itself, in connection with it, tend to show the sense in which the insurers, whose word it is, intended it should be used. The policy is to be void, if the person "shall commit suicide, or die by duelling or by the hands of justice." The three excepted modes of death are classed together in one exception or proviso, and two of them are unquestionably the consequences of crime: and, if the maxim *noscitur a sociis* applies, it strongly tends to show that the third is used in a criminal sense also. In *Borradaile* v. *Hunter*, 5 M. & G. 639, 5 Scott, N. R. 418, which was cited upon the argument, ERSKINE, J., who agreed with the majority of the judges, says, as one of the grounds for his judgment in that case—"When I find the terms, 'shall commit suicide,'—that have been popularly understood and judicially considered as importing a criminal act of self-destruction,—changed for terms not hitherto so construed, it may, I think, be fairly inferred that the terms adopted were intended to embrace all cases of intentional self-destruction, unless it can be collected from the immediate context, that the parties used

(a) *In suicidium* appears to have been used for *in succidium*, i. e. *in subsidium*: *Ducange*, *in Verbis*.

them in a more limited sense." And the Lord Chief Justice TINDAL, in his judgment in the same case, says: "If the exception had run in the terms 'shall die *by suicide, or by the hands of justice, or in consequence of a duel,' surely no doubt could have arisen that a [*460 felonious suicide was intended thereby." I refer to these passages in the judgments of these learned judges, as showing their understanding of the meaning of the term "suicide," when used in such an exception, and in connection with such other terms as occur in the present case.

I forbear to speculate upon the probable object of the insurers in introducing such a proviso. It can hardly be because such modes of death as these excepted, are events not to be calculated upon; for, there is no doubt but that the probabilities of such events are as well calculated as any other; and moreover, those modes of death are not excepted where the policies are for the benefit of others. It may be that the exception in case of suicide was introduced to meet the case of a person insuring his life with the intention of committing suicide, in order to benefit his family; or, it may be that the insurers were influenced by some higher motive, and wished to check such modes of death as those excepted. Either of these objects would seem to indicate that the word suicide was used in its ordinary sense, importing a crime. But, as no satisfactory result can be drawn from such a speculation, it is better to judge of the case merely by the ordinary sense of the language used in connection with the other terms which are used along with it. Upon the whole, then, it seems to me that there is nothing in this case to show an intention on the part of the insurers to use the word "suicide" in a more extended sense than that which is ordinarily and popularly attributed to it; and that, on the contrary, the context shows that it was their intention to use it in the ordinary and popular sense, and that they have so used it; and, consequently, that the direction of the judge was correct, and that the defendant in error is entitled to judgment.

*ROLFE, B. The question in this case is very short. Louis [*461 Schwabe, in the year 1836, insured his own life for 999*l.*, in an office of which the plaintiffs in error were the directors liable to be sued for money becoming due on the policies of insurance. The policy by which the 999*l.* was insured, contained a clause in these words:—"Every policy effected by a person on his own life shall be void, if such person shall commit suicide, or die by duelling or the hands of justice." Schwabe died in 1845, and the defendant in error obtained letters of administration, and then sued the plaintiffs in error in action of assumpsit for the 999*l.*, secured by the policy. The plaintiffs in error pleaded that Louis Schwabe did commit suicide, whereby the policy became void. On this issue was joined. The issue was tried before my brother CRESSWELL, at the Liverpool summer assizes last year; and, on the part of the plaintiffs in error witnesses were called to prove that Schwabe's death was caused by his having voluntarily, and for the purpose of killing himself, swallowed a

quantity of sulphuric acid; and the same witnesses also gave evidence tending to show, that, at the time of his so swallowing the said sulphuric acid, Louis Schwabe was of unsound mind. My brother CRESSWELL, in summing up the case to the jury, told them, that, in order to find the issue for the plaintiffs in error, they must be satisfied that Schwabe died by his own voluntary act, being then able to distinguish between right and wrong, and to appreciate the nature and quality of the act he was doing, so as to be a responsible moral agent. To this ruling the plaintiffs in error have excepted; and we have therefore to say whether that ruling was right; and this depends on the meaning of the words in the policy "*shall commit suicide.*" If they mean, shall destroy his own life under circumstances which will make him a "*felo de se,*" then the ruling was right: *462] if they *mean merely "*shall intentionally kill himself,*" then the ruling was wrong.

The word "suicide" is not, as it appears to me, a word of art, to which any legal meaning is to be affixed different from that which it is popularly understood to bear. The authorities referred to by the defendant in error, as showing that suicide means the felonious taking away of a man's own life, do not at all bear out his proposition. Lord Hale, indeed, in the thirty-first chapter of his Pleas of the Crown, vol. i. p. 411, certainly speaks of *felo de se* and suicide, as convertible terms, and defines both the one and the other as being, where a man of the age of discretion, and *compos mentis*, voluntarily kills himself. But it appears to me plain from the whole context of the passage in question, that Lord Hale did not understand that he was giving a *definition* of the term suicide, except as it was often used to mean the same thing as *felo de se;* and this seems manifest from the fact, that, what in the passage in question he calls suicide, he a few lines above designates as *homicidium sui ipsius.* Now, there can be no doubt that a man who takes away the life of another, commits *homicide*, even though the act was justifiable, or may have happened entirely "*per infortunium,*" and was, therefore, not criminal at all; see Hale P. C. c. 39. And, therefore, taking suicide as meaning the same thing as homicide of one's self, it seems to follow, that, in the opinion of Lord Hale, neither guilt nor moral responsibility is necessarily involved in its legal definition.

The passage to which we were referred in 4 Bla. Com. 189, seems strongly to show that suicide does not, in the opinion of that learned judge, necessarily include the notion of moral responsibility. The learned commentator, after stating that the party who destroys himself is not *felo de se*, unless he was in his senses, adds that coroners' juries are apt to push *463] this principle too *far, and to hold that the very act of *suicide* is evidence of insanity. It is plain that the word suicide is there used as designating the mere act of self-destruction; otherwise, the passage would be insensible.

The only other authority referred to, in which the word suicide occurs, is

the recent case of *Borradaile* v. *Hunter*, 5 M. & G. 639, 5 Scott, N. R. 418, which was an action, like this, on a policy of insurance, in which was a stipulation making it void, not, as in this case, if the party should commit suicide, but, if he should "die *by his own hands*." There, a majority of the court held that the assured, having intentionally destroyed himself, though he was at the time incapable of distinguishing between right and wrong, the policy was void. TINDAL, C. J., differed from the rest of the court; and, at p. 668 of his judgment, the following passage occurs: "The expression, dying by his own hand, is in fact no more than the translation into English of the word of Latin origin "suicide:" but, if the exception had run in these terms—'shall die by suicide, or by the hands of justice, or in consequence of a duel,' surely no doubt could have arisen that a *felonious* suicide was intended thereby." This, though it certainly shows that TINDAL, C. J., would, from the context, have interpreted the word suicide in this policy as he did the words "die by his own hands," in *Borradaile* v. *Hunter*, as referring only to cases of self-destruction perpetrated by persons of sound mind, yet shows also that he did not think that to be the necessary or natural meaning of the word suicide, standing alone. The distinction between felonious suicide and suicide not felonious, taken and observed on by that learned judge, seems conclusively to show, that, in his opinion, *suicide* did not necessarily, *ex vi termini*, import a criminal act, and therefore the *act of a responsible moral agent; [*464 and in the same case, near the bottom of page 688, ERSKINE, J., speaks of *criminal* suicide, showing that he took the same view of the meaning of the word suicide as was taken by the lord chief justice. All these authorities seem to me to favour my interpretation of this word.

But, after all, our decision must rest entirely on what is the ordinary meaning of the term. In my opinion, every act of self-destruction is, in common language, described by the word suicide, provided it be the intentional act of a party knowing the probable consequence of what he is about. This is, I think, the ordinary meaning of the word; and I see nothing in the context enabling me to give it any but its ordinary signification.

For these reasons, I think that a *venire de novo* must be awarded.

PATTESON, J.(*a*) The sole question is, what is the true meaning of the words "commit suicide," in the policy in question?

It is argued, first, that these words have a technical meaning, and import a felony.

No authority is cited for this position: no case in which the finding of a jury that A. had "committed suicide," has been held equivalent to a finding that A. had "murdered himself," or that A. was "a felon of himself." I apprehend that the word "*murdravit*" was as necessary in a case of *felo de se* as in the case of the murder of another person; and,

(*a*) Coleridge, J., was absent. He had heard the argument, and concurred in opinion with the majority of the judges.

unless some records could be found, or some decisions of the courts, in which the word "suicide" has been held to have the same meaning as "self-murder," I am at a loss to know what ground there is for saying that the words "commit suicide" have any *technical* meaning.

*465] *It is argued, secondly, that the words, in their ordinary acceptation, import felony.

Now, the word "suicide," literally translated, means only "killing himself or herself:" the circumstances attending the act manifestly cannot affect the literal meaning of the word.

Reference is made to Hale's Pleas of the Crown, c. 31, p. 411, where Lord Hale, in speaking of the different kinds of murder, speaks of suicide—*felo de se.* No doubt, he does; but he is treating of criminal suicide only; and he nowhere intimates that the word "suicide" in itself imports criminal suicide. Johnson's dictionary and Richardson's dictionary are also referred to: but they are of very little weight when the court is considering what the parties to a contract mean by the words they have used. The word "commit" is said always to be used in a bad sense: be it so; but, how does that prove that it communicates the quality of felonious to the word "suicide?" No suicide is good or meritorious; it must always be spoken of in a bad sense, however pitiable, or, one may hope, excusable, the circumstances of it may be.

But it is argued, thirdly—which is the true question—that a felonious suicide only is pointed at by this policy, and that this appears by the words themselves, and by the context.

Now, the words themselves are large enough to embrace all self-destruction, as well as self-murder: not indeed, as was admitted in *Borradaile* v. *Hunter*, to embrace cases of mere accident, or of insanity extending to unconsciousness of the act done, or of its physical consequences; because such cases, although comprehended in the very words themselves, cannot

*466] be considered to have been in the contemplation of the *contracting parties; but clearly embracing an act of self-destruction committed by a person who was aware of the probable consequence of the act, and intended that consequence to follow. The context in this case, as in *Borradaile* v. *Hunter*, is, "or die by duelling or the hands of justice," except that, in that case, the words were—"die by his own hands, or by the hands of justice, or in consequence of a duel," so that the verb "die" applied to all the members of the sentence, whereas, here, the words "commit suicide" are complete as a sentence, without any word taken from the other part. I do not know that this makes any difference. It is true, that the other two modes of death appear to be connected with felony: yet I apprehend that the actual felony is no part of the cause of exception from liability. If it were, it would be competent to the plaintiff to prove that the deceased, although dying by the hands of justice,(*a*) was, in truth, innocent of the crime for which he suffered; in the same manner as it is,

(*a*) Vide suprà, 452 (*e*).

no doubt, competent to an executor to traverse an inquest of *felo de se*, found upon view of the body of his testator, by a coroner's jury; or, that the deceased, although killed in a duel, had fired his pistol in the air, and never contemplated shooting at his opponent. Such defences would surely be excluded; for, the words of the exception are express—"die by the hands of justice," whether justly or not,(*a*) "or by duelling," whether it were felony or not. It seems, in truth, that the exception is not framed with reference to the commission of any felony or crime; but to guard against the time for payment of the sum insured being accelerated by the voluntary act of the party interested in the money. It is equally so accelerated by voluntary act, if the deceased knew the consequences of his act, and intended them to follow, whether he was sane or under some delusion as to the moral *quality of the act done. That the voluntary act of the party interested,—and not the felony,—is the thing [*467 contemplated by the exception, is further apparent from this circumstance, that the clause in the policy goes on to do away with the exceptions altogether, when the deceased has parted with all interest, either for himself or his family, by assigning the policy, and, where the deceased has mortgaged or charged it for the benefit of creditors, to do away with the exception to the extent of the sum secured; yet felony would be committed in those cases just as much as if the policy had not been assigned.

I do not inquire into the reason of this qualification of the exception in the policy,—whether it has any thing to do with the removal from the deceased of temptation to destroy himself when he has parted with his interest, or not; or whether it is inserted as an inducement to those who want to raise money, to effect policies at this office; or what other reason may be conjectured. It is sufficient, for my purpose, that it tends to show that the contracting parties did not regard the commission of felony, as such, in their contract.

Upon the whole, I am of opinion that the words "commit suicide" mean only "kill himself;" and that the true question to be put to the jury is that which was put by ERSKINE, J., in *Borradaile* v. *Hunter*—whether the deceased knew the probable consequences of his act, and did that voluntarily, intending such consequences to follow; and that no question should be put as to the act done being criminal or not.

It follows, that, in my opinion, the judgment must be reversed, and a *venire de novo* awarded.

ALDERSON, B. I also am of opinion that there ought to be a *venire de novo* in this case; and I shall say but a very few words upon the points raised.

The true principle governing cases of this sort seems *to be very [*468 well laid down by my brother MAULE in *Borradaile* v. *Hunter*. The words in question seem to me in this case to have their proper construction, when taken as *including* all cases of voluntary self-destruction.

(*a*) Vide suprà, 452 (*e*).

They do not apply to cases in which the will is not exercised at all; as, where death results from accident or delirium; but where the self-destruction is voluntary, although the will may be perverted. It seems to me, therefore, that the argument arising out of the peculiar use of the word "suicide" in this contract, is fallacious; and that the word is often used in its most extended sense, that, namely, which has been assigned to it on behalf of the plaintiffs in error. For instance, to take so common a book as the Encyclopædia Britannica, under the head of "Suicide," I find this observation: "The general causes of suicide are twofold—insanity and crime." So that the word "suicide" has often, in its ordinary acceptation in the English language, that enlarged sense; and it is not, therefore, to be confined to cases of criminal intention alone. Then, reliance is placed upon the words in the company of which the word "suicide" is found in the policy—"death by duelling or by the hands of justice." I doubt, however, whether that argument carries the case much further. Suppose a person insured were to die in a duel, I do not conceive it would be competent to his representatives to say that he was insane at the time. Cases may easily be suggested, in which a duel might be fatal, and yet not felonious; such as, a duel in the course of war, or the like.

The case, however, has been so fully gone into by those learned judges who have immediately preceded me, that I shall do no more than express my concurrence with their judgments.

PARKE, B. The question in this case may be very shortly stated. By the terms of the policy, all the *conditions and regulations endorsed, are incorporated in it; and one of those, the sixth, is, that every policy effected by a person on his own life, shall be void, if such person shall commit suicide, or die by duelling or the hands of justice: and there is a plea, that the intestate did commit suicide.

*469]

On the trial, my brother CRESSWELL told the jury, "that, in order to find the said issue(a) for the defendants, it was necessary that the said jury should be satisfied that Schwabe died by his own voluntary act, being then able to distinguish between right and wrong, and to appreciate the nature and quality of the act that he was doing, so as to be a responsible moral agent; that the burden of proof as to his dying by his own voluntary act, was on the defendants, but, that being established, the jury must assume that he was of sane mind, and a responsible moral agent, unless the contrary should appear in evidence."

The question is, whether this direction was correct. I agree with the majority of the judges who have preceded me, that part of the direction, viz. that as to the necessity of his being a responsible moral agent, was wrong; for, I think, that, according to the proper construction of this policy, if the intestate *voluntarily* killed himself, it was immaterial whether he was then sane or not.

This being a written contract between the parties, the construction of it

(a) The issue joined on the second plea.

belongs to the court; and the court must adopt the usual rules, and construe the provisos or conditions, as well as the other parts of the instrument, according to the ordinary meaning of the language used; except that terms of art, or technical words, must be understood in their proper sense, unless the context controls or alters their meaning: ancient words may be explained by contemporaneous usage; *and words which have acquired a peculiar sense, by usage, in particular districts, occupations, or trades, must be read (the usage being found by the jury) in their acquired sense. [*470

Here, there is no occasion for any of these exceptions in construing this instrument. The two latter are inapplicable; and there is no ground for saying that the word "suicide" is a legal technical term, or word of art. An inquisition stating that the deceased committed suicide, would be clearly informal and bad. Nor have we a decision of any court on the meaning of these precise words, by which we should consider ourselves bound. The case of *Borradaile* v. *Hunter*, 5 M. & G. 639, 5 Scott, N. R. 418, certainly is not such; nor can the intimation of the opinion of the Lord Chief Justice TINDAL, by way of illustration of his argument, as to the meaning of the expressions now under consideration, have the same effect as a decision.

The whole question resolves itself into an inquiry as to the sense of words used in the ordinary language of the present day, the instrument to be construed bearing date in the year 1836; and we are all perfectly competent to form an opinion upon such a subject, and need not refer to lexicographers, or authors, ancient or modern. If the case depended on the explanation given by dictionaries, the result, nevertheless, would be the same. Johnson, indeed, explains the word "suicide" by "self-murder, the horrid crime of self-murder"—which, no doubt, it includes; Webster, as both "self-murder" and "the act of designedly destroying one-self," and adds, to constitute suicide, the person must be of years of discretion, and refers to Blackstone, inaccurately;(*a*) for, the passage in that author(*b*) applies to *person being *felo de se;* Richardson, who states them to be words of modern formation, as "the slaying of himself, *or* self-murder." But the question does not depend upon the opinion of such authors; for, though they are authorities, they are not conclusive: the case turns on the meaning of the vernacular language which we now use; and I must own that I feel no doubt as to the import of the expression "commit suicide." In ordinary parlance, every one would so speak of one who had purposely killed himself, whether from *tædium* of life, or transport of grief, or in a fit of temporary insanity. To die by his own hands, or to commit suicide, seems to me to be all one, and to apply to all cases of voluntary self-homicide; and I do not see any reason why a different [*471

(*a*) Except upon the supposition that the author considered "suicide" and "felonious self-destruction,"—as was, in this case, contended by the plaintiff below,—to be, in truth, convertible terms.

(*b*) Vol. IV. p. 189.

sense to the ordinary one should be attributed to these words in this instrument: on the contrary, I see very good ground for believing that they are used in their ordinary sense, in order to avoid the consequences which would have followed the adoption of such words as "committing felony of himself," or "self-murder;" as it may be well supposed that juries would, in favour of the family of the deceased, take the same lax view of the evidence as coroners' juries generally do.

I think that the judgment ought to be reversed, and a *venire de novo* awarded.

POLLOCK, C. B. I regret that I differ from the majority of the court who have already delivered their opinions: but, as, after the fullest deliberation, I feel compelled to come to the conclusion that the direction of my brother CRESSWELL to the jury at the trial, was correct in point in law, and that the plaintiff below is entitled to our judgment, it is my duty, with whatever reluctance and hesitation, to state my own view of the case, and the reasons upon which that conclusion is founded.

*472] The question, in point of form, has been so clearly *stated already, that it is unnecessary to state it again; but, in substance, it is, what is the meaning of the words "*commit suicide*" in the policy in question?—does the expression mean and include that the party was *compos mentis*? that he was a responsible being, capable of distinguishing right from wrong,—as stated by my brother CRESSWELL? or, is the expression applicable to a person who *intentionally* produces his own death, (that is, uses the means of destruction, with a knowledge of the effects they will produce, and with the intention of producing them,) but whose understanding, or judgment, or will, is so perverted by disease that he has ceased to be responsible criminally for his conduct?—in short, who is insane (possibly) upon every other point but the physical effects of using a deadly weapon, or the result of applying adequate means to produce the destruction of life?

In considering the question, every thing turns on the meaning of the words as ordinarily occurring in the English language and in English authorities, and especially in books written on law or morals.

Now, what is the meaning of the word "*suicide*," merely as an English word, according to the best authorities? Does it mean the killing of one's self, in the same way as "homicide" means, simply, the killing of a human being—whether by accident, negligence, or in self-defence? or, does it imply a *criminal* taking away of one's own life?

The word is of modern origin: it does not occur in the Bible, or in any English author before the reign of Charles II.; probably, not till after the reign of Anne. As far as I have been able to trace it, it first occurs as an

*473] English word in Hale's Pleas of the Crown. Hale was a judge during the Commonwealth,(a) and died in *1676. His work was

(a) He was also Chief Baron, (1660,) and Chief Justice of the Common Pleas, (1671,) after the Restoration.

published in 1736. It is not in Hawkins, first published in 1716: but it is to be found in Blackstone. These, as legal authorities, will be adverted to presently; but I wish to notice first the authorities not legal.

The meaning assigned to the word by Johnson, in his dictionary, is, "self-murder—the horrid crime of destroying one's self—a self-murderer;" and he gives no other signification, In Richardson's dictionary it is, "the slayer of himself;" also, "the slaying of himself—self-murder." In the *Dictionnaire Universel* of the French language, published in 1771, it is said that the word was introduced into the French language by the Abbé Desfontaines; and a quotation is given from his works, where it is manifestly used in the sense given to it by Johnson. Desfontaines was born in 1685, and died in 1745.

In the year 1644, was published with the works of John Donne (the poet,) dean of St Paul's, who died in 1631, his "βιαθανατος, a Declaration on that Paradox or Thesis that *self-homicide* is not so naturally Sin, that it may never be otherwise." The word "suicide" does not occur in this work; from which it may be presumed that it was not then in general use, and perhaps was not in use at all.

In 1785, Archdeacon Paley published his work on The Principles of Moral and Political Philosophy. The third chapter of book iv. is on "Suicide." Throughout that chapter the word is used as denoting the act of a reasonable, moral, and responsible agent; and in no other sense.

In 1790, Charles Moore, M. A., rector of Cuxton, in Kent, published "A full Enquiry into the Subject of Suicide; to which are added (as being closely connected with the subject) two Treatises on Duelling and Gaming." Page 4 contains the following passage: "There *are [*474 points, then, to be settled, and exceptions to be made, previous to a general charge of guilt on all who put a sudden end to their own lives. For, though every person who termintaes his mortal existence by his own hand, commits *suicide*, yet he does not therefore always commit murder, which alone constitutes its guilt. Some distinction is necessary in regard to a man's killing himself, as it would be had he killed another person; which latter he may do either inadvertently or legally, and therefore, in either case, innocently, and without the imputation of being the murderer of another. When a man kills himself inadvertently or involuntarily, it comes under the legal description of accidental death, or *per infortunium;* but, as to his doing it *legally*, the law allows of no such case. The only instance of innocence which it allows to the commission of voluntary suicide, is in the case of madness; when a man, being deemed under no moral guidance, can be subject to no imputation of guilt on account of his behaviour to himself or others."

In the Encyclopædia Britannica, the explanation of the word "*suicide*" is, "the crime of self-murder," or "the person who commits it." There is a treatise on law, in the Encyclopædia Metropolitana, in which *suicide* is spoken of: it is in the 2d volume of pure sciences, p. 711, "On

Offences against Self." Speaking of the cases where society may interfere to prevent or punish, the writer says: "This observation applies to suicide—the greatest offence a man can commit against himself."

These are all the lay authorities I think it necessary to refer to. But there are *legal* authorities, which, if unopposed by other and greater authorities, I should deem binding and conclusive upon the subject, in a court of law.

*475] *Hale, in the work already alluded to, defines *felo de se*, or *suicide*, to be "where a man of the age of discretion, and *compos mentis*, *voluntarily* kills himself, by stabbing, poison, or any other way." Judge Blackstone in his Commentaries, first published in 1765—1768, uses the word in connection with self-murder, and in the same sense as Hale.(a) In Burn's Ecclesiastical Law, tit. *Suicide*, first published in 1760, it is said: "By the rubric before the burial office, persons who have laid violent hands upon themselves, shall not have that office used at their interment. And the reason thereof given by the canon law, is, because they die in the commission of a mortal sin: and therefore this extendeth not to idiots, lunatics, or persons otherwise of insane mind, as, children, under the age of discretion, or the like. So also not to those who do it involuntarily, as, where a man kills himself by accident; for, in such case, it is not their crime, but their very great misfortune." The 4 Geo. 2, c. 52, relates only to *felo de se:* but the editor says, "Suicides are to be buried in the churchyard at night; but no service is to be performed over them." In Jacob's Law Dictionary, in the edition of 1772, under title "Suicide," reference is made to title "Self-murder:" where it is said that "self-murder is ranked amongst the highest crimes, being a peculiar species of felony—a felony committed on one's self. The party must be in his senses, else it is no crime. In this, as well as all other felonies, the offender must be of the age of discretion, and *compos mentis;* and, therefore, an infant killing himself, under the age of discretion, or a lunatic during his lunacy, cannot be a *felo de se.*" Blackstone says:(a) "Self-murder, the pretended heroism, but real cowardice, of the stoic philosophers, who destroyed themselves, to avoid those evils which they

*476] had not *fortitude to endure, though the attempting it seems to be countenanced by the civil law,(b) yet was punished, by the Athenian law, with cutting off the hand which committed the desperate deed.(c) And also the law of England wisely and religiously considers that no man hath a power to destroy life, but by commission from God, the author of it: and, as the *suicide* is guilty of a double offence—one spiritual, in invading the prerogative of the Almighty, and rushing into his immediate presence uncalled for—the other temporal, against the King,

(a) See 4 Bl. Comm. p. 189.

(b) "*Si quis impatientiâ doloris, aut tædio vitæ, aut morbo, aut furore, aut pudore mori maluit, non animadvertatur in eum.*" Dig. lib. 49. tit. 16, l. 6. And see Bynkershoek, Observ. Jur. Rom. lib. 4, c. 4, Περὶ Αὐτοχειρίας.

(c) Pott. Antiq. b. i. c. 26.

who hath an interest in the preservation (*a*) of all his subjects; the law has therefore ranked this among the highest crimes, making it a peculiar species of felony—a felony committed on one's self. A *felo de se*, therefore, is he that deliberately puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death: as, if, attempting to kill another, he runs upon his antagonist's sword; or, shooting at another, the gun bursts, and kills himself.(*b*) The party must be of years of discretion, and in his senses, else it is no crime."

It should seem, therefore, that the word has never been used by *law* writers except in the sense of a criminal taking away of one's own life: at least, I am not aware of any instance in any law writer, of its use in any other sense.

It may be presumed that the word is of *legal* introduction, and was perhaps first taken from the law writers by Archdeacon Paley. It has since become a *word of general use: but I am not aware of any [*477 authority by which it can be shown that it has lost the meaning to express which it was originally framed, or adopted from some other language. And I think it is clear, that, although it may possibly sometimes admit, in modern times, of a more loose and vague interpretation, it certainly *may* mean self-destruction by a person *compos mentis*, and morally responsible for his acts: and the question is, whether *that* meaning is or is not what was intended by the parties to this contract.

Now in this policy, I find it coupled with the word "*commit*;" the expression is, "*commit suicide.*" The meaning of "commit," in Johnson (with reference to this use of the word) is, "to *perpetrate*—to do a fault—to be guilty of a crime;" and "perpetrate" is, to *commit*, to *act*—always in an *ill* sense. There is no material difference in Richardson. If, therefore, it be admitted, as I think it must, that one meaning of "suicide" imports not merely an act, but a *criminal* act, the use of the expression "commit suicide" is some, and I own I think a strong, reason for believing that the parties to this contract used the word in that sense.

The sentence also in which it is found, may throw some light on the matter. It is coupled with death by duelling or by the hands of justice: and the condition is not—if the party shall *die by suicide*, but, if he shall "*commit* suicide." I think this imports some deliberate criminal act, and not an act the result of insanity, which leaves him intelligence enough to know the means of death, but without any moral control over his actions.

Again, does the nature of the instrument itself supply any argument either way? The object of such a policy is, generally, to make provision for the family of the insurer; and he would naturally desire to include all risks. It is admitted that he is protected, not only against the [*478 common chances of death by disease, but *against accident, or mere

(*a*) Rather, in the retention of each of his subjects, for the benefit of himself and his other subjects; as, otherwise, the rule *unusquisque potest renuntiare juri pro se introducto*, would seem to apply.

(*b*) 1 Hawk. P. C. 68, 1 Hale, P. C. 413.

negligence of the grossest kind. He may even be the immediate cause of his own death by a deadly weapon, provided he be so insane as to be utterly unconscious of what he is doing. But, according to the argument for the defendants below, if he retains a glimmering of reason just enough to enable him to seek to produce death by competent means—it matters not whether he be lost to all moral sense, and for any *other* act or crime a complete madman;—his policy is forfeited.

I own I cannot, from the nature of the contract, believe that this was what the parties intended. A man anxious to provide for his family, would, among the possible calamities of life that might terminate it, anticipate *madness* as one: and, whether it prostrated his intellect altogether, or produced delusion, or destroyed only a part of his faculties, would make no difference. The language used in the agreement between the parties, does not *necessarily* exclude this risk. I think, therefore, as against the office, the risk ought to be included.

Examining the question upon more general principles, I am induced to come to the same conclusion. In the eye of the law, with reference to crime, a man is either *compos mentis* and responsible, or he is *non compos mentis* and irresponsible. Physiologically, no doubt, it is otherwise: and the gradations are perhaps imperceptible, from the highest perfection of intellect, to the darkest obscuration of the mind. But, in point of law, as soon as it is ascertained that a person (to use the language of my brother CRESSWELL in directing the jury) has lost his sense of right and wrong, it matters not what else of the human faculties or capacities remain: he ceases to be a responsible agent; and, in my judgment, can no more *commit suicide* than he can commit murder.

*479] Lastly, the views taken by the defendants' counsel *appear to me to be opposed to all the principles of sound philosophy which can be applied to the subject.

It is admitted, of course, that the office would be liable, if death ensued from any of the ordinary casualties of life, even resulting from the act of the party insured; provided the act were not done with the intention to kill. The act of a raving madman, or of a patient under the influence of disease, is protected by the policy, if the consequences are not foreseen and intended. So, if insanity should produce delusion, and deprive a man of the use of the ordinary senses, and the party should mistake a deadly weapon for an instrument of music, and fancy he was playing on it, when he was destroying his own life; this would not be *committing suicide* within the proviso of the policy. But, what if the delusion, instead of applying to a pistol, or other instrument of death, applied to the man himself? Suppose he believed he was Marcus Curtius, and ought to leap into a gulf? or that he was one of the Decii, and must sacrifice himself for the benefit of his country? or, what, if he fancied himself an apostle, and that it became his duty to die the death of a martyr? What sound philosophy is there in taking a distinction between a delusion about a pistol, and a

delusion in respect of the man against whom it may be directed? or, what distinction, in point of good sense, can be taken between physical blindness, in consequence of which the party insured walks into a well, and intellectual or moral blindness, which, leaving him the use of his senses, and a knowledge of the *physical* consequences of his acts, has deprived him of all judgment which should control and govern his acts, and of all sense to perceive their *moral* consequences?

It may be said, that, when the delusion extends to the character, office, or condition of the party,—so that he mistakes his identity,—he does not mean to kill *himself*, and in such a case the office would be liable. *But, how far is this to be carried? Suppose, under a delusion, [*480 he believed he had committed a crime for which he ought to put himself to death, and that this was the result of insanity—is this a mistake of his identity? and how is a judge to direct a jury so as to steer clear of the difficulties that would thus arise? In my opinion, such subtleties as these ought to find no place in the decision of such a question as the present, in which is involved (from the present extensive practice of life-insurance) the peace, the happiness, and security of thousands of families. Some simple, clear, and safe rule ought to be laid down as to a subject in which the public is so deeply interested.

In my judgment, if death be the result of *disease*—whether by affecting the *senses* or the *reason*—the insurance office is liable under this policy. Whether the privation of reason be total or partial, whether it produce delusion of one kind or another—whether it affects sensation, apprehension, memory, judgment, or will, or any of the moral and intellectual powers which constitute our nature—if the act be not the act of a sane responsible creature, but is the result of any delusion or perversion, whether physical, intellectual, or moral, it is not the act of *the man*: and, to hold otherwise, seems to me a departure from the simplicity of the law, and to be repugnant to sound philosophy, which is the spirit of all law, and on which all law ought to be founded.

I will only add, that I have not adverted to the case of *Borradaile* v. *Hunter*, because the expression in that case—"*shall die by his own hand*"(*a*)—is so different from the expression in this case—"*commit suicide*"—that that decision is no authority on the point arising here.

*The opinion of the majority of the learned judges who were [*481 present at the argument being in favour of the plaintiffs in error, a *venire de novo* was awarded.(*b*) Judgment accordingly.(*c*)

(*a*) Vide antè, 476 (*a*) *in fine*.

(*b*) The case proceeded no further; the office agreed to return the premiums received, with interest at 4 per cent., amounting to 967*l.* 9*s.* 7*d.*, and to bear their own costs. An offer to the same effect had been made before action, but rejected.

(*c*) "Suicide" appears to be a word introduced to supply the want of a legal term to denote the act of the *felo de se*. Legal and popular writers, when treating of this offence, have been almost unavoidably led to consider the proximate act of excusable self-destruction, or *quasi-suicide*; and have done so without formally disclaiming the use of a term which, though in some sense *technical*, is not *a word of art*. The term, in addition to its primary and