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Court : House of Lords

Decided On : Jul-30-1920

Judge : Lord Viscount Finlay, Lord Dunedin &Amp; Lord Shaw of Dunfermline

Appeal No. : [1920] UKHL 5

Appellant : Carmichael

Respondent : Carmichael's Executrix

Judgement :

Viscount Finlay.

In my opinion this appeal should be allowed.

In this case I have had the advantage of reading the judgment which is about to be delivered by my noble and learned friend, Lord Dunedin. That judgment deals so completely with the case that it is unnecessary for me to say anything except that I agree with it, reserving my opinion on the point on which there was a difference of opinion in the Court of Session in the case of Cameron's Trustees v. Cameron .

I am authorised to state that my noble and learned friends Viscount Haldane and Viscount Cave agree in the judgment I have just delivered.

Lord Dunedin.

Mr H. F. Carmichael, who is the real raiser and claimant in this multiplepoinding and respondent in this appeal to your Lordships' House, received on or about 30th September 1903, in Glasgow, from the English and Scottish Law Life Assurance Company, the pursuers and nominal raisers in the multiplepoinding, in response to an application by letter by his wife, a pamphlet explaining the system of deferred assurances for children. The concluding words of the letter from the Company which enclosed the pamphlet explain that there is a formal proposal at the end of the book, which, if filled up, will receive the Company's immediate attention. Thereafter a meeting took place between Mr and Mrs Carmichael and an official of the Company, which was followed by the dispatch of a leaflet showing the rates, which leaflet had also a proposal for assurance attached. Following this up, Mr Carmichael, on 21st October 1903, filled up and signed a proposal form. The proposal bore that the application was for an insurance of 1000 on the life of Ian Carmichael, his son, described as born on 29th October 1894, and then eight years of age, the sum assured to be paid on death, and the assurance to commence when Ian Carmichael reached the age of twenty-one years.

The conditions of the proposal need not for the moment be referred to. The acceptance of the proposal was duly notified by the Company, and thereafter a policy was issued. The material portions of the policy are as follows:-“Whereas Hugh Fletcher Carmichael; Consulting Engineer, Hong Kong, herein called the Grantee, has proposed to effect an Assurance with the English and Scottish Law Life Assurance Association, for the sum of One Thousand pounds upon the Life of his son, Ian Neil Carmichael (stated to have been born on the Twenty-ninth day of October 1894), hereinafter called the Life Assured, on the terms hereinafter stated, and has delivered at the Office of the said Association a Proposal and Declaration … And whereas, the Grantee has paid to the Association the sum of Nine Pounds, Ten Shillings Premium for the year terminating on the Twenty-first day of October 1904, inclusive, and has agreed to pay to the Association the like Premium on the Twenty-second day of October 1904, and on every subsequent Twenty-second day of October up to and inclusive of the Twenty-second day of October 1914. Now this Policy witnesseth, that if the Life Assured shall die before the Twenty-ninth day of October in the year One Thousand Nine Hundred and Fifteen, then the funds and other property of the Association shall be subject and liable,

according to the provisions of the Deed of Settlement of the Association and of the Resolutions endorsed thereon, to repay at one of the principal Offices of the Association in Edinburgh or London, or at the Office in Dublin, to the Grantee, his Executors, Administrators or Assigns, immediately after the death of the Life Assured (prior to the said Twenty-ninth day of October 1915), and his age and the Title to this Policy, shall have been proved to the satisfaction of the Directors of the said Association, all the said Premiums so paid by the Grantee or his foresaids but without any interest thereon. And the Receipt of the Grantee or his foresaids shall also be a good discharge to the Association for any Surrender Value allowed under this Policy prior to the said Twenty-ninth day of October 1915. But should the Life Assured live until the said Twenty-ninth day of October 1915, and so attain Twenty-one years of age, and he or his Assigns shall continue thereafter to pay to the said Association the Premium of 9, 10s. on the said Twenty-second day of October in each year during the continuance of this Assurance, then the Funds and other Property of the Association shall be subject and liable as aforesaid to pay, at one of its said Offices, to the Executors, Administrators, or Assigns of the Life Assured immediately after the death of the Life Assured (on or subsequent to the said Twenty-ninth day of October 1915), and his age and the Title to this Policy shall have been proved as aforesaid, the said sum of One Thousand Pounds of lawful money of Great Britain. …"

The premiums were duly paid each year, up to and including the 22nd of October 1915, by Mr Carmichael, who kept the policy in his possession. On the 29th of October 1915 Ian Carmichael attained 21 years; on 25th July 1916, having joined the Air Force, he was killed in an air accident. He left a will by which he conveyed all his property to his aunt, Miss M'Coll, claimant in the multiplepoinding and appellant before your Lordships' House. She included the proceeds of the policy in the inventory which she submitted for probate. Mr Carmichael intimated to the Assurance Company that he claimed the proceeds, and to determine the question he raised the present action of multiplepoinding. He condescended on the fund in medio as consisting of 1000 due by the Assurance Company. To this no objection was taken. Claims were lodged by him and by Miss M'Coll, and a record closed in the competition. The Lord Ordinary ranked and preferred Mr Carmichael. The claimant, Miss M'Coll, having reclaimed to the First Division, they ordered a proof

of statements as to the knowledge of Ian Carmichael of the existence of the policy and his right of having options thereunder. Proof was led, and after consideration thereof the First Division, with three consulted Judges, adhered to the interlocutor of the Lord Ordinary by a majority. Appeal has now been taken to your Lordships' House.

The obligation in the policy is to pay to the heirs, executors, and assignees of Ian Carmichael. It is, however, the fact that the father paid the premiums and kept the policy in his own possession. The question therefore comes to be-Had Ian Carmichael a jus quœsitum tertio under the policy which passed the proceeds thereof to his executrix?

I think it very necessary to begin by pointing out that the expression “jus quœsitum tertio” is, in different cases and different circumstances, used in a varying sense, or, perhaps I might better say, is looked at from a different point of view. The one sense is meant when the question being considered is simply whether the tertius C has the right to sue A in respect of a contract made between A and B to which contract C is no party. The controversy then arises between C, who wishes to sue, and A, who denies his title to do so. It is here that there is a sharp technical diversity between the laws of England and Scotland. In England, no matter how much the contract contained provisions for behoof of C, C could never sue at law. In equity he could sue, but he could only sue if, by the terms of the contract, he could successfully maintain that A was constituted a trustee in his favour. In Scotland, if the provision is expressed in favour of C, he can sue, and this is often designated by saying “He has a jus quœsitum tertio.” Probably the reason of the difference indicated lies in the simple fact that in Scotland law and equity were never separate. Another familiar illustration of the same class of difference will be found in the right of an assignee in Scotland to sue in his own name, a right which at common law in England apart from statute he did not possess. But, as already stated, in all this class of cases the controversy is between A and C: B is either no longer existent or is, so far as he is concerned, quite willing that C should exact his rights. Examples of this first class of controversy may be found in such cases as Finnie v. Glasgow and South-Western Railway Co., Henderson v. Stubbs, and Love. The other sense of the expression is when the emphasis is, so to speak, on

the quœsitum, and when the controversy arises not between C and A but between C and B. In such a case A is willing to perform his contract, and the contract in form provides that A shall do something for C, but B, or those who represent B's estate, interfere and say that B and not C is the true creditor in the stipulation. Of this second class are the deposit-receipt cases such as Jamieson v. M'Leod, Crosbie's Trustees v. Wright (examples of different results according to the evidence), and insurance policy cases such as Hadden v. Bryden and Jarvie's Trustee v. Jarvie's Trustees .

It is needless to say that the present case is one of the latter category. No question is raised by the Insurance Company. They are willing to pay the 1000. The question is, to whom are they to pay it? Moreover, so far as the form of the stipulation is concerned, it is clear that the creditors are the executors, administrators, or assigns of the person whose life is assured, i.e., of the son, for to them alone is payment expressed to be made. Nor is the condition of continued payment of the premium any obstacle, for such continued payment is only to be made on each 22nd of October after the 29th October 1915, the date of the assured attaining majority, and “during the continuance of this assurance,” and the payment of the sum assured is to be made immediately after death, which necessarily brings the assurance to an end. The obligation on the Company to pay was therefore absolute. The prestation under the condition never became exigible according to its terms. Using the letters as above, A is here willing to pay: the controversy is as to whether B or C is entitled to receive. It may therefore thus be stated-Has C a jus acknowledged by A which is quœsitum to him in a question with B?

If the question be thus stated, it suggests itself to me that the learned Judges who formed the majority in the Court below have approached the question from too narrow a point of view when they have treated it, as they have done, as one of donation and nothing else. I say “too narrow a point of view”; I do not call it error. When B, contracting with A, is under no obligation to secure any benefit for C, and makes a stipulation which in form assures a benefit to C, the query “Did he do that in such a way that C and not he must be the recipient of the benefit?” may not unaptly be put in the form of “Did he intend to make a donation in favour of C?”

There is, however, just the temptation in so doing to fasten the attention too closely on the one fact of delivery, it being the case that donation can as a rule not be made out where there has been delivery neither of the thing alleged to be donated nor of the document which is the title to the thing; and undoubtedly it is the absence of delivery to the son of the document of obligation which the father held from the Insurance Company which determined the judgment in favour of the respondent. The wider, and I think the juster, method of approaching the present question is to ask oneself whether under all the circumstances, and in view of the terms of the document, there was created a jus quœsitum in the second sense in the person of the tertius, in this case the son.

Here I must first deal with an argument of the appellant which, if sound, would be conclusive, but which, in my opinion, attempts too much. It is, that the terms of the document alone are sufficient to create the right. Doubtless she thought to support this argument by a very great authority, the words of Lord Stair (Inst. I. x. 5), which, if taken literally, and according to what I may call the natural grammar, would go the whole length. Lord Stair says: “It is likewise the opinion of Molina, and it quadrates with our customs that when parties contract, if there be any article in favour of a third party, at any time, est jus quœsitum tertio, which cannot be recalled by either or both of the contractors, but he may compel either of them to exhibit the contract, and thereupon the obliged may be compelled to perform.” That would mean that the moment you find from the form of the obligation that there was a jus conceived in favour of a tertius it proved that that jus was quœsitum to that tertius. I do not think Lord Stair meant to lay down such a proposition. If he did, and if your Lordships were to say he was right in so doing, then you would overrule not only the long string of comparatively modern cases as regards deposit-receipts of which I have already mentioned two, and of which a whole series can be found in the Digest under the title of “Donation,” so numerous that it would be tedious to cite them, but also the older authorities as to bonds, destinations in titles to land, and insurance policies, which, beginning with the case of Hill decided in 1755, go on with Balvaird in 1816, and come down to Hadden in 1899. Speaking for myself, I should decline to be a party to such a holocaust of accepted authorities in the law of Scotland; but I do not think Lord Stair meant any such thing. It was pointed out by Lord Ardmillan in

Blumer and Co. v. Scott and Sons, and accepted by Lords Dundas and Mackenzie in this case, that the transposition of the words “est jus quœsitum tertio” and the words “which cannot be recalled by either or both of the contractors” would make the proposition agree with the decided cases. Irrevocability would be a condition, not a consequence, of the expression of the jus in favour of the tertius. Perhaps the ambiguity arises from Lord Stair putting his sentence partly in Latin and partly in English. If he had followed est jus quœsitum tertio by quod non revocari potest, the sentence might grammatically have read as Lord Ardmillan wished it to. But the real reason for supposing that Lord Stair did not mean the larger proposition is the fact that he quotes four cases on which he founds what he is saying, and not one of these would warrant this larger proposition. In Nimmo a purchaser of property was taken bound to pay part of the price to creditors of the seller. The purchaser began to spend money and the creditors used inhibition, but the seller was a consenter to the proceeding. It was therefore a case of the first class; not of the second. The same is true of the case of Ogilvie, Ogilvie being a party to the action. Renton was a case of spuilzie of teinds. The defender proponed a defence to elide the spuilzie on the ground that, along with the title by which the pursuer acquired the teinds, he signed a bond to the disponer that he would never exact more from the teinds than 100 Scots yearly. It was replied that the defender was no party to the bond, but the defender succeeded in having her defence held as relevant upon the explicit ground that the bond had been registered in the Books of Council and Session. Irving turned upon the determination that, as the bond had passed out of the grantor's hands, it was in the circumstances presumed to have been delivered. Both these cases were therefore of the second class, but in both there was something beyond the mere terms of the contract, which something formed the ratio decidendi of the case. I have examined all the cases given in Brown's Synopsis, voce Jus Quœsitum Tertio, which embraces the decisions from the earliest periods down to 1829; and I have found only one which would bear out the wider interpretation of Lord Stair's dictum. It is the case of Warnoch decided in 1759. I ought to mention that there is one other, but the report is so imperfect that it is of no value. The report of Warnoch says that a man in his contract of marriage provided his intended wife with an annuity should she survive him, but burdened it with an annuity of 12 Scots in favour of his stepmother should she be then alive.

He died leaving a settlement in which he revoked the annuity to the stepmother. The stepmother sued and was successful against the widow. It is possible that there may have been registration of the contract. The report, however, does not mention it. As it stands the case will not live with the long series of authorities which I have quoted, nor with the authorities dealing with the distinction between provisions onerous and testamentary. It is obvious that there was no onerous consideration in favour of the stepmother, who was no relative to the wife, and bore no relation to the marriage, such as is found in the case of children to be procreated of a marriage. And the remark of the learned Judges in this case is unanswerable-that it is inconceivable, if Lord Stair's dictum, as the appellant would have it, was good law, why all the cases were decided on evidence, whereas the dictum would have cut the Gordian knot. I therefore reject the case as an authority, and reject the argument for the appellant that the mere terms of the document prove her case.

Taking now Lord Stair's dictum in the other sense, in which I hold it to be sound, what it comes to is this, that irrevocability is the test; but the mere execution of the document will not constitute irrevocability. It is obvious that if A and B contract and nothing else follows, and no one is informed of the contract, A and B can agree to cancel the contract. This is well expressed by Lord Cranworth in this House in the case of Synnot v. Simpson :-“I do not at all question or doubt the doctrine … that, where a person who is indebted makes provision for payment of his debts by vesting property in trustees for the purpose of discharging them, but does so behind the backs of the creditors, and without communicating with them, the trustees do not become trustees for the creditors. The arrangement is one supposed to be made by the debtor for his own convenience only; it is as if he had put a sum of money into the hands of an agent, with directions to apply it in paying specified debts. In such a case there is no privity between the agent and the creditor. The debtor may at any time revoke the authority given to his agent, and may recall the money placed in his hands.”

The very point alluded to in the last sentence of his Lordship had been decided by the Court of Session in 1697 in the case of Stonehewer v. Inglis, where a creditor, other than the special creditors, executed an arrestment in the hands of the party

with whom the money was deposited. There must therefore be something more than the form of the document forming the contract and conceived in favour of the tertius to effectuate irrevocability. This something may be provided in different ways, for, after all, it is a question of evidence. Now the most obvious evidence is the delivery of the document to the tertius himself. The delivery of a deposit-receipt taken to the tertius, or the endorsement of a deposit-receipt taken to the depositor and the handing of the receipt to the tertius, are familiar examples. In place of delivery of the document to the tertius there may be a dealing with the document in such a way as to put it out of the power of the original contractors to deal with it. This may be effected by a registration for publication, i.e., in the Books of Council and Session. There the deed, once registered, is left, and cannot be recalled. The case of Cameron's Trustees, where it was held that a jus quœsitum was not established, is no exception to this reason, for in my judgment in that case I was careful to point out that the Register of Sasines is not like the Books of Council and Session. It is only by a modern and statutory fiction that a conveyance has any place there, and that only as a copy, the effect of which is made equivalent to the registration of an instrument of sasine. Not that registration in the Register of Sasines might not be conclusive, for in some cases it would be equivalent to delivery. Take the well-known case of Balvaird v. Latimer . James Balvaird had bought property from Gilmour. He took the disposition in favour of George Balvaird, but he never took infeftment, and died with the deed in his repositories, leaving a general settlement in favour of his widow. The widow made good her title to the property, but, had infeftment been taken, the result, as the Lord President points out, would have been otherwise. It would then have fallen in exact line with the older case of Gordon v. M'Culloch, where a person disponed to himself as life-renter and then to an institute in strict entail with a substitution of heirs. Investiture was taken, and the deed recorded in the Register of Tailzies. It was held that the liferenter and institute could be prevented at the instance of a substitute from jointly altering the deed. In such cases the taking of the sasine operates as the delivery from A to C, but in Cameron's case the sasine effected no delivery from A to C; it only effected delivery from B to A, and I held that it was not the province of the Register of Sasines to give general notice. The decision may be looked on as a narrow one, for Lord Kyllachy, from whom one could never differ without

hesitation, did not agree. Nevertheless, Lord Kinnear and the rest took the same view as I did, and on best reconsideration I still remain of the same opinion. For the purpose of the present argument it is immaterial whether Lord Kyllachy or I was right, for neither he nor I supposed that the parties could have prevailed on the naked terms of the deed.

This, however, does not exhaust the ways in which irrevocability may be shown. Intimation to the tertius may be quite sufficient. I may here quote the words of Lord Cranworth (at p. 138), which follow the passage which I have already cited in Synnot:-“The case is, however, obviously different when the creditor is a party to the arrangement; the presumption then is that the deed was intended to create a trust in his favour, which he, therefore, is entitled to call on the trustee to execute. So even though he be not made a party, if the debtor has given him notice of the existence of the deed, and has expressly or impliedly told him that he may look to the trust property for the payment of his demand, the creditor may thereby become a cestui que trust and may acquire a right as such, just as if he had been a party and had executed the deed.” Now, it is true that Lord Cranworth here naturally speaks in the English frame of mind of regarding the matter as one of trust, an obvious way of looking at it when the materies is a trust for creditors, and a point of view which could legitimately be taken in such a case by a Scotch lawyer. But everything he says is just as applicable if the question of trust is not before us, but the pure case of jus quœsitum under a contract. This is clearly recognised by the Second Division in the case of Burr v. Commissioners of Bo'ness,

where the want of intimation of the resolution to increase the pursuer's salary made his claim fail.

There is also the class of cases where the tertius comes under onerous engagements on the faith of his having a jus quœsitum, though the actual contract has not been intimated to him. This is at the root of a feuar being able to enforce building restrictions against a co-feuar; the conditions under which such a jus quœsitum may be inferred being set forth with great detail in the well-known judgment of Lord Watson in Hislop's Trustees v. MacRitchie .

I have gone through these various ways in which the intention that a vested jus tertio should be created can be shown, but, after all, they are only examples and not an exhaustive list, for in the end it is a question of evidence, and the only real rule to be deduced is that the mere expression of the obligation as giving a jus tertio is not sufficient. In short, I entirely agree with the one sentence in which Lord Mackenzie states the case, where he says:-“The question always must be-can the article in favour of the third party be recalled or not?” though, for reasons I shall presently give, I do not come to the same conclusion in this case as he does.

Now, in examining the evidence, while, as I have already said more than once, the terms of the document are not conclusive, that does not mean that they are not to be considered. On the contrary, they form a very important piece of evidence. As to this, I would especially recall the words of Lord President Inglis in the case of Crosbie's Trustees, a case which I cannot help thinking has been a little overlooked by those who seem to think that delivery of the document is a sine qua non. The facts were these:-Mr Crosbie had taken a deposit-receipt from the British Linen Bank in these terms: Received from R. Crosbie, Mr A. Wright, and Mrs C. Wright, 3500 “to be paid to any or survivor or survivors of them.” The money was Crosbie's, and Crosbie died leaving a settlement in favour of trustees. The deposit-receipt was never delivered by Crosbie to the Wrights (Mrs Wright was his sister), but it was discovered in a drawer in a room in the Wrights' house which he had occupied while there on a visit. There had been previous deposit-receipts in much the same terms. The proceeds were claimed by the testamentary trustees, and by the Wrights as survivor payees of the deposit-receipt. The Court held that a donatio mortis causa had been proved, and the Lord President said this (at p. 826):-“I hold it therefore as settled that a document of this kind cannot of itself operate as a will containing a bequest of money in favour of the persons in whose names it is conceived, failing the deceased. But while all that is clear, there still remains the question whether the sum contained in this deposit-receipt was not gifted mortis causa to Mr and Mrs Wright, and in that inquiry the terms of the deposit-receipt are very important elements of evidence, because they indicate some purpose of the deceased when he took the deposit-receipt in these terms.”

I turn now to the circumstances of the present case, and I begin with the terms of the document itself. I have already called attention to the actual terms, but there is something more. We are entitled, I think, to look to the nature of the insurance effected, the incidents which are connected with it, and the objects which, according to the prospectus attached to the form which Mr Carmichael signed, are sought to be attained. So doing, I find a contract which makes a marked distinction between the period up to the majority of the life assured and the period thereafter. Up to the majority it is the taker of the policy-the grantee as he is called-who engages to pay the premiums, who can stop paying if he likes and transact as to a surrender value, and who, if the life fails to attain majority, is entitled to a return of the money paid but without interest. After majority the whole scheme alters, the grantee no longer engages to pay the premiums, but the life assured is given several options. He may elect to continue to pay the premiums and keep the policy as an ordinary policy, or he may convert it into a paid-up policy or into an endowment policy, or he may receive a cash payment. These options given to the life assured, but not to the grantee, are strangely inconsistent with the idea of there being no vested right in the life assured, and inconsistent with the idea of promoting thrift in the person of the life assured. I next turn to the fact that, during the period in which action was open to the grantee, no action was taken. Then comes the fact that the son undoubtedly knew of the assurance, a knowledge which it is legitimate to conclude came through his father, though the proof falls short of direct communication. Then there is the letter of Mr Carmichael to the Insurance Company, in which, after his son's majority, he obviously contemplates a possibility of action on the son's part. And, lastly, when he comes into Court, he makes the following statement in the condescendence annexed to the summons for which he, as real raiser, is responsible:-“Under the said contract of assurance the assured had, on attaining the age of 21, certain options, including that of taking up the policy and paying the annual premium thereon, which amounted to 9, 10s. 0d. and was payable on the 22nd October in each year,” a statement which, in his condescendence and claim, he expressly repeats and adopts.

Taking all the circumstances together, I come to the conclusion that we have here the evidence necessary, when taken along with the terms of the document, to show that an irrevocable jus quœsitum was constituted in favour of Ian

Carmichael; that the proceeds of the policy which, by the conception of the contract fall to be paid to his executors truly belong to them; and that, therefore, the present appeal should be allowed, the interlocutors appealed against reversed, and the case remitted to the Court of Session to sustain the claim of Miss M'Coll, and rank and prefer her to the fund in medio, and find her entitled to her expenses in the Inner House. The appellant must also have the costs in this House.

I move accordingly.

Lord Shaw of Dunfermline.

Had I thought that any judgment in this appeal to be pronounced in favour of the appellant was in conflict with the settled law of Scotland as contained in a long series of decisions, I should have hesitated long before even permitting my mind to have attempted such a task. But I am in entire agreement with my noble and learned friend who has preceded me that a judgment in favour of the appellant is in no way inconsistent with these decisions. I agree with Lord Dunedin's judgment, and with its most valuable review of the authorities. I may venture, however, to make this exception. I refer to the case of Cameron's Trustees v. Cameron . I must honestly confess to your Lordships that, notwithstanding the very high authority which must attach to the opinions of the majority in that case, I agree with the opinion of Lord Kyllachy. The case is not, however, here for review, and does not truly affect the judgment to be pronounced on the present appeal. When Lord Kyllachy says in Cameron's Trustees v. Cameron that the grantor of the bond and disposition in security there in question “desired, and intended to make, as against himself and everybody concerned, an irrevocable and effective divestiture,” I have no doubt as to the soundness of that. Nor am I able to attach doubt to the further proposition that the recording of the bond in the Register of Sasines for behoof of the grantor as trustee for his daughter was perfectly sufficient to satisfy all the requirements of the law with reference to delivery. Subject, however, to that very small exception, I find the statement of the law by my noble and learned friend so complete as to make a separate narrative on my own part a work of surplusage.

I should like to say, however, that I have during nearly all my working life looked upon the case of Crosbie's Trustees v. Wright as a leading and unimpeachable

authority. It is so for two reasons. In the first place, it disposes effectively of the plea that delivery of a written document is an absolute essential in all cases where the question is whether a right has been acquired by the third person named as the grantee therein. Delivery is no doubt of high importance, but its absolute essentiality in all cases can no longer be affirmed. “I do not think,” says Lord Mure (at p. 832), “that it has ever been held that actual delivery, in the strict sense of that expression, was necessary, provided there was distinct evidence of an intention to make a donation. In the case of Martin the receipt was not delivered in the strict legal sense, and yet the donation was sustained. In Ross v. Mellis the question of delivery was scarcely raised. But in Gibson v. Hutchison, which has been already referred to, it was laid down that actual delivery is not essential; and the import of the leading cases from the date of that of Martin is that the question must be dealt with as one of intention, to be gathered from the terms of the receipt in each case, and the import of the other evidence adduced in support of the alleged donation.” In my opinion the law so stated still remains.

But, in the second place, the high value of Crosbie is this, that it shows the extreme importance of attaching the greatest weight to the terms of the document itself which, so to speak, vouches the transaction.

These are, in the language of Lord President Inglis (at p. 826), “very important elements of evidence.” And in another passage (at p. 826) of his address that great Judge refers to the circumstance of the repetition of the same terms in a series of deposit-receipts, and he says:-“We have thus undoubtedly indications of a purpose of some kind in Mr Crosbie's mind, continued for a series of years, that the money contained in the receipts should in some way be for the benefit of his sister and her husband.”

For myself I start this case by a consideration of the terms of the policy of assurance. These have already been cited in the judgment preceding my own. It appears to me to be beyond all question that the applicant to the Assurance Company, Mr Carmichael, plainly stipulated that on the arrival of his son Ian's majority, that son (or his assigns) should, if the policy were to be kept up, be the person and continue to be the person liable and alone liable for the payment of the

premium; and, secondly, that on the 29th of October 1915, that is to say, on the date of attaining majority by the son, there came into play for the first time an assurance upon his life for 1000, and the sum assured became from that moment and onwards payable and payable alone to the executors, administrators, or assigns of the son. In fact the sum assured never was payable, under the policy, to anyone else. The earlier chapter of the case had ended; that chapter was that, from the date of insurance, when the boy was in his ninth year, until his majority, the father had obliged himself to pay the premiums, and during the currency of that period had the right to stop them and to get back his money without interest, or to surrender the policy for such value as it had. There the right of the father under this policy came to an end. He stipulated, in my opinion, in perfectly plain terms that when his son attained majority he, the father, dropped out, and his (the father's) contract relations with the insuring Association were definitely and completely closed. No obligation on the father to the Association remained; no obligation of the Association to the father either remained or was created.

I entirely agree with Lord Skerrington when he calls attention to the terms of the proposal of assurance, pointing out that it was a policy for the benefit of the son, and that the father would have had no right to approach the assurers and obtain from them or compel them to give him, the father, a right to the sums assured in place of his son and his executors, andc., as per the terms of the policy. In this case I think that the assurers were under no obligation whatsoever to alter the terms of their contract in that sense. One thing seems pre-eminently clear, namely, that, when the son on reaching majority stood in, so to speak, to the benefit of this contract, the father at the same moment of time definitely and finally stood out. This case accordingly is in the peculiar position that, as it were, the initiator of the contract, the father, is in the position of having allowed the period to expire when he, the father, continued in contract relations with the association. The event of the son's reaching majority started a situation of affairs advantageous to the son, and entirely in accordance with the scheme of the policy, which was for giving an interest in thrift by enabling persons attaining majority to take up, and carry on for themselves on advantageous terms, a contract presented for their acceptance. If they do not so carry it on, it expires; if they do carry it on, they benefit by the transaction. But no financial benefit is created to the father; no control over the

obligations of the Association remains in the father; he has reserved nothing, and it is not in his power to interpel the Association from fulfilling its duties to the person to whom by the policy it owed duties, namely, the son. There is no element in the case either of reservation of property or of control by the original applicant for assurance. If the Association had accepted any premiums after the son's majority, then it seems to my mind clear that they must have done so either from the son or from the agent or assignee of the son, but that the father would have had no right to displace the son from the position of debtor which he was free to assume in regard to the premiums, nor would the father have had right to force the Association to continue under obligations to accept his, the father's, money. As to the sum of 1000 assured, that sum fell to the executors, administrators, and assigns of the son alone. Agreeing with Lord Skerrington, I do not think that it was within the power of the father, after his son reached majority, to alter the terms of the contract with the Assurance Company, and to cause the Association's contractual relations with the son to disappear.

The singularity of this case is, as I pointed out, the division of the two periods of time which the currency of the policy covers. As I have said, the father on his son reaching majority plainly agreed to drop out; and, in my opinion, his son having died subsequently to majority, the father cannot be allowed to alter the nature of the obligation of the Association with which he contracted-that obligation being to pay to the appellant under the son's settlement.

While, however, I am of opinion that this is not a case in which delivery or intimation is essential, and while my view is so largely governed by the consideration of the true nature of the two separate and independent contracts which are in truth embodied in the one policy of assurance, I may say that I should further have been prepared to hold that what happened after the arrival of the son's majority was amply sufficient to constitute an investiture of the son with the right to the sum assured. The terms of the policy were well known to the whole family-to the mother, to the aunt, to the boy himself, as well as to the father. Contemplating joining the army, he personally made inquiries as to whether his services as a soldier were inconsistent with the terms of the policy, or would involve forfeiture of his right to recover in the event of his death on service. He

received the assurance of the Association that this would not happen. He consulted his lawyer, informed him of the assurance and of the inquiries, and made his will in favour of his aunt, to whom he appears to have been gratefully attached. The father himself wrote to the Association expressing very properly and generously a desire to pay the premiums himself, but informing the Association of his son's address in the event of their requiring to make any communication to him. I do not doubt, in these circumstances, that nothing further was required to complete the full circle of the law's requirements. I agree to the course proposed.