Corredor, is entitled, as holding the bill of lading, to demand the cargo from the shipmaster if he has parted with it improperly.

The case must be carefully distinguished from an action brought by the holder of the bill of lading against *bona fide* purchasers under such circumstances as are here disclosed. This is an action against the shipmaster for breach of his obligation to deliver the cargo according to the charter-party and the bill of lading. The shipmaster must defend his act, and he can only defend himself by instructing some sufficient authority to deliver the cargo. But he has not done so. There is no question here with Messrs Tait, and no question here between Wynands and Corredor. It is possible that, as between Wynands and Corredor, other obligations may have been incurred, and other questions may yet arise. But with these we have nothing to do at present. The pursuers, Messrs Pirie, holding the bill of lading duly indorsed, and being the only party entitled to the bill of lading, now demand the cargo from the shipmaster. Why shall they not succeed? Nothing but a right better than theirs can exclude them. I see no such right.

There is not here any duplicate or triplicate bill of lading. There is no competing writing, and no competing indorsation — there is no conflicting authority—no intervention by the shippers, and no complication arising from any supposed relations between Wynands and Corredor.

Wynands, having no papers, directs the master to give delivery of the cargo to Tait—directs him to hasten that delivery — and now supports the master in defending that delivery. But Wynands can have no other defence than what the master could plead, and the master has, in my opinion, no good defence against the holder of the bill of lading, unless he can instruct authority to part with the cargo. I think he has not done so. If Corredor had himself appeared and presented the bill of lading to the master, and demanded delivery of the cargo, the master could not have refused delivery to him.

But Messrs Pirie, or Noble, from whom Messrs Pirie purchased—and I agree with your Lordship in not holding Noble to be a mere agent—became the indorsees of Corredor, and the holders of the only written authority to claim the cargo.

I assume the indorsation to have been received by Messrs Pirie after delivery of the cargo. If the cargo was lawfully parted with by the master before receipt of the indorsement of the bill of lading, then the indorsement did not transfer the property of the cargo. That is, I think, settled. But if, as was the case here, the master parted with the cargo with no authority from the shippers or from the holder of the bill of lading, then I am of opinion that the master has not justified the act of delivery, and the indorsed bill of lading must receive effect.

The delivery was therefore wrongful; and wrongful delivery does not bar indorsement of the bill of lading, or relieve the shipmaster from responsibility.

Lord Kinloch concurred.

Agents for the Pursuers and Appellants—Millar, Allardice, & Robson, W.S.

Agents for the Defenders and Respondents—Stuart & Cheyne, W.S.

Saturday, February 11.

SECOND DIVISION.

NORTH BRITISH INSURANCE CO. *v.* STEWART. *et e contra.*

Essential Error—Policy of Insurance—Restitutio in integrum. A policy of insurance on the life of a party was paid by the Insurance Company in the belief that he had died. *Held*, in an action at the instance of the policy-holder, that upon repayment of the sum paid and arrears of premiums, the policy must be revived. There had been essential error on which no one was to blame, and there must be *restitutio in integrum.*

These were two conjoined actions; the one, at the instance of the North British and Mercantile Insurance Company, claiming repetition of the sum of £1207, 7s. 4d. paid by them to Mr Robert Stewart in respect of a policy of insurance on the life of James Macdonald; the other, at the instance of Robert Stewart, claimed declarator that upon the pursuer's payment of £1316, 8s. 2d. to the Insurance Company, they should deliver up the policy of insurance effected upon said life to him. It appeared that in 1848 a policy of insurance for £999, 19s. was effected on the life of James Macdonald of Dundee by Mrs Miller with the United Kingdom Life Assurance Company. In 1857 this policy was assigned to Stewart, and thereafter the United Kingdom Insurance Company was amalgamated with the North British Insurance Company. Macdonald went to New Zealand, and in 1868 Mr Stewart produced evidence to the Insurance Company which induced them to believe that he was dead, and accordingly they paid over the amount on the policy, with bonus additions, to Mr Stewart. From subsequent information, it appeared that Macdonald was still alive, and also that Mr Stewart had acted in good faith in reporting his death. The question now before the Court was in what way the mistake could be remedied, and the parties restored to their original positions. Stewart claimed on repayment of the sum paid to him by mistake, and all future premiums, to receive another policy for £999, 19s. on the same life, in place of the one which had been discharged. This the Company refused to agree to, and contended that the policy had lapsed.

On 28th July 1870 the Lord Ordinary (Ormidale) pronounced the following interlocutor:—"The Lord Ordinary having heard counsel for the parties in these conjoined processes, and having considered the argument and whole proceedings, including the proof—Finds that the sum of £1207, 7s. 4d., repetition of which is concluded for in the action at the instance of the Insurance Company, was paid by them and received by Mr Stewart as the amount due on a policy of insurance held by the latter on the life of James M'Donald, with some relative sums, on the 19th of December 1868, when under the mistaken belief that the said James M'Donald was then dead; but that it has been since ascertained, and was admitted by both parties at the debate, that the said James Macdonald is still alive: Finds that, in this state of matters, both parties are entitled to have matters restored as near as may be to the state in which they were before said sum was so paid and received; and appoints the case to be enrolled, in order that these findings may be applied, and

judgment pronounced in accordance therewith exhaustive of the cause, and also that parties may be heard on the question of expenses of process." And thereafter, on 29th October 1871, this interlocutor:—"The Lord Ordinary having heard parties' procurators with reference to the interlocutor of 28th July last, in the conjoined processes—Finds that upon the sum of £1316, 8s. 2d. sterling, consigned by Robert Stewart (the defender in the original action) with the Royal Bank of Scotland, as specified in his answers 9 and 10 in said action, being made forthcoming, with all bank interest which shall have accrued thereon, to the North British and Mercantile Insurance Company, and on payment being also made to them by the said Robert Stewart of the sum of £19, 16s. 8d. sterling, being the premium mentioned in said action, which fell to be paid on the day of May 1870, with interest on said sum of £19, 16s. 8d. from the said May last, and till payment, at the rate of £5 per centum per annum, the said Insurance Company are bound to grant and deliver to the said Robert Stewart a certificate or policy of insurance, in terms of the second alternative conclusion of the counter action at the instance of the said Robert Stewart against the said Company, and accordingly ordains the said Insurance Company to execute in regular form, and deliver such policy to the said Robert Stewart on payment being made by him to the said Company of the foresaid sum of £19, 16s. 8d. and interest, and on said completed policy being delivered to the said Robert Stewart, grants warrant to, and ordains the Royal Bank of Scotland to make payment of the foresaid consigned sum and interest to the said Insurance Company, and decerns: Finds Robert Stewart entitled to expenses in the conjoined actions, and also previous to the processes being conjoined, but subject to modification, the extent of such modification to be determined after the taxation of the account."

The Insurance Company reclaimed.

LEE, for them, pleaded—"Standing the discharge of the policy, the pursuer cannot maintain the present action. The conditions and provisions stipulated in the original policy not having been observed and performed by the pursuer, the said policy has lapsed, and the defenders are not bound to restore or revive the same, or to issue a new policy to the same effect." He contended that the policy had lapsed, in respect that at the time, in 1868, when the sum contained in it was paid, the premiums were half a-year in arrear.

MACDONALD in answer.

The Court unanimously adhered. They held that there had been essential error on the part of both of the contracting parties, for which no one was to blame, and therefore there must be *restitutio in integrum*, and the policy must be revived on payment of arrears of premiums.

Agents for Reclaimers—Mackenzie, Innes & Logan, W.S.

Agents for Respondent—Thomson, Dickson & Shaw, W.S.

Tuesday, February 21.

FIRST DIVISION.

SPECIAL CASE—STEWART'S TRUSTEES AND JOHN STEWART.

Trust—Pupil—Parent and Child—Accumulation—Aliment. Trustees were directed to hold property (to the value of about £160 per annum) for behoof of a pupil, to be paid to him when he should reach majority. *Held* that the father of the pupil was not entitled, as administrator in law for his son, to claim payment from the trustees of the whole annual income, but that he was entitled to such an allowance out of the same as should relieve him of the maintenance and education of the pupil, the amount of the allowance being a question, in the first instance, for the discretion of the trustees.

The parties to this Special Case were—(1) The trustees of the late Mrs Isabella Wallace or Stewart, formerly residing in Perth; (2) John Stewart, wine and spirit merchant in Glasgow, as administrator in law for David Stewart, only child of the marriage between the said John Stewart and the now deceased Mrs Elizabeth Stewart, daughter of the late Mrs Isabella Stewart.

Mrs Isabella Stewart died in 1854, leaving a trust-disposition and deed of directions by which she directed her trustees to hold her estate for payment of the free annual produce to her daughter, Elizabeth Stewart, during her life, and for the use and behoof of the children of her daughter, until the whole of the said children should have attained majority, or their mother have died, whichever of these events should last happen, then to be divided equally among the children, share and share alike.

Elizabeth Stewart was married in 1853 to John Stewart, and died in 1869, survived by her husband and by an only son, still in pupillarity.

Mr Stewart, as administrator in law for his son, claimed that the whole free annual produce of the trust-estate (about £160) should be paid over to him for behoof of his son. The trustees, on the other hand, claimed to retain and accumulate the free annual produce. It was stated that Mr Stewart was in fair circumstances, and able to aliment and educate his son.

The question submitted to the Court was as follows:—

"Whether the free annual produce of the truster's estate, which has accrued since the death of the foresaid liferentrix, her daughter, and which may yet accrue, belongs to the pupil the said David Stewart; and (if so) whether the trustees are bound to pay over the same as it has been or may be received by them, or any, and what part thereof, to the said John Stewart, as administrator in law of the said David Stewart, for behoof of the said David Stewart, during his pupillarity, and thereafter during his minority to the said David Stewart himself, with consent of his said administrator in law or curator for the time being?

MACLEAN, for John Stewart, referred to the following cases:—*Campbell* v. *Reid*, 12th June 1840, 2 D. 1084; *Ogilvy* v. *Cumming*, 27th June 1852, 14 D. 363.

MACKINTOSH for Stewart's trustees.

At advising—

The LORD PRESIDENT—There can be no doubt as to the way in which we should dispose of this case. The estate has vested in the child, and the income also belongs to him. There is no direction to accumulate in whole or in part. The child's father is in fair circumstances, but there can be no doubt that a child who possesses an income of his