which is familiar. A sale is none the less one for ready-money where an article is bought across the counter. The buyer gets delivery often before he takes out his purse to pay for it, or he may (even) get it before he goes to the bank to get the money to pay for it. So where there is an advance on a security stipulated for as instantaneous it will be considered as such, notwithstanding some days may elapse before the formalities are completed. Where the stipulation is not for a simultaneous security, but that the debtor shall give one over a particular subject whenever the creditor sees it for his interest to demand it, it is a different thing. Such was stipulated in *Moncreiff's* case, and Lord Ivory says it was a dangerous device to evade the statute. But for the device the Act would have applied in terms. The expression has arisen in recent years which perhaps was not so familiar in his, viz., "contracting yourself out of an Act." Now, I think people cannot contract themselves out of this Act of 1696. The Act 1696 is a public statute, and shall apply wherever circumstances make it applicable notwithstanding any contract between parties to the contrary. Here the contract was, "Go on and act as the owner of the shares, and whenever I desire it, you are to give a transfer, and it is also the contract between us that the Act 1696 shall not apply." That is a device to evade the operation of the statute, and an attempt by parties to contract themselves out of the statute. The result is that I agree with your Lordships that decree should be pronounced in favour of the pursuer.

Lord Craighill and Lord Rutherfurd Clark concurred.

The Court recalled the Lord Ordinary's interlocutor and decerned in terms of the conclusions of the summons.

Counsel for Pursuer — Dickson — Galbraith —Miller. Agents—W. & J. Burness, W.S.

Counsel for Defender — Pearson — Goudy. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Friday, January 28.

FIRST DIVISION.

[Lord M'Laren, Ordinary.

THE SCOTTISH PROVIDENT INSTITUTION *v.* FLEMING AND OTHERS.

Writ—Delivery—Policy of Insurance—Destination to Wife "and Children of the Marriage."

A husband obtained a policy of insurance over his life bearing that certain persons as trustees, "as directed by writing under the hand of" the husband "for behoof of . . . his wife and the children of the marriage," whom failing his heirs and assignees, should, on his decease, be entitled to the sum contained in it. No such writing under his hand had been or ever was executed, and the policy remained in his possession and control without the trustees having ever heard of it for fifteen years, when he informed them of its existence, and obtained an assignation of it by them, and borrowed money on it. Thereafter, having executed a trust for creditors, he died, and the policy became payable. *Held* that the policy never having been delivered, its contents belonged to the trustee under the trust for creditors, and that no right in it had ever passed to the trustees for the wife and children.

On 6th September 1870 Nedrick Jarvie took out a policy for £1000 with the Scottish Provident Institution. The policy bore, that "whereas Jarvie had made payment of the sum of £35, 14s. 2d. sterling, being his first annual contribution to the funds of the said Institution in respect of the benefits thereinafter mentioned: Now these presents are to certify that in consideration of the premises the said Nedrick Jarvie has been duly admitted a member, and that Alexander Fleming of Craigenduinn, merchant, Glasgow; Alexander Miller junior, calico printer, Busby; and William Miller, manufacturer, residing in Busby, and the survivors and survivor of them, and the heirs of the last survivor in trust, as directed by writing under the hand of the said Nedrick Jarvie, for behoof of Mrs Eliza Miller or Jarvie, his wife, and the children of their marriage, whom failing the heirs and assignees of the said Nedrick Jarvie, shall be entitled to receive out of the funds of the said Institution, at the end of six months after the decease of the said Nedrick Jarvie, the sum of £1000 sterling, or such other sum as shall become due or payable upon the aforesaid contingency agreeably to the laws and regulations of the said Institution," subject always to the condition that Jarvie should regularly pay the annual premium in future years.

By assignation dated 6th and 7th April 1885 the trustees mentioned in the policy, with the consent of Mr Jarvie's wife and children, Mr Jarvie signing as administrator-in-law for his wife and minor children, conveyed the policy to Mr Jarvie on the narrative that Mr Jarvie had paid the whole premiums to keep the said policy in force, and had never delivered the policy to them, and that the fact of its existence had only become known to them when asked to sign the assignation, and that they had never acted in any way as trustees, and that Jarvie represented to them that the policy had all along been and remained in his possession undelivered, and that he had given no direction by writing under his hand, or otherwise as to the disposal of the said policy and the sum thereby assured, and that the donation or provision which he contemplated making had never been completed, but that the policy remained his own property and at his free disposal.

On 14th April 1885 Mr Jarvie obtained a loan of £230 from the Scottish Provident Institution on the security of the policy, and granted a bond and assignation therefor. The interest was paid up to 6th October 1885, but not subsequently.

By trust-deed dated 8th February 1886 Mr Jarvie conveyed his whole estates, heritable and moveable, to Mr James Martin in trust for his creditors. The trust-deed was duly intimated to the Scottish Provident Institution.

On 21st March 1886 Mr Jarvie died.

The Insurance Company were then bound in terms of the policy to pay the amount contained in it, under deduction of the loan and of the unpaid interest.

The question was raised whether it belonged to Martin, as trustee for creditors, or to the wife and children.

This action of multiplepoinding was raised in name of the Scottish Provident Institution in order to determine that question, the fund *in medio* being the amount of the policy under deduction of the loan and interest and discount.

The widow and children and the trustees mentioned in the policy claimed the whole fund, maintaining that the policy was an irrevocable provision for them, and that their consent to assign it was given only on advice of Jarvie, and that their consent was given on an incorrect statement of the facts.

Martin, as trustee for the creditors of Jarvie, also claimed the whole fund *in medio*, on the ground that the policy was the property of Jarvie, and therefore formed part of his estate conveyed to the claimant as trustee.

The Lord Ordinary (M'Laren) ranked and preferred Mr Jarvie's widow and children upon the fund *in medio* to the extent of the whole fund.

"*Opinion.*—This is an action instituted for the purpose of determining the right to the proceeds of a policy of life assurance for £1000 effected by Nedrick Jarvie, deceased, with the Scottish Provident Institution, less the sum of £230 advanced upon it by the insurers. The competition is between Mr Jarvie's creditors and his wife and children.

"The policy bears that Mr Jarvie had been admitted a member of the society, and that certain persons named as trustees 'in trust as directed by writing under the hand of the said Nedrick Jarvie for behoof of Mrs Eliza Miller or Jarvie, his wife, and the children of their marriage, whom failing the heirs and assignees of the said Nedrick Jarvie,' should be entitled to receive the said sum of £1000 six months after his death, provided that Mr Jarvie should regularly pay or cause to be paid the stipulated annual premiums.

"Thereafter Mr Jarvie's wife and family, on the narrative stated on the record, assigned the policy to him, and thereupon he obtained an advance of £230 from the society. The children are said to have been in minority at the time, and to have acted under the advice of their father.

"The first question is, what is the meaning of the obligation to pay to Mr Jarvie's wife and children? It was contended by one of the parties that 'and' is to be construed here as a word of destination, and that the gift is to Mrs Jarvie in liferent (or possibly in fee), and to the children after her death. I have not been able to adopt this reading. The gift is to the wife and children in trust as may be directed by Mr Jarvie. As Mr Jarvie left no deed of directions, I think that all the donees must share equally unless they are displaced by the other claimants, the mother sharing with the children. This is an unusual arrangement, but I think it is the legal meaning of the words used.

"The next question is, who are the creditors in the obligation of the Scottish Provident Institution to pay £1000 after death? I think that the trustees for the wife and children are the creditors, although these gentlemen did not in fact know of the existence of the deed until after Mr Jarvie's death. On behalf of Mr Jarvie's creditors it is urged that the gift was not completed by delivery of the policy to the trustees. In my opinion this is not a case where delivery by Mr Jarvie was necessary to vest the right in the donee, because under this policy Mr Jarvie was never instituted creditor in the obligation, and the obligation in its inception was in favour of the trustees for wife and children.

"It is as in the case of a person who pays money into the account of an another. The payment of the premiums to the society was, in my opinion, an irrevocable transfer of funds into the hands of a third party for the benefit of the wife and children. The trust was sufficient for the protection of the interest of unborn or unnamed children, and when the time of payment arrived it would be the duty of the society to apprise the trustees of this irrevocable investment in their names.

"The next point is, whether there is a good assignment of the policy by Mr Jarvie's wife and children to Mr Jarvie himself? I think not, because the husband and father, being the administrator-in-law for his wife and children, could not legally take from them a deed in favour of himself.

"From these considerations I come to the conclusion that the assignation is ineffectual, and that Mr Jarvie's creditors are not entitled to be preferred to the fund *in medio*."

The trustees for Mr Jarvie's creditors reclaimed, and argued—The principle of the Lord Ordinary's judgment was that there is something peculiar in the nature of a policy of insurance, so that when a person takes out a policy in another's name, and pays the premiums, it is out of his power to revoke the policy. That this view was without foundation was shown by the terms of 43 and 44 Vict. c. 26, sec. 2, which show that prior to that enactment a policy taken by a married man for the benefit of his wife and family was revocable unless in some way put beyond his control—*Schumann* v. *Scottish Widows Fund Society*, March 5, 1886, 13 R. 678; *Connell's Trustees* v. *Connell's Trustees*, July 16, 1886, 13 R. 1175. A person could not be vested in an indefeasible right of which he had never heard, and where there had been no delivery—*Hill* v. *Hill*, July 2, 1755, M. 11,580; *Walker's Executor* v. *Walker*, June 19, 1878, 5 R. 965; *Miller* v. *Miller*, June 27, 1874, 1 R. 1107: *Buchan* v. *Porteous*, November 13, 1879, 7 R. 211. Here there was no delivery. It was precluded by the existence of the trust. In consequence of its existence, the doctrine that the husband is the proper custodier of his wife's deeds could not apply—*Craig* v. *Galloway*, June 22, 1860, 22 D. 1211—*rev.* July 17, 1861, 4 Macq. 267—and besides, the clause in the policy indicating an intention to execute a writing showed that Mr Jarvie's intention was not completed. If delivery were assumed, the assignation was good except to the extent of three-sevenths—the interest of the three minor children. The argument that the fee was in the wife was not borne out by the terms of the destination. There was no mention of liferent.

Argued for the wife and children—The question was, what was Mr Jarvie's intention at the time of taking out the policy, not at a later time when he was pressed by his creditors. He took it out in order to make an irrevocable provision for his wife and children, and to put it out of the reach of his creditors. He could only do that by putting it out of his own reach, and therefore the intention was there. Further, assignation was completed by intimation even without delivery—Bell's Prin. sec. 1462—and here the Insurance Company were quite aware of the rights of parties under the policy, and accordingly the equivalent to delivery was present—*M'Lurg* v. *Blackwood*, February 24, 1680, M. 845. In this case the trustees had from the terms of the deeds no right to get the policy until the money came to be paid. Until then the father was the proper custodier for the wife and children. The trustees were not trustees to hold the policy. And so the distinction between this case and that of *Craig* v. *Galloway*, *supra*, vanished. The assignation was bad as regards the consents; in the case of the wife—*Menzies* v. *Murray*, March 5, 1875, 2 R. 507; and of the minor children—*Smith Cuninghame* v. *Anstruther's Trustees*, and *Mercer* v. *Anstruther's Trustees*, April 25, 1872, 10 Macph. (H. of L.) 39. Further, the destination here was a destination of a fee to the wife. That would have been undoubted had a liferent to the wife been expressed—*Beveridges* v. *Beveridge's Trustees*, July 20, 1878, 5 R. 1116; and the interposition of a trust makes no difference—*Ferguson's Trustees* v. *Hamilton and Others*, July 13, 1860, 22 D. 1442, and 4 Macq. 397; M'Laren on Trusts, 142, 145; 2 M. Bell's Conveyancing, 999. The wife could not be less entitled to the fee owing to the absence of restrictive words. The argument that Mr Jarvie had not made up his mind because he intended to make another writing could not stand, for that "writing" referred to a writing already made, and might be the written proposal to the Insurance Company.

At advising—

Lord President—The competition here is between the creditors of the late Mr Jarvie and his wife and children, and the subject of the competition is the proceeds of a policy of insurance on Mr Jarvie's life for £1000, but that is subject to a deduction of £230 which had been advanced to Mr Jarvie by the insurers. We have no question to determine about whether that deduction is to be allowed or not, for the fund consists of the £1000 minus that £230.

Now, the policy was effected by Mr Jarvie himself in the year 1870. He applied, as the policy bears, "to be admitted a member of the Scottish Provident Institution . . . and to become a contributor to the funds of the said Institution," and he made payment of the first premium of £35, 14s. 2d. sterling at the time that he got the policy in respect of the benefit therein mentioned, and the insurers in consideration of that premium "certify that the said Nedrick Jarvie has been duly admitted a member, and that Alexander Fleming of Craigenduinn, merchant, Glasgow; Alexander Miller junior, calico printer, Busby; and William Miller, manufacturer, residing in Busby, and the survivors and survivor of them, and the heirs of the last survivor in trust, as directed by writing under the hand of the said Nedrick Jarvie, for behoof of Mrs Eliza Miller or Jarvie, his wife, and the children of their marriage, whom failing the heirs and assignees of the said Nedrick Jarvie, shall be entitled to receive out of the funds of the said Institution, at the end of six months after the decease of the said Nedrick Jarvie, the sum of £1000 sterling," but under the condition "that the said Nedrick Jarvie shall duly pay or cause to be paid" the future annual contributions of £35, 14s. 2d. in each succeeding year. Now, the policy was delivered to Mr Jarvie, and it remained in his custody and possession until fifteen years afterwards, and during the whole of that period the existence of any trust affecting the contents of that policy was totally unknown either to the trustees themselves or, so far as we know, to the parties beneficially interested—the wife and children of Mr Jarvie. In short, the trust which he had thus created was in every sense latent, and the deed which created it remained in his possession. The question comes to be, upon the facts as thus ascertained, combined with the terms of the policy itself, whether upon his death the contents of the policy became the property of his trustees—or rather, whether they have a title to draw the proceeds and apply them for the benefit of the wife and children—or whether the policy itself was not part of the estate of Mr Jarvie, the bankrupt, and so falls to the trustee for creditors?

The question whether there has been anything equivalent to delivery of that policy to the parties entitled to the benefit of that policy if delivered has not been considered by the Lord Ordinary, for he thinks that such a deed does not require delivery at all. In that ground of judgment I cannot concur. I think if such a deed remains undelivered in the hands of the person who makes it—that is, who causes it to be made—in favour of somebody else, while it remains entirely in his possession it remains entirely under his power. To hold otherwise would be to go back on cases decided over a series of years, and in particular the case of *Hill* and the case of *Walker's Executor* [*supra cit.*] No doubt in these cases the subject under consideration, or rather the deed, was not a policy of insurance. It was in both cases a bond for borrowed money. The creditor in the bond made it payable to another person than himself. In the case of *Hill* it was payable to his son, and in the case of *Walker* it was payable to himself and his wife, and in both cases the deed, although payable in these terms, remained in the custody, and therefore within the power, of the party who brought it into existence, or, as I expressed it already, actually made it. And the doctrine of these two cases is, that so long as that is the state of the matter of fact there can be no delivery at all. The delivery must be a matter of fact. The circumstance that this is a policy of insurance does not vary the matter at all. The obligation of the insurers is to pay a sum of money in a certain event, which is just the obligation of a debtor in a bond. The bond, just like an insurance policy, might be payable on certain conditions, which would not alter the law applicable to the delivery of the bond, and in truth the policy of insurance is just a bond or obligation by the insurance office to pay in a certain event the sum named.

Supposing no trust here at all, the bond being

taken in favour of the wife and children, and it kept within his possession just as the father in the case of *Hill*, and the husband in the case of *Walker*, the result would be that it remained within his power. In both of the former cases the only party who could on the face of the deed demand payment was the son in the one case and the husband and wife in the other. The Court held that the money was the property of the father in the one case and the husband in the other, on the simple ground that the bond remained in his custody, and therefore in his power. Now, the question comes to be—and I think the only other question that can be raised—whether there is in the circumstances anything equivalent to delivery, and I think all the circumstances are unfavourable to that contention. We are bound to look at the intention of Mr Jarvie. He creates a trust by means of that policy, and gives the trustees right to receive the £1000 when his death should occur, and gives them the right to receive it "in trust as directed by writing under the hand of the said Nedrick Jarvie for behoof of Mrs Eliza Miller or Jarvie, his wife, and the children of their marriage." Now, that suggests at once a very good reason for his keeping the policy in his own custody undelivered, and under his control. He means to make another writing for the purpose of declaring what his intention is with regard to the settlement of this money on his wife and children. That is obviously what is meant by the words "as directed by writing" under his hand, and that is the purpose of not delivering or making it known; for his purpose is to keep it to himself until he make up his mind as to the distribution. Another consideration showing us that he had not made up his mind is in the words used in the creation of the trust. You have a very extraordinary settlement or destination, quite unknown in practice, and that, I believe, has never come under the notice of your Lordships—that is, to the "wife and the children of their marriage," and that suggests that he did not intend that to be the ultimate destination, but, on the contrary, knowing that to be obscure he intends to do nothing more until he has considered. The deed itself affords very plain evidence that Mr Jarvie did not, when he executed that policy, or when he took delivery of it, intend that that should be in any sense a delivered evident available to anybody but himself.

What followed afterwards in the year 1885, I think, does not affect the question. He took an assignation then from the trustees and his wife and children upon the footing that they had a vested interest in this policy in order to enable him to raise money upon it. But the narrative in that deed, although favourable for argument on both sides, does not help us. The true question is, what was done and intended to be done with the policy when taken out? The argument has been stated—a very ingenious one—that the insurance society were quite aware of the existence of the trust, and the purpose for which it had been created, and therefore they had intimation of the rights of the parties interested under the trust, and that is the same thing in effect as if Mr Jarvie had taken the policy in his own name, and then assigned it to the trustees, and intimated that assignation to the insurance society, even although he had not delivered the assignation to the assignees, and the case of *M'Lurg* was referred to in illustration of the proposition. No doubt the two cases come near in appearance, but they are far away from one another in legal effect. Taking it to himself and assigning is, no doubt, like taking the document of debt in name of third parties, but the legal doctrine comes in in the one case which is awanting in the other. If he execute an assignation, that assignation will be made complete by intimation without actual delivery, just in the same way as a conveyance of land by a disposition. If you take infeftment on the disposition in favour of a third party, although you do not deliver the disposition, the infeftment in the one case and the intimation in the other completes the right, and thus operates complete publication. So that although the two cases at first sight look like one another, they involve two different propositions in law, and cannot be compared. I am of opinion on the whole matter that the policy here formed part of the personal estate of Mr Jarvie, and passes to the trustee for his creditors.

Lord Mure—I am of the same opinion. The only difficulty I have felt is the case of *Craig* v. *Galloway*. If the wife and children could have brought the case up to the doctrine contained in *Craig* v. *Galloway*, I should have been well enough pleased, as the interests of a wife and children in a case of this sort should be carefully dealt with, but I think the facts are not so strong. The policy here was in the possession of the insured, and the receipts remained in his possession too. Lord Brougham went on the ground that the contents of the policy in *Craig's* case was to be looked upon as a provision, but there the policy was taken in the wife's name, and the receipts for premiums were in her name, and it was admitted on both sides that the policy was delivered, and the broad ground upon which the House of Lords went was that the policy was to be looked upon as a provision, the husband being solvent when it was taken, there being no marriage-contract provision, and the party's intention being that it was to operate as a provision. It is always a question of intention. As I understand the facts here neither Mrs Jarvie nor the trustees ever had possession of the policy. It remained with Jarvie, and the trust remained inoperative and unknown to the trustees till the assignation was executed. The case therefore does not come up to *Craig* v. *Galloway*.

Lord Shand—I have with reluctance come to the same conclusion, for I think, as Lord Mure has expressed, that if possible one would sustain a provision of this kind in favour of a wife and children, as we have it on the face of these documents that there was an intention — I do not say *de præsenti*, but ultimately—that there should be such a provision. As to the view of the Lord Ordinary, I agree that the judgment cannot be sustained on the ground that he has given. He puts the case that "it is as in the case of a person who pays money into the account of another." That would be an unambiguous act, meaning that then and there a money donation was given. Then he goes on to say—"The payment of the premiums to the society was in my opinion an irrevocable transfer of funds into the hands of a third party for the benefit of the wife and children." Now, the com-

plete answer to that reasoning is that it has been held even in the stronger case of money lent by one person to another, the obligation for repayment being taken not in favour of the lender, but at the lender's request in favour of a third party, that it would not create an irrevocable transfer of the fund in the hands of the third party, and the reason is that so long as the custody of the document is retained by the lender, it is in his will to destroy or alter it. So here the mere circumstance of taking this policy in the name of trustees for the wife did not create "an irrevocable transfer of funds." If that were true, then in the case of a bond in favour of a third party, or a policy such as we have here, the transfer would be effectual, although the lender or insurer had written a *notandum* on the deed that he held the deed as subject to his own control; even in such a case it would be a good transfer.

Really the case comes to be a question of fact, and that question is, whether this policy can be said to be delivered? and on that question of fact I am rather disposed to take the argument on the view pressed by Mr Gloag, and take it that this destination should be read as a destination in favour of Mrs Jarvie. It has been held on the authorities cited to us that where such a destination is given to the wife in liferent and to the children in fee without taxative terms, the wife is fiar, and this cannot well be disputed. I think a great deal is to be said for the view that the destination in the policy creates a fee in Mrs Jarvie. But even if that be so, when we look at all the circumstances it has not been made out that there was delivery. If the destination in the policy had been simply to the wife, though the husband had held that in his custody, I think it would have been difficult to distinguish the case from *Craig* v. *Galloway*, for if you assume that the husband is the proper custodier of his wife's writs and held it for her, there would in that way have been delivery. But in *Craig* v. *Galloway* the delivery was assumed.

The arguments here against delivery are, first, that this is not a policy simply in favour of the wife. It is a policy taken in favour of trustees named, and the survivors and survivor of them, and I think that if Mr Jarvie intended that that should be regarded as a delivered deed, then it was not to be left in his own custody, but must have been handed to these trustees. Again, in the body of the deed, it appears that the trustees were to hold it as directed by writing under the hand of Nedrick Jarvie. Mr Gloag says that that must refer to a writing already executed, but the parties are agreed that no such writing has been really executed. I think it must refer to a writing intended to be executed. Taking the fact that this is a deed in favour of third parties to hold for the wife, and with reference to which a writing was to be given to those third parties, and that Mr Jarvie never did part with the contract, it appears to me that there was no delivery, and as there was no delivery, then this policy, whether you look at the surrender value or the ultimate proceeds, formed part of his estate, and is carried to his trustee. For these reasons I concur.

Lord Adam—The Lord Ordinary says that in his opinion delivery was not necessary to vest the right in the donee, and the ground of that opinion he states to be that Mr Jarvie was never instituted creditor in the obligation, and the obligation in its inception was in favour of trustees for wife and children. Now, if the Lord Ordinary means that as a correct exposition of the law with reference to all documents, I think it is quite unsound, for he goes against the cases to which your Lordship has adverted, and against the well-known principle of our law that donation is not effectual without proof, and is not to be presumed. The Lord Ordinary does not attempt to draw a distinction between this document, which is an insurance policy, and any other bond or document of debt, and if that be so, I think the decisions are against his view of the case. If this deed required to be held for the donee, then I think that is not proved, because I agree that in this case Mr Jarvie was not the proper custodier. I think the trustees were the proper custodiers, and that is an essential difference between this case and that of *Craig* v. *Galloway*. I also concur with your Lordship that the clause in the policy which points to a future deed shows that he chose to retain it within his entire control. At the same time I do not go on the statements in the assignation, as it is obvious that circumstances might have changed, and that he might have an interest to make statements which are not to be taken like statements made *unico contextu* with the deed. If he had endorsed on the policy that he held it for his wife and children, or if he had put it beyond his control, then the result would have been different, but I prefer not to go into these matters. On these grounds I concur with your Lordship in the chair.

The Court recalled the Lord Ordinary's judgment, and sustained the claim for the claimant Martin.

Counsel for Trustee and Real Raiser (Martin)—Asher, Q.C.—G. W. Burnet. Agents—Fodd, Simpson, & Marwick, W.S.

Counsel for Mrs Jarvie, &c.—Gloag—Fleming. Agents—Macandrew, Wright, Ellis, & Blyth, W.S.

Friday, January 28.

SECOND DIVISION.

[Lord Kinnear, Ordinary.

HOPE VERE AND OTHERS *v.* YOUNG AND OTHERS.

Road — Footpath — Servitude — Statute Labour Road—Act 47 *Geo. III. c. xlv.*

When a road is shut up as a superfluous road by the Trustees entrusted with jurisdiction to do so, it is shut up for every purpose, and cannot continue to exist as a right-of-way for foot-passengers.

A road was closed by order of the Road Trustees in 1869, as being a superfluous road, such as they were authorised by a local Act to close. In a question whether they had jurisdiction to close it, or whether it was a public footpath which they had no right to close, it was proved that it was a public road for all