Counsel for First Parties — Morison. Agent—Alex. Morison, S.S.C

Counsel for Second Parties — Dewar. Agent—Alex. Morison, S.S.C.

Counsel for Third Parties — Graham Stewart. Agent—Alex. Morison, S.S.C.

Tuesday, July 12.

FIRST DIVISION.

[Lord Low, Ordinary.

THE SICKNESS AND ACCIDENT ASSURANCE ASSOCIATION, LIMITED *v.* THE GENERAL ACCIDENT ASSURANCE CORPORATION, LIMITED.

Insurance—Insurance against Third Party Risks—Action of Relief by One Insurer against Another.

A tramway company effected policies of insurance against claims of compensation for injuries caused by its vehicles with two insurance companies. One of these companies having indemnified the tramway company for a loss covered by its policy, brought an action of contribution against the other insurance company, alleging that the loss in question was covered by both policies.

Held that the pursuers had a title to sue.

Insurance—Agreement to Insure—Condition that Insurance not to Take Effect until Premium Paid—Insurance "from" a Particular Date.

An insurance company agreed to insure a tramway company against accidents for twelve months from 24th November 1888 inclusive, the agreement being subject to the condition that no insurance should be effected until the premium was paid. An accident occurred on 24th November, before the policy had been issued or the premium paid, and for the loss resulting from this accident the insurance company at once repudiated liability. On 26th November the premium was paid, and the insurance company acknowledged receipt of it as premium "for the risk from the 24th inst."

Held (1) — following *Canning* v. *Farquhar*, 16 Q.B.D. 727 — that after the accident on 24th November the insurance company were not bound to issue a policy for the risk from 24th November inclusive; and (2) that they did not by the terms of the receipt undertake liability except for accidents occurring after the 24th.

On 16th November 1888 the General Accident Assurance Corporation, Limited, signed and issued to the South Staffordshire and Birmingham Steam Tramways Company a policy, whereby they agreed, in consideration of a premium of £240, to indemnify the assured up to a specified amount against claims for compensation on account of personal injury or injury to property caused by the assured's vehicles during the period from November 17th 1888 to November 17th 1889. The policy contained this clause—"No assurance shall be held to be effected until the premium due thereon shall have been paid."

As the Tramway Company were already insured with the Sickness and Accident Assurance Company for the twelve months from 24th November 1887, the secretary of the Tramway Company, Mr Hatchett, on 19th November 1888 wrote to Mr Mizon, the manager of the General Accident Assurance Corporation, as follows—"The date from which I desire to be covered is from the 24th instant inclusive, and not the 17th instant."

Mr Mizon replied on the following day—"I shall be pleased to make the alteration in policy required by your directors."

On the same day Mr Mizon wrote to Mr Miller, the secretary of the General Accident Assurance Corporation—"There are one or two slight alterations in this policy required to be put in order before the matter is finally completed, viz.—1. As to date. The risk to commence from the 24th inst. (inclusive), and not the 17th inst." . . .

Mr Miller replied on the following day—"I note this risk commences from the 24th."

On the night of the 24th, before the premium had been paid or the new policy issued, a serious accident occurred to one of the Tramway Company's cars, whereby a number of persons were injured.

On 26th November Mr Hatchett wrote to Mr Mizon, enclosing a cheque for £240, "being premium on policy for third party risk."

On 29th November Mr Mizon acknowledged receipt of the cheque sent by Mr Hatchett in payment of the premium in these terms—"I am much obliged for your favour enclosing cheque, value £240, for the third party risk of the So. Staffd., &c., Tram. Co. from the 24th inst."

The amount of damages incurred by the Tramway Company owing to the accident of 24th November was £833, 4s. 9d., and this sum they recovered from the Sickness and Accident Assurance Association after some litigation in the English Courts.

The Sickness and Accident Assurance Association thereafter brought the present action against the General Accident Assurance Corporation for payment of one-half of the sum which they had paid to the Tramway Company.

The pursuers averred that the defenders were liable under the policy issued by them to the Tramway Company for the damage which had resulted from the accident of 24th November.

The defenders denied this averment, and pleaded, *inter alia*—"(1) No title to sue. (4) In respect that the policy of insurance issued by the defenders to the Tramway Company did not at the date of the accident cover the same risk as was covered by the policy issued by the pursuers to the

Tramway Company, the defenders are entitled to absolvitor."

On 10th November 1891 the Lord Ordinary (Low) repelled the defenders' first plea-in-law, and appointed the cause to be put to the roll for further procedure.

"*Opinion.*—Both the pursuers and the defenders in this action are insurance companies, and they undertake, *inter alia*, to indemnify the owners of vehicles against claims for compensation for personal injury, or injury to property caused by the assured's vehicles.

"The South Staffordshire and Birmingham Tramways Company effected policies of insurance of that nature with both the pursuers and defenders.

"It is averred by the pursuers (and at this stage of the case I must assume the averment to be true) that the policies covered the same risk, and were both in force when the accident out of which this action arose occurred.

"In November 1888 one of the Tramway Company's cars was overturned, and they had to pay damages to the extent of £833, 4s. 9d. For that sum they made a claim against the pursuers under their policy, and after litigation judgment was given in the High Court of Justice in England in favour of the Tramways Company, and the pursuers paid to the Tramways Company the sum of £833, 4s. 9d. The pursuers now sue the defenders for one-half of that sum, on the ground that as they have paid the full amount of the loss, they are entitled to relief to the extent of one-half from the defenders, both policies being contracts of indemnity made with the same person in regard to the same risk.

"The defenders' first plea is, 'No title to sue.' They maintain that there being no contract or privity of contract between them and the pursuers, the latter have no direct claim against them, and cannot sue the present action in their own right, whatever they might be able to do if they were suing in name or as assignees of the Tramways Company.

"I am of opinion that the contention of the defenders is not well founded.

"In marine insurance a rule which has been long recognised is that when the assured has recovered to the full extent of his loss under one policy, the insurer under that policy can recover from other underwriters who have insured the same interest against the same risks a rateable sum by way of contribution. The foundation of the rule is that a contract of marine insurance is one of indemnity, and that the insured, whatever the amount of his insurance or the number of the underwriters with whom he has contracted, can never recover more than is required to indemnify him. The different policies being all with the same person and against the same risk are therefore regarded as truly one insurance, and if one of the underwriters is compelled to meet the whole claim, he is entitled to claim contribution from the other underwriters, just as a surety or cautioner who pays the whole debt is entitled to pay rateable relief against his co-sureties or co-cautioners. There is no reason in principle, in my opinion, why the same rule should not be applied to other classes of insurance which are also contracts of indemnity, and this has been recognised by high authority in cases of fire insurance—*North British and Mercantile Insurance Company* v. *London, Liverpool, and Globe Insurance Company*, 5 Ch. Div. 569.

"The defenders contended that if the pursuers have any claim at all it must be on the ground that having indemnified the Tramways Company they are entitled to succeed to all the means whereby the Tramways Company could have reimbursed themselves for their loss, and that accordingly the claim must be made in name, or as assignees of the Tramways Company. In support of this view the defenders appealed to the judgment of the House of Lords, and especially to the opinion of Lord Cairns, in *Simpson & Company* v. *Thomson*, 5 R. (H. of L.), p. 40. In that case William Burrell was owner of the ships the 'Dunluce Castle' and the 'Fitzmaurice.' These ships came into collision, and the 'Dunluce Castle' was sunk, the fault being entirely on the part of the 'Fitzmaurice.' Mr Burrell presented a petition under the Merchant Shipping Acts for limitation of his liability as owner of the delinquent vessel, and for ranking claimants on the fund. The underwriters of the 'Dunluce Castle,' who had paid insurance as for a total loss, claimed to be ranked on the fund. The House of Lords repelled the claim in respect that the owner himself could not have done so, and that they were no more than his assignees. That case, however, appears to me to belong to a totally different branch of law from the present case. It exemplified an application of the doctrine that where the insured has a primary right against third parties who have been the authors of the loss, the insurers on making good the loss are entitled to be put in his place, and to enforce the remedies which he would have had against these third parties. That, however, is not the doctrine which lies at the root of the rule of marine insurance to which I have referred, but is a doctrine which would be destructive of that rule. The right of an underwriter who has indemnified the insured to claim contribution from the other underwriters cannot be founded upon the doctrine of subrogation, because an assignee can have no higher right than his cedent, and a shipowner who has received full indemnity from one underwriter can never make any claim against another underwriter. The answer, therefore, to the claim of an underwriter who had paid, if made only in the right and as assignee of the insured, would be that the contract was one of indemnity, and that the insurer had already been indemnified.

"I am therefore of opinion that the first plea-in-law for the defenders must be repelled."

A proof was thereafter led. In addition to the facts above narrated, it appeared that on 26th November Mr Miller had had

an interview with Mr Hatchett as to the accident which had occurred on the 24th. As to what then passed, Miller deponed—"I said—'It is fortunate for us you have not paid the premium.' I said that it not having been paid I did not consider we ran the risk. I referred him (Mr Hatchett) to the stipulation in our policy as to the payment of the premium, and I said that now we should take care not to accept the premium except from the 24th, in consequence of the accident." Mr Hatchett did not contradict this evidence, but said he did not remember anything having been said about the premium not having been paid.

On 10th March 1892 the Lord Ordinary sustained the 4th plea for the defenders, and assoilzied them from the conclusions of the action.

"*Opinion.*—It is admitted that the question which I have now to decide is not different from what it would have been if the claim had been made against the defenders by the Birmingham Tramway Company, and not the pursuers; the question being whether the Tramway Company had effected an insurance with the defenders which rendered them liable to indemnify the company for the loss which they sustained through an accident which happened on 24th of November 1888. [*His Lordship then narrated the facts of the case.*]

The result is, that prior to the 24th November there was a concluded contract between the Tramway Company and the defenders, whereby the latter agreed to insure the former against the risks specified in the policy from the 24th of November inclusive, subject to the suspensive condition in the policy in regard to the non-payment of the premium. Now, on the 24th the premium was not paid, and in my judgment the defenders were entitled to take advantage of the suspensive condition in the contract unless they chose to waive their right to do so. . . .

"The pursuers contend that the receipt amounted to a waiver by the defenders of their right to found upon non-payment of the premium, because the terms of the receipt were quite consistent with the contract which had been made, viz., for an insurance from the 24th inclusive. If, the pursuers argue, the defenders intended to stand upon the condition in regard to the payment of premium, the proper course was to refuse to accept payment when it was tendered.

"In my opinion there was no duty on the defenders' part, nor were they entitled to refuse to accept payment of the premium. The present case appears to me to be entirely different from a case of, for example, life insurance. In the latter case the death of the insured is the one event contemplated, and if it is stipulated that there is to be no insurance until the premium is paid, and the insured dies before payment, it may well be that the insurers must either refuse to accept the premium if tendered by the representatives of the deceased, or be held to have waived their right to found upon the stipulation. In such a case as the present, on the other hand, the insurance is against loss sustained in consequence of any accident, and all the accidents which may happen during the period covered by the policy. The contract was to insure against accidents for the period from 24th November 1888 inclusive, to the 24th November 1889, subject to the condition that the defenders should not be liable in regard to an accident happening before the premium was paid. If, therefore, the Tramway Company chose not to pay the premium until the second day of the period, they could not claim for an accident happening on the first day; but the fact that an accident happened on the first day would not, in my judgment, have entitled the defenders to refuse to accept the premium when tendered upon the second day, because they had contracted to indemnify the company against loss from an accident occurring at any time during the period specified, provided that the premium had been paid before the accident had happened. Any other view would be most unjust to the Tramway Company. If the fact that the premium was not paid until the second day, coupled with the fact that an accident happened on the first day, entitled the defenders to refuse to accept the premium, that, I think, must mean that it entitled them to resile from their contract altogether, with the result that, although they had contracted to insure the Tramway Company for every day of the twelve months after the premium was paid, that company would have been left without any insurance at all during the period required to negotiate a fresh contract. The position of matters therefore was, in my opinion, this—the defenders undertook to insure the Tramway Company for the period of twelve months from and including the 24th November, subject to condition that no insurance should be held to be effected until the premium was paid. If, therefore, the Tramway Company wished to obtain the benefit of an effectual insurance for the whole period, it was necessary for them to pay the premium at or before the commencement of the period, and if they did not do so they took the risk of an accident happening before payment. On the other hand, from the moment payment was made the insurance became effectual, and the defenders became liable for the remainder of the twelve months.

"The question, therefore, is narrowed to this, whether the terms of the receipt granted by the defenders imported a waiver of the condition as to payment, and an acknowledgment of liability before payment.

"The defenders maintain that the terms of the receipt exclude the 24th November, and Mr Miller says that it was framed with that intention. The receipt acknowledges payment for the third party risk 'from the 24th current.' The defenders say that the usual and natural meaning if 'from' a certain day is 'from and after' that day. The pursuers, on the other hand, contend that the word 'from' in the receipt must

be construed with reference to the contract, and that as the contract was for an insurance 'from and including' the 24th November, the receipt must bear the same meaning.

"It seems to me that it is impossible to lay down any inflexible rule as to the meaning of the word 'from' in such a case as this. I think that it may mean 'from and after' or 'from and including,' according to the context, and the circumstances of the particular case. In this case, the receipt being for the premium upon a policy running from the 24th November inclusive, I think that the word 'from' cannot be read as unequivocally expressing 'from and after.' Mr Miller no doubt says that it was intended to bear that meaning, but his intention cannot affect the legal construction of the document, and if that was Mr Miller's intention, it is unfortunate that he did not instruct the use of words in regard to the meaning of which there could be no doubt. It is, however, certain that the defenders did not intend at any time to admit liability for what occurred on the 24th. Both before and after the date of the receipt they intimated to the Tramway Company that they were 'not in the risk,' and the question therefore is, whether the terms of the receipt import acknowledgment of a liability to which the defenders would not otherwise have been subject. It is therefore necessary carefully to consider the terms of the receipt.

"In the letter of the 26th November sending the cheque, it is said to be 'premium for third party risk.' That seems to be the short expression by which a contract of insurance of the nature of that under consideration is usually described. Mr Mizon in his receipt uses the same phraseology. He acknowledges receipt of cheque 'for the third party risk . . . from the 24th inst.' Now, I do not regard the words 'for the third party risk' as of any importance. They are merely descriptive of the nature of the insurance. The whole matter therefore depends upon the meaning and effect of the words 'from the 24th inst.' The pursuers, as I have already said, maintain that 'from the 24th inst.' must be read as meaning 'from the 24th inst. inclusive.' I think that this view is right, but it by no means follows, in my judgment, that the pursuers are entitled to succeed. To accept the cheque as payment of the premium upon a policy of insurance against certain risks 'from the 24th November inclusive' would have been a perfectly correct way of describing the payment which had been made, and which, in my opinion, the defenders were bound to accept, because the policy was one running from the 24th November inclusive. Such a receipt would not, however, amount to more than an acknowledgment of the premium under the contract which had been made, that contract being for an insurance against certain risks for a period of twelve months from the 24th November inclusive, but subject to a suspensive condition as regards the defenders' liability. The premium must be held to have been paid and received under and in terms of the contract as a whole, and one of the terms of the contract was that no liability should attach until the premium was paid. I can see no waiver of that term of the contract. The receipt, in my opinion, does no more than acknowledge the payment, and identify the contract under which it was made by a short reference to the nature of the insurance and the period included in the policy.

"I am therefore of opinion that the defenders are entitled to absolvitor."

The pursuers reclaimed, and argued—Under the policy as altered by the subsequent correspondence the insurance ran from the 24th November inclusive, subject to the condition that if an accident occurred before the premium was paid the defenders could resile from their contract. If, however, the defenders accepted the premium, as in fact they did, the insurance which was offered and accepted was from 24th November inclusive—Bunyan's Fire Insurance, p. 88; *Anderson* v. *Thornton*, 1852, 8 Exch. 425; Porter's Law of Insurance, p. 75. At all events, by granting the receipt for the premium in the terms used the defenders waived any right they might previously have had of repudiating liability for the results of the accident which had occurred. Reading that receipt in the terms of the correspondence which had passed between the parties, it was clear that the defenders intended the insurance to cover the 24th.

The defenders argued—The true construction of the clause as to non-payment of the premium was that adopted by the Lord Ordinary, and the contract only took effect from the date of payment—*Canning* v. *Farquhar*, 1886, L.R., 16 Q.B.D. 727. Otherwise, the Tramway Company could have postponed payment until they saw whether any accidents occurred. The defenders were therefore not liable under the policy for the results of the accident of 24th November, and the terms of the receipt granted by them could not be construed as a waiver of their rights. The ordinary meaning of "from the 24th" was "after the 24th."

At advising—

LORD PRESIDENT—On 16th November 1888 there was issued by the defenders to the South Staffordshire and Birmingham District Steam Tramway Company, Limited, signed and sealed, a policy of insurance against accidents for the period from 17th November 1888 to 17th November 1889. After the issue of the policy there ensued a correspondence between insured and insurers caused by the circumstance that the Tramway Company were covered by a policy with another office which expired on the 24th November. Not wishing to be doubly insured from the 17th to the 24th, they proposed that the defenders should, instead of insuring them from the 17th, make their policy begin with the 24th. This was assented to, and I take the result of the correspondence to be that it was agreed

that in place of the policy already issued the defenders should insure the Tramway Company for the year commencing the 24th November. This was the state of matters when that day arrived; no policy had been issued in terms of the new arrangement.

Now, on the 24th there chanced to occur an accident to one of the Tramway Company's cars of the kind provided against in the policy agreed for. Both parties were at once aware of the occurrence, and their representatives met. Thereafter the Tramway Company proceeded to send the cheque for the first premium of the proposed policy, and the defenders replied as follows:—"I am much obliged for your favour enclosing cheque value £240 for the third party risk of the So. Staffd., &c., Tram. Co, from the 24th inst. Please return policy for necessary alterations." These are the main facts; and the question is, Are the defenders liable for the accident which occurred on the 24th?

Now, as regards the policy originally issued, it appears to me to be clear that the parties by the correspondence agreed to depart from and abrogate the contract which that policy embodied, and to substitute for it a contract to be embodied in a policy to run from and including the 24th. The rights of parties therefore stood, not on the policy, but on an agreement for another policy. But in this intermediate and provisional condition of matters an event proposed to be insured against occurred, and the question arises, what effect had this on the rights of parties? Now, on the authority and on the reasoning of *Canning* v. *Farquhar*, 16 Q.B.D. 727, I think that it set the Insurance Company free from the obligation to issue a policy for the period commencing with the 24th. An agreement to undertake to relieve against risks necessarily assumes that when it comes to be fulfilled by issuing the policy the events are still risks, and does not apply if before fulfilment, and there being no delay for which the insurer is alone responsible, the events have been converted into certainties. Accordingly I hold that with the occurrence of the accident the agreement for a policy commencing with that day fell. Well, then, on the 29th the insurance company, having been free, undoubtedly became bound by the receipt, but the extent of the liability then undertaken must be ascertained by the terms of that document. Now, I consider the primary meaning of "from the 24th" to be from the expiry of the 24th. It was strenuously maintained, indeed, that the previous correspondence showed that the defenders had used those very words "from the 24th" as including the 24th, and this is the case. But then this cannot be taken to stereotype a secondary meaning as applying to a common expression when used by a particular person irrespective of all changes of circumstances and intervening meetings. In reading the receipt as excluding the 24th, I do not go upon the extreme improbability of the Insurance Company meaning to include it, but upon the primary meaning of the words; and I decline to adopt a secondary meaning upon the sole medium of the previous letters. It would be impossible to throw out of account the fact that in the interval the parties had met and discussed the accident, and that the defenders' representatives had said to the Tramway Company's representatives that now his company would "take care not to accept the premium except from the 24th in consequence of the accident," the words "from the 24th" being then unquestionably used in their primary sense.

Upon these grounds I am of opinion that the defenders are entitled to the absolvitor which the Lord Ordinary has granted them.

LORD ADAM—I do not think that the policy issued by the defenders for the twelve months from 17th November 1888 can be considered as a policy binding on the defenders, or that it was ever accepted by the Tramway Company as such. The objection to the date from which the risk was to run was an objection *in essentialibus*. If, for example, an accident had occurred on the 18th, the Tramway Company could not possibly have recovered under the policy. It may be a question if, after the acceptance by the defenders of the proposed alteration of the date, nothing material had occurred to alter the risk, they would have been bound, on tender of the premium, to issue a new policy giving effect to the alteration, *i.e.*, making the risk run from 24th November inclusive. But a material circumstance did occur to alter the risk, viz., the accident on the 24th, and I think the question for decision is, whether after that accident the defenders were bound to complete the transaction by accepting the premium and issuing a policy in the terms previously arranged. I think not. What the parties had been transacting about was the insurance of the risk of an accident on the 24th, but before the transaction was completed that had ceased to be a risk merely, but had become a certainty, and was no longer the subject of insurance. Suppose an insurance company had agreed to insure the life of an individual, but that before the premium had been paid, or the policy issued, he had died, I do not think the company would have been bound to accept the premium or conclude the transaction. It seems to me that the whole basis of the transaction is gone. So here what the defenders had agreed to do was to issue a policy against the risk of accident on the 24th, but they had not agreed to indemnify the Tramway Company for the consequences of an accident which had actually occurred. On these grounds therefore, and on the authority of the case of *Canning* v. *Farquhar*, I think the defenders were not bound to complete the transaction and accept the premium on the terms arranged prior to the 24th.

What afterwards happened was that the Tramway Company on 26th November sent a cheque for the amount of the premium to the defenders. This was accepted by them on the terms set forth in the receipt which they granted for it on the 29th. This receipt was in the following terms:—

"I am much obliged for your favour enclosing cheque value £240 for the third party risk of the So. Staffd. Tramway Co. from the 24th inst." I do not think that in the absence of any qualifying words the terms of the receipt are ambiguous, and I think that they exclude liability for risk on the 24th. But it was maintained by the pursuers that the terms of the receipt were ambiguous, and might be read as either excluding or including the 24th, and that when read in connection with the correspondence of 19th and 20th November, they must be read as including that day.

But then I do not think that the receipt is to be construed by the correspondence. The subsequent accident had produced an entire change of circumstances. Mr Miller, the defenders' secretary, and Mr Hatchett, the pursuers' secretary, had a meeting on the 26th. What then passed is thus described by Mr Miller in his evidence—"I said"—"It is fortunate for us you have not paid the premium. He said if he had not had to send the cheque to one of his directors for signature it would have been duly paid. I referred him to the stipulation in our policy as to the payment of premium, and I said that now we should take care not to accept the premium except from the 24th in consequence of the accident." The defenders accordingly instructed Mr Mizon to accept receipt of the premium as from the 24th so as to exclude liability for the 24th. Mr Mizon accepted receipt in the terms I have quoted. The receipt was accepted without objection by the Tramway Company. It was not granted in the terms it bears with reference to the previous correspondence, but with reference to the supervening accident. I think that the defenders accepted payment of the premium in terms of the receipt, and not otherwise. I think that these terms, unless they are to be construed with reference to the previous correspondence, exclude liability for the accident on the 24th. But I think they are not to be so construed, and therefore that the Lord Ordinary's interlocutor ought to be adhered to.

LORD M'LAREN—I agree with the leading proposition of your Lordship in the chair, with one qualification or explanation, which I have no doubt your Lordship will assent to. If the preliminary contract between the parties be for cash against the issue of a policy, then if a casualty occurs before the policy is issued, and before the premium is paid, the nature of the risk is altered, and the company is no longer bound to proceed in the execution of the preliminary contract. But if the contract be for a running account, according to the practice in relation to marine policies, the occurrence of a casualty before the issue of a formal document does not entitle the underwriter to resile, because the agreement is for a running account. I merely mention this in order that it may not appear that we have overlooked this distinction, or may have decided anything contrary to the principles in the decided cases on marine policies. Now, it being once determined that the occurrence of a casualty while matters are entire does entitle the underwriter to resile, then I think all the rest follows plainly as set forth in your Lordship's opinion, and that in this case there was no obligation to issue a policy as from the date originally proposed. Accordingly, when the company agreed to issue a policy "from the 24th," they must be taken to have meant what their words primarily mean, and what is in accordance with their legal rights—a policy taking effect from the day after the casualty occurred.

LORD KINNEAR concurred.

The Court adhered.

Counsel for the Pursuers—Asher, Q.C.—C. S. Dickson. Agents—Ronald & Ritchie, S.S.C.

Counsel for the Defenders — Dean of Faculty Balfour, Q.C. — Ure. Agents — Simpson & Marwick, W.S.

Wednesday, July 13.

FIRST DIVISION.

[Lord Stormonth Darling, Ordinary.

SHAWS *v.* MUIR.

Donation -Donatio inter vivos.

A, a tradesman, having executed a trust-deed for behoof of his creditors, B purchased his business from the trustee, and thereafter entered into an agreement with A, wherein he agreed to take him into his service in connection with the business at a weekly wage, and, without coming under any legal obligation on the subject, expressed his intention to apply one-half of the profits derived from the business, so long as A remained in his service, for the benefit of A's family. A remained in B's service for some years, and during this period B credited him annually in the books of the business with half the profits. After A's death B wrote to his children informing them of the sum standing at A's credit, and in a subsequent letter he talked of this sum as set aside for their benefit, and said that he would continue to make quarterly remittances until both principal and interest were exhausted. *Held* that by his letters to A's children B made them an irrevocable donation of the whole sum standing at A's credit at the date of his death, and that he was not entitled to make any deduction from this sum on account of bad debts incurred during A's life.

In the year 1876 the affairs of William Shaw, grocer and wine merchant in Helensburgh, became embarrassed, and he granted a trust-deed for behoof of his creditors. Shaw's business was sold by the trustee, and was acquired by Robert Muir, who thereafter, on 26th December 1876, entered