father is the head of the family, and it is assumed that his wife and children will reside with him, and any settlement gained by him is gained not for himself alone but for the whole family—*Barbour* v. *Adamson*, H.L., 1 Macq. 376. That principle clearly cannot be applied in a case like this. The law does not assume that this family was kept together by the father. It does not recognise him as the head. It was his duty to reside with his lawful wife, and any settlement he acquired was acquired for her and her family.

It is a narrow question, but on the whole the defenders' argument appears to me to be more in accordance with the decisions than that presented by the pursuers, and I accordingly think they are entitled to be assoilzied from the conclusions of the summons with expenses.

The Lord Ordinary assoilzied the defenders.

Counsel for the Pursuers — Solicitor-General (Morison, K.C.)—Graham Robertson. Agent—James Ayton, S.S.C.

Counsel for the Defenders — Constable, K.C.—MacRobert. Agents—Scott & Glover, W.S.

Friday, May 21.

SECOND DIVISION.

[Sheriff Court at Edinburgh

CHRISTIE'S TRUSTEE *v.* LEITH, HULL, AND HAMBURG STEAM PACKET COMPANY, LIMITED.

Bankruptcy — Sequestration — Vesting of Estate—Tantum et tale—Bond of Annuity under Superannuation Scheme for the Benefit of Employees in Mercantile Company.

A superannuation scheme instituted by a company for the benefit of certain of its employees provided for the company and the employees contributing in the proportions of two-fifths and three-fifths respectively the premiums necessary to purchase bonds of annuity payable at sixty years of age from an insurance company. The employee was bound to pay his proportion to his employers as long as he remained in their service, and it might be collected by deduction from his salary. If he left their service before the age of sixty he became entitled to a bond of annuity equivalent in value to the amounts paid or to the surrender value of the policy. If he died in the service of the company his representatives became entitled to repayment of all sums paid on his behalf by himself and the company, and if he died before the age of sixty-five his representatives were entitled to his annuity up to the time at which he would have reached that age. An employee having become bankrupt while in the company's service his trustee claimed the policy. *Held* (*diss.* Lord Dundas) that the bankrupt could not have demanded delivery of the policy while in the company's service, and that accordingly his trustee was not entitled to obtain possession of it.

Charles Simon Romanes, C.A., Edinburgh, trustee on the sequestrated estates of Thomas Christie, Grangemouth, *pursuer*, brought an action in the Sheriff Court at Edinburgh against the Leith, Hull, and Hamburg Steam Packet Company, Limited, Leith, *defenders*, for declarator that a policy of annuity granted by the Edinburgh Life Assurance Company in favour of Mr Christie and all benefits conferred under it had vested in the pursuer as the trustee on Mr Christie's sequestrated estate, and for decree of delivery of the policy, or failing delivery for payment of £300.

The policy in question was taken out by the defenders under the provisions of a benefit fund which they had instituted with the view of providing superannuation pensions for their clerical staff, of which Mr Christie was a member.

The rules of the benefit fund provided, *inter alia*—Article 31—"Subject to sections 39 and 42, the company undertakes in the case of all members of the clerical staff of the company who at 31st December 1906 were over thirty years of age and under sixty to contribute yearly until the 31st December immediately before such members shall respectively attain the age of 60, for the purchase of annuities, the sums respectively set opposite their names in the fourth column of the Scheme of Allocation and Contribution hereinbefore referred to, and so long as the company shall continue so to do the said members of the staff shall pay yearly the sums respectively set opposite their names in the fifth column of the said scheme. . . ." Article 34—"The annuities provided for in this scheme shall be purchased from the Edinburgh Life Assurance Company or from some other first-class British insurance company. So long as the prospective annuitant is in the service of the company his share of the premium shall be paid to the company, which may collect the same by deductions when paying his salary, and which shall be entitled for any period not more than one year to retain any premium collected before handing it on to the insurance company. . . ." Article 36—"If a member of the clerical staff of the company leave the service of the company for any reason whatever (other than death) before the age of sixty, the company's contributions on his behalf shall forthwith cease; but he shall be entitled to receive from the company a bond of annuity in his favour corresponding to the amounts paid or to be paid on his behalf by himself and the company and the fund (if any), whether by way of single payment or annual premium or both; and if he shall at any time thereafter before reaching the age of sixty elect to surrender the said bond of annuity to the assurance company by which it shall have been issued he shall be entitled to receive from it forthwith repayment of all such amounts paid to it in respect of said bond.

. . ." Article 37 provided that if a member of the clerical staff should die while in the service of the company his representatives should be entitled to receive repayment of all sums paid on his behalf by himself and the company. Article 38 provided that in the event of his dying before he reached the age of sixty-five his annuity should be continued to his representatives up to the date at which had he survived he would have reached the age of sixty-five years. Article 42—"The company shall, notwithstanding anything hereinbefore expressed, be entitled in the case of any member of the staff, and at any time, to discontinue any payments of premiums by it under this scheme, and any such discontinuance shall operate as if the member of the staff had at that date left the service of the company under section 36 hereof."

These provisions became binding on Mr Christie by his intimating his election to accept them.

The policy of insurance taken out in terms of this scheme was in the following terms:—"Now this policy witnesseth that if there shall be paid to the company on or before the first day of January next, and on or before the first day of January in each year, down to and including the first day of January in the year 1920, if the said Thomas Christie shall so long live, a premium of Twenty-three pounds, four shillings and twopence (£23, 4s. 2d.), the company will pay to him after he shall have attained the age of sixty years an annuity of Fifty pounds per annum, payable quarterly on 16th January and 16th April and 16th July and 16th October, beginning the first payment of £12, 10s. on 16th April 1920, and thereafter quarterly to him, or in the event of his death his representatives until 16th January 1925 inclusive, and if he be alive on 16th April 1925 a payment of £12, 10s. on that day, and thereafter quarterly as above set forth during the remainder of his lifetime, and ending with a proportionate payment down to the date of his death, with a fifth part more of liquidate penalty in case of failure and due and ordinary interest of the same, provided the said annuity is duly demanded and not paid from the respective terms of payment thereof during the non-payment of the same. But if payment of the premium be for any reason discontinued or not made regularly as aforesaid, or if the said Thomas Christie surrender this policy to the company or die before attaining the age of sixty years, and satisfactory proof of such death be made to the court of directors of the company, the capital stock and funds of the company shall be subject and liable for the repayment forthwith to him or to his representatives, as the case may be, of the whole premiums which shall have been paid to the company under this policy, whether by way of single payment or annual premium or both without interest."

On 21st May 1914 the Sheriff-Substitute (GUY) granted decree in terms of the crave of the initial writ.

The defenders appealed, and argued—No right had been conferred on either the bankrupt or his trustee by the policy of annuity, because it had never been delivered to the bankrupt—*Hill* v. *Hill*, July 2, 1755, M. 11,580; *Walker's Executor* v. *Walker*, June 19, 1878, 5 R. 965, 15 S.L.R. 636; *Jarvie's Trustee* v. *Jarvie's Trustees*, January 28, 1887, 14 R. 411, 24 S.L.R. 299. The trustee took *tantum et tale*, and his only rights were those which were vested in the bankrupt at the date of his bankruptcy. No doubt the bankrupt had a contingent interest in the policy, conditional on his surviving the age of sixty, but such an interest was no more than a *spes successionis* and did not pass to the trustee in bankruptcy—*Fleeming* v. *Howden*, July 16, 1868, 6 Macph. (H.L.) 113; *Trappes* v. *Meredith*, November 3, 1871, 10 Macph. 38; *Reid* v. *Morison*, March 10, 1893, 20 R. 510, 30 S.L.R. 477. In no sense could the present policy be brought within the ambit of the vesting clause (section 102) in the Bankruptcy (Scotland) Act 1856 (19 and 20 Vict. cap. 79). The Bankruptcy (Scotland) Act 1913 (3 and 4 Geo. V, cap. 20), section 97, sub-section 4, which altered the law in this matter, did not affect the present question, because the date of the sequestration was prior to the Act. The cases cited *contra* were not true cases of contingent interests. The bankrupt's right to terminate the policy was a personal option and not a right of property, and the trustee could not control its exercise—*Lowson* v. *Young*, July 15, 1854, 16 D. 1098. The trustee could not control the bankrupt in giving his services or order him to resign his position, neither could he seize money earned by the personal services of the bankrupt—*Barrow* v. *Mitchell*, July 8, 1881, 8 R. 933, 18 S.L.R. 668; Goudy on Bankruptcy, 4th ed., p. 369.

Argued for the pursuers—The policy had a surrender value, and a beneficial interest in it at the date of his bankruptcy had vested in the bankrupt and passed to his trustee. This was something quite different from the contingent value which the policy had on the bankrupt attaining the age of sixty—*Heritable Reversionary Company, Limited* v. *Millar*, August 9, 1892, 19 R. (H.L.) 43, *per* Lord Watson, p. 49, 30 S.L.R. 13. The bankrupt could have assigned the policy, and the assignee would have got the proceeds either (*a*) if the bankrupt had died before the age of sixty, or (*b*) had left the service of the defenders before that age, or (*c*) had survived that age. It was therefore something different from a *spes successionis*, and the cases cited by the appellants did not apply. The bankrupt could have got delivery of the policy at any time from the defenders, who in making payment of premiums out of his wages were acting merely as his agents, and were therefore not entitled to withhold delivery. The bankrupt could have refused to allow these deductions from his wages, and the defenders could not have prevented him from assigning the policy. If the policy had been assigned and delivered to a third party, who had not completed his title by intimation, any creditor of the bankrupt could have attached its contents—*Strachan* v. *M'Dougle*, June 19, 1835, 13 S. 954. Further, if the bankrupt's beneficial inter-

est in the policy, so far as capable of passing to his trustee, depended on his election, his trustee could compel him to elect that course which was most favourable to his creditors—*Aikman (Smith's Trustee), Petitioner*, March 2, 1893, 30 S.L.R. 804. In the present case bankruptcy was a *casus improvisus* in the scheme.

At advising—

LORD JUSTICE-CLERK—The defenders in this case, who carry on a business in which they have numerous employees, instituted a system of endowment insurance to provide annuities for them, in certain events. This was done for the benefit of the employee and the company, the employee being secured in a provision for death or retirement, and the company being secured against importunity for gratuities on the employment ceasing from any cause. The scheme consisted in obtaining policies from an insurance company, the premiums being provided by the company to the extent of about two-fifths on the one hand, and by the servant in respect of three-fifths, the company receiving his proportion from the employee.

The present case relates to a policy for endowment, under the scheme, in which one Christie was the prospective beneficiary. While the policy was still in force Christie became bankrupt, and his trustee now demands that the policy be delivered up to him that he may now obtain from the Insurance Company whatever value it may have and apply the proceeds for behoof of Christie's creditors in the distribution of his estate. The trustee's contention is that the policy when taken out was Christie's policy, that he held the beneficial right to it to the exclusion of his employers, although his connection with the company did not cease, and although it was in respect of his being such servant that the policy was taken out and maintained up to the date of the bankruptcy, under the rules applicable to all the company's servants who entered into the scheme. The trustee claims that, as in place of the bankrupt, he is entitled to call on the company to deliver the policy to him, seeing that Christie had a right so to demand delivery of it at any time, to deal with it as he pleased, as by calling on the Insurance Company to give him surrender value in exchange for it.

The question comes to be whether Christie could have demanded delivery of the bond at any time while he remained in the company's service. In my opinion he could not. The arrangement that he and his employers had made was that the policy should be carried on at their joint expense to make a provision for the servant in certain eventualities. No right had emerged to him. He had only certain prospects in certain events, and until one or other of such events occurred he could make no claim at all. If he left the company and ceased to be their employee, he could, under the stipulations of Part 3 of the endowment scheme, if he were under the age of sixty, claim to receive a bond of annuity corresponding to the amounts already paid by him and the company; and in such a case he might at any time claim from the insuring company, on surrendering the policy, the amount of the premiums that had been paid.

But the case here is different. Christie never left the employment, and is still an employee of the defenders. He therefore was in the position of having only certain prospects in certain events. As long as the company paid its annual contribution to the premium on the policy (which he could insist upon their doing), the rule was imperative that he should also pay his contribution. Section 31 in Part 3 of the scheme declares that he "shall pay yearly" the sum set against his name in the schedule attached; and the company is empowered to take payment of his proportion of the premium by withholding the amount from his salary. Thus they hold the policy, and continue to do so as long as he is their servant. The company are not mere agents. They have right to have the policy kept in force, and are not bound to part with it to let him do with it what he pleases. If this is the position of matters, as I hold it is on the stipulations of the scheme by which Christie bound himself, he, when solvent, could not demand the policy or take any action to realise it. Is any difference made by his becoming bankrupt? I cannot think so. His bankruptcy does not seem to me to affect in any way the position of the defenders. He is still their servant, and the mutual obligations in regard to this endowment transaction remain the same. He is liable for his share of the premiums as they fall due, and the defenders still have the right on paying the premiums to recoup themselves for his proportion by retention out of his salary. I am therefore unable to see how the trustee can establish a right to impound the policy, seeing that the bankrupt, whom he represents, had no right to call upon the company to deliver the policy to him that he might realise money on it. It was not in any sense an asset of his estate. The company having taken out a bond in favour of Christie, but he not having or being entitled to have delivery of the bond, his trustee, on his being sequestrated, can, as I think, be in no better position. The trustee asks in the initial writ that it be declared that the policy and its benefits are "now vested in and belong to him." In the circumstances I do not see my way to grant any such declaration.

I would move your Lordships to recal the interlocutor of the Sheriff-Substitute and to assoilzie the defenders.

LORD DUNDAS—I regret that I am unable to agree with the opinion just delivered, in which I understand both your Lordships concur.

After careful consideration of this difficult case I have come to the conclusion that the interlocutor of the learned Sheriff-Substitute is right.

The question to be determined is whether the right to a policy or bond of annuity by the Edinburgh Life Assurance Company in

favour of a Mr Christie, dated in 1907, and the sums payable under it, did or did not pass to the pursuer as trustee in Christie's sequestration in 1912.

The policy was taken out in pursuance of a superannuation scheme for the benefit of the clerks of the defender company, including Christie, and to which he was a party. The general aim and object of that scheme was the purchase of deferred annuities of £50 for the clerks, commencing at the age of sixty. The policies were to be taken out by the defender company and the premiums paid partly by the clerk and partly by the company. The company reserved right to discontinue their contributions at any time, but so long as they choose to continue their contributions, the clerk, while in their employment, must continue his, which the company are entitled to collect by way of deduction from his salary. The contributions made by Mr Christie were considerably more than one-half of the whole.

The bond of annuity is in usual form, the Assurance Company undertaking, on condition of the payment of premiums till 1920, to pay to Christie a deferred annuity of £50 for life commencing at that date (when he attains the age of sixty), with a further guarantee that if he dies before sixty-five the annuity shall be paid to his "representatives" until the time when he would have attained that age. The bond contains the further undertaking that if payment of the premiums be for any reason discontinued, or if Christie shall surrender the policy to the Assurance Company or shall die before attaining sixty, the company shall forthwith repay to him or his representatives, as the case may be, the whole premiums paid to the company but without interest.

The first answer made by the defender company to the pursuer's demand for delivery of the policy, which is still in their hands, is based upon the authority of such cases as *Hill*, (1755) M. 11,580; *Walker's Trustees*, (1878) 5 R. 965; and *Jarvie's Trustee*, (1887) 14 R. 411. But it seems to me that these authorities are not here in point. They were all cases where a man, being desirous of making gratuitous provision from his own funds for another, invested his money and took the security in name of the wife or child for whom he intended to provide, and retained the document of debt in his own hands. In such cases it has been held that the fund remained his own property. But it is quite a different case where, as here, the policy has been taken out not gratuitously but in terms of contract, and not wholly from the defender company's funds, but partly (and chiefly) from the funds of the employee whom the company had contracted to aid. Indeed in order to prevail on this branch of the argument the defender company would have to maintain that the sole beneficial right to the policy moneys was in themselves, which they could hardly do.

It occurred to me that an argument might perhaps have been put forward upon equitable principle to the effect that the surrender value of the policy should be divided between the parties in rateable proportion to the contributions towards premiums made by the defender company and by Christie respectively. No such argument was presented and no such plea is stated on record. Probably the point was considered and rejected by both parties. I doubt if it could have been successfully made. See *Leslie* (1883) 23 Ch. Div. 552; *Falcke* (1886) 34 Ch. Div. 234; *E. Winchilsea*, (1888) 39 Ch. Div. 168.

The second answer made by the defender company to the pursuer's claim is rested on the authority of such cases as *Reid*, 1893, 20 R. 510, and *Trappes* v. *Meredith*, 1871, 10 Macph. 38. But these, again, are cases relating to a mere *spes successionis*, and seem to me to have nothing to do with a case (like the present) of a policy capable of immediate transfer and possessing a present surrender value. It was argued for the defender company that the beneficial right to and interest in the policy cannot be said to be vested in Mr Christie alone—that he himself might in some events take no benefit whatever from the policy, and that in case of his death before sixty the benefit would emerge to his "representatives," who in that case would take a right not derived through him but independent of him. I do not think so. I think his "representatives" are simply his legal representatives—his heirs and assignees. It was argued that the term more properly indicated the wife or the children, or perhaps both. I cannot so read it. I think that if the term had been intended to apply to anyone other than ordinary legal representatives, it would have been necessary—and it would have been very easy—to designate precisely the persons intended to be introduced as conditional institutes.

It was further argued for the defender company that it was matter of contractual agreement between them and Mr Christie that the policy should not be delivered to him while he remained in their service, which he still does. It is not quite easy to spell such a contract out of the superannuation scheme. Section 36 was specially relied upon. The whole of that clause is governed by the initial words "if a member . . . leaves the service." Christie has not left the service, and the section is thus in terms inapplicable to his case; but the inference sought to be drawn from it is that unless and until he leaves the service he has by contract with his employers no right to demand delivery of the policy, nor to surrender or deal with it in any way. It is, however, unnecessary to determine whether or not section 36 will bear the suggested construction. For even assuming that the defender company are entitled by agreement with Christie to retain the policy in a question with him, I do not see how such a contract could be effectual to exclude the diligence of his creditors. The superannuation scheme seems to be an excellent and laudable one, but it does not appear to have contemplated the event of a clerk's bankruptcy. I do not doubt that a creditor of Mr Christie could have attached the policy even in the hands of a third party entitled to retain it under onerous contract—

Strachan, 1835, 13 S. 954. See also *Bankhardt's Trustees*, 1871, 9 Macph. 443. In *Strachan's* case nothing could have been more onerous than the contract under which Miss M'Dougle was entitled to hold the policy in security of the debt to her, yet it was held ineffectual as against the claim of an arresting creditor. If this be so, it seems manifest that the defender company cannot found upon their contractual agreement with Mr Christie as entitling them to retain the policy against the trustee in his sequestration.

For these reasons I am of opinion that the appeal should be refused.

LORD SALVESEN—In this case the pursuer craves the Court to find and declare that a policy in favour of the bankrupt Thomas Christie vested in him as trustee on the latter's sequestrated estate, and to ordain the defenders, in whose possession it is, to deliver it to him. The policy in question bears on the face of it that it was effected by the defenders on the life of and in favour of Thomas Christie, and that they had paid the first annual premium. It is admitted that it was delivered to them by the insurance company, that they have since regularly paid the premiums there, and that it has never left their possession. On the other hand, it is plain enough from its terms that if it were delivered to the pursuer as trustee for Mr Christie, he could, as in a question with the insurance company, demand and receive from them its surrender value. The only question therefore in the case appears to be whether Mr Christie when solvent could have demanded from the defenders the delivery of the policy to him.

The policy in question was taken out by the defenders under the provisions of a benefit fund which they had instituted with the view of providing superannuation pensions to the members of their clerical staff. The particular provisions with which we are concerned are those in Part III. These provisions became binding on Mr Christie by his intimating his election to accept them.

[*His Lordship then narrated the principal provisions of the scheme.*]

I think it cannot be doubted, from the general scope of these provisions, that while the institution of this benefit fund was mainly in the interests of the clerical staff of the defenders, it was also in their interest that such a fund should be established. Apart from the circumstance that they would naturally desire to avoid applications for relief from superannuated servants or their dependants, the fact that their staff were entitled to annuities on attaining the age of sixty might conduce to their obtaining good servants or retaining them in their service. The contributions which the defenders made out of their own pockets to secure these objects represented roughly about two-fifths of the premiums required to secure a deferred annuity of £50 payable at the age of sixty. It is not unimportant also to note that the representatives of any member of the clerical staff who died before he attained the age of sixty were entitled to obtain payment of all the premiums paid, whether by him or by the defenders, and also to receive certain benefits if he reached the age of sixty but died before the age of sixty-five. These provisions would have the effect of so far safeguarding the defenders against applications for relief made by such persons.

The claim of the pursuer is based on the view that, notwithstanding this contract between Mr Christie and his employers, under which they both contributed to the premiums, the sole beneficial interest in the policy vested, as soon as it was taken out, in Mr Christie. It would follow that he could at any time have demanded delivery of the policy from them and have surrendered it to the insurance company, he thereupon receiving the premiums that had been paid prior to the surrender. If that were the legal result I think the whole object of the defenders in establishing the scheme would be defeated; they would lose the advantages in consideration of which they contributed to the premiums. I do not think this is the legal inference to be drawn from the terms of the policy and the contract under which it was taken out. No doubt Mr Christie could, if he chose to leave the defenders' service, immediately demand from them delivery of the policy. In that event all connection between them would cease; and they would have no obligations, moral or otherwise, towards him or his dependants. But it is not said that the trustee is entitled to force him to do so in order to obtain for the creditors the surrender value of the policy. If Mr Christie had himself demanded delivery of the policy while continuing in the defenders' service, the answer to him would have been, in my opinion, conclusive that he had no right to it; and the trustee can have no higher right than the bankrupt himself. No right of any kind had vested in Mr Christie at the date of his bankruptcy. It is true that, whatever happens, he or his representatives will certainly, at no remote date, be entitled to get certain benefits under the policy; but at present, nothing has vested, and the obligation to contribute to the premiums on the policy is still exigible both from Mr Christie and from the defenders. The defenders are, in my judgment, in no sense merely agents or trustees for Mr Christie to hold the policy on his behalf, as they might have been if the whole premiums had been contributed by Mr Christie; and it was a mere matter of convenience that the policy was taken out by the defenders on his behalf.

The Sheriff-Substitute seems to have thought that it was sufficient to consider the terms of the policy itself, without regard to the question that it had been taken out by the defenders under the special provisions of their benefit scheme. No doubt that would be so if he was entitled to demand delivery of the policy; but the cases of *Hill*, M. 11,580, *Walker's Executor*, 5 R. 965, and *Jarvie's Trustees*, 14 R. 411, are conclusive to the effect that a bond of annuity or policy in favour of A, which had been taken out by B, and is in B's possession, does not give

A a right to demand implement of the obligations in the bond or policy, but that right remains in the person of the holder. No doubt in all these cases the money payments in consideration of the bond or policy had been exclusively made by the person in whose hands it was, but I do not see how that affects the principle. If there is a contract by A and B under which a policy is taken out by A in favour of B, on the footing that the premiums shall be contributed to by both for their mutual benefit, B can only get delivery if he satisfies the conditions of the contract which entitle him to such delivery. I cannot accept the view that the whole surrender value is due to B, the conditions of the contract remaining unimplemented by him, because B or his trustee makes the demand. The Sheriff-Substitute seems to think that Mr Christie having become bankrupt may have broken his bargain with the defenders. I cannot follow that reasoning. The services of a clerk may just as readily be given to his employer after bankruptcy as before it, and his bankruptcy does not in any way impair his right to make his own living. Again, the Sheriff-Substitute says that any creditor could have arrested Christie's unqualified rights under the policy, and made them good by furthcoming and sale or surrender. If that were so, of course it would follow that these rights had vested in the pursuer. In so holding, however, I think the learned Judge overlooks the importance that attaches to the fact that Christie had no rights under the policy at all until he obtained or became entitled to delivery from the defenders, and that so long as he remained in their employment he could qualify no ground for demanding delivery. I have therefore come to the conclusion that we must recal the interlocutor of the Sheriff-Substitute and assoilzie the defender.

LORD GUTHRIE—[*After a narrative of the facts*]—It is necessary to consider the scheme of a benefit fund of this kind. In originating, or co-operating with their employers to originate, such a fund employees primarily desire to make provision for their support after they have ceased to be able to earn any or at all events full wages, and accordingly provision was made in this scheme for payment of an annuity on the employee reaching the age of sixty, and thereafter to his death. Provision was also naturally made to prevent the employee losing the benefit of the premiums paid by the defenders out of his wages in the event of his leaving the defenders' service before reaching sixty; and provision was also made for certain benefits to the employee's representatives in the event of his not attaining the age of sixty-five and in certain other circumstances. These different contingencies are provided for in sections 35 to 39 and 42.

But it is evident that the fund was originated not only in the interests of the employees. Two-fifths of the premiums were to be paid by the defenders, evidently with the object, first, of protecting themselves against *ad misericordiam* appeals from superannuated workmen and the representatives of deceased workmen, and second, to enable them to obtain the best class of employees, and to secure the continuance of such employees in their service. The arrangement was one for mutual benefit, and the defenders' contributions to the premium fund are not in my opinion (and the distinction is vital) accurately described by the Sheriff-Substitute as donations.

What were the benefits conferred on an employee like Christie under part 3 of the regulations? Did he obtain a vested right to deal with the annuity purchased under section 29 at any time after it was purchased and to surrender it whenever he chose? If he did so, such right would pass to the trustee and the pursuer would be entitled to decree. Or were his rights limited to the emergence of the events provided for in sections 35, 36, and 42? If his rights were so limited, then it is admitted that none of these events have yet occurred. The question is a difficult one, but it seems to me that, none of the events having arisen which would create a vested right in Christie, he could have had no such right as the Sheriff-Substitute has found him to possess. It is unnecessary to consider, first, the rights of his representatives, for he is still alive, or second, rights which will vest in him when he reaches the age of sixty, for he is only fifty-five (although if he remains an undischarged bankrupt when he reaches sixty it may well be that the pursuer will then be entitled to get the decree which he now seeks), or third, rights Christie will acquire if he leaves the service of the defenders, for he is still in their service, or fourth, rights which will emerge if payment of the premiums is discontinued, for they are still regularly paid.

The Sheriff-Substitute seems to think that because in certain circumstances (which have not occurred, and of which it cannot with certainty be predicated which of them will occur) Christie or his representatives may acquire certain rights of surrender or of payment of annuity, or may become entitled to receive payment of an amount corresponding to the amount of the premiums paid, his trustee must therefore now be entitled to delivery of the policy, with a right to obtain from the insurance company its surrender value. I cannot follow this reasoning. If it be said that to hold otherwise is to deprive Christie's creditors of the premiums so far as paid out of his salary, it may be answered that to decide in the pursuer's favour would be to hand over to the creditors the premiums so far as paid by the defenders as well as to upset the whole scheme on which the regulations were based. But, apart from such considerations, I hold the pursuer's claim excluded by the terms of the contract between Christie and the defenders.

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

The Court recalled the interlocutor of the Sheriff-Substitute and assoilzied the defenders.

Counsel for the Pursuer and Respondent —W. T. Watson—Douglas Jameson. Agents —Galbraith Stewart & Reid, S.S.C.

Counsel for the Defenders and Appellants —D.-F. Dickson—Carmont. Agents—Beveridge, Sutherland, & Smith, S.S.C.

Thursday, May 20.

SECOND DIVISION.

(SINGLE BILLS.)

DAWSON *v.* REID'S TRUSTEES.

(*Ante*, p. 543.)

Process—Appeal to House of Lords—Petition to Apply Judgment—Competency—Expenses—Special Case.

A petition by the successful appellant in a Special Case to apply the judgment of the House of Lords, which reversed the interlocutor appealed against, ordered that the questions be answered in a certain way, and remitted the case to the Court of Session to do therein as should be just and consistent with this judgment, *held* unnecessary though competent, and petitioner found liable in expenses.

Miss Christina Dawson, 66 Braid Road, Edinburgh, *petitioner*, presented a petition to the Second Division of the Court of Session to apply the judgment of the House of Lords in a Special Case in which she had been the appellant and in which the testamentary trustees of the late Robert Reid, manufacturer, Dunfermline, were the first parties, and she was the second party.

On 17th March 1915 the Lords reversed the interlocutor appealed against and pronounced the following judgment:—"It is ordered and adjudged by the Lords Spiritual and Temporal in the Court of Parliament of His Majesty the King assembled, that the said interlocutor of the 28th day of October 1913 so far as complained of in the said appeal, be, and the same is hereby, reversed, and that question 3 (*a*) of the Special Case be answered in the affirmative, and questions 3 (*b*) and 4 (*b*) in the negative, and that question 4 (*a*) be answered by declaring that the first parties have a duty, as soon as they conveniently can, to pay to the second party a capital sum of £3000. And it is further ordered that the said cause be, and the same is hereby, remitted back to the Court of Session in Scotland to do therein as shall be just and consistent with this judgment" (*v. ante*, p. 543).

The prayer of the petition was as follows —"May it therefore please your Lordships to apply the judgment of the House of Lords; to alter the interlocutor appealed against by answering the following questions in law in the Special Case as follows, viz., No. 3 (*a*) in the affirmative, and Nos. 3 (*b*), 4 (*b*), and 4 (*c*) in the negative, and to answer 4 (*a*) by declaring that the first parties have a duty as soon as they conveniently can to pay to the second party a capital sum of £3000; *quoad ultra* to reaffirm the said interlocutor in its whole remaining terms and to decern; to find the petitioner entitled to the expenses of this petition and relative procedure; to remit the account thereof when lodged to the Auditor to tax and report, and to do further or otherwise in the premises as to your Lordships shall seem just."

Argued for the petitioner—The petitioner was entitled to an extractable judgment—*General Assembly of the Free Church of Scotland* v. *Lord Overtoun and Others*, October 22, 1904, 7 F. 202, *per* Lord Young at p. 203, 42 S.L.R. 6. In the present case the cause had been remitted to the Court of Session to do something, viz., to answer the questions in a particular way, and the petitioner was entitled to have these answers recorded in the Books of Council and Session—*Ricketts*, June 12, 1861, 23 D. 1014, *per* the Lord President; *Anstruther* v. *Anstruther's Trustees*, July 19, 1873, 11 Macph. 955. The petitioner's procedure had been in accordance with practice—Mackay, Manual of Practice, p. 582.

Argued for the respondents—The petition was unnecessary. The rule was that a petition was only required where in consequence of the judgment of the House of Lords something remained to be done—*Ricketts, cit.*; *Peters* v. *Magistrates of Greenock*, July 6, 1893, 20 R. 924. In the present case nothing remained to be done.

LORD SALVESEN—This petition has been presented to us to apply a judgment of the House of Lords in a Special Case. We answered certain questions that were put by the parties in a certain way, but on appeal the House of Lords have reversed our judgment and answered them in a different way. The petitioner, who was the successful appellant, now brings an application before us to have the judgment applied by us, and to have the questions answered as the House of Lords answered them.

It is to be noted that the House of Lords have not remitted to us to answer the questions. Their judgment orders that the interlocutor appealed from be reversed and that the questions be answered in the way they have specified. The only remit to us is to do as shall be just and consistent with that judgment—a remit entirely in general terms. A Special Case differs from an ordinary process in respect that an extract proceeding upon the judgment in a special case can never, so far as I can see, warrant diligence of any kind. In certain cases an extract may be useful where a question of heritable title is involved, and an extract of the judgment in a special case which submits a question as to heritable title, may be required in order to be put up with the titles of the successful party.

In this case, however, it is obvious that the procedure which has been resorted to, whether competent or not—and I shall proceed to consider its competency—is wholly unnecessary. The judgment of the House of Lords, if it is resisted by the trustees, can only be enforced by an action. The main point that was decided was that