

material whether appellant was principal or surety.

Appeal dismissed with costs.

T. J. Wallace, appellant in person.

Arthur Drysdale, for the respondent.

[March 18.

CONFEDERATION LIFE ASSOCIATION *v.*

O'DONNELL.

Life insurance—Policy—Memo on margin—Want of countersignature—Effect of—Admissibility of evidence.

A policy of life insurance sued on had in the margin the following memo: "This policy is not valid unless countersigned by..... agent at..... countersigned this..... day of..... Agent."

This memo. was not filled up, and the policy was not, in fact, countersigned by the agent. Evidence was given of the payment of the premium, and rebutting evidence by the company that it had never been paid. The jury found that the premium was paid and the policy delivered to the deceased insured as a completed instrument, and a verdict was entered for the plaintiff and affirmed by the Supreme Court of Nova Scotia.

Held, affirming the judgment of the Court below, Sir W. J. Ritchie, C.J., and Gwynne, J., dissenting, that the necessity of countersigning by the agent was not a condition precedent to the validity of the policy, and the jury having found that the premium was paid their verdict should stand.

The judgment on the former appeals in this case was, on this point, substantially adhered to. See 10 Can. S.C.R. 92, and 13 Can. S.C.R. 218.

Appeal dismissed with costs.

S. H. Blake, Q.C., J. Beaty, Q.C., and Borden, for the appellants.

Weldon, Q.C., and Lyons, for the respondent.

[March 18.

TUPPER *v.* ANNAND.

Contract—Mining land—Speculation in—Agreement with third party—Renewal of—Effect.

T. being in Newfoundland, discovered a mine of pyrites, and on returning to Nova Scotia he proposed to A. that they should buy

it on speculation. A. agreed and advanced money towards paying T.'s expenses in going to Newfoundland to secure the title. T. made the second journey and obtained an agreement of purchase from the owner of the mine for a limited time, but, failing to effect a sale within that time, the agreement lapsed. It was renewed, however, some two or three times, A. continuing to advance money for expenses. Finally T. effected a sale of the mine at a profit, and had the necessary transfers made for the purpose, keeping the matter of the sale a secret from A. On an action by A. for his share of the profit under the original agreement,

Held, affirming the judgment of the Court below, that the sale related back, as between T. and A., to the date of the first agreement and A. could recover.

Appeal dismissed with costs.

W. B. Ross, for appellants.

G. H. Fielding, for respondent.

[March 18.

O'CONNOR *v.* MERCHANTS MARINE INSURANCE CO.

Marine Insurance—Policy—Perils of the seas—Barratry—Loss by—Construction of policy.

In a marine policy insuring against loss by 'perils of the seas,' there was no mention of barratry. The vessel being lost it was found, in an action on the policy, that such loss was caused by the barratrous act of the master in causing holes to be bored by which the vessel was sunk.

Held, STRONG, J., dissenting, that this loss was not occasioned by "perils of the seas," and the fact of barratry not being expressly excepted in the policy, would not entitle the insured to recover.

Appeal dismissed with costs.

McMaster, Q.C., and W. B. Ross, for appellant.

MacCoy, Q.C., for respondents.

[March 18.

WHITMAN *v.* UNION BANK OF HALIFAX.

Assignment in trust for creditors—Preference—Liability of assignee—Limitation of—Release of debtor—Resulting trust—13 Eliz. c. 5.

A deed by C. assigning all his property to