

MIDDLETON, J.:—Contrary to the view formed at the close of the argument, I have come to the conclusion that the widow is entitled to this money. The intention of the insured to give this money to his wife is plain. No doubt, he intended the company to issue another policy in his favour; but, so far as he was concerned, he had done all he intended to do, and all that was necessary to make her the beneficiary.

Under the statute, as soon as an instrument is indorsed upon the policy, a trust is created. It is not necessary to communicate the appointment to the company or the beneficiary. When an appointment is made, the insurance is brought under the operation of the Act and the trust cannot be revoked.

The situation, in another aspect, is analogous to a will of personal estate before the Wills Act. Incomplete instruments were admitted to probate. The cases are discussed in Jarman, 6th ed., p. 126, where it is pointed out that when the testator's design of perfecting the paper is frustrated by causes beyond his control and the testamentary intention is disclosed, the document, notwithstanding its defect, is accepted as the will of the deceased.

Here in a written document, which complies with the statute, in that it is indorsed on the policy, the testator has expressed his desire that the insurance money shall be payable to his wife—true, he thought this necessitated a new policy in which she would be named as beneficiary, and he desired the company to issue such a policy, but the failure of the company to issue the policy is just such an involuntary preventing clause as should not be permitted to frustrate the adequately expressed intention.

The order will go for payment to the wife. Costs out of the fund.

SUTHERLAND, J.

OCTOBER 17TH, 1911.

GIBBONS v. DOUGLAS.

*Fraud and Misrepresentation—Exchange of Lands—Collusion—
Rescission—Reconveyance—Damages—Costs*

The plaintiff sought in this action a reconveyance of land formerly owned by him and conveyed, as the result of a real estate sale and exchange, to the father of the defendant Douglas (who was not a party to the action) and a release from a covenant in a deed to him (the plaintiff) of another parcel of land