

taken in a case originating in the Circuit Court (Ch. 135, Rev. St. of Can., secs. 24, art. G., 28 and 30), the respondents' counsel beginning and replying. Towards the end of his reply, he mentioned to the court that the by-law had been repealed.

In reply to a question from the bench, it was admitted by the appellant's counsel that the by-law had in fact been repealed, but they argued that this was plainly irrelevant; (1) because appellant's rights could not be prejudiced by anything done by the other party subsequent to the institution of the action; (2) that if he were right on the merits—and otherwise he would lose any way—the by-law was an absolute nullity *ab initio*, and the subsequent repeal by the council would have no practical effect.

The court held that after the repeal of the by-law, the appellant had no longer any interest in continuing the litigation, having got what he had originally sued for. It was further held that the repeal left for consideration only a speculative question, and a claim for costs; neither of which matters could properly engage the attention of the court.

The appeal was consequently quashed with costs.

A. E. Mitchell & D. C. Robertson, for Appellant.

Maclaren, Leet, Smith & Smith, for the Village of Huntingdon.

Seers & Laurendeau, for the Atty. Genl.  
(D.C.R.)

#### QUEEN'S BENCH DIVISION.

LONDON, July 20, 1891.

#### CLEAVER V. MUTUAL RESERVE FUND LIFE ASSOCIATION.\*

*Insurance—Policy in favour of wife—Death of insured caused by felonious act of wife.*

James Maybrick insured his life with the defendants in favour of his wife. The insured died and his wife was subsequently tried and convicted for murdering him. Prior to her trial she assigned her interest under the policy to one of the plaintiffs. The assignee of the policy and the executors of the deceased sued the defendants to recover the

amount due upon the policy. Held, that the plaintiffs were not entitled to recover.

This was an action brought to recover the amount alleged to be due upon a policy of insurance. It was ordered that certain questions of law should be decided before any question of fact was tried, and the following facts and questions were submitted by the parties for the opinion of the court:

On or about the 3d October, 1888, one James Maybrick effected an insurance on his life with the defendants for £2,000 in favour of his wife, Florence Elizabeth Maybrick. James Maybrick died on the 11th May, 1889, and by his will, dated 25th April, 1889, he appointed the plaintiffs, Thomas Maybrick and Michael Maybrick, executors, and he stated therein as follows:

"My widow will have for her portion of my estate the policies on my life, £500 with the Scottish Widows Fund and £2,000 with the Mutual Reserve Fund Life Association of New York, both policies being made out in her name. If it is legally possible I wish the £2,500 of life insurance on my life in my wife's name to be invested in the names of the said trustees, but that she should have the sole use of the interest thereof during her life-time, but at her death the principal to revert to my children."

Florence Elizabeth Maybrick was accused of having caused the death of her husband, James Maybrick, by administering poison to him, and was at the assizes at Liverpool in August, 1889, in due form of law, tried and convicted upon an indictment charging her with the willful murder of her husband. Prior to her trial, Florence Elizabeth Maybrick by deed assigned to the plaintiff Richard Stewart Cleaver, the said policy and all her interest thereunder, and notice of the assignment was duly given to the defendants.

On the 30th August, 1889, the plaintiff Cleaver was duly appointed administrator of the property and effects of the said Florence Elizabeth Maybrick under the provisions of the statute 33 and 34 Victoria, chapter 23, section 9.

The sentence passed on Florence Elizabeth Maybrick in respect of the said conviction

\* 65 L. T. Rep. 220. The case has been taken to the Court of Appeal.