bearance for a time, and the execution is, as here, withdrawn, yet, as no direct benefit therefrom has arisen to or was contemplated by the promisor, it is simply a promise to pay the debt of another, which is valid enough so far as the consideration is concerned, but is not enforceable because not put into writing. These conclusions are based upon the late cases of Beattie v. Dinnick, 27 O. R. 285; Harburg India Rubber Comb Co. v. Martin, [1902] 1 K. B. 778; and Bailey v. Gillies, 4 O. L. R. 182, 190. Of the older cases, see Tomlinson v. Gell, 6 A. & E. 564, 571, judgment of Patteson, J., and Chater v. Beckett, 7 T. R. 201.

The execution against the Lentz Co. is still outstanding and enforceable and that company are liable for this judgment debt.

Upon all the facts, I should conclude that the transaction was rather as put by Milne than as by the solicitor. All the circumstances indicate that it was far from the intention of a stranger, Milne, to shoulder personally the liability in any event.

The judgment should be set aside and the action dismissed with costs.

MAGEE and LATCHFORD, JJ., concurred.

DIVISIONAL COURT. FEBRUARY 21ST, 1910.

*DICKS v. SUN LIFE ASSURANCE CO.

Life Insurance—Policies Payable to Children of Assured—Change by Direction in Will—Appointment of Trustee to Receive Insurance Moneys—Validity of Payment to Trustee—Breach of Trust—Costs.

Appeal by the plaintiffs from the judgment of MACMAHON, J., ante 178.

The appeal was heard by BOYD, C., MAGEE and LATCHFORD, JJ.

A. J. Russell Snow, K.C., for the plaintiffs.

G. F. Shepley, K.C., and W. Mulock, for the defendants.

BOYD, C., referred to the statute governing the case, R. S. O. 1887 ch. 136, sec. 11, whereby the insured may by will appoint a

*This case will be reported in the Ontario Law Reports.