

## Delivery of Policy not Countersigned

The Supreme Court of Canada decided that the necessity of countersigning the policy by the agent was not a condition precedent to the validity of the policy

By M. L. HAYWARD, B.C.L.

The case of Edmund O'Donnell vs. Confederation Life Association of Canada, is a glowing example of the maximum of litigation over a small amount of current cash.

In this case Edmund O'Donnell lived in the Province of Nova Scotia, and, in the year 1872, made application to the Confederation Life Association for a policy for \$3,000. Allison, the Halifax agent of the Confederation Life, forwarded the application papers to Toronto, and the policy was sent to him at Halifax. Allison was to countersign it and deliver the policy, and receive the premium; and upon the policy itself was printed the following memorandum in this words: "This policy is not valid unless countersigned by \_\_\_\_\_ agent at \_\_\_\_\_, countersigned this \_\_\_\_\_ day of \_\_\_\_\_ Agent."

The policy was dated October 1st, 1872, and the first premium would have covered up to October 1st, 1873. O'Donnell, died in July, 1873, and after his death the Confederation Policy, uncountersigned, was found among his papers. An action was then brought on the policy, and, at the trial, Allison swore that he delivered the policy to O'Donnell, without countersigning it, in order that he (O'Donnell) might read the conditions, and Allison further testified that the premium had never been paid. The Court, however, decided against the Insurance Company, and the Supreme Court of Nova Scotia upheld this decision.

Appeal was then taken to the Supreme Court of Canada, and the case will be found reported in Volume X of The Supreme Court of Canada Reports, page 92. It was held by a majority of the Court that the evidence established the fact that the policy had not been delivered to O'Donnell as a completed instrument, and that therefore, the insurance company was not liable.

### NO VALID DELIVERY.

Chief Justice Ritchie was of the opinion that until the policy was countersigned, there could be no valid delivery. "I think," he said, "this instrument was on its face an incomplete instrument for want of the signature of the agent, and therefore, though produced by the other side, does not authorize an inference of delivery. To give any force or effect to the receipt in the policy it must first be established that the policy was duly delivered, for, if not duly delivered, nothing is established. The policy on its face shows that, though signed by the president and manager, it was not, and was not intended to be, either a complete or a binding instrument; and the fact is unequivocally made apparent to all parties dealing with agents of the company to whom the policy may be transmitted, that the instrument is not to be delivered or received as a valid, binding policy, unless countersigned by the agent to whom it may have been transmitted to be dealt with, that is to say, to be delivered as a valid, binding policy only on payment of the premium, and on being countersigned. Until these conditions were complied with, there was no contract binding on the company, and by the deed and other provisions of the policy before there had been a compliance with these precedent requirements of the company, the deceased only obtained possession of an incomplete instrument which the agent had no right to deliver, or the deceased to accept, as a binding contract. The words, 'This policy is not valid unless countersigned by agent,' are words, I think, that must be read as part of the policy."

Judge Strong, however, was of the opinion that the memorandum to the effect that the policy was not to be valid until countersigned, did not form part of the policy and was not a condition to which it was subject.

### A COMPLETED INSTRUMENT.

"The policy," he said, "in my opinion, was prima facie a completed instrument in the hands of the plaintiff, a valid deed under the seal of the defendants, and signed as their act of incorporation required, and as such it stopped them from denying the payment of the premium for which a receipt and discharge was contained in the body of the policy. It was, however, competent for the defendants to show that the policy had never been delivered, and that it had come into the possession of the assured in such a way that it never was the deed of the defendants, and, in fact never was a completed instrument.

"The question is, do they sufficiently show this? The evidence relied on to establish the non-delivery is that of the defendants' late agent at Halifax, Mr. Allison. He swears that the premium never was paid. This, however, is not the vital question, for, although the premium never was paid, the defendants might be bound by the policy, and the question of payment or non-payment is only important as bearing on the fact of delivery. But then Mr. Allison adds, that for the reason that the premium never was paid he had not countersigned the policy, but had retained it in his hands until the month of May, 1873, when he had handed it to the assured that he might read the conditions; and he says he did not deliver it as a binding contract, and did not on that account countersign it. Now, this is clear and positive evidence from a party who must have known all the facts, and who in not directly interested, and evidence confirmed by the state of the instrument itself, which, however technically complete as a deed, as I think it was, still appears upon its face never to have received the additional sanction of the countersigning, which, it is apparent, was intended should be given to it, and which the witness tells us he withheld for the express purpose of not making it a binding instrument, a very natural reason for finding the policy in the state in which it is now produced. In short, the witness swears that the policy never was delivered because it was never paid for; that it was lent to the assured to read the conditions, and he points to the unsigned memorandum, which it was his duty to countersign, as proof confirmatory of his testimony."

The decision of the Court was that there should be a new trial, and for the second time the decision went against the Company. The Supreme Court of Nova Scotia upheld this decision, and for the second time the case was appealed to the Supreme Court of Canada.

### FORMER OPINION.

On this second appeal, Chief Justice Ritchie and Judge Strong adhered to their former opinion in reference to the memorandum re countersigning.

"I adhere to the opinion," said the Chief Justice, "I expressed when this case was before this court on a former occasion, namely, that the instrument declared on as a policy of insurance was an incomplete instrument for want of the signature of the agent, and which instrument the agent had no right to deliver, or the deceased to accept, as a binding contract, and this view is confirmed by the finding of the jury on the last trial, the jury having found, as a matter of fact, that Allison, the agent, was instructed by the defendants not to deliver the policy until it was countersigned by him, thus establishing to the satisfaction of the jury that the policy was in Allison's hands as an escrow, not to be delivered until countersigned, and which there is evidence to sustain."

"The necessity of countersigning appearing on the face of the policy, and there being no evidence whatever to show that Allison had any right or authority to waive or dispense with the countersigning, but the finding of the jury being to the contrary effect, I think the defendants cannot be held bound by this as an instrument executed and delivered as their deed."

The result of the judgment of the Court was that a new trial was ordered, on the ground of some improper evidence given on the trial, and the parties then "squared away" for a third lawsuit.

### VALID OR INVALID.

On the third trial the jury found, from the evidence, that the premium had been paid, and, as there was no objection to the admissibility of the evidence, the question for the decision of the Court was whether the policy not being countersigned prevented it from being a valid policy. The Supreme Court of Nova Scotia upheld the verdict against the Company, and on a third appeal to the Supreme Court of Canada, the appeal was dismissed, so that the final decision was that the Company was bound to pay.

The Supreme Court of Canada decided by a majority of the Judges that the necessity of countersigning the policy by the agent was not a condition precedent to the validity of the policy, and that as the jury found that the premium had been paid, the verdict against the Company was a proper one.

### VIVE LA FRANCE.

The land of sun-shine and of song!  
Her name your hearts divine!  
To her the banquet's vows belong  
Whose breasts have poured its wine;  
Our trusty friend, our true ally  
Through varied change and chance;  
So, fill your flashing goblets high,  
I give you, Vive La France!

Above our hosts in triple folds  
The selfsame colors spread,  
Where Valor's faithful arm upholds  
The blue, the white, the red;  
Alike each nation's glittering crest  
Reflects the morning's glance,  
Twin eagles, soaring east and west,  
Once more, then, Vive La France!

O land of heroes! in our need  
One gift from Heaven we crave  
To stanch these wounds that vainly bleed,  
The wise to lead the brave!  
Call back one captain of my past  
From glory's marble trance,  
Whose name shall be a bugle blast,  
To rouse us! Vive La France!

Pluck Conde's baton from the trench,  
Wake up stout Charles Martel.  
Or find some woman's hand to clench  
The sword of La Pucelle!  
Give us one hour of old Turenne,  
One lift of Bayard's lance,  
Nay, call Marengo's chief again  
To lead us! Vive La France!

—Oliver Wendell Holmes.

### SCARCITY OF MEAT AND MILKERS.

The Globe points out that there are 1,180,000 fewer cattle, sheep and swine in Ontario than there were in 1913 and that the decrease for all Canada in the same four-year period aggregates 1,742,000. Canada has nearly 100,000 fewer milkers than in the year before the war, nearly 700,000 fewer cattle of all kinds, 119,000 fewer sheep and 935,000 fewer hogs. A similar development has occurred in the United States, while the destruction of live stock in Europe since the war began has proceeded on an enormous scale. There are not nearly enough animals in the world to-day to keep the people supplied with food. The worst feature of the situation is that there seems to be little prospect of improvement so long as scarcity of feed, lack of labor and an abnormal demand for strong food for the armies conspire to draw upon the remaining herds and flocks. The facts here cited are sufficient to explain the high prices of meats even if there were no middlemen to get their living from the work of distribution. The lesson for the Canadian agriculturist is that there is and will long be a great deal of money in the raising of live stock of all kinds — Toronto Globe.

### MASTICATION CONSERVES FOOD.

The process of proper mastication as an element of food control, to which we have alluded before, is being tried in England with success. It has been proved on 7,000 school children in Darling, Lancashire, that lessons controlling food waste by "bolting" lessen consumption of bread by 25 per cent and produce at the same time increased nutrition. The Chittenden method (dry feeding with complete mastication) is a long step towards food conservation. Germany has adopted it, one pamphlet issued by the quartermaster-general of the German army entitled "Germans, Fletcherize!"—Victoria Colonist.

### HUSKING CORN.

The husking of Indian corn is a man-power proposition. Husking and cribbing of this great staple cereal must be done by hand. Machinery has never satisfactorily grappled with the task. Formerly a farmer, single-handed, would husk fifty bushels of corn in a day, but greater skill has raised the possible output per person to between ninety and one hundred bushels. That men and boys, women and girls, may become more proficient in the work, husking schools have now been established throughout the corn belt. These schools are for business, and must not be confounded with husking bees, which are mostly for fun.—Boston Monitor.