On appeal to the full court,

Held, affirming the decisions appealed from, that the pleadings did not disclose any matter in controversy in reference to which the court could be properly asked to adjudge, or which a judgment of the court could affect.

Appeal dismissed without costs.

Irving, Q.C., for appellant.

Burbidge, Q.C., for respondent.

Nova Scotia.]

CONFEDERATION LIFE ASSOCIATION OF CANADA V. O'DONNELL.

Life insurance—Delivery of policy—Escrow—Instructions to agent—Policy not countersigned—Payment of premium—Admissibility of evidence—Entry in books of deceased against interest.

In an action on a policy of life insurance the defence was that the policy was never delivered, that it was not countersigned by the agent, contrary to a condition upon its face, and that the premium was never paid. On the trial an entry in the books of a payment to the agent was received in evidence, and the statement of the agent, made at a former trial, that the premium was not paid, was allowed to be read, the agent having since died.

The policy offered in evidence contained the following condition:

"This policy is not valid unless countersigned by———, Agent at———. Countersigned this ——— day of ———. ———, Agent.

The evidence of the agent which was read, in addition to stating the non-payment of the premium, was to the effect that the policy was only delivered to the deceased to be examined, and that he did not countersign it because it was not actually delivered. The jury found a verdict for the plaintiff, but included in it a finding that the agent was instructed not to deliver the policy until it was countersigned. The Supreme Court of Nova Scotia sustained the verdict. On appeal to the Supreme Court of Canada,

Held, *per* RITCHIE, C.J., and GWYNNE, J., that the policy was in the agent's hands merely as an escrow, not to be delivered until countersigned, and that condition not having been complied with, it was never an instrument duly executed and delivered by which the defendants could be bound.

Per STRONG, J. That the entry in the books of the deceased as to payment of the premium was improperly received in evidence, and there should be a new trial.

Per HENRY and FOURNIER, JJ. That the countersigning of the policy was not a condition to which it was subject, and the defendants are estopped from denying that the premium was paid; and the jury having found that the policy was delivered, the plaintiff is entitled to retain his verdict.

The court being thus divided in opinion, a new trial was granted.

The report of this case on a former appeal will be found in 10 Can. S. C. R. 92.

Beatty, Q.C., and *C. H. Tupper*, for the appellants.

Weldon, Q.C., and *J. H. Lyon*, for the respondent.

Manitoba.]

FEDERAL BANK OF CANADA V. CANADIAN BANK OF COMMERCE.

Writ of execution—Payment of amount to sheriff—Application of proceeds—Interest of third party in defendant's lands—Interpleader.

In August, 1881, the H. B. Co. executed an agreement for the sale of certain lands to A. In March, 1883, A. conveyed the land to R., manager of the Federal Bank. The trustees of a church corporation wishing to purchase the land, R. re-conveyed it to A., to enable him to get a deed from the Co., and A., on Aug. 4th, 1883, having obtained such deed, executed a deed to said trustees. It was agreed that the bank should receive a portion of the purchase money from the church. On the same day that the deed to the trustees was executed the Bank of Commerce, having a judgment against A., placed an execution in the sheriff's hands. The trustees paid to the sheriff the amount of the execution, believing that the same was a charge upon the land bought from A., and received a certificate from the sheriff that the land was free from execution. The Federal Bank gave notice to the sheriff that they claimed the money, and an interpleader order was issued to try out the title to it.