

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 the condition upon its face—and that the premium was never paid. On the trial, an entry in the books of 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..... day of..... Countersigned this..... 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, J. J.—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 appellant.

*J. N. Lyons*, for the respondent.

Ontario.]

THE ATTORNEY GENERAL FOR THE PROVINCE OF ONTARIO, Appellant; and the ATTORNEY GENERAL FOR THE DOMINION OF CANADA, Respondent.

*Statement of Claim in Exchequer Court—Insufficiency of—Summons to fix Trial and hearing discharged — Appeal to Exchequer Court from order of a judge in chambers.*

A statement of claim was filed by the Attorney General for the Province of Ontario in the Exchequer Court of Canada, praying that "it may be declared that the personal property of persons dying domiciled within the Province of Ontario, intestate and leaving no next of kin, or other person entitled thereto, other than Her Majesty, belongs to the Province, or to Her Majesty in trust for the Province." The Attorney General for the Dominion of Canada, in answer to the statement of claim made, prayed: "that it be declared the personal property of persons who have died intestate in Ontario since Confederation, leaving no next of kin or other person entitled thereto, except Her Majesty, belongs to the Dominion of Canada, or to Her Majesty in trust for the Dominion of Canada."

No reply was filed, and on an application to Mr. Justice Gwynne, in chambers, for a summons for an order to fix the time and place of trial or hearing, the summons was discharged on the ground that the case did not present a proper case for the decision of the Court. A motion was then made before the Exchequer Court, (Sir W. J. Ritchie, presiding), by way of appeal from the order of Mr. Justice Gwynne, for an order to fix the time and place of trial. The motion was dismissed without costs on the ground that he was not prepared to interfere with the order of another judge of the same Court. 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.