1866.

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This was their real position towards each other, and if all that was done and all that was agreed upon had been reduced to writing, this is the actual state of things which that writing would have disclosed.

The want of writing makes no difference in point of law, for the trust may be averred, or may be by parol only, as the subject of the trust is merely personal property: *Bayley* v. *Boulcott* (*a*).

The declaration here shews that the policy was not required to go with the goods, for in different places it appears the policy and the property might be separately held, and no rule of law is against this; for change of property which takes place after the insurance made will not at all affect the right to recover on the policy, if it were the intention of the parties to continue it, unless such change has been made in direct violation of any of the conditions of the policy (*b*).

Judgment.

Davies might therefore have kept this policy all through in his own hands by special agreement for the benefit of *Claxton*, and in turn for *McMillan* and *Linton*, or for either of them. *Claxton* also might have done the same, or what is in my opinion the same in this equitable kind of proceeding, he might have assigned it just as he has done to *Linton* on behalf of and as agent for *McMillan*, and the declaration as it is framed will support just such a case. There can be no special virtue in an assignment in fact to *Linton*, for it is all of no avail at law, as *Davies* continues, notwithstanding the assignment, to be the only legal holder and owner of it.

(*a*) 4 Russ. 347.

(*b*) Pawles v. Innes, 11 M. & W. 10; Sparkes v. Marshall, 2 B. N. C. 761.