[HIGH COURT OF AUSTRALIA.]

MARY WINIFRED CAULFIELD . . . APPELLANT;

AND

ROBERT FRANCIS CAULFIELD . . . RESPONDENT.

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1908.

MELBOURNE, *June* 25, 26.

Griffith C.J., Barton and O'Connor JJ.

Life assurance—Transfer of policy—Right to policy moneys.

A policy of life assurance was taken out by A. on his own life and was transferred to B. to secure the money invested by B. in a partnership business of which A. was manager. The partnership was afterwards dissolved and B.'s share of the partnership assets was paid to him. A. subsequently died.

Held, on the evidence, that B. was entitled to the policy moneys.

Judgment of the Supreme Court affirmed.

APPEAL from the Supreme Court of Victoria.

A policy of life assurance for £500 on the life of John Phillip Thomas Caulfield was taken out by him in the Australian Widows' Fund Life Assurance Society Ltd. in November 1901, and was assigned to Robert Francis Caulfield, his brother, on 22nd November 1901. John P. T. Caulfield died on 26th September 1907, and his widow, Mary Winifred Caulfield, was appointed administatrix of his estate. The policy moneys amounting to £507 15s. 3d. were paid into Court pursuant to sec. 6 of the *Companies Act* 1900, and under that section Mrs. Caulfield applied on summons for an order that the moneys should be paid out to her. The application was opposed by Robert F. Caulfield.

Hood J. held that the policy was absolutely the property of

Robert F. Caulfield, and ordered that the policy moneys should be paid out to him.

From this order Mrs. Caulfield now appealed to the High Court.

The facts sufficiently appear in the judgment of *Griffith* C.J. hereunder.

Mitchell K.C. and *Arthur*, for the appellant. Assuming that the policy was originally taken out to secure Robert's interest in the partnership, as soon as that purpose was completed John paid the subsequent premiums, and the Judge should have found that the policy reverted to John. The presumption is that he would not throw away his money by paying premiums on a policy which was not his: *Best on Evidence*, 9th ed., p. 278. There is evidence of a promise by Robert to give the policy to John. If it was upon the faith of that promise that John paid the subsequent premiums, Robert would be compelled to carry out his promise: *Godefroi's Trusts and Trustees*, 3rd ed., pp. 58-60. If there was a representation by conduct on the part of Robert such as to induce John to believe that Robert was not going to insist upon his claim to the policy any further, and if Robert then stood by while John paid subsequent premiums, Robert would not be allowed to say the policy is his: *Everest and Strode's Law of Estoppel*, 2nd ed., p. 408.

Duffy K.C. (with him *Hayes*), for the respondent. The policy, having been taken out and transferred to Robert to secure him, belonged to him. There was never any agreement by which Robert lost his interest in the policy. Robert was always willing to give the policy to John on payment of the premiums Robert had paid, but that offer was never accepted.

Mitchell K.C. in reply.

GRIFFITH C.J. John and Robert Caulfield were brothers. John entered upon an enterprise called an inebriate asylum, of which he was the manager, with some others. For reasons which it is not necessary to particularize, he was not formally an

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owner of the business, but his brother Robert, who had more money, entered into the partnership and contributed £350, which was practically the working capital of the partnership. John suggested to Robert that for his protection John's life should be insured, as the latter was the manager and real life of the business, and that the most convenient way to do this would be that John should take out a policy in his own name and transfer it to Robert. That was done. Some arrangement was made as to payment of the first premium on which nothing turns. After that for two years up to the end of 1903 Robert, being then in the employment of the firm, paid the premiums himself. Up to that time there is no doubt that the policy was Robert's property. In 1902 the partnership was dissolved, and by the end of 1903 all Robert's capital and his share of the profits had been paid to him. In 1907 John died, the policy moneys were paid into Court and the administratrix of John claims that her husband, John, had become entitled to the policy. It is clear that, as the policy was Robert's in 1903, the onus was upon the administratrix to prove that the ownership had changed. The case she made on the summons to pay the money out of Court was that in 1903, shortly after the last instalment of the money payable to Robert had been paid, Robert agreed to transfer the policy to his brother John. The evidence on the subject is somewhat shadowy. It consists of some recollection of conversations at the end of 1903 in which John said he wanted the policy back and Robert promised to give it back. In 1904 and 1905 John, in fact, paid the premiums on the policy. At the end of 1905 the brothers quarrelled, and their business connection came to an end. If the recollection of the witness Miss Caulfield were correct, there would be some ground for saying that there was an agreement made at the end of 1903 that the policy should be transferred to John. Whether there was or was not any consideration for that agreement at the time it was made, yet the subsequent payment of the premiums by John in subsequent years would establish a sufficient consideration for such a contract. But that alleged contract is denied by Robert. He says that what was done was this:—That he said to John at the end of 1903, "I am not able to keep that policy going on

your life. If you like to give me the premiums I have paid, you can have it back"; that John said "No, you had the benefit of it. If I had died you would have got the money;" that Robert said "Yes, I suppose I would"; that John said "I will keep it going for you, I know you will look after the mater any way." Robert also said that he was then in a bad financial position as his brother knew. If that story is true, the presumption from payment of the premiums by John in 1904 and 1905 entirely goes. It was merely a kindly act done by one brother for the other, and the property remained where it had originally been, in Robert. Which of these versions is to be believed? The learned Judge who heard the evidence said he was not prepared to disbelieve Robert's version. But there is a great deal more than that in the case. John in his own lifetime claimed the policy, by action, from Robert, and he then set up no such contract as is now said to be spelled out from John's daughter's recollection of the conversations, but a quite different contract, namely, that the policy was in reality transferred to Robert by way of mortgage to secure the money due by John to Robert, and that, that money having been paid, John was entitled to have the policy re-transferred to him. Robert then denied that there ever was such a bargain. The case then made by John was clearly erroneous, because he alleged that the policy was taken out as security for money which, as a matter of fact, was not then payable, and which did not become due until many months afterwards. That may possibly have been a mistake of the pleader. Robert, however, denied the story. In the face of that statement by John that he had mortgaged the policy, it would be rather hard that after his death his administratrix should be able to succeed in getting the policy moneys by setting up quite a different contract, a contract by which Robert agreed to transfer the policy to John—an independent transaction. In that same action Robert counterclaimed against John setting up quite a different contract. He said that there was a contract made between himself and John for the transfer of the policy to John, but not such as is now alleged by Mrs. Caulfield, nor such as that alleged in the action by John. It was this, that he, Robert, would transfer the policy to John on repayment of the premiums he, Robert, had paid. As a matter of fact the policy was at that

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time of no particular value. Only a few premiums had been paid and John's life was a good one. Robert set up that contract and said he was willing and desired to carry it out. On that counterclaim John joined issue. The action came to nothing. There is strong evidence that such a contract as Robert then alleged was made; at any rate, it is clear that at the end of 1906 there were negotiations proceeding between the brothers as to the terms of the transfer of the policy. Robert absolutely refused to transfer it unless he were repaid the premiums which he had paid, and John absolutely refused to repay them. Then there is some evidence that a contract was made that John should repay the premiums and get back the policy. But it is clear that a transaction of that sort could not stand over indefinitely until by the death of John the policy became very valuable. It is equally clear that John at the time of his death was not ready and willing to perform the contract on his part, and at that time Robert was the legal owner of the policy. So that it seems to me the appellant has failed to prove any contract under which John became entitled to the policy and which is capable of being enforced by the Court. It may be a hard case for Mrs. Caulfield, but the onus is upon her, and upon the evidence, unless a different view is taken of the credibility of the witnesses from that taken by the learned Judge, the appeal must fail. For these reasons, taking the view of the accuracy of the witnesses which the learned Judge took, it is impossible to disturb the decision, and, undoubtedly, upon the evidence I think it almost impossible to come to any other conclusion.

BARTON J. I am of the same opinion. I do not find any satisfactory ground for differing from the decision of *Hood* J.

O'CONNOR J. I also agree that the learned Judge below could not have come to any other conclusion on the facts. It was for the appellant to establish that the policy, which was undoubtedly the legal property of the respondent, had by some means become the appellant's property, or that the respondent had put himself in such a position that he could not claim the beneficial ownership of it. The appellant has not succeeded in establishing either of

those positions. When the arrangement for taking out the policy was made it is clear that neither of the brothers anticipated the condition of things which subsequently arose. No doubt, the policy was taken out to secure Robert's capital in the business, but it was then assumed that the business would go on and that the capital would remain in the business indefinitely. When the brothers quarrelled and Robert was paid off, the question naturally arose, what was to be done with the policy? At that time John's was a good life and the payment of £17 a year by either of them would have appeared to have been a considerable burden without any immediate prospect of a return. At the end of 1903, when Robert was paid off, he had no further interest in keeping up the payments; he then said to his brother that he was not able to pay them, and during 1904 and 1905 John kept up the payments. The inference I draw from that fact is, not that John made those payments so as to claim the policy himself, but really for the sake of keeping the policy alive, hoping to make a final agreement with Robert to transfer it later on satisfactory terms. Apparently the brothers went on negotiating about the transfer of the policy, and the view I take of the facts is that they never came to a final ageeement. Robert was trying to get back the premiums he had paid, and John was trying to get the policy without paying them. It is clear from independent testimony that all through 1906 until the action was brought by John in that year no definite arrangement was made. The letters of Mr. Dixon in January 1906 and the evidence of Wright as to the interviews he had with John and Robert in July 1906 establish clearly that no arrangement was made at that time. The action was brought in July 1906, and each of the brothers had apparently a different view of the situation at that time. John claimed on one kind of contract and Robert set up a contract of another kind. That being the position of things, I have come to the conclusion that at the time of the death of John no arrangement had been made as to the handing over of the policy. That being so, the property being there in Robert must remain so. For these reasons I find it is impossible to differ from the view the learned Judge below took of the matter, and I agree that the appeal should be dismissed.

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Appeal dismissed. Order appealed from varied by consent by directing payment of £40 8s. 4d. in discharge pro tanto of the respondent's costs. Except as aforesaid order appealed from affirmed. Respondent to pay costs of appeal.

Solicitors, for the appellant, *McInerney, McInerney & Wingrove.*

Solicitor, for the respondent, *J. W. Dixon.*

B. L.

Appl *Gray* v *Pastorelli* [1987] WAR 174

Cons *Weston* v *Beaufils* (1994) 122 ALR 240

Disod *Weston* v *Beaufils* (1994) 50 FCR 476

[HIGH COURT OF AUSTRALIA.]

PAYNE . . . . . APPELLANT;
DEFENDANT,

AND

McDONALD . . . . . RESPONDENT.
PLAINTIFF,

ON APPEAL FROM THE SUPREME COURT OF VICTORIA.

H. C. OF A. 1908.

MELBOURNE, *June* 19, 22, 23.

Griffith C.J., O'Connor, and Higgins JJ.

Illegal contract—Transfer of land to defeat creditors—No proof that creditors were defeated—Pleading.

In an action by which the plaintiff alleges and proves that land, which stands in the defendant's name, was bought with the plaintiff's money and was transferred to, and is held by, the defendant as trustee for the plaintiff, and seeks to compel the defendant to transfer the land to the plaintiff, it is not a defence that the land was originally transferred to the defendant in order to defeat the plaintiff's creditors unless it is also alleged and proved that that object was wholly or partly carried into effect.

Whether such proof would be sufficient: *Quære.*

Decision of the Supreme Court affirmed.