CORRESPONDENCE.

ENDOWMENT ASSURANCE POLICIES AS MATRIMONIAL PROVISIONS.

The Scottish Equitable Life Assurance Society v. *Hunter and Another.* Reported 1910, 2, *Scots Law Times*, 296.

SIR,—This was an action of multiplepoinding raised to determine the right to the proceeds of a Policy of Assurance for £400, dated 15th November 1906, effected with the Scottish Equitable Life Assurance Society by Adam Henderson Hunter upon his own life, and payable upon his death or on his surviving until 4th October 1934.

By assignation dated 30th November 1907, Mr. Hunter assigned this policy to his wife. The assignation bore that it was granted "with a view to making some provision for my spouse." Mr. Hunter's estates were sequestrated in 1909, and he died on 17th April 1910. The competing claimants to the proceeds of the policy were the widow of Mr. Hunter and the trustee on his sequestrated estates.

Mrs. Hunter averred that since the date of the assignation of the policy to her she had paid the premiums upon it and dealt with it entirely as her own. She claimed the contents of the policy as being an irrevocable provision by her husband in her favour. The trustee maintained that the assignation was a revocable donation which had been revoked by Mr. Hunter's sequestration. It was admitted that there was no marriage contract and that no other provision had been made for Mrs. Hunter by her husband. The trustee alleged that Mr. Hunter was insolvent at the date of the assignation.

The Lord-Ordinary (Skerrington) held that the policy was a *habile* subject for a provision, and allowed a proof as to the solvency of Mr. Hunter at the date when he granted the assignation.

In the case of *Craig* v. *Galloway* 1860, 22 *D*, 1211 ; 4 *M'Queen's Appeals*, 267, the House of Lords, reversing the judgment of the Court of Session, decided that a husband may make a provision for his wife by effecting an insurance on his own life in her favour, the sum in the policy being payable to her at his death. The Court of Session had decided that the policy was a revocable donation, seeing that it would pass to the wife's executors in the event of her predeceasing her husband, and that she had power to use the policy as a means of raising money during her husband's lifetime. Lord Skerrington was of opinion that the principles laid down in *Craig* v. *Galloway* applied to a case where a policy had been taken out by a husband in his own favour and subsequently assigned by him to his wife, with the object of providing for her after his death, and that they also applied to the case of an endowment policy, such as the policy here in question. He rejected the argument of the trustee that an endowment

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policy cannot competently form the subject-matter of a provision seeing that it is always possible that the husband and wife may both survive the date at which the policy money becomes payable. While of opinion that if Mr. and Mrs. Hunter had both survived until 1934, Mr. Hunter would have been entitled to treat the assignation as a donation *stante matrimonio*, and to revoke it, he thought this possibility should not prevent the assignation from operating as a provision in the event, which happened, of Mr. Hunter dying before 1934. The case of *Craig* v. *Galloway* showed that a provision is none the less valid because it may not take effect in a certain contingency. The case of *Stewart*, 11, *Scots Law Times*, 721, in which Lord Low had expressed the opinion that an Endowment Policy was not at all appropriate for making a provision to a wife in the event of her husband's death was not an authority against this view. In that case the assignation of the policy bore to be granted "for love, favour, and affection," and Lord Low held after a proof that it had not been established that the husband intended thereby to make an irrevocable provision to the wife. The question of whether the assignation might take effect as a provision conditional on the husband dying before he attained the age of sixty, accordingly did not arise in that case. In the present case the assignation bore to be granted for the purpose of making a provision for Mrs. Hunter, and it was not alleged that that statement was untrue. Mrs. Hunter was accordingly entitled to succeed unless it appeared that her husband was insolvent at the date of the assignation.

Yours truly,

JOHN L. WARK.

EDINBURGH, 3*rd February* 1911.

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