was incompetent and irrelevant to make such an offer at that stage. Lord Fullerton repelled this plea of the pursuer, and appointed her to state in a minute, signed by herself, whether she accepted or declined the offer made by the defender. Lord Fullerton's interlocutor was, however, recalled by the First Division, consisting of the first Lord Mackenzie, Lord Corehouse, and Lord Gillies, very much on the strength of a passage in Baron Hume's Lectures. Lord Mackenzie said that it did not appear to him to admit of doubt that, when desertion had been obstinately continued so long as it had been in that case (upwards of four years before the wife obtained her decree of adherence) there was a *jus quæsitum* in the party deserted to insist for a divorce, which was not liable to be thereafter defeated at the option of the deserter. Lord Corehouse said that the statute gave the remedy after four years' "malicious and obstinat defectioun," which remedy was meant to be effectual. He also pointed out, like Lord Mackenzie, that unless the deserted spouse acquired a right to obtain a divorce after the lapse of four years such as could not be defeated by a subsequent tender of adherence, the remedy of the statute would be quite inoperative. And Lord Gillies agreed, on the assumption (which all the Judges made), that the pursuer's proceedings, ecclesiastical and civil, had been regular.

M'Callum's case was an action of divorce on the ground of desertion, and the judgment in it was pronounced soon after the passing of the Conjugal Rights Act, which by section 11 rendered it unnecessary, prior to any action for divorce, to institute against the defender any action of adherence, or to charge the defender to adhere to the pursuer, or to denounce the defender, or to apply to the presbytery of the bounds, or any other judicature, to admonish the defender to adhere. Excommunication not being expressly abolished by section 11 the case was reported by the Lord Ordinary (Lord Ormidale) on the question whether wilful desertion for four years together was a sufficient ground for divorce. The First Division unanimously held that, when admonition was dispensed with, excommunication as a necessary consequence was dispensed with also, and, accordingly, it was remitted to the Lord Ordinary to proceed with the cause.

Watson's case followed in 1890 and was sent to the Whole Court. It was proved that in 1874 the wife left her husband and had persisted in her desertion ever since. Her husband deponed that he was willing to take her back, but she was not called as a witness, and it did not appear that any remonstrance had been made to her, although she was living in Scotland and her address was known to the pursuer. The Whole Court, by a majority, holding that the facts proved were not sufficient to warrant decree of divorce, remitted the case to the Lord Ordinary to take further proof, particularly with regard to the state of mind of the pursuer towards his wife during the period of desertion, and as to her willingness to return to him during that period. This case, therefore, seems to show that in the opinion of the majority the necessity of admonition or remonstrance on the part of the spouse complaining of desertion was a question of circumstances, depending upon the merits of the particular case, and that no absolute rule could be laid down. Perhaps the case is chiefly important for a vigorous protest by Lord President Inglis against the notion of introducing, or even seeming to countenance, divorce *a vinculo* by consent of parties.

It seems, therefore, to be the result of all the cases that when, as here, there has been "malicious and obstinat defectioun of the partie offender" for the full statutory period of four years, the injured spouse being all that time willing to adhere, and not being disentitled by any conjugal misconduct of her own from seeking the remedy of divorce, that is by itself a sufficient cause of divorce, whether it be called a vested right or a *jus quæsitum* to apply for the remedy. I am, accordingly, of opinion with the Lord Ordinary that the proof which he proposes should be allowed.

LORDS LOW and ARDWALL concurred.

The LORD JUSTICE-CLERK was absent.

The Court remitted the case to the Lord Ordinary, instructing him to find the libel relevant and fix a diet for proof.

Counsel for the Pursuer—Inglis. Agent—Geo. A. Grant, S.S.C.

Counsel for the Defender—Dykes. Agent—Robert Millar, S.S.C.

Saturday, July 11.

SECOND DIVISION.

[Sheriff Court at Glasgow.

THE SALVATION ARMY LIFE ASSURANCE SOCIETY, LIMITED *v.* THE BRITISH LEGAL LIFE ASSURANCE COMPANY, LIMITED.

Insurance — Life — Industrial Assurance Transfer to Another Company — Notice of Transfer—Person Sought to be Transferred — Collecting Societies and Industrial Assurance Companies Act 1896 (59 *and* 60 *Vict. c.* 26), *sec.* 4, *sub-secs.* 1 *and* 2, *sec.* 14, *sub-sec.* 1.

The Collecting Societies and Industrial Assurance Companies Act 1896 enacts—sec. 4 — "(1) A member of or person insured with a collecting society or industrial assurance company shall not" (with certain exceptions not here material) "become or be made a member of or be insured with any other such society or company without his written consent, or in the case of an infant without the consent of his father or other guardian. (2) The society or

company to which the member or person is sought to be transferred, shall, within seven days from his application for admission to that society or company, give notice thereof in writing to the society or company from which he is sought to be transferred." Section 14 (1)—"It shall be an offence under this Act if . . . (*c*) a collecting society or industrial assurance company to which a member or person is sought to be transferred fails to give such notice as is by this Act required."

F, who along with his wife and children were insured with Society A, in September 1906, approached G, an agent of Company B, and through him effected insurances upon the lives of himself and his wife with Company B, the premiums and benefits differing from those of Society A. Until 10th December F paid the premiums due on both insurances, but having become dissatisfied with Society A he then resolved to leave it, and intimated his intention to one of the collectors, and made no further payments. Soon afterwards F suggested to G that company B should take over the insurances he had with Society A, telling him at the same time that he was leaving Society A, and had ceased to pay premiums. The terms of F's insurances with Society A were more favourable than those usually granted by Company B, and G accordingly had to consult his superiors. They were never made aware of the fact that F was insured with Society A, but policies were eventually issued to him on terms identical with those of Society A. At the time when these policies were issued F's insurance with Society A had not lapsed. No notice was sent by Company B to Society A.

Held that the transaction was a transfer within the meaning of the Act, of which notice should have been given under section 4 (2), and that Company B had by their failure to give notice committed an offence under section 14 (1) (*c*).

The Collecting Societies and Industrial Assurance Companies Act 1896 enacts—section 3—"A forfeiture shall not be incurred by any member or person insured in a collecting society or industrial assurance company by reason of any default in paying any contribution, until after (*a*) notice stating the amount due by him, and informing him that in case of default of payment by him within a reasonable time, not being less than fourteen days, and at a place to be specified in the notice, his interest or benefit will be forfeited, has been served upon him by or on behalf of the society or company; and (*b*) default has been made by him in paying his contributions in accordance with that notice."

Section 4 (1) and (2) are quoted in rubric.

Section (14) (1)—"It shall be an offence under this Act if . . . (*b*) A person attempts to transfer a member or person insured from one collecting society or industrial assurance company to another without such written consent as is by this Act required." (*c*) is quoted in rubric.

The Salvation Army Assurance Society, Limited, 79 West Regent Street, Glasgow, being an Industrial Assurance Company within the meaning of the Collecting Societies and Industrial Assurance Companies Act 1896, with consent and concurrence of James Neil Hart, writer, Glasgow, Procurator-Fiscal of Lanarkshire, brought a complaint under the Summary Jurisdiction (Scotland) Acts 1864 and 1889 and the Criminal Procedure (Scotland) Act 1887 in the Sheriff Court at Glasgow against the British Legal Life Assurance Company, Limited.

The complaint set forth "That the British Legal Life Assurance Company, Limited, being an Industrial Assurance Company within the meaning of the said Collecting Societies and Industrial Assurance Companies Act 1896, and having their principal office at Seven Blythswood Square, Glasgow, did on or about the twenty-fourth day of December nineteen hundred and six receive proposals for insurance [each for a less sum than twenty pounds] upon the lives of Peter, Mary, David, Marion, and James Findlay, residing at Somerville Buildings, Cowdenbeath, and did on or about the 27th day of December nineteen hundred and six issue policies of insurance upon the lives of the said Peter, Mary, David, Marion, and James Findlay [each for a less sum than twenty pounds] while the said persons were insured with the complainers the Salvation Army Assurance Society, Limited, under policies of insurance dated the 29th day of November nineteen hundred and four [each for a less sum than twenty pounds], the fact of the said persons being insured with the complainers as aforesaid being well known to the said British Legal Life Assurance Company, Limited, or alternatively the said British Legal Life Assurance Company, Limited, having culpably failed to ascertain the fact of said insurance with the complainers, and that the said British Legal Life Assurance Company, Limited, did fail to give notice to the complainers the said Salvation Army Assurance Society, Limited, of the said proposals for insurance made to the said British Legal Life Assurance Company, Limited, which were proposals to be transferred from the said Salvation Army Assurance Society, Limited, to the said British Legal Life Assurance Society, Limited, within the meaning of the said Collecting Societies and Industrial Insurance Societies Act 1896, and that within seven days from the date of said proposals and since, contrary to the said Collecting Societies and Industrial Assurance Companies Act 1896, sections 4 and 14, and contrary to the Friendly Societies Act 1896, sections 86, 89, 91, and 102, whereby the said British Legal Life Assurance Company, Limited, is liable to the complainers" in certain penalties specified.

The Sheriff-Substitute (A. O. M. MACKENZIE) after a proof assoilzied the respondents, holding that James Findlay and his wife and children were not, in the sense of

the Act, transferred or sought to be transferred from the complaining society to the respondent company.

In a stated case on appeal the following *facts* were set forth as proved—"1. In the year 1904 James Findlay, who then lived at Portobello, effected insurances on the lives of himself, his wife, and his children Peter, Mary, and David, with the complaining society.

"2. In the summer of 1906, James Findlay moved his home to Cowdenbeath, in the County of Fife. Soon after his arrival there the respondents' agent at Cowdenbeath, Matthew Ferris, called upon him and asked whether he was insured. Findlay replied that he was insured with the complainers, and the respondents' agent thereupon left him without making any attempt to induce him to effect an insurance with the respondent company.

"3. In September 1906 Findlay approached the respondents' agent Matthew Ferris with proposals for insurance on his own life and the life of his wife, and these proposals having been accepted, the proposed insurances with the respondent company were effected. The benefits secured and the premiums payable under these insurances were different from the benefits secured and premiums payable under Findlay's insurances with the complaining society.

"4. From September to December 1906 Findlay paid the premiums due on his insurances with both insurance companies, but in December, having become dissatisfied with the attention he was receiving from the complainers' collectors, he resolved to leave the complainers' society, and intimated this resolution to one of their collectors. The premiums due to that society had generally been collected once a fortnight, and the last payment by Findlay was made on 10th December 1906. His intimation to the complainers' collector, just referred to, was made in the course of the following week.

"5. Shortly after giving this intimation Findlay requested the respondents' agent—the said Matthew Ferris—to call upon him, and the agent having done so Findlay proposed to him that he should take over the insurances which he had with the complaining society. The respondents' agent at first declined on the ground that his company did not do transfer business, but on Findlay explaining that it was not a transfer which he was proposing, but that he was leaving the complainers, and had stopped paying them premiums, the respondents' agent proceeded to consider the application. Findlay further informed the respondents' agent that his company might have the business if they would secure him in immediate benefits of £12, 10s. on his own life and £12 on the life of his wife, at weekly premiums of 2½d. and 2d. respectively. These were the same benefits as Findlay was entitled to under his insurance with the complainers' society. It was not proved that Findlay told the respondents' agent this. The respondents' agent made no inquiry either at this or any other time as to whether Findlay's insurance with the complainers' society had or had not lapsed.

"6. The terms asked by Findlay being more favourable to the insured than those provided in the general tables of the respondent company, it was beyond their agent's authority to accept them on his own initiative. He accordingly reported the matter to the district superintendent of the company, who visited Cowdenbeath about this time. He informed the superintendent that Findlay had been insured with the complainers but had ceased to be a member of their society.

"7. On receiving the agent's report the district superintendent of the respondents' company, accompanied by the agent, interviewed Findlay in regard to his application, and medical reports as to the good health of Findlay and his wife having been obtained, they, on 21st December 1906, took from Findlay a proposal in writing for insurance on his own life and the lives of his wife and his children Peter, Mary, and David. The benefits stipulated for were substantially identical with those secured by Findlay's insurance with the complainers' society, and the weekly premiums payable were the same.

"8. Having received this proposal, the respondents' agent and superintendent forwarded it, along with the medical reports already mentioned, to the district office of the company at Edinburgh, with the recommendation that it should be accepted. The proposal bore a note that the proposed insurances on the lives of Findlay and his wife were second assurances, the reference being to the insurances effected by Findlay with the respondent company in September 1906.

"9. The proposal was subsequently forwarded from the Edinburgh office, with the recommendation of the local manager, to the head office in Glasgow, and there submitted to the directors of the company, who sanctioned its acceptance, after which policies were issued on 27th December. The insurances in question were not based on the tables contained in any public prospectus issued by the respondents, but on tables issued for the private information of agents of the company.

"10. Neither the Edinburgh office nor the head office were informed that Findlay had been insured with the complainers' society.

"11. No notice of Findlay's application was given by respondents to the complainers.

"12. At the time when the policies were issued by the respondent company, Findlay's insurances with the complainers had not lapsed. They did not lapse till February."

The *questions of law* for the opinion of the Court were—"1. Upon the facts above stated to have been proved, were James Findlay and his family transferred, or sought to be transferred, from the complaining society to the respondent company, within the meaning of sec. 4 (2) of the Collecting Societies and Industrial Assurance

Companies Act 1896? 2. Upon the facts above stated as proved, were the respondent company rightly assoilzied from the complaint?"

Argued for the complainers (appellants)—In the circumstances disclosed the respondents' company were bound to give notice to the appellants' company, and having failed to do so had committed an offence against section 14 (1) (*c*), and were liable in a penalty. Under that section notice had to be given whenever a "person is sought to be transferred" from one society to another. That occurred as soon as one company took any steps to obtain the custom of a person already insured with another company whether they ultimately were successful in obtaining his custom or not. The object of this notice was to enable the original company to consider whether they would in the existing circumstances give their customer the notice which was necessary under section 3 in order to terminate their liability. "Transfer" referred to transference of business or custom or hope of custom rather than transference of the individual. A person, accordingly, might be "transferred" from company A to company B if, being a customer of company A, he became a customer of company B, even although he still remained insured in company A. The substitution of company B for company A was not necessary—*Pearl Life Assurance Company, Limited* v. *Scottish Legal Life Assurance Society, Limited*, [1901] 1 K.B. 528. Even, however, if it were necessary before there could be a "transfer" that there should be a substitution, there was a substitution here, for Findlay stopped his contributions to the complainers' society and effected, to take their place, insurances with the respondents' company on terms similar to those which had been given him by the complainers' society, and which were more favourable than those usually granted by the respondents' company. He in fact changed over from the complainers' society to the respondents' company. The fact that the head office was ignorant that Findlay was already insured with another company, and that there was nothing fraudulent in the motives of their agent, were quite immaterial, except indeed as bearing upon the amount of the penalty which the Court might think it proper to impose.

Argued for the respondents—Findlay and his wife and family were not "transferred" or "sought to be transferred" in the sense of the statute. Accordingly, no notice was necessary and no offence had been committed. The word "transfer" fell to be construed in its natural meaning, and that involved a change from company A to company B, the substitution of one for the other. Here there was nothing except an entering into an additional contract, and there was nothing in the statute to prevent a person being insured in a dozen different companies if he so desired. Section 3 was conceived solely in the interest of the insured. The statute was a penal one and fell to be strictly construed. All that the *Pearl Life Assurance Company, Limited* v. *Scottish Legal Life Assurance Society, Limited* (*cit. sup.*) decided was that the mere fact that there might be policies actually co-existent in two societies at one time did not make it impossible that there might be an attempt to transfer from one to the other within the meaning of the Act. It was noticeable in the present case that there was no suggestion of any fraudulent intention.

At advising—

LORD STORMONTH DARLING—It is perhaps unfortunate that in this appeal, which calls for the construction of the Act 59 and 60 Vict. cap. 56, bearing a title which is not self-explanatory, we have no aid from a preamble to show what was the mischief or mischiefs intended to be remedied. But I think we may safely gather from the Act itself that there were at least three mischiefs which the Act had in view. The first was that in the case of these small insurances—insurances on any one life for a sum of less than £20—they might be forfeited for non-payment of the contribution or premium without notice. The second was that such insurance might be transferred, or sought to be transferred, from one society or insurance company to another without the written consent of the person insured. And the third was that the canvassing by agents for such insurance societies or companies should be checked. The first of these mischiefs was dealt with by section 3 of the Act, which required that a notice should be served on the person insured by the insuring society or company requiring payment by the insured person of his contribution within not less than fourteen days. The second mischief was dealt with by sec. 4 (1), which required the written consent of the insured person, or, in the case of an infant, of his father or other guardian, to any transfer of his insurance from one such society or company to another. And the third mischief was dealt with by sec. 4 (2), which provided that within seven days of the insured person's application for admission to the new society or company a notice thereof should be given in writing to the society or company from which he was sought to be transferred.

The Sheriff-Substitute who heard the case has given a careful judgment, in which he has held, among the facts proved, that the first approach to the respondents' agent (Ferris) was made by the insured person (Findlay) himself; that at first no attempt was made by Ferris to induce Findlay to effect an insurance with the respondent company; that on Findlay renewing his proposals these were accepted, but with different premiums and benefits from those secured under the insurances effected with the complaining society; that from September to December 1906 Findlay paid the premiums due on both insurances, but that Findlay having become dissatisfied with the attention he was receiving from the complainers' collectors, he stopped making payments after December, and pro-

posed to Ferris that he should take over the insurances which he had with the complaining society; that this being beyond Ferris' authority as a canvassing agent, he referred the matter to the respondents' superintendent, who received Findlay's proposals in writing and forwarded them to the head office; and that in the end these were accepted, in ignorance that Findlay had been insured with the complaining society, though they substantially secured the same benefits as in the case of the latter. I do not wonder, therefore, that the Sheriff-Substitute has held that in the circumstances there was no offence under the Act, and has assoilzied the respondents, for it is hard to say that on the facts so found any moral blame lay either with the respondents' head office, or even with Ferris, their canvasser.

But I have come to the conclusion that at all events a technical offence has been committed under the Act, though it is not a case for inflicting anything but a very modified penalty. Indeed, Mr Clyde for the complaining society did not ask for more.

It is always desirable that in the construction of an imperial statute the courts of the two countries should speak with the same voice, though a Scottish court may not, strictly speaking, be bound by the decision of an English one. Now, the only case in which this statute has been construed in England is that of the *Pearl Insurance Company*, [1901] 1 K.B. 528. There an alderman of the City of London had held that there was no transfer, or seeking to transfer, where no two insurances had been shown to co-exist. But a Divisional Court, consisting of Mr Justice Wills and Mr Justice Phillemore, reversed his decision, holding that there was a seeking to transfer in the sense of the Act, and remitted to him to convict. I think we must hold the same. There was in this case a co-existence for a short time of two insurances substantially securing the same benefits in return for the same contributions, though the persons concerned in the transactions may not have known or intended it. Accordingly the complaining society ought to have received notice of Findlay's proposal for admission to the respondents' company in terms of section 4 (2), and the omission to send such notice constituted at all events a technical contravention of the Act.

LORD LOW—I think that sections 3 and 4 of the Collecting Societies and Industrial Assurance Companies Act 1896 are intended for the protection of both persons insuring with such societies or companies and of the societies and companies themselves.

Section 3 confers a benefit upon the person insured, because it provides that forfeiture of the insurance shall not be incurred by reason of any default in paying any contribution, until after notice has been given to the insured that in case of default of payment by him, within a certain time and at a certain place, the insurance will be forfeited, and until default has been made in paying the contribution in accordance with that notice.

Sub-section 1 of section 4 also contains provisions in favour of the assured. It is in these terms— . . . [*Quotes supra in rubric*]. . . .

I imagine that the main object of that enactment is to protect persons insured against the solicitations of collecting agents of such societies or companies. I suppose that such agents are paid by results, and that therefore the interest of each agent is to obtain as much business as possible for the society or company which he represents. He is therefore likely to exalt the merits of his company beyond those of all other companies, and to try and persuade a person insured with another company to leave that company and take out an insurance with that which he represents, or to insure with the latter company in addition to the insurance already effected with the other company. I think that the enactment, if read according to the natural meaning of the language used, covers both of these cases, and provides that in either of them the written consent of the insured shall be obtained.

Sub-section 2 of section 4 (upon which the question at issue mainly turns) is designed for the protection of the society or the company, and here again I think that the risks mainly in view were those arising from what I shall call the excessive zeal of their collectors. The sub-section runs thus —. . . [*Quotes supra in rubric*]. . . .

That seems to me to be an enactment unusually difficult of construction, and I cannot pretend to have arrived at any confident opinion as to what its meaning truly is.

In the first place, it deals with the same persons as fall within the scope of the previous sub-section. That is plain from the use of the expression "*the* member or person." That being so, one would rather expect that sub-section 2 would be the correlative of sub-section 1, and would deal, from the point of view of the society or company, with both of the situations in which a member or person insured may apparently find himself under sub-section 1; that is to say, both with the case of a person dropping his connection with one company and becoming a member of or insuring with another, or becoming a member of or insuring with that other company without dropping the first.

The difficulty in adopting that construction is occasioned by the use of the word "transferred." Mr Clyde argued that the transference contemplated was a transference of what he called custom, which covered the case of a person effecting an insurance with a new company while retaining that in a company with which he was already insured. It seems to me that that construction is negatived by the words actually used, because it is the person which is spoken of as being "transferred." The precise words are "the member or person sought to be transferred." Now if a person is transferred from one place to another, or

from one company to another, he is taken out of the first and put into the second; if he is *transferred* he cannot be partly in one and partly in the other.

I am therefore unable, without unduly straining the language used, to read sub-section 2 as providing for any other case than that of a person stopping his insurance with one company for the purpose of effecting an insurance with another. I say, *for the purpose* of effecting an insurance with another, because I do not think that the mere fact that the person insuring with a company had at some previous period of his life been insured with another company would of itself bring the case within sub-section 2. For example, if a man came to the conclusion that he could not afford to continue paying premiums and therefore allowed an insurance which he had to drop, and a considerable time afterwards changed his mind and effected a new insurance with another company, I do not think that that would be a transfer within the meaning of the enactment.

Further, I think that sub-section 2 of section 4 must be read in connection with section 3. If a man was unable to pay his contribution by reason of illness, or inability to obtain work, or other innocent misfortune, the company with which he was insured might be disposed to treat him with great consideration, whereas if they found that he had stopped paying his contribution because he had effected an insurance with a rival company, they might consider it prudent to give the notice required by section 3 as early as possible. I therefore think that the provisions of sub-section 2 of section 4 were intended to prevent a company with whom a person was assured being prejudiced by the benefit conferred upon him by section 3 in cases where the reason for his stopping payment of his contribution was that he had transferred his insurance to another company.

Again, section 14, sub-section 1 (*b*) and (*c*), require to be considered. That sub-section makes it an offence under the Act (*b*) if a person attempts to transfer a member or person from one society or company to another without the written consent required by section 4 (1); and (*c*) if a society or company to which a member or person is sought to be *transferred* fails to give the notice required by section 4 (2). In both cases the offence is only committed in the case of there being a transference, and accordingly I do not think that a person or a society or company could be convicted of an offence under the 14th section if what had been done had merely been to effect an additional insurance with a second society or company, leaving the insurance with the first society or company in force, and payment of contributions in respect thereof being continued.

As regards the present case the facts are very clearly stated by the Sheriff-Substitute, and upon these facts I am of opinion that the transaction referred to in the complaint was truly a transfer of Findlay's insurance from the complainers' society to the respondents' company. Findlay, who was insured with the complainers, stopped paying his contributions to them, and immediately effected with the respondents an insurance which secured to him the same benefits for payment of the same contributions as his insurance with the complainers had done. Further, the terms upon which the respondents insured Findlay were more favourable to the insured than those provided in their general tables, and required to be sanctioned by the directors. That, I think, constituted a clear case of the transfer of an insurance within the meaning of the Act.

I am therefore of opinion that an offence under the Act was committed, although I agree with your Lordship that having regard to the circumstances stated in the case it was merely a technical offence. There is no reason to suppose that any of the officials of the respondent company except Ferris, the collector, who arranged the matter with Findlay, knew that Findlay had been insured with the complainers, and Ferris cannot be charged with anything more serious than that, according to my view, he put a wrong construction upon section 4 (2) of the Act, which is not surprising. Therefore, although I think that the respondents should have been convicted of the offence libelled, I am of opinion that it was a case for a merely nominal penalty.

LORD JUSTICE-CLERK—The Act of Parliament upon which this case is based was passed for the purpose of protecting the small insurer in industrial insurance organisations from several evils; one was that the companies or societies which granted small insurances had to be restrained from cutting off the insured from the benefit of the insurance, and so holding past premiums while getting rid of their obligation. Therefore it was provided that forfeit should not take place without sufficient notice to the assured who was in arrear, and giving him the opportunity to pay up overdue premiums. A second purpose was to prevent persons insured being induced under pressure to transfer their insurance from one company or society to another, unless written consent was obtained. Improper canvassing was also struck at.

Accordingly, under the Act fourteen days' notice must be given of any intended forfeit, and where a transfer is proposed there must be a written consent of the party or of the parent or guardian of minor; and where any insured applies to a new insurance company or society, notice is required to be given to the original insurers within seven days of his application.

In this case it appears that one Findlay, a person insured with the complainers, approached the agent of the respondents in the appeal, desiring to effect an insurance, that at first the agent did not try to induce Findlay to insure with him. Thereafter Findlay renewed his application and was granted an insurance with the respondents. For some time thereafter Findlay kept up both insurances, and then being dissatisfied with the complainers, stopped his payments

to them, and asked the agent of the respondents to take him on for the same terms as he enjoyed with the complainers. At this time the insurance with the complainers was still in force. The agent had no power to grant special terms, and the matter was referred to his superiors, who granted the concession. It is only fair to say that they were not aware, as the agent was, that Findlay had held an insurance from the complainers.

On these facts my opinion is that the interlocutor of the Sheriff-Substitute is erroneous, and that the complainers are entitled to a judgment in the latter transaction. That which was done was done without obedience to the statutory direction being fulfilled, which requires that notice be given. It may be that there was no evil motive as a cause of the breach of the statute, but the offence is a technical one, and it is not necessary that there should be any wilfulness to constitute it. Unless we are to go contrary to the decision in the *Pearl Insurance Company's* case, we must hold that a technical offence has been committed, and while the decision of an English Court is not a binding authority on this Court, it is entitled to all respectful consideration. My own opinion is that it was rightly decided. I should have been in favour of a judgment to the same effect had this been the first case occurring under the Act. Whatever difficulty may be created by the word "transfer" in the statutes and which has led to much discussion I have no doubt that what was done here was a transfer in the sense of the Act.

If that be a sound view, as I understand your Lordships hold it to be, there must be a conviction and a penalty. But in the circumstances of the case there does not seem to be any ground for more than a nominal penalty, as the case is one really for the purpose of having the law applicable to a particular set of circumstances settled, and indeed the petitioners through their counsel expressed their desire that the case should be so dealt with.

LORD ARDWALL concurred.

The Court answered the first question of law in the affirmative and the second question in the negative, and remitted to the Sheriff-Substitute to convict.

Counsel for the Appellants—Clyde, K.C. —Macmillan. Agents—Alex. Morison & Company, W.S.

Counsel for the Respondents—Murray —Hon. W. Watson. Agents—Campbell & Smith, S.S.C.

Tuesday, July 14.

FIRST DIVISION.

NAPIER'S TRUSTEES *v.* NAPIERS.

Succession — Destination — Vesting — Liferent — Accretion — Joint - Liferent to Parents and their Children.

A testator directed his trustees to set aside a certain share of residue, and to hold it "in trust for behoof of my son, J. his wife and family, for alimentary use . . . ., (and afterwards to their issue in fee)."

Held, in a special case, that the gift to J, his wife and family, was a joint-liferent, and that the last survivor of them was entitled to the liferent of the whole fund.

On 15th August 1907 a special case was presented which dealt with a provision, contained in a codicil to the trust-disposition and settlement of the deceased Robert Napier, engineer and shipbuilder in Glasgow.

Robert Napier died on the 23rd June 1876, leaving a trust-disposition and settlement, dated 14th April 1871, whereby he conveyed his whole estate to trustees, with five codicils or additions thereto, of which that of 18th January 1876 alone had any bearing on the questions now raised. The fifth purpose of the trust directed the trustees to divide the residue and remainder of his means and estate into ten equal shares; to hold one tenth share for each of his three daughters, and her children; to hold three tenth shares for behoof of his son "James Robert Napier and his wife and children, and those substituted to them as hereinafter mentioned"; and to pay or convey over three tenth parts or shares to his son "John Napier and his heirs." The deed then proceeded as follows—"And as regards the remaining one tenth part or share, I direct my trustees to apply the same in the first instance in satisfying and paying the several legacies and bequests which I have left or may leave or bequeath by any separate writing or codicil though not formally executed, and in paying the Government duty on such legacies and bequests; and I direct that after satisfying these legacies or bequests and the duty thereon the surplus or remainder of the said last-mentioned share shall be paid or made over also to my said son John Napier and his heirs; and I would explain that my reason for making all the provisions of the said John Napier payable to himself instead of destining the same or a portion thereof for the benefit of his wife and family (as I should have wished to have done) is that he may have the command and control of all available capital in carrying on the business of Robert Napier & Sons, as after mentioned."

On 18th January 1876 the testator addressed a letter to the trustees,—"Dear Sirs—With reference to the directions contained in the fifth purpose of my trust-disposition and settlement regarding