

by him as follows:—"The question is whether the pursuer, who during the time in question occupied the position of the defender's wife, can now recover from him moneys which she must be held to have known were being applied for mutual purposes. If this were the case of a marriage dissolved by decree of divorce it would, I think, be plain from the decision in *Fenton Livingston*, 44 S.L.R. 503, and the cases there referred to, that she could not. . . . I am of opinion that the principle of the cases above referred to applies to moneys spent on mutual purposes during the period the pursuer and the defender believed they were married persons." Now I differ from the Lord Ordinary, because I do not see how the pursuer can be held to have known that the money was being applied for mutual purposes unless she knew for what purposes it had been withdrawn from the defender's bank account, and this she has no means of knowing. Whether it had been withdrawn for the purposes of speculative investment or for the purpose of making additions to the stock of the hotel business she could not know. She would not assume that the cheques which she received for the purpose of paying the hotel bills came from the £100 in question. The defender assured her to the contrary, and led her to believe that the money was all right and that she could get it at any time.

Still less is there any room for a plea of acquiescence, for the pursuer says—"After the end of September, when I knew Mr Wilkie had diverted the money for his own use, I repeatedly complained to him about it. I was always put off with excuses"; and again—"I knew it was in his name and that there was an overdraft, but he said he would give me back the £80." These passages show clearly that the pursuer did not acquiesce in the money being spent by the defender for current expenses or otherwise. I believe her statement, and I do not believe the contrary statements of the defender. In these circumstances I do not see any foundation in fact for a plea of acquiescence or taciturnity.

The case of *Fenton Livingston*, besides being differentiated from the present case by the fact that the marriage was dissolved by decree of divorce, is also differentiated from the present by the fact that in that case the money came into the husband's hands by way of donation from his wife and was applied to mutual purposes, such as the payment of jewellers' bills and the husband's personal expenses. In the case of *Hedderwick*, 1901, 4 F. 163, the wife herself had expended her own money on household purposes, and she was held not entitled to recover it as a debt from her husband. The case of *Hutchison*, 1842, 4 D. 1399, does not appear to me to have much bearing on the present case. So far as it goes it appears to me to be adverse to the defender's contentions. I think, therefore, that none of these cases support the defender's argument.

I agree with my brother Lord Stormonth Darling that the case in which the married

life of the parties is brought to an end by a decree of nullity is very different from the case where a marriage is dissolved by a decree of divorce, and this is an additional reason for holding that the case of *Fenton Livingston* does not apply to the present.

LORD LOW was absent.

The Court recalled the interlocutor reclaimed against, and ordained the defender to make payment to the pursuer of the sum of £100.

Counsel for the Pursuer (Reclaiming)—Scott Dickson, K.C.—A. M. Anderson. Agents—Clark & Macdonald, S.S.C.

Counsel for the Defender (Respondent)—M'Clure, K.C.—Spens. Agents—Cunningham & Lawson, Solicitors.

HOUSE OF LORDS.

Tuesday, March 17.

(Before the Lord Chancellor (Loreburn), the Earl of Halsbury, Lord Macnaghten, Lord James of Hereford, Lord Robertson, Lord Atkinson, and Lord Collins.)

COLQUHOUN v. GLASGOW FACULTY OF PROCURATORS' WIDOWS' FUND SOCIETY.

(In the Court of Session, December 22, 1904, 42 S.L.R. 271, and 7 F. 345.)

Insurance — Statute — Contract — Society — Widows' Fund — Rights of Contributor to Insurance Fund for Benefit of Widows of Members of a Society on his Expulsion from the Society — Glasgow Faculty of Procurators' Widows' Fund Act 1833 (3 Will. IV, cap. lxxiv.) — Glasgow Faculty of Procurators Act 1875 (38 Vict. cap. vi).

The Faculty of Procurators in Glasgow, incorporated by Royal Charter in 1796, granted annuities to the widows and children of deceased Members of the Faculty. In 1833 it obtained an Act of Parliament for the better establishing and securing a fund for this purpose, and a society called "The Society of Contributors to the Widows' Fund of the Faculty of Procurators in Glasgow" was thereby incorporated. In 1875 another Act limited those interested in the "Widows' Fund" to the then annuitants and the then contributors. A Member of the Faculty, who had joined it and become a contributor to the Widows' Fund in 1870, was expelled from the Faculty in 1900, having been convicted of embezzlement.

Held (per the Lord Chancellor (Loreburn), Lord Macnaghten, Lord James of Hereford, and Lord Atkinson—*diss.* Lord Halsbury, Lord Robertson, and Lord Collins), *rev.* decision of the First

Division (*diss.* Lord M'Laren), that upon a consideration of the whole provisions of the Act of 1833 he was entitled to remain a contributor to the Widows' Fund and a Member of the Society.

Per the Lord Chancellor (Loreburn)—“Between two equally admissible interpretations the more reasonable should be preferred. And if an Act will read equally well whether or not an unexpressed condition be implied, a Court ought surely not to imply a condition that works hardship.”

Per Lord Halsbury (*dissenting*)—“For my own part I cannot understand why such a society, which means to confine those who enter it to those possessing a particular professional qualification, is not supposed to require the member to possess throughout the qualification without which he could not have entered the Society.”

This case is reported *ante ut supra*.

James Colquhoun, his wife, and children, the pursuers and reclaimers in the Court of Session, appealed to the House of Lords, and the cause was twice argued before their Lordships.

The provisions of the Glasgow Faculty of Procurators' Widows' Fund Act 1833 (3 Will. IV, cap. lxxiv), which are too long to be given here *in extenso*, are summarised in their Lordships' opinions.

The provisions of the Glasgow Faculty of Procurators Act 1875 (38 Vict. cap. vi) are, so far as necessary, given in the previous report.

At delivering judgment—

LORD CHANCELLOR—This case has been twice argued. Mr Colquhoun, the appellant in this appeal, became a member of the Faculty of Procurators of Glasgow in 1870. Under an Act of Parliament then in force he was obliged to join, and did join, the Society of Contributors, which was a mutual insurance society for members of the Faculty, regulated by that Act. He paid a considerable entrance fee and an annual subscription down to the year 1899. Subsequently he was expelled from the Faculty for misconduct, and the Society claim that they also were entitled to expel him and to deprive him of all the benefits derived from his membership and past subscriptions. The question for your Lordships is whether this Society was so entitled; and that question must be solved by reference to the Act itself, which is the third of Will. IV, cap. lxxiv.

To begin with, this much is clear. Mr Colquhoun cannot be deprived of these benefits as a punishment for his misconduct. There is not a word in the Act which upon any construction can authorise the Society to deprive on the ground of delinquency where they could not otherwise deprive. If Mr Colquhoun is to lose the fruit of his insurance it must be on the ground that he is no longer a member of the Faculty, a ground which would apply whatsoever may have been the cause of his

ceasing to be a member. And so it comes to this—Ought we to construe this Act of Parliament as meaning that whenever a member of the Faculty ceases to be a member, he must necessarily also cease to be a member of and contributor to the Insurance Society?

It is a question of contract. What were the terms on which Mr Colquhoun became a contributor to this Society? I think this is to be settled by the Act alone, and that no help can be gained by referring to anything beyond it.

Under the scheme of the Act any procurator who joins the Faculty is compelled to join the Insurance Society also, and thenceforward to subscribe to it as long as he lives—not, be it observed, for so long as he remains a member of the Faculty. He is allowed to renounce the benefits in due form, and will thereupon cease to have any interest in the fund. Also, he may forfeit them by specified acts or omissions, all of which relate to some default relative to the fund itself. There is no provision that ceasing to be a member of the Faculty shall entail consequences so serious, and I cannot see any sufficient reason for implying such a provision.

It would operate very harshly upon those who had compounded for or, to use the language of section 27, “redeemed” their annual contributions; also upon any member of the Faculty who, having for many years paid to this fund, desired to quit the Faculty for another profession.

Between two equally admissible interpretations the more reasonable should be preferred. And if an Act will read equally well whether or not an unexpressed condition be implied, a Court ought surely not to imply a condition that works hardship. In my view this Act set up a statutory contract of insurance. Even if I thought the Act admitted of it I would not imply a condition most onerous to the assured unless the Act also required it. But in the present case I do not think there is an ambiguity.

I am of opinion that, according to the letter of the Act, any member of the Faculty who once becomes a contributor to the fund is entitled to continue a contributor, and is entitled to the benefits offered in exchange, even though he ceases to be a member of the Faculty.

Under section 16, on payment of his entry money a member of the Faculty becomes a contributor to the fund “and entitled to the benefit thereof under the provisions of this Act.” Under section 18 such person is bound to pay the Society an annual contribution “during his life.” And under section 9 one of the purposes of the fund is “payment to the widows and children of the members of said Faculty who now are or may hereafter become entitled to the benefit of the fund under the provisions of this Act as hereinafter specified.” All that is required is that the person entering the Society should be a member of the Faculty when he enters it. In my opinion the position of any member of the Faculty who has paid his entry

money is as follows:—He may renounce; he may redeem; he may forfeit the benefits; for some cause specified in the Act. But if none of these things happen he is required to keep up his annual contributions whether he remains a member of the Faculty or not, and is entitled in return to the benefits like any other contributor.

Accordingly, with the utmost respect, I am unable to agree with the judgment of the First Division.

EARL OF HALSBURY—I think it is a very relevant consideration that the corporate body we are now dealing with has from its earliest institution been confined to a separate professional class, and that from the year 1796 till 1833 and 1875 it has continued to be so confined, and to the present day is undoubtedly so confined that no one can demand to be admitted within it unless he is a member of the class in question.

It is not denied that for entry into the corporation and its ancillary charitable provisions a person must be a member of the Faculty of Procurators. If he is, he may take a part in its government and, among other things, has his chance of being entrusted with the management and distribution of its funds.

By the 2nd section of the Act of 1833, which is described as an Act for the better establishing and securing a fund for providing annuities to the widows and children of the members of the Faculty of Procurators of Glasgow, a scheme for the election of its officers is enacted which is described to be for the proper administration of the funds of the Society and management of the affairs thereof, and it provides that any member of the Society may be re-elected, or any other member may be elected also by the 11th section, former regulations as to the fund are cancelled by the statute, and it is enacted that in future the funds shall be administered in pursuance of the new enactment. Up to the passing of the Act a person to be admitted was required to serve a regular apprenticeship for five years with one of the members of the Faculty, but by the 15th section of the Act the Faculty was authorised to receive and admit any person who should be found duly qualified in terms of the original charter, and upon such terms as to payments to the said Faculty and to the said Society thereby constituted as the Faculty should from time to time appoint.

I presume doubt had been raised as to the lawfulness of some of the appropriations of a portion of the funds, since by the 8th section the appropriation of certain portions of "the funds of the said Faculty of Procurators" was declared to be lawful, and by the 9th section the declaration of the object of the trust, after providing for the necessary charges, goes on to declare, what is relevant to the present questions before your Lordships, for provision and payment of an annuity to the widows severally and children of deceased members of the said Faculty.

The concluding words of that section seem to me most important—"And in the

last place, for provision and payment of an annuity to the widows severally and children of deceased members of the said Faculty, contributors to the fund and Society hereby established, and for payment to the widows and children of the members of said Faculty, who now are or may hereafter become entitled to the benefit of the fund, under the provisions of this Act, as hereinafter specified. And it shall not be lawful to apply the said fund to any other use or purpose whatsoever."

Now, it will be observed that this is the section which defines the object of the trust and which prohibits any other disposition of its funds. That part of it which is relevant to the discussion defines the object as widows of members of the Faculty who were contributors, and must have been both members and contributors—in the later part of the section it says, "members of the said Faculty contributors to the Fund and Society hereby established."

It seems to me impossible to construe the words here used as if it permitted the qualification for an annuity to cover the case of a widow who did not fill the character of a widow who became a widow by the death of her husband while he was a member of the Faculty, and besides being a member of the Faculty had also been a contributor to the fund.

I do not think the question of forfeiture or loss of money comes into the question of construction. It is a question of what this definition of the object of the trust means, and I cannot doubt what the true construction is, much as I respect the views of those who differ. It may, of course, present a case calculated to raise a feeling that some injustice is being done when a man who has paid this contribution for nineteen years is refused permission to continue his contributions and thus loses for his wife and children a provision intended for them; but upon the question of construction it is immaterial whether it was nineteen years or nineteen days. If the contributor died within the first year and was a detected thief the day after his entry the construction must be the same.

For my own part I cannot understand why such a Society, which means to confine those who enter it to those possessing a particular professional qualification, is not supposed to require the member to possess throughout the qualification without which he could not have entered the Society.

Neither am I much impressed by the absence of a distinct provision that the member might be expelled where such a qualification is taken away by the person being detected as a thief—and, as I understand the argument, it is not now denied that, quite apart from the express power by later legislation, it was quite within the powers of the governing body to deprive the appellant of his character of procurator, yet because of his having contributed to the Society, which is simply ancillary to it, it is argued he is still entitled to become a contributor.

I am not quite certain that I understand Lord M'Laren's objection to that power

which every corporation possesses both of disfranchisement and amotion for heinous crimes, such as embezzlement undoubtedly is (see Lord Mansfield's judgment in 2 Burrows, 723), and though the loss of pecuniary profit may follow as a consequence it seems to me fallacious to treat as itself a penalty what is the consequence of a loss of qualification, and the whole question seems to me to depend upon whether being a Glasgow Procurator is or is not a qualification for joining in the Society for providing funds for the widows and children of Glasgow Procurators.

I have hitherto referred to the section which declares the object of the trust, but there is nothing in the rest of the Act which seems to me to militate against the construction I put upon that section. On the contrary, the title and preamble of the Act of 1833 seem to me to disclose with some distinctness the purpose of the Act, and certainly I should not suppose from the language used it was contemplated to erect two different societies, since the objects sought to be attained are to be "the objects of the said incorporation." The charter granted was to the Faculty, and the Act referred to is its, and is said to be for the better and more convenient distribution of the funds thereof; still, be it observed, it is assumed to be the same corporation, and the Act is for the better and more convenient distribution of the funds thereof.

The preamble proceeds to recite that the said Faculty appropriated certain sums of money from the said funds, and other contributions from the then present members and future members of the said Faculty, "for establishing a fund or scheme for providing annuities to the widows and children of the members of said Faculty contributors"—observe it is still members who are within this description, but they must also be contributors. It goes on to mention that at a meeting of the members on the 5th of February 1827 amended regulations were made and approved of by the said Faculty at the time.

It then recites that several alterations and amendments in the said scheme had been suggested, and that members of the said Faculty made certain alterations for the better management and distribution of the said fund. It then recites the great increase of the said fund by the contributions of the members of the said Faculty. It declares that it is expedient, without prejudice to what has been done, that the said Faculty should be enabled more effectually to manage the said fund, and to extend the usefulness thereof by making provision for more ample annuities to the widows and children of the members of the said Faculty who may be willing to contribute for that purpose, and to adopt certain regulations for the more sure establishment and better administration of the said fund and for the continuance of the benefits thereof, but which objects cannot be carried into effect without the authority of Parliament.

It then proceeds to enact that all and each of the members of the Faculty of

Procurators in Glasgow and every person who shall thereafter become members of and contributors to the said fund in manner after mentioned shall be and are thereby declared to be members of and contributors to said fund established under the provisions of the Act, and shall be called the Society of Contributors to the Widows' Fund of the Faculty of Procurators in Glasgow.

It is an old observation, that in construing an Act of this character it is not the language of the Legislature itself, but the language which the promoters have used and to which the Legislature has assented.

I say this because the words I have quoted are, in some respects, slipshod and inaccurate. I do not know, speaking accurately, what is the meaning of the words "members of a fund," but it is impossible not to see what the draftsman intended. He has throughout referred to the Faculty and its members, in respect of the greatly increased contributions by the Faculty, the enabling of the said Faculty effectively to manage and to extend its usefulness, and for giving more ample annuities to widows and children of "the members of the said Faculty who may be willing to contribute for that purpose."

From first to last I can find no trace of any intention to establish a fund independent of and not for the benefit of the profession of the Faculty of Procurators. That some words were necessary when the rule of compulsory contribution was abolished is plain enough, and that they only should be entitled who contributed is one thing, but that people who were not members of the Faculty should be entitled to contribute is another, and a very different thing.

I do not think it is very relevant to the matter now in hand to consider the cases where by voluntary retirement the contributions should cease, they are provided for.

The very last words of the first section quoted by some of your Lordships describes the Widows' Fund of the Faculty of Procurators in Glasgow.

It is in view of the preamble and the enacting part of the 1st section that I think the 29th and 30th sections so important. It does not appear to me that there was ever any intention to alter the constitution of the Society, but the abolition of the compulsory contribution rendered appropriate an alteration of the phraseology, which, however, has not throughout been observed with strict accuracy, but the language appears to me to be sufficiently plain that while only the contributory members of the Society should receive the benefit, it is assumed all through that they must be members of the Faculty.

I am afraid I do not follow the argument derived from the statement that the relations between the corporation and its members is that of contract. There is no other contract than that of becoming a member of the corporation, and as such liable to all the incidents which belong to an individual corporator.

Lord Mansfield said the causes of the

amotion of a corporator are first offences against the duties of his office as a corporator; second, crimes in their own nature heinous and against the offender's general duty as a subject yet not particularly relating to his corporate office as a duty.

It can hardly be doubted that the offence of embezzlement comes within Lord Mansfield's second category, and requires no express contract that he should be removable for such a cause.

It would be intolerable that because a man was once a corporator the non-criminal corporators should be compelled to associate with and take part in the business of the corporation with a person who had been convicted of theft and suffered the punishment of penal servitude.

It is by the act of the person thus guilty that what is called his loss is incurred, and, indeed, it is not quite accurate to describe it as if his investment was entirely lost. During the nineteen years he had the security of his investment for his wife and children if at any time he had died during the period, and if in the end the pension has been lost it is because he has committed a crime which involved the loss of his qualification when he was found out.

For these reasons I am of opinion that the judgment below was right and ought to be affirmed.

LORD MACNAGHTEN—In 1870 the appellant James Colquhoun became a member of "The Faculty of Procurators in Glasgow"—a corporation established in 1796 by Royal Charter. At the same time he became a member of a mutual insurance society styled "The Society of the Contributors to the Widows' Fund of the Faculty of Procurators in Glasgow." This Society was constituted by Act of Parliament in 1833. The Act provides in section 16 that no person shall be admitted a member of the Faculty of Procurators without first paying entry-money to the Widows' Fund, and that after such payment the person admitted as a member of the Faculty of Procurators shall be "held and deemed a contributor to or member of the Fund, and entitled to the benefit thereof under the provisions of this Act."

In March 1900 Colquhoun, having been convicted of embezzlement, was struck off the roll of the Faculty. The trustees of the Insurance Society then removed his name from the list of the Society. It is not suggested that their action was justified by the crime which Colquhoun had committed. Misconduct has nothing whatever to do with the position taken up by the respondents. Their attitude apparently would have been just the same if Colquhoun had left the Faculty with an unblemished character and of his own free will. Their contention is that if a person becomes a member of the Society and so by statute entitled to the benefits of its fund, and afterwards, from any cause or for any reason, ceases to be a member of the Faculty of Procurators his statutory rights as member of the Insurance Society are at once extinguished, and all his contributions

confiscated for the benefit of the Society. Is that contention sound?

The question, as it seems to me, depends on the meaning and effect of the Act of 1833 and on nothing else. Except so far as may be gathered from the recitals in the Act, the charter of 1796 and the regulations in force under it are, in my opinion, irrelevant. Equally irrelevant, I think, is any reference to a subsequent Act passed in 1875 for winding up the affairs of the Society. The question is simply a question of contract, and the contract is to be found within the four corners of the Act of 1833.

The Widows' Fund had its origin in certain provisions made by the Faculty of Procurators for the benefit of widows and children of members. Before the Act of 1833 everything was in the hands of the Faculty. The allocation and distribution of its funds was a matter of domestic arrangement and regulation. By the Act of 1833 the condition of things was altered. The old widows' fund with its existing liabilities was handed over to the Insurance Society, which was to have no claim on the Faculty fund in respect of new members. The Society from its inception was a body separate and distinct from the Faculty. Even the members were not identical, for no one who became a member of the Faculty after reaching a certain age could enter the Society, and members of the Society might leave that body and still continue members of the Faculty. The Society had its own treasurer and was under the control of its own officers. It had no disciplinary powers. It had no function but that of an insurance society. It was a purely business association of a common type, intended to be conducted on sound actuarial principles, subject to periodical investigation in accordance with the most approved tables of mortality, "taken in connection," as the Act itself declares, "with . . . the experience of this and similar schemes." It is quite true that entrance to the Society could only be gained through admission to the Faculty of Procurators. Membership of the Faculty was the only passport to the Society. So far, but no further, the Faculty and the Society were linked together. When once the entrance gate was passed and a person became "a contributor to the Widows' Fund and entitled to the benefits thereof," his only statutory obligation to the Society, besides payment of a marriage tax, if exigible, was to contribute during the whole of his life unless and until he purchased exemption by compounding or by contributing for a period fixed by the Act, or unless and until he renounced in due form for himself and for his widow and children all interest in the Society and its funds.

The argument of the respondents, if I understood it aright, was founded partly on the language of the declaration of trust contained in the Act of 1833, and partly on inferences derived from the circumstances and position of the Widows' Fund before the Act.

The latter branch of the argument,

which at first sight seems the more formidable, and on which much stress was laid, is I think displaced and excluded by the Act itself. In section 11 it was enacted that the regulations in force before the passing of the Act should be annulled, and that the Fund as vested in the officers of the Insurance Society, with the whole increase thereof, should be administered under the provisions of the Act of 1833.

The declaration of trust on which the respondents rely is to be found in section 9. That section declares that the uses and purposes of the Society and of the funds vested and to become vested in it or in the trustees thereof shall, after satisfying certain prior charges, be "for provision and payment of an annuity to the widows severally and children of deceased members of the Faculty, contributors to the Fund and Society hereby established." Then follow these words dealing with present and future contributors, "and for payment to the widows and children of the members of said Faculty who now are or may hereafter become entitled to the benefit of the fund under the provisions of this Act, as hereinafter specified." What is the meaning of these latter words? In construing them you must, I think, bear in mind two things. In the first place, a person could only enter the Society as a member of the Faculty. The Society was formed for the purpose of insuring members of the Faculty and no others. In the next place, a member of the Society, in the view of the framers of the Act, became "entitled" to the benefits of the Society's fund immediately on his admission. That is plain enough from the language of this section. It is plainer still from the language of section 16, which has been referred to already. Now the learned counsel for the respondents in construing the clause under consideration seemed to omit or leave out of sight the most important part of it. They read the clause as if the declared purpose of the fund was "for payment to the widows and children of the members of the said Faculty," without anything further in the way of defining the class of persons intended to be benefited. I venture to think that is not quite right. If I might paraphrase the sentence I should say the true meaning is "for payment to the widows and children of persons who, being members of the Faculty, are or may hereafter be admitted to the Society, and by virtue of their admission become entitled to the benefit of the fund." This construction is consistent with what is found in subsequent sections, where the phraseology is varied and the persons entitled to the benefits of the fund are described sometimes as "contributors" simply and sometimes as "members of the fund," without any reference to membership of the Faculty. What is more important is that it is consistent with the fundamental constitution of the Society as declared in section 1. The constituents of the Society besides the then members of the Widows' Fund are to be "all and every other person or persons who shall hereafter become

members of and contributors to said fund in manner after mentioned." The only conditions of membership of the Society are entrance in the prescribed manner and contribution—not contribution plus continued membership of the Faculty of Procurators.

The construction for which the respondents contend would certainly lead to strange and harsh results. A person might be a member of the Faculty of Procurators and also a member of the Insurance Society, he might have compounded for all future contributions to the Widows' Fund and thus have purchased for his wife and children the benefit of the annuity by payment in full. Suppose he were then struck off the roll of procurators in order to enable him to join the Bar or some other profession, membership of which might be incompatible with membership of the Faculty, it would be a strange thing that he, or rather his wife and children, should lose the benefit of his purchase. It would be a strange thing too, unheard of I should think in the practice of insurance societies, that this Insurance Society without making any refund should appropriate a windfall which the actuarial calculations of an insurance society would not, I suppose, take into account. But however that may be, I rest my judgment simply and solely on the Act of 1833. It seems to me that when a person is declared by Act of Parliament to have become a member of a statutory body and to be entitled to the benefit of a certain fund, his status and rights are not to be destroyed or taken away without plain language. An implied power of expulsion seems to me something of a novelty. Forfeitures, as a great Judge has said, "are not favoured in the law."

I think the Order appealed from ought to be reversed.

LORD JAMES OF HEREFORD—The question raised in this case can easily be stated.

The Faculty of Procurators in Glasgow are a corporation existing under a charter.

In 1833 an Act of Parliament was passed for the better establishing and securing a fund for providing annuities to the widows and children of the members of the Faculty.

The general effect of the statute is that persons becoming in the future members of the Faculty had to contribute to the Widows' Fund, and upon making certain payments would be entitled to certain benefits. By the concluding words of the first section of the Act the position of such contributors is thus defined, "shall be called the Society of Contributors to the Widows' Fund of the Faculty of Procurators in Glasgow."

The pursuer J. Colquhoun being a member of the Faculty became in 1870 a contributor to the Widows' Fund, making payment by way of entrance and subscription amounting to £179. He was always ready and offered to continue to pay the subscriptions due from him.

In 1899 J. Colquhoun pleaded guilty to a charge of embezzlement, and the Faculty, acting within their powers, expelled him.

The question before your Lordships is, What are the effects of that expulsion? Does it carry with it any forfeiture or loss of the benefits under the Widows' Fund to which Colquhoun was entitled by virtue of his contributions?

I think that it does not.

The argument of the respondents is that inasmuch as no one could become a contributor to the Fund unless he were a member of the Faculty, in like manner he lost his rights under his contributorship if he ceased to be such member of Faculty.

But such argument cannot be supported by anything expressed in the statute; it is by force of inference only that such contention can prevail.

Where, as in this case, it is sought to effect a loss of moneys paid, surely there ought to be clear and distinct grounds for drawing such inference. I cannot find them.

On the contrary, I think the provisions of the statute show that it was intended to protect the interests of the contributor. He is entitled to renounce or to redeem under sections 27 and 28, and is liable to forfeiture only for non-payment of contributions under section 26 of the Act.

It is true that in the first instance a contributor to the fund must be a member of the Faculty, but obligations are imposed upon him by the statute to make certain payments not only whilst he is a member of the Faculty "but during the period that each of such contributors respectively shall use and be a member of such Society."

Now, a member of the Faculty may desire to resign such position—as, for instance, if he sought to become a member of the bar of England or Scotland—and the respondents' argument must go to the extent of saying that in such a case all right to the benefits resulting from the contribution would be lost. No reliance is placed upon the fact that in this case misconduct has occurred. It is the absence of the pursuer's name from the roll that is relied upon. If this were sufficient to cause the forfeiture the statute may well have said so, but it has not, and in the absence of any express declaration that only members of the Faculty can be allowed to remain members of the contribution fund, I come to the conclusion that the appellant's contention is correct and ought to prevail.

LORD ROBERTSON—The judgment which I am now to read was written after the first hearing, and I have nothing to add.

I am of opinion, and as there is a difference of opinion, it is right to say clearly of opinion, that the judgment appealed against is right.

The claim of the appellant is that albeit he is not a member of the Faculty of Procurators he is entitled to contribute to their Widows' Fund and to receive the benefits of that institution. It seems to me that from the beginning, and of its essence, this fund has been one purely domestic to the Faculty, and that none of the modifications of the institution have impaired this essential characteristic and

condition. Nor do I find in the successive charters and statutes anything to afford the smallest countenance to the idea that the fact that a man while a member of the Faculty has been a contributor to the fund gives him any right to contribute to the fund when he has ceased to be a member. The nature of all such insurance exposes it to the risk that the contributions of years may be lost if a man has not the money or has not the qualification to contribute in later years. But I hope that I need not remind your Lordships that hardship will not supply a ground of decision which the contract does not supply, and that it would be at least as irrelevant to deplore Mr Colquhoun's loss as to reflect on his fraud.

Now I do not intend to rehearse the developments of this fund, for this has been done very adequately. But I take the several stages.

I should have thought it past all doubt that the claim of the appellant would have been impossible if the Act of 1833 had stood alone. The preamble and the enacting section 1 make membership of the Faculty the qualification of contributing to the new fund; and when we come to section 9 the Act declares the purposes of the trust to be the payment of annuities to the widows and children of members of the Faculty; "and it shall not be lawful to apply the said fund to any other use or purpose whatever."

Now I turn to the Act of 1875, which, as has been said with substantial accuracy, provides for the winding-up of the fund. I must own, that this being so, it would be a singular occasion for increasing the number of contributors by bringing in persons who *ex hypothesi* were hitherto outsiders, or by abolishing a condition which on the same hypothesis had hitherto attached to existing contributors. In truth, however, the negative words of section 3 do not contain any such implication.

In what I have said I assume the right of the Faculty to remove from their membership persons disqualified from membership, and such is a person convicted of the crime of embezzlement. I do not suppose that this was a new power conferred by the supplementary charter; but it is there in black and white. The truth is that membership of any such body is precarious to this extent, that it is not the fact of a man having been honest at the time of his admission that will retain his position if in the sequel he is found dishonest. The same kind and degree of precariousness attend the corresponding investment of money by contributing to a professional widows' fund—that, and nothing more.

On these grounds I am for affirming the judgment of the First Division.

LORD ATKINSON—I concur with the noble and learned Lord on the Woolsack.

Whatever may have been the true relation between the "Faculty of Procurators in Glasgow" and the contributors to the Widows' Fund before 1833, the statute of

that year, in my opinion, entirely altered their relative positions, and gave to those contributors a corporate existence distinct from, and to a certain extent independent of, the older corporation. It was by the first section of that Act provided that those persons who were at the passing of the Act members or contributors to the Widows' Fund, together with all other persons who should thereafter become members or contributors to the Fund, "in manner thereafter provided," should form the corporation. From that time forward the new corporation stood to the old very much, I think, in the position of an insurance company. Every member under fifty years of age admitted to the Faculty was bound to become a contributor to this fund, whereby, in consideration of the payment of a lump sum, varying from £25 upwards in an ascending scale according to his age, plus an annual contribution or premium during his life of £3, 10s., or such larger sum as the Society should have theretofore fixed, together with interest and penalties as in the statute provided, certain annuities were after his death to be paid to his widow or children. Every member of the Society could redeem, *i.e.*, compound for, his annual contribution, and thus, if he were so minded, pay a lump sum at once. And none but members of the Faculty could become contributors.

It was not disputed, as I understood, that the relations between the contributors and the new corporation became, from 1833, a contractual relation. And the point for your Lordships' decision is, in my view, this, whether it is an implied term of this statutory contract—it is certainly not an express one—that the insurer must continue to be a member of the Faculty until his death, so that if for any reason he during his life should cease to be a member of the Faculty he should *ipso facto* forfeit everything he had paid, and the Society be relieved from every obligation to pay anything whatever to his widow or children.

This contingency, as appears from the actuarial tables used, was not taken into account in fixing the amount of the contribution. The latter is uniform, and the lump sum varies with the age of the insurer, and that alone.

Section 13 provides for the restoration of members of the Faculty whose interest in the Fund shall have been forfeited, and section 14 enacts that on being restored they shall become members of the Society, "and each pay to the treasurer £1, 10s. *during his natural life.*" Section 21 enacts that the customary payments of £1 in respect of every contributor who was admitted to the benefit of the Fund before 7th February 1814, and of £1, 10s. in respect of every contributor admitted after that date, shall be continued to be paid by the Faculty "during the period that each of the said contributors respectively shall live and continue to be a member of the Society"—not, be it observed, continue to be a member of the Faculty.

Section 18 provides that every person who

should thereafter be admitted to the Faculty should be bound to pay to the Treasurer of the Society for his benefit annually "*during his life*" the sum of £3, 10s., or such larger sum as the Society shall have theretofore fixed and appointed.

All these sections apparently contemplate that the annual payment should continue to be made during the life of the contributor, and that this is their true meaning is I think enforced by the fact that special provision is made for the cessation of this payment in three particular instances, and those alone, namely—(1) Where the contributor has paid for forty years (section 27); (2) Where he has renounced all benefits of the Fund (section 28); and (3) Where his interest in the fund has been forfeited by reason of his having been guilty of one of the several acts or defaults specified in the various sections, each of which is in its nature injurious to the interests of the fund. No provision whatever is made for the cessation of the contributions, expressly made payable for life, on the happening of such a probable event as the contributor's ceasing for any reason to be a member of the Faculty. *Prima facie* it must, I think, strike one as strange that such a contingency was not expressly provided for if it was the intention of the Legislature that forfeiture should follow upon its occurrence. It has been urged on behalf of the respondents that the omission is accounted for by the history of the fund, and by the special wording of several sections of the Act, notably the 9th, 29th, and 30th, which show that the widows or children who are to receive annuities are the widows and children of persons who at the time of their decease were members of the Faculty, and that anything in the nature of a forfeiture clause, such as is above suggested, is therefore unnecessary.

The past history of the fund cannot, in my opinion, furnish any key to the meaning of the language of a statute which so fundamentally altered the previous position of things as did the Act of 1833, while the words used in the several sections relied upon do not, I think, when examined lead to the conclusion contended for. These words occur in section 9 already quoted. We find occurring in section 29 "there shall be paid out of the funds of the said Society to each of the widows of the deceased members of the said Faculty whose names are specified in Schedule A" and in section 30 we find the words "there shall be paid out of the funds of the said Society to the widow of every member of the Faculty who shall have contributed to the said fund." It is to be observed, however, that in both sections 29 and 30, where the payment of annuities to children is dealt with, the words used are "deceased contributor" and "in case any member of the said Society shall die," and "widow of a contributor." While in section 31 the events, of the proof of which the trustees are empowered to call for evidence, are described as the "death of contributors." Again, in section 33 the phrase used is "widow of more than one contributor in

succession." And in section 34 the word "contributor" is used throughout the section, the words "member of the Faculty" never, while the phrase "widow or children of such contributor" frequently occurs. It is clear therefore that under all the sections the essential fact which must be proved in order to entitle a widow, or a child, to an annuity is, that the husband of the widow, or father of the child, must have been a contributor at the date of his death, unless he had already redeemed or paid his contribution for forty years. These are the only exceptions. In the face of the clear provisions of sections 9 and 16, which have already been quoted, I think the words "widows of deceased members of the Faculty," or words of the like kind, may, when used in the three sections above mentioned, well be held to mean the widows of men who were members of the Faculty, and who consequently became contributors, but subsequently ceased to be members of that Faculty but continued to be contributors, so that one is not constrained to adopt a construction which, at all events in the case of men who have paid their contributions for forty years or who redeemed them and thus purchased the benefits provided for their widows and children, if not in the case of others, would work the most gross injustice. Neither will this construction prejudice the interest of the Faculty or of the Society, while in my view it reconciles the several sections of the Statute of 1833, and makes them consistent with each other. If it be the correct construction, as it appears to me to be, then I think Colquhoun has not forfeited his interest in the fund as the respondents were not justified in the course they took. The decision of the First Division was wrong and should be reversed, and this appeal allowed with costs.

LORD COLLINS—At the close of the first hearing I arrived at the conclusion that the decision of the Court below was right. Afterwards, I had the opportunity of reading in print the opinion of Lord Robertson. I did not attempt the superfluous task of trying to modify or improve upon that opinion, for I frankly felt that I could not. Since then the case has been re-argued, and I am bound to say that the re-argument tended to confirm my original opinion. Since then, again, that opinion has been re-enforced by that of my noble and learned friend Lord Halsbury, with the result that, with all deference to those who hold the opposite view, I am compelled to give my opinion that the judgment of the Court below is right, and that this appeal ought to be dismissed.

LORD CHANCELLOR—As the majority of your Lordships are in favour of allowing this appeal, I shall propose the following Order—"That the minute or resolution of the 4th February 1901 be reduced, and that it be found and declared as concluded for." I apprehend if any question arises in the drawing-up of this Order, the parties will settle it themselves. Failing that it will be

possible to submit it for your Lordships' consideration.

Their Lordships reversed the order dismissing the action, reduced the minute or resolution of the Society dated 4th February 1901, and declared as concluded for, with expenses.

Counsel for the Appellants (Pursuers and Reclaimers)—Macmillan—Maitland. Agents—J. Gordon Mason, S.S.C., Edinburgh—A. & W. Beveridge, Westminster.

Counsel for the Respondents (Defenders and Respondents)—Sir Robert Finlay, K.C. — Hunter, K.C. — Hon. Wm. Watson. Agents—Webster, Will, & Co., S.S.C., Edinburgh—Grahames, Currey, & Spens, Westminster.

COURT OF SESSION.

Tuesday, February 25.

SECOND DIVISION.

[Lord Salvesen, Ordinary.]

CLAN STEAM TRAWLING COMPANY, LIMITED, AND OTHERS *v.* ABERDEEN STEAM TRAWLING AND FISHING COMPANY, LIMITED.

Ship—Salvage—Services Rendered in Respect of Obligation Contained in Contract of Insurance.

Services rendered by one vessel to another in distress are "salvage services" conferring a right to salvage remuneration only where rendered spontaneously and voluntarily, and not in respect of any duty, official or contractual, resting on the vessel rendering the services.

Under the policies of an insurance company the owners of vessels insured contracted that "ships insured in this company shall give assistance to any steamer broken down or in distress which is insured in this company" or other companies specified. *Held* that services rendered by one steamer insured in the company to another distressed steamer insured in the same company were not "salvage services," inasmuch as they were rendered in fulfilment of the obligation contained in the contract of insurance, and that accordingly the owners of the steamer rendering the services were not entitled to salvage remuneration.

On 13th June 1907 the "Clan Grant," owned by the Clan Steam Trawling Company, Limited, rendered assistance to the "Strathclyde," owned by the Aberdeen Steam Trawling and Fishing Company, Limited, ashore and in distress near Duncansby Head.

In October 1907 the Clan Steam Trawling Company, Limited, and the members of the