Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Mulraj Khatau v. *Vishwanath Prabhuram Vaidya, from the High Court of Judicature at Bombay* (*P. C. Appeal No.* 35 *of* 1912), *delivered the* 21*st November* 1912.

PRESENT AT THE HEARING:

LORD MACNAGHTEN.
LORD MOULTON.
SIR JOHN EDGE.
MR. AMEER ALI.

[DELIVERED BY LORD MOULTON.]

The question in this Appeal is as to whether the Appellant or the Respondent is entitled to a sum of Rs. 29,426.14.0 now standing in Court to abide the result of the action. It represents the net proceeds of a policy of insurance on the life of Dwarkadas Dharamsey who died on 28th August 1909.

The Appellant bases his claim on an assignment in writing under the hand of Dwarkadas Dharamsey, dated the 13th of August 1909. It is in form an absolute assignment, and was according to the evidence given under pressure from the Appellant to whom Dwarkadas Dharamsey was then indebted in a much larger sum. The validity of the assignment is therefere established. It may well be that although absolute in form it was intended to be only by way of security so as to be subject to a right of redemption, but this does not affect the rights of the parties under the circumstances of the present case.

[87.] J. 182. 120.—11/1912. E. & S.

The Respondent bases his claim upon a deposit of the policy with him by Dwarkadas Dharamsey undoubtedly with the intention of its acting as security for the repayment of a debt then owing by him to the Respondent. This deposit was made in November 1904 and was unaccompanied by anything in writing. The particular debt owing at the time was subsequently paid off, but in and subsequently to April 1909 Dwarkadas Dharamsey again became indebted to the Respondent, and it is claimed that the deposit was made on the terms that it should act as security not only for the then existing debt but for any indebtedness that might subsequently arise. Whether or not this contention of fact is established is not in their Lordships' opinion material.

The decision of the matter in issue turns entirely on the interpretation of Section 130, sub-section 1, of the Transfer of Property Act, 1900. It is as follows:—

"The transfer of an actionable claim shall be "effected only by the execution of an instrument "in writing, signed by the transferor or his duly "authorised agent, and shall be complete and "effectual upon the execution of such instrument, "and thereupon all the rights and remedies "of the transferor, whether by way of damages "or otherwise, shall vest in the transferee, "whether such notice of the transfer as is "hereinafter provided be given or not:

"Provided that every dealing with the debt "or other actionable claim by the debtor or other "person from or against whom the transferor "would, but for such instrument of transfer as "aforesaid, have been entitled to recover or "enforce such debt or other actionable claim, "shall (save where the debtor or other person is "a party to the transfer or has received express "notice thereof as hereinafter provided) be valid "as against such transfer."

It is admitted that the right to the monies becoming due under the policy is an actionable claim. Their Lordships are also of opinion that the section covers transfers by way of security as well as absolute transfers. If any doubt existed on either of these two points it would be set at rest by the second illustration to the Section which is given in the Act.

In the present case the Respondent bases his claim on a deposit of the policy and not under a written transfer, and claims that this creates a charge on the policy. The section specifically enacts that such a proceeding shall not have any such effect; such a charge can only be created by a written document. It follows that the Respondent acquired no right whatever to the policy or its proceeds by reason of the deposit.

The Appellant on the other hand claims under an instrument in writing conforming in all respects to the provisions of the section. He therefore acquired by the execution of that instrument an absolute right to the proceeds of the policy.

The decision of the Court below was therefore erroneous. The error arose from the learned Judges not having appreciated that the positive language of the section precluded the application in India of the principles of English Law on which they based their decision.

Their Lordships will therefore humbly advise His Majesty that the Appeal be allowed, and that it be declared that the Appellant be entitled to the monies standing in Court, and that the Respondent pay the costs in the Courts below as well as the costs of this Appeal.

In the Privy Council.

MULRAJ KHATAU

v.

VISHWANATH PRABHURAM VAIDYA.

DELIVERED BY LORD MOULTON.

LONDON:
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1912.