

could only get what they would fairly be entitled to, namely, the refunding (as provided by the Act) of such premiums as were paid in fraud of them (a). Where the premiums have been paid by the beneficiary himself, the insolvency of the assured is of course not a ground for paying them over to the creditors (b).

**4. Conflict of laws.**—An indorsement on a policy declaring it to be for the benefit of a wife (see secs. 5, 6, post) is governed by the law of the province where it is made and the assured is domiciled, and not by the law of the province where the insuring company has its principal offices and the payment of the insurance money is to be made (a).

## II. CREATION OF THE TRUST UNDER GENERAL STATUTES.

**5. Summary of English Acts.**—In order that the rulings referred to in the ensuing sections may be comprehended, it will be necessary to summarize briefly the effect of the various English and Canadian statutes, so far as they are pertinent.

*England:* The English Married Women's Property Acts of 1870, c. 93, sec. 10, and of 1882, c. 75, sec. 11, declare that a policy of insurance effected by any married man on his own life, and, expressed upon the face of it to be for the benefit of his wife or of his wife and children, or any of them, shall be deemed a trust for their benefit, and that the moneys payable under such policy "shall not, so long as any object of the trust remains unperformed, form part of the estate of the insured or be subject to his debts."

**6. Summary of Canadian Acts.**—The Acts in *Newfoundland*: (Consolidated Statutes, 1892, c. 81, sec. 11), and in *Nova Scotia* (Rev. Stat. (5th Ser.) 1884, c. 94, sec. 12) follow the English Acts of 1870, 1882.

*Ontario:* The provisions of the Ontario Act which regulates the manner in which the trust is created, first assumed a shape not materially different from its present one in 47 Vict., c. 20, sec. 5, afterwards

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(a) *Holt v. Everall* (1876) 2 Ch. D. C.A. 266. In this case the special point decided was that a new policy taken out under the Act in place of one not subject to its provisions ensured to the benefit of the wife, where the insured, being insolvent at the time of the surrender of the original policy, was unable to pay the premiums, and the old policy was therefore really valueless. Lord Justice James thought that, even apart from the insolvency of the insured, there was nothing of substantial value taken from the creditors, because the insured might have given up or forfeited the original policy, whenever he pleased.

The Ontario statutes and those modelled upon them also make provision for the refunding of premiums paid in fraud of creditors. See Rev. Stat. Ont. 1887, c. 156, sec. 22; Rev. Stat. Ont. 1897, c. 203, sec. 151 (2).

(b) *Holt v. Everall* (1876) 2 Ch. D. C.A. 266.

(a) *Toronto &c. Co. v. Sewell* (1889) 17 Ont. R. 442, per Ferguson J.