

On an application made by the High Court of the Canadian Order of Foresters to pay these moneys into Court, TEETZEL, J., by an order dated 6th November, 1908, directed that the High Court of the Canadian Order of Foresters pay these moneys into Court after deducting the costs of all parties, and further ordered that the determination of the question whether the moneys payable under this life insurance certificate belong personally to the legal heirs of Alexander Hamilton or to his estate, to be disposed of under the provisions of his will, be referred to a Divisional Court of the High Court of Justice.

In pursuance of this order the matter came before a Divisional Court composed of BOYD, C., MACLAREN, J.A., and BRITTON, J.

Lyman Lee, Hamilton, for the official guardian, on behalf of Lottie M. Hamilton, Roland Hill Hamilton, Theodore Hamilton, and Emma Hamilton, infant children of Alexander Hamilton, deceased, contended that the widow and each of the 8 children of the deceased Alexander Hamilton were entitled to a one-ninth share in these moneys under the terms of the certificate and under the definition of "legal heirs" contained in the Ontario Insurance Act, R. S. O. 1897 ch. 203, sec. 2, sub-sec. 36, as amended by 7 Edw. VII. ch. 36, sec. 1.

S. H. Bradford, K.C., for the Toronto General Trusts Corporation, the executors under the will and codicil of Alexander Hamilton, deceased, and for Gerald Ross Hamilton and Desmond Russell Hamilton, infant residuary legatees, under the will of Alexander Hamilton, cited *Re Duncombe*, 3 O. L. R. 510, 1 O. W. R. 153, in support of his contention, that these moneys should be paid to the executors and be disposed of as part of the estate.

THE COURT held that the moneys payable under this certificate belonged to the "legal heirs" personally, that is, that the widow and the 8 children were entitled each to a one-ninth share in same. *Re Duncombe*, *supra*, not followed.

Costs of all parties out of the fund.