

Letters probate were issued to Daniel Baker on the 29th December, 1916. The action was continued in the name of Daniel Baker as plaintiff in his double character of assignee and executor.

The action was tried without a jury at Toronto.

R. G. Agnew and E. C. Ironsides, for the plaintiff.

Norman Sommerville, for the defendants.

SUTHERLAND, J., in a written judgment, said, after stating the facts and referring to the constitution and rules of the defendants, the application made by the deceased Rachel in 1893, and the evidence, that it was clear, upon the evidence, that, the monthly assessment for August not having been paid on the 1st September, or within 30 days thereafter, under rule 19 of the defendants the assured was suspended from the Order and all benefits. A constitutional method of reinstatement was provided by rules 21 and 22, if reinstatement was applied for within a prescribed time and in the manner indicated. She might have been reinstated had she applied in her lifetime, but it was impossible that an application could be made after her death.

Reference to Grainger v. Order of Canadian Home Circles (1914-15), 31 O.L.R. 461, 33 O.L.R. 116; and Re Supreme Legion Select Knights of Canada, Cunningham's case (1898), 29 O.R. 708, 714; the Ontario Insurance Act, R.S.O. 1914 ch. 183, sec. 188 (1).

It was clear that fixed monthly sums, at fixed dates, were required to be paid, under the constitution and laws of the defendants, by which the assured was bound; that the amounts and dates of payment were known to the assured and to Daniel Baker; and that, consequently, the statute could not intervene or regulate the procedure.

The evidence did not sustain the plaintiff's contentions that there was a custom or practice of making and accepting payments in a manner different from that laid down in the constitution and laws—even if such a custom could be considered binding.

The assured was entitled to a sum of \$51.84, under a scheme for distribution of the defendants' reserve fund (see an Ontario Act respecting the Canadian Order of Home Circles, 7 Geo. V. ch. 99, sec. 1); but it was plain that this sum was not due to her at any time before her death, nor was it available to be applied upon her assessments.

Action dismissed with costs.