

c. 40, as party and party costs, the expenses incurred in qualifying witnesses to give evidence at the trial.

Sub-sec. (s) of s. 39 of the Act, which provides that, when there is any conflict between the rules of equity and common law, the former shall prevail, refers to matters of substantive law and not to matters of mere practice, and the equity rule formerly in force in England under which such expenses might have been allowed is not in force here, for by rule 4 all practice inconsistent with the Act was abolished and, as to all matters not provided for, the practice is, as far as may be, to be regulated by analogy to the Act and rules.

*J. Campbell, K.C., for plaintiff. Hoskin, for defendant.*

Mathers, J.]

RE DRYSDALE ESTATE.

[April 22.

*Life insurance—Benevolent society—Appropriation of insurance benefit by will.*

The destination of a benefit in the nature of life insurance conferred by membership in a benevolent society is to be determined solely by a consideration of the rules and regulations of the society and, where such rules and regulations make full and explicit provisions as to the destination of such benefit, the insurance is not subject to the Life Insurance Act, R.S.M. 1902, c. 83. *Re Anderson*, 16 M.R. 177, followed.

The testator's beneficiary certificate in the Canadian Order of Chosen Friends was expressed to be payable to his wife in the manner and subject to the conditions set forth in the laws governing the life insurance fund. Those laws prevented a member diverting the benefit to any one not related to or dependent upon him unless there was no such person, and provided that, in case of the prior death of the beneficiary "and no further or other disposition be made thereof" the benefit should go to the surviving children of the deceased member in equal shares.

*Held*, that it was not competent to the testator to divert by his will the benefit to his executors as part of his estate although they were to take it in trust for the children, and that the proceeds should go to the children free from the claims of creditors of the deceased.

*McKay, for executors. Curran, for creditors.*