

infant children, for an order for payment out of moneys paid into Court by the assurance companies, being the moneys due under two policies upon the life of the deceased.

J. A. Robertson, for the applicants.

F. W. Harcourt, K.C., for the infants.

MIDDLETON, J., in a written judgment, said that, by the policies in question, the proceeds were made payable to Jennie Bartlett Dickenson, the wife of the deceased, if living. She was the first wife of the insured, and predeceased him some years. He afterwards married again, and his second wife, Millie A. Dickenson, survived him. Two children, issue of his first marriage, also survived him.

Under sec. 178 of the Ontario Insurance Act, R.S.O. 1914 ch. 183, as enacted by 6 Geo. V. ch. 36, sec. 5, the wife named in the contract of insurance having predeceased the insured, and he having remarried, "such insurance money . . . shall be for the benefit in equal shares of the wife living at the maturity of the contract and the children of the assured."

The widow contended that the meaning of this statute is that the proceeds of these insurance policies shall be given one half to her, and the remaining one half in equal shares to the children. The statute should not be so read. The wife who survives and the children of the assured are to take "in equal shares." The wife should, therefore, have one third, and not one half, of these funds.

FALCONBRIDGE, C.J.K.B.

DECEMBER 4TH, 1919.

GARDINER v. SHIELD.

Executors—Action by, to Recover two Sums of Money Lent by Testator—Defence—Gift of one Sum—Evidence—Corroboration—Entry in Diary—Insufficiency—Evidence Act, R.S.O. 1914 ch. 76, sec. 12—Extended Term of Credit as to other Sum—Acknowledgment—Debt—Release by Parol.

Action by the executors of Foster Shield, deceased, to recover \$5,000 and \$2,000 alleged to have been lent by the testator to the defendant.

The action was tried without a jury at Lindsay.

R. J. McLaughlin, K.C., and L. R. Knight, for the plaintiffs.

A. J. Armstrong, for the defendant.