

Bain, J.]

NATIONAL TRUST CO. v. HUGHES.

[Jan. 29.]

*Life insurance—Revocation by assured of trust in favour of beneficiary—
Revocation by will—"Instrument in writing" includes a will.*

The plaintiffs were the executors and trustees under the will of R. R. Hughes, and brought this action to obtain a decision as to the effect of a clause in his will directing that the money payable under a policy of insurance on his life in the London Life Insurance Company of Canada should become part of his estate, and be paid to his executors, and absolutely revoking the appropriation of same in favour of his wife, which was expressed on the face of the policy. Hughes and his wife were residents of Manitoba, and the policy had been procured through an agent also resident in Manitoba; but the company's head office was in Ontario, where the policy was issued, and where the insurance money was made payable.

By the Life Assurance Act, R. S. M., c. 88, s. 12, as re-enacted by 62 & 63 Vict., c. 17, it is provided that, in the case of a policy of insurance effected by a man or woman, on its face expressed to be for the benefit of his wife or her husband, the insured may, by an instrument in writing attached to, or indorsed on, or identifying the policy by its number or otherwise, absolutely revoke the benefit previously made, and divert the insurance money wholly or in part to himself or his estate.

The corresponding statutory provision in Ontario (R. S. O. c. 203, s. 160), while it permits a person who has effected an insurance on his life for the benefit of his wife, to alter or vary the benefit of the policy as between his wife and children, prohibits him from absolutely revoking his wife's benefit in it and diverting the insurance money to himself or his estate. The decision of the question before the Court, therefore, depended upon whether the right of revocation was governed by the law of Ontario or by that of Manitoba.

Held, that although the contract of insurance itself must be interpreted and carried out according to the Ontario law, yet the law of Manitoba should be applied as regards the collateral right of the assured to make any assignment, revocation, or other appropriation of the insurance moneys payable under it. *Toronto General Trusts Co. v. Sewell*, 17 Q. R. 442, and *Lee v. Abdy*, 17 Q. B. D. 309, followed.

The question was one not of the construction of the policy or contract, but of the capacity of the insured to make a disposition of the benefit of the policy; and, as he was living in Manitoba when he effected the insurance through an agent of the company there, it was reasonable to presume that it would be in the contemplation of all the parties that he could deal with the benefit that he had given his wife in the policy in such manner as the laws of Manitoba empowered him.

The right to invoke the wife's benefit in the insurance money might also be considered to come under the general description of personal or movable property; and, if it does, then the general principle would apply