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No. 14.

BOYD, C.

APRIL 4TH, 1903.

TRIAL.

GRIFFITH v. HOWES.

*Will—Construction—Life Insurance Moneys—Attempt to Apply by Will to Debts—Previous “Designation” in Favour of Children—Election—Mortgage—Charge on Land—Failure of Specific Legacy—Devise—Estate—Term—Maintenance.*

Action by the infant children of Sarah Elizabeth Lowery, deceased wife of John Lowery, of the township of Hinchinbrooke, in the county of Frontenac, farmer, against her executors, for administration of her estate and construction of her will, etc. In 1889 the testatrix, being then a widow, obtained a benefit certificate of insurance under R. S. O. 1887 ch. 36, payable at her death to her children John and Lizzie. She afterwards married John Lowery, and had a child by him, Lena, in 1891, and in 1892 she surrendered the first certificate and obtained another payable to “her legal heirs as designated by her will.” Her will (which was made about a month before the last certificate) referred to all three children in the way of bestowing benefits upon them, but had this specific designation of the insurance moneys: “My life insurance in the Chosen Friends I give and bequeath to my executors for the purpose of paying thereout all debts due by me at my decease, including the mortgage made by me to Warner.”

G. M. Macdonnell, K.C., for plaintiffs.

W. H. Sullivan, Kingston, for defendants.

BOYD, C.—The disposition of the insurance moneys by the will is repugnant to the statute under which the insurance arises, by which it is declared that, so long as any object of the trust remains, the money payable under the policy shall not be subject to the control of the creditors or form