

(2) That the transaction was not such that the plaintiff transmitted the title to this policy and the money it represents to the defendant as donee.

(3) That there was no delivery, constructive or otherwise, of the assignment of the policy to the defendant.

My decision has been quite irrespective of the Insurance Act.

Apart from the form of the assignment in question, the plaintiff relies upon the Insurance Act, R.S.O. 1897, c. 203, s. 151, s.-ss. 3, 4, 5, as amended by 1 Edw. VII. c. 21, s. 2, s.-ss. 5, 6, 7.

The assignment lodged with the company did designate the defendant as beneficiary. She was not of the preferred class, and not a beneficiary for value, so the plaintiff had the right to change, as he has done.

The assignment was executed on the 22nd December, 1896, prior to the enactment of s. 159 of the Insurance Act; but, if "declaration" means or includes "declaration designating a beneficiary," as I think it does, then s.-s. 4 of s. 151, of R.S.O. 1897, c. 203, makes it applicable to any contract of insurance or declaration made before the passing of the Act.

The judgment will be for a declaration that the plaintiff, subject to payment of the defendant's costs, is entitled to be paid the money due and payable under the policy in question, and that the paper called the assignment has been effectually revoked.

Owing to the special facts and circumstances of this case, it is not one for costs to the plaintiff, but is one where the costs of the defendant should be paid out of the money in court. The residue of the money will be paid out to the plaintiff.

W. E. Middleton, K.C., and J. M. Best, for the plaintiff. W. Proudfoot, K.C., and F. Holmested, for the defendant.

Divisional Court.] BRENNAN v. CAMERON.

[Feb. 2.

Foreign judgment—Action on—Defence—Foreign court not having jurisdiction over defendants—Domicil—Judgment of court of another province of Canada.

Appeal by the defendants from the judgment of TEETZEL, J., in favour of the plaintiff in an action upon a judgment recovered by the plaintiff in the Supreme Court of British Columbia, on the 9th June, 1908, against the defendants for \$1,014.19 debt and \$45.63 costs.

The defendant D. H. Cameron was a person of unsound mind, and the defendant O'Heir was duly appointed his committee, and as such defended this action.