

MACMAHON, J.:— . . . The only distinction between the case decided by my brother Street and this case is, that in the certificate issued by the Ancient Order of United Workmen it was declared, on the face, that John A. Marshall . . . had designated 3 of his children (naming them) as the beneficiaries, and afterwards, in 1899, he revoked this designation by indorsement on the certificate, and directed payment to be made to his executors named in his will and in such shares as set forth in the will; whereas, in the case now being dealt with, the insured in his application for a change of beneficiary revoked the designation indorsed on the certificate and directed payment to be made to his executors and administrators for his wife and children, in such proportions as set forth in his will.

This is a distinction without a difference, and the decision of my brother Street in 5 O. W. R. 404 governs the present application.

The insured has not by his will dealt with the moneys payable under the certificate, and as to them there is an intestacy. The amount of the insurance is for his wife and children in such proportions as set out in his will, and, as he died without fixing the proportions, the fund will be divided among the widow and children in equal shares: R. S. O. 1897 ch. 203, sec. 159 (7).

Costs of all parties out of the fund, the costs of the executor between solicitor and client.

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MACMAHON, J.

APRIL 11TH, 1905.

TRIAL.

LAZIER v. ARMSTRONG.

*Landlord and Tenant—Lease of Shop—Covenants—Insolvency of Tenant—Assignment for Creditors—Election of Assignee to Retain Premises—Rent—Use and Occupation.*

Action to recover possession of demised premises and for use and occupation.

E. G. Porter, Belleville, for plaintiffs.

W. S. Morden, Belleville, for defendants.

MACMAHON, J.:—On 29th April, 1902, plaintiffs leased to John C. Woods certain premises . . . to be used as a