Devise of Life Insurance to Wife or Children

Specially written for the Journal of Commerce by M. L. HAYWARD, B.C.L.

In practically all the Provinces, acts have been passed "to secure to wives and children the benefit of life insurance," and cases arising under these acts have been before the Canadian Courts on several occasions, especially in the Province of Ontario.

The general effect of these acts is that any insured person may, by any writing identifying any insurance policy by its number or otherwise, declare and provide that the policy shall be in trust for the benefit of wives and children free from the control of the creditors.

One of the first questions then arises is, if a person has a life insurance policy, and by a will, bequeaths the proceeds of the policy to a wife or children, is the will a "writing" within the meaning of the law?

This point has been before the Ontario Courts in three or four cases, in all of which it has been decided that such a declaration may be made by a will.

As to what is a sufficient identification of the policy "by number or otherwise," there has been more uncertainty, but in one Ontario case it was held that where a party bequeaths the proceeds "of all life insurance policies" to the wife or children, or where he makes certain bequests and then bequeaths the residue of his estate, "including life insurance," to wife or children, it is a sufficient identification of the policy to comply with the terms of the Act.

In another Ontario case a party made a will bequeathing the sum of $1,000 "to be paid out of the insurance money on my life at my decease," and there was only one policy of insurance on his life either at the time the will was made or thereafter, and the question was whether this was a sufficient identification of the policy. The Ontario Court held that it was.

"The wording here is certainly very general," said the Judge, "but, the fact being admitted that the policy in question existed at the time, and was the only policy of insurance upon the life of the deceased, either then or subsequent thereto until his death, there can be no doubt, I think, that the testator, at all events referred to the policy in question, and, having regard to the facts that there could be no question as to what policy he did refer to."

Probably the most important case along this line, decided by the Canadian Courts is the case of Arnold vs. Dominion Trust Company, recently passed upon by the British Columbia Courts, the case having arisen out of a rather peculiar state of facts, and a peculiarly worded will, and the amount of money involved being somewhat large.

The case in question arose out of the operations of the Dominion Trust Company, and the death of W. R. Arnold, the manager. Arnold carried a very heavy insurance—in fact, over $200,000 of insurance money was collected, while some of the companies resisted payment. Before his death Arnold made a will in the words and figures following:

"The first $75,000 collected on account of policies of life insurance I give to my wife," with other provisions in reference to disposal of the funds.

The British Columbia Act relating to the matter is as follows:—

In case a policy of insurance effected by a man on his life is expressed upon the face of it to be for the benefit of his wife, or of his wife and children, or any of them, or in case he has heretofore indorsed, or may hereafter indorse, or by any writing identifying the policy by its number or otherwise has made, or may hereafter make, a declaration that the policy is for the benefit of his wife, or his wife and children, or any of them, such policy shall ensure and be deemed a trust for the benefit of his wife for her separate use, and of his children, or any of them, according to the intent so expressed or declared; and so long as any object of the trust remains, the money payable under the policy shall not be subject to the control of the husband or his creditors, or form part of his estate when the sum secured by the policy becomes payable.

The question then was whether the will bequeathing the insurance money to the wife was "any writing" within the meaning of the Act, and on this point the British Columbia Court followed the Ontario decisions to the same effect.

Then the question was whether the will in question was a writing "identifying the policy by its number or otherwise," and the point was one of "first impression," as the lawyers say, as none of the Ontario cases was exactly in point.

Judge Macdonald, who tried the case, decided against the claim of the wife, on the ground that where there are several policies for a total amount exceeding the sum named in the will a bequest of a certain smaller sum to be paid out of life insurance generally is not a sufficient "identification" of the policies.

In deciding the case the Judge made the following general observations in reference to the insurance acts:—

"The Act was passed as a remedial measure and of assistance in effecting one of the principal benefits of life insurance. It was intended, notwithstanding the terms of the contract with the insurance company, that the assured could of his own volition vary the same and make provision for his dependents in case of death. It is limited in its operation to his wife and children. I think, under such circumstances, that the Act should receive such fair, large and liberal construction and interpretation as will best insure the attainment of its object.' No decision has been cited to me on the point, in which the facts are on all fours with those presented in this case."

Notwithstanding the foregoing, the decision was against the widow, the Judge relying strongly on an Ontario case where the Court refused to uphold a will bequeathing to a wife one of four policies (all of a similar description) without any further reference to any particular policy. In that case the Ontario Judge had said:—

"I should go far beyond any decision yet pronounced in favour of preferred beneficiaries upon the question of identification under the statute. In my opinion it is not possible to maintain that a bequest of one of four policies, any one of which may be selected to answer a bequest, is such a designation as meets the requirements of the statute—that the policy shall be identified by number or otherwise."

"It is admitted," concluded Judge Macdonald, "in this case that W. R. Arnold had a number of policies in force at the time when he made his will. The face of such policies exceeded $75,000, and it is thus doubtful out of which policies the testator expected or intended such amount to be paid. It is thus contended that even if a will can by apt terms operate so as to comply with the Act that the language of the will in question falls short of the identification contemplated and intended by the statue. He could easily have identified a particular policy in the will. He did not do so, however. Can the wife and children under the terms of the will obtain the benefit of the Act without some such compliance? I think that while the intention of the testator to appropriate the proceeds of insurance is quite clear, still, this is not sufficient: I should not as a Court of first instance, hold that the policies have been properly identified so as to comply with the statute. If I decided otherwise, I feel that I would be going farther than the decisions warrant. It was uncertain at the time when the will was made, or when Mrs. Arnold was informed as to the provisions of the will, as to what policy or policies would afford the moneys to pay the $75,000. This is still unascertained. There is not the 'clear, sure and certain identification which seems to be imperative, having regard to the repeated and particular expressions of the Insurance Act.'"

"It is to be regretted that the testator did not implement his intention of providing for his dependants out of his life insurance—in a legal manner. In my opinion, the statute permitting this course to be pursued for the benefit of wives and children has not been complied with. The moneys collected from the life insurance policies are not available for payment of the $75,000."

The case was appealed to the British Columbia Court of Appeal, and two Judges held that Judge Macdonald was right; while Judges Martin and McPhillips decided that the will was sufficient and that the widow was entitled to the $75,000 fund.

"To illustrate the point," said the former Judge, "if at the time of the present declaration in the will there were ten policies in existence, but all had since lapsed save one, there could then be no doubt about the identification whatever—it would be a certainty. And if two only remained for $50,000 each, there would still be a certainty for both would have to be resorted to in order to complete the trust. So, in my opinion, there can be no real lack of identification where all are made liable to a contribution wholly or in part, from which liability they may be freed by payments from one or more of the whole group charged; in such case there is from the outset the certainty that all are liable and none is discharged till payment of the whole specified amount is made to the beneficiary. Again, by illustration—if the insured had four policies in four different companies for $5,000, $10,000, $15,000 and $20,000, respectively, they could be jointly charged for a whole sum of $25,000 just as effectually as they could be severally charged for a part thereof. And it is easy to imagine circumtsances in whic ha careful and prudent policyholder would seek to guard against any failure of the intended trust by making a joint charge of $20,000 upon four policies aggregating $50,000, instead of a several charge of $5,000 upon each of them; as time goes by he may have reason to doubt the financial standing of one or more of them; or the forfeiture, or non-contestable, or other clauses might not be so favourable in all; or he might wish to guard against the consequence of any oversight in payment of premiums; or delay in payment by any company which might for a special reason wish to contest payment, thereby causing expensive litigation as well as a postponement of the intended benefit, which is almost invariably urgently needed. Therefore, I am of the opinion that the Court should hesitate long before depriving his widow and children of the result of his foresight and business acumen in minimizing and distributing the risk of any failure of the intended trust by making a joint instead of a several charge. There is absolutely no distinction in principle, and cases ought to be decided upon principle and not upon attempts to change principles to meet new and ever varying facts. I regard the words here employed—'The first $75,000 collected on account of policies of life insurance'—as equivalent to 'all my policies of life insurance,' for the testator was unquestionably speaking of his own insurance, and 'my policies' means 'all my policies' just as 'my goods and chattels' means 'all my goods and chattels' unless further words of limitation are employed."

The following quotations from the judgment of Judge McPhillips will also repay a careful perusal:

"Turning to the precise matter we have for decision, it appears to me to be simple in the extreme. All the insurance of the testator is dealt with in the declaration as contained in the will; the fund is identified; the policies are all the policies upon the life of the testator that are dealt with in the writing. Is it difficult to identify or find these policies? It is highly unreasonable to so construe the statute law as to render it nugatory, void and of no effect, and ask for the number of the policies or other particular identification when the declaration, in its effect, covers all policies; that a portion of the moneys only are to go to the wife matters not, the whole might have been given, but, save as to the $75,000, the creditors of the estate are entitled to the moneys. When it is considered that it was the plain intention of the legislature to make provision, whereby the husband could, even as against his creditors, protect his wife and children from penury, it would be frittering away the benefit intended, to so construe the statute law as to render it almost impossible under certain conditions to obtain the benefit clearly intended by the legislature. It is not difficult to call into mind situations and circumstances when the husband would be unable to have the policies at hand, or would know the numbers thereof, or even remember the names of the companies; and can it for a moment be considered that the intention of the legislature was that the language used should in such a case, without this information available, render it impossible for the husband to comply with the statute? The answer must be, that the spirit and intention of the legislature was to enable the husband to make the declaration in any reasonable and rational way, and the language is 'by any writing identifying the policy by its number or otherwise, has made or may hereafter make a declaration that the policy is for the benefit of his wife or of his wife and children.'"

The Court being equally divided—two and two—Judge Macdonald's judgment was sustained, so that the decision will be good law in British Columbia unless the case is carried to the Supreme Court of Canada and reversed on appeal.