

the last renewal matured the manager of the company wrote demanding payment. In an action by M's widow to recover the sum insured with interest,

*Held*, affirming the decision of the Court of Appeal for Ontario (20 Ont. App. R. 187) which reversed the judgment of the Divisional Court (22 O.R. 151), that the policy was void under the said condition, and that the demand of payment after the last renewal was not a waiver of the breach of the condition so as to keep it in force.

Appeal dismissed with costs.

*Aylesworth, Q.C.*, for the appellant.

*Kerr, Q.C.*, for the respondents.

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RETRAIT SUCCESSORAL — PHILLIPS v. BAXTER.

[Concluded from 192.]

Such are the principles that govern the matter and which we acknowledge and maintain in the litigation between plaintiff and defendant. If, by *ricochet*, to make use of an expression of Demolombe, our decision reacts upon Mrs. Beique, it is a legal sequence we cannot prevent.

Besides we hope that these remarks may, perhaps, have the effect of putting an end to all litigation in this succession, although our decision cannot be *res judicata* as regards Mad. Beique. This is one of the reasons which prevented us from remitting the record to the Superior Court to have her (Mad. Beique) impleaded (*mise en cause*), which, at first, we thought of doing. We considered that by so doing, far from attaining the desired result, we might perhaps prolong the litigation. Besides, it would have virtually deprived the plaintiff of a judgment against the defendant to which she has an undeniable right. If, hereafter, from the omission of Mad. Beique from the record, the plaintiff suffers any damages, be it merely prolonged delays or the inconvenience of a new suit, she will only have herself to blame.

The defendant has advanced the proposition that, inasmuch as he had sold to Mad. Beique only a determinate portion of an immovable of the succession, the *retrait* does not lie for that part, and he asked us, for this reason, to reform the judgment of the Court of Review whereby the exemption from *retrait* of such part was refused. But this proposition is entirely erroneous and the demand upon which it is based cannot be granted. According