

moneys into Court and determining who are the persons entitled to share therein.

The insured, Jacob Baeder, who died on the 30th March, 1915, originally was domiciled and resided at Guelph, Ontario. While so domiciled, in July, 1890, he became a member of the Canadian Order of Chosen Friends, a life insurance or benefit society organised in Ontario, and obtained a beneficiary certificate for \$2,000, which provided that this sum should, upon his death, be paid to Charles, Minnie, and Henry Baeder, equally. Subsequently, the insured changed his domicile to Rochester, in the State of New York; and, by his will, made there on the 24th February, 1915, he gave all his life insurance to his grandchild Caroline Wagner. The rest of his estate he directed to be divided among his children.

Lyman Lee, for the society.

S. F. Washington, K.C., for the three children, contended that, although the certificate was issued by an Ontario society in Ontario, the law which governed the operation and effect of the will upon the policy, was the law of New York; and, according to the law of New York, beneficiaries in an insurance policy cannot be changed by will. He referred to *Lee v. Abdy* (1886), 17 Q.B.D. 309, and *Toronto General Trusts Co. v. Sewell* (1889), 17 O.R. 442.

F. W. Harcourt, K.C., for the grandchild, an infant, did not dispute the assertion as to the law of New York, but contended that the insurance money was to be regarded as a trust fund subject to the law of Ontario, which in effect defined the terms of the trust; and that the will was operative, and the grandchild took.

MIDDLETON, J., said that he favoured the contention made on behalf of the infant. By the Insurance Act, R.S.O. 1914 ch. 183, sec. 178 (2), the policy and declaration in favour of a preferred beneficiary created a trust in favour of that beneficiary, subject to the powers conferred by sec. 179, enabling the insured, either by declaration or will, to change the beneficiary to some other person of the preferred class; and a will executed in accordance with the laws of Ontario must be regarded as an appointment or declaration within the terms of the statute. In no conceivable way can the statute-law of the country where the insured happens to be domiciled be deemed to be grafted upon the statutory deed of trust.

A will in accordance with our laws is a proper exercise of a