

H. Guthrie, K.C., for the administrator and adult surviving children of James Davidson.

W. W. Osborne, for the widow, contended that his client was entitled to the whole amount, as she was the wife living at the maturity of the certificate of insurance, and was entitled under sub-sec. 7 of sec. 159 of R. S. O. 1897 ch. 203.

J. R. Meredith, for the infant grandchildren.

TEETZEL, J.:—I am of opinion that sub-sec. 7 of sec. 159 does not apply to the case in question, but that sub-sec. 8 of sec. 159, as amended and re-enacted by 4 Edw. VII. ch. 15, sec. 7, applies, and that, when that sub-section is read in conjunction with sub-sec. 6 of sec. 151, as amended by 1 Edw. VII. ch. 21, sec. 2, sub-sec. 7, and by 3 Edw. VII. ch. 15, sec. 6, the effect is that, if there is no survivor of the preferred beneficiaries named in the certificate, the insurance shall be for the benefit in equal shares of the surviving children of the assured, and, if there are no surviving children, it shall form part of the estate of the insured.

I think it is also plain that the words "his wife" in the certificate describing the beneficiary can only mean the person who was his wife at the date of the certificate, and who was described by name in the application upon which the certificate was based, and that it cannot be applied to a different person who answered the description of being his wife at the time of his death; for the law is now made clear by 7 Edw. VII. ch. 36, sec. 5, that, for the purpose of ascertaining the person intended as beneficiary, even a will speaks from the date of signing thereof, and not from the date of the testator's death.

The application of sub-sec. 7 relied upon by Mr. Osborne is limited, so far as it relates to the wife living at the maturity of the policy, to a case where the insurance is for the benefit of "the wife and children generally," and does not extend to a case where the insurance is declared to be for the benefit of the wife only.

Grandchildren of the deceased are necessarily excluded from the benefit by reason of the express provision above referred to, providing only for the surviving children.

The order will, therefore, be that the moneys in Court shall be paid out to the children of James Davidson who survived him.

Costs of all parties out of the fund.