

by those to whom he may be, or may die, heavily indebted" (a). The assured, accordingly, has no power to defeat the claim of a "preferred beneficiary," except by non-payment of premiums (b). Whether, supposing he should deliberately undertake to dis-appoint his beneficiary in this manner, he might be checkmated if the premiums were tendered by, or in behalf of, the beneficiary, is a question which does not seem to have been discussed. That a section dealing with such a contingency might advantageously be inserted in the statutes scarcely admits of a doubt; though it may be conceded that, in view of the large privileges which in some jurisdictions insurers now possess with respect to transferring the benefits from one beneficiary to another (see III, post), such a provision would be of practical advantage only in cases where the beneficiary already designated is the only living representative of the class of persons to which new apportionments are restricted.

3. Insolvency of the assured not fatal to the validity of a trust under the statutes.—It has been held that a policy taken out under the provisions of the English Married Woman's Property Act of 1870 (see sec. 5, post), for the benefit of wife and children is not settled property within the meaning of sec. 91 of the Bankruptcy Act of 1869, which avoids settlements of property by a trader upon his wife and children, in case he becomes bankrupt within two years after the settlement. To this extent the earlier Act is modified by the later one, the intention of the legislature being to alter the law so far as regards the insurance of a man's life for the benefit of his wife and children, and to declare that the creditors

(a) *McKibbin v. Feegan* (1893) 21 Ont. App. 87, per Hagarty, C.J.O. Similar views are expressed in other cases. "When once a policy is issued in favour of wife or children, it becomes an irrevocable trust, placing it not only beyond the reach of creditors, but beyond the control of the husband." *Fisher v. Fisher* (1898) 25 Ont. App. 108, per Burton, C.J.O. The spirit of the Act is that, "such settlements once made are beyond the control of the settlor." *Fisher v. Fisher* (1898) 25 Ont. App. 108, per MacLennan, J.A. (p. 117). See also the remarks of Osler, J. A., on p. 118. "The object and intent of the Legislature was that the insurance money in such a policy should be paid directly to the wife and children, in their several rights, and not to the personal representatives of the insured." *Campbell v. National L. Ins. Co.* (1873) 34 U.C. Q.B. 35, (said of the earliest Canadian Act on the subject, 29 Vict., c. 17). Speaking of this Act in another case, Osler, J. A. remarked that its effect "was to enable a man by means of a policy of insurance on his life to make a sort of post nuptial settlement upon his wife and children which should be free from the claims of his creditors." *Wicksteed v. Moore* (1885) 13 Ont. App. 286. But the more recent legislation provides also for declaration of trust prior to and in contemplation of marriage. See sec. 6, post.

(b) *Fisher v. Fisher* (1898) 25 Ont. App. 108.