

KELLY, J., IN CHAMBERS.

OCTOBER 17TH, 1919.

## RE BOWEN AND CANADIAN ORDER OF FORESTERS.

*Insurance (Life)—Contest between Beneficiary under Policy and Beneficiary under Will of Deceased Assured—Insurance Company Allowed to Pay Insurance Moneys into Court—Issue Directed.*

Motion by the society for an order allowing it to pay into Court moneys payable under an insurance certificate for \$1,000 upon the life of Vincent Bowen, now deceased.

Lyman Lee, for the society.

Nicol Jeffrey, for Annie Elizabeth Bowen, mother of the deceased.

L. Goetz, for Hilda Bowen, widow of the deceased.

KELLY, J., in a written judgment, said that the widow of the assured, who was also the sole beneficiary under his will, which had been admitted to probate, relied upon *Re Monkman and Canadian Order of Chosen Friends* (1918), 42 O.L.R. 363, as determining in her favour her claim to these insurance moneys.

If the only question involved were whether the will had effected a change of the beneficiary in favour of the widow, the learned Judge would have felt bound by the decision in that case, the wills there and here being practically identical in form. But counsel for the claimant—the mother of the assured, who was named as the beneficiary on the face of the certificate—urged on the argument, and there was a suggestion of it in one part of the correspondence between the representatives of the parties, that his client, in addition to any rights she might have as such beneficiary, set up an agreement under which also she claimed to be entitled.

The merits of these respective claims were not before the learned Judge for determination; but, in view of their nature, he thought the \$1,000, less the applicant's costs of this motion and of paying in, should be paid into Court, and there should be an issue to determine, as between the claimants, which of them was entitled.