the money into the Provincial Treasurer's office to abide the determination of the question now raised.

The deceased (who was domiciled in Ontario) had signed a document in the form of a will, which was in existence at the time of his death, but was not executed in accordance with the Wills Act, and was invalid as a testamentary document. It contained this clause: "I appoint D. M. Spaidal, Brockville, sole executor, to pay debts and sell ranch and collect all accounts and insurance. The proceeds to be divided between his children and the children of Fred Tisdale." This document was dated the 28th September, 1915, and signed "William H. Leavitt." There were no witnesses. Leavitt died intestate on the 8th March, 1918. The association were not notified by the intestate of the execution of this document, nor were the defendants. It was stated in the special case that, after the death of his wife, the intestate said to D. M. Spaidal that it was his wife's wish that the infant defendants should share in his (Leavitt's) estate, and then mentioned his insurance, calling it his "Travellers' insurance." It was admitted that he had no other insurance.

His membership in the association was renewed annually in the month of January by the signing, upon a form provided by the association, of an application for renewal, and forwarding the same to the association accompanied by the renewal premium of $10; and on or about the 2nd January, 1918, the association received from Leavitt a renewal application, signed by him, and containing the words, "Benefit in case of death payable to my estate."

The plaintiff relied on In re Jansen (1906), 12 O.L.R. 63, where it was held that a will, invalidly executed, is not an "instrument in writing" effectual to vary the benefit of an insurance certificate. That case was decided under the Insurance Act, R.S.O. 1897 ch. 203, sec. 160 (1). The change made by the Ontario Insurance Act, 2 Geo. V. ch. 33, sec. 171, and sec. 2.(19), rendered the document signed by Leavitt effective to constitute the infants named therein beneficiaries, although it was not effective as a will. The simple description "insurance," there being no other insurance, was sufficient: sec. 171 (5).

But the application for renewal, making the insurance "payable to my estate," annulled the declaration previously made in favour of the infants: sub-sec. 3 of sec. 171.

There should be judgment in favour of the plaintiff, declaring that he, as administrator, was entitled to receive the $1,200, less a tax of $24 imposed by the Province of Quebec. The defendants should not be held liable for the $24. The contest was reasonable and proper, and the payment of the insurance money to the Provincial Treasurer was proper.

All parties should have their costs out of the fund, the administrator as between solicitor and client.