

assessments to be made for that purpose, the sum of \$1,000 to his wife Theresa Tune, or such other beneficiary or beneficiaries as the said member may in his lifetime have designated, in writing, as provided by the laws of the province of Ontario; and, in default of any such designation, to his legal personal representatives."

Tune became indebted to James, and he and his wife on 5th March, 1895, signed the following indorsement on the certificate: "This is to certify that Mr. Henry James, of Brantford, is to be a beneficiary, to the amount of \$686, of the benefit payable in within certificate, and Mrs. Theresa Tune to the amount of \$314."

This was duly entered and noted in the books of the society, as appears by the memorandum of the secretary, of the same date.

After the death of his wife, Tune signed the following indorsement: "Toronto, May 5th, 1899. This is to certify that I wish the full amount payable by this certificate to be paid to Mr. Henry James, of Brantford, as my wife has since died:" which was also duly entered and noted in the books of the society. Tune seems to have retained possession of the certificate, and by memorandum dated 2nd July, 1904, he certified that he wished the amount payable thereunder to be paid to his 3 daughters, of whom Lillian is one. There is no memorandum of noting by the society.

Tune died on or about 5th November, 1908, and Lillian Tune is his executrix and sole devisee and legatee.

The indorsements in favour of James were perfected before the 1 Edw. VII. ch. 21, sec. 2, sub-secs. 5 and 6, and James was a beneficiary for value.

James had predeceased Tune, and probate of his will was granted to the Toronto General Trusts Corporation.

The onus is upon Tune's executrix to prove payment of the debt, and she has failed to discharge it. The Statute of Limitations is no answer to the claim on the security, even though the original debt is barred: *Spears v. Hartley*, 8 Esp. 81; *Hewitt on Limitations*, pp. 7 and 126; *Waterous Engine Works Co. v. Livingstone*, 3 O. W. R. at p. 671.

Judgment will, therefore, go for payment of the fund in hand to the Toronto General Trusts Corporation, as executors of Henry James, less Lillian Tune's costs, to be taxed as between solicitor and client.