PAYMENT TO LIFE INSURANCE BENEFICIARIES

Alberta Law Held to Govern Situs of Debt, but Ontario Law to Govern Distribution to Beneficiaries

IN an application by executors for advice as to the distribution of life insurance policies the Alberta Supreme Court held that section 43, chapters 8, 5, George V., 1915, which provides that the money payable under any policy of life insurance "shall . . . be payable in the province" where the assured is or dies domiciled therein, does not purport to do more than declare where the debt is payable; it cannot be construed as holding that the law of the province governs in the construction of the contract when made in another province.

The facts of the case are: The Confederation Life Association on June 3, 1887, issued a policy for $1,000 on the life of John J. Mellon in favor of himself, and on May 5, 1897, the insured executed a declaration in which he appointed his wife, Amelia Mellon, and daughter, Amelia Elizabeth Mellon, beneficiaries under said policy. His wife predeceased him and the insurance company paid the proceeds of the policy to his daughter, surviving beneficiary.

Insured Became Insane

The Grand Orange Lodge of B.N.A. issued a policy on the life of the said Mellon for $1,000 payable to himself and the proceeds of such policy were paid into Court pursuant to an order of Justice Scott, and the insurer was released from any further liability in respect of same.

At the date of his death Mellon was a resident and domiciled in the province of Alberta. On March 25, 1914, Mellon became insane and died in a sanitarium in Guelph, Ontario, on March 4, 1918.

The questions raised in the application are: (1) Does the will make a valid disposition of the proceeds of said policies or either of them. (2) Does the law of Alberta or the law of Ontario govern in determining the disposition of the proceeds of the said policies? (3) Does the law as it was at (a) the execution of the contract of insurance or (b) at the date of the will or (c) at the date when deceased became insane or (d) at the date of his death, govern in regard to the said distribution?

The Confederation Life policy provided that "In all cases of claims under this policy the law of Ontario shall govern."

In his judgment Justice Simmons says:—

"It will be convenient to arrive at a conclusion to question (2) as it has an important bearing upon (1) and (3). The law of Ontario in regard to the distribution of the proceeds of insurance policies was modified in 1897 and 1914 and that of Alberta in 1915 and 1916. The Confederation Life Association was incorporated by Acts of the Parliament of Canada and was registered under the provisions of the Alberta Insurance Act. Section 43 of the Alberta Act, 1915, provides that 'the money payable under any policy of life insurance already issued or that may hereafter be issued by an insurance corporation that has already become or may hereafter become registered under the provisions of this Act . . . shall in all cases be payable in the province where the assured is or dies domiciled therein notwithstanding anything contained in any policy or the fact that the head office of the insurance corporation is not within the province."

Law of Ontario Applicable

"The operative words of the section 'shall be payable in the province' do not purport to do more than declare the situs of the debt shall be in the province and I think it is reading into the section that which is not contained therein to hold that the law of Alberta should apply in determining the construction of the contract especially when to do so is to go to the root of the contract and so modify it as to alter the declared intention of the parties when the contract was entered into. To adopt the view that the laws of Alberta would apply in the construction of a contract made in another province by a company which is the creation of the Parliament of Canada would raise very grave and far-reaching conclusions on constitutional law which I do not think necessary to be dealt with in my view, that the application of the section under a liberal construction does not involve any more than a declaration as to the place of performance of the obligation arising out of the contract.

"The Confederation Life Association raises no objection to payment of the moneys within the province.

"I conclude, therefore, that the provision in the contract whereby the parties agreed that the law of Ontario should govern in regard to the distribution of moneys under the policy is applicable.

"It would appear that so far as the declaration in this policy is concerned, the daughter as a surviving preferred beneficiary was entitled to the entire proceeds of the policy.

"The policy in the Grand Orange Lodge of B.N.A. is not available but it seems to be assumed by all the parties to the reference that the contract was made in Ontario and applying the principles above referred to the law of Ontario would govern.

"In the result then the proceeds of the policy in the Grand Orange Lodge of B.N.A. belong to the four surviving children in equal shares and are to be paid out accordingly."

SUIT OVER SALE OF MINING SHARES

The Supreme Court of Canada last week heard the appeal of W. E. Brown vs. J. S. Crawford, both financial agents of Ottawa, against the decisions of the Ontario Court of Appeal and of the trial judge, both of whom had dismissed Brown's action. Judgment of the Supreme Court was reserved.

The action of Brown vs. Crawford arises from the sale of 15,000 shares of fully paid-up stock in the Prince Rupert Cobalt Silver Mines, subject, it was contended, to agreement, for $1,500. The transaction took place on or about September 27, 1909. The stock was not delivered and has not yet been issued.

Action was taken in the Supreme Court of Ontario for the recovery of the $1,500 paid, with interest, or the specific performance of the agreement. The defence of the action was that the agreement stipulated the stock should be delivered when issued, and it is further contended by the defence that it was subject to a pooling agreement. The case came to trial before Judge Sutherland at the court house on July 23, 1919, the trial judge dismissing the action. The case was then taken to the Ontario Court of Appeals, and this court upheld the decision of the trial judge in dismissing the action with Justice Meredith dissenting.

Next an appeal was taken to the Supreme Court of Canada. Among some of the points emphasized by Mr. Lemieux was that if the sale had taken place subject to a pooling agreement, that Crawford could not sell the shares in the pool to Brown, and if he did, he had not delivered them, and that Mr. Brown had received no consideration for his money so far. Mr. Rupert Broadfoot maintained that the sale of the shares had taken place, subject to an agreement, and among its provisions was that Brown was only to receive the shares when the stock was issued.

FIRE INSURANCE COMPANIES APPEAL

The case of the Miller-Morse Hardware Company against the Dominion Fire Insurance Company, London Mutual and Millers' National Fire Insurance Companies, which was held in Saskatchewan last July, and in which judgment was given for the plaintiff a few weeks ago, is being appealed by the defendant companies. The question at issue arose out of four fire insurance policies covering the stock and buildings of Sam Stockhammer, of Khedive, Sask., being sent to the companies' agent at Khedive, but not handed over by him to the insured. The policies were held at the trial to be in force, although still in the possession of the agent.