

LEGAL DECISIONS.

BENEFICIARY FOR VALUE—Section 160 sub-section 2, of the Ontario Insurance Act provides that the assured cannot revoke a direction to pay the insurance money to a beneficiary for value so as to divert it from him. In *Potte v. Potts* (affirmed by the Court of Appeal on March 7th) the insured, who was a member of the Supreme Tent, Knights of the Maccabees, and unmarried, took out a certificate of membership dated July 1897 payable to his mother as beneficiary. In July, 1897 he married the defendant. The day before his death, in July, 1899, he made the following declaration in writing:—"I hereby direct that my estate shall be divided as follows: First, to my wife, Ada Lavinia Potte, shall be paid all my insurance, viz., Knights of the Maccabees policy of \$1,000. This policy is payable to my mother, Ida Potte, as beneficiary, but I direct that it be paid to my wife." The mother, the plaintiff in this action, claimed as a beneficiary for value under the above section of the Act, but Rose, J., held that if the policy does not expressly state that the beneficiary is a beneficiary for value this fact cannot be enquired into. The action by the mother was therefore dismissed.

PROOF OF PERFORMANCE OF CONDITIONS IN POLICY—Where a policy contains a condition providing for payment in ninety days after satisfactory proofs of death and settling out what proofs must be given, it has recently been decided that the onus is on the plaintiff to show that proof of the death of the assured on a certain date was furnished, that all the conditions were performed, and that the necessary time has elapsed to entitle the plaintiff to payment, and not on the defendant to prove non-performance of the conditions.—*Randall v. Home Life Association*. 35 Canada Law Journal, 122.

Revocation of Will of Endorsement on Policy—The Ontario Insurance Act (R. S. O. c. 203) sec. 179, provides that where the assured declares the insurance to be for the benefit of any member of the class known as "preferred beneficiaries" (the husband, wife, children, grandchildren and mother of the assured) a trust is created in favor of the beneficiary, and the assured cannot vary the appointment except to make a different selection from among the class of preferred beneficiaries. In the case of *In re Harrison* decided in January of this year, and reported in 26 Canadian Law Times 38) a beneficiary society issued a certificate of life assurance which stated on its face that it was subject to the by-laws, rules and regulations of the society. One of these provided for the payment of the insurance money to any person nominated by endorsement on the certificate, and another effected to allow the revocation of this endorsement. By the endorsement the member directed the money to be paid to his wife, but subsequently by will made a different disposition by which only part of it was to be paid to the wife and the rest to other persons outside the preferred class. On action being brought by the widow the court held that the by-law allowing of revocation so far as inconsistent with the Act was modified by it, and that the revocation being ineffectual, she was entitled to the whole fund.

INSURANCE ON MURDERED MEN—The Court of Appeal on the suit of the mother, brothers and sisters of Isidore Poirier, murdered by his wife Cordelia Vian and Sam Parlow over two

years ago, has decided that the life insurance company must pay the policy on deceased's life. The court found that though Cordelia Vian induced her husband to procure the insurance, yet this did not render him her agent so as to make the policies fraudulent as against the company. Poirier acted in perfect good faith and paid the premium so that the company was liable to his heirs, who were not responsible for the crime.

The decision follows and closely resembles the famous Maybrick case in England *Cleaver v. Mutual Reserve*, 1892 1 Q. B. 111. That was an action by the representatives of James Maybrick, who was poisoned by his wife in May, 1889. The court held that inasmuch as the contract was made between deceased and the company, and as the event had happened upon which the policy became payable, the plaintiffs were entitled to succeed notwithstanding the fact that the death of the insured was caused by the felonious act of the wife.

The effect of these decisions is that where the wife induces her husband to take out a policy in which she is the sole beneficiary in the event of her murdering him, the benefit of the policy reverts to the heirs.

ABSENCE SAME AS DEATH.

Curious Case Against the Canadian Order of Foresters.

Ellen Pott, of Woodstock, sued the Canadian Order of Foresters for \$1,000 due on a beneficiary certificate issued to her husband, William Pott, who has never been heard of since February of 1891. The case has been before the courts for some time, and finally Judges Moss, Rose, MacLennan and Lister gave judgment for the claimant and ordered the Society to pay the amount. We take the following report of the case from the legal column of the Toronto daily papers. This was an action by Ellen Pott to recover amount of endowment certificate No. 265 in her favor on the life of her husband, William Pott. The certificate was duly issued on October 6, 1891, and designates the plaintiff as "my wife, Ellen Pott" as the beneficiary, and as being entitled to \$1,000 within 30 days after satisfactory proof of death of insured. William Pott left his home in Woodstock on February 3, 1891, to seek work in Detroit, and wrote to his wife thereafter regularly until the end of the month, at which time he disappeared, leaving most of his belongings in his boarding house, and has never been seen or heard of since. The plaintiff held the certificate and continued to pay the dues in respect of it. On February 20, 1899, she claimed \$1,000 from the defendants, offering in proof of death the following: (1) Verified statements of the officers of the Court of the defendants, to which William Pott belonged, that he was in good standing at the time of claim; (2) affidavit of plaintiff proving the facts within her knowledge; (3) declarations of father and sister of William Pott as to his disappearance and belief of death, and that special efforts had been made to find him; (4) declaration as to search for will by plaintiff; (5) declaration as to age by father, and she also tendered a bond made by herself and good and sufficient securities conditioned to repay the \$1,000 in the event of its having been wrongfully paid to her, and produced the certificate. The defendants refused to pay. The trial judge found that the death of William Pott at the

expiry of seven years from his last being heard from had been satisfactorily shown, and in the absence of evidence by defendants that death was due to intoxication or accident therefrom, or any other cause set out in statement of defence, which would free the defendants from liability to pay, gave judgment for plaintiff. In finding defendants should pay the costs, the learned judge was assisted by the case of *Dyke v. City of Glasgow Life Insurance Company*, 7 L. J. N. S. 35. Here the defendants had before them, before action practically all the evidence at the trial, and, in addition, a bond. Coupling this with the fact that if plaintiff ceased to pay assessments the policy lapsed and the practical impossibility of William Pott, if he reappeared, obtaining an order of the Court declaring that the contract has been kept on foot, it seems unreasonable of defendants to require this action to be brought. It was contended for appellants that they were entitled to have the fact of death declared by the Court, or that plaintiff should have taken out letters of administration; that the trial judge erred in refusing to allow defendants to examine a sister of William Pott as to statements alleged to have been made by her before action to certain officers of defendants, that her brother told her before he left he would not be heard from, and in excluding the evidence of certain officers of defendants going to prove that statements were made by William Pott before he left to members of his family which would account for his silence.

The Court therefore held that Mrs. Pott was entitled to the money, and made an order that the Society pay the \$1,000 with costs.

MARKS OF LONGEVITY.

A careful examination will show that certain physical characteristics are usually associated with longevity. Perhaps the most noticeable of these is the carriage. Ninety nine out of one hundred people have curvature of the spine. The octogenarian is the one hundredth man. His spine is a straight line, his head erect, his chest broad and deep. This means that the vital organs are properly supported by the attachments provided by nature, and that they do not rest upon and crowd each other. The heart, lungs, stomach, liver and kidneys are thus enabled to do their work unimpeded; and their activity in providing food for the tissues and in removing waste matter (which is the prime cause of disease) is a potent factor in longevity. A large trunk, with legs short in proportion, a straight spine and an erect carriage are among the most obvious characteristics of those who attain great age. Another characteristic of those who achieve longevity, less evident to the untrained observer, but equally important, is the habit of slow, deep respiration. The oxygen is the only real food; for only the matter oxidized in the system becomes tissue. Deep, full breathing means an immensely increased amount of oxygen ingested, and an equally augmented quantity of poisonous matter eliminated by the lungs. Mental quietude is essential to proper breathing. The excited man—the emotional individual—who suffocates with joy, palpitates with enthusiasm, chokes with rage, gasps with astonishment, sighs from the intensity of his attachments—the emotional individual by every in-

equality in his respiration abbreviates his life. Another physical character of longevity most important of all and seldom or never noticed, is ease and repose of movement. The old person—the hale, vigorous, healthy old man—moves easily, lightly, silently. He has always moved that way. That's the reason he is here now instead of with the others, who, with their gasps and sighs, their clinched brows and twirling thumbs, their intense emotions and little complaints, are gone and forgotten. Ease of movement and grace depend upon muscular relaxation. Muscular relaxation is impossible except when the mind is tranquil. A fourth peculiarity of those who live long is that they are invariably small eaters. Gourmands die young. The octogenarian is always frugal. The enormous physiological task of digesting and excreting daily pounds of food not needed by the organism is not performed by the frugal eater, and so he has the more vitality to expend in thought in working and in living out his century.

FIGURES MAY DECEIVE

When an old line agent tells you what large returns his company will pay if you insure with him, just read to him the following statement published by Mr. Clarkson, the well-known editor of the Des Moines, Ia., Register.

"We had a \$100,000 year limited tontine policy in the New York Life, which matured last October. We paid that company \$3,000 annual premium on that policy for fifteen years, and paid the company \$5,000 in cash during that period. When the policy matured the company proffered \$1,000 for a settlement and a surrender of the policy; and that, too, notwithstanding we held and still hold the estimate of the company's agent that the policy would be worth \$4,116 at its maturity. We corresponded with the company for two months, in an endeavor to gain a fair settlement, only to find that the fine print policy compelled us to accept the paltry sum tendered by the company."—The Modern Woodman, May 1900.

CAN'T BE BOTHERED.

A financier called upon a delinquent member to collect his assessment and save him from suspension.

"Oh, what do you want to bother me about a little thing like that for? It's only cents, let the council pay it."

"It is your place to pay it. Do you want to be suspended?"

"No, but I can't be bothered. However, I suppose I will have to pay it to get rid of you," said the member as he drew a roll of bills from his pocket and tossed one to the financier.

The above is a fact, and similar cases are more frequent than they should be. It shows that there are members of beneficial Orders who have the idea that the Orders are institutions whose main purpose is to help those who will not help themselves. They act as if they considered their order and their council primarily, under an obligation to them, and it is the duty of their fellow members to pay for them whenever they do not feel like paying for themselves. They seem to imagine that they are especially privileged above other members, and do not recognize that if they can claim the right to be carried by their council every other member can do the same with equal propriety.