

sufficient, without more, to entitle the defendant to receive the money. Nor do I think effect can be given to the alleged intention of the donor to reserve the right of revocation. If such a contention can be admitted here, there is no case in which it might not avail where a gift has been made. It utterly contradicts the form of the gift, and oral evidence of such intention is not, in my opinion, admissible.

It is urged, however, that the effect of the statute R. S. O. 1897 ch. 203, sec. 151, sub-sec. 3 (as amended by 1 Edw. VII. ch. 21, sec. 2, sub-sec. 5) and sub-sec. 4, is to give the donor the right to change the beneficiary, and that the legal effect of the assignment was merely to designate the defendant as the beneficiary. . . .

The policy is in form a promise to pay the assured, Robert Wilson, or his assigns, the sum of \$5,000, due on the 26th December, 1908, or, if the assured should die before that time, then to make payment to his executors, administrators, or assigns.

It does not appear to me that under sub-sec. 3 an absolute assignment of the policy is contemplated. Under that section the policy remains the property of the assured with the right to designate a beneficiary and to alter or revoke the benefits thus conferred upon the beneficiary. The word "assignment" is nowhere used in that sub-section; nor was it, in my opinion, intended to apply to an assignment. Sub-section 5 of sec. 151 in the original Act makes this clear. Nothing contained in the Act is to restrict or interfere with the right of any person to assign a policy in any other mode allowed by law. By the assignment the plaintiff assigned and transferred all his right, title, and interest in the policy. He did not merely designate the beneficiary, but transferred to her the absolute legal title.

With great respect, the judgment below should be set aside, and judgment entered for the defendant, with a declaration that the defendant is entitled to be paid the money due and payable under the policy in question. The defendant is entitled to the costs below and of this appeal. In case there is no appeal, the plaintiff may be paid the amount of the premiums paid by him subsequent to the assignment, in pursuance of the offer made by the defendant's counsel, less the costs of the action and appeal.

SUTHERLAND, J.:—I agree.

FALCONBRIDGE, C.J., agreed in the result, for reasons stated in writing.