When as here the defendant is out of the jurisdiction this principle seems even more applicable.

The motion is therefore dismissed, leaving the plaintiff to take the matter higher or proceed to trial as may be thought best.

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HON. MR. JUSTICE MIDDLETON.   APRIL 12TH, 1913.

RE JANNISON.

4 O. W. N. 1084.

Insurance—Life Insurance — Death of Beneficiary — " Surviving Children" — R. S. O. 1897, c. 203, ss. 151, 159 — 1 Ed. VII., c. 21, s. 2, s.s. 7 — 4 Ed. VII., c. 15, s. 7 — Phrase refers to Death of Testator and not Death of Beneficiary — Subsequent Gift in General Language in Will Ineffective.

MIDDLETON, J., *held*, that the phrases " survivor " and " surviving children," in the clauses as to distribution upon the death of a beneficiary in the Insurance Acts prior to the Act of 1912, had reference to the death of the testator and not that of the beneficiary.

Motion by widow of William Jannison, deceased, for payment out of Court of $1,000, being the amount of a beneficiary certificate paid into Court by the insurance company.

F. D. Davis, for the widow.

J. R. Meredith, for the infants.

HON. MR. JUSTICE MIDDLETON:—William Jannison was married three times. During the life of his second wife, Chattie, he had the insurance in question made payable to her. She died in 1902, childless. On the 3rd of October, 1904, the deceased married the present wife; and on the 1st April, 1905, he made his will, by which he gave all his property, " including all my insurance policies at present in force and that I may hereafter have," to the applicant.

On the 16th January, 1907, the infant was born. The testator died on the 29th February, 1912, leaving him surviving the applicant and the infant, his only child.

The insured having died before the Insurance Act of 1912, came into force, the rights of the parties must be determined on the earlier legislation. Under the Insurance Act, R. S. O. 1897, ch. 203, sec. 151, as amended by 1 Edw. VII., ch. 21, sec. 2, sub-sec. 7, if all beneficiaries named