

DIVISIONAL COURT.

JUNE 10TH, 1911.

## CLARK v. LOFTUS.

*Life Insurance—Benefit Certificate—Change of Apportionment—Undue Influence—Suspicious Circumstances—Onus on Person Benefiting by Change—Agreement that Apportionment Should not be Changed—Insurance Act, secs. 151, 160, and Amendments thereto.*

Appeal by the defendant from the judgment of MIDDLETON, J., of the 6th February, 1911.

The appeal was heard by MEREDITH, C.J.C.P., TEETZEL and CLUTE, JJ.

G. H. Watson, K.C., and J. T. Loftus, for the defendant.

J. B. Clarke, K.C., and E. J. Hearn, K.C., for the plaintiffs.

CLUTE J.:—The plaintiffs claim two-thirds of certain insurance moneys paid into Court by the Independent Order of Foresters on an endowment certificate of \$3,000, dated the 6th March, 1893. The original insurance was for \$1,000 dated the 19th January, 1892. This certificate was surrendered and a new certificate for \$3,000 issued. The beneficiaries named therein are the plaintiffs and the defendant in equal shares. The certificate continued in force until the death of the assured, James E. Clark, on the 16th February, 1910.

The plaintiff, Jane Clark, is his second wife and May Clark their daughter. The defendant, Florence Loftus, is a daughter by a previous marriage. The plaintiff, Jane Clark, was married in 1882 and she continued to reside with her husband until the 22nd November, 1909. The deceased had been in business, occupying premises owned by his wife, the said Jane Clark, until about 1900, when being unable to carry on the business successfully any longer he gave up the business.

He had prior to this received an injury from an explosion, which for a length of time rendered him unable to walk. The injury was from a scald upon the legs, which from time to time broke out in running sores and to a certain extent affected his health and earning power, so that after he gave up the business, his earning power was not sufficient to support his family and keep up the premiums upon his insurance, and he determined to drop it. It was, however, arranged between his wife and himself that she should pay the premiums out of certain rents coming to