

brought the donation within the statute in that behalf. Here is no ascertained fund—the creation of the fund was in progress with an ultimate view of having it increased by contribution from the officers of the bank, and there is no means of defining who of all the officers and their families are to be the recipients of the pension. In this regard, the decision of Cozens-Hardy, J., in *Re Gassiot* (1901), 70 L. J. Ch. 242, is pertinent. He held that the testamentary gift of income to be applied for the benefit of persons answering a certain description in the wine trade without any reference to age or poverty could not be supported as a charitable gift and therefore failed wholly as infringing the rule against perpetuities.

In brief, the whole scheme as projected is as yet inchoate, and it was interrupted in the making by the compulsory liquidation of the bank.

The judgment should be affirmed and the money returned to the shareholders. The Referee has awarded costs against the petitioners. But, as the point is a new one under the Bank Act and is one calling for judicial decision, I think the better course will be to relieve the petitioners from the payment of costs and to direct that the costs of the liquidator be paid out of the fund.

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HON. MR. JUSTICE MIDDLETON.

OCTOBER 16TH, 1913.

RE KLOEPFER.

5 O. W. N. 133.

*Life Insurance—Beneficiary—Wife or Surviving Children—Mention of Wife by Name—Death of Wife—Remarriage of Insured—Rights of Second Wife Surviving Insured—Rights of Surviving Children—Ontario Insurance Act, 2 Geo. V. c. 33, ss. 178, 181—Trust—Executors.*

Insured left an insurance policy payable B. K. wife of C. K. for her sole use if living, in conformity with the statute, and if not living to the surviving children of said C. K. The first wife B. K. died and C. K. married again. Second wife claimed the money.

MIDDLETON, J., *held*, that the second wife was entitled holding that the wife to be benefited was the wife at the time of death, even though the wife at the time of insurance was mentioned by name.

Motion by the executors and widow of the late Christian Kloefer for payment out of Court of moneys arising from an insurance policy upon the life of the deceased.