

It was not necessary or desirable to express any opinion upon that question on the present application: because, as regarded the relief now sought, the result was the same whichever view of the effect of the instrument was correct. The company's contract was with D. B. McLean: he was the assured; and, whether his designation of Adèle Caroline McLean as beneficiary had the effect of designating her merely as the person to receive the money in case of his death, or designated her also to receive the money (or, instead of receiving the money, to receive, e.g., some money and a new policy) in case he lived, nothing was found in the Insurance Act, R.S.O. 1914 ch. 183, to deprive him, during his life and prior to the discharge of the policy by payment or otherwise, of his statutory right to substitute a new beneficiary. Notwithstanding the fact that the company had issued a cheque, which had not reached the hands of Adèle Caroline McLean, if she was the proper person to receive payment, the policy was a subsisting policy, and the company's contract with D. B. McLean had not been discharged, when, in November, 1918, he attempted to revoke the benefits theretofore conferred upon his wife and to substitute his mother as beneficiary. The learned Judge was of opinion that the assured's attempt was successful, and that whatever rights Adèle Caroline McLean had theretofore possessed passed to Ophelia McLean. See sec. 171 of the Act. From this it seemed to follow that D. B. McLean or Ophelia McLean had some right to select some benefit other than the payment of the cash which the company desired to pay into Court, and that the order asked for could not be made without defeating that right.

The motion should, therefore, be dismissed. Adèle Caroline McLean must pay the costs of the assured and his mother—the issue was really between her and them; the company should neither receive nor pay costs.

No issue was raised between D. B. McLean and Ophelia McLean, and no opinion was expressed as to their respective rights under the policy and the instrument of November, 1918.