JUNE 27TH, 1903.

DIVISIONAL COURT.

LINTS v. LINTS.

Life Insurance—Benefit Certificate—Beneficiary—Designation—Substitution—"Dependent"—Statute—By-laws of Society.

Appeal by defendant from judgment of FERGUSON, J., in favour of plaintiff, Serena Lints, in action brought by her against Fanny Lints to determine the ownership of moneys paid into Court by the Independent Order of Foresters, being the amount due under a benefit certificate issued by them on 27th February, 1899, being in fact a policy of insurance upon the life of John Henry Lints for $2,000. In the application for the insurance Lints designated his mother as his beneficiary, adding, however, the following qualification, "reserving to myself the power of revocation and substitution of other beneficiaries in accordance with the constitution and laws of the Order." By the terms of the certificate the benefit was payable at the death of Lints "to the widow or other beneficiary or trustee duly designated" by the insured. When this certificate was issued, the insured was married to plaintiff, but was not living with her. On 23rd August, 1899, he went through a form of marriage with defendant (Fanny Hawn), who was not aware that he was a married man, and he lived with her until his death in March, 1902. On 26th November, 1900, he applied to the society to change the beneficiary from his mother to his "wife, Fanny Lints," and the change was made by the proper officers. After the death the mother assigned to plaintiff all her rights under the certificate.

R. U. McPherson, for defendant.

J. J. Warren, for plaintiff.

THE COURT (FALCONBRIDGE, C.J., STREET, J., BRITTON, J.) held that the attempt of the assured to divert the benefit from his mother to defendant, who was not his wife, but merely a "dependent," not within the privileged class, being contrary to the statute, availed nothing, and the mother was at the time of the death the only beneficiary. The reservation on the face of the instrument by which the original designation was made, of the right to revoke the designation, and divert the benefit to another, is no stronger as a matter of legal construction than where the original designation is declared on its face to be subject to by-laws which give the same rights. The statute has been declared to override the by-laws in the latter case, and it must therefore override the reservation in the former. Mingeaud v. Packer, 21 O. R. 267, 19 A. R. 290, and Re Harrison, 31 O. R. 314, followed.

Appeal dismissed with costs.