

insured the right to the money passes over to the personal representatives of the beneficiary to the exclusion of the insured or his personal representatives at his death. *Central Bank of Washington v. Hume*, 128 U.S. 195, and *Am. & Eng. Ency.*, vol. 3, p. 980, followed. *Wicksteed v. Munro*, 13 A.R. 486, distinguished because based on the special Ontario statute.

A life insurance policy may be made payable to a person or beneficiary who is totally without any insurable interest in the life of the insured. *North American Life v. Craigen*, 13 S.C.R. 278, followed.

By virtue of s. 40 of the Manitoba Insurance Act, R.S.M. 1902, c. 82, the money payable under a policy of life insurance issued by a company licensed under the Act, when the insured resides in Manitoba, is payable there although the policy itself provides for payment at the head office of the company in another province, and in such a case the contract of insurance is subject to the laws of Manitoba and the money must be distributed in accordance therewith.

*McKay*, for administrators. *Macdonald*, K.C., for infants. *Card* and *Anderson*, for the other parties.

Phippen, J.A.]

DURAND v. FORRESTER.

[March 20.

*Malicious prosecution—Determination of proceedings in plaintiff's favour—Termination of prosecution where two justices decide differently.*

On the preliminary hearing of a charge of arson against the plaintiff, one justice decided that he should be committed for trial and the other that the information should be dismissed and nothing more was ever done in the matter.

*Held*, that it could not be said that the plaintiff had been discharged on the investigation so as to entitle him to bring an action for malicious prosecution against the informant. *Abrath v. North Eastern Ry. Co.*, 11 Q.B.D. 445; *Metropolitan Bank v. Pooley*, 10 A.C. 210; *Partin v. Hill*, 12 W.R. 754, and *Baxter v. Gordon*, 13 O.L.R. 598, followed.

*Semble*, the justices might have been compelled by mandamus to make an order of dismissal under the circumstances and, if they had made such an order, the plaintiff could have proceeded with his action: *Kinnis v. Graves*, 67 L.J.Q.B. 584.

*Hagel*, K.C., for plaintiff. *Coyne*, for defendant.