

BRITTON, J.

NOVEMBER 22ND, 1904.

CHAMBERS.

RE PARISH.

Life Insurance—Benefit Society — Beneficiary — Conditions Imposed by Will—Notice to Society—Payment into Court —Reduced Amount—Ascertainment.

Petition by the Order of Canadian Home Circles, a benefit society, for leave to pay into Court \$789.39 in respect of a benefit certificate upon the life of George Parish, instead of \$1,000, for which amount the certificate was issued.

W. A. Dowler, K.C., for petitioners.

H. E. Rose, for Edith Parish, claimant.

BRITTON, J.—The certificate issued on 7th September, 1901, and is on its face payable to Edith Parish, daughter of George Parish; there was no change by any indorsement. On 18th October, 1901, George Parish made his will giving this certificate to his daughter Edith, but . . . attached, or attempted to attach, conditions to the use and investment of the money. Parish died on 12th January, 1904. It does not appear that the executors have obtained probate of the will, and they have not made any formal claim to the money secured by the certificate, but the solicitor for one of the executors has given to the petitioners a copy of the will, and has notified them of the facts which may have induced the testator to make such a will. That having been done, if the petitioners should pay the money to Edith, they would do so at their own risk. Sub-section 7 of sec. 151 of the Ontario Insurance Act, R. S. O. 1897 ch. 203, prevents insurers, except at their own risk, from dealing with and obtaining a valid discharge from a beneficiary after a copy of the will affecting the insurance money or any portion of it has been received.

In these circumstances, the petitioners are entitled to the usual order for leave to pay the money into Court.

It is not admitted that upon the facts set out in the petition \$789.39 is the proper amount, even if conceded that there was a difference of age as alleged. The true amount can easily be ascertained under sec. 149 of the Insurance Act, and if it is really in dispute the Clerk in Chambers may determine it, or I will do so upon hearing the parties, so that the correct amount may be inserted in the order.

This is a case in which there are no disputed facts, so the claimant should have leave, on notice to the executors, to apply for payment to her of the said money or a part thereof,