

of the trust company, being his share of the balance on hand, should be paid out to him, notwithstanding that all the children of Mary Dicks have not yet attained 21 years of age.

The contention of the applicant is that under the terms of the policy he and the other children on the death of the mother had a vested interest in the insurance moneys, and that the provisions of the will postponing his absolute interest until the youngest child should attain 21 years of age, when the money should be divided per stirpes, were beyond the power of the testatrix under the law in force at her death.

In the first place, I think the provisions of the will are not a mere apportionment or an alteration of the apportionment of the insurance moneys, but are a variation of the terms of the policy. Under the policy the applicant upon the death of his mother was entitled to a vested interest in the insurance money; while under the will his interest other than the provision for his maintenance, &c., is made contingent upon his surviving the time when the youngest child should attain the age of 21 years, and thereby deprives him of the right of disposing of his interest, and gives the same to his child or children, should he leave any, otherwise to his surviving brothers and sisters.

Under the law as it stood at the death of the testatrix, there was no provision for an assured taking insurance moneys that had been apportioned to children and giving it to grandchildren.

The statute in force at that date was R. S. O. 1887 ch. 136, sec. 6, as amended by 51 Vict. ch. 22, sec. 3, and as again amended by 53 Vict. ch. 39, sec. 6.

As held in *Re Grant*, 26 O. R. 120, there is in the section as amended a clear distinction drawn between an "instrument in writing" and a will, and between what the insured may do by an instrument in writing and what he may do by his will. By his will he is only empowered "to make or alter the apportionment of the insurance money," and it does not empower him to declare that others than those for whose benefit he has effected the insurance, or for whose benefit he has declared the policy to be, shall be entitled to the insurance money, or to apportion it among others than those for whose benefit he has effected the policy, or for whose benefit he has declared it to be.

See also *McIntyre v. Silcox*, 30 O. R. 488; *Scott v. Scott*, 20 O. R. 313; *Cartwright v. Cartwright*, 12 O. L. R. 72, 8 O. W. R. 109.