

the attendance of these witnesses and the briefing of their evidence, etc., should be allowed on taxation of the plaintiff's costs against the defendant.

*W. E. Middleton*, for the plaintiff. *C. B. Jackes*, for the defendant.

Anglin, J.]

[May 11.]

RE PHILLIPS AND THE CANADIAN ORDER OF CHOSEN FRIENDS.

*Insurance—Co-morientes—Survivorship—Onus of Proof—R.S.O. 1897, c. 203, s. 159, sub-ss. 1 and 8, 4 Edw. VII. c. 15, s. 7, (O.).*

The Ontario Insurance Act, R.S.O. 1897, c. 203, s. 159, sub-s. 8, as amended by 4 Edw. VII. c. 15, s. 7 (O), applies only where the beneficiary "dies during the life time of the assured" and the onus is upon anyone claiming under that section to establish that fact. Where the assured and one of the beneficiaries perished in a common disaster and there was no evidence of survivorship.

*Held*, that the surviving beneficiaries were not entitled by virtue of that section to the insurance money.

*Held*, also, that the interest of a beneficiary is, apart from the section, contingent upon the beneficiary surviving the assured, and as the onus is upon any beneficiary seeking to share in the fund to establish such survivorship, the representatives of the deceased beneficiary took no share.

*Seemle*, that beneficiaries under the statute take as tenants in common and not joint tenants.

*Seemle*, also, that apart from sub-s. 8, the effect of s. 159, sub-s. 1, is, upon the death of one of several beneficiaries, to create a resulting trust in favour of the survivors.

*W. E. Middleton*, for the application. *Harcourt*, Official Guardian for the infants. *Lyman Lee*, for the Chosen Friends.

Anglin, J.]

RE TOLHURST.

[May 12.]

*Dower—Order dispensing with release of—Husband and wife living apart—R.S.O. 1897, c. 164, s. 12.*

A right which is barred by contract is not usually spoken of as a right to which a person is disentitled by law.