

"5. Where the declaration described the subject of it as the insurance of the policy or policies of insurance or the insurance fund of the assured, or uses language of like import in describing it, the declaration, although there exists a declaration in favour of a member or members of the preferred class of beneficiaries, shall operate upon such policy or policies to the extent to which the assured has the right to alter or revoke such last-mentioned declaration."

It is contended on behalf of those interested in the estate, other than the widow, that the Act of 1912, was in part passed in consequence of the decision in *Re Cochrane*, and the construction placed on sec. 160, of ch. 203, of the Revised Statutes of Ontario, 1897. Sub-section 5 of said sec. 171, and which is a new section, is referred to in this connection. It is argued that the Act is in this respect an enabling one, and it should be given a liberal construction. See Maxwell on the Construction of Statutes, 4th ed., p. 360. If said sub-sec. 5 applies, it would apparently make the declaration in the will effective to alter the previous declaration in the policies. It is also contended on behalf of those other than the widow that though secs. 170 and 171 are sections referred to in sec. 247, as not coming into force until August 1st, 1912, that nevertheless on that date they became operative, and by virtue of sec. 171, are retroactively applicable to the declaration in the will made before the passing of the Act. On behalf of the widow it is, however, contended that on the death of the testator her interest became a vested one. The policies by their terms were payable on the death of the insured and to the widow. At that time the only existing declaration which was intended to or could effect a change was the one in the will. It was, however, under the law as it then stood ineffective for that purpose. I think the contention on behalf of the widow is a sound one and that the Act of 1912, cannot be held to have any application to the policies in question, that the interest of the widow was a vested one and that she is entitled to the moneys in question. Reference to Craies' Statute Law, 351, 352, 357, 367. "*The Langdale*," 23 T. L. R. 683—*Smithies v. National Association of Operative Plasterers*, [1909] 1 K. B. 310, at p. 319; *Commercial Bank of Canada v. Harris*, 26 U. C. R. 594.

The first three questions propounded in the notice of motion must, therefore, be answered in the negative, and the fourth in the affirmative.