

representing that they are the authorized representatives of the plaintiffs the Hancock Inspirator Co. for the sale or manufacture of locomotive inspirators in the Dominion of Canada. The plaintiffs McAvity claim under an agreement made in 1901 with the plaintiff company to have the exclusive right of manufacture, etc., for the Dominion. The defendants set up an agreement made in 1886 with the company and one Morrison, and assigned to them, giving them the right to so manufacture and sell, and counterclaim for its breach and to have the plaintiffs' patent and trade marks declared invalid.

D. L. McCarthy, for plaintiffs.

G. H. Watson, K.C., for defendants.

LOUNT, J., held, that it cannot be said that the pleadings in question do not disclose a reasonable ground of defence; or that the counterclaim is frivolous or vexatious.

Bank of Hamilton v. George, 16 P. R. 418, approved.

Costs in the action to defendants.

(Affirmed by a Divisional Court, 8th Sept.)

LOUNT, J.

AUGUST 15TH, 1902.

WEEKLY COURT.

RE LETHBRIDGE.

*Infant—En Ventre sa Mère — Insurance — Period of Distribution — Trustee Relief Act.*

Motion by trustees under the Trustee Relief Act for an order determining whether an infant *en ventre sa mère* at the death of her father is entitled to share in certain moneys, proceeds of policies of life insurance. Under the policy the moneys were payable "to his widow, A. Lethbridge, and his children in equal shares." The insured died April 22, 1897, and the infant was born on August 7, 1897, and is now living.

J. S. Robertson, St. Thomas, for the trustees.

F. P. Betts, London, for infant.

LOUNT, J., held that the infant is entitled to share in the proceeds of the policy: Jarman, 5th ed., p. 1041. Pain v. Miller, 6 Ves. Jr. 349, Whitehead v. St. Johns, 10 Ves. Jr. 152, Re Knapp, 1 Ch. D. 91, do not support the proposition that the period of distribution of the moneys arose at the time of the vesting, which was at the death of the father, and, therefore, that the infant not being "in esse" could not take. In those cases the period of distribution is fixed; in this case it is not fixed. Costs out of estate.