MacMahon, J.:—The assured could, on the death of his wife—the sole beneficiary of the preferred class—under sub-sec. 3 of sec. 151, "by instrument in writing attached to or by indorsement on or identifying the said contract by number or otherwise . . . substitute new beneficiaries," who must be of the preferred class, which class includes children, grandchildren, and mother of the assured: sec. 159, sub-sec. 2.

Now, the assured, seven years after making the indorsement already referred to on the beneficiary certificate, made his will, by which he directed that the whole of his estate be divided amongst his children—there being both adult and infant children—in equal shares.

Had the assured simply indorsed the certificate making the insurance payable to his children without any reference to his will, the beneficiaries would have been sufficiently designated, as all the children living at the time of his death would have been entitled to share equally in the fund: Mearns v. A. O. U. W., 22 O. R. 34. But the indorsement on the benefit certificate did not effect a complete substitution of new beneficiaries, as the children who were by the terms of the indorsement to receive payment of the fund were such as he should direct by his will. The will—the instrument in writing by which, under the Act, the beneficiary may be designated or ascertained—makes no reference whatever to the benefit certificate (the contract), nor is it attempted to be identified, by number or otherwise in the will, as required by sec. 151, sub-sec. 3, so as to create, under the statute, a substitution of new beneficiaries.

The assured, when he indorsed the beneficiary certificate, may have intended that his infant children should be the new beneficiaries under his will. But, as the amendment to sec. 151, sub-sec. 6, by 1 Edw. VII. ch. 21, sec. 2, sub-sec. 7, by which, in the event of new beneficiaries not being appointed as provided by the Act, the insurance fund would be payable to his infant children, was passed a year prior to the making of the will, he may have considered it unnecessary to deal with the benefit certificate by his will, leaving the infant children to take the fund, under the Act.

Were the applicants—the executors—to succeed on this motion, the result would be that the estate of the assured would get the benefit of this insurance fund, and, as a consequence, the creditors of the assured might be paid out of it. It was in order to prevent this that the Act provides that, where the beneficiary is of the preferred class, the assured shall not divert the benefit "to a person not of