

The motion was referred to a Divisional Court by MIDDLETON, J. See ante 88, where the facts are stated.

The motion was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

S. F. Washington, K.C., for the claimants, the three children of the deceased.

J. R. Meredith, for the Official Guardian, representing Caroline Wagner, the infant grandchild of the deceased.

MEREDITH, C.J.C.P., read a judgment in which he said that the one question argued was, whether a change of beneficiaries, under a benevolent society's benefit certificate, made by will in a foreign country, the statute-law whereof did not, speaking generally, permit such a mode of transfer, is good, the will being duly executed with the formalities required to give validity to a will made either in Ontario or in the foreign country.

The insurers are a provincial benefit society, and can carry on business only in such manner as the law which gives them legal existence permits, and so only in accordance with the provisions of the Ontario Insurance Act, which the society's rules recognise and give effect to. So, by the terms of the contract, the beneficiaries can be changed by will, that is, an instrument valid as a will in the domicile or place of residence of the testator: see sec. 177(4); and the laws of the foreign state do not purport to affect it. And so, if the beneficiaries have been changed in accordance with the provisions of the provincial enactment, the new beneficiary takes, and the old are excluded altogether.

The words of sub-sec. 5 of sec. 171 are wide enough to support the claim of the grandchild that a valid change was made by the will. The words used in the will were sufficient as a declaration under the statute.

The infant grandchild is entitled to the moneys in question. No order as to costs, except that the costs of the Official Guardian be paid out of those moneys.

RIDDELL, J., read a judgment in which he reviewed the authorities and stated his opinion that the will was a declaration such as required by sec. 171(3) of the Act, and that it was effective to change the beneficiary.

MASTEN, J., also read a judgment, in which he referred to the authorities and to sec. 178(1) and (2) and sec. 179(1) of the