

ficiary coming within any of the classes mentioned in the sub-section.

The provision of the sub-section is that the declaration shall create a trust "in favour of the said beneficiary or beneficiaries according to the intent so expressed or declared, and so long as any object of the trust remains. . . ."

If the condition which the assured has imposed or the power of revocation which he has reserved is disregarded, I do not see how it can be said that the trust is treated as one in favour of the beneficiary or beneficiaries according to the intent expressed or declared in the declaration, for where the assured has made a declaration in favour of a member of any of the classes mentioned in the sub-section, reserving to himself the right to revoke the trust thereby created, to hold that he may not exercise the power of revocation, as it appears to me, is not to give effect to the trust according to the intent expressed or declared, but the contrary. The decided cases, however, make it impossible for me to give effect to my own view: *Mingeaud v. Packer*, 21 O. R. 267, 19 A. R. 290; *Re Harrison*, 31 O. R. 314; *Fisher v. Fisher*, 25 A. R. 108; *Lints v. Lints*, 6 O. L. R. 100, 2 O. W. R. 550.

If then the declaration in favour of Peagam, Dinnick, and Farley, "executors in trust for legal heirs," because, in the events that have happened, the grandson, John Arthur Farley, is the person who answers the description "legal heirs," operates as a declaration in favour of the grandson within the meaning of sub-sec. 1, I am bound to hold that it was not revoked or affected by the subsequent declaration of the assured, assuming to declare other and different trusts of the moneys payable under the contract of insurance.

I have, with some hesitation, reached the conclusion that the declaration is one not operating under sub-sec. 1. . . .

[Reference to *Mearns v. Ancient Order of United Workmen*, 22 O. R. 34.]

After that decision, and in all probability in consequence of it, the Ontario Insurance Act was amended by the addition of what is now sub-sec. 36 of sec. 2 of R. S. O. ch. 203, which provides as follows: "In insurance of the person the phrase 'legal heirs' or 'lawful heirs' shall mean and include all the lawful surviving children of the assured, and also the wife or husband if surviving the assured, or where the assured died without lawful surviving children and unmarried, it shall mean those persons entitled to take according to the Statute of Distributions."