

remainder to John Heber Fogarty would be defective, because it was the expectation and wish of the testatrix that these children should inherit. See *Re McDonald*, 6 O. L. R. 478.

It was clearly the intention of the testatrix, if there were no such children, that John Heber Fogarty should have the property, or so much of it as would remain after the death of Levis. The question now is, whether the taking away the estate of the adopted daughter by the operation of the Wills Act causes an intestacy or "accelerates the remainder."

I am of opinion that the latter results. The condition under which Fogarty would be deprived of any of the property remaining at the death of Leavis could not exist. The children, if any, not taking under the will, could not possibly take at all. As their mother is not the owner, she takes nothing. To use the language so far as applicable and to apply the reasoning of *Malins, V.-C.*, in *Jull v. Jacobs*, 3 Ch. D. at p. 703, Fogarty was postponed to Leavis because she was to have the property, and postponed to the children of Leavis if she should die leaving children who would inherit it. But the mother cannot have the property, her children cannot inherit the property, nor can they take under the will. If the mother had known that from any cause neither Leavis nor her children could take, it is quite evident she would not have postponed the gift to Fogarty. It is, of course, by mere accident or ignorance of law that Leavis cannot take, but she must be regarded as dead and with no children, that is, none who can inherit this property, and with all the property remaining on hand.

I think Fogarty is entitled to the property, subject to the payment of debts and costs and expenses. . . .

Declaration that there is an acceleration of the estate to John Heber Fogarty. . . .

It appears from the affidavit of the executor that Elizabeth Leavis is now the wife of John Heber Fogarty. . . .

Costs of all parties out of estate.

BRITTON, J.

NOVEMBER 22ND, 1904.

CHAMBERS.

RE TIDEY.

*Life Insurance—Benefit Society—Beneficiaries—Executors—
Payment into Court.*

Petition by the Order of Canadian Home Circles, a benefit society, for leave to pay into Court \$1,900 in respect of a beneficiary certificate upon the life of John A. Tidey.

W. A. Dowler, K.C., for petitioners.