

the preferred class; and that therefore the disposition has failed and the money becomes part of the residuary estate of the insured. It is to be observed that the insured did not assume in any way to exercise control over this policy after his mother's death.

With the first policy, it seems to me, we have nothing to do. If the mother acquiesced in the change, it was clearly for her benefit to get a certainty by means of a paid-up policy. Even if otherwise, it surely cannot be denied that she might either have released her claim to her son or made over her contingent interest to any one else. Either she assented to the change, assuming that her consent was necessary, or she did not. In the first case she had no right to complain. In the second case her rights against the company are not affected. However this may be, it is enough to say that no claim is being made by any one on her behalf.

But I cannot see how the insured was prevented from leaving to his mother, as he did, all the benefits she would have taken under the first policy, and at the same time providing for the case of her decease in his lifetime. See R. S. O. 1897 ch. 203, sec. 151. He has done so, and the evidence of Mrs. McBride makes it very clear why he did so. Her evidence also shews that after the mother's death Mr. Kelly read the policy in question and handed it back to her, saying, "There is \$500 for you." He sealed it up again and told me that no person could take it from me, as it was mine and would pay me for the trouble I had with mother." . . . In any case possession of the policy would be sufficient to enable her to hold it: see *Rummens v. Hare*, 1 Ex. D. 169.

The money must be paid out to Mrs. McBride, and the plaintiffs must pay the costs, including the costs of payment into Court which were deducted from the \$500.

BRITTON, J.

DECEMBER 15TH, 1903.

WEEKLY COURT.

WENDOVER v. NICHOLSON.

Gift—Parent and Child—Confidential Relationship—Conveyance of Land—Assignment of Mortgage—Action by Administrator of Parent's Estate to Set aside—Improvvidence—Lack of Independent Advice—Reference—Account—Inquiries—Statute of Limitations—Costs.

Appeal by plaintiff from report of an official referee to whom the action was referred under R. S. O. 1897, ch. 62, sec. 29.