CIHM
Microfiche
Series
(Monographs)

ICMH
Collection de
microfiches
(monographies)

Canadian Institute for Historical Microreproductions / Institut canadien de microreproductions historiques

Technical and Bibliographic Notes / Notes techniques et bibliographiques

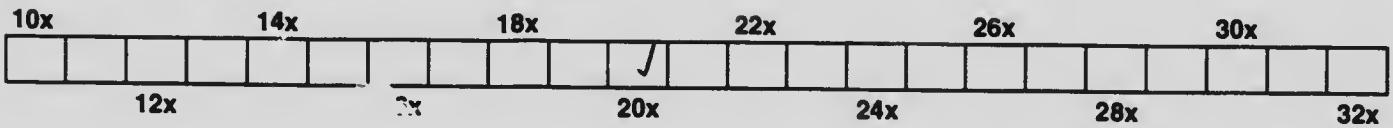
The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming are checked below.

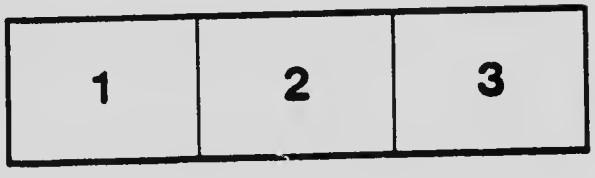
- [x] Coloured covers / Couverture de couleur
- [ ] Covers damaged / Couverture endommagée
- [ ] Covers restored and/or laminated / Couverture restaurée et/ou pelliculée
- [ ] Cover title missing / Le titre de couverture manque
- [ ] Coloured maps / Cartes géographiques en couleur
- [ ] Coloured ink (i.e. other than blue or black) / Encre de couleur (i.e. autre que bleue ou noire)
- [ ] Coloured plates and/or illustrations / Planches et/ou illustrations en couleur
- [ ] Bound with other material / Relié avec d'autres documents
- [ ] Only edition available / Seule édition disponible
- [ ] Tight binding may cause shadows or distortion along interior margin / La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure.
- [ ] Blank leaves added during restorations may appear within the text. Whenever possible, these have been omitted from filming / Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- [ ] Additional comments / Commentaires supplémentaires:

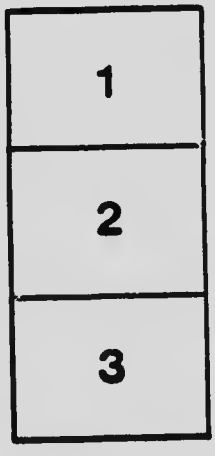
L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

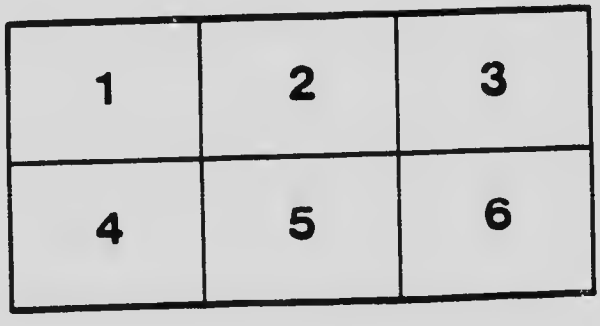
- [ ] Coloured pages / Pages de couleur
- [ ] Pages damaged / Pages endommagées
- [ ] Pages restored and/or laminated / Pages restaurées et/ou pelliculées
- [x] Pages discoloured, stained or foxed / Pages décolorées, tachetées ou piquées
- [ ] Pages detached / Pages détachées
- [x] Showthrough / Transparence
- [ ] Quality of print varies / Qualité inégale de l'impression
- [ ] Includes supplementary material / Comprend du matériel supplémentaire
- [ ] Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image / Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.
- [ ] Opposing pages with varying colouration or discolourations are filmed twice to ensure the best possible image / Les pages s'opposant ayant des colorations variables ou des décolorations sont filmées deux fois afin d'obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below / Ce document est filmé au taux de réduction indiqué ci-dessous.









LIFE INSURANCE CONTRACTS IN CANADA

By H. J. SIMS

LIFE INSURANCE CONTRACTS IN CANADA

BY

HARVEY JAMES SIMS, LL.B., B.C.L.

OF OSGOODE HALL, BARRISTER-AT-LAW

TORONTO

R. G. McLEAN, LIMITED

MCMXX

PREFACE.

I hold every man a debtor to his profession, from the which as men of course do seek to receive countenance and profit, so ought they of duty to endeavor themselves by way of amends to be a help and ornament thereunto.—*Bacon.*

IN the course of its career, now covering fifty years, there has arisen in the experience of this Company an increasing number of cases where inconvenience and real hardship have occurred in dealing with beneficiaries under life insurance policies through lack of knowledge of laws affecting life insurance contracts. A great difficulty in the way of making such knowledge more general has been the varying enactments on the subject by the different provinces of the Dominion. Recent years have shown a commendable tendency towards uniformity of legislation in this respect, and it is to be hoped this desirable movement will receive further impetus.

With the object of making available a working knowledge of the laws of Canada bearing on life insurance contracts, especially for life insurance agents who are largely the advisers of the insuring public in disposing of their life insurance benefactions, this little work is sent on its mission of use. It has been prepared by the Company's Solicitor, Mr. H. J. Sims, LL.B., with painstaking care, and it is hoped it may not be without interest to the legal profession and to legislators as well as to those engaged in the great business of life insurance. The book is published by the Company for complimentary distribution in the year of its Golden Jubilee.

THE MUTUAL LIFE ASSURANCE COMPANY
OF CANADA.

Waterloo, Ontario, September, 1920.

TABLE OF CONTENTS.

INDEX TO CASES CITED.

CHAPTER I.

THE CONTRACT AT COMMON LAW AND AS MODIFIED BY LEGISLATION

Contract of life insurance.

The contract of life insurance may be defined to be a contract to pay a sum of money upon the happening of a particular event contingent upon the duration of human life, in consideration of the payment of a smaller sum at once or by certain periodical instalments which the insurer is bound to receive by the original terms of the contract. This is the common law definition of life insurance given many years ago by Chief Justice Tindal, an eminent English Judge. It is admirably clear and concise. The contract is usually evidenced by a policy issued by the insurer to the insured, although an oral insurance contract is binding in law. The consideration is termed the premium.

Principles governing.

An insurance contract is governed by the same general principles as other contracts, but must be carefully considered in consequence of numerous statutory enactments. It is unilateral in that the insured is not bound to continue the insurance, although the insurer is bound so long as the premiums are paid. The utmost good faith must exist on both sides. Fraudulent misrepresentation or concealment nullifies the contract.

Elizur Wright, who was mainly instrumental in placing life insurance on a firm basis in the United States, said many years ago, that life insurance is neither a business nor an investment, and furthermore that it is not a gamble.

It is not an enterprise in which capital engages for the sake of profit. The great life companies are trusts in the real meaning of the term; their directors are trustees in the most sacred sense. Money is paid to an insurance company by a number of persons under the belief that it will be cared for, invested and ultimately paid to some one they wish to benefit. It is not an investment in the usual commercial sense, in that the company puts the premiums at interest, not that it may furnish a return in addition to the insurance, but that it may accumulate a fund out of which the policy is paid. It is not a gamble in that it rests upon two solid bases: the law of human mortality and that of compound interest. He goes on to say that life insurance is one thing and one thing only. In the social and economic order it performs a single and simple service. It is the money indemnification for the loss of a valuable human life. It is a co-operative effort that relieves individuals from the crushing weight of losses that come upon them without their own fault by distributing the burden over the many.

Bearing these cardinal principles and objects in mind, one has a clearer understanding of the purposes of insurance and therefore of the real meaning of the contract.

Legislation governing.

Recognizing the importance of life insurance as a factor in the economic life of a nation and its inestimable benefits if directed along proper lines, legislatures have deemed it wise to pass laws regulating insurance companies, defining the terms and conditions of the contract and protecting beneficiaries. Canada has not lagged behind other countries in the matter of insurance legislation, and in fact a number of our Provinces have insurance laws much in advance of some of the older lands. Generally speaking, the aim of the legislation in Canada has been to create vested rights in favor of certain

beneficiaries. Many years ago in Upper and Lower Canada the principle was adopted of freeing insurance moneys payable to wives and children from the claims of creditors. Canada was the first country in the british Empire to enact such legislation. The principle has since been extended in favor of certain other beneficiaries and is now part and parcel of the Insurance Acts of all the Provinces. Insurance moneys are by statutory enactments in this country frequently impressed with a trust and the contract has added to it many of the characteristics of a trust settlement. The paternal features of modern legislation in Canada as well as in other countries, have largely been dictated by a recognition both of the immense investments of money in life insurance and of the fact that its encouragement will best tend to eradicate the baneful influences of thriftlessness.

Dominion legislation.

In Canada there is Dominion as well as Provincial legislation concerning life insurance. It is generally conceded that the main features of the subject such as the policy contract, the status and rights of beneficiaries, the transfer or assignment of an interest in the policy, are matters within the purview of the provincial legislatures. The Federal Parliament has power to incorporate insurance companies and has passed an Act regulating the business of insurance as carried on by companies within the Federal jurisdiction. The Act also provides that certain terms and conditions shall be attached to policies and this legislation is stated to govern the contracts of all companies incorporated by Parliament as well as foreign companies operating under Dominion licenses.

Provincial legislation.

The provinces of Ontario and Quebec have been the pioneers in insurance legislation in Canada. The Ontario Insurance Act deals in a most comprehensive way with the whole matter of insurance. Quebec too has very

complete laws on the subject. The Saskatchewan Insurance Act is practically a counterpart of the Ontario Act. The Maritime Provinces have used the Ontario Act as a basis for their insurance laws and much of the legislation in Manitoba, British Columbia, and Alberta is similar to that of Ontario.

Although there is considerable variation in the statutory enactments of the different provinces concerning life insurance, still the salient features of the various provincial Acts are quite similar. This is particularly true in respect to the benefits conferred on wives and children. However, it is to be regretted that there are not uniform insurance laws throughout the various provinces. If there were, it would avoid much confusion, considerable inconvenience and more or less litigation.

Statutes.

The Statutes of the various provinces dealing with insurance law are as follows:

ONTARIO:

The Ontario Insurance Act, R.S.O. 1914, Chap. 183. Amendments, 1914, Chap. 30; 1915, Chap. 20, Sec. 19; 1916, Chap. 36; 1917, Chap. 27, Secs. 28 and 29; 1918, Chap. 20, Secs. 32, 33 and 34; 1919, Chap. 25, Sec. 24; 1920, Chap. 55.

QUEBEC:

The Quebec Insurance Act, R.S.Q. 1909, Article 6832 *et seq.* The Act respecting Life Insurance by Husbands and Parents (sometimes known as the Wives' & Children's Act), R.S.Q. 1909, Articles 7377-7407. Amendments, 1911, Chaps. 44, 45, 46; 1914, Chap. 54; 1916, Chaps. 31, 83; 1917, Chaps. 46, 47; 1918, Chaps. 66, 67; 1919, Chap. 67. The Civil Code, Articles 2468 to 2593 inclusive.

MANITOBA:

The Manitoba Insurance Act, R.S.M. 1913, Chap. 98. Amendments, 1914, Ch 52; 1915, Chap. 33; 1917, Chap. 45; 1919, Chap. 46; 1920, Chaps. 59 & 60. The Life Insurance Act, R.S.M. 1913, Chap. 99. Amendments, 1918, Chap. 34; 1920, Chap. 61.

SASKATCHEWAN:

The Saskatchewan Insurance Act, 1915, Chap. 15. Amendments, 1916, Chap. 16; 1917, 1st Session, Chap. 22; 1917, 2nd Session, Chap. 54; 1918-19, Chap. 33.

ALBERTA:

The Alberta Insurance Act, 1915, Chap. 8. Amendments, 1916, Chap. 3, Sec. 13; 1918, Chap. 33; 1919, Chap. 4. The Life Insurance Beneficiaries Act, 1916, Chap. 25. Amendments, 1917, Chap. 40.

BRITISH COLUMBIA:

Life Insurance Policies Act, R.S.B.C. 1911, Chap. 115, and the Insurance Act, 1913, Chap. 33. Amendments, 1914, Chaps. 38 and 40; 1916, Chap. 27; 1918, Chap. 38; 1919, Chap. 38; 1920, Chap. 35.

NOVA SCOTIA:

The Life Insurance Act, 1903, Chap. 15. Amendments, 1904, Chap. 22; 1915, Chap. 28; 1918, Chap. 23, Sec. 13. An Act respecting Insurance Companies, 1918, Chap. 15. An Act respecting Insurance Agents, 1919, Chap. 74.

NEW BRUNSWICK:

The Life Insurance Act, 190[illegible].4. Amendments, 1909, Chap. 40; 1915, Chaps. 7 [illegible].1.

PRINCE EDWARD ISLAND:

The Life Insurance Act, 1906, Chap. 16. Amendments, 1907, Chap. 15.

DOMINION OF CANADA:

The Insurance Act, 1917, Chap. 29. Amendments, 1919, Chap. 57.

The Statutes of Newfoundland dealing with Life Insurance are similar to those of the Maritime Provinces. The Newfoundland Insurance Act is Chap. 193 of the Consolidated Statutes.

CHAPTER II.

APPLICATION, POLICY AND COMPLETION OF CONTRACT.

Mutuality is required in an insurance contract the same as in all other contracts. The principle that there is no contract if the minds of the contracting parties never are *ad idem* applies in life insurance. The essentials of the contract must be agreed on, viz., the subject matter, the party who is to insure, the party who is to be insured, the duration and amount of the risk and the rate of the premium. Mutuality required.

In life insurance the invariable practice now is for the person desiring to be insured to make a written application to an insurance company on a form prepared and supplied by the company. If the company wishes to accept the proposal, it issues a policy either before or after, but generally concurrently with acceptance of the premium. Application.

It is of very considerable consequence to know as a matter of law at what point of time the contract is completed and binding on both parties. In the absence of any statutory enactment, the terms and conditions of the contract must be looked to, and invariably there are provisions in the application and the policy reciting what set of facts are necessary to constitute a complete and binding contract. The point must never be lost sight of, that insurance is a contract and that the insurer and insured are at liberty to incorporate into their agreement whatever stipulations they like, saving where the Statutes intervene. The Courts will recognize and give effect to When contract completed and binding.

whatever is agreed to, assuming that the parties are competent to contract, that there has been no fraud or material misrepresentation, and that the statutory provisions relating to the contract, if any, have been complied with.

Contract construed most favorably to insured.

In the interpretation of a policy, the rule is well established that it must be liberally construed in favor of the insured, so as not to defeat his claim to the indemnity, which in effecting the insurance, it was his object to secure. While the Courts will extend all reasonable protection to insurers by allowing them to hedge themselves about by conditions intended to guard against fraud, want of interest and the like, they will nevertheless enforce the rule of construction that as the language of the conditions is theirs, and it is therefore in their power to provide for every proper case, it is to be construed most favorably to the insured. Consequently, if a stipulation be ambiguous and no light can be thrown upon it in accordance with the received principles of law, from extrinsic evidence, the doubt is to be resolved against the party by whom and in whose favor the stipulation is made.

Delivery of policy and payment of premium.

A condition now invariably inserted in every insurance contract is that it shall not come into effect until the policy and the company's official receipt are delivered and the full premium thereon paid to the company or to a duly authorized agent, during the lifetime and good health of the insured. The application generally provides that the insured shall accept the policy when presented and pay the stipulated premium therefor. It frequently occurs that the premium is paid to the agent at the same time as the application is taken. If the application is then accepted by the company and a policy issued, the question arises as to the exact time when the policy is in

force. In such a case it has been held by the Supreme Court of Canada that the contract is not completed until the terms and conditions of the policy have been complied with, *i.e.*, actual delivery of the policy and the official receipt to the insured during his lifetime and continued good health: Donovan v. Excelsior Life (1916), 53 S.C.R. 539. In this case the policy was sent by the Head Office to an agent who did not deliver it on hearing that the insured was ill. She died a few days later. Mr. Justice Idington at p. 551 says, "To hold otherwise would seem to conflict with the supreme rule, relative to the common purpose or intention of the parties thereto, which must govern this and every other contract."

Donovan v. Excelsior Life.

There is a dictum by Mr. Justice Riddell in the cases of Sharkey v. Yorkshire Ins. Co. (1916), 37 O.L.R. at p. 352, and Robinson v. London Life (1918), 42 O.L.R. 527, to the effect that the ordinary application for insurance is not a tender which will become a contract, but a request to the company to offer a policy, that, if the company tender a policy on such request, the applicant may decline to accept it and that, if the applicant accept the policy tendered, then and only then is the contract complete.

Sharkey v. Yorkshire.

It is now usual for an insurance company, when the premium is paid in advance, to agree that the contract shall take effect as of the date of the medical examination, provided the applicant was on that date in the opinion of the company's authorized officers at the Head Office, an insurable risk under its rules, and the application is otherwise acceptable on the plan and for the amount and at the rate of premium applied for.

Agreement where premium paid in advance.

The stipulation in an application that the company shall not be liable until the premium has been actually paid and received by the company or its duly authorized agent, works both ways. If the applicant refuses to

Payment of premium.

accept the policy when offered to him, the company cannot sue him for the first premium. But if the applicant by a term in the application binds himself to pay the first premium on presentation of the policy, the company would be entitled to such loss in money as had been occasioned by the applicant's refusal to accept the policy. Sometimes the damages for refusal to accept the policy are stated in the application or in the receipt for the premium as liquidated damages.

Ontario Insurance Act, Sec. 159, Sub-sec. 1.

Sub-sec. 1 of sec. 159 of the Ontario Insurance Act provides as follows:

> Where the contract of insurance has been delivered it shall be as binding on the insurer as if the premium had been paid, although it has not in fact been paid, and although delivered by an officer or agent of the insurer who had not authority to deliver it.

This provision, so far as life insurance contracts are concerned, does not appear in the Insurance Acts of any of the other provinces and consequently is only applicable to such life policies as are subject to construction by the law of Ontario. The substance of this section has been incorporated into the Insurance Acts of Saskatchewan and Alberta but it is specifically provided that it shall not apply to life insurance contracts. It is submitted that the principle of the Ontario section as applicable to life insurance is wrong and that the legislature has failed to recognize the distinctive features of life and fire insurance. It is common knowledge that in fire insurance where the application is frequently oral, or partly oral and partly written, an interim receipt and even the policy are often delivered before payment of the premium. The practice is for the company to charge the agent with the premium. The agent in turn bills the insured with the amount of the premium and payment is frequently not

made to the agent until a considerable time after delivery of the interim receipt or the policy. It is fit and proper that the law should be made to conform with the practice in such cases and the wisdom of the above section, in so far as fire insurance is concerned, is obvious. No such practice obtains in life insurance. There, it is a cardinal principle that payment of the premium must be contemporaneous with or in advance of the delivery of the policy and the consummation of the contract. The whole contract is based on this assumption.

Delivery of policy.

It is contended that, notwithstanding the above enactment, where a policy is merely handed to an insured for the purpose of examination and approval, and where the company's official receipt of payment of the premium has not been delivered to the insured, the contract would not be in force, the contention being that there was no real delivery in the eyes of the law and that the policy was never divested of the character of an escrow to bind the company. This point has not yet been determined by the Ontario Courts. It would be advisable for an agent who wishes to hand a policy to an applicant for examination only, to first obtain from him a written acknowledgment to that effect and that while it is in his hands it is merely to bear the character of an escrow and moreover that the premium has not been paid.

Dominion Insurance Act, 1917.

The following provisions in reference to life insurance policies are to be found in the Dominion Insurance Act:

No policy shall be delivered in Canada until a copy of the form of such policy has been mailed to the Superintendent of Insurance.

Section 91 provides that every policy shall contain the following terms and conditions:

30 days' grace for payment of premiums.

(*a*) That the insured is entitled to 30 days of grac for payment of any premium other than that of th first year.

Active service in Militia.

(*b*) That the insured may, without the consen of the company, engage in the active service of th Canadian Militia, notice thereof, however, to be give to the company within 90 days after the date of hi so engaging in such service and on payment of such extra premium as the company shall fix in pursuanc of the terms of the policy.

Incontestability after 2 years.

(*c*) That the policy shall be incontestable two years after its date except for fraud, non-payment o premiums or for violation of the conditions of the policy relating to engaging in Military or Naval service (except as aforesaid) without the written consent of the company.

Policy and endorsement to be entire contract.

(*d*) That the policy and the endorsement thereon shall constitute the entire contract and that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties and that no such statement shall be used in defence to a claim unless it is contained in a written application and a copy of the application or such parts thereof as are material, attached to the policy.

Age understated.

(*e*) That if the age of the insured has been understated, the amount payable under the policy shall be such as the premium would have purchased at the correct age.

Lapsed policies.

(*f*) The options as to surrender values, or paid-up insurance or extended insurance to which the policyholder is entitled in the event of default in a premium payment after three full annual premiums have been paid.

Loan on policy.

(*g*) That after three full annual premiums have been paid, the company shall loan on the security of the policy a sum not exceeding 95% of the surrender value.

Table of surrender and loan values.

(*h*) A table showing the surrender and loan values and the options available under the policy each year upon default in premium payments.

(*i*) In case the proceeds of a policy are payable in instalments or as an annuity, a table showing the amounts of the instalment and annuity payments. Table of instalments.

(*j*) That a policyholder shall be entitled to have the policy reinstated at any time within two years from date of lapse, unless the cash value has been paid, paid-up insurance granted, or the extension period expired, upon a satisfactory medical examination and the payment of all overdue premiums with interest not exceeding 6% per annum compounded annually from the date of lapse. Reinstatement of policy.

(*k*) That an action against a British or foreign company may be brought in the Courts of the province where the policyholder resides or last resided before his decease. Action against a British or foreign company.

The above provisions do not apply to assessment companies or industrial insurance.

The Act also provides that there shall be a distribution of surplus to participating policies at intervals not greater than quinquennially and that deferred dividend policy allotments must be treated as a liability the same as reserves. Further, that the surplus allotted to any participating policy shall at the option of the policyholder, be payable in cash, or applied in payment of a premium, or the purchase of a paid-up addition to the policy. Distribution of surplus.

The Provincial Legislatures have never admitted that the Federal Parliament has jurisdiction to legislate in respect to the insurance contract and for that reason nearly all of the provinces have passed legislation similar to the Dominion enactments respecting the policy. In 1914 Nova Scotia passed an Act providing that all policies issued to residents of that province should comply in all respects with the provisions of the Dominion Insurance Act. For some reason this Act was repealed in 1918. It is a matter of satisfaction to know that the statutory Provincial legislation.

enactments of the Dominion and the various provinces respecting the insurance contract do not clash.

Quebec Civil Code, Art. 2588

In the Quebec Civil Code a contract of insurance is defined as well as what a life policy contains. Article 2588 recites that the declaration in the policy of the age and condition of health of the person upon whose life the insurance is made, constitutes a warranty upon the correctness of which the contract depends. Nevertheless, in the absence of fraud, the warranty that the person is in good health is to be construed liberally and not as meaning that he is free from all infirmity or disorder.

Meaning of forms of life insurance.

The ordinary meaning of various forms of life insurance are as follows:

Ordinary Life: Payable at death only; premiums payable for whole of life.

Limited Payment Life: Payable at death; number of premiums limited to term of years.

Endowment Assurance: Payable at end of definite term or prior death.

Term Insurance: Payable at death if occurring within a certain term of years; at end of that term insurance ceases.

Income Insurance: Payable in annual, semi-annual or monthly instalments following death or at end of definite term.

Annuity: Stipulated sum payable annually during lifetime of insured; may be ordinary annuity, certain and deferred, survivorship or joint annuity.

CHAPTER III.

THE PREMIUM.

The premium is the consideration or price which the insured obligates himself to pay for the insurance. The premium is necessarily closely associated with the risk and has been defined as "a price paid adequate to the risk." This is one of the reasons forming the basis of the requirement that the insured shall fully and fairly represent every fact which shows the nature and extent of the risk. Life insurance differs from fire insurance in this, that in Canada at least, a contract of life insurance is never completed until the premium is paid and accepted by the company insuring.

Ontario Insurance Act, Sec. 159.

There is a reservation, however, to this rule due to section 159 of The Ontario Insurance Act which provides that where the policy has been delivered, it shall be as binding on the insurer as if the premium had been paid. Reference has already been made in Chapter II. to this section, which is the only disturbing factor in a well established rule of life insurance law.

Payment of premium.

In Canada the life policy, or the application which forms part of it, invariably declares that the insurance is not to become effective until payment of the premium during the good health of the applicant and its acceptance by the company. Production, however, from the custody of representatives of the insured of the policy, was held in a case decided by the Supreme Court of Canada, to raise a *prima facie* presumption that it was duly delivered and the premium paid, but that this presumption

could be rebutted by evidence going to show that the premium was not paid and that the delivery of the policy was merely conditional: Mutual Life of Canada v. Giguere (1902), 32 S.C.R. 348. This was an appeal from the judgment of the Court of King's Bench of the Province of Quebec. In view of section 159 of The Ontario Insurance Act, the above decision would not be applicable to an insurance contract subject to construction according to the law of Ontario.

Forfeiture for non-payment of premium

In case the whole of a premium is unpaid when due, forfeiture takes place, unless there is some provision in the policy or some statutory enactment preventing it. Promptness in payment of the premium is of the essence of life insurance. The Dominion and all the provinces now have legislation giving the insured thirty days' grace, except in the case of an initial payment, before a forfeiture becomes effective. So if the insured dies during the period of grace, the company is liable, the only condition being that the premium due must be deducted from the amount of the insurance. This is also provided for by Statute: Dominion Insurance Act, 1917, Chap. 29, Sec. 91. According to the Ontario Insurance Act the payment, delivery or tender of the premium may be by sending the money in a registered letter and is deemed to have been paid, delivered or tendered at the time of the delivery and registration of a letter at a post office in Ontario: Sec. 164 (2). On such payment, delivery or tender, the contract is *ipso facto* revived notwithstanding any agreement or stipulation to the contrary. Most of the other provinces have provisions of like import.

London & Lancashire v. Fleming.

Once a policy has become forfeited for non-payment of premium, within the days of grace, an agent cannot extend the time without express authority from the com-

pany. Merely debiting the agent, who has accepted a premium after the days of grace, with the premium by the company, is not equivalent to a payment to the company by the insured: London & Lancashire Life v. Fleming (1897), A.C. 499.

Premium note.

Where credit is given for payment of the premium, it is usually in the form of a premium note. Policies or the applications therefor, invariably provide for forfeiture upon non-payment of the premium note at maturity and that notwithstanding forfeiture, the insured shall be liable for payment of the full amount of the note. Usually a premium note also contains such conditions. The Courts have frequently held that the insured is liable for the full amount of the note, notwithstanding the fact that his policy was only in force during the currency of the note. The plea of a failure of part of the consideration is not a good defence to an action brought by the company for the recovery of the full amount of the note and interest. Where a premium note is given, the company's official receipt for payment of the premium is not delivered to the insured until the note is paid.

McGeachie v. North American.

It is held in Canada as well as in United States that where the stipulation for forfeiture is contained in the policy or application or only in the premium note, failure to pay the note at maturity forfeits the policy, without affirmative action on the part of the company: McGeachie v. North American Life (1893), 23 S.C.R. 148; Iowa Life Insurance Co. v. Lewis (1902), 187 U.S. 335.

Forfeiture for non-payment of premium note.

Where a policy contains a condition of forfeiture for non-payment of a premium note at maturity, but provides that the note should nevertheless be payable, equivocal acts, such as carrying the policy in the books of the company as an existing policy and including the

amount in its official returns of insurance in force, are not evidence of waiver of the forfeiture, these acts not being known to the insured or intended to influence his conduct. A demand by the company of payment of the premium after default does not constitute waiver of forfeiture.

Section 159 of The Ontario Insurance Act which has been referred to above contains the following sub-section: "Where the premium is paid by cheque or a promissory note and the cheque is not paid on presentation or the promissory note at maturity, the contract shall at the option of the insurer be void."

Cases in which person has lien on policy.

When a person, not the sole beneficial owner, pays the premiums to keep up a policy of life insurance, he is entitled to a lien on the policy or its proceeds in the following cases: (1) By contract with the beneficial owner: (2) By reason of the right of trustees to an indemnity out of their trust property for money expended by them in its preservation: (3) By subrogation to their right of some person who, at the request of trustees, has advanced money for the preservation of the property: (4) By reason of the right of a mortgagee to add to his charge any money paid by him to preserve the property. In no other cases can a lien on a policy for premiums paid be acquired either by a stranger or by a part owner of the policy: Leslie v. French (1883), 23 Chy. Div. 552.

Leslie v. French.

CHAPTER IV.

AGENTS.

Since all Canadian companies employ agents, and since insurance is largely placed through the medium of agents, it would be well to shortly consider their powers, their duties and how far their acts bind their principals.

In most, if not all the provinces, insurance agents must obtain certificates of authority or licenses from the Government before they can act as such. A certificate or license may be revoked if after due investigation the Superintendent of Insurance determines that an agent has violated any of the provisions of the provincial insurance law or has been guilty of a fraudulent act or a criminal offence, and in some provinces for other causes. In Manitoba, Alberta and Nova Scotia a certificate of authority may be revoked for any violation of the provisions of the Dominion Insurance Act. No doubt the legislatures of the provinces have had the pernicious habit of rebating in mind. This is quite evident in Manitoba at least, where in 1919 the following important amendment was made to its Insurance Act:

Provincial licenses.

Revocation for rebating.

> 91A. No agent, or other person representing, or doing business in the province for any company registered or licensed under this Act shall, directly or indirectly, divide or offer to divide his commission or other remuneration, or any other matter or thing or value with any person whose life, safety, health, fidelity, property or insurable interest he may be insuring or seeking to insure, or with any person having or claiming or appearing to have any influence or control over the person for whom insurance is sought to be placed unless such agent holds a subsisting certificate of authority.

Manitoba Act of 1919, Chap. 46.

Nova Scotia Act of 1919, Chap. 74.

Nova Scotia is the only province having a special Act respecting insurance agents. It was passed in 1919, being Chap. 74 of the Acts of that year. The following is the principal section:

> 4. (*a*) No person, firm, company or corporation shall mislead or deceive any person about to insure by misrepresenting any of the terms or conditions of any policy contract, whether issued by the company represented by him, or issued by any other company, or to issue or circulate or cause to be issued or circulated any document or publication containing representations of such a nature.
>
> (*b*) No person, firm, company or corporation shall procure, induce, or attempt to procure or induce any person insured under a policy of one company to lapse said policy and insure in another company by means of misleading or false statements, either about the company itself or any of its policy contracts.

In other respects the provisions of the Act are similar to those contained in the Insurance Acts of other provinces respecting agents.

General law governing powers of agents.

The general law of principal and agent governs the powers of agents. Bunyon in his excellent work on Life Insurance says that in all questions arising upon the acts of agents, it must be remembered that they are only binding upon the company to the extent of the agency or the delegated authority, and for any such act, the power may be either express or incidental to the office conferred. He says further that the employment of an agent in any particular capacity gives the necessary authority to act under ordinary circumstances only. If an emergency occurs, an act of agency in excess of his authority is upon his own responsibility and he must take the chance of the approval or disapproval of his principal. But if the principal afterwards adopts the act or contract of the agent, such a confirmation will operate from the time of

the contract and not only from the time at which it is given. If the agent commits a fraud in the conduct of the business in which his principal has placed him, the principal may be responsible to third parties for the manner in which that agent has conducted himself in doing the business which it was the act of the master to place him in.

Limited authority of agents.

In Canada, and no doubt in other countries as well, the term "agent" is commonly applied in practice to persons who are invested with a very limited authority, being employed in places distant from the head office of the company to solicit applications for insurance and to receive premiums. To such persons the general law respecting agents and their capacity for agency will apply. They must closely follow the instructions of the company and by no means presume to exceed the limits of the delegated authority.

Agents' contracts.

As a general rule, the powers and duties of an agent are specifically and concisely set out in an agreement entered into between the company and agent called the agent's contract. Generally speaking, the agent is given no authority on behalf of the company to make, alter or discharge any contract; to waive forfeitures or grant permits; to collect any premiums except those for which policies or official receipts have been placed in his hands for collection nor to contract any debt on behalf of the company, except where expressly authorized. Even at common law an agent cannot bind the company so as to alter the conditions of any contract of insurance, or revive a lapsed policy without the previous express approval of the company, or involve it in any fresh liability by pledging it to any new or additional insurance contract.

Authority of agents.

Insurance policies issued in Canada usually contain a clause that none of the provisions may be changed or

modified except by an endorsement signed by some head office official. Generally there is also a provision that no agent has authority to put a policy in force before payment of the first premium and delivery of the company's official receipt.

Agents' accounts.

One of the principal duties of an agent, if not his most important duty, is to keep regular account of all his transactions and pay over all moneys received by him to the company. Should he mix the moneys received by him on the agency account with his own, paying them to the same account with a banker, he must bear the loss of the failure of the latter. Should he presume to speculate with the company's moneys, he will be liable to account to the company for the profits, if any.

Difficulty has frequently been met with in ascertaining when and how far the agent represents the insurer and the insured. Some companies have sought to avoid the controversy by an agreement set forth in the policy or application. The Courts have striven to regard the question as one of fact and n[illegible] stipulation, and therefore to be determined from the facts of each case, and not from mere words used. In life insurance the point has been largely put at rest by section 81 of the Dominion Insurance Act of 1917, which reads as follows:

Dominion Insurance Act, 1917, Sec. 81.

Agent of company not to be agent of insured

> No officer, agent, employee or servant of such life insurance company nor any person soliciting insurance, whether an agent of the company or not, shall be deemed to be for any purpose whatever the agent of any person insured in respect of any question arising out of the contract of insurance between such person insured and the company.

The Dominion Act also contains the following important sections forbidding estimating and rebating:

Sec. 82. Estimates forbidden.

> 82. No such life insurance company, and no officer, director or agent thereof, shall issue or circulate,

or cause or permit to be issued or circulated in Canada any estimate, illustration or statement of the dividends or shares of surplus expected to be received in respect of any policy issued by it.

Sec.83.Rebates, discrimination, &c., forbidden.

83. (1) No such life insurance company shall make or permit any distinction or discrimination in favor of individuals between the insured of the same class and equal expectation of life in the amount of premiums charged, or in the dividends payable on the policy, nor shall any agent of any such company assume to make any contract of insurance, or agreement as to such contract, whether in respect of the premium to be paid or otherwise, other than as plainly expressed in the policy issued; nor shall any such company or any officer, agent, solicitor or representative thereof pay, allow or give, or offer to pay, allow or give, directly or indirectly, as inducement to insure, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon, or any advantage by way of local or advisory directorship where actual service is not bona fide performed, or any paid employment or contract for services of any kind, or any inducement whatever intended to be in the nature of a rebate or premium; nor shall any person knowingly receive as such inducement any such rebate of premium or other such special favor, advantage, benefit, consideration or inducement; nor shall any such company or any officer, agent, solicitor or representative thereof give, sell or purchase as such inducement, or in connection with such insurance, any stocks, bonds, or other securities of any insurance company or other corporation association or partnership.

Penalty.

The penalty provided by the Act for rebating is for the first offence double the amount of the annual premium, and in no case less than one hundred dollars, and for a second or subsequent offence, double the amount of the annual premium and in no case less than two hundred dollars. The penalty is recoverable in any Court of competent civil jurisdiction at the suit of any person

suing, as well for His Majesty as for himself. One-half of such penalty when recovered, is applied towards payment of the expense of the Insurance Department and the other half to the person suing. Offenders are not to be indemnified out of the funds of the company. For estimating, the penalty is not less than twenty dollars and not more than five thousand dollars for each offence. Such penalty is recoverable and enforceable with costs at the suit of His Majesty, instituted by the Attorney-General of Canada, and shall, when recovered, be applied towards payment of the expenses of the Department.

The Dominion Act makes the following further provisions as to life insurance agents:

Additional commissions.

That a life insurance company shall not allow any agent for procuring an application, for collecting any premium or for any other service performed in connection therewith, any compensation other than that which has been determined in advance: Sec. 54.

Advances to agents.

No life insurance company shall make any loan or advance to an agent soliciting applications without adequate security except for travelling expenses or against commissions or other compensation to be earned in respect of premiums: Sec. 55.

Salaries of agents.

No salary or compensation amounting in any year to more than $5,000 shall be paid to any agent without the approval of the Company's Board of Directors.

Salary agreement for not more than 5 years.

Salary agreements shall not be for more than five years, but this restriction is not applicable to agreements in respect of insurance secured or to be secured by the agent, such insurance amounting in any year to less than 20% of the total insurance secured in that year by the company. All salary agreements with agents are terminable at the option of the company on not more than three months' notice: Secs. 56 & 57.

CHAPTER V.

BENEFICIARIES.

R OF BENEFICIARIES AT COMMON LAW.

In order to properly understand and appreciate the important legislation passed by the various provinces in Canada in respect to beneficiaries, it is necessary to consider the rights of beneficiaries at common law.

Vested interest of beneficiary.

Chief Justice Fuller of the Supreme Court of the United States, in the case of Central Bank of Washington v. Hume (1888), 128 U.S. 195, very well expresses the common law rule on this continent in respect to the rights of the beneficiary in whose favor a policy is made. He says: "It is indeed the general rule that a policy and the money to become due under it, belong, the moment it is issued, to the person or persons named in it as the beneficiaries and that there is no power in the person procuring the insurance, by any act of his, by deed or will, to transfer to any other per-

son the interest of the person named." This is also the rule laid down years ago by Bliss on Life Insurance, who is regarded as a leading authority in the United States. The rule has been followed by the Canadian courts. The interest of the beneficiary is a vested one, subject to be defeated in the event of the moneys never becoming payable within the terms of the contract. Bliss says that an irrevocable trust is created. This, however, must depend ultimately upon the intention of the insured. In England the rule is not so strongly put as on this continent. There, the intention of the donor is looked at to determine the completeness of the gift, although the acceptance of a gratuity is presumed.

Insured reserving right to change beneficiary.

The insured can, of course, in creating the trust, make an arrangement with the company by which he reserves the right to change the beneficiary with the assent of the company. In the United States such a course is almost invariably pursued, with the result that the insured may change the beneficiary at any time. If the insured, however, makes no new appointment in his lifetime, the beneficiary becomes absolutely entitled to the insurance moneys.

Beneficiary predeceasing insured.

At common law, when a beneficiary predeceases the insured, the right to the money passes, in the absence of a contrary stipulation, to the estate of the beneficiary. But directly a Statute or an agreement with the insured confers a power of revocation, the beneficiary has only a contingent interest, and upon his predeceasing the insured the insurance money will, in the absence of a contrary provision, not belong to the estate of the beneficiary, but to the insured or his estate or to such as the Statute may designate.

Provincial legislation.

There has been elaborate and somewhat complicated legislation passed by the various provinces of Canada per-

taining to beneficiaries, and the common law doctrine as explained above has been greatly altered. An interesting historical review of the development of legislation in Canada on the subject will be found in Cameron's work on Life Insurance. Since the provincial Statutes differ more or less it has been considered advisable to deal with them separately.

Provisions of the Ontario Insurance Act Respecting Beneficiaries.

In the interpretation section of the Act it is stated that "beneficiary" shall include every person entitled to insurance money and the executors, administrators and assigns of any person so entitled: Sec. 2 (6).

The Act recognizes three classes of beneficiaries: (*a*) Preferred; (*b*) Ordinary; and (*c*) For Value.

PREFERRED BENEFICIARIES:—

By Sec. 178 (1) preferred beneficiaries are constituted a class and include the husband, wife, children, grandchildren and mother of the insured.

Who shall constitute preferred beneficiaries.

A trust is created in favor of these beneficiaries. Sec. 178 (2) reads as follows:

Trust created.

> Where the contract of insurance or declaration provides that the insurance money or part thereof, or the interest thereof, shall be for the benefit of a preferred beneficiary or preferred beneficiaries, such contract or declaration shall, subject to the right of the assured to apportion or alter as hereinafter provided, create a trust in favor of such beneficiary or beneficiaries, and so long as any object of the trust remains, the money payable under the contract shall not be subject to the control of the assured, or of his creditors, or form part of his estate, but this shall not interfere with any transfer or pledge of the contract to any person prior to such declaration.

This is really the most important provision in the whole Act and for that reason it has been quoted in full. There is no similar enactment in any of the American States. In England there is legislation of like import but the preferred class is confined to wives and children.

The effect of this enactment is to create a statutory trust which is engrafted on the insurance contract and is made an integral part of it. As soon as the nomination of a preferred beneficiary is made, the money payable under the contract is withdrawn from the control of the insured and is also exempt from the claims of his creditors. Furthermore, the money forms no part of his estate.

Insured may vary benefit or beneficiary.

By a later section it is provided that the insured may by a declaration, including a will, vary a contract or declaration previously made so as to restrict, extend, transfer or limit the benefits of the insurance to any one or more persons of the class of preferred beneficiaries, but it is expressly stated that he cannot make an appointment in favor of any one out of the preferred class so long as any of that class are living: Sec. 179 (1).

Adopted or step-child not a preferred beneficiary.

An adopted child or grandchild is not within the preferred class: Fidelity Trust Co. v. Buchner (1912), 26 O.L.R. 367. A step-child or step-mother is not a preferred beneficiary: Re Rutherford (1917), 40 O.L.R. 266.

Wife securing a divorce.

Where a wife, specifically named, secures a divorce, either in Canada or elsewhere, she is no longer a preferred beneficiary. She will continue to be an ordinary beneficiary until a further appointment is made by the insured: Re Banks (1918), 42 O.L.R. 64.

Where the insured, by his will, after directing the payment of his just debts out of his general estate, bequeathed and devised to his widow all his estate,

including his life policies, subject to the payment of such debts, it was held that the widow only took the policies subject to the payment of the debts: Re Wrighton (1904), 8 O.L.R. 630, and Re Honsberger (1916), 11 O.W.N. 187.

In Ontario insurance moneys payable to preferred beneficiaries are liable to the claims of their creditors: Re Mutual Life Assurance (1908), 18 O.L.R. at p. 414.

The contingent interest created by Sec. 178 (2) can be assigned by the preferred beneficiary, the assignee taking subject to the contingency happening, *i.e.*, by the insured transferring the benefit to some one else in the preferred class: Kelly v. McBride (1903), 7 O.L.R. 30.

Meaning of "heirs."

The words "heirs," "legal heirs" or "lawful heirs" mean and include all the lawful surviving children of the insured and also the wife or husband if surviving the insured. Where the insured dies without lawful surviving children and unmarried, they mean those persons entitled to take according to The Devolution of Estates Act: Sec. 163.

Shares of beneficiaries.

Where two or more beneficiaries are designated but no apportionment is made, all of them share equally: Sec. 178 (3).

Beneficiary wife only, or wife and children.

Meaning of "wife" and "children."

Where a policy is payable to wife of the insured only, or to his wife and children generally, or to his children generally, the word "wife" means the wife living when the contract matures, and the word "children" includes all the children of the insured living when the contract matures and also the children of a deceased child, such last mentioned children taking the share their parent would have taken if living. This rule also prevails where insurance is effected by a man while unmarried or a widower for the benefit of his future wife, or his future wife and children or of his children: Sec. 178 (3a).

Designation by insured and subsequent re-marriage.

Where a policy is payable to the wife only and she is designated by name, and she is not living when the policy matures, the insurance money is payable in equal shares to the wife then living and the children of the insured and also the children then living of any child of the insured who predeceased him, such last mentioned children taking the share their parent would have taken if living: Sec. 178 (4).

Where insured unmarried or widower without issue.

Where an unmarried man or a widower effects the contract or declares it to be for the benefit of his future wife, or of his future wife and children or of his children, but at maturity of the contract the assured is still unmarried, or is a widower without issue, the insurance money forms part of his estate: Sec. 178 (5).

Where insured does not marry specified beneficiary.

Where an unmarried man or a widower effects or declares the contract to be for the benefit of his future wife, or future wife and children, and the intended wife is designated by name or is otherwise clearly ascertained in the contract, but the intended marriage does not take place, all questions arising on such contract shall be determined as in the case of a beneficiary not belonging to the preferred class: Sec. 178 (6).

Where beneficiary predeceases insured.

If a designated preferred beneficiary dies in the lifetime of the insured, he may by a declaration provide that the benefit of the person so dying shall be for his own benefit or that of his estate or of any other person whether of the preferred class or not. In the absence of any such declaration, the share of the person so dying is payable in equal shares to the survivor or survivors of the designated preferred beneficiaries, except where the person so dying is a child of the insured and leaves a child or children surviving him, in which case such child or children take his share. If there is no such surviving beneficiary and no such child entitled to take, the insur-

ance money is payable to the wife and children of the insured living at his death, and the child or children of any deceased child who take the parents' share, and if there is no surviving wife, child or grandchild, the money forms part of the insured's estate: Sec. 178 (7).

Power to convert into paid-up policy.

Where the insured is unable to continue paying premiums, he may surrender the policy and accept in lieu thereof a paid-up policy. This can be done without the consent of a preferred beneficiary: Sec. 180 (1).

Power to borrow on policy to meet premiums.

Notwithstanding the designation of a preferred beneficiary, the insured may borrow from the company or any one, such sums as may be necessary to keep the policy in force, and such sums with interest constitute a first lien on the insurance moneys: Sec. 180 (2).

Application of bonuses and profits.

The insured without the consent of preferred beneficiaries may apply bonuses or profits on a policy as he chooses: Sec. 181 (1).

Surrender or assignment of contract.

Where the policy is made payable to preferred beneficiaries, the insured cannot surrender the policy, except for a paid-up policy, without the consent of such beneficiaries. In order to assign the contract either absolutely or by way of security, he must first obtain their consent. Beneficiaries under age cannot consent.

ORDINARY BENEFICIARIES:

All beneficiaries who are not in the preferred class and not designated as beneficiaries for value are known as ordinary beneficiaries.

Right to revoke appointment.

According to the Ontario Insurance Act, the insured has the right at any time to revoke the appointment of an ordinary beneficiary and make an appointment, either by declaration or will, in favor of himself, or his estate or anyone else: Sec. 171 (3).

It will consequently be seen that in the case of ordinary beneficiaries, the vested interest doctrine at common law has been done away with in Ontario by Statute. It was pointed out above that in the United States the same object is attained by the insured reserving the right in the insurance contract to change the beneficiary.

The wisdom of the Ontario enactment is self-evident. Where a policy is payable to an ordinary beneficiary, there is no good reason why an insured should not have complete control over the policy in so far at least as the appointment of another beneficiary is concerned. He pays the premiums, no consideration moves from the beneficiary, the act is entirely gratuitous on the part of the insured, and in many cases it is highly desirable that a change should be made, *e.g.*, an insured after marriage altering the benefits in favor of his wife.

Case of death of persons entitled where no apportionment.

The Act goes on to state that where there are several ordinary beneficiaries, if one or more of them die in the lifetime of the insured and no apportionment or other disposition is subsequently made by him, the insurance shall be for the benefit of the surviving beneficiary or beneficiaries, in equal shares if more than one; and if all the beneficiaries, or the sole beneficiary, die in the lifetime of the insured and no other disposition is made by him, the insurance shall form part of the estate of the insured: Sec. 171 (9).

BENEFICIARIES FOR VALUE:

In the interpretation section to the Act, "beneficiary for value" is stated to mean a beneficiary for a valuable consideration other than marriage.

Sec. 171 (7) is as follows:

> A beneficiary shall be deemed to be a beneficiary for value only when he is expressly stated to be so in the contract or in an endorsement thereon signed by the assured.

Particular notice should be taken of the fact that while other beneficiaries may be appointed by declaration or by will subsequent to the issue of the policy, the nomination of a beneficiary for value can only be effected in the policy itself or endorsed on it.

A beneficiary for value acquires a vested interest in a policy which the insured cannot by any method defeat.

It is customary in Canada for an insured to take out a policy payable to himself and then assign it, rather than to have it payable in the first place to a beneficiary for value.

THE APPOINTMENT AND CHANGING OF BENEFICIARIES:

A very important branch of life insurance law is the appointment of beneficiaries and the powers given the insured to revoke, alter and divert the benefit of insurance contracts from time to time. The subject has already been touched on to a certain extent in the preceding paragraphs dealing with the different classes of beneficiaries. Contending claimants are continually before the Courts and the decisions on the subject are multifarious. Careful consideration should therefore be given to the statutory powers accorded the insured in the disposition of the benefits of a life policy.

Beneficiary, how designated.

In the first place, the insured may designate the beneficiary by the insurance contract itself. In fact, this is necessary. The proceeds of the policy must be made payable to some definite person. Very frequently the insured makes the policy payable to himself or his estate. By so doing he retains absolute control of the benefits during his lifetime. He is at liberty to make an appointment in favor of anyone that he wishes. But having once made a declaration. his further powers over the

policy depend on whether the appointee is an ordinary or a preferred beneficiary. The distinction between these two classes has already been fully dealt with.

In the ne..t place it is necessary to consider what act is required on the part of the insured, to change the beneficiary named in the policy and thereafter from time to time apportion, alter or revoke the benefits.

The Ontario Insurance Act provides that the insured may designate the beneficiary by the contract of insurance or by an instrument in writing attached to or endorsed on it or by an instrument in writing, including a will, or otherwise in any way identifying the contract: Sec. 171 (3).

The "instrument in writing" is termed a declaration and is referred to as such throughout the Act.

Meaning of "declaration."

The interpretation section of the Act defines a "declaration" as follows: "Any mode of designating in writing a beneficiary or of apportioning or reapportioning insurance money among beneficiaries." This section also states that a "will" shall mean last will and testament.

Considerable litigation arose over the proper interpretation of sub-sec. 3 of sec. 171, and the Legislature in 1912 added the following to sec. 171:

Operation of general declaration.

> (5) Where the declaration describes the subject of it as the insurance or the policy or policies of insurance or the insurance fund of the assured, or uses language of like import in describing it, the declaration, although there exists a declaration in favor of a member or members of the preferred class of beneficiaries, shall operate upon such policy or policies to the extent to which the assured has the right to alter or revoke such last mentioned declaration.

This sub-section very materially modifies the previously existing law. The Ontario Courts now hold that if it appears from the words used by the insured in the declaration that he desires to change the beneficiary, effect must be given to it accordingly. The intention of the insured is the main consideration: Re Baeder & Canadian Order of Chosen Friends (1916), 36 O.L.R. 30; also Re Monkman & Canadian Order of Chosen Friends (1918), 42 O.L.R. 363.

Re Baeder and Chosen Friends.

The provinces of Saskatchewan and Alberta have incorporated this important sub-section into their Insurance Acts.

It has been held that a document signed in the form of a will by the insured and in existence at the time of his death, though not executed in accordance with the Wills Act and consequently invalid as a testamentary document, is an "instrument in writing" effectual to vary the benefits of an insurance contract: Leavitt v. Spaidal (1919), 45 O.L.R. 611, and see also Re Monkman & Chosen Friends cited above.

Leavitt v. Spaidal.

It was also held in Leavitt v. Spaidal that the simple description "insurance" in the document, there being no other insurance than the policy in question, was a sufficient identification to make the instrument an effective declaration under the provisions of Sec. 171 (5).

It is evident that the Ontario Courts have followed the well known rule of law that "an Act should receive such fair, large and liberal construction and interpretation as will best ensure the attainment of its object." Whether the Supreme Court of Canada would place such a liberal construction on this sub-section is doubtful in view of the remarks by a number of the Judges in that Court in the case of Arnold v. Dominion Trust Co. (1918), 56 S.C.R. 433.

Arnold v. Dominion Trust

There is nothing similar to Sec. 171 (5) in the Insurance Acts of any of the other provinces except Saskatchewan and Alberta.

It has been held in Ontario in the case of an endowment assurance policy that the insured may by a proper declaration divert insurance moneys from one beneficiary to another after the expiration of the endowment period and before the moneys are paid over, on the ground that the insurance contract is still subsisting: Re Sun Life & McLean (1919), 15 O.W.N. 393.

Re Sun Life & McLean.

Effect of declaration by will.

Where the instrument by which a declaration is made is a will, such declaration as against a subsequent declaration is deemed to have been made at the date of the will and not at the death of the testator: Sec. 171 (4).

There is an interesting review of the Ontario cases on declarations by Mr. Justice Riddell in Re Baeder & Chosen Friends (1916), 36 O.L.R. 30.

Company protected in payment before notice of declaration.

It rests with the assured or other person interested to see that proper notice is given the insurer of any dealings with the benefits of the policy, otherwise the latter may deal with and obtain a valid discharge, "in the same manner and with the like effect" as if such transaction had not taken place. Such notice is defined by the Act to be "the original or a copy of an instrument in writing affecting the insurance money or any part thereof, or of any appointment, or revocation of an appointment of a trustee." Sec. 171 (10).

Naming beneficiary by will.

As a rule, the insured desires to retain control of the policy during his lifetime. At the same time, in case of his death, he wishes the benefits to go to his wife or children, or at least to some one in the preferred class of beneficiaries, free from the claims of his creditors, and forming no part of his estate, or possibly, in case of his

death, he wishes the moneys to go to some person not in the preferred class. The insured can attain this object by naming the desired beneficiary in his will, assuming that when he makes the will he has complete control over the policy. By so doing the policy remains in his absolute control to deal with subsequently as he may see fit. It is assumed, of course, that the insured does not notify the company of the appointment by the will, because if he does, and the appointee is a preferred beneficiary, he cannot make a new appointment except in favor of some one else in the preferred class.

Quebec Law.

In Quebec, most of the law pertaining to the subject of insurance has been codified. It is to be found partly in the provincial Statutes and partly in the Civil Code. The articles, as a rule, are clear and concise, more so than many of the sections of the Insurance Acts of the other provinces.

To one familiar only with the laws of the English speaking provinces, the Quebec law is somewhat perplexing at first, owing to the infusion into a number of the articles of certain doctrines in the Civil Law of France. However, the underlying principles of the Quebec law respecting beneficiaries are similar to those of the other provinces. The articles are mostly derived from English and American authorities, a few have been adopted from the statutory laws of the other provinces.

There are two classes of beneficiaries analogous to what are known in the other provinces as preferred and ordinary beneficiaries, although not so called in Quebec. For the sake of convenience these terms will be used.

PREFERRED BENEFICIARIES:

The Wives' and Children's Act.

The Wives' and Children's Act found in the Revised Statutes of Quebec, 1909, Articles 7377 to 7407 inclusive, deals exclusively with life insurance by husbands and parents and creates a specially protected class of beneficiaries. The class is not so wide as in Ontario. It consists in the case of a man, of his wife, his children and his wife's children. In the case of a woman it consists of her children. Such beneficiaries may be named in the policy, or appropriation may be made in their favor subsequently.

How appropriation may be made.

The appropriation is made by a declaration in writing endorsed upon or referring and attached to the policy. A duplicate of the declaration must be filed with the company and a note of the filing of such duplicate must be endorsed by the company on the policy or on the declaration. These formalities are for the protection of the company and their absence will not vitiate the appropriation. It is sufficient if the declaration be made by a separate instrument not attached to the policy, at the time a duplicate is filed with the company. An appropriation may also be made by will.

Where no apportionment is made.

Where no apportionment is made among the beneficiaries, either when the insurance is effected or by declaration or will, the parties interested share as follows:

1. If the insurance is for the benefit of a wife and the children, issue of her marriage with the person whose life is insured, one-half for her and the other half for their children, who shall divide equally:

2. If for the benefit of a wife and her children, one-half for the wife and the other half for her children, whether issue of the same or of different marriages, who shall divide equally:

3. If for the benefit of a wife and her husband's children, one-half for the wife and the other half for the children of her husband, whether issue of the same or of different marriages, who shall divide equally:

4. If for the benefit of a wife and her husband's and her own children, one-half for the wife and the other half for his children and for her children, whether issue of their or of other marriages, such children dividing equally:

5. If for the benefit of a wife and one or more children specified by name, one-half for the wife a: the other half for such child, or for such childre who shall divide equally:

6. If for the benefit of children generally, equally between the children of the parent whose life was insured, whether issue of the same or different marriages:

7. If for the benefit of several children specified by name, equally between them. Art. 7384.

When a child predeceases insured.

When any child, specified by name or included generally, predeceases the person w! ›se life is insured, the descendants of such predeceased child take his or her share by representation: Art. 7385.

If no apportionment made.

When the insurance is effected or the appropriation is made without apportionment in favor of several children, whether it be jointly with a wife or in favor of children alone, if any of such children predecease the person whose life is insured, without issue, accretion takes place in favor of the surviving children.

When the insurance effected, or appropriation made without apportionment, is in favor of a wife and a child or children, if the wife predeceases her husband, accretion takes place in favor of the child or children, and if the child or all the children predecease the husband, accretion takes place in favor of the wife: Art. 7386.

Revocation of benefits conferred.

A policy in favor of a preferred beneficiary cannot be changed without his consent except in favor of another preferred beneficiary. A revocation containing an appropriation in favor of another preferred beneficiary, or any re-apportionment of the benefits among any of the mem-

bers of the preferred class, may be by declaration similar to that used in an original appropriation or by will. The manner of notice to the company is also the same. If the appropriation is by will, an authentic copy must be lodged with the company after the death of the insured. In default of such notice, the company is validly discharged by paying the insurance money according to the terms and directions of the policy or of a previous declaration or revocation: Art. 7388.

When policy reverts to insured.

The policy reverts to the insured:

1. When the child for whose benefit it was effected or appropriated, or the surviving child for whose benefit solely it exists, dies without issue before the person insured:

2. When the wife for whose sole benefit it exists either by the policy, appropriation or revocation, or by accretion, predeceases her husband with or without issue.

The benefit of any share in an apportionment likewise reverts to the insured, when the child to whom it was apportioned dies without issue before the insured parent, or when the wife to whom it was apportioned predeceases her husband with or without issue. Art. 7389.

It is to be noted that if the wife is the sole beneficiary or an apportionment exists in her favor and she predeceases her husband, the policy, or her share as the case may be, reverts to him, whether she leaves issue or not.

It was held in Quebec that a wife who murdered her husband was not entitled to the benefits of a policy on his life made payable to her. In this particular case the Court declared that the insurance money belonged to the husband's estate: Trudeau v. Standard Life (1899), Q.R. 16 S.C. at p. 547. A similar decision was given in England arising out of the celebrated Florence Maybrick murder case: Cleaver v. Mutual Reserve (1892), 1 Q.B. 147.

Cleaver v. Mutual Reserve.

Divorced wife.

It has also been held that under the Quebec law, a wife who is divorced either in Canada or by a foreign court ceases to have any claim to the policy, which reverts to the husband: Hart v. Tudor (1892), Q.R. 2 S.C. 534, and O'Reilly v. O'Reilly (1908), 12 O.W.R. 688. In Ontario it has already been noted that the wife remains an ordinary beneficiary if specifically named.

Aetna Life v. Gosselin.

Where a first wife, to whom a policy is payable, dies, the policy reverts to the husband, who may deal with it as he likes. In case he marries again, his second wife does not take the benefits unless there is a fresh appropriation in her favor: Aetna Life v. Gosselin, Q.R. (1892), 2 S.C. 392. It will be remembered that in Ontario the second wife takes, unless the first wife is designated by name. If she is so designated then she takes equally with the children of the insured, that is in Ontario, but not in Quebec.

Power to convert into paid-up policy.

If the insured, when the policy is payable to any one in the preferred class, is unable to pay the premiums, he may surrender the policy and accept in lieu thereof a paid-up policy, in which case the benefits go in the same proportion as provided in the original policy: Art. 7398.

The insured may receive the profits for his own benefit. He may also borrow on the security of the policy, to pay premiums when he is unable to continue meeting them.

Policies exempt from seizure.

Policies payable to preferred beneficiaries are exempt from seizure for debts due either by the insured or by the person benefited.

The insurance money, *while in the hands of the company*, is free from and unseizable for the debts either of the insured or the persons benefited. Consequently the money becomes seizable the moment it is paid over by the insurance company: Art. 7405 and Devlin v. Devlin, Q.R. (1894), 6 S.C. 338, 340. This differs materially from

the Ontario law, where the money is absolutely free from the claims of the insured's creditors even when paid over to the beneficiary. It is to be noted that in Ontario the money is not free from the claims of the beneficiary's creditors.

In Quebec as in Ontario, a policy payable to preferred beneficiaries may be assigned or surrendered with the consent of all the beneficiaries if they are of age.

How an appropriation is made.

There is a singular dearth of decisions in the Quebec Courts as to what language in a declaration is sufficient to constitute an appropriation or revocation of the policy. Art. 7381 states that an appropriation is made "by a declaration in writing endorsed upon or referring and attached to the policy appropriated." Art. 7388 provides that a revocation may be made "either by an instrument to be attached to the policy or by will." The language in both cases is explicit. The policy must be definitely earmarked. This differs materially from the Ontario Act, where words of a general character are sufficient as long as the intent of the insured is reasonably plain.

ORDINARY BENEFICIARIES AND THE DOCTRINE OF ACCEPTANCE:

There is nothing in the Insurance Acts of Quebec dealing specifically with policies payable to persons other than preferred beneficiaries, nor is there anything regulating the change of beneficiaries in such cases. Recourse must therefore be had to the civil law.

Civil Code, Art. 1029.

Article 1029 of the Civil Code is as follows:

> A party may stipulate for the benefit of a third person, when such is the condition of a contract which he makes for himself, or of a gift which he makes to another; and he who makes the stipulation cannot revoke it, if the third person has signified his assent to it.

Consequently in Quebec, if a beneficiary has accepted the contract made in his favor, it is irrevocable, and a new beneficiary cannot be substituted without his consent. It is therefore always necessary to enquire whether or not the beneficiary has "accepted."

What constitutes acceptance.

In many cases it is difficult to conclude what constitutes acceptance. It need not be formal. It is sufficient if it be manifested in a certain and evident manner. It must, however, be definite. Where the beneficiary signs the application with the insured, or where he notifies the company that he accepts, or if he makes it his business to get possession of the policy and receipts at the earliest possible moment, such facts amount to acceptance. Mere possession of the policy does not always constitute acceptance. It would seem that it is not the possession alone which counts, but the circumstances under which possession was obtained. It has been held that acceptance need not be in writing at all, but that it may be made tacitly, that is to say, that the conduct and actions of the beneficiary may be sufficient to constitute acceptance: Baron v. Lemieux (1908), Q.R. 17 K.B. 177.

It can readily be seen that an insurance company is frequently placed in an awkward position. How is the company to know whether there has been acceptance? The only safeguard for the company is to take such precautions as it can, and towards that end an eminent authority on insurance law suggests this rule: Require a solemn declaration from the assured stating that the beneficiary named in the policy did not know that he was made a beneficiary, and that he never had possession of the policy which always remained in the hands of the assured, and if the assured cannot say that the beneficiary did not know of his having been so appointed, to at least ask him for a solemn declaration stating that

the beneficiary never accepted or signified his acceptance of the benefit of the stipulation, either expressly or tacitly.

It is suggested further that in practice an insurance company should always assume that there has been acceptance and require the consent of an ordinary beneficiary to a change, unless it is clearly proved that there has been no acceptance.

The difficulty could be overcome in the first place by a provision in the policy reserving to the insured the right at any time to change the beneficiary. This, of course, would only be applicable to a policy payable to a non-preferred beneficiary. As pointed out before, this course is pursued in the United States to get around the vested interest doctrine at common law which prevails there.

Manitoba Law.

The Province of Manitoba has the most meagre life insurance legislation of any of the Provinces. The only Statute dealing strictly with the subject is the Act respecting Life Insurance for the Benefit of Wives and Children, R.S.M. 1913, Chap. 99, and otherwise known as The Life Insurance Act. There is an Act respecting Insurance Companies, R.S.M. 1913, Chap. 98, but so far as life insurance is concerned it only deals with the licensing of companies, agents and other matters of a general character.

Inferentially there are three classes of beneficiaries: (*a*) Preferred; (*b*) Ordinary; (*c*) For Value.

PREFERRED BENEFICIARIES:

The Wives' and Children's Act.

This class is dealt with entirely in the Wives' & Children's Act referred to above. The class consists of

husband, wife, children and step-children. As in Ontario, a trust is created in favor of these beneficiaries; the money payable under the policy is free from the claims of the creditors of the insured and forms no part of his estate. Whatever a man may lawfully do in respect of insurance effected upon his life, may also under the like circumstances be done by a woman in respect of insurance effected upon her life.

Trust created.

The insured may, by an instrument in writing attached to or endorsed on the policy or identifying it by its number or otherwise, vary a policy declaration or appropriation previously made and apportion the benefits anew to his wife and children or to one or some of them. He may also do the same thing by his will. An appropriation so made prevails over any other made before the date of the will.

Method of varying benefits.

In the event of the death of a beneficiary during the lifetime of the insured, the latter may declare the share of the deceased to be for the benefit of such other person or persons as he may name "not being other than the wife and children of the insured or one or more of them."

Death of beneficiary.

When the benefit is for several the insured may apportion the amount payable to each. When no apportionment is made, the parties interested shall have the insurance as follows:

Where no apportionment, method of division.

> If for the benefit of a wife and the children, issue of her marriage with the person whose life is insured, one-third for her and the other two-thirds for their children, who shall sub-divide equally; if for the benefit of a wife and her children, one-third for the wife and the other two-thirds for the children, whether issue of the same or different marriages, who will sub-divide equally; if for the benefit of a wife and her husband's children, one-third for the wife and the other two-thirds for the children of her husband, whether issue of the same or different marriages,

who shall sub-divide equally; if for the benefit of a wife and her husband's and her own children, one-third for the wife and the other two-thirds for his children and for her children, whether issue of their or of other marriages, such children sub-dividing equally; if for the benefit of a wife and one or more children specified by name, one-third for the wife and the other two-thirds for such child or for such children, who will sub-divide equally; if for the benefit of children only generally, equally between the children of the parent whose life was insured, whether issue of the same or different marriages; and if for the benefit of several children specified by name, equally between them. Sec. 11.

Death of child.

When any child specified by name or included generally predeceases the person whose life is insured and there is no apportionment, the descendants of such predeceased child take his or her share by representation. If the child dies without issue and there is no apportionment, accretion takes place in favor of the surviving children. When the insurance effected or appropriation without apportionment is in favor of a wife and a child or children, if the wife predecease her husband, accretion takes place in favor of the child or children, and if the child or all the children predecease the husband, accretion takes place in favor of the wife.

When benefits revert to insured.

The benefit of the policy reverts to the insured when the child for whose benefit it was effected or appropriated, or the surviving child for whose benefit solely it exists, dies without issue before him, or when the wife for whose benefit solely it exists, predeceases her husband with or without issue.

When a policy reverts to the insured in whole or for a share or shares, the insured may deal with such policy, or share or shares, as if the insurance had been effected and always held for his or her own benefit. An important

change was made in The Life Insurance Act in 1920. It appears as Sec. 2 in Chap. 61 of the Statutes of that year. It reads as follows:

Benefits can not be taken out of preferred class.

Section 15 of the said Act is hereby repealed and the following substituted therefor:

15. If in case of a policy of insurance heretofore or hereafter effected by a man or woman, it is expressed on its face to be for the benefit of, or has been heretofore or shall be hereafter under this Act appropriated for the benefit of any person or persons other than his wife or her husband, or his wife and children, or her husband and children, or his or her children or any of them, then the insured may, by an instrument in writing attached to or endorsed on the policy or identifying the same by its number or otherwise, absolutely revoke the benefit or declaration or appropriation previously made and apportion the insurance money, or by like instrument from time to time reapportion the same, or alter or revoke the benefits, or add or substitute new beneficiaries, or divert the insurance money wholly or in part to himself or his estate, provided that the insured shall not alter or revoke or divert the benefit of any person who is a beneficiary for value.

Prior to the change an insured was permitted at any time to revoke the benefits conferred on preferred beneficiaries. The effect of the legislation of 1920 is to prevent an insured from taking away the benefits of a policy from preferred beneficiaries once they are named. The law on this important point is now uniform throughout the Dominion of Canada and Newfoundland.

A further section in Chap. 61 of the Statutes of 1920 states that the repeal of Sec. 15 applies to all policies existing or future, but does not affect any payments which have already been made by a company in accordance with any appointment permitted by Sec. 15 before its repeal.

Method of changing beneficiary.

It is to be noted that the instrument in writing changing or revoking the benefits of a policy must be attached to or endorsed on the policy or "identifying the same by its number or otherwise." It has been held that the words "including all stocks, bonds, life insurance or the proceeds of any policy of insurance" in a will do not identify any policy by its number or by something equivalent. In Re Richardson (1919), 3 W.W.R. (Man.) 1, the Court followed the Ontario decisions before sub-sec. 5 of sec. 171 of the Ontario Insurance Act was passed. There is no section in the Manitoba Act similar to sub-sec. 5 of sec. 171 of the Ontario Act, reference to which has previously been made. The result in Manitoba is that if the insured intends to change or revoke the benefits of a policy, the declaration must be attached to or endorsed on the policy, and failing which, it must identify the policy by number or in an equally effective way.

Re Richardson.

Green v. Standard Life.

In Green v. Standard Life (1912), 22 M.L.R. 397, the following declaration was considered: "the policy and insurance shall remain payable as in the policy mentioned, subject to alteration in my lifetime, but if not assigned or otherwise disposed of, then on my death, if my wife survive me, the policy shall be for her benefit." The policy on the face of it was payable to his estate. The Court held that the declaration was not positive or unconditional enough to operate as a declaration of trust in favor of his wife. Under the Ontario Insurance Act the provision would probably be held to be a good declaration.

Policies free from seizure.

The Act goes on to provide that policies effected or appropriated for preferred beneficiaries shall be exempt from attachment for debts due either by the insured or

by the persons benefited, and shall be assignable by any such parties, save during minority, either absolutely or by way of security; also that the insurance money, while in the hands of the company, shall be free from and unattachable for the debts of the insured or the preferred beneficiaries.

As in the other provinces, the insured is empowered to surrender the policy and accept a paid-up policy where he is unable to meet the premiums. He may also receive the profits for his own benefit and borrow on the policy to keep it in force.

ORDINARY BENEFICIARIES:

How beneficiary designated.

The only reference to this class is in Sec. 15 as re-enacted in 1920 and is to the effect that if, in case of a policy effected by a man or woman, it is expressed on the face to be for the benefit of or at any time is appropriated for the benefit of any person or persons other than his wife or her husband, or his wife and children, or her husband and children, or his or her children or any of them, then the insured may, by an instrument in writing in the manner indicated above, absolutely revoke the benefit and make the insurance money payable to himself, his estate, or to any one he may choose. The vested right doctrine has accordingly been defeated by Statute the same as in Ontario.

It may be mentioned that there is nothing in the section specifically permitting a change to be made by will. However, in the Ontario Courts "an instrument in writing" has been held to include a will, and no doubt the same would be held, if it has not already been held, in the Manitoba Courts.

BENEFICIARIES FOR VALUE:

There is no mention of this class, except in Sec. 15. It is as follows: "Provided that the insured shall not alter or revoke or divert the benefit of any person who is a beneficiary for value."

GENERAL:

Re Richardson.

A luminous review of the important sections of the Manitoba Life Insurance Act is to be found in Re Richardson, *supra*.

It is a matter of regret that life insurance legislation is so scant in Manitoba, and it is to be hoped that when further legislation is decided on, the leading provisions of the Ontario and Saskatchewan Acts will be adopted.

Saskatchewan Law.

The Saskatchewan Insurance Act passed in 1915 is practically identical with The Ontario Insurance Act.

As in Ontario, there are three classes of beneficiaries: (*a*) Preferred; (*b*) Ordinary; (*c*) For Value. The preferred class consists of husband, wife, child, grandchild and mother.

It is needless to follow the subject any further here. Suffice it to say that the references already made to the law in Ontario are equally applicable to Saskatchewan. However, Sec. 198 of the Saskatchewan Act is worthy of special note. It is as follows:

Saskatchewan Insurance Act, 1915, Sec. 198.

> Where a contract of insurance, other than life insurance, has been delivered, it shall be as binding on the insurer as if the premium had been paid, although it has not in fact been paid, and although delivered by an officer or agent of the insurer who had not authority to deliver it.

(2) This section shall have effect notwithstanding any agreement, condition or stipulation to the contrary.

(3) Where the premium is paid by a cheque or a promissory note and the cheque is not paid on presentation or the promissory note at maturity, the contract shall at the option of the insurer be void.

(4) The insurer may deduct from any loss sustained by the assured under a contract of insurance any indebtedness of the assured on such contract for premium due or to become due, whether evidenced by note or otherwise given either to the insurer or its agent and held either by the insurer or other parties.

(5) In making the deduction mentioned in the preceding sub-section the company shall allow to the assured the same discount upon any unpaid premium as he would be entitled to if such unpaid premium were paid in cash at the date of the loss.

(6) Sub-sections 3 and 4 of this section shall apply to contracts of life insurance.

It is to be observed that the first sub-section differs from the first sub-section of sec. 159 of the Ontario Act in that it is not made applicable to life insurance.

Construction to be placed on Sections in Saskatchewan Act.

So far as the construction to be placed on the various provisions of the Saskatchewan Act is concerned, it is assumed that the construction placed upon similar provisions in the Ontario Act was intended by the legislature of Saskatchewan to be followed in that province; in other words, it must be assumed that the legislature of Saskatchewan was apprised of the judicial interpretation that had been placed on the various sections in the Ontario Act when reproducing them in the Saskatchewan Act and that it intended that such interpretation should be followed in Saskatchewan: Arnold v. Dominion Trust (1918), 56 S.C.R. 433.

Alberta Law.

Legislation on this subject in Alberta is all contained in The Life Insurance Beneficiaries Act, passed in 1916. There is an Act called the Alberta Insurance Act passed in 1915, but it deals generally with the licensing and regulation of companies, securities, agents and other matters.

A considerable part of The Life Insurance Beneficiaries Act relating to beneficiaries is taken from The Ontario Insurance Act, and the references which have been made to the Ontario Act and the cases cited in the Ontario Courts may also be applied to the Alberta Act and the insurance law of that province.

In Alberta there are three classes of beneficiaries: (*a*) Preferred; (*b*) Ordinary; (*c*) For Value.

PREFERRED BENEFICIARIES:

This class consists of husband, wife, child, grandchild and mother of the assured.

Trust created.

A trust is created in favor of these beneficiaries and the assured has power only to make changes within the class. The money is free from the insured's creditors and forms no part of his estate.

Where no apportionment beneficiaries share equally.

Where there is no apportionment, beneficiaries share equally. Where the policy is payable to the wife or future wife of the assured, the wife or future wife so

Designation by insured and subsequent remarriage.

referred to, whether designated by name or not, is deemed to be the wife living at the maturity of the contract, provided, however, that where, at the maturity of the contract, there is a child or children of the assured living or a child or children of a deceased child, the share of such wife or future wife is, if she be then deceased, payable in equal shares to the wife living at the maturity of the

contract, the child or children of the assured then living and the issue of a deceased child, the latter by representation: Sec. 9 (3) & (4).

Meaning of "children."

The word "children" includes all the children of the assured living when the policy becomes payable and also the issue of any deceased child.

Where insured unmarried.

Where a policy is taken out by an unmarried man for his future wife but at the maturity of the contract the assured is still unmarried, the insurance money is payable to himself or his estate. If the intended wife is designated by name but the intended marriage does not take place, she is an ordinary beneficiary: Sec. 9 (7) & (8).

Death of designated preferred beneficiary.

If a designated preferred beneficiary dies before the maturity of the contract, the assured may by declaration dispose of the share of such person as he may see fit. If he makes no declaration, the share, if payable to a deceased child, goes to the issue of such child. If there is no issue, the share goes to the surviving designated preferred beneficiaries. If there is no issue and no surviving designated preferred beneficiaries, a wife or any children then living take equally, the issue of any deceased child taking by representation. If there is no one entitled to take under the above provisions, the share is payable to the assured or his estate: Sec. 9 (9).

Power to convert into paid-up policy.

Where the assured is unable to keep up the premiums, he may without the consent of a preferred beneficiary, surrender the contract for a paid-up policy. He can also borrow on the security of the policy to keep it in force.

Payment of profits.

He may also in writing, require the company to pay the profits to himself or apply them in reduction of premiums or add them to the benefit. The company, however, is not obliged to pay or apply such profits in any way contrary to the stipulations in the policy or application.

The assured with the consent of the preferred beneficiaries (if of age) may surrender or assign or dispose of the policy either absolutely or by way of security.

ORDINARY BENEFICIARIES:

In Alberta as in all the other provinces, except British Columbia and Quebec, the assured may freely revoke the appointment of an ordinary beneficiary at any time and declare the insurance moneys payable to himself, his estate or any one else.

Death of beneficiary.

If one of several beneficiaries dies before the policy is payable and no further apportionment is made by the insured, there is accretion in favor of the surviving beneficiaries. If none survive and no other disposition is made, the insurance is payable to the assured or his representatives.

BENEFICIARIES FOR VALUE:

The Alberta Act, the same as the Ontario Act, states that a beneficiary for value means a beneficiary for valuable consideration other than marriage.

Reference may be had to the observations made on this class in the Ontario law.

THE APPOINTMENT AND CHANGING OF BENEFICIARIES:

In the interpretation section of the Alberta Act a "declaration" is defined as follows:

Meaning of "Declaration."

> "Declaration" means the designation by the assured of the beneficiary under a policy of insurance or the appointment or apportionment of the insurance money whether such designation, appointment or apportionment is made by the contract of insurance itself or by any instrument in writing, including a will, attached to or endorsed on it or in any way identifying it.

The sections in the Alberta Act dealing with this branch of the subject follow the Ontario Insurance Act almost word for word. Sec. 6 of the former Act is to all intents and purposes the same as Sec. 171 of the latter Act. The declaration need not necessarily identify the policy "by number or otherwise." If it is reasonably clear by the instrument that the assured intended to alter the benefits of the policy, effect will be given to such intention.

The Ontario cases referred to on this important point would likely be followed by the Alberta Courts in view of the fact that Sec. 6 (5) of the Alberta Act is exactly the same as Sec. 171 (5) of the Ontario Act.

British Columbia Law.

The legislation concerning beneficiaries is contained in the Life Insurance Policies Act passed in 1911. It is defined to be an Act to secure to Wives and Children the benefit of Life Insurance and to regulate and prohibit insurance without an interest in the life of the insured.

There is an Act respecting Insurance other than Fire Insurance passed in 1913, but it only deals with the licensing and regulation of companies.

The terms "Preferred" and "Ordinary" Beneficiary are not used in the British Columbia Act. However, there is a class which is preferred, and following the practice in the other provinces it would be well to preserve the distinction under the same nomenclature.

PREFERRED BENEFICIARIES:

This class consists of husband, wife and children of the insured. It is to be observed that the assured's mother is not a preferred beneficiary. The benefits of a policy may be shifted about by the insured among members of the class, but cannot be taken away while any are living,

Trust created.

without their consent. The policy is deemed to be a trust in favor of the preferred beneficiary to whom it is payable. The insurance money is free from the claims of the insured's creditors and forms no part of his estate.

Where no apportionment beneficiaries share equally.

If there is no apportionment among beneficiaries, they share equally. Where a policy is payable to wife and children generally or to children generally without specifying the names of the children, the word "children" is held to mean all the children of the insured living at the maturity of the contract and the wife to benefit is the wife living at the maturity thereof. It is to be noted that elsewhere in Canada, except the Maritime Provinces, the issue of a deceased child takes the parent's share by representation.

Meaning of word "children."

Policies payable to preferred beneficiaries may be assigned or surrendered by the insured with their consent, provided they are adults.

Where preferred beneficiary dies.

If a preferred beneficiary in whose favor an apportionment has been made, dies, the insured may declare the share of the deceased in favor of some other person in the preferred class. In default of such declaration, the share becomes the property of the insured. If there is no apportionment originally and no further apportionment is made by the insured, the insurance is payable to the surviving preferred beneficiaries in equal shares. If all die in the insured's lifetime, the policy and the insurance money form part of his estate.

There is a provision in the Act similar to that in the Alberta Act in reference to insurance in favor of a future wife: Sec. 12.

Sec. 13 is as follows:

Benefits not liable for debts of insured.

(1) A policy or written contract of life insurance effected by any woman on her own life, or on the life of her husband, and expressed to be for the benefit of

her husband and children, or of either husband or children, or any of them, shall be deemed a trust in favor of the objects therein named, and the moneys payable under such policy shall not, so long as any object of the trust remains unperformed, form part of the estate of the deceased, or be subject to her debts.

(2) Whatever under this Act a man may lawfully do, in respect of insurance effected upon his life, may also, under the like circumstances, be done by a woman in respect of insurance effected upon her life, or effected by her on the life of her husband, and the like rules of construction shall prevail.

There are also provisions, as in the other provinces, for the surrender of a policy for a paid-up policy, for borrowing on the policy to keep it in force and for payment of profits to the insured.

ORDINARY BENEFICIARIES:

There is no legislation in British Columbia dealing with policies payable to others than husbands, wives and children. It is the only province, other than Quebec, where there is no statutory enactment enabling an insured to change an ordinary beneficiary. Even in Quebec the insured may revoke an appointment in favor of an ordinary beneficiary where there has not been acceptance.

Vested right doctrine prevails.

In the absence of any such legislation, the vested right doctrine at common law prevails. Consequently in British Columbia where a policy is payable to an ordinary beneficiary, there is no power in the person insured to transfer the benefit to any other person without the consent of the beneficiary. It does seem rather anomalous that while the insured may deprive his wife of the benefit of a policy by giving it to his child, he cannot take it from a stranger without the latter's consent.

To give the insured this desirable right it is suggested that all policies issued in British Columbia to an ordinary beneficiary should contain a provision permitting the insured to change the beneficiary. As pointed out before, this course is pursued in the United States where the vested right doctrine obtains.

BENEFICIARIES FOR VALUE:

There is no reference in the Act to this class of beneficiaries. It is assumed that if a policy is taken out which discloses on its face that it is effected for a valuable consideration flowing from the beneficiary, the insured can not deal with the policy in any way without the beneficiary's consent.

THE APPOINTMENT AND CHANGING OF BENEFICIARIES:

Method of appointing and changing beneficiaries.

The insured may, by an instrument in writing attached to or endorsed on, or identifying the policy by its number or otherwise, make a declaration that the policy is for the benefit of his wife or his wife and children, or any of them, and also in like manner vary a policy or a declaration or an appointment previously made so as to restrict or extend, transfer or limit the benefits of the policy to the wife alone, or to the children or to one or more of them. He may also in like manner apportion and reapportion the benefits among them from time to time as he desires. An apportionment made by his will prevails over any other made before the date of the will: Secs. 7 and 8.

Appointment must identify policy by number or otherwise

The salient feature is that if the appointment is not made by a writing attached to or endorsed on the policy, it must identify the policy by its number or otherwise. There is a similar provision in the Insurance Acts of Quebec, Manitoba and the Maritime Provinces. It has been pointed out before that in Ontario, Saskatchewan

and Alberta a declaration is effective if any language is used from which it can reasonably be inferred that the insured desires to change the beneficiary.

A. by his will bequeathed to his wife "the first seventy-five thousand dollars collected on account of policies of life insurance." It was held by the Court of Appeal of British Columbia and also by the Supreme Court of Canada that such a devise was not a writing identifying the policy by its number or otherwise: Arnold v. The Dominion Trust Co. (1917), 35 D.L.R. 145 and (1918), 56 S.C.R. 433. In this case it was also held that a declaration in writing may be made by will on the ground that the Legislature of British Columbia, when enacting Sec. 7, must be presumed to have adopted the judicial construction of similar legislation in the Province of Ontario.

Arnold v. Dominion Trust.

Sec. 25 provides that no declaration or apportionment affecting the insurance money shall be of any force or effect as respects the company until the instrument or a duplicate or a copy thereof is deposited with the company.

Company protected if declaration not filed.

It has been held that there is nothing in the British Columbia Life Insurance Policies Act requiring a wife to have independent advice before joining with her husband in the surrender of a policy taken out in her favor. Moore v. Confederation Life (1918), 2 W.W.R. 895.

The Law of the Maritime Provinces.

There is little or no difference in the legislation of Nova Scotia, New Brunswick and Prince Edward Island, concerning beneficiaries.

In Nova Scotia the subject is covered by the Life Insurance Act, Chap. 15 of the Acts of 1903; in New

Legislation.

Brunswick by the Life Insurance Act, Chap. 4 of the Acts of 1905; and in Prince Edward Island by the Life Insurance Act, Chap. 16 of the Acts of 1906.

The insurance laws of the three provinces are similar to those of Ontario and particularly in reference to beneficiaries. Their laws, however, are based upon the legislation in force in Ontario some years ago, and these provinces have not adopted some of the amendments made in Ontario within the last few years.

There are three classes of beneficiaries: (*a*) Preferred; (*b*) Ordinary; (*c*) For Value.

PREFERRED BENEFICIARIES:

In Nova Scotia and Prince Edward Island, this class consists of husband, wife, children, grandchildren and mother of the insured.

In New Brunswick the class is wider. It consists of husband, wife, children, grandchildren, mother, father, sisters and brothers of the insured. Father, sisters and brothers were added to the class in 1915. In the Life Insurance Act of Prince Edward Island passed in 1906, father, sisters and brothers were preferred beneficiaries. In 1907 they were struck out.

Trust created and benefits free from claims of insured's creditors.

In the three provinces a trust is created in favor of preferred beneficiaries. The insurance moneys are free from the claims of the insured's creditors and form no part of his estate. In Prince Edward Island a trust is also created in favor of the father and brothers and sisters of the insured. Insurance moneys payable to them are likewise not liable for the debts of the insured and form no part of his estate. It must be borne in mind, however, that the insured may at any time before the maturity of the contract revoke a benefit conferred on a father, brother or sister.

When two or more beneficiaries are designated but there is no apportionment between them, they take equally. Where the insurance is for the benefit of the wife and children generally or of the children generally, without specifying the names of the children, the word "children" means all the children issue of the insured living at the maturity of the policy, and the wife to benefit is the wife living at the maturity of the policy. Remark might be made that the issue of a deceased child of the insured is not included.

Where no apportionment beneficiaries share equally.

Meaning of "children."

Where a policy is effected for the benefit of a future wife, and the intended wife is designated by name, but the intended marriage does not take place, the appointee is only an ordinary beneficiary.

If one or more of the preferred beneficiaries die, the insured can by declaration make the share of such deceased payable to some one or other in the preferred class, and in default of such declaration, the share shall go to the surviving preferred beneficiaries in equal shares.

Death of preferred beneficiary.

The insured, where he is unable to pay premiums, may surrender the policy and take a paid-up policy. He may also borrow on the security of the policy to keep it in force. Even if a policy is payable to a preferred beneficiary, the insured has control over the disposition of the profits.

Insured may take paid-up policy.

ORDINARY BENEFICIARIES:

The interpretation sections of the Acts of the three provinces state that all beneficiaries, other than the preferred class, are to be known as "ordinary beneficiaries."

The insured has full power to insure his own life and make the policy payable to any beneficiary. He

May revoke benefits at any time.

may revoke the interest of an ordinary beneficiary at any time and divert the insurance moneys to himself, his estate or any third person.

In Nova Scotia in case of the death of an ordinary beneficiary and no new appointment is made, the surviving beneficiaries take, and if all the beneficiaries predecease the insured, the benefits of the policy go to the surviving infant children of the insured, and failing such, then to the insured's estate.

In New Brunswick and Prince Edward Island, however, after the death of all the beneficiaries, the benefits go to all of the insured's surviving children, not merely to the surviving infant children.

BENEFICIARIES FOR VALUE:

They are stated to mean beneficiaries for valuable consideration other than marriage. Their rights can not be prejudiced by any act of the insured other than non-payment of the premium.

APPOINTMENT AND CHANGE OF BENEFICIARIES:

Method of appointing and changing beneficiaries.

The insured may designate the beneficiary by the contract of insurance or by instrument in writing attached to or endorsed on, or identifying the contract by number or otherwise, and by like instrument from time to time apportion or reapportion the insurance money or alter or revoke the benefits or trusts, or add or substitute new beneficiaries or trustees, or divert the insurance money wholly or in part to himself or his estate. He cannot divert the benefits from a beneficiary for value nor can he divert the benefits from a person who is of the class of preferred beneficiaries to a person not of the same class, or to himself or his estate.

This provision appears in the Insurance Acts of a number of the other provinces. Observations have already been made to the provision in the cases of Quebec, Manitoba and British Columbia.

Company protected if declaration not filed.

Until the company has received the original or a copy of any declaration, apportionment, will or other instrument of disposition in writing affecting the insurance moneys, the company may deal with and obtain a valid discharge from the insured or his personal representatives.

NEWFOUNDLAND:

The Life Insurance Act of Newfoundland was passed in 1906 and there have been no changes since that year. The Act is a reproduction of the Nova Scotia Life Insurance Act of 1903.

There are three classes of beneficiaries: (*a*) Preferred; (*b*) Ordinary; (*c*) For Value. The preferred class consists of husband, wife, children, grandchildren and mother of the insured. The sections in the Act dealing with beneficiaries are the same as those in the Nova Scotia Act.

CHAPTER VI.

INSURABLE INTEREST.

Insurable interest necessary.

Wager or gaming policies, in the object of which the insured has no insurable interest, are illegal. In other words, if a person insures the life of another, he must have an insurable interest in that life, and if he has not, the policy is void.

There is authority for the statement that a wager policy effected by a person having no interest in the life was, at common law, against public policy, and so void: North American Life v. Craigen (1886), 13 S.C.R. at p. 292.

The Gambling Act, 14 Geo. III., Chap. 48.

However, if there was ever any doubt on the point at common law, the question was settled by Statute many years ago by The Gambling Act passed in the reign of George the Third. The Statute is known as 14 Geo. III., Chap. 48. It was entitled "an Act for regulating Insurance upon Lives." It enacts as follows:

> Sec. 1. No insurance shall be made by any person or persons, bodies politic or corporate, on the life or lives of any person or persons or on any other event or events whatsoever, wherein the person or persons for whose use, benefit, or on whose account such policies shall be made, shall have no interest, or by way of gaming and wagering; and that every assurance made contrary to the true interest and meaning hereof shall be null and void to all intents and purposes whatsoever.
>
> Sec. 2. And be it further enacted, that it shall not be lawful to make any policy or policies on the life or lives of any person or persons, or other event or events, without inserting in such policy or policies,

the person or persons, name or names interested therein, and for whose use, benefit or on whose account such policy is so made or underwrote.

Sec. 3. And be it further enacted, that in all cases where the insured hath interest in such life or lives, event or events, no greater sum shall be recovered or received from the insurer or insurers than the amount or value of the interest of the insured in such life or lives, or other event or events.

This Statute is still in force in Ontario and elsewhere in Canada. The above sections have been copied into the Life Insurance Policies Act of British Columbia. It was never a part of the law of Quebec. The Act has been modified to some extent by local Statutes in the various provinces although the cardinal principles have been retained.

Object to prevent gambling in lives.

The purpose of the Act is obvious, and that is to prevent the gambling in lives with the resulting evil practices. May on Insurance, puts it very well when he says: "When the insured has nothing to lose, but everything to gain, by the happening of the event insured against, it would be dangerous and demoralizing to subject the insured to so great a temptation to destroy the life upon which the insurance is effected. A sound public policy will not sanction such a policy."

The English Act is modified by the Ontario Insurance Act as follows:

English Act modified by Ontario Insurance Act.

It shall be necessary for the validity of a contract of insurance that the beneficiary under it, if he is not the person on whose life the insurance is effected, or the parent, or bona fide donee, grantee or assignee, or a person entitled under the will of such person, or by operation of law, shall have at the date of the contract a pecuniary interest in the duration of the life or other subject insured, but any otherwise lawful contract of annuity upon life shall not require for

its validity that the annuitant has or at any time had an insurable interest in the life of the nominee. Sec. 169 (1).

Where a pecuniary interest is necessary, the insurer shall not be liable under the contract for more than the amount or value of the pecuniary interest. Sec. 169 (2).

Where beneficiary must have pecuniary interest in life of insured.

The wording of sub-sec. 1 might have been simpler. Part of it is not clear. The effect of the provision is that the beneficiary must have a pecuniary interest in the life of the insured when the policy is taken out, except where he or she is the parent, or the bona fide donee or grantee of the insured. How an assignee or legatee or a person acquiring an interest by operation of law could have an interest at the date of the contract is beyond the writer's comprehension. It is not necessary that a life annuitant should have an insurable interest in the life of the nominee in the policy.

The other provinces, with the exception of Quebec, Manitoba and British Columbia, have reproduced the Ontario sections in their Life Insurance Acts.

What constitutes a pecuniary interest.

It is plain that an insurable interest means a pecuniary interest. Then what constitutes a pecuniary interest? The Supreme Court of the United States lays down the law as follows: No person has an insurable interest in the life of another unless he would in reasonable probability suffer a pecuniary loss or fail to make a pecuniary gain by the other's death, or, in some jurisdictions, unless in the discharge of some undertaking he has spent money, or is about to spend money, for the other's support or advantage.

A child who is of age, and therefore not entitled to maintenance, cannot, in the absence of pecuniary interest, insure his parent's life. The wife, husband and infant children have a recognized insurable interest in the life

of the husband, wife and father, but come in like grandchildren under the designation of bona fide donee or grantee.

Want of interest does not apply to assignee of insured.

It has been held that a want of interest does not apply to an assignee of the insured, on the ground that the Statute only requires a pecuniary interest at the date of the contract: Vezina v. New York Life (1881), 6 S.C.R. 30. Consequently it must always be borne in mind that where an insured bona fide insures his life he may at any time assign the policy to a third person, even although such third person had no insurable interest whatever in the policy when it was issued. Article 2591 of the Quebec Civil Code provides explicitly that a policy on life or health may pass by transfer, will or succession, to any person, whether he has an insurable interest or not in the life of the person insured.

In Quebec a policy was treated as a wagering policy in the hands of an assignee where it had been transferred immediately on and practically contemporaneously with its issue: New York Life v. Parent (1876), 3 Q.L.R. 163. In this case, however, the transaction was a colourable one and it was apparent that there was a lack of bona fides on the part of the interested parties.

North American v. Brophy.

The leading case in the Canadian Courts on the subject is North American Life v. Brophy (1902), 32 S.C.R. 261. In that case the law is succinctly recited to be as follows: If a person bona fide insures his own life, it is a valid insurance, though for the benefit of others. If he really does not insure it, but some one else for his own benefit uses his name and his life, even with his connivance, it is colourable, and the insurance is a wagering contract and void. It was held too, in this case that the beneficiary having no interest in the life of the insured and having effected the insurance for his own benefit, and further hav-

ing paid all the premiums himself, was not entitled to recover the premiums back from the company. It may be remarked that the company brought action for the cancellation of the policy and succeeded.

A proviso in the contract making it incontestable on any ground whatever does not prevent the company from showing that the policy is a wagering one and therefore void: Manufacturers' Life v. Anctil (1897), 28 S.C.R. 103; (1899) A.C. 604. It would no doubt be held as well that a wagering contract is void notwithstanding the statutory provision that all policies are incontestable after two years on the ground that the contract was *ab initio* fraudulent.

Civil Code, Art. 2590.

With that clearness peculiar to life insurance legislation in Quebec, the nature of insurable interest is well stated in Article 2590 of the Civil Code. It is as follows:

> The insured must have an insurable interest in the life upon which the insurance is effected.
>
> He has an insurable interest in the life:
>
> 1. Of himself:
>
> 2. Of any person upon whom he depends wholly or in part for support or education:
>
> 3. Of any person under legal obligation to him for the payment of money, or respecting property or services which death or illness might defeat or prevent the performance of:
>
> 4. Of any person upon whose life any estate or interest vested in the insured depends.

Meaning of "insurable interest" in Alberta.

The Alberta Life Insurance Act also contains a concise provision as to what persons shall have an insurable interest. Section 4 reads as follows:

> Without restricting the meaning which the term "insurable interest" now has at law, it is hereby declared that the following persons shall have an insurable interest, that is to say:

(*a*) A parent, in the life of his child under twenty-one years of age.

(*b*) A husband, in the life of his wife.

(*c*) A married woman, in the life of her husband.

(*d*) Any person who has a pecuniary interest in the duration of another person's life, in the life of such other person.

(*e*) Every person, in his own life.

A creditor has an insurable interest in the life of his debtor if the debt is a legal one. A partner likewise has an insurable interest in the life of his co-partner and an employer in the life of his employee. The general rule is that between husband and wife there is reciprocally an insurable interest.

Insurable interest at maturity of policy not necessary.

It has been held by virtue of The Gambling Act, 14 Geo. III., Chap. 48, that if the policy is valid at its inception, because based on an adequate insurable interest, the existence of such an interest at the maturity of the policy is unnecessary. In Quebec the Civil Code provides that the measure of the interest insured is the sum fixed in the policy, except in cases of insurance by creditors or in other like cases in which the interest is susceptible of exact pecuniary measurement. In these cases the sum fixed is reduced to the actual interest: Art. 2592.

The discussion of this subject is to a certain extent academic. It is true that an insurance company can avail itself of the defence of want of insurable interest. In actual practice, however, there is little or no occasion to question the validity of a contract on that ground. In the great majority of cases the application discloses the fact that the beneficiary has an insurable interest in the life of the insured. Very often the insured asks that the insurance moneys be made payable to himself or his estate. The insured is then at perfect liberty to

transfer or assign the benefits to any person he desires. If, on the other hand, the interest of the beneficiary in the life of the person to be insured is not apparent on the face of the application, it is quite likely that the company, before issuing the policy, would satisfy itself that the beneficiary really has some pecuniary interest in the life about to be insured. It is apprehended that any well-managed company would take such a precaution.

INSURANCE BY PARENT OF LIFE OF CHILD:

In England at common law a parent has no insurable interest in the life of a minor child by virtue merely of the parental relationship. If he can show a pecuniary interest in the child, then he can insure its life. In most of the United States of America it has been held that parents and children may each have an insurable interest in the lives of the other on account of their mutual liability to support each other.

In those provinces in Canada where there is no enabling legislation, it is submitted that a policy taken out by a parent on his minor child is invalid unless he can show clearly that he had an actual pecuniary interest in the child's life: Wakeman v. Metropolitan Life (1899), 30 O.R. 705.

In most Provinces children insurance permitted to limited extent by statute.

In the provinces of Ontario, Quebec, Saskatchewan, Alberta and British Columbia, insurance of children's lives is permitted by Statute to a limited extent. Owing to the well known dangers arising from the unrestricted insurance of children, the Insurance Acts of these provinces limit the amount that can be placed on the life of a child under ten years of age. Over that age the amount is not limited.

In the five provinces mentioned above, the amount of insurance payable is limited as follows:

$32	if the child dies under the age of 2 years.
40	if the child dies under the age of 3 years.
48	if the child dies under the age of 4 years.
56	if the child dies under the age of 5 years.
83	if the child dies under the age of 6 years.
120	if the child dies under the age of 7 years.
160	if the child dies under the age of 8 years.
200	if the child dies under the age of 9 years.
260	if the child dies under the age of 10 years.

A child under one year cannot be insured.

In Ontario, Quebec, Saskatchewan and Alberta, where a company knowingly or without sufficient inquiry insures a child less than one year of age or less than ten years of age for a greater amount than above provided, the premiums paid are recoverable from the company by the person paying the same, together with legal interest. In British Columbia the premiums are recoverable with compound interest at the rate of seven per cent. per annum.

Every company effecting insurance on the lives of children under ten must print certain sections of the Act relating to industrial insurance in conspicuous type upon every circular soliciting and upon every application for, and every contract of such insurance, or with the consent of the Superintendent of Insurance, print or stamp a notice thereon that the insurance is subject to the restrictions above mentioned. There is no option in Alberta or British Columbia. In those provinces the provisions must be printed on the circulars, applications and policies.

In the Acts of Ontario, Saskatchewan, Alberta and British Columbia there is a provision to the following effect:

> Insurance heretofore or hereafter effected by a parent upon the life of his child under twenty-one years of age, shall not be invalid by reason only of the parent's want of pecuniary interest in the life of the child.

There is no such provision in the Quebec Insurance Act, because under the law of that province a parent has an insurable interest in the life of a child: Arts. 166, 167 and 168 Civil Code.

Legislation.

The sections in the Insurance Acts of the various provinces dealing with children's insurance are as follows:

The Ontario Insurance Act, R.S.O. 1914, Chap. 183, Sec. 169.

The Quebec Insurance Act, R.S.Q. 1909, Art. 7031.

The Saskatchewan Insurance Act, 1915, Chap. 15, Sec. 177.

The Alberta Life Insurance Beneficiaries Act, 1916, Chap. 25, Secs. 7 and 8.

The British Columbia Life Insurance Policies Act, R.S.B.C. 1911, Chap. 115, Sec. 13, as amended by the Life Insurance Policies Act Amendment Act, 1920, Chap. 35.

None of the other provinces has any legislation respecting children's insurance. Neither has Newfoundland any such legislation.

INSURABLE INTEREST IN ONE'S OWN LIFE:

Every person has insurable interest in his own life.

At common law an adult has full power to insure his own life. However, all of the provinces, with the exception of Manitoba and British Columbia, have incorporated into their Insurance Acts provisions to the effect that every person of the full age of twenty-one years has an

insurable interest in his own life. These provisions are merely declaratory of the common law.

Sec. 171 (1) of the Ontario Insurance Act is as follows:

> Every person of the full age of twenty-one years shall have an unlimited insurable interest in his own life and may effect bona fide at his own charge insurance of his own person for the whole term of life, or any shorter term for the sole or partial benefit of himself, or of his estate, or of any other person, whether the beneficiary has or has not an insurable interest in the life of the assured, and the insurance money may be made payable to any person for his own use or as trustee for another person.

Saskatchewan, Alberta, the Maritime Provinces and Newfoundland have similar sections. Art. 2590 of the Quebec Civil Code provides that a person has an insurable interest in his own life. In Quebec, however, a married woman can only insure her life in favor of her children. The status and rights of married women in Quebec will be considered in Chapter VII.

In certain Provinces children may insure their lives.

In Ontario, Saskatchewan and Alberta, children over fifteen years of age may insure their lives in favor of certain persons or for their own benefit. In British Columbia a minor over sixteen years of age may effect contracts of insurance on his life as freely as an adult. The capacity of such children to insure will also be discussed in Chapter VII.

CHAPTER VII.

CAPACITY TO CONTRACT.

INFANTS:

Where no statutory power, insurance by infant voidable by him but binding on company.

Porter in his work on Insurance says that there seems no reason why, if a company is willing to enter into a contract of insurance with an infant, he should not be able to contract with the company in the same manner as he might enter into other contracts which are for his benefit, the rule being that a contract by an infant which is voidable only by him and not absolutely void is binding upon the other contracting party until avoided. The privilege of avoidance is that of the infant only and not that of the other party with whom he contracts.

Porter's interpretation of the English law is accepted by Laverty in his excellent work on the Insurance Law of Canada, and he says that it is also the law of Quebec. In support of this contention, Laverty quotes Art. 987 of the Civil Code, which is as follows:

> Parties capable of contracting cannot set up the incapacity of the minors or of the interdicted persons with whom they have contracted.

Can infant recover premiums?

In Quebec it has been held that if an infant, after having the benefit of the insurance for a time, were to repudiate the contract, he cannot upon repudiation recover the premiums paid by him: See Laverty, p. 106. Bunyan expresses the same opinion and cites the English case of Valentini v. Canali (1890), 24 Q.B.D. 166, in support of this contention. MacGillivray on Insurance Law says at p. 571 that the question depends upon

whether the infant has derived any intermediate advantage from the insurance which he can restore, and he says further at p. 572 that it may be questioned whether the fact that an insurance company has issued a policy and been on the risk is an advantage to the infant in this sense. He refers to the case of Kettlewell v. Refuge (1907), 2 K.B. 242. The point does not appear to have been judicially decided in any of the Canadian Courts outside of Quebec. MacGillivray also states that the question has not been judicially determined in England.

United States law.

In the United States it has been held that if an insurer enters into a contract which it may fairly and reasonably make with an infant for a sum fairly commensurate with his estate and ability to pay and at the ordinary and usual rates, there being no fraud or unlawful practices in procuring the risk, the infant may not rescind and recover back the premiums, but the insurer is entitled to those premiums intended to cover the current annual risks under the policy: Joyce on Law of Insurance, 2 Ed., Sec. 1399.

In Ontario minor over 15 may insure his life in favor of certain persons.

In Ontario a minor over fifteen years of age has an insurable interest in his own life and can take out a policy in favor of himself, or for the benefit of a preferred beneficiary or of a father, brother or sister. This power is conferred by Statute. The Ontario Insurance Act has the following provision on the subject:

> Sec. 169 (9). A person not of the full age of twenty-one years but of the age of fifteen years or upwards, may effect insurance on his own life for his own benefit, or for the benefit of a preferred beneficiary or of a father, brother or sister, which, if he had been of full age he might have lawfully effected, and notwithstanding his minority he may surrender such insurance or give a valid discharge for any benefit accruing or for money payable under the contract.

Same in Saskatchewan and Alberta.

There are similar provisions in the Insurance Acts of Saskatchewan and Alberta.

The Alberta Act contains the following additional clause:

> Sec. 7 (2). Such person shall so far as shall be consistent with the provisions of this section, have all the powers as to designating beneficiaries, appointing and apportioning the insurance money, altering or revoking the benefits, adding or substituting new beneficiaries or diverting the insurance to himself or his estate, which he would have if of the full age of twenty-one years, but he shall not during his minority designate, add or substitute any beneficiary not mentioned in the first sub-section of this section.

The Alberta Act permits an infant over fifteen years of age to insure his life in favor of a grandparent.

By an amendment to the Alberta Act in 1917 (Chap. 40, Sec. 1), the following clause was added to sec. 7:

> (3) Such a person may from time to time borrow from the insurer on the security of the contract such sums as may be necessary to keep it in force and the same shall be so applied, and on such terms and conditions as may be agreed upon; and the sums so borrowed with such interest as may be agreed on, shall be a first lien on the contract and on all moneys payable thereunder.

In these Provinces minor may borrow on policy to keep it in force.

In Alberta accordingly, a minor over fifteen years of age may from time to time alter the beneficiary, but not so as to take it out of the class mentioned above. He may also borrow on the policy to keep it in force. Although there are no similar provisions in the Ontario and Saskatchewan Acts, it is submitted that by implication a minor has the power to borrow on a policy to keep it alive in those provinces as well.

In British Columbia minor over 16 may insure his life in favor of anyone

In British Columbia a minor over the age of sixteen years may effect contracts of insurance on his life and

may do in respect of any such contract whatever under the Life Insurance Policies Act a person of full age may lawfully do: Life Insurance Policies Act Amendment Act 1920, Chap. 35, Sec. 2. In this province, therefore, a minor over sixteen may insure his life in favor of any one.

It is contended that an infant cannot deal with a policy in any way except as expressly authorized by Statute. For instance, it would likely be held that loan agreements—except those to cover premiums—and assignments made by infants are voidable at their option and even in such cases where minors over a certain age are empowered by Statute to contract for insurance. Where an infant capable of contracting for insurance gives a promissory note in payment of a premium on a policy on his own life, he is not liable on the note. He is liable, however, on the insurance contract itself: Federal Life v. Hewitt (1907), 9 O.W.R. 857.

Infant not liable on premium note.

In the provinces, other than Ontario, Saskatchewan, Alberta and British Columbia, there is no legislation enabling infants of any age to insure their lives. If, however, policies are taken out by infants on their own lives in Quebec, Manitoba, the Maritime Provinces or Newfoundland, or even by children under fifteen years of age in Ontario, Saskatchewan or Alberta, or under sixteen in British Columbia, such policies are not absolutely void. As pointed out above, they are only voidable at the instance of the infant. They are binding on the company unless voided by the infant.

In other Provinces contract voidable by infant but binding on company

The Statute of Frauds, as re-enacted in Ontario, provides that an infant upon written ratification after full age, is bound by a contract made by him during infancy: R.S.O. 1914, Chap. 102, Sec. 7.

Infant liable upon written ratification after full age.

MARRIED WOMEN:

In all Provinces except Quebec, married woman 21 years of age has insurable interest in her own life.

In all the provinces except Quebec, a married woman twenty-one years of age has an unlimited insurable interest in her own life. In Ontario, Saskatchewan and Alberta, if she is a minor over fifteen years of age, she may insure her life in her own favor or in favor of a preferred beneficiary or father, brother or sister, and in Alberta also in favor of a grandparent. In British Columbia if she is a minor over sixteen years of age she may insure her life in favor of any one.

Quebec law in respect to contractual capacity of married women.

In the Province of Quebec, the law in respect to the contractual capacity of married women is radically different to that of the other provinces.

In order to understand the subject properly, it is necessary to ascertain whether the consorts are common or separate as to property. Parties contemplating marriage may stipulate by what is called a marriage contract, that they shall be separate as to property. When this arrangement is reached, all that either consort possesses at the time of the marriage or becomes possessed of during it, belongs absolutely to him or her as the case may be as though marriage had not been entered into.

It is impossible for either consort to confer any benefit on the other.

If there is no marriage contract, the parties are common as to property. A sort of partnership exists. All personal property which either party possesses at the time of marriage falls into the partnership or community, and also all property, both real and personal, which either consort acquires during the marriage with the single exception of real property secured through an ancestor. The husband is the head or managing partner of the community. He may deal with its property in

the most absolute manner without the concurrence of the wife. During the marriage, the wife is under the authority of her husband.

Wife cannot insure her life except in favor of her children without authorization of husband or Judge.

It follows, therefore, that a wife cannot insure her life except in favor of her children without the authorization of her husband or a Judge. The exception is the result of statutory enactment: Art. 7378, R.S.Q. 1909. Even if the consorts are separate as to property, the wife requires the written consent of her husband before she can make a contract of insurance except in favor of her children. Without authorization, the contract is a nullity which nothing can cure and may be taken advantage of by all those who have an existing and actual interest in doing so: Art. 183 Civil Code.

By statute husband may insure his life in favor of his wife.

There is one exception to the rule that during the marriage the consorts cannot confer any benefit upon each other, and that exception is the law which allows a husband to insure his life in favor of his wife. This is by Statute. Being an exception to the common law it must be strictly interpreted and does not permit a woman to insure her life in favor of her husband. Such a contract is a nullity and cannot be enforced in the Courts.

CHAPTER VIII.

WHAT LAW GOVERNS.

Mr. Justice Hodgins, in his work on Life Insurance Contracts in Canada, says that it is often difficult to decide what law is to govern an insurance contract. However, since his treatise was published, the law has been somewhat clarified by a number of interesting decisions in the English and Canadian Courts.

Particular rule is that law of country where contract made governs, unless express intention to contrary

Bowen, L.J., in Jacobs v. Credit Lyonnais (1884), 12 Q.B.D., at p. 600 says: "The particular rule is that the law of a country where a contract is made presumably governs the nature, the obligation and the interpretation of it, unless the contrary appears to be the express intention of the parties." Lord Chancellor Halsbury, in Re Missouri Steamship Co. (1889), 42 Chy. Div., at p. 336 remarks that when the parties themselves agree what law shall govern, then the intention is no longer in doubt. The judgment in the case of Hamlyn v. Talisker (1894), A.C. at p. 207, is to the effect that the whole of the contract must be looked at and the rights under it must be regulated by the intention of the parties as appearing from the contract.

Intention of parties paramount in absence of countervailing legislation.

The general principle is, therefore, that the question of what law governs a contract of insurance is decided almost entirely by the intention of the parties. When the parties agree that the contract shall be construed by the law of a certain country, full effect will be given by the Courts to such an agreement in the absence of countervailing legislation. Where, however, there is no explicit provision in the contract as to what law should govern, the form of the contract, its subject matter, the surround-

ing circumstances, common sense, business convenience, the comity of nations and the country with which the transaction has the most real connection, are all considered.

While the general rule of law is reasonably clear, it must never be forgotten that statutory enactments respecting contracts are of paramount consequence and must always be carefully considered when the question arises as to what law should govern.

Contracts to be deemed made in Ontario.

For instance, the Ontario Insurance Act provides that the contract of insurance of a person domiciled or resident in Ontario, if signed or delivered in Ontario or posted or handed over to be delivered here, is deemed to be a contract made in Ontario and is to be construed according to Ontario law and all moneys are made payable in that province. Legislation of like import is to be found in the other provinces of the Dominion, except British Columbia. Newfoundland also has similar legislation.

The provision is of such consequence that it is advisable to quote the Ontario enactment *in extenso*. It is as follows:

> Where the subject matter of a contract of insurance is property or an insurable interest in property within Ontario, or is a person domiciled or resident therein, the contract of insurance, if signed, countersigned, issued or delivered in Ontario or committed to the post office or to any carrier, messenger or agent to be delivered or handed over to the assured, his assign or agent in Ontario, shall be deemed to evidence a contract made therein, and the contract shall be construed according to the law thereof, and all moneys payable under the contract shall be paid at the office of the chief officer or agent in Ontario of the insuring corporation in lawful money of Canada. Sec. 155 (1).
>
> This section shall have effect notwithstanding any agreement, condition or stipulation to the contrary. Sec. 155 (2).

Law in Quebec and Saskatchewan.

This section is reproduced in the Insurance Act of Quebec, R.S.Q. 1909, Art. 7027, and the Saskatchewan Insurance Act, 1915, Chap. 15, Sec. 192.

Law in Maritime Provinces.

In the Nova Scotia Life Insurance Act the section is practically reproduced with certain additional provisions. It is as follows:

> Sec. 4 (1). Where the assured is a person domiciled or resident in Nova Scotia, or is so domiciled or resident at the maturity of the policy, the policy, certificate or writing evidencing the contract shall, if issued or delivered over in Nova Scotia, or committed to the post office or to any carrier, messenger or agent to be delivered or handed over in Nova Scotia to the assured, his assign or agent, be deemed to evidence a contract made in Nova Scotia, and the contract shall be construed, and the status of the beneficiary or beneficiaries thereunder shall be determined, according to the law of Nova Scotia, and all moneys payable under the contract shall be paid in Nova Scotia at the office of the insurer or its chief officer or agent in lawful money of Canada.
>
> (2) Any action to enforce such contract may be validly taken in any court of competent jurisdiction in Nova Scotia.
>
> (3) This section shall have effect notwithstanding any agreement, condition or stipulation in the policy to the contrary.

This section in the Nova Scotia Act is also to be found in the Insurance Acts of New Brunswick, Prince Edward Island and Newfoundland.

The added parts in the Nova Scotia section are as follows: "Where the assured * * * is so domiciled or resident at the maturity of the contract" and "the status of the beneficiary or beneficiaries thereunder shall be determined, according to the law of Nova Scotia."

The following is Sec. 47 of the Manitoba Insurance Act: Law in Manitoba and Alberta.

> The moneys payable under any policy of life assurance already issued or that may hereafter be issued by a company that has already obtained or may hereafter obtain a license or certificate of registration under the provisions of this Act, or any Act for which this Act is substituted, shall in all cases, be payable in this Province, when the assured resides therein, notwithstanding anything contained in any such policy or the fact that the head office of the company is not within this province.

This section appears almost word for word in the Alberta Insurance Act as Sec. 43, the only change being that when the assured is or dies domiciled in the province, the insurance moneys shall be payable there.

This section was considered in Rudolph v. Continental Life (1915), 9 O.W.N. 327. It was held that the Statute in effect became part of the insurance contract and that the policy having been issued in Alberta and the insured being domiciled there, the company could exonerate itself by paying the insurance moneys into court in Alberta, notwithstanding the fact that the policy provided for payment in Ontario, where the head office of the company was situate. The effect of the Statute was to supersede the policy provision and to make the money payable in Alberta. Rudolph v. Continental Life.

There being similar provisions in the Insurance Acts of all the provinces, except British Columbia, it is submitted that where there are rival claimants and the company desires to pay the money into court, the money should always be paid into the court of that province where the policy was delivered and the insured domiciled. This rule would not necessarily apply to British Columbia. No similar legislation in British Columbia.

It has been held that the effect of the above sections in the Manitoba and Alberta Acts is to make the insurance

contract subject to construction by the laws of those provinces respectively, *i.e.*, when the policy is issued in the province and the insured resides there: Re McGregor (1909), 18 Man. R. 433.

Statute incorporated into contract.

This legislation, enacted as it is, in all of the provinces except British Columbia, overrides anything and everything to the contrary appearing in the insurance contract. As has been stated before, the Statute is really incorporated into the contract. Chancellor Boyd, in the case of Gillie v. Young (1901), 1 O.L.R. at p. 374, uses this language:

Gillie v. Young.

> If then the rules of the society and the enabling powers of the Statute are in conflict I am bound by the authorities to say that the by-laws must yield to the superior power of the Legislature. The society has obtained the advantages of Ontario law in the prosecution of its business and the whole body, as well as all members of that body, must be taken to know the legal effect of such a privilege. Any by-law or condition repugnant to the Statute must be deemed invalid, however manifested.

Meredith, C.J.C.P., in Re [illegible]der and Canadian Order of Chosen Friends (1916), 36 O.L.R. at p. 36, puts it this way:

> The insurers 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.

Provincial Statute will govern contract wherever made as soon as company takes out license.

It is therefore well established that foreign insurance companies obtaining a license in any province are considered as submitting to its laws as to their insurance contracts. While intention is primarily the test of what law applies, a Provincial Statute will govern a contract, wherever made, as soon as a company takes out a license to do business in that particular province.

In the province of British Columbia, however, where there is no similar legislation, the general rule indicated above will be applicable. For instance, if a policy issued by a company having its head office in Ontario, contains a condition that the policy is to be construed according to the law of Ontario, effect will be given to such a provision notwithstanding the fact that the policy may have been delivered in British Columbia to a person resident there.

Rights and status of beneficiaries.

It is to be noted that in none of the Provincial Statutes, except those of the Maritime Provinces and Newfoundland, is it stated that the rights and status of beneficiaries are to be determined by the provincial statutory law. The construction of the insurance contract is only referred to. This has been held to cover the validity, the nature, the obligation and the interpretation of the contract: Story's Conflict of Laws, Sec. 280.

Lee v. Abdy.

The incidents of a contract must be determined by the law of the place where it is entered into: Lee v. Abdy (1886), 17 Q.B.D. 309. In this case an assignment of the policy was made in Cape Colony by the insured to his wife. At the time of the assignment the insured was domiciled there. By the law of Cape Colony, a husband cannot convey to his wife, and the assignment was void. It was held that the validity of the contract of assignment between the husband and wife had to be determined by the law of Cape Colony, even though the subject matter of that contract was an insurance policy made in England. It is clear then that the rights of an assignee or a creditor will be decided by the law of the place where the assignment is entered into, that place being the domicile of the assignor. It is self-evident that this has nothing to do with the construction of the insurance policy itself. An assignment is a collateral contract, merely an "incident"

of the insurance contract. It is entered into between the insured and a third party for a valuable consideration. What if a beneficiary has been changed without any contract having intervened, *e.g.*, a declaration or will changing the beneficiary from A. to B.? Would this also be an "incident" of the insurance contract?

Re Baeder and Chosen Friends

A very important decision on this point was given in the case of Re Baeder and Canadian Order of Chosen Friends (1916), 36 O.L.R. 30. The facts were as follows: An Ontario benevolent society in 1890 issued to B., then domiciled in Ontario, a benefit certificate for $2,000, which provided that this sum should, upon his death, be paid to his three children equally. B. subsequently changed his residence and domicile to the State of New York and died there in 1915. By his will, made in that State shortly before his death, he provided as follows: "I give, devise and bequeath to my granddaughter C. W. all my life insurance that I may have and in force at the time of my death." The will was duly executed according to the laws of Ontario and New York.

The contention on behalf of the children was that the law which governed the operation and effect of the will upon the policy was the law of New York, and that according to the law of New York, beneficiaries in an insurance policy cannot be changed by will. On behalf of the granddaughter it was contended that the policy was governed by the law of Ontario and that the insurance money was to be regarded as a trust fund subject to the law of Ontario, which in effect constituted and defined the terms of the trust.

The Appellate Division of the Supreme Court of Ontario unanimously held that the law of Ontario and not the law of New York applied and that a valid change of beneficiaries had been made by the will.

Middleton, J., at p. 32 says:

Statutory deed of trust created reserving to insured special power of appointment.

The statute has become in effect a statutory deed of settlement, reserving to the insured a special power of appointment, to be exercised in the mode pointed out by the statute. The change of the domicile of the insured can have no effect upon the terms of the trust or of the statutory power of changing the beneficiary which is vested in the insured.

Rights and powers not subject to change as domicile of insured changes.

In no conceivable way can the statute-law of the country where the insured happens to be domiciled be deemed to be grafted upon this statutory deed of trust. As soon as the contract is made, the rights and powers are crystallised and defined; they cannot be regarded as mutable and subject to change as the domicile of the insured changes. Similar contracts issued in Ontario in favor of the insured cannot be subject to different construction and operation dependent upon the accident of the domicile of the insured. The contract is clearly intended to be governed by the law of Ontario, and the statute expressly so declares.

In referring to and distinguishing the case of Lee v. Abdy, *supra*, Masten, J., at p. 36, says:

In that case the proceeds of the insurance policy belonged to the estate of the insured. It was his property to realise, assign, or otherwise deal with as he saw fit. He chose to assign it to his wife, he and she being at the time domiciled in Cape Colony. It was the assignment of a chose in action, and the right and capacity of the husband to assign and of the wife to receive an assignment of such chose in action depended on the law of Cape Colony.

Referring to the case at bar, Masten, J., goes on to say:

The fund in question formed no part of his estate, but was, according to the statute, a trust fund in Ontario in respect to which he was by statute given a limited power to appoint. The original policy and its subject-matter is something in Ontario governed by

the laws of Ontario, and is not a chose in action belonging to the testator, nor governed by the law of his domicile.

This power of appointment or declaration respecting the beneficiary might have been exercised by will or by any other method which complied with the Ontario statute, and the law of the place where the insured executed the power does not govern. Neither the rule that a chose in action follows the domicile of its possessor, nor the rule that the validity of a testamentary disposition of movables is governed by the law of the testator's domicile, has anything to do with this case.

Re Richardson.

This case has been followed by the Manitoba Court of Appeal in Re Richardson (1919), 3 W.W.R. 666.

In Pouey v. Hordern (1900), 1 Ch. 492, it was held that a domiciled French woman having, under an English settlement, a special power of appointment over funds in England, can exercise the power in such a way as to dispose of the property in a manner inconsistent with her position under the law of France. Farwell, J., at p. 494, points out that the exercise of the power does not involve a disposition of property belonging to the testator.

The judgment in the Baeder and Chosen Friends case is logical and convincing. It is founded on certain principles of law expounded by the highest Courts in England. For the sake of uniformity, it is to be hoped that the decision will be followed by the Courts of the other provinces. Mention must be made of the fact that in this case the certificate was on its face made payable to a preferred beneficiary. A statutory trust was created as soon as the contract was completed. From that time on the insured had a limited power of appointment over insurance moneys which were not his own

property. In such a case it is now clear that the law of the province where the policy is delivered to an insured domiciled there, governs, no matter to what province or country he may afterwards remove.

Law of Province where policy delivered to preferred beneficiary domiciled there governs.

It is submitted that the principle would also be applicable as soon as an appointment is made in favor of a preferred beneficiary. For instance, supposing a resident of Ontario takes out a policy payable to his estate. The policy is delivered to him in Ontario. Subsequently and while still domiciled in Ontario he makes it payable to some one in the preferred class. A statutory trust is then created in favor of the preferred beneficiary. He now has only a limited power of appointment over property which is not his own. Supposing he then moves to the Province of Quebec. The law of Ontario would still govern the question of the rights and status of beneficiaries and would continue to govern as long as the statutory trust existed, no matter how often he might subsequently change his domicile. This would be the logical result of the line of reasoning pursued in the Baeder case. Since the great majority of life insurance policies at maturity are payable to preferred beneficiaries, the importance of the decision in this case can readily be appreciated.

Re Baeder and Chosen Friends.

How far the principle laid down in the Baeder case can be applied has not yet been determined by the Canadian Courts. Would it apply where a statutory trust is not created, *e.g.*, where a policy is payable to an ordinary beneficiary? Take this case: A. living in Ontario takes out a policy payable to his father, who is not a preferred beneficiary. He then changes his residence to the State of California, and while domiciled there makes a will leaving the policy to his wife, the will being

valid both in California and Ontario. By the law of California a beneficiary cannot be changed by will. By Ontario law the change can be made. Which law governs? It may be laid down, though with diffidence, that the Ontario law would govern. This is the opinion of Mr. Justice Hodgins in his work on Life Insurance Contracts. See p. 146. It is true that there is no statutory trust in favor of the father. Still there is a completed gift to him, subject to revocation in the manner prescribed by the statute of the country where the contract was made. The insured has a general power of appointment in the case of a policy payable to an ordinary beneficiary as distinguished from a limited power in the case of a preferred beneficiary. To use the words of Middleton, J., in Re Baeder and Chosen Friends, "the change of the domicile of the insured can have no effect upon the statutory power of changing the beneficiary which is vested in the insured."

National Trust v. Hughes.

The judgment in National Trust Co. v. Hughes (1902), 14 Man. R. 41, is to the contrary. This case was decided in 1902 and is quoted by the text books since that time as settling the law on the subject. In view of the judgments in the Baeder case and also in Re Richardson (1919), 3 W.W.R. 666, the decision in the Hughes case cannot now be regarded as the law.

It is a moot point whether the principle laid down in the above cases is applicable where the insurance moneys are payable to the insured or his estate. The better opinion is that the statutory reservation of a right to alter the beneficiary is something which is reserved to and follows the insured wherever he goes. It is likely that the point will be judicially determined by the Canadian Courts before very long.

In the consideration of this subject it must be borne in mind that in the Maritime Provinces and Newfoundland there is legislation to the effect that the rights and status of beneficiaries are to be determined by the local laws where policies are delivered to persons domiciled there, and that in British Columbia there is no legislation at all as to what law should govern the construction of insurance contracts or the incidents thereto.

CHAPTER IX.

MISREPRESENTATION AND CONCEALMENT.

Fraudulent misrepresentation or concealment vitiates a contract.

It is a well known rule of law that fraudulent misrepresentation or concealment vitiates a contract. There are four conditions involved: The statement is untrue. The maker knew it to be untrue. He made it with fraudulent intent, and fourth, that it was material.

An excellent definition of fraud is to be found in the Quebec Civil Code:

> Fraud is a cause of nullity when the artifices practised by one party or with his knowledge are such that the other party would not have contracted without them.
>
> It is never presumed and must be proved: Art. 993.

It is also expressly stated in the Code, under the title of Insurance, that fraudulent misrepresentation or concealment on the part either of the insurer or of the insured is in all cases a cause of nullity of the contract in favor of the innocent party: Art. 2488.

The Dominion Insurance Act provides that a policy shall be incontestable after two years except in the case of fraud, among other things: Sec. 91.

What acts of misrepresentation or concealment are sufficient to void a contract.

Although the law is well established that fraudulent misrepresentation or concealment nullifies a contract, it is often difficult to determine what acts of misrepresentation or concealment are sufficient to void a contract where the element of active fraud is wanting. There is some legislation on the point which it would be well to refer to.

Ontario Insurance Act, Sec. 156.

The Ontario Insurance Act contains a provision that the contract shall not be invalidated by erroneous statements in the application unless the same are material to the contract. It is stated further that the question of materiality shall be a question of fact for the jury, or for the Court if there is no jury, also that no condition or term to the contrary contained in the application or policy shall have any force or validity: Sec. 156, sub-secs. 5 and 6.

The Insurance Acts of Saskatchewan, the Maritime Provinces and Newfoundland contain the same provision.

Quebec Insurance Act.

The Quebec Insurance Act provides that the Court shall determine how far the insurer was induced to enter into the contract by any misrepresentation contained in the application.

The common law on the subject is epitomized in the Civil Code as follows:

Civil Code.

> The insured is obliged to represent to the insurer fully and fairly every fact which shows the nature and extent of the risk, and which may prevent the undertaking of it, or affect the rate of premium. Art. 2485.
>
> The insured is not obliged to represent facts known to the insurer, or which from their public character and notoriety he is presumed to know; nor is he obliged to declare facts covered by warranty express or implied, except in answer to inquiries made by the insurer. Art. 2486.
>
> Misrepresentation or concealment either by error or design, of a fact of a nature to diminish the appreciation of the risk or change the object of it, is a cause of nullity. The contract may in such case be annulled although the loss has not in any degree arisen from the fact misrepresented or concealed. Art. 2487.
>
> The obligation of the insured with respect to representation is satisfied when the fact is substantially as represented and there is no material concealment. Art. 2489.

The above extracts from the Insurance Acts of Ontario and Quebec and the Civil Code are largely declaratory of the law as it existed previously, and the principles outlined above would be applicable to those provinces where there is no special legislation on the subject.

Implied warranty as to good health.

There is an implied warranty as to the good health of the applicant for insurance and the application usually contains a provision to that effect. It is stated in Art. 2588 of the Quebec Code that the declaration in the policy of the age and condition of health of the person upon whose life the insurance is made, constitutes a warranty upon the correctness of which the contract depends.

Nevertheless, in the absence of fraud, the warranty that the person is in good health is to be construed liberally and not as meaning that he is free from all infirmity or disorder. It has been pointed out elsewhere that a misstatement as to age will not vitiate the contract. An abatement is made in the proportion that the premium paid bears to the premium that should have been paid.

Misstatement as to age will not vitiate contract.

It is the usual practice in life insurance for the company to ask the person seeking insurance, to make a written application for a policy and submit to a medical examination. The application is a printed form prepared by the company. The medical report is also on a printed form supplied by the company. There is a series of questions asked the applicant, the answers to which are presumed to disclose such facts as are necessary to enable the company to determine whether the application should be accepted or declined. The disclosures which the applicant makes must naturally be governed largely by the nature of the questions asked by the company. Whatever information the company thinks it should have, it should ask for. It is true that the

Whatever information company thinks it should have it should ask for.

applicant must disclose everything which is material to be made known to the company to enable the latter to judge of the risk it undertakes. At the same time, the applicant should be aided by questions and suggestions from the company. It has been held that if no inquiry is made to elicit facts, a policy is not necessarily avoided by failure to disclose them: Coulter v. Equity Fire Ins. Co. (1904), 9 O.L.R. 35.

Coulter v. Equity.

Where the blank opposite a question in an application was not filled up, the answer to the question was considered to be waived by the acceptance of the application and the issue of a policy: Cunard v. Nova Scotia Marine Ins. Co. (1897), 29 N.S.R. 409.

When the agent forwards an application and medical report to the head office, it is the duty of the officials there to look carefully at the answers to see if there are questions left unanswered or any apparent mistakes in filling up the answers. By not doing so, the company may be estopped from saying that the applicant wilfully concealed material facts or made false representations: McQueen v. Phoenix Mutual (1880), 4 S.C.R. at p. 685.

McQueen v. Phoenix Mutual.

Misrepresentations upon an application for life insurance, found to be material, will avoid the policy, notwithstanding that they may have been made in good faith and in the conscientious belief that they were true: Jordan v. Provincial Provident (1898), 28 S.C.R. 554.

Material misrepresentations though made in good faith will void policy.

Where information is wilfully withheld from the company, and it is material to be stated to the latter, this will avoid the policy, even though the manager, having doubts as to the propriety of accepting the risk, causes the local agent of the company to make further inquiries as to the applicant's habits, and on receiving a satisfactory report issues the policy: Russell v. Canada Life (1882), 32 C.P. 256; (1883), 8 A.R. 716.

An application for insurance very frequently includes a declaration and agreement on the part of the applicant somewhat like this:

> I hereby declare that to the best of my knowledge, information and belief, my health is good, my mind sound, and my habits temperate, that I usually enjoy good health, and do not practice any habit or habits that tend to impair my health or shorten my life, that the statements made above are respectively full, complete and true; and I agree that such statements with this declaration, and any statements made or to be made to the company's examining physician shall form the basis of the contract for such assurance, and if there be therein any untruth or suppression of facts material to the contract, the policy shall be void, and any premiums paid thereon forfeited.

These statements are in the nature of warranties and are strictly construed against the company. For instance, a warranty of good health means simply that the applicant is in a reasonably good state of health. The term "sound health" is not interpreted as meaning "perfect health:" Fernand v. Metropolitan Life (1915), 47 Que. S.C. 520.

In the Quebec Civil Code warranties and conditions are stated to be a part of the insurance contract and must be true if affirmative, and if promissory must be complied with; otherwise the contract may be annulled, notwithstanding the good faith of the insured: Art. 2490.

The Civil Code also provides that representations not contained in the policy or made a part of it, are not admitted to control its construction or effect: Art. 2570. It has been judicially determined that representations made in good faith by the company or its agents as to possible or likely profits will not invalidate the contract or entitle the claimant to recover more than

Representations made in good faith by agent as to likely profits will not invalidate contract.

the amount contracted for in the policy: Shaw v. Mutual Life of New York (1912), 46 S.C.R. 606.

The following appears in the Ontario and Saskatchewan Acts:

> The proposal or application of the assured shall not as against him be deemed a part of or be considered with the contract of insurance except in so far as the Court may determine that it contains a material misrepresentation by which the insurer was induced to enter into the contract. Ont. Act, Sec. 156 (3); Sask. Act, Sec. 193 (3).

The Quebec Insurance Act provides that the proposal or application shall not be excluded from being considered with the contract, and the Court shall determine how far the insurer was induced to enter the contract by any misrepresentation contained in the proposal or application.

The subject of misrepresentation and concealment is exhaustively dealt with by Mr. Laverty in his treatise on the Insurance Law of Canada, to which reference should be made for further authorities.

CHAPTER X.

ASSIGNMENTS.

Right of insured to assign policy.

Everyone has an insurable interest in his own life and consequently anyone insuring his own life *bona fide* can assign the policy to whomsoever he wishes. If there is a named beneficiary, the assignee should secure an assignment as well from such beneficiary, in order to complete his title to the policy. If the policy is payable to an ordinary beneficiary, who objects to joining in the assignment, the insured may overcome the difficulty by simply revoking the appointment and making the policy payable to himself. He can then deal with it as he desires. It is possible for a beneficiary to assign whatever interest he may have in a policy. At best he has only a contingent interest, except in British Columbia where the vested interest doctrine prevails, and except in Quebec where the law of acceptance governs.

Legislation.

In the Ontario Insurance Act it is provided that nothing in the Act shall restrict or interfere with the right to assign a policy in any other manner allowed by law. The same clause is found in the Saskatchewan Act. In Quebec the Civil Code provides that a policy of insurance on life may pass by transfer, will or succession to any person, whether he has an insurable interest or not, in the life of the person insured. The Wives' & Children's Act recites that the insured and the parties benefited may join in assigning a policy.

Under the Ontario Judicature Act, notice to the company of the assignment has the effect of passing the legal

right to the chose in action and the power to give a discharge for the same without the concurrence of the insured.

An assignment of a policy need not necessarily be in writing. It there is a clear intention to pass the beneficial interest in a policy an equitable assignment is constituted which is recognized in law: Re McRae Estate (1903), 6 O.L.R. 238. There can also be an equitable mortgage or lien of a policy.

Policy assigned as security for a debt.

The assignee of a policy is limited to the amount of his actual claim unless the policy has actually been sold to him and he is able to afford the insurer a full legal discharge: Hallendal v. Hillman (1891), 28 O.R. 342 (n). It is submitted that where a policy is stated to be assigned as collateral security to a loan and though there is nothing in the assignment to indicate that the policy has not been absolutely assigned, the company should nevertheless, when the policy becomes a claim, oblige the assignee to prove the existence of the debt and then only pay that amount to him and account to the assignor for the balance, if any. This is a qualified assignment and casts upon the assignee when claiming under the policy the obligation to establish an indebtedness of the insured to him: Dubrule v. Sun Life (1906), Q.R. 29 S.C. 457.

An assignment of a policy in fraud of creditors may be set aside and the proceeds made available for the claims of creditors.

Assignment governed by law of place where entered into.

The assignment of a policy is governed by the law of the place where the assignment is entered into and not of the place where the policy was issued: Lee v. Abdy (1886), 17 Q.B.D. 309; Crawford v. Canadian Bank of Commerce (1908), 9 O.W.R. 401.

Assignee has no higher rights than insured.

The assignee has no higher rights than the insured, and if there has been fraud or misrepresentation on the part of the insured sufficient to void the policy *ab initio*, the assignee cannot succeed in an action brought against the company for the recovery of the insurance moneys: Venner v. Sun Life (1889), 17 S.C.R. 394.

In Quebec the authorization of a husband should be obtained to an assignment of a policy by a married woman: Boyce v. Phoenix Mutual (1887), 14 S.C.R. 723.

In British Columbia it appears that a minor over sixteen years of age can effectually assign a policy payable to a preferred beneficiary with the consent of such beneficiary, if of age.

CHAPTER XI.

PAYMENT OF CLAIM.

PROOFS OF CLAIM:

Evidence as to title of claimant.

It is now invariably made a term of the insurance contract that the furnishing of satisfactory proofs of the title of the claimant is a condition precedent to the liability of the company. The proofs are required to be in writing and usually under oath or by way of statutory declaration. It is customary for the company to supply printed forms for the purpose which are to be

filled out by the claimant. It is assumed that the company will ask for sufficient information to satisfy itself as to the death of the insured and the *bona fides* of the beneficiary's claim.

Cooke on Life Insurance says that under a general requirement of proof or notice, it is not practicable to lay down other than a very general rule as to their sufficiency; but as to the proof, it may doubtless be safely said that it involves the idea of evidence in some form, such form as is usual and customary in such cases, or as is recognized by law and is calculated to persuade the mind of the truth of the fact alleged. It is clear that the company cannot arbitrarily determine the sufficiency of the proofs. It is enough if they are reasonably satisfactory.

Waiver of proofs of claim.

The conduct of the company may be such as to preclude it from raising the objection that the proofs were insufficient or not satisfactory or even that they were never furnished. For instance, the company may retain the proofs without objection, refuse on a distinct ground to pay the claim or refuse to furnish the customary blanks used for preparing the proofs. Any of these acts would amount to a waiver on the part of the company.

It has been held that interest is not payable on insurance moneys until satisfactory proofs of loss have been furnished the company: Toronto Savings Bank v. Canada Life (1868), 14 Grant 509.

Where claimants are infants.

Where insurance moneys are payable to infants, most of the Insurance Acts provide that the company may require reasonable proof of the number, names and ages of such infants.

The Quebec Civil Code contains the following provision:

> In case of loss the insured must, with reasonable diligence, give notice thereof to the insurer; and he must conform to such special requirements as may be contained in the policy with respect to notice and preliminary proof of his claim, unless they are waived by the insurer.
>
> If it be impossible for the insured to give notice or to make the preliminary proof within the delay specified in the policy, he is entitled to a reasonable extension of time. Art. 2478.

THE AMOUNT PAYABLE:

Maximum named in contract *prima facie* payable.

The Ontario Insurance Act provides that where the amount payable is in dispute, it shall *prima facie* be the maximum amount stated or indicated in the contract. Where the maximum is disputed the claimant is entitled to inspect the company's books. If the company refuses or neglects to afford the claimant reasonable opportunity to inspect, the claimant may apply to the Superintendent of Insurance and obtain an order for an inspection: Sec. 173.

This provision also appears in the Saskatchewan Insurance Act as Sec. 181. There is no similar enactment in any of the other provinces or Newfoundland.

WHEN PAYABLE:

Section 89 of the Ontario Insurance Act is as follows:

When action may be brought under contract.

> (1) No action shall be brought for the recovery of money payable under a contract of insurance until the expiration of sixty days after proof, in accordance with the provisions of the contract, of the loss or of the happening of the event upon which the insurance money is to become payable or such shorter period as may be prescribed by any enactment regulating the contracts of the corporation or as may be fixed by the contract of insurance.

(2) After such sixty days or shorter period any person entitled as beneficiary or by assignment or other derivative title to the insurance money, and having the right to receive the same and to give an effectual discharge therefor, may sue for the same in his own name, any rule, stipulation or condition to the contrary notwithstanding.

(3) If a corporation disputes a claim it shall give notice in writing to that effect to the claimant and to the Superintendent within such period.

In Quebec, Manitoba, Saskatchewan, Alberta and British Columbia, sixty days must also elapse after the proofs of claim are filed with the company before action can be brought. In the Maritime Provinces and Newfoundland, claims are payable thirty days after proof.

WHERE PAYABLE:

Insurance moneys payable in Province where policy delivered if insured domiciled there.

There is a provision in the Ontario Insurance Act to the effect that where the insured is a person domiciled or resident in Ontario, and the policy is issued or delivered to him there, all insurance moneys payable under the contract shall be paid at the office of the chief officer or agent in Ontario of the company, notwithstanding any agreement, condition or stipulation to the contrary: Sec. 155.

All of the other provinces except British Columbia have legislation to the same effect, including Newfoundland. In the absence of any statutory provision and where no place of payment is mentioned in the policy, it must be assumed that the place of payment is where the head office of the company is situated: Holt on the Insurance Law of Canada at p. 572.

Dominion Insurance Act, 1917, Sec. 91(k)

The Dominion Insurance Act contains a provision that if a policy is issued by a British or foreign company, an action to enforce the obligations of such policy may be

validly taken in any Court of competent jurisdiction in the province where the policyholder resides or last resided before his decease: Sec. 91 (k).

Appointment of agent to accept service of process.

The Dominion Act also provides that every company shall file in the Department of Insurance a power of attorney from the company to its agent in Canada which shall expressly authorize such attorney to receive service of process in all suits and proceedings against such company in any province in Canada in respect of any liabilities incurred by the company therein and which power of attorney shall also declare that service of process accordingly shall be legal and binding on the company. After such power of attorney is filed any process may be validly served on the company at its agency: Secs. 22, 23 and 26.

LIMITATION OF ACTION:

Limit of time within which action may be brought.

In the Provinces of Ontario and Saskatchewan any action or proceeding against the insurer for the recovery of any claim under the contract of insurance must be commenced within one year after the cause of action arose, except where death is presumed by reason of the insured not having been heard of for seven years, in which case action must be commenced within one year and six months from the expiration of such period of seven years. There is the further exception that where the death of the insured is unknown to the person entitled to claim under the contract, an action must be brought within one year and six months after the death becomes known to him: Ont. Act, Sec. 165; Sask. Act, Sec. 174.

In the Province of Quebec, action may be brought within one year after the happening of the event insured against, or within the further term of six months by leave of a Judge of the Superior Court, granted upon a

petition, upon its being shown to his satisfaction that there was a reasonable excuse for not commencing the action within the year. In case of presumption of death arising from the assured not having been heard of for seven years, the period is one year and six months from the expiration of the seven years: R.S.Q. 1909, Art. 7030.

Duffield v. Mutual Life.

In the Ontario case of Duffield v. Mutual Life of New York (1914), 32 O.L.R. 299, it was held that the company must show that the period of seven years expired more than one year and six months before the writ was issued.

In the Insurance Acts of the other provinces and Newfoundland there are no provisions as to the limitation of actions.

In the absence of a statutory enactment, a clause in a policy prescribing legal proceedings after a limited period has been held to be a reasonable provision and such a condition is a complete bar to any suit or action instituted after the lapse of the term to which the action is thereby limited: Home Ins. Co. v. Victoria-Montreal (1907), A.C. 59, and Allen v. Merchants Marine (1888), 15 S.C.R. 488. Most of the companies have accordingly inserted in their policies a stipulation that no action may be brought to recover insurance moneys beyond a certain specified time after they mature.

PAYMENT INTO COURT:

In all of the provinces and Newfoundland there are Rules of Court or special statutory enactments permitting a company to pay moneys into Court where there are rival claimants. By pursuing this course a company avoids being drawn into litigation.

PRESUMPTION OF DEATH:

Where death is presumed.

Under the Ontario and Saskatchewan Acts, where a claim is made against a company on the ground that the insured is presumed to be dead by reason of his not having been heard of for seven years, the company may on notice, apply to a Judge of the Supreme Court in Chambers for a declaration as to the presumption of death.

If the Judge is satisfied that a presumption of death has been established, he makes an order to that effect and also an order as to payment of the insurance money. Payment by the company as so ordered, discharges it from all liability: Ont. Act, Sec. 165; Sask. Act, Sec. 174.

There is no similar section in the Insurance Acts of the other provinces or Newfoundland. However the common law presumption of death after an absence of seven years, during which the person has not been seen or heard from, is applied in the case of the disappearance of the insured: Willyams v. Scottish Widows Socy. (1888), 4 T.L.R. 489. Consequently in those provinces where there is no special statute, an order or declaration may be obtained from the Court as to the presumption of death. The insurance company would then be quite safe in paying a claim.

Evidence required.

Premiums paid after presumption of death arose, cannot be demanded back: Somerville v. Aetna Life (1910), 21 O.L.R. 276. As to what evidence is necessary to raise the presumption of death, reference should be made to the following cases: Duffield v. Mutual Life of New York (1914), 32 O.L.R. 299; Somerville v. Aetna Life, *supra*; Halsbury's Laws of England, Vol. 13, Sec. 692; Re Oag and Home Circles (1913), 4 O.W.N. 643; Ollson v. A.O.U.W. (1916), 38 O.L.R. 268.

PROTECTION OF INSURER:

Protection of company in paying insurance before notice of declaration.

The Ontario Insurance Act contains the following important section which serves as a protection to the company in paying insurance money before receiving notice of a declaration changing the beneficiary:

> Until the insurer has received the original or a copy of an instrument in writing affecting the insurance money or any part thereof, or of any appointment or revocation of an appointment of a trustee, the insurer may deal with and obtain a valid discharge from the assured, or with and from his beneficiaries, or with and from his trustees, executors, administrators or assigns in the same manner and with the like effect as if such instrument in writing, appointment or revocation had not been made, but nothing in this sub-section shall affect the right of any person entitled by virtue of such instrument, appointment, or revocation to recover insurance money from the person to whom it has been paid by the insurer. Sec. 171 (10).

The other provinces have similar legislation.

PAYMENT TO THE ASSURED OR HIS ESTATE:

Payment to personal representatives.

Where a person desires to retain complete control of a policy, it is customary to have the insurance moneys payable to himself or his estate. In such a case, if at the maturity of the contract the insured is dead and he has not in his lifetime made a disposition in favor of some third person, or has not assigned the policy, the insurance moneys are payable to his estate, or in other words, to his personal representatives.

In the English speaking provinces it is usual to use the words "executors or administrators" instead of "estate." For all intents and purposes the words are synonymous. If the insured dies leaving a will, payment is made to the executor, who must, however, first take out

probate. If, on the other hand, the insured dies intestate, it is necessary for some one to take out letters of administration to his estate and payment is made to the administrator.

Fees payable for probate or administration.

In Ontario there is a provision in the Surrogate Courts Act that when the whole property of the deceased consists of insurance money, or of insurance money and wearing apparel, the fees payable for probate or administration are as follows:

Where the insurance money does not exceed $1,000	$4.00
Where the insurance money exceeds $1,000, but does not exceed $2,000	6.00
Where the insurance money exceeds $2,000, but does not exceed $3,000	8.00

These fees are exclusive of the fees payable to the Crown. There are similar provisions in the Insurance Acts of the Maritime Provinces.

Meaning of "heirs," "legal heirs" or "lawful heirs."

According to the Ontario and Saskatchewan Acts the words "heirs," "legal heirs" or "lawful heirs" 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 surviving children and unmarried, they mean those persons entitled to take according to the Devolution of Estates Act.

Death of assured abroad.

Where the assured dies domiciled or resident in a foreign jurisdiction, the Ontario Act provides as follows:

> Sec. 177 (1). Where under a contract made or by law deemed to be made in Ontario, or a contract made by a corporation having its head office or chief agency in Ontario, the insurance money is payable to the representatives of a person who at his death was domiciled or resident in a foreign jurisdiction, if no person has become his personal representative in Ontario, the money may on the expiration of two

months after such death be paid to the personal representative appointed by the proper court of the foreign jurisdiction.

(2) Where such a contract provides that the insurance money may be paid to the personal representative appointed by the court of the jurisdiction in which the deceased may be resident or domiciled at the time of his death, the money may be paid to such representative or according to the terms of the contract at any time after the death.

(3) Where under such a contract the insurance money is payable to the representatives of a person who at the time of his death was domiciled or resident in a foreign jurisdiction and died intestate, the money may after the expiration of three months after such death, if no person has become his personal representative in Ontario, be paid to the person entitled according to the law of the foreign jurisdiction to receive the money and give a discharge for the same as if such money were by the terms of the contract payable in such foreign jurisdiction.

(4) Where a testator domiciled or resident in a foreign jurisdiction disposes of the insurance money by a will valid according to the law of that jurisdiction, such money may be paid according to the terms of the contract at any time after the death to the person entitled under such will to receive and give a valid discharge for money payable in such foreign jurisdiction.

The same sections are to be found in the Insurance Acts of Saskatchewan, the Maritime Provinces and Newfoundland.

Law in Quebec.

In the Province of Quebec, if the policy is payable to the assured's estate, the insurance moneys are handed to his personal representatives. If the assured leaves a will, the executor is entitled to the moneys. In case no executor is appointed, the residuary legatees or the one to whom the policy is bequeathed, can give a discharge.

If the assured dies without a will there is no provision in the law of Quebec for the appointment of an administrator. In such cases the insurance moneys are payable to the legal heirs direct, unless they are minors or persons of unsound mind.

In Quebec, if a man, common as to property, insures his life in favor of himself or his legal representatives, and the policy be not assigned during his lifetime, the proceeds fall into the community and on his death one-half only goes to his heirs, the other half going to his wife, not as one of his heirs, but in her own right as the surviving partner. The same law prevails in the case of a married woman common as to property. The discharge of the surviving consort should therefore always be secured by the company, unless evidence is furnished that they were separate as to property.

No presumption at law as to survivors among persons dying from same cause.

There is no presumption at law arising from age or sex as to survivors among persons dying from the same cause nor is there any presumption that they all died at the same time. The question is entirely one of fact. In the case of a ship going down at sea with all on board and there being no witnesses as to the accident, it is impossible to establish the fact of survivorship one way or the other. The onus is on the party contending that there was survivorship and it would be impossible for him to succeed in his contention: Wing v. Angrave (1860), 8 H.L.C. 183; Re Barber and Walker (1919), 17 O.W.N. 215.

PAYMENT TO INFANTS:

Certain minors have insurable interest in their own lives.

In Ontario, Saskatchewan and Alberta, a minor 15 years of age and over, and in British Columbia, a minor 16 years of age and over, has an insurable interest in his own life, and where the policy is payable to himself he

can give a valid discharge for any benefit accruing or for money payable under the contract.

Infants' shares may be paid to persons authorised by contract to receive same.

In all the provinces and Newfoundland the share of an infant in insurance moneys may be paid to a person authorized by the contract or whom the insured by an instrument in writing or by his will expressly authorizes to receive the moneys. The person so authorized is generally called a trustee.

Ontario law.

In Ontario where an infant is entitled to insurance money, the company must within thirty days from the death of the insured, notify the Official Guardian of Infants for the Province of the fact, and if the company fail to do so, it is liable to a penalty not exceeding $100.

By the Ontario Act, if no trustee is appointed to receive the share of an infant, the company is obliged to pay the money into Court to the credit of the infant. An order of the Court is not necessary, but payment may be made with the privity of the accountant of the Supreme Court. At the time of payment in, the company is obliged to file with the accountant an affidavit showing the name and date of birth of the infant. Notice of payment into Court must be given at the same time to the Official Guardian of Infants for the Province: Sec. 176.

The Ontario Act also contains a provision that where it appears by letters of guardianship issued by a foreign Court, that it has been shown to the satisfaction of such Court that the assured at the maturity of the contract was domiciled or resident within its jurisdiction and that proper security has been given by the guardian, the Court in Ontario may appoint such guardian or trustee to receive the share of an infant residing in such foreign Court: Sec. 177 (5).

By the Ontario Act, a declaration changing the preferred beneficiaries or altering, apportioning or varying the benefits of the insurance may be made notwithstanding that by the contract of insurance or a previous declaration the insurance money is payable to a trustee for preferred beneficiaries: Sec. 182.

Provision is often made by will for payment of an infant's share to an executor accompanied by directions to the executor as to the investment and use of the insurance money during the infant's minority.

Quebec law.

In Quebec the Wives' & Children's Act provides that when no trustee is appointed for minor children, payment of the insurance moneys coming to such children is made to the testamentary executors of the insured. If trustees or executors refuse to accept, or if the insured dies intestate, payment is made to the tutor of the minor children: Art. 7393. A tutor is appointed on the advice of a family council, by a competent Court or by any Judge or the prothonotary thereof. There must be at least seven in the council, composed if possible of those most nearly related to the minor. If a sufficient number of relatives cannot be found, the friends of the minor may be called to complete the number required: Civil Code, Arts. 249 *et seq.*

The company is not bound to see to the investment of the insurance moneys nor is it liable for the subsequent misapplication thereof by any trustees, executors or tutors: Art. 7394. The Act also provides for the investment and management of insurance moneys by trustees and gives them power to make advances to a minor "for the establishment, advancement or preferment in the world, or for the settlement in marriage of such child": Arts. 7395 *et seq.*

Manitoba law.

In Manitoba, if no trustee is appointed, insurance moneys belonging to an infant are payable to the executor of the insured's estate. In case of no trustee being appointed, or the executor refusing to act, payment is made to the guardian of the infant: Manitoba Life Insurance Act, Sec. 11. Manitoba has followed the Quebec law as to the investment and management of insurance moneys by trustees.

Saskatchewan law.

The law of Saskatchewan in respect to infant's money is the same as that of Ontario: The Saskatchewan Insurance Act, Sec. 182 *et seq.*

Alberta law.

In Alberta, if no trustee of the insurance money is named or appointed, shares of infants may be paid to a trust company appointed as trustee by the Court. When insurance money not exceeding $2,000 is payable to the wife and children, or to the children of the assured, and one or more of the children are infants, the Court may, if the assured is dead and if the widow of the assured is the mother of such infants, appoint such widow as their guardian with or without security, and such insurance money may be paid to her as such guardian. A trustee, subject to the terms of the trust instrument, or a guardian may invest infants' money in any security in which trust companies under the provisions of the Trust Companies Ordinance may invest trust funds. The trustee or guardian may apply the income towards the maintenance and education of such infants and may also with the approval of the Court advance the whole or part of the principal for their advancement or preferment in life or on their marriage. If there is no person competent to receive the share of an infant and the company admits the claim, it may, after the expiration of two months from the date of the admission of the claim, pay the money into Court: The Life Insurance Beneficiaries Act, Secs. 14 and 15.

British Columbia law.

In British Columbia, if no trustee is named to receive the shares to which infants are entitled, their shares may be paid to the executors of the insured or to a guardian of the infants or trustee appointed by the Court. The guardian must give security for the faithful performance of his duties. Provision is also made for the investment and advancement of infants' moneys by trustees, executors and guardians, the same as in Alberta. If there is no trustee, executor or guardian, the company may at the expiration of two months from the time it has admitted the claim, pay the money into Court. If the company does not within four months from the time the claim is admitted either pay the infants' share to some person competent to receive the same, or pay the same into Court, an order may be obtained from the Court compelling the company to pay the money to the proper person or into Court. On certain conditions the Court may appoint a foreign guardian as trustee to receive infants' insurance moneys: The Life Insurance Policies Act, Secs. 15 *et seq.*

Law of the Maritime Provinces and Newfoundland.

In the Maritime Provinces and Newfoundland, infants' shares may be paid to the executors of the assured or to a guardian or trustee appointed by the Court, that is, provided no trustee is named by the assured. The guardian must give security. Where insurance moneys not exceeding $3,000 are payable to the wife and children of the assured and some are infants, the Court may appoint the widow, being mother of such infants, as their guardian without security. Provision is made for the investment, management and advancement of infants' moneys. There is also provision for the appointment in certain cases of a foreign guardian as trustee to receive infants' shares. If there is no trustee, executor or guardian, the company may at the end of two months

after it has admitted the claim, pay the money into Court. If the company does not within thirty days from the time the claim is admitted pay the money to the proper person or into Court, an order may be obtained from the Court obliging the company to do so: The Nova Scotia Life Insurance Act, Secs. 19, 20 and 21; the New Brunswick Life Insurance Act, Secs. 19, 20 and 21; the Prince Edward Island Life Insurance Act, Secs. 18, 19 and 20; the Insurance Act of Newfoundland, Secs. 13, 14 and 15.

PAYMENT TO LUNATICS:

Ontario law.

Where a lunatic, who is entitled to insurance money, is confined in a Provincial Asylum in Ontario, the Public Trustee is entitled to receive the money as official committee of the lunatic: The Hospitals for Insane Act, R.S.O. 1914, Chap. 295, Sec. 36 *et seq.*, and the Ontario Public Trustee Act, 9 Geo. V., Chap. 32, Sec. 4.

It has been held that Sec. 36 of the Hospitals for the Insane Act overrides *pro tanto* Sec. 176 of the Ontario Insurance Act, which provides that when there is no person at the time of the maturity of the contract competent to receive the share of a lunatic, the company shall pay such share into Court: Re Nash and Chosen Friends (1916), 11 O.W.N. 65.

It is assumed that the share of a lunatic who is not incarcerated in a Provincial institution should be paid into Court unless a guardian or committee has been lawfully appointed to take the care and management of his property.

Quebec law.

In Quebec, when the insured dies without having appointed trustees for any benefited persons who are not in the exercise of their rights, payment of the insurance money coming to such disqualified persons is made to the

testamentary executors of the insured. If the trustees or executors refuse to accept, or if the insured dies intestate, payment is made to the curator of such disqualified persons. A curator is appointed in the same manner as a tutor. Trustees, executors and curators have like power of investment, management and advancement of the moneys of disqualified persons as in the case of infants: Art. 7393 *et seq.*

Manitoba law.

In Manitoba, insurance moneys to which insane persons are entitled are payable to the insured's executors, when he has not appointed a trustee for that purpose. In case there is no trustee, or the executors refuse to accept, or the insured dies intestate, payment is made to the curator of such persons incapable of exercising their rights. Trustees, executors and curators have the power to invest, manage and advance moneys belonging to insane persons, the same as in the case of infants.

Saskatchewan law.

The Insurance Act of Saskatchewan provides that a lunatic's share shall be paid into Court, if there is no person at the time of the maturity of the contract competent to receive the money. The procedure is the same as in Ontario.

There is no provision in the Insurance Acts of Alberta, British Columbia or the Maritime Provinces for the payment of insurance moneys belonging to lunatics. It is assumed that the Courts in these provinces may appoint a guardian or committee of the lunatic to receive such moneys. The same applies to Newfoundland.

PAYMENT TO TRUSTEES:

In all of the Provinces and Newfoundland the insured may appoint a trustee to receive payment of insurance moneys and may from time to time revoke such appointment and make a new appointment as he wishes. A

trustee is given power by statute to give a valid discharge to the company for insurance moneys. A number of the provinces define the powers and duties of trustees in respect to the investment and management of funds coming into their hands for beneficiaries.

PAYMENT TO CREDITORS:

A creditor is limited to the amount of his actual claim unless the policy has been actually sold to him: Hodgins on Life Insurance Contracts, p. 131.

Art. 2592 of the Quebec Civil Code provides that the measure of the interest insured is the sum fixed in the policy, except in cases of insurance by creditors or in other like cases in which the interest is susceptible of exact pecuniary measurement. In these cases the sum fixed is reduced to the actual interest.

It has been held that a paid-up policy and bonus additions are exigible under execution and that a receiver may be appointed to receive the moneys on the application of an execution creditor: Canadian Mutual v. Nisbet (1900), 31 O.R. 562.

Rights of creditors.

There is a provision in the Insurance Acts of all of the provinces, except Manitoba, to the effect that if the premiums are paid by the assured with intent to defraud his creditors, they are entitled to receive out of the insurance money an amount not exceeding the premiums so paid and interest thereon. It is to be noted that the creditors are only entitled to the premiums and interest. The wording of the provision in Quebec is different. It is as follows:

> If, however, it be proved that all or any of the premiums were paid, at a time when the person whose life was insured was insolvent, in fraud of the rights of creditors, such creditors shall be entitled to recover

and to receive out of the insurance money, an amount equal to the premiums so paid; and in such case, the share of each person, when more than one are benefited, shall be proportionately reduced: R.S.Q. 1909, Art. 7407.

The fact that the insured is insolvent at the date of taking out a policy in favor of his wife, etc., does not invalidate the policy as being in fraud of creditors. The latter have recourse under the above provision only: Peachy v. Riverin (1895), Q.R. 7 S.C. 519.

Creditors have no claim on insurance moneys payable to preferred beneficiaries except as above provided.

It has been held by the Supreme Court of Canada in the case of Cornwall v. Halifax Banking Co. (1902), 32 S.C.R. 442, that the beneficiary when definitely indicated, be he ordinary or preferred, acquires, so long as the benefit is not revoked, an exclusive right to the insurance moneys and that consequently the moneys are not liable to the claims of the assured's creditors after his death. The reservation must, of course, be made that he creditors can recover the premiums and interest where payment was made with intent to defraud them.

Cornwall v. Halifax Banking Co.

PAYMENT TO ASSIGNEE OF THE POLICY:

References to this subject will be found in Chap. X. dealing with assignments.

PAYMENT OF BONUSES AND PROFITS:

All of the Provinces and Newfoundland provide that the insured may require the company to pay bonuses and profits to himself or in reduction or payment of premiums or add the same to the insurance money. The consent of the beneficiary is not necessary, no matter whether he is in the ordinary or preferred class.

SURRENDER OF POLICY:

Insured may surrender policy with consent of beneficiary.

There is also legislation in all the Provinces and Newfoundland permitting the insured to surrender the policy with the consent of the beneficiary if of age. According to the Dominion Insurance Act, a policy must show its surrender values. Most insurance companies have a clause in their policies to the effect that at the end of the third or any subsequent policy year, provided the premiums have been paid in full, the net cash value or its equivalent in non-participating paid-up insurance shall be available to the person entitled, upon surrender of the policy to the company and the completion of a proper discharge.

In those provinces where a minor has the power to insure his own life, he may also surrender the policy, the same as an adult.

In Quebec a married woman is free to surrender her policy payable to herself with the authorization of her husband.

CASH LOANS ON POLICIES:

After three full premiums paid company must loan.

The Dominion Insurance Act provides that after three full annual premiums have been paid on a policy, the company shall loan on the security thereof, at not more than seven per cent. per annum, a sum not exceeding ninety-five per cent. of the surrender value of such policy less any indebtedness to the company in respect thereof. This provision must be set out in every policy, together with a table of the loan values. The Act also provides that where a loan is made, the policy must be assigned to the company by an assignment executed by all proper parties "and in the form G in the schedule to this Act, or in such other form as may be approved of by the

Superintendent": Sec. 91 (g). Remark should be made of the fact that in form G there is nothing obliging the borrower to repay the loan, although the agreement permits him to repay it at any time. The beneficiary must consent to a loan being made by the assured. It has already been pointed out that the assured alone may borrow on the policy to keep it alive.

Loans to married women in Quebec.

In Quebec there are difficulties in making loans to a married woman on policies payable to her or her estate. If she is common as to property and her husband executes the loan agreement, no trouble arises. If, however, the wife is separate as to property, confusion has resulted by reason of Art. 1301 of the Civil Code, which is as follows:

> A wife cannot bind herself either with or for her husband otherwise than as being common as to property; any such obligation contracted by her in any other quality is void and of no effect, saving the rights of creditors who contract in good faith.

In view of this provision, an eminent authority on Quebec law advises a company, when lending to a married woman in Quebec on the security of a policy, to have the applicant state precisely in writing at the start the purposes of the loan and what she intends to do with the money, and then if it appears that it is to be used for herself personally, and for what she has a right legally to spend money on, and this seems reasonable with due regard to her station in life, the contract may be safely entered into, provided that she and her husband both make a solemn declaration that the money is to be used for the stated purpose and on no account to benefit him.