

1898

*May 20.

ROBERT G. FISHER (DEFENDANT).... APPELLANT ;

AND

AGNES E. E. FISHER (PLAINTIFF).....RESPONDENT.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

Appeal—Special leave—60 & 61 V. (D.) c. 34, s. 1 (e)—Benevolent Society—Certificate of Insurance.

An action in which less than the sum or value of one thousand dollars is in controversy and wherein the decision involves questions as to the construction of the conditions indorsed upon a benevolent society's certificate of insurance and as to the application of the statute securing the benefit of life insurance to wives and children to such certificates is not a matter of such public importance as would justify an order by the court granting special leave to appeal under the provisions subsection (e) of the first section of the statute 60 & 61 V. c. 34

APPEAL from the judgment of the Court of Appeal for Ontario (1), reversing the decision of Mr. Justice Street in the High Court of Justice for Ontario (2), which dismissed the plaintiff's action with costs.

MOTION on behalf of the defendant for special leave to appeal under the provisions of subsection (e) of 60 & 61 Vict. ch. 34.

By the first section of the statute above mentioned appeals are allowed to the Supreme Court of Canada from judgments of the Court of Appeal for Ontario, in the following cases only, that is to say,—

* PRESENT :—Sir Henry Strong C.J. and Taschereau, Gwynne, Sedgewick and King JJ.

(1) 25 Ont. App. R. 103.

(2) 28 O. R. 459.

“(a) Where the title to real estate or some interest therein is in question ;

(b) Where the validity of a patent is affected ;

(c) Where the matter in controversy in the appeal exceeds the sum or value of one thousand dollars, exclusive of costs ;

(d) Where the matter in question relates to the taking of an annual or other rent, custom or other duty or fee, or a like demand of a general or public nature affecting future rights ;

(e) In other cases where the special leave of the Court of Appeal for Ontario or of the Supreme Court of Canada to appeal to such last mentioned court is granted.”

The action was brought to recover \$835 received upon a policy or certificate of insurance on the life of the plaintiff's deceased husband which had been paid to and was retained and claimed by the defendant as the personal representative of the insured. In the trial court the action was dismissed but, on appeal, this decision was reversed and a judgment for \$901.65 and costs, (which were afterwards taxed at \$382.65,) was ordered to be entered in favour of the plaintiff.

The application by the deceased to the society for the certificate stated that the insurance money was to be paid to the applicant's wife, and the certificate, as issued and accepted, provided that the money should, at his death, be paid to the deceased's wife, or such other beneficiary as he might in his lifetime designate in writing indorsed on the certificate and, in default of such designation, to his legal personal representatives.

In dismissing the action in the trial court, Mr. Justice Street was of the opinion that, in the absence of special indorsements designating beneficiaries under such certificates, the insurance moneys belonged to

1898
FISHER
v.
FISHER.
—

1898
FISHER
v.
FISHER.
—

the legal personal representatives of the insured, whilst the majority of the judges in the Court of Appeal, (Osler J. A. dissenting), held that the certificate came within the Act to secure to wives and children the benefit of life assurance (1), and that the widow was entitled to recover the amount of her claim.

Walter Barwick for the motion.

Chrysler Q.C. contra.

After hearing counsel upon the motion and without calling upon opposing counsel, the court was unanimously of opinion that, under the circumstances disclosed, it did not appear that the questions at issue in the case were of sufficient public importance to justify the court in making an order granting special leave to appeal.

Motion dismissed with costs.

Solicitors for the appellant: *Fraser & Fraser.*

Solicitors for the respondent: *McWhinney, Ridley & Co.*

(1) R. S. O. [1887] ch. 136.