BOYD, C.]   [Dec. 22.

SCOTT ET AL *v.* SCOTT.

Life insurance—Benevolent society—Endorse-
ment on policy—Devise by will inconsistent
with endorsement—Who entitled—Trustee—
Executors—R.S.O., c. 136, s. 5.

J.H.S. took out a policy of life insurance
with the Order of Foresters, a benevolent society,
conditioned to be paid "To the widow or
orphans or personal representatives of the said
brother (J.H.S.)," and endorsed and signed on
it, " I hereby direct that the endowment benefit
due at my death on this endowment certificate
shall be paid to my daughter, L.A.S." Subse-
quently, by his will, he devised to his executors
all the rest of his estate, " Including the proceeds
of a life insurance policy in the Independent
Order of Foresters for the sum of $3,000," on
certain trusts.   After his death the proceeds of
the policy were claimed by his executors and by
his widow, who had been appointed guardian to
the infant daughter, L.A.S.

Held, that the policy was within the meaning
of R.S.O., c. 136, s. 5.   That the effect of the
endorsement was to withdraw the money from
the control of the insured, so that upon his death
it did not "form part of his estate."   That such
money was, however, payable "under the
policy," and he could appoint trustees to receive
and invest it where the person entitled was an
infant, and that such trustee should be disting-
uished from his executors.

Held, also, that as the testator had directed
his executors to hold this and other moneys in
trust with directions repugnant to the absolute
right of the daughter (L.A.S.), it would lead to
confusion to let this money be mingled with
other estate moneys in the hands of the execu-
tors, and that they were not competent trustees
within the meaning of the Act (s. 11); and that
as the widow had been duly appointed guardian
for the infant daughter, and had given security
for the due performance of her duties and the
proper application of the money, she should be
entrusted with it rather than the executors, and
that the will was invalid so far as it assumed to
deal with the policy.

D. M. Christie for the petitioners.

W. M. Douglas for the respondent.

BOYD, C.]   [Jan. 6.

BEATTY *v.* DAVIS.

Gaming rights—Navigable water.

Ownership of land or water (though not en-
closed) gives to the proprietor, under the com-
mon law, the sole and exclusive right to fish,
fowl, hunt, or shoot, within the precincts of that
private property, subject to the game laws when
pertinent.   And this exclusive right is not di-
minished by the fact that the land may be
covered by navigable water.   The right of
navigation, when it exists, is to be used so as
not to unnecessarily disturb or interfere with the
enjoyment of the subordinate private rights of
fishing and shooting.   The public can only use
the water for *bona fide* purposes of navigation,
but not so as to occupy the water for the purposes
of fishing or fowling when the soil underneath
is the private property of one who objects to
such occupation.

McCarthy, Q.C., and *H. S. Osler*, for the
plaintiff.

Patterson, Q.C., for the defendant.

Practice.

Court of Appeal.]   [Jan. 13.

MCNAIR *v.* BOYD.

Costs—Order of judge as to, under Rule 1172—
"Good cause"— Allowing appeal without
costs.

The words of Rule 1172, "The Judge or court
makes no order respecting the costs," do not
confer any wholly discretionary power on the
Judge, but must be read with Rule 1170, as to
an order made " for good cause."

And where, in an action in a County Court
for damages for bodily injuries sustained by the
plaintiff through the alleged negligence of the
defendant, the jury found for the plaintiff and
assessed the damages at $30, and added that the
defendant should pay "the Court expenses," and
the Judge made an order that the defendant
should have full County Court costs, and that the
defendant should not have the set-off provided
by Rule 1172, because, in his opinion, the injury
done to the plaintiff was attended by circum-
stances of great aggravation, and the jury ought
to have given larger damages,

Held, OSLER, J.A., dissenting, that these
were not circumstances which constituted "good