MIDDLETON, J., IN CHAMBERS. OCTOBER 16TH, 1913.

RE KLOEPFER.

Life Insurance—Beneficiary—Wife or Surviving Children—Mention of Wife by Name—Death of Wife—Remarriage of Insured—Rights of Second Wife Surviving Insured—Rights of Surviving Children—Ontario Insurance Act, 2 Geo. V. ch. 33, secs. 178, 181—Trust—Executors.

Motion by the executors and widow of Christian Kloepfer, deceased, for payment out of Court of moneys arising from an insurance policy upon the life of the deceased.

W. J. Boland, for the executors and widow.

F. W. Harcourt, K.C., for the infant children.

A. J. Thomson, for Nellie K. Bongard, daughter of the testator.

MIDDLETON, J.:—The insurance money is payable to "Bessie Kloepfer, wife of Christian Kloepfer, for her sole use, if living, in conformity with the statute, and, if not living, to the surviving children of said Christian Kloepfer." The policy was issued on the 25th May, 1885. Bessie Kloepfer died, and on the 10th June, 1910, the insured directed the amount secured by the policy to be paid to his executors.

In the meantime the insured had, on the 1st June, 1904, married again. He died on the 9th February, 1913, leaving his second wife and children surviving.

All admit that the executors cannot take; and the latter part of clause 4 of sec. 178 of the Ontario Insurance Act, 2 Geo. V. ch. 33, cannot aid the executors, as the children are preferred beneficiaries.

The children claim as beneficiaries named in the policy. The widow claims on the theory that the policy must be read, under the statute, as though she, and not the first wife, was named in it, relying on what is said in Re Lloyd and Ancient Order of United Workmen, ante 5: "The insurance contract must be read as creating a trust . . . in favour of the wife of the assured only, such wife being, by force of the statutory definition, the wife living at the maturity of the contract, notwithstanding that the first wife was designated by name."

I read these words as applying to a case which had already been held to come within clauses 3 and 4, and not as determining