

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.

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

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

All admit that the executors cannot take; as the latter part of clause 4 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 v. A. O. U. W.*, 5 O. W. N. 5; O. L. R.

“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 that these clauses provide that in the construction of an insurance policy “wife” (or a named wife) means the widow of the insured.

In *Re Lloyd v. A. O. U. W.* the policy was for \$2,000: \$1,000 to be paid to the widow and \$1,000 to be paid to the daughter. I thought this was not, within the words of the act, a policy payable to the wife or payable to the wife and children generally. The Appellate Division took the view that the \$1,000 was a separate insurance payable to the wife; and, this being so, secs. 3 and 4 applied.

The real question in this case is whether this policy is for the “wife and children generally” within the meaning of the statute; for, if it is, the word “wife” means the wife