invalid as such, can be treated as an "instrument in writing" under the Insurance Act, R. S. O. 1897 ch. 203, sec. 160, sub-sec. 1.

The point is, I think, a new one. . . . I was not referred to any authority expressly in point.

In Kreh v. Moses, 22 O. R. 307, the person who would have benefited by the writing was not one of the class known as "preferred beneficiaries:" sec. 159. But I think the principle is the same. The deceased did not intend to execute an instrument in writing to transfer the benefits of the policy inter vivos. His intention was to make a will, and he failed to make a valid one. I am therefore of opinion that the paper in question is not an instrument in writing which is effectual to vary the benefit of the certificate. To hold otherwise would, I think, be to defeat the statute prescribing how a will shall be executed.

The widow is, therefore, entitled to the fund in question. I think it is a case for directing costs to all parties to be paid out of the fund.

I refer also to Re Hughes, 36 W. R. 821, and to Long's Appeal, 86 Pa. St. R. 196, 204.

ANGLIN, J. JUNE 12TH, 1906.

TRIAL.

CRONKHITE v. IMPERIAL BANK OF CANADA.

Landlord and Tenant—Vault Door Placed on Demised Premises by Tenant — Annexation to Freehold—Fixture—Removal after Expiry of Term—Waste—Damages.

Action by the owner of a building in the city of Niagara Falls for damages for alleged waste committed by the defendants, tenants of a portion of the building, by removing the door of a vault used by them for banking purposes in the leased premises.

F. W. Griffiths, Niagara Falls, for plaintiff.

A. Fraser, Niagara Falls, for defendants.