

company's office and told the president that he had failed to collect the \$700, and would not take the shares, and was told it was all right.

Held, on winding up proceedings that he was not a contributory in respect to the shares.

Raney, for alleged contributor. *J. T. Scott*, for liquidator.

Lount, J.]

IN RE DUNCOMBE.

[Feb. 24.

Will—Construction—“Including”—“Estate”—Policies of insurance—R.S.O. 1897, c. 202, s. 2, sub-s. 36, s. 159.

By a clause in his will a testator bequeathed to his wife one-half his estate “including policies of insurance made payable to her upon my death.” The testator left three policies, one for \$1,000 payable to his wife, the second providing for payment to his wife of an annuity of \$250 per annum for twenty years, and the third payable at his death to the “legal heirs.” There were no children, grandchildren or mother living at the time of the testator's death, but his widow survived him.

Held, that the third policy being payable to the heirs and not to the widow as a preferred beneficiary, formed part of the testator's estate, although as a fact the widow was the legal heir: but the first two policies did not form part of the estate. By them a trust was created in favour of the wife as a preferred beneficiary, and so remained until the death of the testator.

Held, also that “including” imported addition, that is indicating some thing not to be included.

H. A. Wilson, Clarke, K.C., Cartwright, K.C., A. M. Stewart, and M. F. Muir, for various parties.

MCCORMICK HARVESTING COMPANY v. WARNICA.

Falconbridge, C.J.K.B., Street, J., Britton, J.]

[March 4.

Division Court—Breach of undertaking—Amount ascertained by signature—Jurisdiction.

Defendant gave two notes for \$75 and \$62 respectively on a form which contained an undertaking to give further security, and in the event of default in giving the security that the notes might be treated as due. Plaintiffs demanded further security and not receiving same brought an action on the notes before the time, mentioned in them for their maturity, had expired.

Held, that notwithstanding the plaintiff had to prove a breach of the undertaking to give security before he could recover on the notes the Division Court had jurisdiction to entertain the action. *Petrie v. Machan* (1897) 28 O.R. 642, followed in preference to *Kreutziger v. Brax* (1900) 32 O.R. 418.

Judgment of the Tenth Division Court, County of York reversed.

F. C. Cooke, for the appeal. *C. E. Hewson*, contra.