

HON. MR. JUSTICE MIDDLETON.

APRIL 21st, 1913.

RE CAIGER.

4 O. W. N. 1174.

Insurance—Life Insurance—Ontario Insurance Act—2 Geo. V. c. 33, s. 178 (7)—Construction of—Application to Sole Beneficiary.

MIDDLETON, J., *held*, that the words "one or all of the designated preferred beneficiaries" in s. 178 (7) of the Insurance Act of 1912, 2 Geo. V. c. 33, included a sole designated preferred beneficiary.

By policy dated 1st October, 1901, the deceased W. E. Caiger insured his life in favour of his wife, who died on 13th October, 1911. The deceased survived his wife, dying 8th November, 1912, but executed no document in any way affecting this insurance—\$3,128.25 the proceeds of the policy has been paid into Court by the insurance company as a contest has arisen between the creditors and the children of the deceased.

The rights of the contestants depend upon the construction of sec. 178 (7) of the Insurance Act 2 Geo. V. ch. 33. If that section applies, the children take. If not, then under sec. 171 (9) the money forms part of the estate of the insured.

Sec. 178 (7) applies if the words "one or more or all of the designated preferred beneficiaries" can be held to cover the case of a "sole designated preferred beneficiary" for then the section as applied to this case directs the money to go to the children.

The wording of the statute is not uniform throughout and in some of the sections the Legislature has, as in the case of 171 (9) been careful to say "all the beneficiaries or the sole beneficiary," but in seeking to interpret the words used, I think the words here used "all the beneficiaries" are wide enough to cover the cause of a "sole beneficiary." To hold otherwise would be to create an unwarrantable exception and an indefensible anomaly.

The money will be declared to belong to the children and will be paid accordingly. The creditors must pay the costs of this motion and the costs of the company deducted when the money was paid into Court.