

the costs of this action and motion to be taxed," and does not make it recoverable out of everything else. If the judgment had been in the form to which plaintiffs were entitled, there could not have been any question raised here. As it is, plaintiffs seem only entitled to retain their order if they can establish that the proceeds of this policy were separate estate.

I must hold that the money here in question is separate estate. It is perfectly true that, apart from the provisions of our Insurance Act with regard to insurances effected for the benefit of wives and children, it could not have been contended that money coming to a widow under a policy of insurance upon her husband's life, of which he had made her beneficiary, was separate estate, because, from its very nature, it was not property belonging to her during coverture.

Under sec. 159 of R. S. O. ch. 203, however, the naming of the wife as a beneficiary in a policy, or by indorsement or other writing, creates a trust in her favour of the amount secured by the policy, and leaves the assured no further rights of disposition over it, beyond a right which is in effect a right of revocation and new appointment, limited, however, strictly to certain objects.

The effect of what defendant's husband did, therefore, was to create a trust in her favour of the amount secured by this policy; it is true he might have revoked it and declared a new trust in favour of children, if he had them, but he never did in fact revoke the original trust in her favour, and the right so created and vested in her must, I think, be treated as separate estate.

[King v. Lewis, 23 Ch. D. 724, and Re Shakespear, 30 Ch. D. 171, distinguished.]

In my opinion, there was a valid trust of this policy created by the statute in favour of the wife when it was issued, and the policy and its proceeds were separate estate within the meaning of R. S. O. ch. 163, and were properly seized under the judgment.

Appeal dismissed.

ANGLIN, J.

MARCH 11TH, 1905.

WEEKLY COURT.

CITY OF TORONTO v. TORONTO R. W. CO.

*Reference—Stay—Judgment on Special Case—Appeal—Rule 829—Terms of Special Case.*

Appeal by defendants from a ruling of James S. Cartwright, official referee, to whom the taking of evidence