

in an insurance contract die during the life of the assured "the insurance shall be for the benefit in equal shares of the surviving infant children of the assured, and if no surviving infant children then the benefit of the contract and the insurance money shall form part of the estate of the assured." This section is general, and applies to all beneficiaries, whether within the preferred class or not.

Some confusion existed by reason of the failure to make a corresponding amendment in sec. 159, dealing with preferred beneficiaries; but the two sections would have to be read together, and this amendment would serve to supplement the provision of sec. 159, sub-sec. 8, which did not cover the case of the death of all beneficiaries, but only the case of the death of some of the beneficiaries.

This was the position of the law when the second wife died; and as there were then no children, the policy would form part of the estate of the assured, unless this expression "surviving infant children" refer to the death of the assured.

In 1904, before the marriage took place, the law was again amended, and sub-sec. 8 of sec. 159 was remodelled by 4 Edw. VII., ch. 15, sec. 7; a provision being added recognizing the amendment of 1901, as applicable to preferred beneficiaries and providing that in default of any new apportionment upon the death of the preferred beneficiary the benefit shall be for the survivors and if "there is no such survivor the insurance shall be for the benefit in equal shares of the children of the assured, and if no surviving children of the assured then the assurance shall form part of the estate of the insured."

I have come to the conclusion that the whole context indicates that the words "survivor" and "surviving children" relate to the death of the insured and not to the death of the beneficiary. The destination of the insurance money upon the death of the insured is what is being dealt with by the Legislature. If the beneficiaries have then predeceased the testator, the insurance money, which has become a trust fund, is to be given to those named by the statute; the survivor of any beneficiaries named, or, if there is no survivor, then to the children.

All this is subject to the power conferred by the statute upon the insured. He may, by an instrument in writing attached to, endorsed on, or referring to and identifying