

On the 3rd October, 1904, the deceased married the present wife; and on the 1st April, 1905, he made his will, by which he gave all his property, "including all my insurance policies at present in force and that I may hereafter have," to the applicant.

On the 16th January, 1907, the infant was born. The testator died on the 29th February, 1912, leaving him surviving the applicant and the infant, his only child.

The insured having died before the Insurance Act of 1912 came into force, the rights of the parties must be determined on the earlier legislation. Under the Insurance Act, R.S.O. 1897 ch. 203, sec. 151, as amended by 1 Edw. VII. ch. 21, sec. 2, sub-sec. 7, if all beneficiaries named 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 provisions 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 the expression "surviving infant children" refers 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 recognising 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 bene-