St. Germain v. *the Minister of National Revenue*,[12] Dumoulin, J., in the Exchequer Court held that the taxpayer was liable either under 8(1)(c) or section 137(2). Either section 137(2) is unnecessary in cases of this kind or further direction is necessary as to when it is to be applied. An appeal in the *Smythe* case should soon be heard before the Supreme Court of Canada. It is doubtful, however, whether judicial interpretation will be able to effect a satisfying solution to a section which appearing, as it does, in Part VI of the Act under the rubric *Tax Evasion* has now become a charging section displacing to some extent those sections such as 8(1) and 81(1) which had been regarded as the applicable charging sections of the Act. It would seem that legislative enactment will be required to effect a suitable solution. Hopefully, the Minister of Finance will consider this in the Bill revising the Income Tax Act, which he has announced will be introduced into the House of Commons early in 1969.

—E. M. BREDIN, Q.C.*

12 [1968] C.T.C. 148; 68 D.T.C. 5105.
* B.A., LL.B. (Alta.) of the Alberta Bar.

INSURANCE ACT, S.A. 1960, c. 49, s. 263—SURVIVORSHIP ACT, S.A. 1964, c. 91, s. 2(1)—CONFLICT OF STATUTES—*RE CANE AND CANE* (1968), 66 D.L.R. (2d) 741—*RE BILN* (1967), 59 W.W.R. 229.

The Survivorship Act[1] in section 2(1) creates a presumption, where two or more persons die at the same time or in circumstances rendering it uncertain which of them survived the other, that the elder died first. The Insurance Act[2] by section 263 creates a presumption that where the person whose life is insured and a beneficiary die at the same time or in circumstances rendering it uncertain which of them survived the other, the insurance money is payable as if the beneficiary had died first. These presumptions, in a situation where the insured is the elder of the two victims, are at odds with each other and it is therefore necessary to determine which presumption should properly prevail. To properly understand the intendment of the Survivorship Act it is necessary to have an understanding of the reasons for passage of the Act.

Survivorship at Common Law

At common law where two people perished by the same calamity, whether testate or intestate, there was no presumption that one survived the other or that they died at the same moment.[3] The *onus probandi* lay upon the party asserting survival. This was clearly pointed out in *Hickman* v. *Peacey* by Lord Simonds when he said:[4]

> . . . if A and B died in a common calamity it was necessary for the representatives of that one of them who claimed to be interested in the estate of the other under his will or as upon his intestacy, to prove that he was the survivor. If they did not prove it the claim failed. In the not uncommon case when each of them was interested under the will or as upon the intestacy of the other, neither of them could take any interest unless survivorship was

1 S.A. 1964, c. 91, s. 2(1).
2 S.A. 1960, c. 49, s. 263.
3 *Underwood* v. *Wing* (1854), 4 De. G.M. & G. 633; 43 E.R. 655; *aff'd.* on appeal sub-nom. *Wing* v. *Angrave* (1860), 8 H.L. Cas. 183; 11 E.R. 397.
4 [1945] A.C. 304, 341.

proved. It followed that in such a case the estate of A had to be administered upon the footing that B did not survive him and the estate of B upon the footing that A did not survive him, a result which could be stated in a compendious form by saying that the estates of A and B were to be administered as if they had died at the same time. Survivorship was a fact to be proved like any other fact. There was no presumption of it founded on age or sex or any other factor. So also there was no presumption of death at the same time.

This was a defect in the law, for as Bailey[5] pointed out:

When dealing with questions of lapse it is essential to know whether the testator died before the person to whom he devised or bequeathed his property. If no evidence is available on this point (e.g. if testator and legatee are found dead in debris of railway accident) there was formerly no solution of the mystery; and so, for want of proof that the legatee had outlived the testator the legacy failed.

Survivorship Legislation

This defect was remedied in England by the Law of Property Act, 1925[6] which enacted that

184. In all cases where, after the commencement of this Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the Court) for all purposes affecting the title to property, be presumed to have occurred in the order of seniority, and accordingly the younger shall be deemed to have survived the elder.

In 1948 an Alberta Act, the Commorientes Act,[7] created a similar presumption. This Act was a product of the Commissioners on Uniformity in Canada and ". . . the commorientes or survivorship legislation . . . has been quite properly treated as one of its most successful model acts."[8] This legislation has, with one exception, served its purpose well.

The one exception arises with regard to what is now section 3 of our Act, which enacts that "This Act is subject to sections 263 and 320*e* of the *Alberta Insurance Act.*" A similar section was in the 1948 Act.[9] This section, which would seem to be the answer to the problem stated at the beginning of this case-note (i.e. it seems to say the Insurance Act prevails), has been subject to varying judicial interpretations which are quite inconsistent.

Cases Dealing with Conflict

An examination of the cases shows that there are two trends of thought on this problem.

The first case to deal with this problem, *Re Law*,[10] was decided in the Supreme Court of British Columbia. In this case the insured, his wife, and his father were apparently drowned when a row boat they were in capsized during a storm. There were no survivors and no witnesses to the tragedy and it was therefore unknown who survived. The wife had a daughter by a former marriage and the mother of the insured was his sole next of kin. The action arose as a petition for directions as to the distribution of the insured's policies—i.e. should the wife's next of kin (her daughter) or the husband's next of kin (his mother) receive the proceeds of the policy.

5 Bailey on Wills 86 (6th ed. 1967).
6 15 & 16 Geo. 5, c. 20, s. 184.
7 S.A. 1948, c. 16.
8 Gilbert D. Kennedy, *British Columbia's Revised Statute of Frauds and New Survivorship and Presumption of Death Act* (1959-60), 3 U. of T. L.J. 112, 113.
9 S.A. 1948, c. 16, s. 2(2) which stated that "the provisions of this section shall be read and construed subject to the provisions of section 248 of the Alberta Insurance Act."
10 [1946] 2 D.L.R. 378.

Counsel for the daughter, while admitting that for the purpose of deciding the immediate destination of the insurance monies the Insurance Act governs, went on to contend that as soon as this was done the money was to be paid to the insured's estate, and the estate is distributed as is provided for in the Commorientes Act—i.e. one assumes that the insured, being the elder, died first and the next of kin of the wife would take the money.

Macfarlane, J., refused to accept this reasoning. He said:[11]

> . . . in my opinion, as the *Commorientes Act* is expressly directed to be construed subject to the provisions of s. 123 of the *Insurance Act* that where the circumstances set out in that section arise the presumption as to the order of death thereby created is to be followed. That presumption in this case is that the beneficiary, here the wife, is presumed to have died first in so far as the insurance moneys . . . are concerned. I do not think that I should allow the issue to be confused by consideration of the possible devolution of other property to which that section has no application. I do not think that being 'construed subject to' means that the statutes are to be complimentary and are to be read together or that that provision is one for their joint application. To my mind the intention is that where the circumstances set out in s. 123 of the *Insurance Act* arise, the presumption as to the order of death thereby created is to be followed for all purposes connected with that subject matter. . . . I do not think that I can accept as reasonable, the construction that in respect of the same thing, a presumption is declared to have effect at the movement and a moment later to be set aside by another when the first presumption is declared to be the prevailing one in respect of that subject-matter.

He therefore held that the wife died first and the money was to be dealt with on this basis and that the Survivorship Act presumption had no application at all so far as insurance monies were concerned.

Macfarlane, J., was also led to this conclusion because the Commorientes Act only applies where an element of uncertainty as to the order of deaths is involved. In this case there was no uncertainty because the Insurance Act makes it certain that the wife died first.

Shortly after this decision was rendered, Dr. Gilbert Kennedy commented on it.[12] His view was that the reasoning of the daughter's counsel should have prevailed, i.e., both acts should be read together.

His main argument was that section 104 of the Insurance Act provides that where a preferred beneficiary is designated the money "shall not, except as otherwise provided in this Part, . . . form part of the estate of the insured." By section 123 of the Insurance Act the beneficiary is presumed to have died first and section 108 provides a list of options for disposal of the share of a deceased preferred beneficiary. This latter section provides that when a preferred beneficiary dies first the insured is at liberty once again to do what he wants with the contract, and that if he dies without having done so the monies by section 108(4)(d) are payable to his estate. Dr. Kennedy contends that once the money reaches the estate it does not retain its identity as insurance money but rather becomes part of the general estate. He posed the following questions:

> Is it not proper to say that s. 123 has spent itself when it determines that the wife, as named beneficiary of the insurance policies, predeceased the insured? Section 108 must then operate. Why, thereafter, revive s. 123 instead of allowing the Commorientes Act to come in?[13]

I submit that it is not proper to say that section 123 has spent itself when the wife is determined to have died first. While it is true that

11 *Id.*, at 380-81.
12 (1946), 24 Can. Bar Rev. 720.
13 *Id.*, at 723.

section 108 must then operate, section 123 is revived because to do otherwise is to put yourself in the rather absurd position of assuming that, with respect to the *same subject matter,* at one moment the husband survived and at the next moment that he died first. This is something, it is submitted, that the legislature intended to avoid—and this intention was expressed in the Commorientes Act where it is stated that the Act is to be "read and construed subject to the provisions of section 123 of the Insurance Act."[14] Another reason why section 123 is revived is that, as was pointed out by Macfarlane, J., in the *Law* case, the Commorientes Act applies only where there is uncertainty as to the order of deaths. Here there is no uncertainty because the order of deaths, as far as insurance monies are concerned, has already been decided conclusively by the Insurance Act.

Another argument of Dr. Kennedy's was that if the legislation had sought to exclude insurance moneys from the total operation of the Commorientes Act, it could have done so very easily in express language. The answer to this argument is very simply that the Insurance Act provision was created in 1924 in British Columbia (R.S.B.C., c. 117, s. 24) while the Commorientes Act was not enacted until 1939. It is rather difficult for an earlier act to exclude insurance moneys from the operation of an act that is not even in existence. The converse of Dr. Kennedy's statement would seem to make much more sense—i.e., that if the Commorientes Act wished to include the proceeds of insurance policies within its ambit it could and should have done so very easily by using express language. Instead the words "shall be read and construed" subject to the Insurance Act presumption were used—hardly words which take the meaning Dr. Kennedy wished to attribute to them.

The next major case to deal with this problem was *Re Topliss and Topliss*[15] dealt with in the Ontario Court of Appeal. In this case the husband and wife died in Hurricane Hazel in circumstances rendering it uncertain which of them survived. There were three policies of life insurance on the husband, and in each the wife was the beneficiary. Roach, J.A., discussed the *Law* case but refused to follow it. His reasoning was more along the lines of Dr. Kennedy's:[16]

> At the moment of the husband's death each of the policies became a policy payable on its maturity, to the estate of the husband by virtue of ss. 168(4)(d) and 183 of the *Insurance Act*. . . . Once those proceeds had been paid to the husband's estate then s. 183 had served its purpose and its effect had been spent. Having received those proceeds, regardless of their source, the administrator of the husband's estate . . . would be required to distribute them and the other assets of the estate after payment of debts and succession duties, . . . to the persons entitled. . . . At that point the question arises who survived the husband? Was the wife one of the survivors? To answer that question the administrator would turn to the *Survivorship Act* and applying it, would proceed on the presumption that the husband had predeceased his wife and that share of his estate which she would have been entitled would become payable to the representative of her estate.
>
> In my respectful opinion there is really no conflict between the two statutory provisions. The provision in the *Insurance Act* serves its purpose; the provision in the *Survivorship Act* serves its purpose. The purpose of the *Insurance Act* is to determine to whom the proceeds of the policy in the circumstances shall be paid; the purpose of the *Survivorship Act* is to determine to whom the assets of the estate should be distributed.

14 S.B.C. 1939, c. 6, s. 2(2).
15 (1957) 10 D.L.R. (2d) 664.
16 *Id.*, at 656.

A British Columbia Court again dealt with this problem in *Re Currie and Currie*[17] where the husband and wife both died in an aeroplane accident. The husband's life insurance policies were payable to his wife if she survived him and if not to his estate. After discussing both the *Topliss* and *Law* cases, Verchere, J., concluded that he was inclined to agree with Dr. Kennedy's criticisms of the *Law* case. He, however, found that it was not necessary to decide this matter because the *Currie* case was distinguishable from the earlier cases on the basis of the express alternative directions contained in Mr. Currie's policies which provided for payment of the proceeds to his estate if his wife died before him.

In *Re Cane and Cane*[18] Matas, J., of the Manitoba Queen's Bench decided that the differences between the Manitoba Statute and the Statutes considered in the *Currie* and *Topliss* cases was not sufficient to affect the general principles of those cases. He therefore agreed with the Topliss case and "the money will become part of the general assets of the estate."[19]

The only Alberta case to deal with this problem is *Re Biln.*[20] Charney Biln and his wife were killed in an automobile crash. Mr. Biln, who was older than his wife, had an insurance policy which was payable to his wife; and his wife had one payable to him. Under the wills of both, the parents of Mrs. Biln were named as personal representatives and the court held that they were also the substitute beneficiaries. The issue of the case was whether his parents (his next-of-kin) took the proceeds of Mr. Biln's insurance policy.

Kirby, J., after discussing all of the relevant cases and examining the Alberta statutes involved, concluded that section 2(2) of the Alberta Act "can only be construed to mean that the provisions of sec. 263 of *The Insurance Act* prevail, notwithstanding the provisions of sec. 2(1) of *The Survivorship Act.* This is to say, effect must be given to the presumption that the beneficiary predeceased the insured."[21] Section 2(2) reads as follows:

> 2. (2) Where a *statute* or an instrument contains a provision for the disposition of property operative if a person designated in the statute or instrument,
> (a) dies before another person,
> (b) dies at the same time as another person, or
> (c) dies in circumstances rendering it uncertain which of them survived the other,
> and the designated person dies at the same time as the other person or in circumstances rendering it uncertain which of them survived the other, *for the purpose of that disposition, the case for which the statute or instrument provides is deemed to have occurred.*

Kirby, J., pointed out[22] that you give effect to the Insurance Act presumption and distribute the moneys according to section 241 of the Insurance Act which provides that:

> 241. (1) Where a beneficiary predeceases the person whose life is insured, and no disposition of the share of the deceased beneficiary in the insurance money is provided in the contract or by a declaration, the share is payable,

17 (1964), 41 D.L.R. (2d) 666.
18 (1968), 66 D.L.R. (2d) 741.
19 *Id.*, at 746.
20 (1967), 59 W.W.R. 229. *Aff'd.* on appeal (unreported). It is the writer's understanding that the decision on appeal did not deal with this issue but rather disposed of the case on the basis of an express alternate designation having been made in the will (like the *Currie* case).
21 *Id.*, at 238.
22 *Id.*, at 237.

(a) to the surviving beneficiary, or
(b) if there is more than one surviving beneficiary; to the surviving beneficiaries in equal shares, or,
(c) if there is no surviving beneficiary, to the insured, or his personal representative.

Therefore, by applying this section to the facts, the money went by section 241(c) to the named personal representative of his will—his wife's parents.

While it is submitted that Kirby's, J., conclusion is correct, his reasoning is not entirely complete because he apparently overlooked the fact that the Alberta Survivorship Act had a section which states that the Act is to be subject to the Insurance Act provisions, i.e., the same section that was considered in the *Topliss, Law, Currie,* and *Cane* cases. This oversight is apparent from the following passage of the judgment:[23]

> However, there is a significant difference between the provisions of subsec.(2) of the presumption clauses of the British Columbia and Ontario *Survivorship Acts* on the one hand, and the Alberta *Survivorship Act* on the other. Both the British Columbia and Ontario Acts, as did the Alberta *Commorientes Act,* which was repealed by the *Survivorship Act,* provide by subsec.(2) that the provisions of subsec.(1) are subject to the provisions of the respective *Insurance Acts* which have been quoted above, whereas subsec.(2) of the Alberta *Survivorship Act* provides. . . .

What Kirby, J., overlooked was that Alberta still has a section which is identical to the British Columbia and Ontario sections he mentions. The only difference is that in our Act it appears as section 3.

From this examination of the cases it can be seen that there are two distinct and opposite theories as to which presumption governs—that recently expounded in Alberta's *Biln* case and on the other hand that recently expounded in Manitoba's *Cane* case. The legislation in both provinces is identical and therefore it is necessary to determine which presumption should properly prevail.

It is submitted that so far as insurance proceeds are concerned, the Survivorship Act should not be considered at all.

The most compelling reason for this is the one used by Kirby, J., in the *Biln* case—i.e., that section 2(2) of the Alberta Survivorship Act was not (and is not) in either the British Columbia or Ontario Acts construed in the *Topliss* and *Currie* cases.[24]

This section, when read along with the subsection which says that the Survivorship Act is to be read subject to the presumption of the Insurance Act,[25] can leave no real doubt that the Insurance Act is to prevail, because the Insurance Act is a statute which *does* contain a provision for disposition of property which is operative if there is doubt as to the order of deaths within the meaning of section 2(2). Therefore the presumption of the Insurance Act must operate *alone.* The Ontario and British Columbia Acts[26] have a section making provision for such an occurrence solely with respect to wills and no mention is made of a statute providing for dispositions when there is uncertainty as to the

[23] *Id.*, at 237-38.
[24] This section is cited *supra*, n. 21, particular the italicized portions.
[25] The effect of s. 3 of our Act is to reinforce what is already made clear by s. 2(2). This, it is submitted, is the conclusion Kirby, J., would have come to if he had not overlooked the presence of s. 3 in our Act.
[26] The Ontario Act considered in *Topliss* was R.S.O. 1950, c. 382, which provides that where a testator and beneficiary of property under a *will* die in such circumstances and the *will* contains provision for such an event then for purpose of that disposition the will shall take effect as if the beneficiary had not survived.
The British Columbia Act has a section which is worded differently but has the same effect. In neither statute (which are unchanged today) is there mention of a statute providing otherwise.

order of deaths. Because of this most vital difference in the Statutes, the *Topliss* and *Currie* cases are not applicable to Alberta.[27]

It is submitted that this argument alone is enough to conclusively show that the Insurance Act prevails. However, quite apart from section 2(2), it is submitted that section 3 provides several reasons why the Insurance Act should prevail (and therefore why *Re Law* is preferable to *Re Currie* and *Re Topliss*).

One of the most logical reasons is provided by reading the Life Insurance part of the Insurance Act. This Part was designed to deal specifically with the disposition of the proceeds of life insurance policiies. The presumption created by the Act is clear. When a beneficiary dies first, section 241 provides what happens to the money—it goes to the surviving beneficiaries, and if none, to the insured or his personal representative. His personal representative then distributes the money. The Act does not say that it should or should not become part of the general assets; but, since the Act has already declared that the beneficiary (usually the wife) dies first, it is ridiculous for the personal representative to have to now say that she did not die first. Because of this it is submitted that the money by implication does not become part of the general assets of the estate.

Also, as a matter of statutory construction it is submitted that the Survivorship Act should have no application at all so far as insurance proceeds are concerned. To cite Maxwell on Interpretation:[28] (when he is dealing with Acts passed at different times)

> There are certain objects which the legislature is presumed not to intend, and a construction which would lead to any of them is therefore to be avoided. . . . One of these presumptions is that the legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares. . . . It is in the last degree improbable that the legislature would overthrow fundamental principles, infringe rights, or depart from the general system of the law, without expressing its intention with irresistible clearness. . . .

The law before the passage of the Survivorship Act in 1948 was very clear. There was prior to 1948 only one assumption as to the order of deaths in circumstances where the order was not actually known—and that was the presumption created by the Insurance Act of 1942 (which is the same as the presumption created today by that Act). At that time, if the husband being the elder and being insured died in a common disaster with his wife, he, being the insured, was presumed to have survived. Since the wife was a preferred beneficiary, section 133(4)(c) of the 1942 Act applied. This provided that, where the preferred beneficiary died first and no other preferred beneficiaries were named, the share of the deceased beneficiary was payable in equal shares to the wife or husband and the child or children of the insured who were living at the maturity of the contract. In the event that there was no wife or issue living, the money by section 133(4)(d) went to the insured or his estate. When the money went into his estate it was distributed (in absence of alternate beneficiaries in his will) to his next of kin.

The law before 1948 was therefore very clear—his next of kin re-

[27] In *Re Cane* the Manitoba legislation considered was identical to ours. The counsel argued that there were differences in the Manitoba and B.C. legislation and these differences were such that the *Currie* and *Topliss* cases were not applicable in Manitoba. This argument was rejected but the argument was not based on the section which I rely on as showing the Insurance Act prevails.

[28] Maxwell on *Interpretation of Status* 78-79 (11th ed. 1962).

ceived the insurance proceeds. The Survivorship Act was passed to correct a defect in the law, and according to Maxwell this later enactment should not be construed as changing the existing law beyond what it expressly declares. It did expressly change the law as regards the disposition of the general assets of the estates. It also made reference to the Insurance Act by enacting that the Survivorship Act was to be read and construed subject to the provisions of the Insurance Act which created the presumption that the beneficiary died first. These words can hardly be considered as words which are intended to expressly alter the law. Rather these are words which show a definite intention to leave the law as it was prior to the passage of the Survivorship Act.

Also, the section in the Insurance Act can be considered as being specific—it applies to one specific thing and that is life insurance and to specific people—those who have life insurance. The Survivorship Act, on the other hand, is a general act—it applies to all assets of an estate whether they are cars, houses, oil wells or a set of golf clubs. In circumstances where a general and a specific act are not in accord with each other Maxwell suggests the proper solution to the problem is as follows:[29]

> Having already given its attention to the particular subject and provided for it, the legislature is reasonably presumed not to intend to alter that special provision by a subsequent general enactment unless that intention is manifested in explicit language, or there is something which shows that the attention of the legislature had been turned to the special act and that the general one was intended to embrace the special cases provided for by the previous one, or there be something in the nature of the general one making it unlikely that an exception was intended as regards the special act. In the absence of these conditions, the general statute is read as silently excluding from its operation the cases which have been provided for by the special one.

None of these exceptions is present and therefore the rule is that the special provision is read as being excluded from the operation of the general enactment. This would mean that the Survivorship Act should not apply at all so far as life insurance proceeds are concerned.

As a matter of legislative intention, it is submitted that the Insurance Act, and it alone, applies to the distribution of the proceeds of life insurance policies.

The insured paid the premiums on the policy and if he dies intestate it would seem more likely that, in the event that his wife dies first, he would want his next of kin to receive the proceeds rather than his wife's next of kin. It seems very much fairer that the parents, those who raised the insured, should receive the money before a step daughter should (as was the situation in the *Law* case). Also, if the wife's next of kin receive the proceeds of the insurance policies too, that means that they get everything the insured and his wife owned while the next of kin of the insured get nothing. It is more reasonable to assume that the Uniformity Commissioners recognized that this would not be fair and that they therefore inserted the section making the Survivorship Act subject to the Insurance Act presumption in order to correct or at least counterbalance the inequity.

This view of the legislative intent of the two Acts coincides with what was in the minds of the American Uniformity Commissioners when they drafted their similar Simultaneous Death Act in 1940. The theory of the American Act is that as to the property of each person he is pre-

[29] *Id.*, at 169.

sumed to be the survivor and the property is administered accordingly. They also drafted a special section dealing with life insurance. It enacts that: [30]

> When the insured and the beneficiary in a policy of life or accident insurance have died and there is no sufficient evidence that they have died otherwise than simultaneously, the proceeds of the policy shall be distributed as if the insured survived the beneficiary.

This wording leaves no doubt at all what should be done—the money is disposed of just as it was in Canada prior to the passage of the Survivorship Act. The American Commissioners felt that: [31]

> The special circumstances seem to justify the creation of a presumption relative to the survivorship of the insured or beneficiary. By providing that the insured presumably survived it is thought that the result will most nearly approximate the intention of the real party in interest. If it does not, he is at liberty to provide otherwise in a contract of insurance.

A final argument as to why the Insurance Act should prevail is provided by the meaning of the words "subject to" as they appear in the Survivorship Act.

Black's Law Dictionary [32] defines "subject to" as meaning "liable, subordinate, subservient, inferior, obedient to, governed or affected by, provided that, answerable for." This meaning would then mean that the Survivorship Act is subservient to the provisions of the Insurance Act. However, the meaning these words take in the *Topliss*, [33] *Currie*, [34] and *Cane* [35] cases has just the opposite effect because it is the Survivorship Act which determines the ultimate destination of the money rather than an act which was specifically intended to deal with this.

In *Smith* v. *London Transport Executive* [36] Lord Simonds was called upon to interpret the meaning of "subject to the provisions of this Act"—words which are, it is submitted, analogous to the words in question. This analogy is valid because the words "subject to" are the operative words in both cases while the other words merely describe what it is to be read as being subject to. His Lordship described these as "words that are apt to enact that the powers thereafter given are subject to restrictions or limitations to be found elsewhere . . ." [37] In that case the one counsel argued that the words were equivalent to "in accordance with the provisions of this Act" or "in such manner as provided by this Act." [38] This meaning was rejected and Lord Simonds said: [39]

> I find the words . . . too clear to admit of any doubt. The words subject to the provisions of this Act . . . are *naturally words of restriction*. They assume an authority immediately given and give a warning that elsewhere a limitation upon that authority will be found.

Similarly, the Survivorship Act assumes an assumption that will generally apply and warns that the Insurance Act limits that assumption with respect to life insurance. The *Topliss* view is inconsistent with this statement, for the Survivorship Act is not limited at all by the Insurance Act presumption in these cases.

30 9C Uniform Laws Annotated 167.
31 *Id.*, at 158.
32 1594 (4th ed.).
33 *Supra*, n. 15.
34 *Supra*, n. 17.
35 *Supra*, n. 18.
36 [1951] A.C. 555 (H.L.).
37 *Id.*, at 565.
38 *Id.*, at 569.
39 *Ibid.* (italics added).

It is submitted that the words should be interpreted as Macfarlane, J., did in *Re Law*:[40]

> I do not think that being 'construed subject to' means that the statutes are to be complementary and are to be read together or that that provision is for their joint application. To my mind the intention is that where the circumstances set out in s. 123 of the *Insurance Act* arise, the presumption as to the order of death thereby created is to be followed for all purposes connected with that subject-matter.

Therefore in conclusion it is submitted that the Survivorship Act presumption should not apply at all where the insurance proceeds are being dispersed.

—KENNETH B. POTTER*

[40] *Supra*, n. 10, at 380.

* B.A. of the third year class.