In the Privy Council.

No. 58 of 1930.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA AND FROM THE SUPREME COURT OF CANADA.

IN THE MATTER OF THE INSURANCE ACT AND OF A RULING OF THE SUPERINTENDENT OF INSURANCE.

BETWEEN :

THE SUN LIFE ASSURANCE COMPANY OF CANADA - *Appellants*

AND

THE SUPERINTENDENT OF INSURANCE - - *Respondent.*

RESPONDENT'S CASE.

CASE OF THE RESPONDENT.

RECORD.

1. This is an appeal by special leave given on the 13th June, 1930, p. 61.
from a judgment of the Supreme Court of Canada pronounced on the 10th p. 46.
April, 1930, dismissing an appeal of the appellant company from a judgment p. 25.
of the President of the Exchequer Court of Canada, dated 18th June, 1929.

2. The proceedings in the said Exchequer Court were taken by the
appellant company by way of an appeal from a certain ruling of the Superin- p. 3.
tendent of Insurance as provided for by section 68 of the Insurance Act.

3. The said section 68 of the Insurance Act provides as follows :—

" 68. In his annual report prepared for the Minister under the
10 provisions of paragraph (*e*) of section thirty-eight of this Act, the Superintendent shall allow as assets only such of the investments of the several companies as are authorized by this Act, or by their Acts of incorporation, or by the general Acts applicable to such investments.

x P 33905 75 6/31 E & S

RECORD.

2. In his said report the Superintendent shall make all necessary corrections in the annual statements made by the companies as herein provided and shall be at liberty to increase or diminish the liabilities of such companies to the true and correct amounts thereof as ascertained by him in the examination of their affairs at the head office thereof in Canada, or otherwise.

3. The Superintendent may request any Canadian company to dispose of and realize any of its investments acquired after the twentieth day of September, one thousand nine hundred and seventeen, and not authorized by this Act, and the company shall within sixty days after receiving such request absolutely dispose of and realize the said investments, and if the amount realized therefrom falls below the amount paid by the company for the said investments, the directors of the company shall be jointly and severally liable for the payment to the company of the amount of the deficiency.

4. If any director present when any such investment is authorized does forthwith, or if any director then absent does, within twenty-four hours after he becomes aware of such investment and is able to do so, enter on the minutes of the board of directors his protest against the same, and within eight days thereafter gives notice of his protest by registered letter to the Superintendent, such director may thereby, and not otherwise, exonerate himself from such liability.

5. An appeal shall lie in a summary manner from the ruling of the Superintendent as to the admissibility of any asset not allowed by him, or as to any item or amount so added to liabilities, or as to any correction or alteration made in any statement, or as to any other matter arising in the carrying out of the provisions of this Act, to the Exchequer Court of Canada, which court shall have power to make all necessary rules for the conduct of appeals under this section.

6. For the purposes of such appeal the Superintendent shall at the request of the company interested give a certificate in writing setting forth the ruling appealed from and the reasons therefor, which ruling shall, however, be binding upon the company unless the company shall within fifteen days after notice of such ruling serve upon the Superintendent notice of its intention to appeal therefrom, setting forth the grounds of appeal, and within fifteen days thereafter file its appeal with the registrar of the said court and with due diligence prosecute the same, in which case action on such ruling shall be suspended until the Court has rendered judgment thereon. 1917, c. 29, s. 73."

4. Sections 30 and 31 of the Insurance Act required the appellant company to deposit with the Superintendent of Insurance an annual statement of the condition and affairs of the company in a prescribed form. The

said form required the company to show the amount of the authorized stock as at the 31st day of December, preceding. The appellant on the 24th day of February, 1928, deposited its annual statement as of the 31st December, 1927. In the said statement the authorized capital stock of the appellant was shown as $4,000,000. RECORD.

5. Section 68 aforesaid of the Insurance Act required that the Superintendent of Insurance should make in his annual report, prepared under the provisions of paragraph (*e*) of section 38 all necessary corrections in the annual statement made by the company. The Superintendent of Insurance in his report for the year 1927 made a correction in the annual statement of the appellant company by stating the amount of the authorized capital stock as being $2,000,000, instead of $4,000,000 aforesaid.

6. The Superintendent, on the request of the appellant company, furnished a certificate in writing setting forth the change made as provided in section 68 of the Insurance Act, the said certificate being dated the 22nd of March, 1929. pp. 3–4.

7. On the 25th March, 1929, the appellant appealed to the Exchequer Court from the aforesaid ruling of the Superintendent and stated its grounds of appeal to be that by its act of incorporation, as amended, it was authorized to increase its capital stock to $4,000,000, and that on the 8th February, 1927, the authorized capital stock was duly increased from $2,000,000 to $3,000,000.

8. On the argument before the Exchequer Court the Superintendent of Insurance said that the appellant company was incorrect in stating its authorized capital stock at a sum of $4,000,000, inasmuch as the charter of the company limited the capital stock to be authorized and issued to $2,000,000, and that the appellant company had no power to authorize the issue of stock in excess of $2,000,000.

9. On the 18th June, 1929, the appeal of the appellant company was dismissed without costs.

10. The charter of the appellant company, with amendments thereto, are set out in the record of proceedings at pages 13 to 23.

11. The learned President of the Exchequer Court stated the question in issue as follows :—

> " In 1865, The Sun Insurance Company of Montreal, now the Sun Life Assurance Company of Canada, was incorporated by statute enacted by the late Province of Canada. By its charter the company was empowered to carry on the business of insurance generally, including fire, marine, accident, sickness, indemnity and life insurance. The capital of the company was therein stated to be two million dollars, with power to increase the same to four million dollars. p. 25, l. 26.

RECORD.

p. 25, l. 33. In 1870 the company's charter was amended in quite important particulars. The capital stock of the company was reduced to one million of dollars, with power to the company to increase the same, under the provisions of its charter, in sums of not less than one million dollars, to a sum not exceeding four millions of dollars. The business of Life and Accident Assurance, which was defined, was to be conducted as a distinct branch of the company's business under the corporate name of the company, with the addition thereto of the words 'Life Branch.' The capital stock of the company, one million dollars, was to be applied solely to the Life Branch of the company, but this amount might be increased under the terms of the charter of the company, to two million dollars. The company was authorized to commence business of Life and Accident insurance when five thousand shares had been subscribed, and fifty thousand dollars paid in on account of the same to the Life Branch. The company was also authorized to transact fire, marine and guarantee insurance, and this class of insurance business was also to be conducted as a distinct branch of the business of the company, under the corporate name of the company, but with the addition thereto of the words General Branch. Authority was given by the Act to raise one million dollars for the capital purposes of the General Branch, which amount might be increased to two million dollars; when a certain amount of the capital stock of the company had been subscribed and allotted to the General Branch, the company was empowered to commence the insurance business included in this branch. The company was required to maintain separate accounts of the stock subscribed and allotted, and of the business transacted by it, under the Life Branch and General Branch, and of the expenses, profits, losses, etc., under each of the said branches respectively. The capital stock of the company subscribed and allotted to the Life Branch and the General Branch respectively, was to be liable only for the expenses, losses and liabilities incurred by the branch to which the same had been allotted, and entitled only to the profits and claims arising from such branch. The failure of one branch of the company's business to meet its obligations, did not require the suspension of the business of the other branch, nor was the latter to be subject to the statutory law relating to insolvent companies.

p. 26, l. 27. In 1871, the Act incorporating The Sun Insurance Company of Montreal was further amended by an Act of the Parliament of Canada. The name of the company was changed to The Sun Mutual Life Insurance Company of Montreal. Nothing I think turns upon the introduction of the word Mutual into the corporate name. The important sections of this amending statute are two, and are as follows:—

> 3. 'The powers of the said company are hereby restricted to life and accident insurance.'

4. 'All provisions of the Act of Incorporation of the said Company, and of the Act amending the same, which are inconsistent with the provisions of this Act, are hereby repealed.' RECORD.

The company up to this time had not yet begun to do insurance business of any kind, and I understand it was subsequent to the passing of this amending Act that it did commence business."

12. The learned President stated his reasons for supporting the ruling of the Superintendent as follows :

"I have carefully considered the argument of counsel for the company, and every relevant provision of the various statutes which relate to the matter in dispute, and I have reached the conclusion that the ruling of the Superintendent of Insurance was correct, and that the capital stock of the company is two million dollars. It is quite true that the company, under its charter as originally enacted, was empowered to commence business with a capital of two million dollars, which amount of capital might have been increased to four million dollars with the sanction of the company's shareholders; and it is equally true that the company might have restricted itself to life and accident insurance only. The capital structure of the company was, however, entirely changed by the Act of 1870. The purpose of the change is I think quite plain. It was proposed to conduct the business of the company in one or two separate branches, and to make available to each branch a maximum of capital of two million dollars, as and when required. Section 1 of this Act clearly was drafted having this in mind, as is readily to be observed upon a reading of the succeeding sections dealing with the capital to be employed by the two different branches. The capital of the Life Branch was definitely limited to two million dollars whether or not the General Branch ever came into existence. The scheme was to set up what was virtually two separate and independent insurance organizations with an authorized capital stock of one million dollars for each, with power to raise such capital to two million dollars in each case, there being a common reservoir, from which each branch might draw the amount of one million dollars each, and again another million each, if and when desired. If one branch did not go to the reservoir for its capital, that would not make authority for the other branch to absorb what the other did not elect to take, To do this, the authority would need to be very clearly expressed. The Act of 1871 restricted the business of the company to life and accident insurance, but there is no intimation whatever therein, of any intention to grant a greater capital than two million dollars for the conduct of such classes of insurance business. I do not think it was intended by sec. 4 of the Act of 1871 to repeal sec. 4 of the Act of 1870, which latter p. 27, l. 18.

RECORD.

provision fixed the capital of the Life Branch at two million dollars, and I think it still stands. It is not inconsistent to say that though the proposed General Branch has been eliminated, that the other branch remains exactly as it was constituted under the Act of 1870. The Act of 1870 made provision for such an event. It was not imperative in the proposed scheme that the General Branch be ever established."

13. The appellant company thereupon appealed to the Supreme Court of Canada which appeal was dismissed with costs on the 10th April, 1930 (Duff and Smith JJ., dissenting). Anglin, C. J. C., in writing the reasons for judgment of the majority first dealt with the question whether there was jurisdiction to entertain the appeal and he decided that there was not on the ground that it could not be said that " the actual amount in controversy exceeds five hundred dollars " as provided by sections 82 and 83 of the Exchequer Court Act, and further that the proceeding in the court below was not " a judicial proceeding," but that the Exchequer Court in supervising the action of the Superintendent was exercising " a regulative jurisdiction."

14. The learned Chief Justice said:

p. 50, l. 1.

" When we consider the character of the functions of the Superintendent, not in this particular case, but in making other corrections and alterations within s. 68 of the Insurance Act, it seems clear from the language of subsection 5 that a right of appeal beyond the Exchequer Court was not meant to be conferred. On the contrary, by giving the right to appeal to the Exchequer Court '*in a summary manner*' and subject to the special provisions made in subsection 6 for short delays in prosecuting such appeals, it seems reasonably certain that Parliament intended to make that Court *curia designata* for the purpose of supervising acts of an official (the Superintendent of Insurance) and that the summary jurisdiction to be thus exercised by the Court so designated should be final and conclusive. See *Gosnell* v. *Minister of Mines* (No. 3283, March 7, 1913) where the Supreme Court of Canada quashed an appeal from the Court of Appeal of British Columbia which had dismissed an appeal from the Chief Justice of British Columbia upholding a ruling by the Chief Commissioner of Crown Lands. Section 107 of the Land Act (8 Edw. VII, c. 30) gave an appeal *in a summary manner* to the Supreme Court of British Columbia from

> any decision of a stipendiary magistrate, justice of the peace or commissioner under this Act;

and provided for such appeal a special procedure.

That no appeal lies to this Court where the Court *a quo* has acted as *curia designata*, is well established. The appeal given in this case to the Exchequer Court is not unlike that given by the

Railway Act from the award of an arbitrator fixing compensation for lands expropriated, where it is said that the courts which may be appealed to are

RECORD.

> designated by the statute to be *special tribunals.* . . .

See *James Bay Railway* v. *Armstrong*, 38 Can. S. C. R., 511 at p. 514. See also *St. Hilaire* v. *Lambert*, 42 Can. S. C. R. 264."

15. However, as two members of the Supreme Court took a different view of the question of jurisdiction the majority of the Court, through the Chief Justice, dealt with the merits of the appeal as follows:

"Apparently at the time this amending Act was passed, p. 52, l. 17.
Parliament regarded $2,000,000 as the maximum amount of capital that was required for, or should be allowed to be used in the life insurance business of the Company—including therein, accident insurance and other business set out in s. 3 above quoted.

In 1871 there was a further amending statute, again enacted at the instance of the Company (34 V., c. 53), by which its corporate name was changed to 'The Sun *Mutual Life* Insurance Company of Montreal.' By s. 3

> The powers of the said Company (were) restricted to Life and Accident Insurance.

S. 4 reads as follows:—

> All provisions of the Act of Incorporation of the said Company and of the Act amending the same, which are inconsistent with the provisions of this Act, are hereby repealed.

On the purview and application of s. 4 depends the decision p. 52, l. 32.
on the merits of this appeal. I find nothing in those provisions of the statute of the previous year (1870) which limited the capital stock of the company to be used for life and accident insurance purposes to $2,000,000, inconsistent with the abandonment in 1871 by the Company of its intention to do other insurance business or with the restriction of the powers of the Company to life and accident insurance then imposed. Parliament, which had, in 1865, in a statute enabling the Company to do all sorts of insurance business, including fire and marine insurance, authorized an original capital of $2,000,000, to be increased to $4,000,000, saw fit, in 1870, to determine that a capital of $2,000,000, would suffice for the branch of the Company's business doing life insurance business, if exclusively applied to it, and that a further $2,000,000, authorized should (if raised) be used, likewise exclusively, in the other branch of the Company's business. In other words, by the Act of 1870, Parliament said to the Company:

> If you do life and accident business only you shall not employ more than $2,000,000, of capital for that purpose.

RECORD.

If you choose to extend your business to other branches you may raise an additional $2,000,000 of capital for those purposes.

p. 53, l. 7.

Neither by the statute of 1865, nor by that of 1870, was the Company obliged to engage in any business; but, if it should do business after 1870, it must devote the $1,000,000 of capital then authorized to be raised without resorting to increase by stockholders' meeting, to the business of life and accident insurance exclusively; and in addition thereto it was empowered to raise and use, for that purpose, a further $1,000,000 of capital and no more. It seems to us to be more conformable to the intention of Parliament, as therein indicated, to construe the Act of 1871 as contemplating the continuance of the restriction of the Company's capital to the $2,000,000 authorized in 1870 to be used for life insurance purposes. A passage from Maxwell's Interpretation of Statutes (7th ed.), p. 136, cited on behalf of the appellant, fully supports this view:

> The language of every enactment must be construed as far as possible in accordance with the terms of every other statute which it does not in express terms modify or repeal. The law, therefore, will not allow the revocation or alteration of a statute by construction when the words may be capable of proper operation without it.

The words of s. 4 of the Act of 1871 are fully capable of proper operation by confining the repeal which they enact to those provisions of the Act of 1870 which dealt with the operation of 'the general branch,' leaving intact, those which provided for 'the life branch' and its limitations.

If, by the Act of 1871, the promoters of the appellant Company intended to take authority for the issue of any amount of stock for life and accident insurance purposes in excess of the $2,000,000 authorized by the Act of 1870 to be used by it for these purposes, it was incumbent upon them to see that the restricting provisions of the Act of 1870 were clearly modified or repealed so as to permit of that being done. Indeed, having regard to s. 19 (*a*) of the Interpretation Act (R.S.C., c. 1), the Act of 1871 should probably have contained an express provision reviving the right of the appellants as it existed under the charter of 1865, to issue and use $4,000,000 of stock for any purpose of the Company, including life and accident insurance, if that was intended."

16. Duff, J., with whom Smith, J. agreed, held that the proceeding in the Court of appeal was "a judicial proceeding," and that there was an amount in excess of $500 in controversy and that therefore the judgment of the Exchequer Court was appealable.

17. Duff and Smith, JJ. held further that the true construction of the charter of the company, as amended, was to enable the company to issue capital stock up to $4,000,000. Duff J. said: RECORD.

"The intention necessarily implied by this statute (1871) is, as I have said, that the system of the Act of 1870, by which the business of the Company was divided into, and conducted through, separate compartments, should disappear. Life and Accident Insurance, it was finally settled, was to be the business of the Company, not a branch of its business. All the devices, then, which had been conceived for giving effect to the plan now abandoned lose their utility and are bereft of their functions; and the provisions of the Act of 1870, such as that requiring Life and Accident business to be conducted under the corporate name with the addition 'Life Branch', that requiring separate accounts for shares allotted to the several branches, for their several profits and investments; that limiting the liability of shares to liabilities incurred by the 'branch' to which the share had been 'allotted'; all such provisions become meaningless and inoperative. So, also, as to the provisions for the appropriation of share capital to the several 'branches'. It is to be observed that with one exception, which I am about to refer to, this appropriation was not effected by the statute. It was to be left to the discretion of the Company, and as applied to the situation created by the Act of 1871, enactments upon that subject could of course have no force. The enactment that the initial capital of $1,000,000 was to be applied to the 'Life Branch' ceased under the Act of 1871 to have any significance; because, after the change effected in the objects of the Company by that Act, no part of the Company's capital could lawfully be applied to anything but the business of Life and Accident Insurance; the remaining provision of that section in the same way became equally otiose, because under section 1, which as I shall point out, is not affected by the Act of 1871, the nominal capital, as already observed may be increased to $4,000,000 in successive increments of $1,000,000 which, under last mentioned Act, can only be employed for the objects of the Company, as defined therein. p. 60, l. 9.

Section 4 of the Act of 1870 must be viewed as one element in the *fascicule* beginning with the latter part of section 3 and extending to section 9. All these provisions presuppose a Company whose authorized business includes Life and Accident as well as other branches of insurance, and which is to be carried on in two branches under the regime of the Act of 1870. Section 4 can have no operation, first, because in addition to what has already been said, there is no 'Life Branch' to which it can apply, secondly, because everything found in section 4 is in view of the new definition of the Company's undertaking in the Act of 1871, already in section 1."

18. It is submitted on behalf of the Superintendent of Insurance that the judgments of the Supreme Court of Canada and of the Exchequer Court are right and ought to be affirmed, and that the appeal therefrom ought to be dismissed for the

REASONS

stated in the reasons for judgment of Anglin, C. J. C. and of MacLean, J. and the following reasons :

The intention of Parliament and of the promoters of the Company, as indicated by the charter as finally formulated in 1871, was to create a life and accident assurance company with authority to issue capital stock up to but not exceeding $2,000,000.

H. GUTHRIE.

C. P. PLAXTON.

In the Privy Council.

No. 58 of 1930.

On Appeal from the Exchequer Court of Canada and from the Supreme Court of Canada.

IN THE MATTER of the Insurance Act and of a Ruling of the Superintendent of Insurance.

BETWEEN

THE SUN LIFE ASSURANCE COMPANY OF CANADA

(*Appellants*)

AND

THE SUPERINTENDENT OF INSURANCE

(*Respondent*).

CASE OF THE RESPONDENT.

CHARLES RUSSELL & CO.,
37, Norfolk Street,
Strand, W.C.2.
Solicitors for the Respondent.

EYRE AND SPOTTISWOODE, LTD., EAST HARDING STREET, E.C.4.