

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.*

RECORD OF PROCEEDINGS.

INDEX OF REFERENCE.

No.	Description of Document.	Date.	Page.
IN THE EXCHEQUER COURT OF CANADA.			
1	Certificate of ruling of Superintendent of Insurance	22nd March 1929	3
2	Appellants' notice of intention to appeal to Exchequer Court	25th March 1929	5
3	Order to file Factums	4th April 1929	7
4	Appellants' Factum	9th April 1929	7
5	Respondent's Factum	- - - - -	10
6	Appendix to Respondent's Factum consisting of—		
	(a) Act incorporating the Appellants	18th March 1865	13
	(b) Act amending Appellants' Act of Incorporation	12th May 1870	20
	(c) Act amending Appellants' Act of Incorporation and amending Act	14th April 1871	22

No.	Description of Document.	Date.	Page.
7	Order fixing date of hearing - - - - -	3rd May 1929 - - -	23
8	Admissions of the parties - - - - -	11th May 1929 - - -	23
9	Formal Judgment - - - - -	18th June 1929 - - -	25
10	Reasons for Judgment—MacLean, J. - - - - -	18th June 1929 - - -	25
11	Extract from Supreme Court Minute Book shewing application for leave to appeal to Supreme Court rejected - - - - -	18th July 1929 - - -	28
12	Notice of appeal to Supreme Court - - - - -	22nd July 1929 - - -	29
IN THE SUPREME COURT OF CANADA.			
13	Order approving security - - - - -	19th December 1929 - -	29
14	Order allowing printing of extract from Appellants' Annual Statement of 1927 - - - - -	26th December 1929 - -	30
15	Appellants' Factum - - - - -	10th January 1930 - -	30
16	Respondent's Factum - - - - -	- - - - -	42
17	Formal Judgment - - - - -	10th April 1930 - - -	46
18	Reasons for Judgment—		
	(a) Anglin, C.J.C. (concurring in by Cannon, J., Newcombe, J., concurring in the conclusion) - - - - -	- - - - -	47
	(b) Duff, J. (concurring in by Smith, J.) - - - - -	- - - - -	54
IN THE PRIVY COUNCIL.			
19	Order in Council granting special leave to appeal to His Majesty in Council - - - - -	13th June 1930 - - -	61

EXHIBITS.

Exhibit Mark.	Description of Document.	Date.	Page.
1	(a) Copy By-law of Appellants' Directors increasing Capital Stock - - - - -	8th February 1927 - -	63
	(b) Copy Resolution of Appellants' Shareholders approving and re-enacting By-law - - - - -	8th February 1927 - -	63
2	Extract from Appellants' Annual Statement for 1927 shewing alterations made by Respondent - - - - -	8th February 1927 - -	64

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.*

RECORD OF PROCEEDINGS.

No. 1.

Certificate of ruling of Superintendent of Insurance.

In the matter of

THE INSURANCE ACT, R. S. 1927, C. 101.

and

THE SUN LIFE ASSURANCE COMPANY OF CANADA.

CERTIFICATE OF RULING UNDER SECTION 68 OF THE SAID ACT.

WHEREAS, under the provisions of section thirty-one of the said Act,
the Sun Life Assurance Company of Canada is required to deposit with the
10 Department of Insurance, within two months after the first day of January
in each year, an annual statement of the condition and affairs of the said
Company as at the thirty-first day of December next preceding; and

*In the
Exchequer
Court of
Canada.*

No. 1.
Certificate
of ruling of
Superin-
tendent of
Insurance,
22nd March
1929.

*In the
Exchequer
Court of
Canada.*

No. 1.
Certificate
of ruling of
Superin-
tendent of
Insurance,
22nd March
1929—con-
tinued.

WHEREAS the form of statement prescribed by the Schedule to the said Act includes a statement of the amount of authorized capital stock of the Company as at the said thirty-first day of December; and

WHEREAS the said Company deposited in the said Department on the twenty-fourth day of February, one thousand nine hundred and twenty-eight, its annual statement as at December thirty-first, one thousand nine hundred and twenty-seven; and

WHEREAS in the said statement the amount of capital stock authorized as at the thirty-first day of December, one thousand nine hundred and twenty-seven, is stated to be an amount in excess of two million dollars; and 10

WHEREAS section sixty-eight of the said Act provides, in subsection two thereof, that the Superintendent of Insurance shall make, in his annual report prepared for the Minister under the provisions of paragraph (e) of section thirty-eight of the said Act, all necessary corrections in the annual statements made by the companies; and

WHEREAS the Superintendent of Insurance has, in his report to the Minister for the business of the year one thousand nine hundred and twenty-seven, made the necessary correction in the annual statement aforesaid by stating the amount of the authorized capital stock appearing in the said statement as being two million dollars; and 20

WHEREAS the said Company has requested from the said Superintendent a certificate in writing setting forth the change made for the purpose of an appeal thereagainst as in the said section sixty-eight provided;

NOW, THEREFORE, this is to certify that the Superintendent of Insurance has in the said annual statement aforesaid of the said Company made correction therein by stating the authorized capital stock of the Company at two million dollars, and hereby makes a ruling that the said authorized capital stock is and is limited to the sum of Two million dollars for the reason that by the charter of the Company the capital stock is limited to two million dollars without power in the Company to increase the capital stock beyond that amount. 30

Given under my hand and seal this
twenty-second day of March, one thousand
and nine hundred and twenty-nine,

(SEAL)

G. D. FINLAYSON,
Superintendent of Insurance.

No. 2.

Appellants' notice of intention to appeal to Exchequer Court.

To G. D. FINLAYSON, ESQ.,
 SUPERINTENDENT OF INSURANCE,
 DEPARTMENT OF INSURANCE,
 OTTAWA

Sir,—

You are hereby notified that the Sun Life Assurance Company of Canada, a duly incorporated assurance company within the legislative jurisdiction of the Parliament of Canada, having its Head Office at the City of Montreal, in the Province of Quebec, intends to appeal to the Exchequer Court of Canada from your ruling as set forth in the certificate given under your hand and seal the twenty-second day of March, one thousand nine hundred and twenty-nine, sent to the Legal Adviser of the said Company at the said City of Montreal with your letter dated the same day and received by him on the twenty-third of the said month, to the effect that in its Annual Statement as at December thirty-first, one thousand nine hundred and twenty-seven, deposited by the Company in the Department of Insurance on the twenty-fourth of February, one thousand nine hundred and twenty-eight, the amount of Capital Stock authorized as at the thirty-first day of December, one thousand nine hundred and twenty-seven, is stated to be an amount in excess of Two Million Dollars (\$2,000,000.) but in your Annual Report prepared for the Minister of Finance for the business of the year one thousand nine hundred and twenty-seven you made an alteration in the said Annual Statement by stating the amount of the authorized Capital Stock appearing in the said statement as being Two Million Dollars (\$2,000,000.), and in and by the said Certificate you certified that you had in the said Annual Statement made a correction therein by stating the authorized Capital Stock of the said Company to be Two Million Dollars (\$2,000,000.), and you therein and thereby rule that the said authorized Capital Stock is and is limited to the sum of Two Million Dollars (\$2,000,000.), for the reason that by the Charter of the said Company the Capital Stock is limited to Two Million Dollars (\$2,000,000.) without power in the Company to increase the Capital Stock beyond that amount.

And the Company's grounds of appeal are :—

1. That it is a body corporate, having been incorporated by special Act of the Parliament of the late Province of Canada in the year 1865, 28 Victoria, Chapter 43, which Act was amended by a special Act of Parliament of Canada in the year 1870, 33 Victoria, Chapter 58, and further amended by a special Act of the Parliament of Canada in 1871, 34 Victoria, Chapter 53, and again amended by a special Act of the Parliament of Canada in 1882, 45 Victoria, Chapter 100.

2. That in and by the said Three Acts of Parliament passed in the years 1865, 1870 and 1871 respectively, the said Company was

*In the
 Exchequer
 Court of
 Canada.*

No. 2.
 Appellants'
 notice of
 intention to
 appeal to
 Exchequer
 Court,
 25th March
 1929.

*In the
Exchequer
Court of
Canada.*

No. 2.
Appellants'
notice of
intention to
appeal to
Exchequer
Court,
25th March
1929—con-
tinued.

authorized to increase its Capital Stock, in sums of not less than One Million of Dollars (\$1,000,000.) to a sum not exceeding Four Millions of Dollars (\$4,000,000.), in the manner indicated in the said Acts.

3. That prior to the eighth of February, one thousand nine hundred and twenty-seven, the said Company had issued its Capital Stock to the extent of Two Millions of Dollars (\$2,000,000.).

4. That by By-Law enacted by the Board of Directors of the said Company on the eighth day of February, one thousand nine hundred and twenty-seven, unanimously approved, ratified, confirmed and re-enacted by the stockholders of the said Company at a special meeting expressly convened for that purpose and held at the City of Montreal on the last mentioned date, the Capital Stock of the said Company was increased to Three Millions of Dollars (\$3,000,000.) by the issue of ten thousand additional shares, amounting to One Million of Dollars (\$1,000,000). 10

5. That notwithstanding the wide powers granted to the said company by its Act of Incorporation and amending Acts, it has never carried on any other business than that of life and accident insurance, and for many years past has confined its business entirely to that of life insurance only. 20

6. That on the thirty-first day of December, one thousand nine hundred and twenty-seven, the said Company's authorized Capital Stock was an amount in excess of Two Million Dollars (\$2,000,000.) and amounted to at least Three Million Dollars (\$3,000,000.), with power to the Company to increase it to Four Million Dollars (\$4,000,000.) under its said Act of Incorporation and amending Acts.

7. That you acted erroneously in altering the said Annual Statement of the condition and affairs of the said Company as at the end of the year one thousand nine hundred and twenty-seven by stating the amount of the Company's authorized Capital Stock to be Two Million Dollars (\$2,000,000.) 30

Montreal, March twenty-fifth, 1929.

J. A. EWING,

Solicitor for Sun Life Assurance Company of Canada.
Ottawa Agent,

L. CLARE MOYER,
201 Ottawa Electric Bldg.

(E N D O R S E D)

Service of a true copy hereof admitted this 27th day of March, 1929. 40

G. D. FINLAYSON,
Superintendent of Insurance.

No. 3.**Order to file Factums.**

IN THE EXCHEQUER COURT OF CANADA.

Thursday the 4th day of April, A.D., 1929.

Before the Honourable the President in Chambers.

IN THE MATTER of The Insurance Act and of a certain appeal by the Sun Life Assurance Company of Canada, Limited, from a ruling of the Superintendent of Insurance.

Upon an application being made jointly by counsel representing the Appellant and the Superintendent of Insurance :

IT IS ORDERED that the parties be at liberty to file written factums on or before the 18th day of April A.D. 1929.

ARNOLD W. DUCLOS,
Deputy Registrar.

*In the
Exchequer
Court of
Canada.*

No. 3.
Order to
file
Factums,
4th April
1929.

No. 4.**Appellants' Factum.**

Filed and delivered pursuant to order dated April 4, 1929 :—
Appellant says :—

1. THAT Appellant is a duly incorporated insurance company, with its Head Office at the City of Montreal, in the Province of Quebec, within the legislative jurisdiction of the Parliament of Canada, having been incorporated by special Act of Parliament of the late Province of Canada, in the year 1865, 28 Victoria, Chapter 43, which Act was amended by a special Act of the Parliament of Canada in the year 1870, 33 Victoria, Chapter 58, and further amended by a special Act of the Parliament of Canada in 1871, 34 Victoria, Chapter 53, and again amended by a special Act of Parliament of Canada in 1882, 45 Victoria, Chapter 100, and for many years past, and particularly during the year one thousand nine hundred and twenty-seven, it was duly licensed to carry on the business of life assurance throughout Canada and in various parts of the world.

2. THAT in and by the said three Acts of Parliament passed in the years 1865, 1870, and 1871 respectively, the said Company was authorized to increase its Capital Stock, in sums of not less than One million of dollars (\$1,000,000.) to a sum not exceeding Four millions of dollars (\$4,000,000.) in the manner indicated in the said Acts.

3. THAT prior to the eighth of February, one thousand nine hundred and twenty-seven, the said Company had issued its Capital Stock to the extent of Two millions of dollars (\$2,000,000.).

4. THAT by By-law enacted by the Board of Directors of the said Company on the eighth day of February, one thousand nine hundred and

No. 4.
Appellants'
Factum.

*In the
Exchequer
Court of
Canada.*

No. 4.
Appellants'
Factum—
continued.

twenty-seven, unanimously approved, ratified, confirmed and re-enacted by the stock holders of the said Company at a special meeting expressly convened for that purpose and held at the City of Montreal on the last-mentioned date, the Capital Stock of the said Company was increased to Three Millions of Dollars (\$3,000,000.) by the issue of ten thousand additional shares, amounting to One Million of Dollars (\$1,000,000.).

5. THAT notwithstanding the wide powers granted to the said Company by its Act of Incorporation and amending Acts, it has never carried on any other business than that of life and accident insurance, and for many years past has confined its business entirely to that of life insurance only. 10

6. THAT on the thirty-first day of December, one thousand nine hundred and twenty-seven, the said Company's authorized Capital Stock was an amount in excess of Two Million Dollars (\$2,000,000.) and amounted to at least Three Million Dollars (\$3,000,000.), with power to the Company to increase it to Four Million Dollars (\$4,000,000.) under its said Act of Incorporation and amending Acts.

7. THAT in accordance with the requirements of the Insurance Act, the Appellant deposited in the Department of Insurance on the twenty-fourth day of February, one thousand nine hundred and twenty-eight its Annual Statement for the year one thousand nine hundred and twenty-seven, in which the amount of its capital stock authorized as at the thirty-first day of December, one thousand nine hundred and twenty-seven was stated to be an amount in excess of Two Million Dollars (\$2,000,000.), which Annual Statement the Respondent is called upon to produce. 20

8. THAT in his Annual Report prepared for the Minister of Finance for the business of the year one thousand nine hundred and twenty-seven the Superintendent of Insurance made an alteration in the said Annual Statement by stating the amount of the authorized capital stock appearing in the said Statement as being Two Million Dollars (\$2,000,000.), and the Superintendent has made a ruling accordingly. 30

9. THAT Appellant, under the provisions of the Insurance Act, appeals to this Honourable Court from the said ruling and action of the Superintendent of Insurance.

10. THAT the Superintendent of Insurance, for the purposes of such appeal, on the twenty-second day of March, one thousand nine hundred and twenty-nine, issued a certificate in the following words and figures, which has been filed in this case :—

“ In the matter of

The Insurance Act, R. S. 1927, C. 101.

and

The Sun Life Assurance Company of Canada.

40

CERTIFICATE OF RULING UNDER SECTION 68 OF THE SAID ACT.

WHEREAS, under the provisions of section thirty-one of the said Act, the Sun Life Assurance Company of Canada is required to deposit with the

Department of Insurance, within two months after the first day of January in each year, an annual statement of the condition and affairs of the said Company as at the thirty-first day of December next preceding; and

WHEREAS the form of statement prescribed by the Schedule to the said Act includes a statement of the amount of authorized capital stock of the Company as at the said thirty-first day of December; and

WHEREAS the said Company deposited in the said Department on the twenty-fourth day of February, one thousand nine hundred and twenty-eight, its annual statement as at December thirty-first, one thousand nine hundred and twenty-seven; and

WHEREAS in the said statement the amount of capital stock authorized as at the thirty-first day of December, one thousand nine hundred and twenty-seven, is stated to be an amount in excess of two million dollars; and

WHEREAS section sixty-eight of the said Act provides, in subsection two thereof, that the Superintendent of Insurance shall make, in his annual report prepared for the Minister under the provisions of paragraph (e) of section thirty-eight of the said Act, all necessary corrections in the annual statements made by the companies; and

WHEREAS the Superintendent of Insurance has, in his report to the Minister for the business of the year one thousand nine hundred and twenty-seven, made the necessary correction in the annual statement aforesaid by stating the amount of the authorized capital stock appearing in the said statement as being two million dollars; and

WHEREAS the said Company has requested from the said Superintendent a certificate in writing setting forth the change made for the purpose of an appeal thereagainst as in the said section sixty-eight provided;

NOW THEREFORE, this is to certify that the Superintendent of Insurance has in the said annual statement aforesaid of the said Company made correction therein by stating the authorized capital stock of the Company at two million dollars, and hereby makes a ruling that the said authorized capital stock is and is limited to the sum of two million dollars for the reason that by the charter of the company the capital stock is limited to two million dollars without power in the Company to increase the capital stock beyond that amount.

GIVEN UNDER MY HAND AND SEAL THIS TWENTY-SECOND DAY OF MARCH, ONE THOUSAND NINE HUNDRED AND TWENTY-NINE.

G. D. FINLAYSON,
Superintendent of Insurance.”

11. THAT Appellant, on the Twenty-seventh day of March, one thousand nine hundred and twenty-nine caused to be served upon the Superintendent of Insurance a notice of its intention to appeal from the said ruling, setting forth its grounds of appeal, a duplicate of said notice, with admission of service endorsed thereon, having been filed in this case.

12. THAT the Superintendent of Insurance acted erroneously and without right in making the said alteration in the said Annual Statement and stating

*In the
Exchequer
Court of
Canada.*

No. 4.
Appellants'
Factum—
continued.

*In the
Exchequer
Court of
Canada.*

No. 4.
Appellants'
Factum—
continued.

therein that the amount of the Appellant's authorized capital stock on the Thirty-first of December, One thousand nine hundred and twenty-seven, was only Two Million dollars (\$2,000,000.00).

The Appellant, therefore, claims as follows :—

(a) An order of this Honourable Court declaring that the authorized capital stock of the Appellant on the Thirty-first day of December, one thousand nine hundred and twenty-seven, amounted to more than Two million dollars (\$2,000,000.00);

(b) An order of this Honourable Court declaring that the authorized capital stock of the Appellant, was, under the provisions of its said Act of Incorporation and amending Acts, on the Thirty-first day of December, One thousand nine hundred and twenty-seven, Four million dollars (\$4,000,000.00);

(c) An order of this Honourable Court declaring that on the Thirty-first day of December, One thousand nine hundred and twenty-seven, the amount of the capital stock which the Appellant was duly and legally authorized by its stockholders to issue was Three Million dollars (\$3,000,000.00);

(d) An order of this Honourable Court setting aside the said ruling of the Superintendent of Insurance.

(e) The costs of this action.

(f) Such further and other relief as the nature of the case may require, and as to this Honourable Court may seem meet.

Dated at Ottawa this 9th day of April, A.D. 1929.

J. A. EWING,
Solicitor for Appellant.

No. 5.
Respond-
ent's
Factum.

No. 5.

Respondent's Factum.

The respondent says that the action of the corporation in stating, in its annual statement for the year 1927, its authorized capital stock at a sum in excess of two million dollars, viz., three million dollars, was incorrect, inasmuch as the charter of the company limits the capital stock to be authorized and issued to two million dollars; and that the corporation had no power to authorize the issue of stock in excess of two million dollars.

The charter of the company is contained in three statutes of 1865, 1870 and 1871 which are set out in the appendix hereto. By the first of the statutes in question, the company was empowered to engage in the business of assurance generally, including fire, life, accident, sickness, guarantee and indemnity insurance (28 Vict. Ch. 43, s.6). For these purposes the company was authorized to issue stock to the amount of two million dollars with

power, however in the shareholders to increase the said authorized capital stock to a sum not exceeding four million dollars (s.2). When four thousand shares had been subscribed and one hundred thousand dollars paid up, the company was authorized to commence the business of fire, accident, sickness, guarantee and indemnity insurance (s.9), but only when eight thousand shares had been subscribed and an additional one hundred thousand dollars paid up could the company engage in life assurance (s.9). The additional one hundred thousand dollars was to be invested in securities “ for the special security of the assurances on lives ” (s.9). Thus there was
 10 at the outset a partial division of the business of the company into two branches, namely, general and life. The company was by this first charter a fire, accident and guarantee company, with power to engage also in life business when stock had been subscribed for double that required for the fire, accident and guarantee business and one hundred thousand dollars set aside for the security of life policies.

In 1870, before any action had been taken under the Act of 1865, the charter was completely revised. The authorized capital stock was reduced from two million to one million dollars with power to the company to increase the same in sums of not less than one million dollars to a sum not exceeding
 20 four million dollars. (33 Vict. Ch. 57, s.6). This power, however, in the shareholders to increase the capital to four million dollars must be read subject to the subsequent provisions of the charter of 1870.

The powers of the company to transact “ life ” and “ general ” insurance were completely separated by the provisions of sections 3, 4, 5, 6, 7, 8, 9 and 12. The effect of these provisions was as follows. Section 3 defined life and accident assurance, and directed the company to carry the same on as a distinct branch of its business under its corporate name, with the addition thereto of the words “ Life Branch.” Section 4 directed that the whole of the authorized capital stock of one million dollars should be
 30 applied solely to the life branch, with power to increase the same to two million dollars. Section 5 authorized the company to commence the business of the life branch when five thousand shares had been subscribed and fifty thousand dollars paid up. Section 7 provided that in addition to the “ life ” business, the shareholders were empowered to authorize the raising of an additional one to two million dollars for the purposes of “ general ” business, that is, fire, marine and guarantee insurance. If the shareholders decided to engage in this business, the company was directed by section 6 to carry the same on as a distinct branch of the business of the company under the corporate name of the said company with the addition
 40 thereto of the words “ General Branch.

Separate accounts were to be maintained for each branch in respect of stock subscribed, business transacted, expenses, profits, claims, losses, liabilities and assets, and investments were to be earmarked for the branch for which they were made (s.8). The capital subscribed in respect of each branch was to be liable only for the expenses, losses and liabilities incurred by the said branch, and entitled only to the profits and claims arising in and proceeding from such branch (s.9). In the event of the failure of one branch

*In the
Exchequer
Court of
Canada.*

No. 5.
Respond-
ent's
Factum—
continued.

*In the
Exchequer
Court of
Canada.*
No. 5.
Respond-
ent's
Factum—
continued.

to meet its obligations, the other branch was not to suspend business or to be subject to the statutory provisions relating to insolvent companies (s.12).

Thus by this second charter a life and accident insurance company was created with the name "The Sun Insurance Company of Montreal (Life Branch)" and with an authorized capital stock of one million dollars capable of being increased to two million dollars. In addition the shareholders had power to set up, if they desired, what was to all intents and purposes a separate entity "The Sun Insurance Company of Montreal (General Branch)" empowered to carry on fire, marine and guarantee insurance and to issue one to two million dollars in capital stock for such purposes. 10

In 1871 the power to set up "The Sun Insurance Company of Montreal (General Branch)" was rescinded by a provision which restricted the powers of the company to life and accident insurance (34 Vict. Ch. 53, s.3). It was also provided that all provisions of the Acts of 1865 and 1870 inconsistent with the provisions of the Act of 1871 were repealed. (s.4).

The appellant must rely on section 1 of the Statute of 1870 for the power now claimed to issue capital stock in excess of two million dollars. That provision authorizing the increase from one to four million dollars must of course be read in conjunction with the other provisions of the Act of 1870. Reading the Act of 1870 as a whole, and before the amendment of 1871, there is no doubt that the capital stock was limited to two million dollars unless the "general branch" was established. 20

The question, therefore, is whether the provisions of the Act of 1871 had the effect of enabling the company to authorize more than two million dollars for the purposes of the life assurance business. The Act of 1871 merely restricted the business of the company to life and accident assurance and changed the name of the company to the Sun *Mutual* Life Insurance Company of Montreal, and provided for the repeal of the provisions of the Act of 1870 inconsistent with provisions of the Act of 1871. It is necessary to ascertain what provisions of the Act of 1870 were repealed. The following rules should, it is submitted, be adopted. 30

Those provisions relating exclusively to the life branch or which would have been effective whether the "general branch" was established or not, stand, while those which were intended only to have effect if the general branch was established, fall. Section 4 of the Act of 1870 reads as follows :

"4. The Capital Stock of one million of dollars shall be applied solely to the "Life Branch" of the said Company, but may be increased under the terms of the Act of Incorporation to two millions of dollars." 40

and would have been effective whether or not the general branch was established. Therefore it stands. The provisions relating exclusively to the "general branch" fall.

It is submitted that the company has no power to increase capital stock beyond two million dollars for the following among other reasons : (a) the powers of the life branch were so completely separated from the

powers of the general branch (so that there were in reality two separate corporations) that the power to authorize two millions of capital for the general branch could not vest in the life branch when the power to create the general branch was rescinded; the power to authorize this additional two millions related so exclusively to the separate general branch that the abolition of the general branch involved the abolition of the power to authorize the said additional capital; (b) for the reasons already mentioned, section 4 of the Act of 1870 was not repealed by the Act of 1871 and it stands and has the effect to limit the authorized capital of this life assurance
 10 company to two millions; (c) section 1 of the Act of 1870 when enacted had to be read in connection with the subsequent qualifying provisions of the Act, including section 4, and as this section was not repealed it still qualifies section 1; (d) the change of name in 1871 to include the word "Mutual" is a clear indication that Parliament did not intend to increase the stockholding character of the corporation by doubling the authorized capital stock thereof as is contended.

*In the
Exchequer
Court of
Canada.*

No. 5.
Respondent's
Factum—
continued.

LUCIEN CANNON,
Solicitor General of Canada,
F. P. VARCOE,
of Counsel for the Respondent.

20

No. 6.

Appendix to Respondent's Factum.

(a) Act Incorporating the Appellants, Cap. XLIII.

An Act to incorporate "The Sun Insurance Company of Montreal".
 (Assented to 18th March, 1865.)

WHEREAS George Stephen, M. H. Gault, Thomas Gordon, William Dow, J. Glennon, G. H. Frothingham, A. W. Oglivie, Henry Thomas, James Hutton, Henry Mulholland, James Ferrier, the younger, and others, have petitioned the Legislature that an association, under the style and title of
 30 "The Sun Insurance Company of Montreal," may be incorporated, to enable parties owners of or interested in property to insure the same against loss by fire, and also to carry on the business of marine and inland navigation assurance, and life assurance generally; And whereas such associations are greatly beneficial to the interests of this Province, and tend to the retaining therein a large portion of the moneys annually sent away as premiums for such assurances: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. All such persons as now are, or hereafter shall become, stockholders
 40 of the said association shall be, and are hereby ordained, constituted and declared to be a body corporate and politic in law, in fact, and in name, by the style and title of "The Sun Insurance Company of Montreal," and shall

No. 6.
Appendix to
Respondent's
Factum.
(a) Act incorporating
the Appellants,
18th March
1865.

*In the
Exchequer
Court of
Canada.*

No. 6.
Appendix to
Respond-
ent's
Factum.
(a) Act in-
corporating
the Appel-
lants,
18th March
1865—con-
tinued.

be capable in law of purchasing, holding or conveying any estate, real or personal, for the use of the said corporation, subject to the rules and conditions hereinafter mentioned.

2. A share in the stock of the said company shall be one hundred dollars, and the capital of the company shall be two millions of dollars; and books of subscription shall be opened in the city of Montreal, and in such other of the principal cities and towns of the Province as the directors shall see fit, of which public notice shall be given by such person or persons and under such regulations, as the majority of the directors hereinafter appointed shall direct; Provided, always, that it shall and may be lawful for the said corporation to increase its capital stock to a sum not exceeding four millions of dollars, as a majority of the stockholders, at a meeting to be expressly convened for that purpose, shall agree upon. 10

3. It shall be lawful for any person or persons, or body politic, to subscribe for such and so many shares as he, she or they may think fit, not however exceeding, during the first month the subscription books are opened, two hundred shares; and two dollars per cent. shall be paid at the time of subscription, and eight dollars per cent. additional shall be called for by the directors as soon as they may deem expedient, and the remainder shall be payable in such instalments as the majority of the directors may determine upon; Provided always, that no instalment shall exceed ten per cent., upon the capital stock in any period of four months, nor be called for nor become payable in less than sixty days after public notice shall have been given in one newspaper published in the city of Montreal and the Canada Gazette, and by circular addressed to each stockholder at his, her or their last known residence; if any stockholder or stockholders, as aforesaid, shall refuse or neglect to pay to the said directors the instalment due on any share or shares held by him, her or them at the time required so to do, such stockholder or stockholders as aforesaid shall forfeit such share or shares as aforesaid, together with the amount previously paid thereon, and such forfeited share or shares may be sold at a public sale by the said directors, after such notice as they may direct, and the moneys arising therefrom shall be applied for the purposes of this Act; Provided always, that in case the money produced by any sale of shares be more than sufficient to pay all arrears and interests, together with the expense of such sale, the surplus of such money shall be paid on demand to the owner, and no more shares shall be sold than shall be deemed necessary to pay such arrears, interest and expenses. 20

4. If payment of such arrears of calls, interest and expenses be made before any share so forfeited and vested in the company shall have been sold, such share shall revert to the party to whom the same belonged before such forfeiture, as if such calls had been duly paid; and in all actions or suits for the recovery of such arrears on calls, it shall be sufficient for the said company to declare in an action of debt in manner following: 40

“ For that whereas the defendant heretofore, to wit : on the
“ day of , eighteen
“ hundred , was indebted to ‘The Sun

“ Insurance Company of Montreal ’ in the sum of _____, for
 “ divers calls and dues upon certain stock and shares of the said
 “ company, held by defendant before, then due and unpaid upon the
 “ said stock and shares, and being so indebted then became liable
 “ to pay the said amount to the said plaintiffs, whereby an action
 “ hath accrued to the said plaintiffs, to ask and demand the same
 “ from the defendant; yet the defendant, although often requested,
 “ hath not paid the same or any part thereof, to the plaintiff’s
 “ damage of _____ : Wherefore they
 10 “ bring the suit, &c.”

*In the
Exchequer
Court of
Canada.*

No. 6.

Appendix to
Respond-
ent’s
Factum.

(a) Act in-
corporating
the Appel-
lants,
18th March
1865—con-
tinued.

And it shall only be necessary to prove that the defendant was owner of some shares in the company, that such calls were in fact made, and that notice was given as directed by this Act, and it shall not be necessary to prove the appointment of the directors who made such calls, nor any other matter whatsoever.

5. Provided that if the whole number of shares shall not be subscribed for, within one month, after the said books of subscription shall be opened, then it shall be lawful for any former subscriber or subscribers to increase his, her or their subscription; And provided further, that if the total
20 amount of subscriptions within the period aforesaid shall exceed the capital stock, limited by this Act to two millions of dollars, then and in such case the shares of each subscriber of above ten shares shall, as nearly as may be, be proportionably reduced until the total number of shares be brought down to the limits aforesaid; And provided, nevertheless, that the said limitation, in respect to persons subscribing to the said capital stock, shall not extend or be construed to extend to prevent the acquisition of a greater number of shares by purchase, after the said corporation shall have commenced its operations.

6. The corporation hereby erected shall have power and authority to
30 make and effect contracts of assurance with any person or persons, body, politic or corporate, against loss or damage by fire on any houses, stores or other buildings whatsoever, and on any shipping or vessels whatsoever, wheresoever or whithersoever proceeding, and either sea-going or navigating upon lakes rivers or navigable waters, against loss or damage by fire, water, or any other risk whatever, and in like manner on any goods, chattels or personal estate whatsoever, whether on shore or afloat; and to make and effect assurances on life or lives, or in any manner dependent on life or lives, and also against all accidents whatever either by land or sea, and against
40 sickness, and also against all error, default, irregularity, misconduct, dishonesty or malversation of clerks and employees of every description, depositaries, warehousemen, and all persons employed about the management of the affairs of others, in whole or in part, or entrusted with their property, moneys or effects, and to grant annuities, and to purchase reversionary interests, under such modifications and restrictions as may be bargained or agreed upon or set forth, and to cause themselves to be insured against any loss or risk they may have incurred in the course of their business

*In the
Exchequer
Court of
Canada.*

No. 6.
Appendix to
Respond-
ent's
Factum.
(a) Act in-
corporating
the Appel-
lants,
18th March
1865—con-
tinued.

and generally to do and perform all other necessary matters and things connected with and proper to promote these objects.

7. The said corporation shall be in law capable of acquiring by purchase, lease, mortgage or otherwise, and of holding, absolutely or conditionally, any lands, tenements, real or personal estate, and the same may sell, let, release, transfer and dispose of as to them shall seem expedient; Provided always, that nothing herein contained shall be considered as permission to hold any real estate beyond the annual value of five thousand dollars, or such as shall have been *bona fide* mortgaged to it by way of security, or conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments which shall have been obtained for such debts; And provided also, that it shall not be lawful for the said corporation to deal, use or employ any part of the stock, funds or moneys thereof in buying or selling any goods, wares or merchandise, or in any banking operations whatsoever; but it shall, nevertheless, be lawful for the said corporation to purchase and hold, for the purpose of investing therein any part of the said funds or money, any of the public securities of this Province, the stocks of any of the banks or other chartered companies, and the bonds and debentures of any of the incorporated cities or towns, or municipal districts, and also to sell and transfer the same and again to renew such investment when and as often as a due regard to the interests of the said company shall require, and also to make loans of the funds on bond and mortgage at any legal rate of interest, and with power to receive the same in advance, and the same investments to call in and re-loan as occasion may require.

8. The property, affairs and concerns of the said company shall be managed and conducted by a board of nine directors, one of whom shall be chosen president and one vice-president, which board, in the first instance and until others shall be chosen and appointed as hereafter provided, shall consist of George Stephen, Amable Prévost, John Caverhill, Benjamin Lyman, Théodore Doucet, Thomas Tiffin, William Darling, and George Winks, all of the City of Montreal, and which said directors shall hold their offices until the election hereinafter provided for shall take place.

9. As soon as at least four thousand shares shall have been taken up and one hundred thousand dollars paid in on account of the subscribed capital of the company, it shall and may be lawful for the shareholders or subscribers to proceed to the election by ballot of nine directors, at such time and place as the present board shall appoint, giving fifteen days' notice thereof in the Canada Gazette, and in one newspaper at least in the City of Montreal, which directors shall be subjects of Her Majesty, and stockholders at the time of their election and during their continuance in office to the amount of fifty shares, and shall have power to choose from among themselves a president and vice-president; and the said directors shall thereupon, at their first meeting thereafter, divide themselves by lot into three classes of three each, who shall go out of office in rotation as hereinafter provided for; Provided always that before the company shall commence the Life

Department of their business, the sum of eight hundred thousand dollars of the stock of the company shall have been subscribed for, and an additional sum of one hundred thousand dollars paid up and invested in securities of the Province for the special security of the assurances on lives to be effected with the company.

10 10. Each stockholder shall be entitled to one vote for each share which he or she shall have held in his or her name, at least one month prior to the time of voting; and all votes given at any meeting may be either personally or by proxy, the holders of such proxies being stockholders authorized by writing under the hands of the stockholders nominating such proxy, and every proposition at any such meeting shall be determined by a majority of the votes of the parties present, including proxies.

11. If any director of the said corporation shall die, resign or become disqualified, or incompetent to act as a director, or shall cease to be a director through any other cause than that of going out of office by rotation as aforesaid, the remaining directors, if they think proper so to do, may elect in his place any stockholder duly qualified to be a director, and the stockholder so elected to fill up any such vacancy shall continue in office until the first yearly meeting after such vacancy, and the stockholders then present shall 20 elect a new director, who shall hold office for the same period as the director would have done, whose death, resignation or disqualification caused the vacancy.

12. A general meeting of the shareholders of the said company shall be held in the City of Montreal, on such day in each and every year, as a majority of the said directors shall appoint, after giving thirty days' notice thereof; and at such meeting the three directors, whose names stand first on the list of directors, shall be held to vacate their seats, and the stockholders present at such meeting, either in person or by proxy, shall proceed to elect, by ballot, three directors to serve as directors for the ensuing year, who shall, 30 upon election, be placed at the bottom of the roll of directors; Provided always, that nothing herein contained shall be held to render the retiring director ineligible for re-election.

13. At the annual general meeting of the company, and before the shareholders then assembled, the board of directors shall exhibit a full and unreserved statement of the affairs of the company, of the funds, property and securities, showing the amount in real estate, in bonds and mortgages, and other securities, or in public debt or other stock, and the amount of debt due to and by the said company.

40 14. If it shall happen at any time, or for any cause, that an election of directors shall not be made on any day when, pursuant to this Act or the ordinances of the Company, it ought to have been made, the said corporation shall not for that cause be dissolved; but it shall be lawful, on any other day, to hold and make an election of directors, in such manner as shall have been regulated by the by-laws or ordinances of the Company, and the directors in office shall so continue until a new election shall be made.

15. Any number of Directors of the said Company, being a majority of the said Directors, shall have full power and authority to make, prescribe

*In the
Exchequer
Court of
Canada.*

No. 6.

Appendix to
Respond-
ent's
Factum.
(a) Act in-
corporating
the Appel-
lants,
18th March
1865—con-
tinued.

*In the
Exchequer
Court of
Canada.*

No. 6.

Appendix to
Respond-
ent's
Factum.
(a) Act in-
corporating
the Appel-
lants,
18th March
1865—con-
tinued.

and alter such by-laws, rules, regulations and ordinances as shall appear to them proper and needful, touching the well ordering of the Company, the rates and amount of assurance and issuing of policies, the management and disposition of its stock, property, estate and effects, and also to call in any instalment or instalments at such times and seasons as they shall see fit, giving due notice thereof as hereinafter provided; and also, to declare and cause to be paid or distributed to the respective stockholders of the Company any dividend or dividends of profit, at such times and seasons as they shall deem expedient; and also, to appoint a managing Director, secretary and treasurer, or any of them, with such salary or allowances to each, as well as to other officers or agents of the Company as may be thought reasonable, and to take security for the due performance of their respective duties as they shall think advisable; provided always, that for the purposes in this section mentioned, except as hereinafter specially provided, a majority of the Directors shall be present and assisting, and it shall not be competent for a board consisting of a less number of Directors than were present at the time, to alter, repeal or amend any matter or thing so done. 10

16. It shall be lawful for a majority of the said Directors, if they shall deem it for the interest of the said Company, to return to the holders of policies or other instruments, such part or parts of the actual realized profits of the Company, in such parts, shares and proportions, and at such times and in such manner as the said Directors may deem advisable, and to enter into obligations so to do either by endorsements on the policies or otherwise; provided always, that such holders of policies or other instruments shall not be held to be in any wise answerable for the debts or losses of the said Company, beyond the amount of the premium or premiums which may have been actually paid up by him, her or them. 20

17. There shall be a weekly or semi-monthly (as may be fixed by the By-laws of the Company) meeting of the Board of Directors of the said Company, and any three or more of the said Directors shall be a quorum for the purpose of transacting and managing the details of the business and affairs of the said Company; and at all meetings of the Board of Directors, all questions before them shall be decided by a majority of voices or votes, and in case of an equality of votes, the president, vice-president or presiding Director, shall give the casting vote over and above his proper vote as a Director; provided always, that nothing herein contained shall be construed to authorize the making, altering or repealing of any By-laws or ordinances of the said Company, or calling any instalments on stock, or declaring dividends of profits, or the appointment of managing Director, Secretary or Treasurer, or the appointments of salaries to, or securities from, officers or agents of the said Company, by any less number of Directors, or in any other manner than is hereinbefore mentioned and provided. 30 40

18. The Directors for the time being shall receive a reasonable compensation for the attendance at the board, to be ascertained and determined by a By-law or rule of the board; and the said Directors shall be indemnified and saved harmless by the members of the said corporation in proportion to their several interests in the same, in and for their giving out and signing

policies of assurance, and all other lawful acts, deeds and transactions done and performed in pursuance of this Act, and neither shall the said Directors be answerable for, or chargeable with, the defaults, neglects or misdeeds of others of them.

19. All policies, checks or other instruments issued or entered into by the said Company, shall be signed by the president, vice-president or managing Director and countersigned by the secretary, or as otherwise directed by the rules and regulations of the Company, in case of their absence, and being so signed and countersigned, and under the seal of the said Company,
10 shall be deemed valid and binding upon them according to the tenor and meaning thereof.

20. No transfer of any share of the said corporation shall be valid until entered in the books of the corporation, according to such form as the Directors may, from time to time, determine, and until the whole of the capital stock of the said corporation is paid up, it shall be necessary to obtain the consent of the Directors to such transfer being made; provided always, that no stockholder indebted to the said corporation shall be permitted to make a transfer or receive a dividend until such debt is paid, or secured to be paid, to the satisfaction of the Directors.

20 21. Any person, who, as secretary, clerk or other officer of the Company, shall be guilty of any designed falsehood or fraud, in any matter or thing pertaining to his office or duty, shall be guilty of a misdemeanor; and any person offering to vote in person at any election of Directors of the said Company, who shall falsely personate another, or who shall falsely sign or affix the name of any other person, a member of the Company, to any appointment of a proxy, shall be guilty of a misdemeanor.

22. If any insurance on any house or building shall be, and subsist in the said Company, and in any other office or form, and by any other person or persons at the same time, the assurance made in and by the
30 Company hereby incorporated, shall be deemed and become void, unless such double assurance subsist with the consent of the Directors, signified by endorsement on the policy, signed by the president, vice-president, managing director secretary or otherwise, as directed by the by-laws and regulations of the company.

23. In all actions, suits and prosecutions in which the said company may be at any time engaged, any officer or stockholder in the said company shall be a competent witness notwithstanding any interests he may have therein.

40 24. The said Company shall, when required so to do by either of the three branches of the Legislature, present a return under oath, of the amount of real estate held by the said corporation, the amount of capitalstock subscribed and paid up, with a list of the shareholders and the stock subscribed and paid up, with a list of the shareholders and the stock subscribed by each, and the names of the directors, together with a statement of the amount of risks paid during the past year, the amount of risks for which the Company is liable, the amount paid the stockholders in dividends and bonuses, and the amount of money in hand at the time of making the return.

*In the
Exchequer
Court of
Canada.*

No. 6.
Appendix to
Respondent's
Factum.
(a) Act incorporating
the Appellants,
18th March
1865—*continued.*

*In the
Exchequer
Court of
Canada.*

No. 6.
Appendix to
Respond-
ent's
Factum.
(a) Act in-
corporating
the Appel-
lants,
18th March
1865—con-
tinued.

25. Each shareholder shall be individually liable to the creditors of the Company to an amount equal to the amount unpaid on the stock held by him for the debts and liabilities thereof, but no further.

26. This Act is hereby declared a Public Act.

27. The present Act shall in no wise be forfeited for non-user at any time before the first day of January, one thousand eight hundred and seventy.

28. The corporate rights hereby conferred, shall, at all times hereafter, be subject to the provisions of any general enactment hereafter to be passed with reference to Insurance Companies or the business of insurance.

(b) Act amending Appellants' Act of Incorporation.

10

An Act to amend the Act intituled, "An Act to incorporate The Sun Insurance Company of Montreal."

(Assented to 12th May, 1870).

Whereas, the promoters of "The Sun Insurance Company of Montreal," have petitioned for the amendment and extension of the Act of Incorporation of the said Company, and it is expedient that the prayer of their petition be granted. Therefore, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows :—

1. The Act passed in the Session of the Parliament of the late Province of Canada, held in the twenty-eighth year of Her Majesty's Reign, and intituled "An Act to incorporate The Sun Insurance Company of Montreal," is hereby amended and extended, so that, notwithstanding anything therein contained, the capital stock of the said company shall be One Million of Dollars, with power to the said company to increase the same, under the provisions of the said Act, in sums of not less than One Million of Dollars, to a sum not exceeding Four Millions of Dollars. 20

2. The privileges granted by section four of the Act passed in the Parliament of Canada, in the thirty-first year of Her Majesty's Reign, intituled, "An Act respecting Insurance Companies," to Companies existing at the time of its passing, of obtaining licences from the Minister of Finance, on the deposit of fifty thousand dollars payable in three equal annual instalments, are hereby extended to the said company, as fully as if the said company had fulfilled all the requirements of the said Act within the time limited therein; provided, however, that the said company shall make such deposit, and obtain a licence in respect of each branch of its business as hereinafter mentioned, and shall pay the first instalment of such deposit on behalf of that branch in which they may commence operations, on or before the first day of March, one thousand eight hundred and seventy-one; and in the event of the Company undertaking the other branch of their business, the same privilege of making the necessary deposit by instalments shall be extended to them the payment of the first instalment of such deposit being made before they commence the business of such other branch. 30 40

(b) Act
amending
Appellants'
Act of in-
corporation,
12th May
1870.

3. The business of Life and Accident Assurance, which the said company is authorized to transact, shall include power to effect contracts of assurance, with any persons or bodies corporate, upon lives, or in any way dependent upon lives, and to grant or sell annuities, either for lives or otherwise, and on survivorship, and to purchase annuities, to grant endowments to children or other persons, and to receive investments of money for accumulation, to purchase contingent rights, whether for reversion, remainder, annuities, life policies or otherwise, and generally to enter into any transaction depending upon the contingency of life or accident to the
 10 person, whether by land or sea, usually entered into by life or accident assurance companies, including re-assurance and shall be established, maintained and prosecuted by the said company, as a distinct branch of its business, under the corporate name of the said company, with the addition thereto of the words "Life Branch."

4. The capital stock of one million of dollars shall be applied solely to the "Life Branch" of the said Company, but may be increased under the terms of the Act of Incorporation to two millions of dollars.

5. So soon as at least five thousand shares of the capital stock of the said company shall have been subscribed and allotted to the "Life Branch"
 20 of the said company, and fifty thousand dollars paid in on account of the same, it shall be lawful for the shareholders to elect the directors of the said company, as provided in the said Act, and to commence the business of Life and Accident Assurance under their said charter.

6. The general business which the said company is authorized to transact in fire insurance, as well as in marine and guarantee insurance, and the re-insurance of any risks thereunder, shall be established, maintained, and prosecuted, as a distinct branch of the business of the said company, under the corporate name of the said company, with the addition thereto of the words "General Branch."

7. One million of dollars may be raised for the purposes of the said
 30 "General Branch," which may be increased to two millions of dollars, and so soon as at least five thousand shares of the capital stock of the said company shall have been subscribed and allotted to the "General Branch" of the said company, and fifty thousand dollars paid in on account of the same, it shall be lawful for the said company to commence the business of insurance included under the branch styled the "General Branch."

8. The said company shall 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 and
 40 claims, losses, liabilities and assets, under each of the said branches respectively; and all instruments representing investments made of such assets shall specify for which branch such investments are so made, and shall be held for such branch.

9. The capital stock of the said company so subscribed and allotted to the "Life Branch," and "General Branch" respectively, shall be liable only for the expenses, losses and liabilities incurred by the branch to which

*In the
Exchequer
Court of
Canada.*

No. 6.
Appendix to
Respondent's
Factum.
(b) Act
amending
Appellants'
Act of in-
corporation,
12th May
1870—con-
tinued.

*In the
Exchequer
Court of
Canada.*

No. 6.
Appendix to
Respond-
ent's
Factum.
(b) Act
amending
Appellants'
Act of in-
corporation,
12th May
1870—con-
tinued.

the same has been allotted, and entitled only to the profits and claims arising in, and proceeding from, such branch.

10. The Company shall not be bound to see to the execution of any trust, whether expressed, implied or constructive, to which any share or shares of its stock may be subject, and the receipt of the party in whose name any share stands in the books, shall be a sufficient discharge to the Company for any money paid in respect of such share or shares, notwithstanding any trust to which they may be held subject, and whether or not the company shall have had notice of such trust.

11. No director or other officer of the company shall become a borrower of any portion of its funds, nor become surety for any other person who is or shall become a borrower from the company, nor shall the funds of one branch be applied to or borrowed for the purposes of the other. 10

12. The failure of the Life Branch or of the General Branch to meet its obligations shall not necessitate the suspension of its business by the other branch, or subject such other branch to the provisions of the Act respecting Insurance Companies, in relation to companies becoming insolvent.

13. The provisional directors of the said company shall be George Stephen, George Winks, Thomas Gordon, Henry Mulholland, George H. Frothingham, A. W. Ogilvie, A. F. Gault, James Hutton and M. H. Gault, all of the City of Montreal, merchants, instead of the persons named in the said Act. 20

14. The real estate which may be held by the said company for the purpose of conducting its business, shall not exceed the annual value of twenty thousand dollars.

15. The securities which the said company shall be entitled to hold, shall include the securities of the Dominion of Canada, or of any of the Provinces comprising the said Dominion.

16. The twenty-seventh section of the said Act twenty-eighth Victoria, chapter forty-three, is hereby repealed, and the said Act is extended, as if the said section had never been enacted, and all the provisions of the said Act inconsistent with this Act are hereby repealed. 30

(c) Act
amending
Appellants'
Act of in-
corporation
and amend-
ing Act,
14th April
1871.

(c) **Act amending Appellants' Act of Incorporation and amending Act.**

An Act to amend the Act incorporating the Sun Insurance Company of Montreal. (Assented to 14th April, 1871.)

Whereas the Sun Insurance Company of Montreal have by their petition prayed that the Corporate name of the said Company may be changed, and it is expedient to grant the prayer of the said petition; Therefore Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:— 40

1. The Corporate name of the said Company shall hereafter be "The Sun Mutual Life Insurance Company of Montreal."

2. The said change of name shall not in any manner affect the rights, claims, assets or liabilities of the said Company, all of which shall remain vested in or obligatory upon the Company by its new name, in the same manner and to the same extent as they were vested in and obligatory upon the said Company by the Corporate name originally conferred upon it.

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
10 of this Act, are hereby repealed.

No. 7.

Order fixing date of Hearing.

IN THE EXCHEQUER COURT OF CANADA.

Before the President in Chambers.

UPON application made on behalf of the Attorney General and upon reading the consent filed herein :

IT IS ORDERED that the hearing of this appeal do take place before this Honourable Court at the Supreme and Exchequer Courts' Building at the City of Ottawa in the Province of Ontario on Tuesday the 21st day of
20 May, A.D. 1929, at 10.30 o'clock in the forenoon :

AND IT IS FURTHER ORDERED that notice of hearing at the time and place aforesaid, together with a copy of this order, be within three days from the date hereof served on the Appellant by leaving such notice and copy of such Order at the office of the Ottawa agent of the Appellant.

Dated at Ottawa, this 3rd day of May, A.D. 1929.

CHAS. MORSE,
Registrar.

No. 8.

Admissions of the Parties.

30 The parties admit :—

1. THAT the Appellant is a duly incorporated insurance company within the Legislative jurisdiction of the Parliament of Canada, having been incorporated by Special Act of the Parliament of the late Province of Canada which Act was amended by Special Acts of the Parliament of Canada, all as set forth in paragraph One of the Appellant's Factum.

*In the
Exchequer
Court of
Canada.*

No. 6.
Appendix to
Respondents'
Factum.
(c) Act
amending
Appellants'
Act of in-
corporation
and amend-
ing Act,
14th April
1871—con-
tinued.

No. 7.
Order fixing
date of
hearing,
3rd May
1929.

No. 8.
Admissions
of the
Parties,
11th May
1929.

*In the
Exchequer
Court of
Canada.*
—
No. 8.
Admissions
of the
Parties,
11th May
1929—con-
tinued.

2. THAT for many years past, including the year One Thousand Nine hundred and twenty-seven, the Appellant was duly licensed to carry on the business of life assurance throughout Canada and in various parts of the world and for a number of years, including the said year One thousand Nine hundred and Twenty-seven, the Appellant has transacted a large insurance business throughout Canada and various parts of the world.

3. THAT prior to the Eighth of February, One thousand Nine hundred and Twenty-seven, the Appellant had issued its capital stock to the extent of Two million dollars (\$2,000,000.00).

4. THAT on the Eighth day of February, One thousand Nine hundred and Twenty-seven, the Board of Directors of the Appellant enacted a by-law increasing the capital stock of the Appellant from Two millions of dollars to Three millions of dollars, and this by-law was approved, ratified and confirmed and re-enacted by the unanimous vote of a majority of the stockholders at a meeting expressly convened for the purpose of considering the said by-law and held at the City of Montreal on the last-mentioned day. 10

5. THAT the Appellant has never carried on any other business than that of life and accident insurance and for many years past, including the year One thousand Nine hundred and Twenty-seven, it has confined its business entirely to that of life insurance only. 20

6. THAT the Appellant deposited in the Department of Insurance on the Twenty-fourth day of February, One thousand Nine hundred and twenty-eight, its annual statement for the year One thousand Nine hundred and Twenty-seven, in which the amount of its capital stock, authorized as at the Thirty-first day of December, One thousand Nine hundred and Twenty seven, was stated to be Four millions of dollars (\$4,000,000.00).

7. THAT in his annual report prepared for the Minister of Finance for the business of the year One thousand nine hundred and twenty-seven, the Superintendent of Insurance made an alteration in the said annual statement by stating the amount of the authorized capital stock appearing therein as being Two million dollars (\$2,000,000.00); and the Superintendent of Insurance made a ruling accordingly. 30

8. THAT the Superintendent of Insurance on the Twenty-second day of March, One thousand Nine hundred and Twenty-nine, issued a certificate in the words and figures set forth in paragraph Ten of the Appellant's Factum.

9. THAT the Appellant, on the Twenty-seventh day of March, One thousand Nine hundred and Twenty-nine, served on the Superintendent of Insurance a notice of its intention to appeal from the said Ruling to the Exchequer Court of Canada. 40

Dated at Ottawa this 11th day of May, A.D. One thousand Nine hundred and twenty-nine.

J. A. EWING,
Solicitor for Appellant.

F. P. VARCOE,
Solicitor for Respondent.

No. 9.**Formal Judgment.**

IN THE EXCHEQUER COURT OF CANADA.

Before the Honourable the President
Tuesday, the 18th day of June, 1929.

IN THE MATTER OF THE INSURANCE ACT, AND OF A CERTAIN APPEAL
OF THE SUN LIFE ASSURANCE COMPANY OF CANADA - *Appellant*
from a ruling of the 22nd day of March, 1929 of
THE SUPERINTENDENT OF INSURANCE - - - - *Respondent.*

10 This appeal having come on for hearing on the 21st day of May, 1929,
in the presence of counsel for the Appellant and the Respondent, upon
reading the certificate of the Superintendent setting forth the ruling
appealed from and the factums filed by direction and the documentary
evidence adduced and upon hearing what was alleged by counsel aforesaid,
this Court was pleased to direct that this appeal should stand over for
judgment, and the same coming on this day for judgment.

THIS COURT DOTH ORDER AND ADJUDGE that the appeal be dismissed
without costs.

By the Court,
CHAS. MORSE,
Registrar.

20

No. 10.**Reasons for Judgment.**

MACLEAN, J.

Judgment rendered June 18th, 1929.

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,
30 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.

In 1870 the company's charter was amended in quite important par-
ticulars. The capital stock of the company was reduced to one million of
dollars, with power to the company to increase the same, under the pro-
visions 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
40 addition thereto of the words "Life Branch." The capital stock of the

*In the
Exchequer
Court of
Canada.*

No. 9.
Formal
Judgment,
18th June
1929.

No. 10.
Reasons for
Judgment,
Maclean, J.,
18th June
1929.

*In the
Exchequer
Court of
Canada.*

No. 10.
Reasons for
Judgment,
Maclean, J.,
18th June
1929—*con-
tinued.*

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. 10

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:— 30

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."

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. 40

In accordance with the requirements of the Insurance Act, the company deposited with the Department of Insurance, in February 1928, its annual statement for the preceding year, in which the amount of its capital stock authorized as of the 31st day of December 1927, was stated to be an amount in excess of two million dollars, namely four million dollars. The Superintendent of Insurance, in his Annual Report for the year 1927, made an

alteration in the said annual statement of the company, by stating the authorized capital stock of the company as being two million dollars, and the Superintendent of Insurance made a ruling to the effect that the authorized capital stock of the company was limited to two million dollars for the reason that by the charter of the company its capital stock was limited to two million dollars, without power in the company to increase the same beyond that amount. Under the provisions of the Insurance Act, the Sun Life Assurance Company appeals to this Court from the ruling and action of the Superintendent of Insurance, and it claims an order of the Court declaring that its authorized capital stock on the 31st day of December 1927, amounted to more than two million dollars, and that under the provisions of its Act of incorporation and amending Acts, it had an authorized capital of four million dollars; it also asks for a declaration that on the 31st day of December 1927, the amount of its capital stock was three million dollars, by virtue of a by-law enacted by the Board of Directors of the company, and approved of by the shareholders of the company as required by its charter, increasing the capital to three million dollars.

I have very 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

*In the
Exchequer
Court of
Canada.*

No. 10.
Reasons for
Judgment,
Maclean, J.,
18th June
1929—con-
tinued.

*In the
Exchequer
Court of
Canada.*

No. 10.
Reasons for
Judgment,
Maclean, J.,
18th June
1929—con-
tinued.

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 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.

Upon a consideration of the statutory provisions which I have mentioned I think it is quite plain that the ruling of the Superintendent of Insurance was a proper one, and that the provisions of the statutes relevant here permit only of the interpretation which he has given to them. It may well be that at the time of the enactment of the legislation of 1871, the company rested under the belief that its capital as authorized by the Act of 1865 incorporating the company, was being automatically restored; that may have been the intention of the legislature and it is probable it would then have expressly so enacted if requested so to do by the company, but when, as I think, the words of the statute admit of but one meaning, a court is not permitted to speculate on the intention of the legislature and to construe such words according to its notion as to what ought to have been enacted. That would be to make the law and not to interpret what the language of the legislature means. The question is not what the legislature meant, but what its language means. It is for the legislature alone to alter the statute. Accordingly I dismiss the appeal. Each party will bear its own costs of the appeal.

10

20

No. 11.
Extract
from
Supreme
Court
Minute
Book
showing
application
for leave to
appeal to
Supreme
Court
rejected,
18th July
1929.

No. 11.

Extract from Supreme Court Minute Book shewing application for leave to appeal to Supreme Court rejected.

“ July 18, 1929

“ Application on behalf of the Sun Life Assurance Company of Canada. 30

“ Counsel appear by consent before Mr. Justice Newcombe in chambers, on an application on behalf of the Sun Life Assurance Company of Canada, under section 83 of the Exchequer Court Act, for leave to appeal from the judgment of Maclean, J., President of the Exchequer Court of Canada, dated the 18th day of June, 1929, dismissing its appeal from the Ruling of the Superintendent of Insurance under section 68 of the Insurance Act, R.S.C., 1927, C. 101.

“ J. A. Ewing, K. C. and L. C. Moyer for the appellant; F. P. Varcoe for the respondent.

“ The application is dismissed.”

40

No. 12.

Notice of Appeal to Supreme Court.

TAKE NOTICE that the appellant appeals from the judgment of the Exchequer Court of Canada, rendered in this action on the 18th day of June, 1929, and that the sum of fifty dollars (\$50.) has been deposited in the office of the registrar of the Supreme Court of Canada, and that the appeal has been set down for hearing at the October Sittings of the Supreme Court of Canada.

DATED at Ottawa this 22nd day of July, 1929.

*In the
Exchequer
Court of
Canada.*

No. 12.
Notice of
Appeal to
Supreme
Court,
22nd July
1929.

10

L. C. MOYER,
Of Solicitors for Appellant.

To
The Registrar of the Exchequer Court of Canada
And to
The Solicitors for the Respondent.

No. 13.

Order approving Security.

IN THE SUPREME COURT OF CANADA,
Thursday, the 19th day of December, 1929.

20 IN THE MATTER OF THE INSURANCE ACT AND OF A CERTAIN APPEAL OF THE
SUN LIFE ASSURANCE COMPANY OF CANADA - - *Appellant*
from the ruling of
THE SUPERINTENDENT OF INSURANCE - - - - *Respondent.*

*In the
Supreme
Court of
Canada.*

No. 13.
Order
approving
security,
19th Dec-
ember 1929.

Before the Registrar in Chambers :

Upon the application of the above named appellant, in the presence of counsel for the respondent :

30 IT IS ORDERED that the sum of fifty dollars (\$50.) paid in to the Bank of Montreal, as appears by the receipt of the said bank, dated the 18th day of July, 1929, duly filed as security that the appellants will effectually prosecute their appeal, and will pay such costs and damages as may be awarded against them by this Court, be and the same is hereby allowed as good and sufficient security.

AND IT IS FURTHER ORDERED that the costs of this application be costs in the cause.

E. R. CAMERON,
Registrar.

*In the
Supreme
Court of
Canada.*

No. 14.

Order allowing printing of extract from Appellants' Annual Statement of 1927.

IN THE SUPREME COURT OF CANADA,

Thursday, the 26th day of December, 1929.

No. 14.
Order
allowing
printing of
extract from
Appellants'
Annual
Statement
of 1927,
26th Dec-
ember 1929.

IN THE MATTER OF THE INSURANCE ACT AND OF A CERTAIN

APPEAL OF THE SUN LIFE ASSURANCE COMPANY OF

CANADA - - - - - *Appellant*

from the ruling of

THE SUPERINTENDENT OF INSURANCE - - - - - *Respondent.*

Before the Acting Registrar in Chambers :

10

Upon the application of the appellant for the order dispensing with the printing of a portion of a certain document forming part of the record herein in the Exchequer Court of Canada; upon reading the consent filed on behalf of the parties herein; and upon hearing what was alleged by counsel :

IT IS ORDERED that the printing, in the appeal case herein, of the full text of the Annual Statement of the Sun Life Assurance Company of Canada of 1927 be dispensed with, and that only page two (2) thereof, which the parties have agreed to be sufficient for the case on appeal, be so printed.

IT IS FURTHER ORDERED that the costs hereof be costs in the cause.

20

ARMAND GRENIER,
Acting Registrar.

No. 15.
Appellants'
Factum.

No. 15.

Appellants' Factum.

DOMINION OF CANADA

IN THE SUPREME COURT OF CANADA

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA, OTTAWA.

Between

THE SUN LIFE ASSURANCE COMPANY OF CANADA (*Appellant*) - *Appellant*
and

30

THE SUPERINTENDENT OF INSURANCE (*Respondent*) - - - *Respondent.*

PART I

STATEMENT OF FACTS.

The Appellant was incorporated by Act of the Parliament of the late Province of Canada, being 28 Victoria, Chapter 43. This Act has been amended a number of times by the Parliament of Canada, to which amending Acts reference will be made later. By its Act of Incorporation the capital

of the Appellant was declared to be two millions of dollars, but authority was given to increase the capital to a sum not exceeding four millions of dollars as a majority of the stockholders at a meeting to be expressly convened for that purpose should agree upon.

*In the
Supreme
Court of
Canada.*

No. 15.
Appellants'
Factum—
continued.

Prior to February, 1927, the Appellant had issued its capital stock to the extent of two millions of dollars, all of which was then outstanding. On the eighth of February, 1927, the Directors passed a by-law increasing the capital stock to three million dollars, and this by-law was approved, ratified and confirmed and re-enacted by the unanimous vote of a majority
10 of the stockholders at a meeting expressly convened for the purpose on the said eighth day of February.

In accordance with Sections 30 and 31 of The Insurance Act (R. S. C. Chap. 101) the Appellant duly deposited in the Department of Insurance a statement of its condition and affairs on the 31st of December, 1927, wherein it stated that its authorized capital was four million dollars. In his annual report prepared for the Minister of Finance under paragraph (e) of Section 38 of The Insurance Act the Superintendent of Insurance made an alteration
20 in the Appellant's annual statement for the year 1927 by stating the amount of the authorized capital to be two million dollars, and made a ruling accordingly. The Appellant then appealed to the Exchequer Court of Canada from the ruling of the Superintendent of Insurance under subsections 5 and 6 of Section 68 of The Insurance Act which read as follows :—

“ 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
30 section.”

“ 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
40 shall be suspended until the court has rendered judgment thereon.”

On June 18th, 1929, the Exchequer Court rendered judgment dismissing the Appellant's appeal, on the ground that the Appellant by its Act of Incorporation and amending Acts could not issue more than two million dollars of capital stock.

This appeal from that judgment is instituted under Sec. 82, Chap. 34, R. S. C.

PART II.

ASSIGNMENT OF ERRORS.

The Appellant submits that the learned Trial Judge was in error in the following respects :

1. In holding that the Act of 1871, while restricting the business of the Company to life and accident insurance, contained no intimation of any intention to grant a greater capital than two million dollars for the conduct of such classes of insurance business.

2. The learned Judge should have held that unless there was a clear intention to effect a reduction of the authorized capital, it might be increased to the sum of four million dollars. 10

3. The learned Judge was wrong in holding that section 4 of the Act of 1871 did not operate to repeal section 4 of the Act of 1870.

4. The learned Judge was in error in holding that it was not inconsistent to say that though the proposed general branch had been eliminated, the other branch remained exactly as it was constituted under the Act of 1870.

5. The learned Judge should have held that by the elimination of the general branch, all provisions relating to the two departments of insurance created by the Act of 1870 had been abolished. 20

6. The learned Judge was in error in holding that the ruling of the Superintendent of Insurance was a proper one, and that the provisions of the relevant statutes permitted of no other interpretation than that which he has given them.

7. The learned Judge should have held that the Appellant was correct in stating in its annual return for the year 1927 that the authorized capital stock was four million dollars.

8. The learned Judge should have held that the Superintendent of Insurance was in error in altering Appellant's annual statement for the year 1927 by stating that its authorized capital stock was limited to two million dollars. 30

PART III.

ARGUMENT ON BEHALF OF APPELLANT.

The Appellant's Act of Incorporation and the pertinent amending acts are printed as an appendix to Respondent's Factum in the Exchequer Court at pages 10-19 of the Case.

Section 2, of the Appellant's Act of Incorporation, which sets forth its authorized capital, reads as follows :—

“ A share in the stock of the said company shall be one hundred dollars, and the capital of the company shall be two millions of dollars; and books of subscription shall be opened in the city of 40

Montreal, and in such other of the principal cities and towns of the Province as the directors shall see fit, of which public notice shall be given by such person or persons and under such regulations, as the majority of the directors hereinafter appointed shall direct; Provided always, that it shall and may be lawful for the said corporation to increase its capital stock to a sum not exceeding four millions of dollars, as a majority of the stockholders, at a meeting to be expressly convened for that purpose, shall agree upon."

*In the
Supreme
Court of
Canada.*

No. 15.
Appellants'
Factum—
continued.

Section 6, which enumerates the Appellant's powers, reads as follows:—

20 " The Corporation hereby erected shall have power and authority to make and effect contracts of assurance with any person or persons, body politic or corporate, against loss or damage by fire on any houses, stores or other buildings whatsoever, and on any shipping or vessels whatsoever, wheresoever or whithersoever proceeding, and either sea-going or navigating upon lakes, rivers or navigable waters, against loss or damage by fire, water, or any other risk whatever, and in like manner on any goods, chattels or personal estate whatsoever, whether on shore or afloat; and to

30 make and effect assurances on life or lives, or in any manner dependent on life or lives, and also against all accidents whatever either by land or sea, and against sickness, and also against all error, default, irregularity, misconduct, dishonesty or malversation of clerks and employees of every description, depositaries, warehousemen, and all persons employed about the management of the affairs of others, in whole or in part, or entrusted with their property, moneys or effects, and to grant annuities, and to purchase reversionary interests, under such modifications and restrictions as may be bargained or agreed upon or set forth, and to cause themselves to be insured against any loss or risk they may have incurred in the course of their business, and generally to do and perform all other necessary matters and things connected with and proper to promote these objects."

It will be noticed that the power to effect contracts of assurance on life or lives and against accidents comes about midway in the list of insurance businesses which the company is authorized to carry on. As a matter of fact the Company never carried on any other business than that of life and accident assurance, and for many years past has only transacted life assurance. It is submitted that under this statute it had

40 the right to issue the full amount of its authorized capital stock, four million dollars, for the purpose of the only business it ever carried on, namely life and accident assurance. There is no restriction at all up to \$4,000,000 as to the amount of capital which it might embark in its business, whether it consisted of one or many branches.

*In the
Supreme
Court of
Canada.*

No. 15.
Appellants'
Factum—
continued.

There is only one other section of the Act of Incorporation which requires consideration here and that is the concluding words of Section 9 which read as follows :—

“ Provided always that before the company shall commence the Life Department of their business, the sum of eight hundred thousand dollars of the stock of the company shall have been subscribed for, and an additional sum of one hundred thousand dollars paid up and invested in securities of the Province for the special security of the assurances on lives to be effected with the company.”

not because it throws any light on the subject, but because it is referred to by the Respondent in his factum, wherein he says : “ Thus there was at the outset a partial division of the business of the company into two branches, namely General and Life.” It is submitted that such a conclusion cannot be drawn from the terms of the statute. It was natural that Parliament desired that the company should have a certain amount of capital before embarking in the business of life insurance, but there is nothing to show that its intention was that the life department should be separated from the Company’s other insurance departments. 10

In 1870 the Appellant’s Act of Incorporation was amended by the Act of the Parliament of Canada, 33 Victoria, Chapter 58. Section 1 of this Act reads as follows : 20

“ The Act passed in the Session of the Parliament of the late Province of Canada, held in the twenty-eighth year of Her Majesty’s Reign, and intituled “ An Act to incorporate the Sun Insurance Company of Montreal,” is hereby amended and extended, so that, notwithstanding anything therein contained, the capital stock of the said company shall be One Million of Dollars, with power to the said company to increase the same, under the provisions of the said Act, in sums of not less than One Million of Dollars, to a sum not exceeding Four Millions of Dollars.” 30

This Section repeats and re-enacts the original provision as to the capital stock with a slight variation. If it stood by itself there would not be any trouble at all. Other sections of this amending Act divided the company into two separate departments, one known as the “ Life Branch”, consisting of life and accident insurance, and the other called the “ General Branch”, consisting of fire, marine, guarantee and all other insurance businesses which the company was authorized to carry on. Sections 3 and 6 of this Act read as follows :—

“ 3. The business of Life and Accident Assurance, which the said company is authorized to transact, shall include power to effect contracts of assurance, with any persons or bodies corporate, upon lives, or in any way dependent upon lives, and to grant or sell annuities, either for lives or otherwise, and on survivorship, and to purchase annuities, to grant endowments to children or other per- 40

sons, and to receive investments of money for accumulation, to purchase contingent rights, whether of reversion, remainder, annuities, life policies or otherwise, and generally to enter into any transaction depending upon the contingency of life or accident to the person, whether by land or sea, usually entered into by life or accident assurance companies, including re-assurance, and shall be established, maintained and prosecuted by the said company, as a distinct branch of its business, under the corporate name of the said company, with the addition thereto of the words "Life Branch."

*In the
Supreme
Court of
Canada.*

No. 15.
Appellants'
Factum—
continued.

10 "6. The general business which the said company is authorized to transact in fire insurance, as well as in marine and guarantee insurance, and the re-insurance of any risks thereunder, shall be established, maintained, and prosecuted, as a distinct branch of the business of the said company, under the corporate name of the said company, with the addition thereto of the words "General Branch".

The other provisions of the amending Act bearing on the amount of capital stock which the company may issue are the following :

20 "4. The capital stock of one million of dollars shall be applied solely to the "Life Branch" of the said Company, but may be increased under the terms of the Act of Incorporation to two millions of dollars."

"5. So soon as at least five thousand shares of the capital stock of the said company shall have been subscribed and allotted to the "Life Branch" of the said company, and fifty thousand dollars paid in on account of the same, it shall be lawful for the shareholders to elect the directors of the said company, as provided in the said Act, and to commence the business of Life and Accident Assurance under their said charter."

30 "7. One million of dollars may be raised for the purposes of the said "General Branch," which may be increased to two millions of dollars, and so soon as at least five thousand shares of the capital stock of the said company shall have been subscribed and allotted to the "General Branch" of the said company, and fifty thousand dollars paid in on account of the same, it shall be lawful for the said company to commence the business of insurance included under the branch styled the "General Branch."

40 "8. The said company shall 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 and claims, losses, liabilities and assets, under each of the said branches respectively; and all instruments representing investments made of such assets shall specify for which branch such investments are so made, and shall be held for such branch.

"9. The capital stock of the said company so subscribed and allotted to the "Life Branch" and "General Branch" respectively,

*In the
Supreme
Court of
Canada.*

No. 15.
Appellants'
Factum—
continued.

shall be liable only for the expenses, losses and liabilities incurred by the branch to which the same has been allotted, and entitled only to the profits and claims arising in, and proceeding from, such branch."

" 11. No director or other officer of the company shall become a borrower of any portion of its funds, nor become surety for any other person who is or shall become a borrower from the company, nor shall the funds of one branch be applied to or borrowed for the purposes of the other."

" 12. The failure of the Life Branch or of the General Branch 10
to meet its obligations shall not necessitate the suspension of its business by the other branch, or subject such other branch to the provisions of the Act respecting Insurance Companies, in relation to companies becoming insolvent."

The object of these enactments was to provide that within the limit of the company's powers neither of these branches should be starved for want of capital, and to prevent the company from devoting a major portion of its capital to the advantage of one branch at the expense of the other. It should be noted, however, that Section 4, in dealing with the initial amount of capital which shall be applied solely to the Life Branch uses 20
the imperative *shall*, and Section 7, which deals with the capital which may be applied to the purposes of the General Branch uses the permissive *may*. From this and the phraseology of the concluding portion of Section 9 of the original Act of Incorporation already cited it may be inferred that Parliament was specially anxious that as much capital as possible should be devoted to the life and accident assurance business of the company.

In 1871 Parliament again amended the Appellant's Act of Incorporation by 34 Victoria, Chapter 53. Section 1 changed its name. It reads as follows :—

" The Corporate name of the said Company shall hereafter be 30
" The Sun Mutual Life Insurance Company of Montreal."

Section 2 provided that the change of name should not in any manner affect the rights, etc., of the company. It reads as follows :—

" The said change of name shall not in any manner affect the rights, claims, assets or liabilities of the said Company, all of which shall remain vested in or obligatory upon the Company by its new name, in the same manner and to the same extent as they were vested in and obligatory upon the said Company by the Corporate name originally conferred upon it."

Section 3 did away with the departmentalization of the Company. 40
It reads as follows :—

" The powers of the said Company are hereby restricted to Life and Accident Insurance."

Section 4 repealed inconsistent provisions. It 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.”

*In the
Supreme
Court of
Canada.*

No. 15.
Appellants'
Factum—
continued.

Section 3 took away the wide range which the original charter and the amendment of 1870 gave to the Company, and permitted it only to carry on the business of Life and Accident Insurance. It is submitted that under the original charter the Company might have concentrated all its efforts on Life Insurance to the exclusion of all other branches and, on observing the formalities laid down by the Act, could have issued the full amount of its authorized capital, four million dollars, for the purposes of that one kind of insurance business which it afterwards carried on; but now its powers are expressly restricted to Life and Accident Insurance. In view of Section 4 we must consider what provisions of the Act of Incorporation and of the amending Act of 1870 are inconsistent with the Act of 1871, and which are by the latter Act repealed.

Apart from the change of name effected by Sections 1 and 2, the Amendment of 1871 contains no provisions whatever except that laid down in Section 3, which declares that

“ the powers of the said Company are hereby restricted to Life and Accident Insurance.”

No other alteration of any kind is made in the powers conferred on the Company. In particular, no reference is made to the amount of capital. For the purposes of the present case Section 4 of the Act of 1871 which repeals all provisions of the Act of Incorporation and of the Amendment of 1870 which are inconsistent with the provisions of the Act of 1871 must be interpreted as meaning only inconsistent with Section 3 thereof, since there are no other provisions of that Act with which there could be any inconsistency.

Dealing first with the Act of Incorporation, it is evident that Section 6 of that Act has been amended by eliminating the words beginning on the second line thereof as follows :—

“ to make and effect contracts of assurance with any person or persons, body politic or corporate, against loss or damage by fire on any houses, stores or other buildings whatsoever, and on any shipping or vessels whatsoever, wheresoever or whithersoever proceeding, and either sea-going or navigating upon lakes, rivers or navigable waters, against loss or damage by fire, water, or any other risk whatever, and in like manner on any goods, chattels or personal estate whatsoever, whether on shore or afloat; and ”

Also the following words, which occur further on in the same section :—

“ and against sickness, and also against all error, default, irregularity, misconduct, dishonesty, or malversation of clerks and employees of every description, depositaries, warehousemen, and all persons employed about the management of the affairs of others, in whole or in part, or entrusted with their property, moneys or effects.”

*In the
Supreme
Court of
Canada.*

No. 15.
Appellants'
Factum—
continued.

We must next consider what provisions of the Act of 1870 are inconsistent with Section 3 of the Act of 1871, and with Section 6 of the Act of Incorporation as above amended.

As the powers of the Company are now limited to but Life and Accident Insurance, all provisions regulating or dealing with Fire, Marine, Guarantee or Sickness Insurance were clearly repealed. These repealed clauses necessarily included all the provisions which created departments, or referred to the divisions of the Company's business into departments.

The most important sections of the Act of 1870 which were thus repealed are as follows :—

10

In section 3 the concluding words, which set aside the life and accident business into a separate branch, must be struck out. They read as follows :—

“ and shall be established, maintained and prosecuted by the said company, as a distinct branch of its business, under the corporate name of the said company, with the addition thereto of the words “ Life Branch.”

The whole of Section 6, which created the General Branch, likewise disappears, the power to transact the business mentioned therein having been taken away. It reads :—

20

“ The general business which the said company is authorized to transact in fire insurance, as well as in marine and guarantee insurance, and the re-insurance of any risks thereunder, shall be established, maintained, and prosecuted, as a distinct branch of the business of the said company, under the corporate name of the said company, with the addition thereto of the words “ General Branch.”

The whole of Section 7 is repealed, as the General Branch has been abolished. It says :—

“ One million of dollars may be raised for the purposes of the said ‘ General Branch,’ which may be increased to two millions of dollars, and so soon as at least five thousand shares of the capital stock of the said company shall have been subscribed and allotted to the ‘ General Branch ’ of the said company, and fifty thousand dollars paid in on account of the same, it shall be lawful for the said company to commence the business of insurance included under the branch styled the ‘ General Branch.’”

Section 8 also disappears as there are no longer separate branches for which separate accounts must be maintained. It says :—

“ The said company shall 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 and claims, losses, liabilities and assets, under each of the said branches respectively; and all instruments representing investments made of such assets shall specify for which branch such investments are so made, and shall be held for such branch.”

40

Section 9 which provides separate liability for each branch, is also eliminated. It reads :—

“The capital stock of the said company so subscribed and allotted to the ‘Life Branch’ and ‘General Branch’ respectively, shall be liable only for the expenses, losses and liabilities incurred by the branch to which the same has been allotted, and entitled only to the profits and claims arising in, and proceeding from, such branch.”

Section 12, which provides that the failure of one branch shall not affect the other, also of course goes out altogether. It says :—

10 “The failure of the Life Branch or of the General Branch to meet its obligations shall not necessitate the suspension of its business by the other branch, or subject such other branch to the provisions of the Act respecting Insurance Companies, in relation to companies becoming insolvent.”

There are minor phrases or provisions in Sections 2, 5 and 11 which recognize the division into branches, and which must necessarily be considered to be repealed, but as they present no difficulty and have no bearing on the present issue, it is not necessary to refer to them.

20 That all the foregoing clauses are certainly repealed will hardly be denied. There remains therefore but the one special clause to consider—Section 4 of the Act of 1870. This reads as follows :—

“The capital stock of one million of dollars shall be applied solely to the ‘Life Branch’ of the said Company, but may be increased under the terms of the Act of Incorporation to two millions of dollars.”

It is argued that this section remains in force even though all the other sections referred to be admittedly repealed. Is this possible?

30 Every provision in the Act of Incorporation, and in the Amendment of 1870, which referred to the power to transact other kinds of insurance besides Life and Accident, or which was based on the existence of such wider powers, was repealed.

The division of the business into branches was necessary only so long as the Company was authorized to transact many kinds of insurance and became not only unnecessary but impossible as soon as its powers were limited to but Life and Accident business. The entire scheme of division into branches dropped with the curtailment of the Company’s powers. Section 4 is merely one of the clauses which set forth the terms and conditions of the division into branches. It was an integral part of that scheme and does not stand by itself. It cannot be dissociated from the other
40 provisions in regard to that scheme which were unquestionably repealed. The limitation on the amount of capital applicable to the Life Branch contained in Section 4 was a mere incident of the scheme and it can hardly be argued that that one feature of the scheme alone survived when all other provisions dependent on the division into branches were swept away. Section 4 of the Act of 1870 must be considered to have been repealed in

*In the
Supreme
Court of
Canada.*

—
No. 15.
Appellants’
Factum—
continued.

*In the
Supreme
Court of
Canada.*

No. 15.
Appellants'
Factum—
continued.

precisely the same way that Section 7 of the same Act, which was the corresponding section relating to the General Branch, was admittedly repealed.

The Act of 1871 makes no alteration whatever in the powers of the Company except that of restricting its business to Life and Accident Insurance, and the Appellant submits that the only clauses of the Act of Incorporation which were thus repealed are those portions of Section 6 which gave the Company the power to transact other kinds of insurance, and that as regards its capital stock the Amendment of 1871 merely placed the Company in the position which it would have occupied had the clauses authorizing it to transact other branches of insurance been omitted from Section 6 of the Act of Incorporation when originally enacted. 10

The Act of 1871 made no reference whatever to the capital stock, and as the right of the Company to increase its capital is in no way inconsistent with the provisions of Section 3 of that Act, or with any other provision of that Act, the powers of the Company in regard to the amount of its capital stock remain unaffected.

The Company's Act of Incorporation conferred power on it to issue capital up to four millions of dollars, and Section 1 of the amending Act of 1870 repeated this power, and authorized it to increase its capital to this sum "under the provisions of the said Act." Parliament has never taken that right away and in order to do so it would have to take it away by express words. Repeal of a statute is never presumed; it must be clearly expressed. 20

"A repeal by implication is never to be favoured." Per Field J. in *Dobbs v. Grand Junction Waterworks Co.*, 9 Q.B.D. 151, at page 158.

"We ought not to hold a sufficient Act repealed, not expressly as it might have been, but by implication, without some strong reason." Per Lord Bramwell, in *Great Western Railway Co. v. Swindon and Cheltenham Extension Railway Co.*, 9 App. Cas. 787, at page 809. 30

"A later Act of Parliament hath never been construed to repeal a prior Act, without words of repeal, unless there be a contrariety and repugnancy between them, or at least some notice taken of the former law in the subsequent one, so as to indicate an intention in the law-makers to repeal it." Per Lord Hardwicke, L.C. in *Middleton v. Crofts*, 2 Atk. 650, at p. 675.

"The court must be satisfied that the two enactments are inconsistent before they can from the language of the later imply a repeal of an express prior enactment." Per Bayles J. in *Conservators of the River Thames v. Hall*, L.R. 3 C.P. 415 at page 419 : 40

and in the same case Keating J. said (at page 420) :

"I entirely agree with my brother Bayles, that before we come to that conclusion, we are bound to satisfy ourselves that it is a necessary implication."

“When the repeal is not express, the burden is on those who assert that there is an implied repeal to shew that the two statutes cannot stand consistently the one with the other.” Per Chitty J. in *Lybbe v. Hart*, 29 Ch. D. 8, at p. 15.

*In the
Supreme
Court of
Canada.*

The above were all cited by Killam, Chief Railway Commissioner, whose reasons were approved by the Judges of the Supreme Court in re *G. T. R. Co. vs. Robertson*, 39 S. C. R. at pages 518 and following.

No. 15.
Appellants'
Factum—
continued.

36 Cyc. of Law and Procedure at page 1071 ;

10 Implied Repeal. (1) In General. A legislature may express its will in any form — affirmative or negative — that it pleases, so long as it does not transgress constitutional prohibitions. It is under no obligation to use words of express repeal. But the repeal of statutes by implication is not favoured by the courts. The presumption is always against the intention to repeal where express terms are not used. To justify the presumption of an intention to repeal one statute by another, either the two statutes must be irreconcilable, or the intent to effect a repeal must be otherwise clearly expressed. It follows that where the intention not to repeal is apparent or manifest from an act there is no room for repeal by implication, or the application of rules regarding implied repeal.

20 Beal, Cardinal Rules of Legal Interpretation, 2nd Ed. at page 471 :

“Repeal by implication is never to be favoured.” At page 477 :

30 “Now it must be remembered that these several Acts, though declared public Acts, are substantially and in their nature private ones, and it is a rule of law that one private Act of Parliament cannot repeal another, except by express enactment; there is no such enactment in the defendants’ Act in reference to those of the plaintiff; and the latter are therefore, I consider, unaffected by the former. I have said that, in my opinion, the rule of law as to the construction of such Acts is not to do anything which would be in effect a repeal of any clause, unless in a subsequent Act some words are inserted which would operate as an express repeal of the former. That appears to be the rule as laid down by the learned Judge Jenkyns in Sir Foulk Grevil’s Case, reported in his work called “Eight Centuries of Reports,” the Third Century, Case 41, p. 120.” *The Trustees of the Birkenhead Docks v. Laird* (1853), 23 L. J. Ch. 457, at pp. 458, 459; 4 D.M. & G. 732, Turner, L. J.

Maxwell, Interpretation of Statutes, 6th ed., page 280 :

40 “An author must be supposed to be consistent with himself; and, therefore, if in one place he has expressed his mind clearly, it ought to be presumed that he is still of the same mind in another place, unless it clearly appears that he has changed it. In this respect, the work of the Legislature is treated in the same manner as that of any other author; and the language of every enactment must be construed, as far as possible in accordance with the terms

*In the
Supreme
Court of
Canada.*

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."

No. 15.
Appellants'
Factum—
continued.

If the Legislature is always presumed to be consistent, as Mr. Maxwell says, and it allowed the Company to call up four million dollars in 1865 to carry on only one of the branches of insurance which it could carry on were it so minded, is it not presumable that when it restricted the powers of the Company to Life and Accident insurance, and abolished the scheme of division into watertight branches, it still intended, as it had several years previous intended, that the Company might call up the same amount of capital for the only business it was then permitted to carry on, Parliament not having enacted with regard to reducing the Company's authorized capital below four million dollars, and Section 1 of the Act of 1870 not being repealed or modified? Unless this is held the last mentioned section must disappear, and we submit that there is nothing to show that such was the intention of Parliament. 10

Appellant respectfully submits that there is error in the judgment appealed from, that it should be reversed, and that the relief claimed in its factum before the Exchequer Court of Canada should be granted it. 20

E. LAFLEUR,

J. A. EWING,

of Counsel for the Appellant.

Ottawa, Jan. 10, 1930.

No. 16.
Respond-
ent's
Factum.

No. 16.

Respondent's Factum.

IN THE SUPREME COURT OF CANADA.

IN THE MATTER OF THE INSURANCE ACT, AND OF A CERTAIN APPEAL OF THE SUN LIFE ASSURANCE COMPANY OF CANADA, FROM THE RULING OF THE 22ND DAY OF MARCH, A.D. 1929, OF THE SUPERINTENDENT OF INSURANCE. 30

SUN LIFE ASSURANCE COMPANY OF CANADA - - - *Appellant*

and

SUPERINTENDENT OF INSURANCE - - - - *Respondent.*

PART I

STATEMENT OF FACTS

This is an appeal from a decision of the President of The Exchequer Court of Canada pursuant to section 68 of the Insurance Act, which

decision upheld and confirmed a certain ruling of the Superintendent of Insurance. The facts are as follows :

*In the
Supreme
Court of
Canada.*

No. 16.
Respond-
ent's
Factum—
continued.

The Sun Life Assurance Company in its annual statement for the year 1927 furnished to the Superintendent of Insurance, pursuant to sections 30 and 31 of the Insurance Act, stated therein, its authorized capital stock as being three million dollars. The Superintendent of Insurance in his annual report for the year 1927, required by section 38 (e) of the Insurance Act, made an alteration in the said annual statement of the company by stating the authorized capital stock of the company
10 to be two million dollars and made a ruling that the authorized capital stock of the company was limited to two million dollars for the reason that by the charter of the company its capital stock was limited to this sum without power in the company to increase the same beyond that amount. Pursuant to section 68 of the Insurance Act, the company appealed to the Exchequer Court from the ruling aforesaid and claimed a declaration that its authorized capital stock amounted to four million dollars. It also asked for a declaration that on the 31st day of December, 1927, the amount of its capital stock was three million dollars by virtue of a by-law of the company approved by the shareholders. The President
20 of the Exchequer Court dismissed the appeal.

PART II

The Respondent says that the decision of the President of the Exchequer Court should be affirmed for the reasons set out in the decision of the Court and for the reasons hereinafter mentioned.

PART III

ARGUMENT

The Respondent submits that the charter of the company limits the capital stock to be authorized and issued to two million dollars. The charter is contained in three statutes of 1865, 1870 and 1871 (case pp. 10,
30 16 and 18). By the first of the statutes in question the company was empowered to engage in the business of assurance generally, including fire, life, accident, sickness, guarantee and indemnity insurance (28 Vict., Chap. 42, sec. 6). For these purposes the company was authorized to issue stock to the amount of two million dollars with power, however, in the shareholders to increase the said authorized capital stock to a sum not exceeding four million dollars (s. 2). When four thousand shares had been subscribed and one hundred thousand dollars paid up, the company was authorized to commence the business of fire, accident, sickness, guarantee and indemnity insurance (s. 9) but only when eight
40 thousand shares had been subscribed and an additional one hundred thousand dollars paid up could the company engage in life insurance (s. 9). The additional one hundred thousand dollars was to be invested in securities "for the special security of the assurance on lives" (s. 9).

*In the
Supreme
Court of
Canada.*

No. 16.
Respond-
ent's
Factum—
continued.

Thus there was at the outset a partial division of the business of the company into two branches, namely, general and life. The company was by this first charter a fire, accident and guarantee company, with power to engage also in life business when stock had been subscribed for double that required for the fire, accident and guarantee business and one hundred thousand dollars set aside for the security of life policies.

In 1870, before any action had been taken under the Act of 1865, the charter was completely revised. The authorized capital stock was reduced from two million to one million dollars with power to the company to increase the same in sums of not less than one million dollars to a sum 10 not exceeding four million dollars. (33 Vict., Ch. 58, s. 6.) This power, however, in the shareholders to increase the capital to four million dollars must be read subject to the subsequent provisions of the charter of 1870.

The powers of the company to transact "life" and "general" insurance were completely separated by the provisions of sections 3, 4, 5, 6, 7, 8, 9 and 12. The effect of these provisions was as follows. Section 3 defined life and accident assurance, and directed the company to carry the same on as a distinct branch of its business under its corporate name, with addition thereto of the words "Life Branch." Section 4 20 directed that the whole of the authorized capital stock of one million dollars should be applied solely to the life branch, with power to increase the same to two million dollars. Section 5 authorized the company to commence the business of the life branch when five thousand shares had been subscribed and fifty thousand dollars paid up. Section 7 provided that in addition to the "life" business, the shareholders were empowered to authorize the raising of an additional one to two million dollars for the purposes of "general" business, that is, fire, marine and guarantee insurance. If the shareholders decided to engage in this business, the company was directed by section 6 to carry the same on as a distinct branch 30 of the business of the company under the corporate name of the said company with the addition thereto of the words "General Branch."

Separate accounts were to be maintained for each branch in respect of stock subscribed, business transacted, expenses, profits, claims, losses, liabilities and assets, and investments were to be earmarked for the branch for which they were made (s. 8). The capital subscribed in respect of each branch was to be liable only for the expenses, losses and liabilities incurred by the said branch, and entitled only to the profits and claims arising in and proceeding from such branch (s. 9). In the event of the failure of one branch to meet its obligations, the other branch was not to suspend business or to be subject to the statutory provisions relating 40 to insolvent companies (s. 12).

Thus by this second charter a life and accident insurance company was created with the name "The Sun Insurance Company of Montreal (Life Branch)" and with an authorized capital stock of one million dollars capable of being increased to two million dollars. In addition the shareholders had power to set up, if they desired, what was to all intents and purposes a separate entity "The Sun Insurance Company of Montreal

(General Branch)", empowered to carry on fire, marine and guarantee insurance and to issue one to two million dollars in capital stock for such purposes.

In 1871 the power to set up "The Sun Insurance Company of Montreal (General Branch)" was rescinded by a provision which restricted the powers of the company to life and accident insurance (34 Vict., Ch. 53, s. 3). It was also provided that all provisions of the Acts of 1865 and 1870 inconsistent with the provisions of the Act of 1871 were repealed. (s. 4).

*In the
Supreme
Court of
Canada.*

No. 16.
Respond-
ent's
Factum—
continued.

10 The appellant must rely on section 1 of the Statute of 1870 for the power now claimed to issue capital stock in excess of two million dollars. That provision authorizing the increase from one to four million dollars must of course be read in conjunction with the other provisions of the Act of 1870. Reading the Act of 1870 as a whole, and before the amendment of 1871, there is no doubt that the capital stock was limited to two million dollars unless the "general branch" was established.

The question, therefore, is whether the provisions of the Act of 1871 had the effect of enabling the company to authorize more than two million dollars for the purposes of the life assurance business. The Act of 1871
20 merely restricted the business of the company to life and accident assurance and changed the name of the company to the Sun *Mutual* Life Insurance Company of Montreal, and provided for the repeal of the provisions of the Act of 1870 inconsistent with provisions of the Act of 1871. It is necessary to ascertain what provisions of the Act of 1870 were repealed. The following rules should, it is submitted, be adopted.

Those provisions relating exclusively to the life branch or which would have been effective whether the "general branch" was established or not, stand, while those which were intended only to have effect if the general branch was established, fall. Section 4 of the Act of 1870 reads
30 as follows :

" 4. The capital stock of one million of dollars shall be applied solely to the "Life Branch" of the said company, but may be increased under the terms of the Act of Incorporation to two millions of dollars."

and would have been effective whether or not the general branch was established. Therefore it stands. The provisions relating exclusively to the "general branch" fall.

It is submitted that the company has no power to increase capital stock beyond two million dollars for the following among other reasons :
40 (a) the powers of the life branch were so completely separated from the powers of the general branch (so that there were in reality two separate corporations) that the power to authorize two millions of capital for the general branch could not vest in the life branch when the power to create the general branch was rescinded; the power to authorize this additional two millions related so exclusively to the separate general branch that the abolition of the general branch involved the abolition of the power

*In the
Supreme
Court of
Canada.*

No. 16.
Respond-
ent's
Factum—
continued.

to authorize the said additional capital; (b) for the reasons already mentioned, section 4 of the Act of 1870 was not repealed by the Act of 1871 and it stands and has the effect to limit the authorized capital of this life assurance company to two millions; (c) section 1 of the Act of 1870 when enacted had to be read in connection with the subsequent qualifying provisions of the Act, including section 4, and as this section was not repealed it still qualifies section 1; (d) the change of name in 1871 to include the word "Mutual" is a clear indication that Parliament did not intend to increase the stock-holding character of the corporation by doubling the authorized capital stock thereof as is contended.

10

LUCIEN CANNON,
FREDERICK P. VARCOE.

No. 17.
Formal
Judgment,
10th April
1930.

No. 17.

Formal Judgment.

IN THE SUPREME COURT OF CANADA.

Thursday, the 10th day of April, A.D. 1930.

Present :

The Right Honourable F. A. ANGLIN, C.J.C., P.C.
The Right Honourable Mr. Justice DUFF, P.C.
The Honourable Mr. Justice NEWCOMBE.
The Honourable Mr. Justice SMITH.
The Honourable Mr. Justice CANNON.

20

Between :

THE SUN LIFE ASSURANCE COMPANY OF CANADA (*Appellant*) *Appellant*
and

THE SUPERINTENDENT OF INSURANCE (*Respondent*) *Respondent*.

The appeal of the above named appellant from the judgment of the Honourable Mr. Justice Maclean of the Exchequer Court of Canada, pronounced in the above case on the 18th day of June, 1929, having come on for hearing before this court on the 21st day of February, 1929, in the presence of counsel as well for the appellant as for the respondent, where-
upon and upon hearing what was alleged by counsel aforesaid, this court was pleased to direct that the said appeal should stand over for judgment, and the same coming on this day for judgment, this court did order and adjudge that the said Judgment of the Exchequer Court of Canada should be and the same was affirmed and that the said appeal should be and the same was dismissed with costs to be paid by the said appellant to the said respondent.

30

(Signed) E. R. CAMERON

Registrar, Supreme Court of Canada.

40

No. 18.

Reasons for Judgment.

*In the
Supreme
Court of
Canada.*

(a) ANGLIN, C. J. C.—(Concurred in by CANNON J., NEWCOMBE J. concurring in the conclusion).

No. 18.
Reasons for
Judgment.
(a) Anglin,
C.J.C. (con-
curred in by
Cannon, J.,
Newcombe,
J., concurr-
ing in the
conclusion).

Exercising the power conferred by s. 68 (2) of the Insurance Act (R. S. C. c. 101), the Superintendent of Insurance "corrected" the Annual Statement furnished by the Appellant Company for the year ending December 31, 1927 (filed on the 24th of February, 1928), by changing the figure "4" to the figure "2" in the item thereof purporting to give the amount of the authorised capital stock of the Company, thus making the authorised capital stock appear as \$2,000,000 instead of \$4,000,000, as set out in the filed statement.

He also made two changes in the appended "Notes re Capital Stock" so that one item read :

Capital stock forfeited for non-payment of calls not to be included.

instead of, as it appeared in the document filed :

Capital forfeited for non-payment of stock not to be included.

No complaint is made of the last mentioned alterations; but it is asserted that the alteration reducing the amount of the authorised capital stock from \$4,000,000 to \$2,000,000 was wrong.

Sub-sections 5 and 6 of s. 68 of the Insurance Act read as follows :

(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.

*In the
Supreme
Court of
Canada.*

No. 18.
Reasons for
Judgment.
(a) Anglin,
C.J.C. (con-
curred in by
Cannon, J.,
Newcombe,
J., concurr-
ing in the
conclusion)
—continued.

Sections 82 and 83 of the Exchequer Court Act, so far as material (R.S.C., c. 34) are in these terms :—

82. Any party to any action, suit, cause, matter or other judicial proceeding, in which the actual amount in controversy exceeds five hundred dollars, who is dissatisfied with any final judgment, or with any judgment upon any demurrer or point of law raised by the pleadings, given therein by the Exchequer Court, in virtue of any jurisdiction now or hereafter, in any manner, vested in the Court and who is desirous of appealing against such judgment, may, within thirty days from the day on which such judgment has been given, or within such further time as the Judge of such Court allows, deposit with the Registrar of the Supreme Court the sum of fifty dollars by way of security for costs. 10

* * * * *

4. A judgment shall be considered final for the purpose of this section if it determines the rights of the parties, except as to the amount of the damages or the amount of liability.

83. No appeal shall lie from any judgment of the Exchequer Court in any action, suit, cause, matter or other judicial proceeding, wherein the actual amount in controversy does not exceed the sum or value of five hundred dollars 20

Counsel for the appellant stated that it had intended immediately to issue \$1,000,000 of capital stock in addition to the capital stock already subscribed, amounting to \$2,000,000, and that the action of the Superintendent made it impracticable to put such additional stock on the market and is calculated to do the company considerable injury. But no "actual amount" is "in controversy" and no tangible property possessing a money value is at stake in this appeal; nor will rights of shareholders be legally affected by its determination. The words governing the right of appeal from the Exchequer Court above quoted, viz., 30

in which the actual amount in controversy exceeds five hundred dollars,

differ very materially from those defining the general jurisdiction of the Supreme Court, viz.,

where the amount or value of the matter in controversy in the appeal exceeds the sum of two thousand dollars (R.S.C., c. 35, s. 39),

According to our decision in *Orpen v. Roberts* (1925) Can. S.C.R., 364, at p. 367, the subject matter of the appeal, in a case such as this, should, for the ordinary jurisdictional purposes of this Court, be regarded as the right of the appellant to have its capital stock appear in its statement at the figure at which it was put in by it, viz., \$4,000,000, and the amount or value of the matter in controversy in the appeal would accordingly be considered to be the value of that right, i.e., the loss which its denial would entail on the company. That amount would, no doubt, exceed five hundred dollars. But the words, "the actual amount in controversy", 40

seem rather to require that in appeals from the Exchequer Court there should be a pecuniary sum of more than five hundred dollars, or, at least, tangible property, exceeding that amount in actual value, at stake, the right to recover which is directly in issue in the "judicial proceeding". That condition of the right of appeal to this Court does not seem to be satisfied in this case.

There is, moreover, a serious objection to our jurisdiction to entertain this appeal, arising from the terms in which the right of appeal to the Exchequer Court is conferred by s. 68 (5) of the Insurance Act and the nature of the subject matter of the appeals thereby given. It is true that, by s. 82 of the Exchequer Court Act, any final judgment of that Court pronounced,

in virtue of any jurisdiction now or hereafter, in any manner, vested in the court

in a judicial proceeding, in which the actual amount in controversy exceeds five hundred dollars, is made appealable to the Supreme Court of Canada; but this general provision is, according to well known principles of construction, notwithstanding the comprehensive character of the terms in which it is couched, subject to any restriction on the right of further appeal expressed or implied in any particular statute which confers a special jurisdiction on the Exchequer Court.

A "judicial proceeding" is not defined in the Exchequer Court Act; but, in the Supreme Court Act, the definition of that term excludes any proceeding in disposing of which the court appealed from has exercised merely a regulative, administrative or executive jurisdiction. (R.S.C., c. 35, s. 2 (e)).

While not governing appeals from the Exchequer Court, this interpretative section serves to indicate the class of matters which Parliament thought should be excluded from the appellate jurisdiction of this Court.

Sub-section 5 of s. 68 of the Insurance Act gives a right of appeal to the Exchequer Court from any

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 the 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.

Many such matters must be purely of an administrative character and the Exchequer Court in supervising the action of the Superintendent in regard to them must necessarily be exercising a "regulative jurisdiction".

That Parliament intended to give a further right of appeal in all such matters where the value of the right in controversy exceeds five hundred dollars, from decisions of the Exchequer Court thereon to the "General Court of Appeal for Canada" (B.N.A. Act, s. 101) established by it, seems scarcely credible. Yet, if there be jurisdiction to entertain

*In the
Supreme
Court of
Canada.*

No. 18.

Reasons for
Judgment.
(a) Anglin,
C.J.C. (con-
curred in by
Cannon, J.,
Newcombe,
J., concur-
ring in the
conclusion)
—continued.

*In the
Supreme
Court of
Canada.*

No. 18.
Reasons for
Judgment.
(a) Anglin,
C.J.C. (con-
curred in by
Cannon, J.,
Newcombe,
J., concur-
ring in the
conclusion)
—continued.

the present appeal, that would seem necessarily to follow. 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 sub-section 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 sub-section 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

10

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

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.

30

But while, for these reasons, I am inclined to the opinion that this Court is without jurisdiction to entertain this appeal, at least two of my learned brothers, I understand, hold the contrary view. Subject to the question of jurisdiction, argument was fully heard on the merits of the appeal. It will, accordingly, probably be better that they should be disposed of.

* *sic* ?

By its Act of Interpretation* of 1865 (28 V., c. 43), the Sun Insurance Company's capital stock was fixed at \$2,000,000; and provision was made for its increase, to a sum not exceeding \$4,000,000, by resolution of a majority of the stockholders at a meeting to be expressly convened for that purpose. By s. 6 the company was empowered to do fire, marine, life, accident, fidelity insurance, etc. By an amending Act of 1870 (33V., c. 58), passed, as the recital shows, on the petition of the Company, it was provided that the capital stock of the Company should be \$1,000,000 with power to increase the same, under the provisions of its Act of

40

Incorporation, in sums of not less than \$1,000,000 to a sum not exceeding \$4,000,000 (s. 1). Sections 3, 4, 6, 7, 8, 9, 11 and 12 of the Act of 1870 read as follows :—

*In the
Supreme
Court of
Canada.*

No. 18.
Reasons for
Judgment.
(a) Anglin,
C.J.C. (con-
curred in by
Cannon, J.,
Newcombe,
J., concur-
ring in the
conclusion)
—*continued.*

10 3. The business of Life and Accident Assurance, which the said company is authorized to transact, shall include power to effect contracts of assurance, with any persons or bodies corporate, upon lives, or in any way dependent upon lives, and to grant or sell annuities, either for lives or otherwise, and on survivorship, and to purchase annuities, to grant endowments to children or other persons, and to receive investments of money for accumulation, to purchase contingent rights, whether of reversion, remainder, annuities, life policies or otherwise, and generally to enter into any transaction depending upon the contingency of life or accident to the person, whether by land or sea, usually entered into by life or accident assurance companies, including re-assurance, and shall be established, maintained and prosecuted by the said company, as a distinct branch of its business, under the corporate name of the said company, with the addition thereto of the words " Life Branch ".

20 4. The capital stock of one million of dollars shall be applied solely to the " Life Branch " of the said Company, but may be increased under the terms of the Act of Incorporation to two million of dollars.

30 6. The general business which the said company is authorized to transact in fire insurance, as well as in marine and guarantee insurance, and the re-insurance of any risks thereunder, shall be established, maintained and prosecuted, as a distinct branch of the business of the said company, under the corporate name of the said company, with the addition thereto of the words " General Branch ".

7. One million of dollars may be raised for the purposes of the said " General Branch ", which may be increased to two millions of dollars, and so soon as at least five thousand shares of the capital stock of the said company shall have been subscribed and allotted to the " General Branch " of the said company, and fifty thousand dollars paid in on account of the same, it shall be lawful for the said company to commence the business of insurance included under the branch styled the " General Branch ".

40 8. The said company shall 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 and claims, losses, liabilities and assets, under each of the said branches respectively; and all instruments representing investments made of such assets shall specify for which branch such investments are so made, and shall be held for such branch.

*In the
Supreme
Court of
Canada.*

No. 18.
Reasons for
Judgment.
(a) Anglin,
C.J.C. (con-
curred in by
Cannon, J.,
Newcombe,
J., concur-
ring in the
conclusion)
—continued.

9. The capital stock of the said company so subscribed and allotted to the "Life Branch" and "General Branch" respectively, shall be liable only for the expenses, losses and liabilities incurred by the branch to which the same has been allotted, and entitled only to the profits and claims arising in, and proceeding from, such branch.

11. No director or other officer of the company shall become a borrower of any portion of its funds, nor become surety for any other person who is or shall become a borrower from the company, nor shall the funds of one branch be applied to or borrowed for the purposes of the other. 10

12. The failure of the Life Branch or of the General Branch to meet its obligations shall not necessitate the suspension of its business by the other branch, or subject such other branch to the provisions of the Act respecting Insurance Companies, in relation to companies becoming insolvent.

Apparently at the time this amending Act was passed, 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. 20

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. 30

On the purview and application of s. 4 depends the decision 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 40

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

10 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 :

20 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.

30 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.

40 There is, as already stated, no inconsistency between the restricting of the company's powers by s. 3 of the statute of 1871 to life and accident insurance and the reduction of the limit upon the capital stock to be devoted to that purpose imposed by the Act of 1870. Consequently,

*In the
Supreme
Court of
Canada.*

—
No. 18.

Reasons for
Judgment.
(a) Anglin,
C.J.C. (con-
curred in by
Cannon, J.,
Newcombe,
J., concur-
ring in the
conclusion)
—continued.

*In the
Supreme
Court of
Canada.*

in our opinion, the repealing section (number 4 of the Act of 1871) did not have the effect of doing away with the limitation imposed by s. 4 of the Act of 1870 on the amount of capital which might be devoted to the life insurance business of the company.

No. 18.
Reasons for
Judgment.
(a) Anglin,
C.J.C. (con-
curred in by
Cannon, J.,
Newcombe,
J., concur-
ring in the
conclusion)
—*continued.*

As a consequence of its activities being so restricted, s. 2 of the Act of 1865 and s. 1 of the Act of 1871 should be deemed to have been *pro tanto* repealed, or so modified that the total authorized capital of the Company shall be \$2,000,000 and not \$4,000,000 as therein stated. *Leges posteriores priores contrarias abrogant.*

The appeal will be dismissed with costs.

10

(b) Duff, J.
(concurrent
in by Smith,
J.).

(b) DUFF J. (concurrent in by SMITH J.)

The right of appeal now challenged turns upon the construction of sections 82 and 83 of the Exchequer Court Act, I quote Section 82 in full:—

“ 82. Any party to any action, suit, cause, matter or other
“ judicial proceeding, in which the actual amount in controversy
“ exceeds five hundred dollars, who is dissatisfied with any final
“ judgment, or with any judgment, upon any demurrer or point
“ of law raised by the pleadings, given therein by the Exchequer
“ Court, in virtue of any jurisdiction now or hereafter, in any 20
“ manner, vested in the Court, and who is desirous of appealing
“ against such judgment may, within thirty days from the day
“ on which such judgment has been given, or within such further
“ time as the judge of such Court allows, deposit with the Registrar
“ of the Supreme Court the sum of fifty dollars by way of security
“ for costs.”

The first point to consider is whether or not (a point to which some colour is given by the language of section 82) the right of appeal exists only when the judicial proceeding in the Exchequer Court involves a pecuniary demand. This point seems to be disposed of by the decisions under section 46 (c) of the old Supreme Court Act, where the words were “ amounts to the sum or value of \$2,000 ”, which do not differ pertinently from the words in Section 83, “ actual amount in controversy does not exceed the sum or value of \$500.” It is clear to my mind that section 83 must be read with section 82, and having regard to the general scope of the sections, it must be held that in this particular respect the conditions of jurisdiction do not differ from those laid down by section 46 (c). In respect of this last mentioned section, where the matter in controversy was, for example, the right to quash a by-law and so to nullify a contract, it was held by this Court that the jurisdiction existed if the right immediately involved amounted to the value of \$2,000. *Shawinigan v. Shawinigan*, 43, S.C.R. 650, per Anglin J. 30 40

The next question is whether the proceeding in the Exchequer Court was a judicial proceeding and the adjudication a judgment within a meaning of sections 82 and 83.

The certificate of the ruling of the Superintendent of Insurance is in the following words :—

“ WHEREAS, under the provisions of section thirty-one of
 “ the said Act, the Sun Life Assurance Company of Canada is
 “ required to deposit with the Department of Insurance, within
 “ two months after the first day of January in each year, an
 “ annual statement of the condition and affairs of the said
 “ Company as at the thirty-first day of December next preceding;
 “ and

“ WHEREAS the form of statement prescribed by the Schedule
 “ to the said Act includes a statement of the amount of authorized
 “ capital stock of the Company as at the said thirty-first day of
 “ December; and

“ WHEREAS the said Company deposited in the said Department
 “ on the twenty-fourth day of February, one thousand nine hundred
 “ and twenty-eight, its annual statement as at December thirty-
 “ first, one thousand nine hundred and twenty-seven; and

“ WHEREAS in the said statement the amount of capital
 “ stock authorized as at the thirty-first day of December, one
 “ thousand nine hundred and twenty-seven, is stated to be an
 “ amount in excess of two million dollars; and

“ WHEREAS section sixty-eight of the said Act provides,
 “ in sub-section two thereof, that the Superintendent of Insurance
 “ shall make, in his annual report prepared for the Minister under
 “ the provisions of paragraph (e) of section thirty-eight of the
 “ said Act, all necessary corrections in the annual statements
 “ made by the companies; and

“ WHEREAS the Superintendent of Insurance has, in his
 “ report to the Minister for the business of the year one thousand
 “ nine hundred and twenty-seven made the necessary correction
 “ in the annual statement aforesaid by stating the amount of
 “ the authorized capital stock appearing in the said statement
 “ as being two million dollars; and

“ WHEREAS the said Company has requested from the said
 “ Superintendent a certificate in writing setting forth the change
 “ made for the purpose of an appeal there-against as in the said
 “ section sixty-eight provided;

“ NOW THEREFORE, this is to certify that the Superintendent
 “ of Insurance has in the said annual statement aforesaid of the
 “ said Company made correction therein by stating the authorized
 “ capital stock of the Company at two million dollars, and hereby
 “ makes a ruling that the said authorized capital stock is and is

*In the
 Supreme
 Court of
 Canada.*

—
 No. 18.

Reasons for
 Judgment.
 (b) Duff, J.
 (concurrent
 in by Smith,
 J.)—con-
 tinued.

10

20

30

40

*In the
Supreme
Court of
Canada.*

No. 18.
Reasons for
Judgment.
(b) Duff, J.
(concurrent
in by Smith,
J.)—*con-
tinued.*

“ limited to the sum of two million dollars for the reason that
“ by the charter of the Company the capital stock is limited to
“ two million dollars without power in the company to increase
“ the capital stock beyond that amount.

“ Given under my hand and seal this twenty-second day of
“ March one thousand nine hundred and twenty-nine.

“ (Seal). “ G. D. FINLAYSON,
Superintendent of Insurance.”

The appeal to the Exchequer Court is given by Section 68, sub-
sections 5 and 6, of the Insurance Act, as follows :—

10

“ 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 20
“ 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.” (Vol. 3, Rev. Statutes 1927, page 38, chap. 101). 30

The pronouncement of the Exchequer Court in disposing of the
appeal is treated as a “judgment” in sub-section 6. These further
points should be underlined. It was the statutory duty of the appellants
to give correctly the amount of their authorized capital; it was con-
sequently their right to do so. Any correction by the Superintendent,
substituting an erroneous or inaccurate statement (by which under the
statute they would be bound) would be an invasion of the right of the
company, a right, however, in respect of which the company would have
no redress except through the proceedings in appeal authorized in the
enactment quoted above. On the appeal the controversy was whether 40
the ruling was a lawful ruling or one which constituted an invasion of
the rights of the company. It seems pretty clear that if a company
having an authorized capital of \$3,000,000 is about to procure working
capital by disposing of shares in excess of, say \$2,000,000, it is of some
practical importance to them that they should be committed by statutory

compulsion to an official statement giving their authorized capital as \$2,000,000. Not only would it be an invasion of their right to have any public statement of their affairs, avouched by them, or made "binding" on them by statute, accord with the truth; it might very seriously impair in practice their actual rights in respect of the allotment of new capital, if it did not indeed in practice render those rights valueless. The nature of the proceeding, however, in the appeal to the Exchequer Court can be most conveniently illustrated by reference to Section 42, sub-section 2, which is in these words:—

21c. Q. 46.

10

"2. In the case of any violation of any of the provisions of this Act by a company licensed thereunder to carry on business within Canada, or in the case of failure to comply with any of the provisions of its charter or Act of Incorporation by any Canadian company so licensed, it shall be the duty of the Superintendent to report the same to the Minister, and thereupon the Minister may, in his discretion, withdraw the company's license or may refuse to renew the same or may suspend the same for such time as he may deem proper."

Obviously this section could be brought into play if a company to which it applied were to attempt to allot shares in excess of its authorized capital. In such a case it would be the duty of the Superintendent, who by section 46 is required to inform himself fully as to all matters connected with the company's "business or transactions," to report the *ultra vires* acts of the company, and in such a case it would, under the statute, be within the power of the Minister to withdraw the company's license or suspend the same. A report to such effect by the Superintendent would no doubt be a ruling upon "a matter arising in the carrying out of the provisions of this Act" from which an appeal would lie under section 68. The matter in controversy in such an appeal would be the question whether or not the company had been acting in excess of its powers; in other words, what was the amount of the authorized capital of the company and by what acts the company had exceeded its powers in relation thereto? It is impossible to exaggerate the importance of such a question, when raised under section 42, involving, as it would, the question of the jurisdiction of the Minister to put into operation his powers of forfeiture under that section. The right involved in such a case would be the private right of the company. And I am quite unable to see upon what grounds it can be contended that a proceeding in the Exchequer Court between the company on the one hand, and the Superintendent on the other, involving the binding determination of the existence or non-existence of that right, would not be a "judicial proceeding", or why the adjudication (which is treated as a "judgment" in section 69, sub-section 6, of the Insurance Act) would not also be a "judgment" within the meaning of the Exchequer Court and the Supreme Court Acts. There are other questions as indicated in sub-section 5 of section 68, in respect of which an appeal is given

*In the
Supreme
Court of
Canada.*

No. 18.
Reasons for
Judgment.
(b) Duff, J.
(concurring
in by Smith,
J.)—*con-
tinued.*

*In the
Supreme
Court of
Canada.*

No. 18.
Reasons for
Judgment.
(b) Duff, J.
(concurring
in by Smith,
J.)—con-
tinued.

eo nomine where the ruling might, if adverse, be just as destructive a blow to the private rights and interests of the company.

To revert, then, to the ruling in question on this appeal. The ruling is, subject to appeal, declared by section 68 to be binding on the company. I do not intend to express any precise opinion as to the meaning of this. It is susceptible of a construction by which the ruling fixes the capital of the company. That is a little startling, at first sight, but not altogether out of harmony with the spirit of some of the provisions of this most amazing enactment. Again, it is susceptible of an interpretation by which the ruling would be binding as against the company, as between the company and the Crown, so that in proceedings by the Attorney-General, alleging *ultra vires* acts by the company in respect of the allotment of shares, the company would be concluded by the ruling. I express no final opinion whether this is in truth the effect of the enactment of section 68. I can see no reason for holding that by force of the enactment of 68 (6), a ruling on any matter arising in course of the execution of the Act is not binding on the company as between it and the Department in any controversy in course of the exercise by the Department of any of its powers under the Act. 10

The ruling therefore now under debate is a ruling decisive at least for the purposes of section 42, upon the private right of the company to raise capital by disposing of shares to an amount in excess of \$2,000,000. 20

For these reasons I conclude that the judgment of the Exchequer Court is a judgment in a judicial proceeding and appealable to this Court.

I now turn to the question of substance. We are concerned with three special Acts of the appellants, 1st, the Act of Incorporation of 1865, 2nd, the Act of 1870, and 3rd, that of 1871.

By the second of these statutes, if it had ever gone into practical operation, a considerable change would have been introduced into the regulations for the conduct of the Company's business. The Company was, by its provisions, to have carried on its business under two branches, styled respectively the "Life Branch" embracing life and accident insurance, and the "General Branch" embracing fire, marine and guarantee insurance. 30

The Company was to carry on the business of each branch separately under the corporate name of the Company with "Life Branch" or "General Branch" added thereto. Separate accounts were to be kept of the share capital "subscribed and allotted" for each branch; of the business transacted, of the liabilities, profits, losses and investments of each. The share capital "allotted" to each was to be subject only to the liabilities and losses incurred, and entitled only to the profits earned, in its business. 40

The business of the Company was to be managed as before by a board of directors with very extensive powers; and the share-holders were to act as a single body in the election of directors and otherwise; whether or not the general assets of the Company were to continue

liable for all debts incurred by either branch, is left a little obscure; the *prima facie* liability is not in express terms negatived, but there is some ground for saying that it is so inferentially.

*In the
Supreme
Court of
Canada.*

By the Act of 1865, the nominal share capital of the Company was \$2,000,000, with power in the shareholders to increase it to \$4,000,000. By the Act of 1870, the initial capital was reduced to \$1,000,000, with power to augment it, under the provisions of the Act of 1865, in successive increments of \$1,000,000, to \$4,000,000. Provision was made by the later Act for the application of the subscribed capital for the
10 purposes of the respective branches. The initial \$1,000,000 when subscribed, was to be applied to the purposes of the business of the Life Branch, the Company having a discretionary authority to devote another \$1,000,000 of subscribed capital to the same purposes. The Company was authorized to appropriate to the business of the General Branch \$1,000,000, and afterwards another \$1,000,000, if thought desirable.

No. 18.
Reasons for
Judgment.
(b) Duff, J.
(concurring
in by Smith,
J.)—*con-
tinued.*

This enactment as a whole never went into practical operation; within a year, and before, as we were informed in argument, any capital had been subscribed, the substratum of the new scheme had been swept away by the third Act. We have therefore to consider the Act of 1871. By that
20 Act, in its 3rd section, the business of the Company was re-defined as that of Life and Accident Insurance.

That, I think, there can be no doubt was the effect of the 3rd section—neither more nor less. By a complementary section, (the 4th) anything in existing legislation inconsistent with the Act of 1871 was repealed.

The meaning of section 3, I think, becomes perfectly clear when the Acts of 1865 and 1870 are considered. The Act of 1865, the Act of Incorporation, contains as usual one section in which the scope of the Company's business or undertaking is defined, and it is defined in this way, "The corporation hereby erected shall have *power and authority* to
30 "make and effect contracts of assurance" of various kinds; "to make
"and effect assurances on life or lives", and so on; to enter into contracts of re-insurance; and generally to do and perform all other necessary matters and things connected with, and proper to promote, those objects. Subsidiary capacities of various kinds, concerned mainly with the management of the Company's affairs are given in various sections, but the word "power" is nowhere throughout the Act used in relation to these subsidiary authorities in connection with the Company. Then in the Act of 1870, in section 3, where the business of Life and Accident Assurance
40 "which the Company is authorized to carry on" is further defined, the same form of expression is used. During the years when these Acts were passed, it will be found on examination of Special Acts of this general character that this was the most common form of phraseology for declaring the scope of the business or the undertaking of the Company incorporated. I have looked through the Special Acts of that period, and I find that the definition of the Company's business or undertaking usually comes under the heading of "powers", and that the expression "shall have power

*In the
Supreme
Court of
Canada.*

No. 18.
Reasons for
Judgment.
(b) Duff, J.
(concurring
in by Smith
J.)—con-
tinued.

and authority ” is the form almost invariably used in Special Acts incorporating Insurance Companies, (and there appears to have been a large number of them enacted at that time), to define the scope of the Company’s business. Moreover, the form of the section itself shows that the subject matter with which the legislature was dealing in section 3, was the scope of the Company’s authorized business. A comparison of the language of section 3 of the Act of 1871 in the French version, with that of section 6 of the Act of 1865 of the same version, is useful.

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.

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.

Section 1 stands, because there is nothing in it inconsistent with any enactment of the Act of 1871; and I may add that if the intention had been to reduce the capital to \$2,000,000, I should have expected to find that expressed.

The appeal should be allowed and the ruling set aside, with costs throughout.

*In the
Supreme
Court of
Canada.*

No. 18.
Reasons for
Judgment.
(b) Duff, J.
(concurring
in by Smith,
J.)—*con-
tinued.*

No. 19.

Order in Council granting special leave to appeal to His Majesty in Council.

*In the
Privy
Council.*

AT THE COURT AT BUCKINGHAM PALACE.

10

The 13th day of June, 1930.

Present,

THE KING'S MOST EXCELLENT MAJESTY.

LORD PRESIDENT.

HON. SIR WILLIAM ERSKINE.

LORD PRIVY SEAL.

DR. ADDISON.

MR. SECRETARY THOMAS.

MR. NOEL BUXTON.

No. 19.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
13th June
1930.

WHEREAS there was this day read at the Board a Report from the Judicial Committee of the Privy Council dated the 22nd day of May, 1930, in the words following, viz. :—

20

“ WHEREAS by virtue of His late Majesty King Edward the Seventh's Order in Council of the 18th day of October 1909 there was referred unto this Committee a humble Petition of the Sun Life Assurance Company of Canada in the matter of an appeal from the Supreme Court of Canada between the Petitioners Appellants and the Superintendent of Insurance Respondent setting forth (amongst other matters) that the Petitioners desire to obtain special leave to appeal from a Judgment of the Exchequer Court of Canada of the 18th June 1929 which confirmed the ruling of the Superintendent of Insurance as shown by his Certificate dated the 22nd March 1929 that the authorised capital of the Petitioners on the 31st December 1927 was and was limited to \$2,000,000 whereas the Petitioners contend that it was only limited to \$4,000,000 and in so far as it may have confirmed the Judgment of the Exchequer Court from a Judgment of the Supreme Court dismissing by a majority of three Judges to two (Anglin C.J. Newcombe and Cannon J.J. Duff and Smith J.J. dissenting): the Petitioners Appeal to that Court that in the Supreme Court Anglin C.J., delivered a Judgment in which Cannon J. concurred holding that the Supreme Court was without jurisdiction to hear the Appeal and also deciding on the merits against the Petitioners

30

*In the
Privy
Council.*

No. 19.
Order in
Council
granting
special leave
to appeal to
His Majesty
in Council,
13th June
1930—con-
tinued.

and that the Appeal should be dismissed: that Newcombe J. concurred in the conclusions reached by Anglin C.J. and Cannon J. without stating in which conclusion: that Duff J. delivered a Judgment in which Smith J. concurred holding that the Supreme Court had jurisdiction to hear the Appeal and deciding on the merits in favour of the Petitioners: that the Petitioners were incorporated under Act of the Parliament of Canada 28 Vic. Ch. 43 (1865) with power to engage in all kinds of insurance business: that the Respondent is the Superintendent of Insurance required under Section 38 (e) of the Insurance Act of Canada to report to the Minister of Finance on the annual statements required by the Act to be made by certain companies including the Petitioners: that the question involved in the Appeal is whether an increase of the Petitioners' capital from \$2,000,000 to \$3,000,000 has lawfully been made: that this question arises in the manner set forth in the Petition: And humbly praying Your Majesty in Council to order that the Petitioners shall have special leave to appeal from the Judgment of the Exchequer Court dated 18th June 1929 and from the Judgment of the Supreme Court dated the 10th April 1930 or for further or other relief :

“THE LORDS OF THE COMMITTEE in obedience to His late Majesty's said Order in Council have taken the humble Petition into consideration and having heard Counsel in support thereof and for the Respondent Their Lordships do this day agree humbly to report to Your Majesty as their opinion that leave ought to be granted to the Petitioners to enter and prosecute their Appeal against the Judgment of the Exchequer Court of Canada dated 18th June 1929 and from the Judgment of the Supreme Court of Canada, dated the 10th day of April 1930 upon depositing in the Registry of the Privy Council the sum of £400 as security for costs.

“And Their Lordships do further report to Your Majesty that the authenticated copy under seal of the Record produced by the Petitioners upon the hearing of the Petition ought to be accepted (subject to any objection that may be taken thereto by the Respondents) as the Record proper to be laid before Your Majesty on the hearing of the Appeal.”

HIS MAJESTY having taken the said Report into consideration was pleased by and with the advice of His Privy Council to approve thereof and to order as it is hereby ordered that the same be punctually obeyed and carried into execution.

Whereof the Governor-General Lieutenant-Governor or Officer administering the Government of the Dominion of Canada for the time being and all other persons whom it may concern are to take notice and govern themselves accordingly.

COLIN SMITH.

EXHIBITS.

No. 1 (a).—Copy By-law of Appellants' Directors increasing Capital Stock.

THE BOARD OF DIRECTORS OF THE SUN LIFE ASSURANCE COMPANY OF CANADA, SPECIAL MEETING HELD IN MONTREAL ON FEBRUARY 8TH, 1927.

BY-LAW. CAPITAL STOCK. The following By-Law was enacted :

“ WHEREAS by the Company's Act of Incorporation and amending Acts its capital stock is declared to be one million of dollars with power to the Company to increase the same in sums of not less than one million of dollars to a sum not exceeding four millions of dollars; and

10 WHEREAS the capital stock has been increased to two millions of dollars, all of which has been issued; and

WHEREAS it is desirable and in the best interests of the Company to increase the capital stock to three millions of dollars;

IT IS HEREBY ENACTED :—

That the capital stock of the Company be and is hereby increased to three millions of dollars by the issue of ten thousand additional shares of the par value of one hundred dollars each, amounting to one million of dollars :

20 THAT the increased amount be issued and offered for subscription at such prices when and as the Directors shall by resolution determine, the shareholders of the Company to have the privilege of subscribing therefor in the proportion of one share for every two shares held by them.”

(Seal)

H. W. K. HALE,
Secretary.

No. 1 (b).—Copy resolution of Appellants' Shareholders approving and re-enacting By-law.

SPECIAL MEETING OF THE STOCKHOLDERS OF THE SUN LIFE ASSURANCE COMPANY OF CANADA, HELD IN MONTREAL FEBRUARY 8TH, 1927.

30 RESOLVED, that this meeting do and it does hereby approve, ratify and confirm and re-enact the By-Law passed by the directors on the 8th day of February, 1927, which reads as follows :

“ Whereas by the Company's Act of Incorporation and amending Acts its capital stock is declared to be one million of dollars with power to the Company to increase the same in sums of not less

Exhibits.
No. 1 (a).
Copy, By-law of Appellants' Directors increasing Capital Stock, 8th February 1927.

No. 1 (b).
Copy, Resolution of Appellants' Shareholders approving and re-enacting By-law, 8th February 1927.

Exhibits.

No. 1 (b).
Copy,
Resolution
of Appel-
lants'
Share-
holders
approving
and re-
enacting
By-law,
8th Febru-
ary 1927—
continued.

than one million of dollars to a sum not exceeding four millions of dollars; and

Whereas the capital stock has been increased to two millions of dollars, all of which has been issued; and

Whereas it is desirable and in the best interests of the Company to increase the capital stock to three millions of dollars;

It is hereby enacted: That the capital stock of the Company be and is hereby increased to three millions of dollars by the issue of ten thousand additional shares of the par value of one hundred dollars each, amounting to one million of dollars; 10

That the increased amount be issued and offered for subscription at such prices when and as the Directors shall by resolution determine, the shareholders of the Company to have the privilege of subscribing therefor in the proportion of one share for every two shares held by them."

H. W. K. H.

I CERTIFY that the above Resolution was passed by the unanimous vote of the stockholders of the Sun Life Assurance Company of Canada at a meeting expressly convened for considering the same, at which were present, or represented, a majority of the stockholders both in number and in value of stock. Date of Meeting, February 8th, 1927. 20

H. W. K. HALE,

Secretary.

No. 2.
Extract
from Appel-
lants'
Annual
Statement
for 1927
showing
alterations
made by
Respondent,
8th Febru-
ary 1927.

No. 2.—Extract from Appellants' Annual Statement for 1927 shewing alterations made by Respondent.

EXTRACT FROM ANNUAL STATEMENT of the Sun Life Assurance Company of Canada for the year 1927, deposited with the Department of Insurance on February 24th, 1928, showing the alteration thereto made by the Superintendent of Insurance in the amount of Appellant's capital stock, the original Annual Statement having been filed in the case by consent of the parties. 30

This statement is to be filled in and returned in triplicate to the Department on or before 1st March, 1928.

SUN LIFE ASSURANCE COMPANY OF CANADA
(Name of company)

STATEMENT FOR THE YEAR ENDING DECEMBER 31, 1927.
OFFICERS

(As at date of filing statement February 22, 1928)

President and Managing Director T. B. MACAULAY
Vice-President & Actuary ARTHUR B. WOOD
Secretary H. W. K. HALE
Manager
Actuary
Head Office—Dominion Square, Montreal, Canada.
(For List of Directors see Page 34.)
Organized (date).....1865

10

Exhibits.
No. 2.
Extract
from Appel-
lants'
Annual
Statement
for 1927
showing
alterations
made by
Respondent,
8th Febru-
ary 1927—
continued.

Acts of Incorporation and Amending Acts (Acts and dates) 1865 by act of
late Province of Canada—28 Vic. Cap. 43 Amended 1870 by 33 Vic. Cap. 58,
1871 by 34 Vic. Cap. 53 and 1882 by 45 Vic. Cap. 100.
Commenced business (date).....1871
Amendments to charter since date of filing last statement.....None

1. CAPITAL STOCK

20 1. Authorized.....\$ 2,000,000 .00
2. Subscribed..... 2,000,000 .00
3. Paid in Cash..... 1,500,000 .00
4. Premium on capital stock paid by shareholders..... 120,000 .00

(For list of Shareholders see page 34.)

Notes re Capital Stock

Item 2—Capital Stock forfeited for non-payment of calls not to be
included.

Item 3—Only amounts for which payment has actually been made
in cash are to be included.

30 NOTE.—The space below may be used for any notes, details or
explanations in respect of entries on this page.



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 SUPERIN-
TENDENT OF INSURANCE.

BETWEEN
THE SUN LIFE ASSURANCE
COMPANY OF CANADA - *Appellants*
AND
THE SUPERINTENDENT OF
INSURANCE - - - - *Respondent.*

RECORD OF PROCEEDINGS.

LAWRENCE JONES & Co.,
Lloyd's Building,
Leadenhall Street, London, E.C.3.
Solicitors for the Appellants.

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

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