

Act 1890, secs. 1 and 2, for the confirmation of a special resolution to alter the provisions of the memorandum of association with respect to the objects of the company.

On 13th January 1906 the Court remitted to G. M. Paul, Esq., C.S., "to inquire as to whether the proceedings have been regular and proper, and as to the reasons for the proposed alteration of the provisions" of the memorandum of association and to report.

Mr Paul reported in favour of the application being granted.

When the petition appeared in the Single Bills on the report, counsel for the petitioners moved that the prayer of the petition should be granted, and that, as the petition was unopposed and the report favourable, instead of the case being sent to the Summar Roll the matter might appropriately be disposed of in the Single Bills.

LORD PRESIDENT—We have had several applications of this kind before us lately. I have no objection to such applications as the present being disposed of in the Single Bills instead of being sent to the Summar Roll. But in future when such motions are to be made intimation of the motion must be given to the Keeper of the Rolls, in order that the Court may have an opportunity of considering the matter beforehand. We shall dispose of this matter in the Single Bills of to-morrow.

Counsel for Petitioners — Constable.
Agents—Simpson & Marwick, W.S.

Tuesday, February 6.

FIRST DIVISION.

[Exchequer Cause.]

GENERAL ACCIDENT ASSURANCE CORPORATION, LIMITED v. COMMISSIONERS OF INLAND REVENUE.

Revenue—Stamp Duty—Stamp Act 1891 (54 and 55 Vict. cap. 39), First Schedule—Policy of Insurance—Accident Assurance with Clause Returning Part of Premiums on Assured Reaching Certain Age—Question if Accident Policy also a Life Policy—Appropriate Stamp.

A policy of assurance against accident or illness contained a clause whereby the insurance company undertook to return to the assured on his attaining a certain age, or to his representatives at that time should he have died, the policy still being in force, a certain proportion of the premiums which had been paid under the policy, provided that no payment had been made under two of the preceding clauses.

Held that the policy was an accident policy and not a life as well as accident policy, and consequently that it was only subject to the accident insurance policy stamp of 1d. under the Stamp Act 1891.

The General Accident Assurance Corporation, Limited, General Buildings, Perth, appealed by way of stated case against a determination of the Commissioners of Inland Revenue regarding the stamping of an instrument presented to them on 22nd September 1904 by the Corporation for their opinion as to the stamp duty with which it was chargeable under the Stamp Act 1891.

The instrument which had been presented was in the following terms:—"This policy of assurance witnesseth that . . . having paid to the General Accident Assurance Corporation, Limited (hereinafter called the Corporation), the sum of two shillings and sixpence in consideration of the insurance hereinafter mentioned, from twelve o'clock noon on the day that this contract is dated until twelve o'clock noon on the first day of October 1904, the Corporation will pay to the assured, or in case of death the assured's legal personal representatives, in the following events, the sum or sums hereinafter mentioned as payable in respect thereof, that is to say:—

"A. The sum of four pounds per month . . . [this clause dealt with disablement through illness].

"B. The sum of four pounds per month . . . [this clause dealt with disablement from personal injuries caused by accident].

"C. The sum of one hundred pounds if the injury received as aforesaid shall within ninety days from the happening thereof result—(1) in death solely from such injuries; (2) in the entire loss by the complete severance at or about the wrist or ankle joints of one hand and foot, of both hands or feet, or in the entire and permanent destruction of the sight of both eyes.

[Here followed clauses giving increased benefits in certain events, or after the assurance had been in existence certain times.]

"D. Return of Premium.—So soon as the assured under this policy shall reach the age of sixty-five years, or in the event of the previous death of the assured (the policy in either alternative being in full force and effect), the corporation agrees to return to the assured, or to such assured's heirs, executors, administrators, or assigns, 50 per cent. of all premiums which have been paid to the corporation under this policy, not exceeding in the aggregate the sum of £12, provided that no payment has had to be made under clauses C 1 or C 2 of this policy.

The Stamp Act 1891 (54 and 55 Vict. cap. 39), by section 1, imposes the stamp duties specified in the First Schedule to the Act.

The First Schedule includes:—"Policy of Life Insurance—

Where the sum insured does not exceed £10 - - - - -	£0 0 1
Exceeds £10 but does not exceed £25 - - - - -	0 0 3

And see sections 91, 98, and 100. Policy of Insurance against Accident and Policy of Insurance

for any payment agreed to be made during the sickness of any person, or his incapacity from personal injury or by way of indemnity against loss or damage of or to any property - - - - - £0 0 1

And see sections 91, 98, 99, and 100."

Section 91 of the Act provides—"For the purposes of this Act the expression 'policy of insurance' includes every writing whereby any contract of insurance is made or agreed to be made, or is evidenced, and the expression 'insurance' includes assurance."

Section 98—"(1) For the purposes of this Act the expression 'policy of life insurance' means a policy of insurance upon any life or lives, or upon any event or contingency relating to or depending upon any life or lives except a policy of insurance against accident, and the expression 'policy of insurance against accident' means a policy of insurance for any payment agreed to be made upon the death of any person only from accident or violence or otherwise than from a natural cause, or as compensation for personal injury, and includes any notice or advertisement in a newspaper or other publication which purports to insure the payment of money upon the death of or injury to the holder or bearer of the newspaper or publications containing the notice only from accident or violence or otherwise than from a natural cause. (2) A policy of insurance against accident is not to be charged with any further duty than one penny by reason of the same extending to any payment to be made during sickness or incapacity from personal injury."

Section 99 allows of the one penny duty on a policy of insurance other than a sea or life insurance being denoted by an adhesive stamp, and section 100 imposes a penalty on parties not issuing a duly stamped policy or acting on a policy not duly stamped.

The stated case set forth—"The Commissioners were of opinion that the instrument was not only an accident insurance policy but also a life insurance policy, in respect that it provided that so soon as the assured should reach the age of 65 years, or in the event of his previous death, the said corporation agreed to return to him or his heirs, administrators, executors, or assigns, 50 per cent. of all the premiums paid to the corporation, not exceeding in the aggregate the sum of £12. They accordingly assessed upon the instrument the Accident Policy Duty of 1d., and the *ad valorem* Life Policy Duty of 3d., and required payment of the sum of 4d., whereupon the said corporation paid to the Cashier of Stamp Duties at Edinburgh the said sum of 4d., and the said instrument was thereupon stamped with the stamps denoting the said duty of 4d., so assessed as aforesaid, and also with the particular stamp provided by the said Commissioners under the said Act of Parliament to denote and signify that the full amount of stamp-duty with which the instrument was by law chargeable had been paid. But the said Corporation, by their agents, Messrs Simpson & Marwick, W.S., Edinburgh, declared themselves dissatisfied

with the determination of the said Commissioners on the following grounds: That the instrument was properly chargeable as an accident insurance policy only, or, in any case, that it was not chargeable both as an accident and as a life policy; that the condition 'D' providing for a return of premium was not even if it had stood alone a life insurance within the meaning of the statute, because it contained no obligation to pay any definite sum, but in any case that on a fair construction of the instrument as a whole, it was substantially a sickness and accident policy and nothing more; that the said condition was entirely subsidiary to the main purpose of the instrument, and was no more chargeable with the separate duty as a life insurance than were the other conditions in the instrument chargeable with a separate duty as agreements. The Corporation therefore required the said Commissioners to state and sign the case on which the question with respect to such stamp-duty arose, together with their determination thereon, which the Commissioners do hereby state and sign accordingly.

The question for the opinion of the Court is whether the said instrument, in the circumstances above set forth, is liable to be assessed and charged with the said Accident Insurance Policy Duty of 1d. and the Life Insurance Policy Duty of 3d. in terms of the foresaid Act, or with the said Accident Insurance Policy Duty of 1d. only, or if not liable to be assessed and charged with both or either of these duties, with what other duty it is liable to be assessed and charged."

Argued for the appellants—In the instrument in question there were none of the essentials which are found in a life assurance policy proper. There was here (1) no contract of hazard, (2) no provision for the payment of a sum certain in the event of death, and (3) no relation between the sum certain and the annual premium to be paid by the person insured. It was true that in certain events the Corporation undertook to make certain payments to the assured or his representatives, but such payments were really rebates. There was here no risk run to get back a capital sum. The following authorities were referred to—*Dalby v. The India and London Life Assurance Company*, 15 C.B. 365, at p. 387; *Fryer v. Morland*, (1876) L.R. 3 Ch. Div. 675, per Jessel, M.R., at p. 685; *Mortgage Insurance Corporation, Limited v. Commissioners of Inland Revenue*, (1887) L.R. 20 Q.B.D. 645, aff. 31 Q.B.D. 352; *Lancashire Insurance Company v. Commissioners of Inland Revenue*, [1899] 1 Q.B. 353; *Prudential Insurance Company v. Commissioners of Inland Revenue*, [1904] 2 K.B. 658; Porter's Laws of Insurance, pp. 1-19.

Argued for the respondents—The instrument was really a composite policy. Primarily no doubt it was an accident policy, but inasmuch as it contained an obligation to do or pay something in the event of an occurrence dependent upon a life it must also be regarded as a policy of life insurance—*Prudential Insurance Company*, (*cit. supra*), per Channell, J.

At advising—

LORD PRESIDENT—The question arising in this stated case is as to what stamp should be affixed upon the policies of a certain General Accident Insurance Company. The policy before your Lordships is one in common form used by that company. By the provisions of the schedule of the Stamp Act of 1891 there is charged upon a policy of insurance against accident the sum of one penny. There is also charged in the same schedule, in respect of a policy of life assurance, a sliding scale—where the sum assured does not exceed £10 one penny, where it exceeds £10 and does not £25 threepence, and so on. In regard to the present policy it has been determined by the Commissioners of Inland Revenue that it ought to be stamped with a stamp of fourpence, that is to say, one penny as an accident policy and threepence as a life policy for a sum exceeding £10 but not exceeding £25. It is against that determination that this stated case is brought, the contention of the Insurance Company being that the instrument in question is sufficiently stamped with one penny appropriate to an accident policy. The matter of course turns on the instrument. Now, the policy of insurance in question is in this form—it recites that a payment of 2s. 6d. has been made at twelve o'clock noon on the 1st of September, and in respect of that the Insuring Corporation, Limited, bind themselves to pay the sums thereafter mentioned—[reads provisions A, B, and C in policy]. Then there are certain other stipulations with which I need not trouble your Lordships, and then comes the clause upon which really the whole matter turns. It is headed D, and is to the following effect—[reads clause D]. I ought to explain, to make the whole matter completely intelligible, that although the original premium is only 2s. 6d. for a month, there is a provision for an extension of the whole stipulations of the policy provided that another 2s. 6d. is paid in each successive month. Now, the provisions of the Stamp Act which deal with this are these. First of all, there are the two clauses in the schedule which I have already recited, and then there are a few other sections. Section 91 determines that “For the purposes of this Act the expression ‘policy of insurance’ includes every writing whereby any contract of insurance is made, or agreed to be made, or is evidenced; and the expression ‘insurance’ includes ‘assurance.’” It is evident that that section really does not take the matter much further, because it relegates us to what may be called the common law knowledge of what a contract of insurance is. Then the policies of insurance are distinguished. Section 98 defines what is a policy of life insurance—“For the purposes of this Act the expression ‘policy of life insurance’ means a policy of insurance upon any life or lives, or upon any event or contingency relating to or depending upon any life or lives, except a policy of insurance against accident,” &c. It does not seem to me that these definitions in the statute go far towards the ascertainment of this

question, because, after all, we are relegated to what may be called our common law knowledge of what these contracts of insurance are. Now, it seems to me that when we are come to the schedule, the general scheme of the Stamp Act may be said to charge duties upon different instruments of a certain known character, and if an instrument falls within that character, then the duty that is in the schedule is to be charged upon it, and in general no other duty. I can best explain what I mean by the following example. As your Lordships are very well aware, there is a sixpenny duty for any agreement, but supposing a particular instrument falls under the category that is denoted in the schedule, and is stamped with an appropriate stamp under its provisions, nobody ever supposed that you could therefore go on and say that it must always also be stamped with a sixpenny agreement stamp, because as matter of fact in the instrument there are many things which, taken by themselves, might be said to be, and indeed are, agreements. Accordingly the first thing that I think we have to discover is what is the general character of this instrument before us. Now, as to that, I do not think there can be any doubt. There is no doubt that it is an accident policy, and indeed the Inland Revenue concede that, because they propose that it should be stamped with a penny stamp. Now, I am not for one moment saying that you might not have upon the same piece of paper some other instrument so tacked on or incorporated that while it was on the same piece of paper yet it would not lose its distinctive character; and that a company or individual could contract with another person in one deed by which they should effectuate both a policy against accident and also a policy of life insurance I do not doubt. But the point is, has that been done here? Now, I cannot think of any better test—at the same time I think it is a true one—than to take the second so-called contract and see if it would stand alone; that is to say, to use the current expression, whether it would stand upon its own feet. Looking at what is said to be the contract of life insurance here, and testing it by that test, I have no hesitation in saying that it would not. The clause which I have read would be a meaningless contract of life insurance if it were not for what had gone before, and accordingly the result on my mind is this, that that clause does not, in any true sense of the word, constitute a contract of life insurance at all, and that it is merely a stipulation for a reduction of the premiums in certain events.

Accordingly I have come to the conclusion that the determination of the Commissioners is wrong, that this policy is truly an accident policy and nothing else, and that it is appropriately stamped if it bears a one penny stamp.

LORD M'LAREN—It is quite conceivable that in an instrument or policy two separate contracts might be made which were re-

spectively chargeable with different rates of duty. If the same policy were to insure a ship against the perils of the sea, and also to insure the fidelity of the master or the supercargo, I should not doubt that these two obligations were separately stampable; but there are in almost every deed collateral obligations incidental to the main purpose of the deed, which, if one could conceive of them standing alone, might fall under some other denomination of liability to stamp duty. Now it follows, therefore, that what we have to consider here is whether there is a separate and independent contract of life insurance, or whether we have merely a provision which may benefit the party during his life but which is truly incidental. I agree with your Lordship that the latter is the true view of this instrument, and for the reasons which your Lordship has stated. I was specially influenced by this, that the provision upon which the Board of Inland Revenue found is a provision for return of a proportion of the premiums at a definite age, provided that no claim has previously been made against the company in respect of death, sickness, or accident. That condition could have no meaning apart from the main purpose, and therefore I must hold that it is collateral to that purpose, and that it is not intended as a separate and independent obligation.

LORD KINNEAR—I concur.

LORD PEARSON was not present.

The Court pronounced this interlocutor:—

“Find that the instrument referred to in the case is liable to be assessed and charged with the Accident Assurance Policy Duty of 1d. only, and is not liable to be assessed and charged with the Life Assurance Policy Duty of 3d., and therefore order the sum of 3d., being the excess of duty paid by the appellants, to be repaid to them by the Commissioners of Inland Revenue, and decern.”

Counsel for the Appellants—Guthrie, K.C.—Constable. Agents—Simpson & Marwick, W.S.

Counsel for the Respondents—The Solicitor-General (Clyde, K.C.)—A. J. Young. Agent—P. J. Hamilton Grierson, Solicitor of Inland Revenue.

Friday, February 9.

FIRST DIVISION.

[Lord Ardwall, Ordinary.

GUTHRIE v. GUTHRIE.

(Case reported by Lord Ordinary to Inner House.)

Parent and Child—Custody of Child—Failure of Divorced Spouse to Deliver Child—Application for Warrant to Officers of Law to Take Child into Custody—Warrant to be Granted by Inner House—Administration of Justice.

In an action of divorce at the instance of a husband against his wife, the Lord Ordinary granted decree and found the pursuer entitled to the custody of a female pupil child, the only child of the marriage. The defender having left the house where she had been residing, taking the child with her, and no information as to her whereabouts being obtainable by the pursuer, he applied to the Lord Ordinary to grant warrant to officers of law to take the child into custody and deliver her to him.

The Lord Ordinary being of opinion that the order craved could not competently be pronounced in the Outer House, reported the case to the First Division.

The Court, in the circumstances stated by the Lord Ordinary, pronounced the interlocutor craved, but was of opinion that it could not competently have been pronounced in the Outer House. *Leys v. Leys*, July 20, 1886, 13 R. 1223, 23 S.L.R. 834, *followed*.

In an action of divorce for adultery at the instance of Alexander Hunter Guthrie, grocer's assistant, 13 Tolbooth Wynd, Leith, against Mrs Margaret Little or Guthrie his wife, then residing with her mother at 50 West Bowling Green Street, Leith, the Lord Ordinary (ARDWALL) on 27th January 1906 pronounced decree of divorce, and found the pursuer entitled to the custody of Agnes Little Guthrie, the only child of the marriage. At the date of the decree the said child was nearly four years of age.

The defender having failed to deliver the child the pursuer applied to the Lord Ordinary for a warrant to officers of law to take the child into custody wherever it might be found and to hand it over to him.

On 9th February 1906 the Lord Ordinary reported the case to the First Division.

His Lordship stated that since the date of the decree complaint had been made by the pursuer that he had been unable to obtain the custody of his child; that for reasons stated by the defender's counsel he (his Lordship) had twice continued the case and appointed a place and date at and on which the child should be handed over to the pursuer; that the pursuer went on the date specified to the place appointed for delivery, but the defender failed to appear or to hand over the child; that on