HOUSE OF LORDS.

Wednesday, April 8.

(Before the Lord Chancellor (Loreburn), Lord Ashbourne, Lord Macnaghten, Lord James of Hereford, Lord Robertson, Lord Atkinson, and Lord Collins.)

GENERAL ACCIDENT ASSURANCE CORPORATION, LIMITED *v.* INLAND REVENUE (M'GOWAN, SURVEYOR).

(In the Court of Session June 4, 1907, 44 S.L.R. 792, 1907 S.C. 1004.)

Revenue—Income Tax—Insurance Company—Profits—Deductions—Insurance other than Life—Unexpired Risks.

In calculating, for the purposes of income tax, a year's profits, a company carrying on the business of fire, accident, and guarantee assurance is not entitled to make a deduction from the balance of receipts over payments, in respect of risks which have not expired at the end of the year.

This case is reported *ante ut supra.*

The General Accident Assurance Corporation, Limited, appellants, appealed to the House of Lords.

At delivering judgment—

LORD CHANCELLOR—In this case the appellants, a fire and accident insurance company, appeal against an assessment for income tax. The Commissioners arrived at the assessment by calculating income as the balance of receipts from premiums and other unquestioned sources over payments made in respect of losses and other unquestioned deductions. This balance they treat as the company's income for each of the three preceding years, and thence derive the average for which they assess the appellant company in respect of the year 1905-6.

On the other hand the company claim that an allowance should be made for unexpired risks in the way following. They say that 33⅓ per cent. of the premiums received in any one year, say 1903, represents that part of the risk covered by such premium which runs on into the following year. Accordingly they seek to deduct from the gross income of, say 1903, 33⅓ per cent. of the premiums received in that year because it really represents the money they earn for taking risks which run on into 1904. But at the same time they add to the gross income of 1903 33⅓ per cent. of the premiums received in 1902, upon the ground that 1903 has in fact borne that proportion of the risks paid for in 1902.

Now, in my opinion, there is one sufficient reason for rejecting this contention. It is not found, as a fact, that 33⅓ per cent. does represent the real value of the risks that run on into 1904 in respect of premiums received in 1903. I am not prepared to assume that it is so, for all the statement of the Commissioners that it is the practice of insurance companies to estimate 33⅓ per cent. as the proper figure to represent that value. We are not told either for what purpose such an estimate is made, or that it corresponds with the reality. If I am to conjecture, I should incline to the view that this percentage is very far from the proper figure. For if this estimate be accepted, then in the three years 1902, 1903, and 1904, taken together, the total profit of this company, making certain deductions, was £15,338—whereas we know that for its own purposes the total profit, after the same deductions, was treated by the company as £62,850—and dividends were paid and moneys carried to reserve on that footing.

During thirty-two years, since the decision of *Wilson's* case (35 L.T.R. 271), the method of assessing fire and accident companies has been that adopted by the Commissioners in the present case. It is not scientifically unassailable, for it obviously proceeds upon the supposition that the unexpired risks at the beginning and at the end of such year are in substance the same, or that if an average of three years is taken they are upon an average the same. But no method is scientifically unassailable that does not enter into an analysis of the contracts made and contracts current in each year so minute that it is in a business sense impracticable. I think the particular correction sought by the appellants in this case is quite indefensible upon the materials before us, and further that the method adopted by the Commissioners is a good working rule in the present instance and generally. If in any particular case an insurance company can show it works hardship, no doubt the rule ought to be modified, so that the real gains and profits may be ascertained as near as need be. I am for dismissing this appeal with costs.

LORD ASHBOURNE—I concur with the Lord Chancellor.

LORD MACNAGHTEN—I think your Lordships would probably agree with Mr Danckwerts in thinking that the present mode of assessing the profits of a fire insurance company for the purpose of the income tax is neither accurate nor scientific. But it has been established for a very long time. It is very simple, and it does not appear that in the long run it is productive of injustice. The alternative mode first proposed by the learned counsel for the appellants is certainly not more accurate. The inquiry afterwards suggested would, I think, be interminable. It is impossible to obtain anything approaching complete accuracy by any conceivable method. In a somewhat similar case—it was a rating case—Mr Justice Blackburn delivering the judgment of the Queen's Bench, after stating that the Court had endeavoured to lay down a rule more satisfactory than the one then in force, makes the following observations:—"We have not, however, succeeded in laying down a rule which would be consistent with the existing legislation and decisions on this subject and would at the same time be capable of being satisfactorily

worked, and we are strongly impressed with the importance of not unsettling the law as established by past decisions where we cannot lay down a rule that is not open to exception" (12 Q.B.D.).

I think there is much good sense in that observation, and I think it is apposite to the present case.

I think the appeal must be dismissed.

LORD JAMES OF HEREFORD—I concur.

LORD ROBERTSON—I concur.

LORD ATKINSON—I agree.

LORD COLLINS—This is, in effect, an appeal after 32 years from the decision of the Court of Exchequer in 1876 in the case of the *Imperial Fire Insurance Company* v. *Wilson*, 35 L.T. 271. In my opinion the proposed method of taking the accounts of the insurance company is open to the same objections that prevailed in that case, which has been acted upon in the interval. I am far from satisfied that it arrives at a result at all more approximately accurate than the less complex method suggested by the Legislature itself and adopted by the Commissioners. I am of opinion, therefore, that the appeal should be dismissed.

Appeal dismissed with costs.

Counsel for the Appellants—Danckwerts, K.C.—Constable—Beyfus. Agents—Bonar, Hunter, & Johnstone, W.S., Edinburgh—Smiles & Company, London.

Counsel for Respondents—The Attorney-General (Sir W. S. Robson, K.C., M.P.)—The Solicitor-General (Alex. Ure, K.C., M.P.)—Munro. Agents—Solicitor of Inland Revenue for Scotland (P. J. Hamilton Grierson), Edinburgh—Solicitor of Inland Revenue for England (Sir Francis C. Gore), London.

Monday, May 25.

(Before the Lord Chancellor (Loreburn), Earl of Halsbury, Lord Ashbourne, Lord Robertson, and Lord Collins.)

TRAIN *v.* BUCHANAN'S TRUSTEE (CLAPPERTON).

(In the Court of Session, February 5, 1907, 44 S.L.R. 371, 1907 S.C. 517.)

Trust—Faculties and Powers—Direction to Trustees to Pay "either the Whole or only a Portion of the Annual Revenue" to Beneficiary—Exercise of Discretion.

A testator directed his trustees to hold a certain sum and to pay to a beneficiary during his lifetime "either the whole or only a portion of the annual revenue thereof, and that subject to such conditions and restrictions, all as my trustees in their sole and absolute discretion think fit"; and on the beneficiary's death to pay to his children the sum "with any revenue accrued thereon that has not been paid" to the beneficiary; failing such children the sum "and accumulations of revenue, if any," fell into residue. The trustees from time to time paid the beneficiary some very small sums. The beneficiary having assigned his interest in the trust, the assignee brought an action to obtain the unpaid balance of revenue on the ground that the trustees had never exercised the discretion given them to restrict the amount to be paid, and consequently that the whole annual revenue had become the property of the beneficiary.

Held, in the circumstances of the case, that the trustees had exercised the discretion conferred upon them.

This case is reported *ante ut supra*.

Train, the pursuer and respondent in the Court of Session, appealed *in forma pauperis* to the House of Lords.

At the conclusion of the appellant's argument, the respondent not being called upon—

LORD CHANCELLOR—I will not occupy your Lordship's time with this appeal, because it rests upon the statement of the appellant that the trustees who had the misfortune to be saddled with this duty have not exercised a discretion, or, at any rate, have not exercised a reasonable and sound discretion. I think your Lordships are satisfied that they have exercised a discretion; whether it was reasonable or sound I cannot possibly judge, because the facts are not before us, but it looks to me very like a most sound and reasonable discretion.

LORD ASHBOURNE—I quite agree.

LORD ROBERTSON—I concur.

LORD COLLINS—I agree.

Appeal dismissed.

Counsel for the Appellant—Munro—A. A. Fraser. Agents—A. W. Gordon, Edinburgh—Herbert G. Davis, London.

Counsel for the Respondent—Younger, K.C.—C. H. Brown. Agents—F. J. Martin, W.S., Edinburgh — Robbins, Billing, & Company, London.