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No. 58 of 1930.

APPELLANT'S CASE.

In the Privy Council

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 *Appellant*

AND

10 THE SUPERINTENDENT OF INSURANCE *Respondent*

CASE FOR THE APPELLANT.

RECORD

1. This is an appeal by special leave from a Judgment of the Exchequer Court of Canada rendered on the 18th day of June, 1929, which confirmed the ruling of the Superintendent of Insurance as shewn by his Certificate dated the 22nd day of March, 1929, that the authorised capital of the Appellant Company on the 31st day of December, 1927, was and was limited to \$2,000,000 whereas the Appellant contends that it was 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 of Canada rendered on 10th day of April, 1930, dismissing by a majority of three Judges to two (Anglin C. J., Newcombe and Cannon JJ., Duff and Smith JJ. dissenting) the Appeal to that Court from the judgment of the Exchequer Court.

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2. In the Supreme Court of Canada 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 Appellant and that the Appeal should be dismissed. New-

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p. 54. combe J. concurred in the conclusion reached by Anglin C.J., and Cannon J. without stating in which conclusion. 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 Appellant.

3. The question involved in the Appeal is whether an increase of the Appellant's capital from \$2,000,000 to \$3,000,000 has lawfully been made, and whether the Appellant can further increase it to \$4,000,000.

4. The Appellant was incorporated under an Act of the Parliament of the late Province of Canada 28 Vic. Ch. 43 (1865) with power to engage in all kinds of insurance business. Its capital and powers are defined in this and subsequent amending Acts referred to particularly in paragraph 9 hereof.

5. 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 Appellant.

pp. 64-65. 6. The question raised on the Appeal arises in the following manner:—The Insurance Act of Canada Ch. 101 of the Revised Statutes of Canada (1927) by Sections 30 and 31, provides that certain insurance companies, of which the Appellant is one, shall deposit in the Department of Insurance after the end of each year a statement of its condition and affairs for that year, including the amount of joint stock capital authorised. Section 68, ss. 2 of that Act, directs the Superintendent of Insurance to make in his annual report to the Minister of Finance all necessary corrections to the said annual statement. The Appellant filed its statement for the year 1927, stating therein that its authorised capital was \$4,000,000. The Respondent in his report to the Minister made what he considered to be the necessary correction to the Appellant's statement, viz.: that its authorised capital was \$2,000,000 and on the 22nd of March, 1929, the Respondent made a formal ruling to that effect under the provisions of Section 68, ss. 6 of the said Act. 30

pp. 3-4

p. 5. 7. The Appellant appealed from this ruling of the Superintendent to the Exchequer Court of Canada under the provisions of Section 68 (5) of the Insurance Act. The learned Judge of the Exchequer Court, by a judgment dated the 18th day of June, 1929, confirmed the ruling of the Respondent.

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8. The Appellant appealed from the said judgment of the Exchequer Court to the Supreme Court of Canada and the latter Court rendered judgment dated the 10th day of April, 1930, as stated in paragraph 2 hereof and dismissed the Appeal. p. 46.

9. The following sections from the Appellant's Special Acts are pertinent to the question at issue :—

The Act of 1865 (28 Vic. Cap. XLIII).

* * * *

10 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.

* * * *

20 6. 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 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.

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The Act of 1870 (33 Vic. Cap. LVIII).

40 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.

* * * *

3. The business of Life and Accident Assurance, which the said Company is authorised 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." 10

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.

* * * *

6. The general business which the said Company is authorised 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." 20

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."

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. 30

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. 40

* * * *

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.

* * * *

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.

The Act of 1871 (34 Vic. Cap. LIII).

*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 :—

10 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.

20 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.

10. A further amending Act was passed in 1882 (45 Vic. Ch. 100) whereby the Appellant’s name was changed to its present name of the “ Sun Life Assurance Company of Canada,” but no provisions material to the question now raised are contained therein, nor in a further amending Act in 1897 (60 & 61 Vic. Ch. 82).

11. Sub-sections 5 and 6 of Section 68 of the Insurance Act (R.S.C. 1927, cap. 101) are as follows :—

Appeal to Exchequer Court.

30 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.

Procedure on Appeal.

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

12. The Appellant in fact never engaged in any insurance business other than that of life and accident and for many years past has engaged

only in life assurance. Moreover, by the amending Act of 1871 (34 Vic. Ch. 53) Section 3, the Appellant ceased to have the power to engage in any insurance business other than that of life and accident.

p. 63. **13.** Acting on its views that, under the express terms of the Acts of 1865, 1870 and 1871 referred to in Clause 9 hereof, it had power by resolution of the stockholders to increase the capital stock from \$1,000,000 to \$4,000,000 in sums of not less than \$1,000,000, the Appellant prior to the 8th February, 1927, had issued capital stock to the extent of \$2,000,000. By a Bye-law enacted by the Board of Directors of the Appellant on the 8th February, 1927, unanimously approved, ratified, confirmed and enacted by its stockholders, at a special meeting expressly convened for that purpose pursuant to the provisions of Section 2 of the Act of 1865, the Appellant authorised the increase of its capital stock to \$3,000,000 by the issue of Ten thousand additional shares of \$100 each. When however, the Appellant deposited with the Department of Insurance in accordance with the Insurance Act a statement as at 31st December, 1927, that the amount of its authorised capital was \$4,000,000, the Respondent altered the said statement and ruled that the Appellant's authorised capital stock was and was limited to \$2,000,000. 10

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p. 25. **14.** Both the Respondent and the learned Judge of the Exchequer Court have held that the Appellant's capital cannot be increased beyond \$2,000,000, i.e., the part of the capital of the Appellant which by the 1870 Act the Appellant was authorised to allocate to that part of its business then intended to constitute the Life Branch. Chief Justice Anglin and Mr. Justice Cannon held that the Supreme Court was without jurisdiction and also expressed the opinion that the ruling of the Respondent was right. Mr. Justice Newcombe concurred in the conclusion, i.e., that the Appeal to the Supreme Court should be dismissed, without saying whether because of want of jurisdiction or because he disagreed with Appellant on the merits. Mr. Justice Duff, with whose judgment 30

pp. 54-61. Mr. Justice Smith concurred, held that the Supreme Court had jurisdiction and that the Appeal should be allowed on the merits.

p. 60. 1.9. **15.** Mr. Justice Duff was of opinion that as the intention of the Act of 1871 clearly was that the system of the Act of 1870 by which the business of the Company was divided into separate compartments should disappear, all the devices which had been conceived for giving effect to that system lost their utility including the enactment that the initial capital of \$1,000,000 should be applied to the Life Branch but that the provision of Section 1 of the Act of 1870 whereby the capital 40

p. 61. 1.2. might be increased to \$4,000,000 remained unaffected by the Act of 1871. The learned Judge added that if the intention of the Act of 1871 had been to reduce the capital provided for by the Act of 1870 to \$2,000,000 he would have expected to find such an intention expressed.

16. The Appellant respectfully submits that the judgment of Mr. Justice Duff is right. Before the Act of 1870, the Appellant had power to engage in the two kinds of insurance as defined by that Act, and the purpose of the allocation of the Appellant's capital to two separate branches of its business in the 1870 Act was clearly to provide security for each branch separately from the other rather than to limit the amount of capital which might be employed in the business as a whole. The Appellant never did engage in the "general" business and in the next year 1871 it ceased to have the power. The Act of 1871 repealed the sections of the Act of 1870 inconsistent with it, including, the Appellant submits, those sections which provide for the allocation to the different branches of specific portions of the Appellant's capital and removed any limitation on the capital engaged in the Appellant's business of life assurance other than that contained in the first section of the 1870 Act, viz. :—

" . . . the capital stock of the said Company shall be \$1,000,000 with power to the said Company to increase the same under the provisions of the said Act (*i.e.*, the original incorporating Act) in sums of not less than \$1,000,000 to a sum not exceeding \$4,000,000."

17. The Appellant respectfully submits that the judgment of the Exchequer Court of Canada dated the 18th June, 1929, and the judgment of the Supreme Court of Canada dated the 10th April, 1930 in so far as it may have confirmed the judgment of the Exchequer Court, are wrong and ought to be reversed for the following among other

REASONS.

1. Because by its Act of Incorporation of 1865 the Appellant was authorised to increase its capital to \$4,000,000, and it has never been deprived of that authority.
2. Because the Act of 1870 re-enacted the power of the Appellant to increase its capital to \$4,000,000 but provided that such increase should be by sums of not less than \$1,000,000.
3. Because the appropriation directed by the Act of 1870 of portions of the Appellant's capital to particular

branches did not deprive the Appellant of its power to increase its total authorised capital to \$4,000,000.

4. Because the Act of 1871 by limiting the nature of the Appellant's business did not affect its power to increase its total authorised capital to \$4,000,000.
5. Because the provisions of Section 1 of the Act of 1870 are not inconsistent with the provisions of the Act of 1871.
6. Because the provisions of Sections 4, 6, 7, 8, 9 and the last clause of Section 11 and Section 12 of the Act 10 of 1870 are inconsistent with the provisions of the Act of 1871 and are therefore repealed.
7. Because Section 4 of the Act of 1871 repealed Section 4 of the Act of 1870 but did not repeal Section 1 of the said Act.
8. Because the Act of 1871 did not effect any reduction in the Appellant's authorised capital and, therefore, the Appellant's right to increase its capital to \$4,000,000 remained.
9. Because the reasons for his judgment given by Mr. 20 Justice Duff and concurred in by Mr. Justice Smith in the Supreme Court are correct.

JOHN SIMON.

GEOFFREY LAWRENCE.

J. A. EWING.

No. 58 of 1930.

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

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RULING OF THE SUPERINTENDENT OF INSURANCE.

BETWEEN

THE SUN LIFE ASSURANCE
COMPANY OF CANADA ... *Appellant*

AND

THE SUPERINTENDENT OF
INSURANCE *Respondent.*

Case for the Appellant.

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