1930
*Feb. 21.
*Apr. 10.

THE SUN LIFE ASSURANCE COMPANY OF CANADA (APPELLANT IN THE EXCHEQUER COURT) ..... } APPELLANT;

AND

THE SUPERINTENDENT OF INSURANCE (RESPONDENT IN THE EXCHEQUER COURT) ..... } RESPONDENT.

ON APPEAL FROM THE EXCHEQUER COURT OF CANADA

Appeal—Jurisdiction—Appeal from ruling of Superintendent of Insurance—Amount in controversy—Curia designata—Construction of s. 82, Exchequer Court Act—S. 46 (c) of the old Supreme Court Act—Insurance—Capital—Increase—Construction of statutes—Insurance Act, R.S.C., ~~1906~~, c. 101, s. 68 (2) (5) (6)—Exchequer Court Act, R.S.C., ~~1906~~, c. 34, ss. 82, 83.

In 1865, the appellant company was incorporated by an Act of the late province of Canada (28 V., c. 43), with power to carry on the business of insurance generally (s. 6), its capital was fixed at two million dollars and provision was made for its increase to four million dollars. By an amending Act of 1870 (35 V., c. 58, s. 1), the capital was reduced to one million dollars with power to increase the same, in sums of not less than one million dollars, to a sum not exceeding four million dollars. The business of the company was to be carried on in two distinct branches: Life and Accident insurance business to be known as the Life Branch and other forms of insurance to be known as the General Branch business. The capital stock of one million dollars was to apply to the Life Branch only, with power to increase the same to two million dollars; and authority was given to raise one million dollars for the purposes of the General Branch business with power to increase the same to two million dollars. In 1871, the powers of the company were by statute (34 V., c. 53) "restricted to Life and Accident insurance" (s. 3) and it was further provided (s. 4) that "All provisions of the Act of Incorporation of the said company, and the Act amending the same which are inconsistent with the provisions of this Act, are hereby repealed." In its report to the Department of Insurance the company stated its capital to be four million dollars, and the Superintendent of Insurance ruled that it could only be two million dollars and, exercising the power conferred by s. 68 (2) of the *Insurance Act*, R.S.C., 1906, c. 101, amended the report accordingly. The appellant consequently appealed to the Exchequer Court of Canada under the provisions of subsections 5 and 6 of s. 68 of the *Insurance Act* and the ruling of the Superintendent of Insurance was upheld by that court. Hence the present appeal.

Held, Duff and Smith JJ. dissenting, that the capital of the appellant company for Life and Accident insurance business was fixed at two million dollars by the Act of 1870 and had not been altered by sub-

*PRESENT:—Anglin C.J.C. and Duff, Newcombe, Smith and Cannon JJ.

sequent legislation. The ruling of the Superintendent of Insurance was consequently upheld and the appeal was dismissed with costs.

Per Anglin C.J.C. and Cannon J.—There is 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 the repealing section (s. 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. As a consequence of the company's activities being so restricted, s. 2 of the Act of 1865 and s. 1 of the Act of 1870 should be deemed to have been *pro tanto* repealed, or so modified by s. 3 of the Act of 1871 that the total authorized capital of the company shall be two million and not four million dollars.

Per Duff and Smith JJ. dissenting: Section 1 of the Act of 1870, which authorizes the increase of capital to four million dollars, must be given its full effect as there is nothing in it inconsistent with any enactment of the Act of 1871; and, moreover, if the intention of Parliament had been to reduce the capital to two million dollars, such intention should have been expressly stated.

Per Anglin C.J.C. and Cannon J.—The Supreme Court of Canada is without jurisdiction to entertain this appeal. 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 (ss. 82 and 83 of the *Exchequer Court Act*). Moreover, by giving under subs. 5 of s. 68 of the *Insurance Act* a right of appeal to the Exchequer Court "in a summary manner" from the ruling of the Superintendent of Insurance, the Parliament intended to make that court *curia designata* for the purpose of supervising acts of an official and the summary jurisdiction to be thus exercised by the court so designated should be final and conclusive.

Per Duff and Smith JJ.—An appeal lies to this court from the judgment of the Exchequer Court. The right of appeal from that court does not exist only when the judicial proceeding involves a pecuniary demand: the construction of s. 82 of the *Exchequer Court Act* should be determined by the decisions rendered by this court under s. 46 (*c*) of the old *Supreme Court Act;* and it has been held that, when the matter in controversy was, for example, the right to pass a by-law and so to nullify a contract, there was jurisdiction if the right immediately involved amounted to $2,000. Moreover, the proceeding in the Exchequer Court was a "judicial proceeding" and the adjudication by that court was a "judgment" within the meaning of sections 82 and 83 of the *Exchequer Court Act.*

Judgment of the Exchequer Court of Canada ([1930] Ex. C.R. 21) affirmed, Duff and Smith JJ. dissenting.

APPEAL from the judgment of the Exchequer Court of Canada (1), affirming the ruling of the Superintendent of Insurance which had amended the annual report of the appellant company made to the Department of Insurance under the provisions of the *Insurance Act.*

(1) [1930] Ex. C.R. 21.

1930

SUN LIFE ASSUR. CO. v. SUPERINTENDENT OF INSURANCE.

The material facts of the case and the questions at issue are fully stated in the above head-note and in the judgments now reported.

E. Lafleur K.C. and *J. A. Ewing K.C.* for the appellant.

L. Cannon K.C. and *F. P. Varcoe* for the respondent.

The judgment of Anglin C.J.C. and Cannon J. were delivered by

ANGLIN C.J.C.—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 authorized capital stock of the company, thus making the authorized 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 authorized capital stock from $4,000,000 to $2,000,000 was wrong.

Subsections 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.

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.

* * *

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, * * *

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.,

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* (1), 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 in the company. That amount

(1) [1925] Can. S.C.R., 364, at p. 367.

1930

SUN LIFE ASSUR. CO. v. SUPERINTENDENT OF INSURANCE.

Anglin C.J.C.

would, no doubt, exceed five hundred dollars. But the words, "the actual amount in controversy," 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 the particular statute which confers 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.

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

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

and provided for such appeal a special procedure.

That no appeal lies to this court where the court *a quo* has acted as *curia designata,* is well established. The appeal given in this case to the Exchequer Court is not unlike that given by the *Railway Act* from the award of an arbitrator fixing compensation for lands expropriated, where it is said that the courts which may be appealed to are "desig-

1930

SUN LIFE ASSUR. CO. v. SUPERINTENDENT OF INSURANCE.

Anglin C.J.C.

nated by the statute to be *special tribunals* * * *." See *James Bay Railway* v. *Armstrong* (1). See also *St. Hilaire* v. *Lambert* (2).

But while for these reasons, we are inclined to the opinion that this court is without jurisdiction to entertain this appeal, at least two of our learned brothers, we 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.

By its Act of Incorporation 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 (33 V., 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 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:

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."

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 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, main-

(1) 38 Can. S.C.R. 511, at p. 514. (2) 42 Can. S.C.R. 264.

tained, 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."

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, 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 claim 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 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.

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.

1930

SUN LIFE ASSUR. CO. v. SUPERINTENDENT OF INSURANCE.

Anglin C.J.C.

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

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

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

If, by the Act of 1871, the promoters of the appellant company intended to take authority for the issue of any amount of stock for life and accident insurance purposes in excess of the $2,000,000 authorized by the Act of 1870 to be used by it for these purposes, it was incumbent upon them to see that the restricting provisions of the Act of 1870 were clearly modified or repealed so as to permit of that being done. Indeed, if that was intended, 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.

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 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.

As a consequence of its activities being so restricted, s. 2 of the Act of 1865 and s. 1 of the Act of 1870 should be deemed to have been *pro tanto* repealed, or so modified by s. 3 of the Act of 1871 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.

NEWCOMBE J. agrees with the conclusion of the judgment of Anglin C.J.C.

1930

SUN LIFE ASSUR. CO. v. SUPERINTENDENT OF INSURANCE.

Duff J.

The judgment of Duff and Smith JJ. (dissenting) were delivered by

DUFF 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 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 Hydro-Electric Co.* v. *Shawinigan Water and Power Co.* (1), per Anglin J. at p. 662.

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

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

(1) (1910) 43 Can. S.C.R. 650.

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 conditions 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.

(Seal)

G. D. FINLAYSON,
Superintendent of Insurance.

The appeal to the Exchequer Court is given by section 68, subsections 5 and 6 of the *Insurance Act*, 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 the 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

1930

SUN LIFE ASSUR. CO. v. SUPERINTENDENT OF INSURANCE.

Duff J.

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.)

The pronouncement of the Exchequer Court in disposing of the appeal is treated as a "judgment" in subsection 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 consequently 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 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, subsection 2, which is in these words:

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 licence 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 licence 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, subsection 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 subsection 5 of section 68, in respect of which an appeal is given *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

1930

SUN LIFE ASSUR. CO. v. SUPERINTENDENT OF INSURANCE.

Duff J.

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.

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

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.

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.

The business of the company was to be managed as before by a board of directors with very extensive powers; and the shareholders 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.

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 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.

This enactment as a whole never went into practical operation; within a year (and before, as we were informed on argument, any capital had been suscribed) the substratum of the new scheme had been swept away by the third Act we have to consider, the Act of 1871. By that 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 un-

1930

SUN LIFE ASSUR. CO. v. SUPERINTENDENT OF INSURANCE.

Duff J.

dertaking is defined, and it is defined in this way, "The corporation hereby erected shall have *power and authority* to 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 "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 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 shews 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 was not affected 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 group of provisions beginning with the latter part of section 3 and extending to section 9. All these provisions presuppose a company the authorized business of which 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.

1930

SUN LIFE ASSUR. CO. v. SUPERINTENDENT OF INSURANCE.

Duff J.

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.

Appeal dismissed with costs.

Solicitor for the appellant: *J. A. Ewing.*

Solicitor for the respondent: *W. Stuart Edwards.*