

that the witnesses swore falsely." If a judgment is to be set aside, therefore, on the ground of fraud, it must be on allegations raising a distinct and separate issue on which a verdict may be obtained independently of any retrial of the question already decided. The proper order of procedure is clear. The pursuer must in the first place reduce the judgment he complains of on the ground of fraud, and it is only when that has been done that he can have his case tried over again. But the pursuer in this case simply seeks to revive the original dispute, and for that purpose repeats in his condescendence every single matter which was in controversy before. There is no reason whatever alleged for setting aside the judgment, except that on these matters the defender gave false evidence. But that was just the question the learned Judge had to decide in the former case, and on the pursuer's own showing his decision cannot be reduced without retrying the whole case. The proposal is not to reduce the judgment in order to retry the case, but to retry the case in order to reduce the judgment. The only averment which has any semblance of novelty is that the pursuer is now in a position to disprove a certain statement which was made by the late defender incidentally in the course of his cross-examination. He appears to have said that he heard of the sales in question by a telegram which he received from a person named; and the pursuer says he can now prove by the evidence of this person that this statement was false. I cannot see that, by itself, this would do much to help the pursuer's case. It would not prove that the judgment was obtained by fraud, because it appears from Lord Moncreiff's opinion that he did not give credence to that particular statement. But the conclusive answer is that the credibility of the defender's testimony on the one side and the pursuer's on the other was the very matter for decision in the former action; and it could not be decided otherwise in the present action by contradicting the defender on a single isolated point. The extent to which that should affect his credit cannot possibly be measured without trying the whole case over again. The importance of contradicting a witness may vary indefinitely. The contradiction may utterly discredit his testimony or it may leave him unshaken on all substantial matters. It seems to me therefore out of the question to propose that a judgment should be set aside on any such ground as that; and especially that it should be so set aside after the death of the defender, when the Court which *ex hypothesi* is to decide upon his credibility cannot have his testimony. This, however, was the point on which the claimer's counsel most strongly relied. Every other point resolved into a mere plea for a retrial. I am for adhering to the interlocutor of the Lord Ordinary.

LORD M'LAREN—I concur.

LORD PRESIDENT—I also concur in all that has been said. When the peculiarities of this particular case have been removed

the question that is really raised in it will be found to be a simple one. Litigation would be perfectly endless if judgments were to be set aside and cases reheard *ad infinitum* merely on the ground that the evidence formerly given was false, and so it has long been settled that it is no ground for reduction of a judgment delivered *in foro* that the evidence on which it proceeded was contrary to fact.

Therefore if reduction of a decree is to be obtained on the ground of fraud, it can only be where the fraud is something extrinsic to what happened in the former trial, and whether that can be made out is an issue of fact. Subornation of perjury is a plain issue of fact, and can be proved by examining witnesses as to what actually happened. But when it is the evidence of one of the parties himself that is said to be perjured, how are you to proceed to prove that he suborned himself to commit perjury? That question is an inquiry into what happened in the man's own mind, and that could not be proved by anything extrinsic to the former trial, but only by drawing an inference from what actually happened in the former trial. In other words, it would amount simply to going back to the old question that was decided in the previous trial, and that as I have said is not competent. I am therefore for adhering to the Lord Ordinary's interlocutor.

LORD PEARSON was not present.

The Court adhered.

Counsel for the Pursuers and Reclaimers—Crabb Watt, K.C.—Forbes. Agent—D. Howard Smith, Solicitor.

Counsel for the Defenders and Respondents—M'Clure, K.C.—Mackintosh. Agent—John Stewart, Solicitor.

Tuesday, February 6.

#### FIRST DIVISION.

#### GENERAL ACCIDENT ASSURANCE CORPORATION, LIMITED, PETITIONERS.

*Process—Petition—Remit to Reporter—Consideration of Report—Motion to Dispose of Petition in Single Bills—Intimation of Motion to be Made to Keeper of the Rolls.*

A party intending to move the Court to dispose in the Single Bills of an application which would in ordinary course be sent to the Summar Roll must intimate the motion to the Keeper of the Rolls, in order that the Court may have the opportunity of considering the matter beforehand.

On January 2, 1906, the General Accident Assurance Corporation, Limited, presented a petition to the Court under the Companies Acts 1862 to 1900, and especially under the Companies (Memorandum of Association)

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