

*Privy Council Appeal No. 58 of 1930.*

The Sun Life Assurance Company of Canada - - - *Appellants*

*v.*

The Superintendent of Insurance - - - - *Respondent*

FROM

THE EXCHEQUER COURT OF CANADA AND THE SUPREME  
COURT OF CANADA.

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JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL, DELIVERED THE 23RD JULY, 1931.

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*Present at the Hearing :*

VISCOUNT DUNEDIN.

LORD HANWORTH.

LORD ATKIN.

LORD RUSSELL OF KILLOWEN.

LORD MACMILLAN.

[*Delivered by* VISCOUNT DUNEDIN.]

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This is an appeal from a judgment of the Supreme Court which, by a majority, two Judges dissenting, confirmed a judgment of the Judge in the Exchequer Court which confirmed a ruling made by the Superintendent of Insurance as to the authorised capital of the Sun Life Assurance Company, the appellants before this Board. There was, at first, a question as to the jurisdiction of the Supreme Court to consider the judgment of the Exchequer Court Judge, but that question was given up and the only question argued before this Board has been on the merits of the case. It lies in a narrow compass and can be succinctly stated by setting out the sections of the statute on which it depends.

The Company was originally incorporated under the name of the Sun Insurance Company of Montreal by an Act of date 1865. The capital of the Company was stated as two million dollars, with power to increase to a sum not exceeding four million dollars, as the majority of the stockholders, at a meeting expressly called for the purpose, should determine. The business of the Company

was to undertake all classes of insurance. Nothing was done under this Act, no capital was subscribed, and the 1870 amending Act was passed. By that Act the capital was (Section 1) stated to be one million dollars "with power to the said company to increase the same, under the provisions of the said Act [*i.e.*, the original Act of Incorporation of 1865], in sums of not less than one million of dollars, to a sum not exceeding four millions of dollars." By section 3, the life and accident insurance business is to be maintained and prosecuted by the Company as a distinct branch of its business. Section 4 provides that the capital of one million dollars should be applied solely to the "Life Branch," but "may be increased under the terms of the Act of Incorporation to two million of dollars." Section 6 provides that the Company may transact general insurance business other than life and accident, and for those purposes capital of one million dollars may be raised with power to increase that capital to two millions. It is then provided that the two branches of business shall be kept quite separate, and finally, section 9 provides that the capital stock of the "Life Branch" and "General Branch" respectively shall be liable only for the losses incurred in each particular branch and entitled to the profits arising out of it.

Nothing again was done under this Act, and finally an Act of 1871 was passed. By that Act the name of the Company was changed and sections 3 and 4 are as follows :—

"3. The powers of the said Company are hereby restricted to Life and Accident Insurance.

"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."

The Company, after this Act, began business. At first they only raised two millions, but in 1927 they passed a by-law raising an additional million of capital. The Company has to deposit with the General Superintendent of Insurance an annual statement. This statement includes a statement of the authorised capital. The Company stated their authorised capital as four millions. The Superintendent deleted the figure 4 and inserted the figure 2. The sole question, therefore, is whether this alteration was warranted. The argument of the respondent which found favour with the majority in the Courts below was that by the Act of 1870, and especially section 4 thereof, the capital to be raised for life business could not exceed two million dollars, and that as there was nothing in this provision inconsistent with the statement in the Act of 1871 that the Company's business was restricted to life and accident insurance, the said section 4 remained unrepealed and restricted the capital of the Company to two million dollars. Their Lordships are of opinion that this view is not justified, because section 4 is not dealing with the fixing of capital, but solely with its application, the fixing of capital depending on section 1.

Section 1 is quite plain. The capital of the Company is to be one million dollars with power to increase it under the provisions of the original Act, that is, by meeting of shareholders as there expressed, to four millions. Then comes section 4, which provides that the original million is to be consecrated to life business only, but that consecrated sum may be increased to two millions; but the increase spoken of is the increase of such portion of the capital as is devoted solely to life business, the power to increase at all depending on section 1. Then follow sections which allow the application of further raised capital to general business, and the sections which provide for the complete independence of the two branches, the capital allotted to each branch being only liable for the losses in that branch. When the Act of 1871 was passed the whole idea of branches became inconsistent with the said Act because by it life and accident business became the only business of the Company. The idea of capital applications and appropriations thereby disappeared; but there was no inconsistency with section 1 of 1870, which described the capital which could be raised as one million, with power to rise to four millions by increments of not less than one million at a time.

For these reasons their Lordships, agreeing with the dissenting Judges in the Courts below, will humbly advise His Majesty to reverse the judgments of the Supreme Court and of the Exchequer Court and to remit to the former Court to direct the respondent to restore the figure of four millions in the return made by the appellants as the authorised capital of the Company.

The appellants must have their costs in both Courts below and before this Board.

In the Privy Council.

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THE SUN LIFE ASSURANCE COMPANY  
OF CANADA

vs.

THE SUPERINTENDENT OF INSURANCE.

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DELIVERED BY VISCOUNT DUNEDIN.

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