

THE SUN LIFE ASSURANCE COM- }
 PANY OF CANADA..... } APPELLANT;
 AND
 THE SUPERINTENDENT OF IN- }
 SURANCE } RESPONDENT.

1929
 May 21.
 June 18.

Insurance—Capital—Superintendent of Insurance—Powers of—Appeal

In 1865, the appellant company was incorporated by an Act of the late province of Canada, with power to carry on the business of insurance generally, and its capital was stated to be two million dollars, with power to increase the same to four million dollars. By an Act of Parliament of 1870, the capital was reduced to one million dollars with power to increase the same to four million dollars in sums of not less than one million dollars. The business of the company was to be carried on in two distinct branches Life and Accident Insurance business and 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; 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 restricted to Life and Accident Insurance, and it was further provided 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of the said company, and the Act amending the same, which are inconsistent with the provisions of this Act, are hereby repealed."

1929
 SUN LIFE
 ASSURANCE
 Co. OF
 CANADA
 v.
 SUPT. OF
 INSURANCE.

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 amended the report accordingly. Hence the present appeal.

Held, that the capital of the company for Life and Accident insurance business was fixed at two million dollars by the Act of 1870 and was not altered by subsequent legislation. The ruling of the Superintendent of Insurance was upheld, and the appeal dismissed.

APPEAL by the appellant, from the ruling of the Superintendent of Insurance, amending the annual report of the company made to the Department of Insurance under the provisions of the Insurance Act.

The appeal was heard before the Honourable Mr. Justice Maclean, President of the Court, at Ottawa.

Eugene Lafleur, K.C., and *J. A. Ewing, K.C.*, for appellants.

Lucien Cannon, K.C., and *F. P. Varcoe* for respondent.

The facts are stated in the reasons for judgment.

THE PRESIDENT, now (June 18, 1929), delivered judgment.

In 1865, the Sun Insurance Company of Montreal, now the Sun Life Assurance Company of Canada, was incorporated by statute enacted by the late province of Canada. By its charter the company was empowered to carry on the business of insurance generally, including fire, marine, accident, sickness, indemnity and life insurance. The capital of the company was therein stated to be two million dollars, with power to increase the same to four million dollars.

In 1870 the company's charter was amended in quite important particulars. The capital stock of the company was reduced to one million of dollars, with power to the company to increase the same, under the provisions of its charter, in sums of not less than one million dollars, to a sum not exceeding four millions of dollars. The business of Life and Accident Assurance, which was defined, was to be conducted as a distinct branch of the company's business under the corporate name of the company, with the addition thereto of the words "Life Branch." The capital stock of the company, one million dollars, was to be applied solely to the Life Branch of the company, but this amount might be increased under the terms of the charter of the

company, to two million dollars. The company was authorized to commence business of Life and Accident insurance when five thousand shares had been subscribed, and fifty thousand dollars paid in on account of the same to the Life Branch. The company was also authorized to transact fire, marine and guarantee insurance, and this class of insurance business was also to be conducted as a distinct branch of the business of the company, under the corporate name of the company, but with the addition thereto of the words General Branch. Authority was given by the Act to raise one million dollars for the capital purposes of the General Branch, which amount might be increased to two million dollars; when a certain amount of the capital stock of the company had been subscribed and allotted to the General Branch, the company was empowered to commence the insurance business included in this branch. The company was required to 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, losses, etc., under each of the said branches respectively. The capital stock of the company subscribed and allotted to the Life Branch and the General Branch respectively, was to be liable only for the expenses, losses and liabilities incurred by the branch to which the same had been allotted, and entitled only to the profits and claims arising from such branch. The failure of one branch of the company's business to meet its obligations, did not require the suspension of the business of the other branch, nor was the latter to be subject to the statutory law relating to insolvent companies.

In 1871, the Act incorporating the Sun Insurance Company of Montreal was further amended by an Act of the Parliament of Canada. The name of the company was changed to the Sun Mutual Life Insurance Company of Montreal. Nothing I think turns upon the introduction of the word Mutual into the corporate name. The important sections of this amending statute are two, and 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.

1929
 SUN LIFE
 ASSURANCE
 Co. OF
 CANADA
 v.
 SUPT. OF
 INSURANCE.
 Maclean J.

1929
 SUN LIFE
 ASSURANCE
 Co. OF
 v.
 CANADA
 SUPT. OF
 INSURANCE.
 Maclean J.

The company up to this time had not yet begun to do insurance business of any kind, and I understand it was subsequent to the passing of this amending Act that it did commence business.

In accordance with the requirements of the Insurance Act, the company deposited with the Department of Insurance, in February, 1928, its annual statement for the preceding year, in which the amount of its capital stock authorized as of the 31st day of December, 1927, was stated to be an amount in excess of two million dollars, namely four million dollars. The Superintendent of Insurance, in his Annual Report for the year 1927, made an alteration in the said annual statement of the company, by stating the authorized capital stock of the company as being two million dollars, and the Superintendent of Insurance made a ruling to the effect that the authorized capital stock of the company was limited to two million dollars for the reason that by the charter of the company its capital stock was limited to two million dollars, without power in the company to increase the same beyond that amount. Under the provisions of the Insurance Act, the Sun Life Assurance Company appeals to this court from the ruling and action of the Superintendent of Insurance, and it claims an order of the court declaring that its authorized capital stock on the 31st day of December, 1927, amounted to more than two million dollars, and that under the provisions of its Act of incorporation and amending Acts, it had an authorized capital of four million dollars; it also asks for a declaration that on the 31st day of December, 1927, the amount of its capital stock was three million dollars, by virtue of a by-law enacted by the Board of Directors of the company, and approved of by the shareholders of the company as required by its charter, increasing the capital to three million dollars.

I have very carefully considered the argument of counsel for the company, and every relevant provision of the various statutes which relate to the matter in dispute, and I have reached the conclusion that the ruling of the Superintendent of Insurance was correct, and that the capital stock of the company is two million dollars. It is quite true that the company, under its charter as originally enacted, was empowered to commence business with a capital

of two million dollars, which amount of capital might have been increased to four million dollars with the sanction of the company's shareholders; and it is equally true that the company might have restricted itself to life and accident insurance only. The capital structure of the company was however entirely changed by the Act of 1870. The purpose of the change is I think quite plain. It was proposed to conduct the business of the company in one or two separate branches, and to make available to each branch a maximum of capital of two million dollars, as and when required. Section 1 of this Act clearly was drafted having this in mind, as is readily to be observed upon a reading of the succeeding sections dealing with the capital to be employed by the two different branches. The capital of the Life Branch was definitely limited to two million dollars whether or not the General Branch ever came into existence. The scheme was to set up what was virtually two separate and independent insurance organizations with an authorized capital stock of one million dollars for each, with power to raise such capital to two million dollars in each case, there being a common reservoir, from which each branch might draw the amount of one million dollars each, and again another million each, if and when desired. If one branch did not go to the reservoir for its capital, that would not make authority for the other branch to absorb what the other did not elect to take. To do this, the authority would need to be very clearly expressed. The Act of 1871 restricted the business of the company to life and accident insurance, but there is no intimation whatever therein, of any intention to grant a greater capital than two million dollars for the conduct of such classes of insurance business. I do not think it was intended by sec. 4 of the Act of 1871 to repeal sec. 4 of the Act of 1870, which latter provision fixed the capital of the Life Branch at two million dollars, and I think it still stands. It is not inconsistent to say that though the proposed General Branch has been eliminated, that the other branch remains exactly as it was constituted under the Act of 1870. The Act of 1870 made provision for such an event. It was not imperative in the proposed scheme that the General Branch be ever established.

1929
 SUN LIFE
 ASSURANCE
 Co. OF
 CANADA
 v.
 SUPT. OF
 INSURANCE.
 Maclean J.

1929
 SUN LIFE
 ASSURANCE
 Co. OF
 CANADA
 v.
 SUPT. OF
 INSURANCE.
 Maclean J.

Upon a consideration of the statutory provisions which I have mentioned, I think it is quite plain that the ruling of the Superintendent of Insurance was a proper one, and that the provisions of the statutes relevant here permit only of the interpretation which he has given to them. It may well be that at the time of the enactment of the legislation of 1871, the company rested under the belief that its capital as authorized by the Act of 1865 incorporating the company, was being automatically restored; that may have been the intention of the legislature and it is probable it would then have expressly so enacted if requested so to do by the company, but when, as I think, the words of the statute admit of but one meaning, a court is not permitted to speculate on the intention of the legislature and to construe such words according to its notion as to what ought to have been enacted. That would be to make the law and not to interpret what the language of the legislature means. The question is not what the legislature meant, but what its language means. It is for the legislature alone to alter the statute. Accordingly I dismiss the appeal. Each party will bear its own costs of the appeal.

Judgment accordingly.