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June 28, 29.

PRUDENTIAL INSURANCE COMPANY, APPELLANTS *v.* COMMISSIONERS OF INLAND REVENUE, RESPONDENTS.

Revenue—Stamp—"Policy of Life Insurance"—Old Age Endowment Policy —Stamp Act, 1891 (54 & 55 *Vict. c.* 39), *s.* 98.

An instrument whereby it is contracted that, in consideration of the payment by a person of a weekly premium of 6*d.*, a sum certain is to be paid to him on his attaining the age of sixty-five, or, in the event of his dying under that age, a smaller sum is to be paid to his executors, is a policy of insurance upon a contingency depending upon a life within the meaning of s. 98 of the Stamp Act, 1891.

Semble, that even if the portion of the said contract relating to the payment of money to the assured on his attaining the age of sixty-five stood alone, it would be a policy of insurance upon a contingency depending upon a life within the said section.

CASE stated by Commissioners of Inland Revenue.

On January 13, 1904, an instrument was presented on behalf of the appellants to the Commissioners of Inland Revenue under the provisions of s. 12 of the Stamp Act, 1891, for the opinion of the Commissioners as to the stamp duty with which the instrument was chargeable. The instrument, which was under seal, was headed as follows: "Prudential Assurance Company, Limited—Industrial Branch—Old Age Endowment with Life Assurance from entry to 65 years of age. For ages from 11 to 15 next birthday after entry." It witnessed that the company agreed that, in consideration of a weekly premium of 6*d.* to be paid to them by the assured until he should attain the age of sixty-five or during his life, they should make one or other of the following payments, according to the event which should happen: if the assured should attain the age of sixty-five years, they would pay him the sum of 95*l.*, and in the alternative, if he should die under the age of sixty-five, they would pay to his executors or administrators the sum of 30*l.* The instrument further provided that after it had been in force for five years the company would, in exchange for the same (if and while subsisting), grant certain pecuniary benefits specified in a schedule thereto, and corresponding with the age of the assured and the duration of the policy.

The policy was taken out by one W. R. Aucutt for the use and benefit of his son Wilfred Aucutt, the assured being of the age of fourteen years on his next birthday after entry. In calculating the sums alternatively payable under the said instrument, regard was had, with reference to the payment of the said sum of 95*l.* and of the pecuniary benefits offered in exchange for the surrender of the instrument, to the probability of Wilfred Aucutt living to attain a given age, and, with reference to the payment of 30*l.* on death, to the probability of his dying at an earlier date. These diverse probabilities were estimated by actuarial calculations based upon the table of mortality known as the English Life Table, No. 3, which is a table shewing the probabilities of the duration of human life founded upon the observed rates of mortality at different ages in England and Wales, and is the table used by the appellants for calculating premiums under policies of ordinary "whole life" assurance. Many kinds of instruments purporting to be policies of assurance are now issued by life assurance companies under which sums are contracted to be paid, either (*a*) at a particular period or on the previous death of the assured, or (*b*) on the assured attaining a particular age or on the previous death of the assured (in each of these cases, where the same amount of money is payable in either event, according to the practice of the Commissioners life policy duty is charged); and in the case of some instruments sums are thereby contracted to be paid at the expiration of a particular period, if the assured is living, and a further sum at death. These and similar forms of assurance are commonly known as "endowment assurances," and of recent years have become increasingly popular. It is not known when policies of this nature were first introduced, but they are now, and were at least as far back as 1863, very common. At the present time their issue constitutes by far the largest part of the business of the companies which transact life assurance business (other than industrial assurance).

The Commissioners being of opinion that the main part of the appellants' contract was the promise to pay the said sum of 95*l.* upon the said Wilfred Aucutt attaining the age of sixty-

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five years, and that the promise to pay the lesser sum on his dying before that age was merely incidental thereto, were of opinion that the instrument was not, as contended by the appellants, a policy of life insurance within the meaning of the definition contained in s. 98 of the Stamp Act, 1891, and assessed the duty thereon under the heading " Mortgage, Bond, Debenture, Covenant " in the 1st schedule to the said Act at 2*s.* 6*d.*, as being a covenant for securing the payment of money not exceeding 100*l.* If the instrument was to be treated as a policy of life insurance, the duty payable would have been 1*s.* The question for the Court was, with what duty the instrument was chargeable.

Danckwerts, K.C., *Vaughan Hawkins*, and *P. Gregory*, for the appellants. This document was a policy of life insurance. A policy of life insurance is defined by s. 98, sub-s. 1, to mean a "policy of insurance upon any life or lives, or upon any event or contingency relating to or depending upon any life or lives." The endowment portion of the policy has reference to a contingency depending upon life just as much as has the life insurance portion. The 95*l.* is to be payable only in the event of the child living to the age of sixty-five. If a covenant to pay a fixed sum in the event of the assured not attaining a specified age is a policy of life insurance, it must equally be so if you omit the word "not." In Bunyon on Life Insurance at p. 1 the contract of life insurance is defined to be one "in which one party agrees to pay a given sum upon the happening of a particular event contingent upon the duration of human life, in consideration of the immediate payment of a smaller sum or certain equivalent periodical payments by another." In the Policies of Assurance Act, 1867 (30 & 31 Vict. c. 144), the Act which enabled assignees of life policies to sue in their own names, the expression "policy of life insurance" is defined to mean "any instrument by which the payment of moneys, by or out of the funds of an assurance company, on the happening of any contingency depending on the duration of human life, is assured or secured." It is not limited to the contingency of death. The present instrument would clearly

have been a life policy within that Act. These policies have in practice always been treated as life policies, but the question of the stamp duty applicable has never before arisen.

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Sir Robert Finlay, A.-G., and *Rowlatt*, for the Commissioners. This is something more than a life policy. The appellants themselves in the heading to their policy form treat old age endowment as distinct from life insurance. It may be that if this were a policy of insurance it would be a policy of life insurance, inasmuch as the payment of the money depends on the contingency of the duration of life. But it is not a policy of insurance at all. To constitute a contract of insurance there must be something against the happening of which the insurance is effected. An insurance on ship goods or life means an insurance against something happening which is prejudicial to the ship goods or life. If the money is to be payable on the happening of an event which is not disadvantageous to the assured, the contract is not one of insurance. If the appellants' contention is right, then the term "policy of life insurance" would include a covenant to pay an annuity for life. The fact that these endowment policies are based on the tables of mortality does not make them life insurances, for annuities are equally based on those tables.

Danckwerts, K.C., in reply. It is true that in the case of fire and marine policies the event upon which the money is to be payable must be some loss to the assured. But that is not the case with life policies. They are not contracts of indemnity, and the event upon which the money under that class of policy is to be payable need not be prejudicial to the assured. No doubt the Life Assurance Act, 1774 (14 Geo. 3, c. 48), to prevent the making of mere gambling policies, required that the assured should have an interest at the time of effecting the insurance, and that no more should be recoverable under such policies than the amount of the interest which the assured had at that time. But it is well settled by authority that the statute does not require that the interest should be a continuing interest: *Dalby* v. *India and London Life Assurance Co.* (1); *Law* v. *London Indisputable Life Policy Co.* (2)

(1) (1854) 15 C. B. 365. (2) (1855) 1 K. & J. 223.

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CHANNELL J. The question which I have to decide is whether the instrument, a copy of which is set out in the case, is a "policy of insurance upon any life or lives or upon any event or contingency relating to or depending upon any life or lives" within the meaning of s. 98 of the Stamp Act, 1891. The Commissioners of Inland Revenue decided that the instrument was to be stamped as a covenant. No doubt it is a covenant, for it is a contract under seal to pay certain sums of money in certain events. At the same time, it is agreed on both sides that if it comes within the specific definition of a policy of life insurance it is to be stamped as such and not as a covenant. The document in question is headed "Old Age Endowment with Life Insurance," and that heading is to some extent relied on by the Attorney-General as shewing that the parties do not regard it as a life insurance simply, but as something else coupled with a life insurance. But I do not attach much importance to that. It is merely an advertising heading, designed to induce people to enter into the contract by describing it as advantageous. We must look at the contract itself to see what it really is. Now in order that it may come within the definition of a policy of life insurance, it must first of all be a policy of insurance. And whether it is a policy of insurance is I think substantially the only question in this case. For if it be a policy of insurance at all, I cannot help thinking that it is free from doubt that it is a policy upon an event relating to or dependent upon a life. "Policy of insurance" is defined in s. 91 to include "every writing whereby any contract of insurance is made or agreed to be made or is evidenced, and the expression 'insurance' includes assurance." But that definition does not throw much light on the matter. We still have to consider what is a "contract of insurance." The Attorney-General says that to constitute a contract of insurance it must be a provision against something—against some loss or disadvantageous event. Mr. Danckwerts says that may be true as regards marine and fire policies which are indemnities against loss, but it is not true as regards life policies, for a policy of life insurance is not a contract of indemnity. But the question is whether that

makes any real difference, and it seems to me that we must inquire a little further into the nature of a contract of insurance. Where you insure a ship or a house you cannot insure that the ship shall not be lost or the house burnt, but what you do insure is that a sum of money shall be paid upon the happening of a certain event. That I think is the first requirement in a contract of insurance. It must be a contract whereby for some consideration, usually but not necessarily for periodical payments called premiums, you secure to yourself some benefit, usually but not necessarily the payment of a sum of money, upon the happening of some event. Then the next thing that is necessary is that the event should be one which involves some amount of uncertainty. There must be either uncertainty whether the event will ever happen or not, or if the event is one which must happen at some time there must be uncertainty as to the time at which it will happen. The remaining essential is that which was referred to by the Attorney-General when he said the insurance must be against something. A contract which would otherwise be a mere wager may become an insurance by reason of the assured having an interest in the subject-matter—that is to say, the uncertain event which is necessary to make the contract amount to an insurance must be an event which is primâ facie adverse to the interest of the assured. The insurance is to provide for the payment of a sum of money to meet a loss or detriment which will or may be suffered upon the happening of the event. By statute it is necessary that at the time of the making of the contract there should be an insurable interest in the assured. It is true that in the case of life insurance it is not necessary that the interest should continue, and the interest is not the measure of the amount recoverable as in the case of a fire or marine policy. Still, the necessity of there being an insurable interest at the time of the making of the contract shews that it is essential to the idea of a contract of insurance that the event upon which the money is to be paid shall primâ facie be an adverse event. Thus a contract depending upon the dropping of a life, such as a contract whereby two or more people purchase a property as joint tenants with the object of

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the longest liver getting the benefit of survivorship, would not be a contract of life insurance, although it would be a contract with reference to a contingency depending upon a life or lives; it would not be a contract of insurance at all. A contract of insurance, then, must be a contract for the payment of a sum of money, or for some corresponding benefit such as the rebuilding of a house or the repairing of a ship, to become due on the happening of an event, which event must have some amount of uncertainty about it, and must be of a character more or less adverse to the interest of the person effecting the insurance. Then does the particular contract with which we have here to deal come within that definition of a contract of insurance? The contract is to pay a sum of 95*l*. if the person insured attains the age of sixty-five, and 30*l*. if he dies under that age. It seems to me that for the purpose of determining whether that contract comes within the definition we must look at it as a whole, and not split it up into two separate parts. If it were to be so split up, and treated as two separate contracts, I should incline to the view that even the old age endowment portion of it—that is to say, the contract to pay the sum of 95*l*.—would satisfy the definition. In the first place, the event on which the money is to be paid is uncertain, for it is uncertain whether the assured will live to the age of sixty-five, and whether consequently the money will be payable at all. Secondly, it seems to me that the event, in addition to being uncertain, is primâ facie adverse to the interests of the insured. A person whose life was insured at a premium of 6*d*. a week would presumably be a poor person and one who would have to earn his own living, and his capacity of so earning his living would probably be materially diminished by the time he reached the age of sixty-five. The reaching of that age, with its attendant disadvantages, is to my mind an event which is sufficiently adverse to the interest of a poor person to make it a proper subject against which to insure. Therefore, even if this endowment portion of the policy stood alone, and if the contract purported to be nothing more than a provision against old age, I am strongly of opinion that it would be a policy of insurance, and if a policy of insurance, then also a policy of

life insurance, for it seems clear that it would be an insurance upon a contingency relating to life—the contingency of the insured living to the age of sixty-five. But, as I have said, we must look at the contract as a whole. And when you take the whole contract together, there does not seem to be any real difficulty about the matter. A contract of life insurance is one by which persons entitle their executors to receive a sum of money for distribution among their family in the event of their death. The objection to insurance is that, if the insured lives beyond the average period of life upon which the premiums of insurance are based, he has made a bad bargain, and he would have done better if he had saved his money and invested it at compound interest. Consequently, in order to attract insurances, it is usual for the insurance companies to give benefits to persons who live beyond the average period of life. Most of them do this by way of bonuses after the policy has been in existence for a certain period, and the giving of such a bonus, of course, does not prevent the contract from being a contract of insurance. Sometimes it is provided that the sum insured shall be payable either upon the assured reaching a certain age or upon death, whichever first happens. It is clear that that also would be a contract of insurance. That is very like this case, the only difference being that here a larger sum is payable in the former event, and that is a difference which, in my opinion, is immaterial. I have come to the conclusion that this contract, taken as a whole, is clearly a contract of life insurance within the meaning of the Stamp Act, and that the appeal must, therefore, be allowed.

Judgment for the appellants.

Solicitor for appellants: *W. Gamble.*
Solicitor for respondents: *Solicitor of Inland Revenue.*

J. F. C.