

INTERESTING LEGAL DECISION.

INCOME TAX UPON A LIFE INSURANCE COMPANY'S INVESTMENTS.—Upon an appeal by the Scottish Provident Institution of Edinburgh, from the Supreme Court of Victoria, Australia, the following judgment of the House of Lords was delivered by Lord Hobhouse.

The formal appellant in this case is the officer and representative of the Scottish Provident Institution, which is the real appellant. It claims to be exempt from income tax, which the commissioner seeks to impose upon it. The income, in respect of which tax is claimed, proceeds from money lent on the security of land in Victoria. The company has no other property in the colony, nor does it carry on business there. Its head office is in Edinburgh. The question turns entirely on the construction of the Income Tax Act, 1895, and its application to the business of the company.

The tax is imposed by section 5 of the Act on all income derived by any person from the produce of property within Victoria. By the definition clause "person" includes every company, except a company whose head or principal office or principal place of business is in Victoria. It is not disputed that the company falls within the terms of section 5.

Section 7 enacts that there shall be exempt from income tax all income derived or received by persons distributed under twelve heads. The company claims to fall under head (c), which is as follows: "All trusts, societies, associations, institutions, and public bodies not carrying on any trade, or not being engaged in any trade for the purposes of gain to be divided among the shareholders or members thereof." By the definition clause, "trade" includes every profession, vocation, trade, business, calling, employment and occupation. The Supreme Court has held that the company carries on business for the purpose of gain within head "c," so far as its operations outside Victoria are concerned, though it merely lends money on mortgage in Victoria, and that it is not exempted. The appeal is from that decision.

The company was started under a deed of constitution registered in the books of Council and Session on June 8, 1837. Its objects as there laid down are as follows:

"1. To form a common fund on which provisions by way of capital sums and annuities should be chargeable upon the failure of lives and upon survivorships, by means of contributions corresponding to the value of such provisions, to be paid by or on behalf of the persons becoming entitled thereto."

"2. That whatever surplus might eventually arise upon such contributions should be reserved for the benefit of, and be equally apportioned among, the persons, or the representatives or nominees of the persons from whose contributions such surplus shall have arisen."

Article 27 of the deed provides that septennial accounts shall be taken, and that the surpluses which are then found to have arisen on the common fund, shall be available to the members by additions to the sums payable on their policies. From this benefit, however, certain classes of policies are excluded. In terms of the deed no person can effect any form of assurance with the company without becoming *ipso facto* a member.

This is an ordinary type of mutual insurance company, on which footing it appears that the business was conducted for several years. In the year 1848

the company was incorporated by Act of Parliament, and its business was put upon a new footing. It became "entitled to carry on the business of effecting assurances on lives and survivorships, purchase and sale of annuities and of reversions, granting endowments, receiving money for investment and accumulation, and in general for carrying on all the business which now is or may come to be connected with a life assurance society in all the various branches thereof." From that time to this the business of the company has been that which is indicated in the act of 1848. It is the ordinary business of a life assurance society, and in addition that of a society for the purchase of sale of annuities and reversions.

When evidence was taken for the trial of the case in the first Court, the County Court of Melbourne, there was a great deal of controversy with reference to gains made from the forfeited policies of members, from grants of annuities to members, and from the classes of policies granted to members on the principle of non-participation in the growing surpluses. All those are parts of the original constitution. Their Lordships pass them by, not finding it necessary to examine whether or no they constitute a trade or business carried on for gain to the company, which is to be divided among its members. Of course it happens, and indeed it is the very principle of a mutual insurance company, that some members receive more than they pay, while others pay more than they receive. It is sufficient here to say that in 1848 the company became one of those which carry on business with strangers for gain to the company as a whole. It has granted assurances to persons who are not its members; and though it is said that this kind of business has only been done with other insurance companies, and by way of guarantee, it is done, and on terms calculated for profit. It has also trafficked to some extent in reversions. That is carrying on business for gain, and the gain is to be divided among the members of the company. It is urged that the additional business of a general kind is very small—and compared with the magnitude of the other transactions it is so—but it is not unsubstantial, and it is enough to prevent the company from bringing itself within the terms of head (c).

It should also be noticed that the next head of exemption (f) is expressed as follows: "Any mutual life assurance company whose head or principal office or principal place of business is in Australia." Certainly the inference to be drawn from that exemption is that a mutual insurance company which, like the present appellant, has not any place of business in Australia is not to be exempt. It is right to be cautious in laying stress on an inference of this sort. But it is at least not improbable that the framers of the Income Tax Act may have looked upon all companies whose business it is to make money bargains for the benefit of their members as being companies which carry on business for gain to their members; and the way in which they have dealt with mutual insurance companies under head (f) lends countenance to the supposition that they did so think.

Another point of much more importance was raised in the course of the argument and discussed at the bar, though it does not seem to have been raised in the Court below—and that is whether the trusts, etc., mentioned in head (c) can mean trusts, etc., not operating in Victoria. It seems very strange that the Victorian Parliament should desire to forego income tax in favour of a Scotch institution, which has no connection with Victoria, except in its character of a property owner there. If a party of friends in Eng-