

CHANGES IN INSURANCE ACT

Why the Legislation of 1910 Has to be Re-enacted—
Companies Must Have License

As previously stated in *The Monetary Times*, a bill has been introduced in the House at Ottawa mainly for the purpose of repealing the Insurance Act, 1910, and of re-enacting that statute in practically the same form, with the exception of those features which have been declared by a recent decision of the Privy Council to be unconstitutional.

One of the questions submitted in the reference on the insurance case was whether sections 4 and 70 of the act or any or what part or parts of those sections are *ultra vires* of the parliament of Canada, and to this question the answer was as follows:—

"Their lordships are therefore of opinion that the majority in the Supreme Court were right in answering the first of the two questions referred to them in the affirmative."

Must Have License.

Section 4 of the act prohibits any company or person from transacting insurance in Canada without a license from the minister subject to certain exceptions contained in other sections of the act, one of which exempts from the act the provincially incorporated company confining its business to its own province, and section 70 prescribes penalties for the violation of section 4.

It is to be noted that the words of the decision above quoted do not indicate what part or parts of the sections are *ultra vires*, but from a reading of the entire decision, it appears that their lordships were of the opinion that the section is *ultra vires* in so far as it:—

1. Deprives individuals of their civil rights within their provinces, and
2. Interferes with the capacity of a provincially incorporated company to take advantage of powers and rights proffered to it by authorities outside the provincial limits.

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Since the decision establishes the fact that a provincially incorporated company may, without a license under this act, extend its business to provinces other than that by which it is incorporated, provided those other provinces consent, and since the present act prohibits such a company from so extending its business, it has been necessary to exempt from the application of the act provincially incorporated companies except such as voluntarily obtain a license from the minister under this act.

This change has been effected by revising the definition of "company" in section 2, paragraph (d) of the bill. This definition now excludes the corporation incorporated by a province of Canada. Provision is made, however, in section 4, subsection 4, that a provincial company may obtain a license from the minister and on such a license being obtained the company becomes subject to all the provisions of the act applicable to Canadian companies.

The second question contained in the insurance reference was whether section 4 prohibits a foreign company from transacting business in Canada without a license from the minister even if such business is confined to a single province.

To this their lordships replied as follows:—

"In such a case it would be within the power of the parliament of Canada by properly framed legislation to impose such a restriction. It appears to them that such a power is given by the heads in section 91 which refer to the regulation of trade and commerce and to aliens. This question also is therefore answered in the affirmative."

Legislation is Inadequate.

It will be seen from this decision that while the authority assumed by the present act is not beyond the power of parliament, the existing legislation for that purpose appears to be inadequate and the amendment made as a result of the reply to this question is to bring the sections of the act restricting British and foreign companies from transacting business without a license clearly under the heads indicated in the decision. This change is made in sections 11 and 12 of the bill.

In order that the various classes of companies dealt with in the bill may be more conveniently referred to than in the existing act, definitions of "provincial company," "British company" and "foreign company" have been inserted in section 2, and these definitions have rendered necessary changes in the wording indicating the application of the various sections throughout the bill. In the existing act there are various phrases used to describe Canadian companies, such as in section 51:—

"Company which derives its corporate powers, or any of them, from an act of the parliament of Canada, or which is within the legislative power of the said parliament."

and in section 56:—

"which are within the legislative power of the parliament of Canada."

For all such phrases the new bill substitutes the words "Canadian company."

British and Foreign Companies.

Likewise in the existing act British and foreign companies are indicated by the various phrases:—

"Company other than a Canadian company," "company incorporated or legally formed elsewhere than within Canada," etc.

For these cumbersome phrases the words "British or foreign company" are substituted.

The principal changes due to the Privy Council decision are contained in sections 2, 4, 11 and 12 of the bill.

Sections 89 and 95 have been changed in wording in order to make it clear that the provisions regarding the terms of life policies are assumed as a condition of the license of the company and not as an attempt to interfere with the civil rights of the contracting parties.

For the same reason the provisions of sections 118, 119, 120 and 122 of the old act relating to assessment companies have been brought together in one section 118 of the bill, and the wording changed to show that the restrictions are imposed as a condition of the license.

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