

allowed as the expense of getting the Auditor's report approved, and decree for the taxed amount pronounced, and only to claim for the balance of £3, 16s. 10d. due to the defender. The pursuer declined this offer and enrolled the case in order to have the Auditor's report approved.

The defender submitted that in respect of the offer made by her, the sum of £2, 18s. should be deducted from the pursuer's account, and referred to the case of *Allan v. Allan's Trustees*, July 1, 1851, 13 D. 1270.

The pursuer moved for decree in name of the agent-disburser, and referred to the following cases—*Paterson v. Wilson*, December 20, 1883, 11 R. 358; *Stuart v. Moss*, February 6, 1886, 13 R. 572; *Strain v. Strain*, March 7, 1890, 17 R. 566.

At advising—

LORD ADAM—I think the rule is that if there are separate actions between the same parties, as in the cases quoted by Mr Rhind, the agent in the one case is entitled to decree in his own name as disburser, and the other party is not allowed to set off expenses decreed for in his favour in the other action, but it is also, I think, equally established that in the same action when one party has obtained a decree for part of the expenses of the action, the agent of the opposite party is not entitled to obtain decree in his own name for expenses to which his client has been found entitled. The one account is always set off against the other.

Here there were not two separate actions, but only one action, and the accounts must be set off against one another. It makes, I think, no difference that the two accounts of expenses were incurred upon separate appeals.

LORD M'LAREN—The only consideration which occurs to my mind to lead me to think that the rule that compensation should not hold in the case of different actions is a convenient one, is because the second action is not necessarily tried by the same judge as the first, and the judge in the second action may have no knowledge what was done in the former action. Therefore the attempt to set off the expenses in the one action against the expenses in the other might involve an inquiry quite unsuited to a motion for expenses. When both accounts are incurred in the same action the Court can deal with the whole subject of expenses, and without risk of injustice may set-off the one account against the other as seems consistent with the known principle of compensation.

LORD KINNEAR—I am of the same opinion. I think the rule is quite fixed that compensation may be pleaded where cross accounts occur in the same action, and not where they occur in different actions. In addition to the reason suggested by Lord M'Laren, there seems to me to be another reason for the rule in the fact that the agent-disburser's right to take decree in his own name cannot be cut down by

extrinsic claims of compensation between the adverse parties, and the debt arising from decree for expenses in another action is clearly an extrinsic debt.

The Court approved of the Auditor's report upon the pursuer and appellant's account of expenses, No. 33 of process, and decerned in favour of the appellant for the taxed amount thereof, less £2, 18s., being the charges in said account for making the motion for approval of the Auditor's report and decerniture, in respect that before enrolment of the motion the taxed amount of the account was tendered by the respondent to the appellant.

Counsel for Pursuer—Rhind. Agent—William Officer, S.S.C.

Counsel for Defender—Baillie. Agents Watt & Anderson, S.S.C.

Tuesday, November 17.

SECOND DIVISION.

[Sheriff of Lanarkshire.]

GREAT BRITAIN STEAMSHIP PREMIUM ASSOCIATION AND OTHERS v. WHITE.

Revenue—Stamp Duty—Sea Insurance—Policy Including a Number of Vessels—Customs and Inland Revenue Act 1870 (30 Vict. c. 23), sec. 4, Sched. (B)—Interpretation of Statutes Act 1889 (52 and 53 Vict. c. 63), sec. 1.

Schedule (B) of the Customs and Inland Revenue Act 1870 imposes a stamp duty of 3d "for every policy of sea insurance for time in respect of every full sum of £100, and in respect of any fractional part of £100 thereby insured." Section 4 defines "sea insurance" as meaning, *inter alia*, "insurance made upon any ship or vessel." Section 1 of the Interpretation of Statutes Act 1889 provides that in any Act passed after 1850, "unless the contrary intention appears, words in the singular shall include the plural, and words in the plural shall include the singular."

Held (1) that the words "insurance made upon any ship or vessel," in the 4th section of the Customs and Inland Revenue Act 1870, must be read as including "insurance made upon any ships or vessels;" and (2) that where 119 vessels were insured under a time policy, a specific sum being appropriated to each vessel, the stamp duty exigible must be calculated upon the aggregate amount of the insurance, and not upon the separate sums insured in respect of each vessel.

On 30th November 1887 John Holman & Sons, shipowners and insurance brokers, London, on behalf of themselves and all persons interested, insured with James L. White, merchant, Glasgow, and certain

other underwriters, the premiums of insurance of 119 steamers mentioned in a list attached to the policy, for the space of 133 days from October 10th 1887. The policy effecting this insurance was underwritten by Mr White for a sum of £1450, and the aggregate sum insured was £34,690, each vessel having a specific portion of that sum appropriated to it. The amount for which the policy was stamped was £4, 6s. 9d. In January 1888 three of the ships named in the policy were wrecked and became total losses.

In May 1890 the Great Britain Steamship Premium Association raised an action in the Sheriff Court at Glasgow, with consent of John Holman & Sons, against James L. White for payment of the sum of £43, 17s. 6d. as the amount due to them in respect of the total loss of the said three ships on the sum underwritten by the defender. They averred that they were insured by the policy above mentioned to the amount of the sums entered against each ship in the list in the event of a total loss of said vessels.

The defender admitted that, assuming the policy to be valid, the sum of £43, 17s. 6d. had become due by him to the pursuers in respect of said losses, but averred (Ans. 1 and 2) that the policy was not duly stamped; and (Ans. 3) that according to the rules of the Glasgow Association of Underwriters and Insurance Brokers and the custom of Glasgow underwriters, both well known to the pursuers, all claims competent to pursuers against defender had been settled and discharged.

The defender pleaded, *inter alia*—“(2) Said policy not being duly stamped, pursuers are not entitled to sue thereon, and the present action should be dismissed with costs.”

The Act 30 Vict. c. 23, sec. 1, enacts that the several duties shall be charged which are specified in Schedules (A), (B), and (C). Schedule (B) is as follows:—“For every policy of sea insurance for or upon any voyage—In respect of every full sum of £100, and in respect of any fractional part of £100 thereby incurred, 3d.” “For every policy of sea insurance for time—In respect of every full sum of £100, and in respect of any fractional part of £100 thereby insured, where the insurance shall be made for any time not exceeding six months, 3d.; where the insurance shall be made for any time exceeding six months and not exceeding twelve months, 6d. But if the separate and distinct interests of two or more persons shall be insured by one policy for a voyage or for time, then the duty of 3d., or the duty of 3d. or 6d., as the case may require, shall be charged thereon in respect of every full sum of £100 and every fractional part of £100 thereby insured upon any separate or distinct interest.” This last provision as to separate and distinct interests was subsequently repealed by 47 and 48 Vict. c. 62, sec. 8 (3).

Section 4 of the Act provides—“In this Act the expression ‘sea insurance’ means any insurance (including re-insurance) made upon any ship or vessel, or upon the

machinery, tackle, or furniture of any ship or vessel, or upon any goods, merchandise, or property of any description whatever on board of any ship or vessel, or upon the freight or of any other interest which may be insured in or relating to any ship or vessel; and the word ‘policy’ means any instrument whereby contract or agreement for any sea insurance is made or entered into.”

The Interpretation Act 1889 (52 and 53 Vict. c. 63), sec. 1, enacts (1) that in that Act, and in every Act passed after the year 1850, whether before or after the commencement of that Act, “unless the contrary intention appears, (b) words in the singular shall include the plural, and words in the plural shall include the singular.”

On 10th July 1890 the Sheriff-Substitute (MURRAY) pronounced this interlocutor:—“Finds that the second plea stated by the defender, that the document No. 7/1 of process, founded on by pursuers, is insufficiently stamped, will fall to be sustained: Appoints defender to amend his third statement by specifying the nature of the custom, and the rule or rules of the association to which he refers: Continues the case on the Adjustment Roll to 29th instant, and grants leave to appeal.”

The pursuers appealed, and on 14th November 1890 the Sheriff (BERRY) adhered.

“*Note.*—The document 7/1, in regard to which a question of stamp has been raised, bears to insure a number of steam vessels for a period of 133 days from a certain date. There are 119 vessels included in the insurance, and the aggregate amount insured is £34,690, but each vessel has a specific portion of that amount appropriated to it. The document has been stamped as if it were one policy, and the question is, whether the stamp is sufficient, or whether the document should not be regarded as in effect 119 different policies, and liable to be stamped as such.

“The Act 30 Vict. c. 23, regulates the stamp duty on sea insurances, and by Schedule (B) a duty of 3d. is imposed for every sea insurance for time in respect of every full sum of £100 and in respect of any fractional part of £100 thereby insured. The interpretation clause (section 4) of the Act declares the expression ‘sea insurance’ to mean ‘any insurance made upon any ship or vessel,’ and the word ‘policy’ to mean ‘any instrument whereby a contract for sea insurance is made or entered into.’ In the light of this clause the words ‘upon any ship or vessel’ must be held as inserted after the word ‘insurance’ in the schedule, and so reading the schedule, I think that under the language of this statute, considered by itself, the insurance on each individual vessel would be understood as a separate insurance, and consequently that we should have here 119 different policies. But the Interpretation Act 1889 has been appealed to as having a controlling or governing effect on the construction of all Acts of Parliament passed within the last forty years. By section 1 of that Act, re-enacting a similar provision in a repealed Act of 1859, it is provided that

in every Act passed after 1850, 'unless the contrary intention appears, . . . words in the singular shall include the plural.' Hence it is said the words 'upon any ship or vessel' in the Stamp Act (30 Vict. c. 23) should be read as including a case of insurance 'upon any ships or vessels,' and consequently the document here should be viewed as a single policy, although it bears to insure a number of vessels. In aid of the argument on this point reference is further made to the principle that Revenue Statutes should be construed strictly against the Revenue, and favourably to private persons. I am unable to give effect to this argument. If we are to apply the Interpretation Act to the Stamp Act, and read the words 'ship or vessel' as if they were 'ships or vessels,' we must at the same time read other nouns in the same sentence as being also in the plural. In this way we are brought to a definition of 'sea insurances' in the plural, and in ascertaining the meaning of 'sea insurance' in the singular are left to the guidance of the provision in the Stamp Act itself, under which an insurance on any single ship falls, in my judgment, to be treated as a separate and distinct insurance. The unreasonableness of reading one word in the plural while others in the same sentence are left in the singular might be exemplified by reading the clause which defines the word 'policy' thus, that that word in the singular means 'any instruments, &c.,' in the plural.

"The Sheriff-Substitute has dealt with the case as if the insurances here were voyage, and not time policies; the arguments, however, which apply to the two cases do not seem to differ in principle. I agree with him in the result that the document in question is not sufficiently stamped as one policy."

The pursuers having thereafter lodged a minute stating that they were desirous to obtain the opinion of a higher Court on the question of stamp duty, and were not prepared meantime to pay additional stamp duty and penalties, the Sheriff on 8th January 1891 closed the record, sustained the defender's second plea, and dismissed the action.

The pursuers appealed, and argued—Section 4 of the Act 30 Vict. c. 23, must be read in the light of section 1 of the Interpretation Act 1889, and so insurance "upon any ship or vessel" included an insurance "upon any ships or vessels." The former Interpretation Act had been construed to have a similar effect—13 Vict. cap. 21, sec. 4; *Magistrates of Glasgow v. Police Commissioners of Hillhead*, March 20, 1885, 12 R. 864. The insurance policy founded on by the pursuers was therefore duly stamped.

The defender argued—The policy of the statute was to charge stamp duty for each separate risk, as was to be seen from the distinction drawn between voyage and time policies. Here there were separate risks, and the duty exigible must be calculated, not on the aggregate sums insured, but separately with regard to the amount insured on each separate risk—that was to

say, each separate vessel. The intention of the Act excluded the application of the Interpretation Statute to section 4.

At advising—

LORD YOUNG.—The policy sued on is a "policy of sea insurance for time," not exceeding six months on 119 steamers "as per list attached," and no objection is stated to it except that it is not duly stamped. If the law were that only one ship can be insured by one policy this policy would be invalid irrespective of the Stamp Act, but it is not contended that the law is so, or that two or any number of ships may not be insured by one policy.

I therefore assume that at common law, and irrespective of the Stamp Act, the policy sued on is a valid policy of sea insurance for the time specified on the 119 steamers named in the list attached, and on this assumption proceed to consider the objection that it is according to that Act insufficiently stamped. That objection is that inasmuch as each of the 119 steamers might have been insured by a separate policy, the stamp on the one policy that comprehends them all must equal in amount the sum of the 119 stamps, which would have been used had there been 119 policies—one on each steamer for the sum set against it in attached list. If this view be sound the objection is good, and otherwise not, for it is founded on no other. I am very clearly of opinion that it is unsound.

The statute which governs the matter of duty on policies of sea insurance is 30 Vict. c. 23, and it enacts that the stamp duty on any such policy for time not exceeding six months shall be 3d., "in respect of every full sum of £100, and in respect of any fractional part of £100 thereby insured." The sum insured by the policy in question is £34,690, *i.e.*, the full sum of £100, 346 times repeated, and one fractional part of £100, so that the stamp ought to be of amount or value of 347 times 3d., or £4, 6s. 9d., and it is of that amount exactly.

The sum insured by the policy is ascertained by adding together the several sums specified as insured on each item comprehended in the policy. But in this there is nothing wrong or unusual. It is, on the contrary the familiar, invariable, and I should have thought, necessary practice in all policies whether against sea peril or fire. There is no possible objection to a policy embracing any number of items each insured for a specified sum, and none that I see, or can imagine, against such items being all or some of them steamers any more than against their consisting of any kind of cargo, pictures, or machinery, or any thing else quite capable of being each of them insured by a separate policy. The idea of calculating and estimating the stamp duty on a policy which embraces several items, not by taking their aggregate amount, but by supposing that each had been the subject of a separate policy, is, so far as I know, quite novel, and I think inadmissible.

I cannot comprehend the view of the Sheriff when he says that he is unable to give effect to the argument that "the document (the policy) here should be viewed as a single policy although it bears to insure a number of vessels," and that in his opinion "we should have here 119 different policies." We have in fact only one policy, and if it is incapable of insuring a number of vessels, we cannot, as I have pointed out, reach any question about the stamp, for no stamp whatever would validate it. On the other hand, if the policy is by the common law capable of insuring a number of vessels, and the only question is what stamp (if any) ought by statute to be impressed on it, the legitimate and logical result of the Sheriff's reading of the statute is that this policy does not fall under it, and so need not be stamped at all, for the statute alone can subject it to stamp duty. The Sheriff's reading of the statute is that stamp duty is thereby imposed only on a policy of sea insurance "upon any ship or vessel"—the singular "ship or vessel" being incapable either by the rules of the common law or by virtue of the Interpretation Act of 1889 of being read in the plural "ships or vessels."

It seems to me that the legitimate and logical result of this view is that a policy of sea insurance on "ships or vessels" does not fall under the taxing enactment. I need hardly say that the view is in my opinion wrong. I see no objection whatever to the applicability of the Interpretation Act, although as I should reach the same result without it, I regard it as superfluous to the point in question.

LORD RUTHERFURD CLARK concurred.

LORD TRAYNER—The only question raised by the appeal is, whether the policy on which the pursuers found their claim is or is not duly stamped? The Sheriff and Sheriff-Substitute are agreed in thinking that the policy is not duly stamped, and accordingly the action has been dismissed. I differ from the view which has thus been sustained.

The policy in question is curiously expressed. It bears to be a policy on "premiums of insurance" on certain ships. But it was represented at the bar as a proper time policy on the ships themselves, and it can be so read. I take it therefore as a policy of insurance effected over 119 ships named in the list appended to the policy for a period of 133 days. The amount or value of the interest insured in regard to each ship is noted against the name of each ship, and I observe that out of the 119 ships only nine of them are insured for full sums of one or more hundreds of pounds, while the remaining 110 ships are insured for sums which include a fractional part of a hundred pounds.

The total amount insured is £34,690, and the stamp impressed on the policy covers (at the rate of 3d. on every £100 or fractional part of £100, being the duty payable on time policies for a period of less than six months) a sum of £34,700. The stamp is

therefore sufficient if the total sum insured is alone regarded. But the defenders' contention is that this is not one policy but 119 policies, one over each ship named, and that the stamp duty is to be reckoned on each £100 or fractional part of a £100 for which each vessel is insured.

The determination of the question before us depends on the terms and construction of the Act 30 Vict. c. 23, which provides that after the passing thereof certain duties set forth in Schedule B annexed to the Act shall be payable on policies of sea insurance in place of the duties previously exigible. By section 4 of this Act the expression "sea insurance" is defined to mean "any insurance (including re-insurance) made upon any ship or vessel, or upon the machinery, tackle, or furniture of any ship or vessel, or upon any goods, merchandise, or property of any description whatever on board of any ship or vessel, or upon the freight of or any other interest which may be lawfully insured in or relating to any ship or vessel." Upon the terms of this clause the defender maintains that the words "any ship or vessel" must be read strictly as expressed in the singular number, and as meaning "any one ship or vessel;" that where two or more ships are covered by the one policy the insurances must be regarded as distinct, and duty paid on each as if it were the sole insurance; that so regarded the policy founded on is insufficiently stamped.

I do not regard this 4th section of the statute as having very much to do with the question before us. It is an interpretation clause, and nothing more, for defining what shall come within the term "sea insurance;" but as both parties are agreed that the policy sued on is a policy of sea insurance within the meaning of the Act requiring to be stamped as there provided, any appeal to the interpretation clause to ascertain what is thus admitted seems unnecessary and superfluous. But further it appears to me that the defender's reading of the clause in question cannot be accepted. The Interpretation Act 1889 has provided that in all Acts passed since 1850, "unless a contrary intention appear," words in the singular shall include the plural, and the present case seems to be one to which the provisions of the Interpretation Act are applicable. Certainly no "contrary intention" appears on the face of the Act we are construing. Besides, if we read the 4th section of the Act of 1867 in the manner proposed by the defender, such a reading would be destructive of the plea which that reading is set forth to support. The defender says that under the clause referred to, a sea insurance is an insurance over any, that is, over any one ship or vessel. Well, if that is so, the policy in question, which is one over a great many ships, is not a policy of sea insurance within the Act of 1867. Not being a policy of sea insurance within the meaning of that Act, it would require no stamp at all, as that Act is the only one in force which requires stamp duty to be paid on policies of sea insurance.

As I have said, however, the 4th clause of the Act of 1867 is not of much, if any, importance in the decision of this case. The part of the Act with which we are really concerned is the Schedule (B) annexed to the Act, which is specially declared (sec. 1) to be a part of the Act. The terms of that schedule leave no room for doubt as to the cases in which stamp duty is exigible, or as to the amount of the duty required to be paid. It provides that "for every policy of sea insurance for time" where the time does not exceed six months, there shall be paid a duty of 3d. in respect of every full sum of £100, and in respect of any fractional part of £100 thereby insured." Now, apply that to the present case. We have a time policy of sea insurance for less than six months, whereby there is insured a sum of £34,690. There must be paid a duty of 3d. per £100 on each of the 346 hundreds insured, and 3d. more for the odd £90, the fractional part of a hundred. This has been done. It will be observed that the schedule does not say that the duty is at all dependent on the number of subjects which the insurance covers, but gives as the only standard for ascertaining the duty payable the amount insured. And that this is not only in accordance with the words of the schedule, but is in full accordance with its intention, becomes I think plain when the concluding part of the schedule is considered. That part of the schedule to which I am about to refer has been repealed, but it may still be referred to, as I propose to do, for the purpose of throwing light upon the meaning and intent of the provisions preceding it which are still operative. The schedule provides that where "separate and distinct interests of two or more persons" shall be insured by one policy, duty shall be payable on each separate interest at the same rate according to the amount or value of the interest "thereby insured." What the separate and distinct interests are which are here referred may be learned from the terms of the 4th or definition clause I have already quoted. They are the interests of the shipowner in his ship, the merchant in his cargo, it may be of a charterer in the freight, or a mortgagee for his debt secured over the ship. These interests may be involved in, and insurance thereof may cover, one or many subjects in which the interest is centred. Thus the merchant or shipper may insure a cargo at £10,000, but he may have declared or estimated in a list appended to the policy the value of different parts of the cargo at various sums. This would not make a separate policy for each part of the cargo, each paying its appropriate stamp duty. The interest is £10,000—that is the sum insured—and the fact of that aggregate interest or value being distributed over different parts of the cargo would make a difference, according to the Act, in the duty payable in respect of the insurance. So in the present case what is insured is the shipowner's interest to the extent of £34,690 distributed over various vessels. It is, however, one interest. The fact that the statute provided for the

separate insurance stamp duty in respect of separate interests, and made no reference to the several subjects in which that interest might be centred, seems to indicate clearly that in estimating the stamp duty the several interests were to be regarded, and that the several subjects in which the interest insured exists were not. The words of the statute are that stamp duty is to be paid on the sum insured under the policy, and this was the correct language to use. It is said popularly that the ship is insured—the cargo and freight are insured. But in fact it is not the ship cargo or freight that is insured. It is the insurers' money interest in any or all of these subjects, and therefore I say that the language of the statute is strictly accurate when it speaks of the sum as insured and not the subject of which that sum is the expressed value.

I am of opinion that the interlocutors appealed against should be recalled, the defender's second plea-in-law repelled, and the case remitted back to the Sheriff to proceed therein.

LORD JUSTICE-CLERK—I have had considerable difficulty in making up my mind upon this case. I was very much moved by the able argument addressed to us for the respondent, but after reconsidering the case with the aid of your Lordships' advice I have come ultimately to the opinion that the judgment of your Lordships is right, and I concur in the opinions expressed.

The Court recalled the interlocutors of the Sheriff and Sheriff-Substitute, repelled the second plea-in-law for the defenders, and remitted the case to the Sheriff for further procedure.

Counsel for the Pursuers—Ure. Agents—J. & J. Ross, W.S.

Counsel for the Defender—D.-F. Balfour, Q.C.—Salvesen. Agents—Emslie & Guthrie, S.S.C.

Thursday, November 19.

SECOND DIVISION.

[Lord Wellwood, Ordinary.]

LOW v. LOW.

Husband and Wife—Divorce—Domicile—Jurisdiction

A Scotsman, who in 1862 had entered the Royal Navy, in 1866 married in Malta a native of that island, where from 1867 till 1873 he was employed in a Government office. He then retired, and after some months' residence in Great Britain he again returned with his wife and family, on account of his health, to Malta, where he remained until 1879, when he was appointed to an office there which he was entitled to hold for a period of twenty years. While abroad he