

Friday, June 5.

SECOND DIVISION.

[Lord Pearson, Ordinary.]

MACKAY v. SCOTTISH BOAT INSURANCE COMPANY, LIMITED.

Insurance—Marine Insurance—Policy—Essentials of Policy of Sea Insurance—Stamp Act 1891 (54 and 55 Vict. c. 39), secs. 91, 92, 93 (3).

A document headed "contract-note," and consisting of a printed form beginning—"Please send me policy for," and containing a list of various particulars to be filled up, was handed by the agent of a boat insurance company to the owners of a fishing-boat. This document was signed by the local agent of the insurance company, and was addressed to the secretary. So far as filled up it ran—"Please send me Policy for £562, 10s. on boat "Brilliant, Letter and No., B F 1983, valued at £750; period, 3 months; to fish at west coast." The document was not stamped, and did not specify either the name of the insured or the premium to be paid. The boat having been wrecked, the owners raised an action (1) for declarator that the contract-note was a policy of sea insurance within the meaning of section 92 of the Stamp Act 1891, on the ground that it contained all the essentials of a marine policy as enumerated in section 93 (3) of the Act, and (2) for payment of £562, 10s.

Held that the document founded on would not if stamped be a valid policy of sea insurance.

Stamp—Policy of Sea Insurance—Unstamped Document Assumed to be Available as Instructing Title to Sue a Declarator that it was a Policy of Sea Insurance—Stamp Act 1891 (54 and 55 Vict. c. 39), sec. 95 (2).

In an action for declarator that an unstamped document was a policy of sea insurance within the meaning of section 92 of the Stamp Act 1891 the Court assumed for the purposes of the discussion that the unstamped document was available as instructing the title of the pursuers to sue.

The Stamp Act 1891 (54 and 55 Vict. c. 39) enacts:—Section 91—"For the purposes of this Act the expression 'policy of insurance' includes every writing whereby any contract of insurance is made or agreed to be made, or is evidenced, and the expression 'insurance' includes assurance."

Section 92 (1)—"For the purposes of this Act the expression 'policy of sea insurance' means any insurance (including re-insurance) made upon any ship or vessel." . . .

Section 93 (3)—"A policy of sea insurance shall not be valid unless it specifies the particular risk or adventure, the names of the subscribers or underwriters, and the sum or sums insured, and is made for a period not exceeding twelve months."

Section 95 (2)—"Provided that a policy of sea insurance shall for the purpose of production in evidence be an instrument which may be legally stamped after the execution thereof, and the penalty payable by law in stamping the same shall be the sum of one hundred pounds."

This was an action at the instance of Donald Mackay, Angus Mackay, Donald MacSween, Torquil Macdonald, and George Macdonald, all of Shader, Stornoway, in the Island of Lewis, as representing the crew of the herring fishing boat "Brilliant," of the port of Banff, registered BF. 1983, against the Scottish Boat Insurance Company, Limited, incorporated under the Companies Acts 1862 to 1867, and having its registered office in Fraserburgh. The first three conclusions of the action were (1) for declarator that a contract-note, dated the 8th day of January 1901, and signed by Mr J. M. Morrison, shipbroker, Stornoway, on behalf of the defenders, whereby the defenders undertook to insure the fishing-boat "Brilliant," for £562, 10s. against loss for three months from the said date on the west coast of Scotland, as also the sea passage from Buckie to Stornoway, was a policy of sea insurance in the meaning of section 92 of the Stamp Act 1891 (54 and 55 Vict. cap. 39), and that the pursuers were entitled to have the same stamped in terms of section 95 (2) of the said Act; and (2) thereafter, on the said policy of sea insurance being duly stamped, for payment of £562, 10s., with interest thereon at £5 per centum, from 9th January 1901 until payment; or otherwise (3) for decree ordaining the defenders to issue and deliver to the pursuers a policy of marine insurance over said boat for £562, 10s., all in terms of the said contract-note, dated 8th January 1901.

The contract-note founded on was in the following terms:—

"To the Secretary,
 The Scottish Boat Insurance Company,
 Limited, Fraserburgh.

Stornoway, Agency, 8 Jan. 1901.

Please send me Policy for £562, 10s.

In name of
Premium
Extra Premium
Stamp Duty
On Boat 'Brilliant.'
Letter and No. BF. 1983.
Of
Built in the year
Style of Build—Clinker or Carvel?
Valued at £750.
Master's Name
Period 3 months.
To Fish at West Coast.
Builder
Tonnage
Length over Stems
Length of Keel
Quality of Material
Breadth outside of Skin
Depth of Hold

J. M. MORRISON, Agent.

P.T.O."

Also passage insurance—Buckie to Stornoway.

"NOTE ON FLY LEAF.

"Note for Agents.—*The particulars mentioned on the other side are all required for Boats proposed for Insurance for the first time. For Renewals it is sufficient that the No. of the former Policy, the present value, period for which to be Insured, whether clinker or carvel built, and where the Boat is to prosecute fishing, alone are stated.*"

The pursuers averred that on 8th January 1901 they, as owners of the herring fishing-boat "Brilliant," made a proposal to insure the boat to J. M. Morrison, shipbroker, Stornoway, agent for the defenders; that as the result of negotiations Mr Morrison handed the pursuers the contract-note founded on; that on 8th January 1901 the "Brilliant," when on the voyage from Buckie to Stornoway, was wrecked in Wick Bay, and that the defenders had been called upon to pay in terms of the said contract of insurance, but they declined to do so, and the action had been rendered necessary.

The pursuers pleaded—" (1) The said contract-note being a policy of sea insurance in the sense of the Stamp Act 1891, sec. 92, decree of declarator should be pronounced as craved. (2) On the said policy of sea insurance being duly stamped the pursuers are entitled to decree for the amount insured therein, the 'Brilliant' having been duly abandoned as a total loss. (3) Alternatively, under and by virtue of the contract entered into on their behalf by their agent, the defenders are bound, and should be ordained to deliver to the pursuers a policy of insurance in terms of the said contract-note."

The defenders pleaded—" (1) *Ante omnia*, the writing alleged by the pursuers to constitute a contract of insurance falls to be stamped. (3) No title to sue. (4) The writing founded upon not being a policy of sea insurance within the meaning of the Stamp Act 1891, or otherwise, the defenders are entitled to absolvitor from the declaratory conclusions of the summons to that effect. (5) The said writing not constituting a valid contract of insurance, and the agents of the defenders having no power to effect any insurance on their behalf, the defenders are not bound to deliver any policy of insurance."

On 21st February 1903 the Lord Ordinary (PEARSON) pronounced the following interlocutor:—"Assoilzies the defenders from the first three conclusions of the summons," &c.

Note.—"I am afraid that in no view can the pursuers succeed in obtaining decree in this action.

"Their first conclusion is for declarator that the 'contract note' is a policy of sea insurance within the meaning of section 92 of the Stamp Act. That document is unstamped; and if it is a policy, it can only be stamped on payment of a penalty of £100. The statute provides that an unstamped document is not to be available for any purpose whatever until it is stamped. Whether it is available as instructing the title of the pursuers to sue a declarator that it is a policy may be doubted. But

assuming that it is, then I think that on inspection it discloses no contract. I do not know if the absence of the name of the insured could be got over. Perhaps it might. But I do not see how the contract can be regarded as concluded without any stipulation as to the amount of the premium, or any averment that the parties had agreed as to how it was to be fixed. It is said that by section 93 (3) of the Stamp Act the essential features of a marine policy are enumerated, and that the premium is not one of them. The enactment is that a policy shall not be valid unless it specifies certain things. But it does not enact that every document which specifies these things shall be a concluded contract. In my opinion, therefore, the defenders must be assoilzied from the declaratory conclusion, and also from the next two conclusions."

The pursuers reclaimed, and argued—The contract note produced constituted a policy of sea insurance within the meaning of the Stamp Act 1891, secs. 91 and 92. Neither the premium to be paid nor the names of the insured required to be inserted in order to make the policy valid. The three essentials of a policy of sea insurance were stated in sec. 93 (3) of the Act, and the present document contained all these essentials. It was therefore a valid policy—*Home Marine Insurance Company, Limited v. Smith* [1898], 1 Q.B. 829 and 2 Q.B. 351. In *Ionides v. Pacific Insurance Company*, 1871, L.R., 6 Q.B. 674, it had been held that a "slip note" might be given in evidence. Under sec. 91 of the Stamp Act 1891, which extended the meaning of a policy of insurance under the older law, a slip note if it contained the essentials specified in sec. 93 (3) would itself form a policy of insurance. The Court should not require the contract-note founded on to be stamped before giving judgment. On the Court declaring this contract-note to be a policy of sea insurance, the pursuers would pay the penalty and get it stamped and then produce it in evidence. For the purposes of the discussion it should be assumed to be stamped, as in *Home Marine Insurance Company, supra*.

Argued for the respondents—Before the pursuers were entitled to found on this contract-note as a policy of insurance they were bound to stamp it. Otherwise they had no title to sue. The contract-note was only a proposal to insure. It was absurd to call it a policy of insurance. It contained no statement as to the amount of the premium and no obligation on any one to pay a premium. It also failed to state the name of the insured person, which was essential under the Marine Insurance Act 1788 (28 Geo. III. cap. 46.) This proposal to insure had never been accepted and could not be sued on as even a contract to issue a policy.

At advising—

LORD JUSTICE-CLERK—I am of opinion that the Lord Ordinary has in this case come to the right conclusion. It seems to

me to be impossible to hold that the document founded on by the pursuers constitutes an agreement for insurance. It does not upon the face of it bear to impose any obligation upon anyone. There is no name of one of the alleged parties to the agreement, there is no statement of premium or of any means of calculating premiums, and it is in form only a request to the company to issue a policy. To hold such a paper to constitute a policy of insurance seems to me to be quite out of the question. . . .

I therefore move your Lordships to adhere to the Lord Ordinary's judgment with additional expenses.

LORD YOUNG concurred.

LORD TRAYNER—I think the Lord Ordinary is right. The writ on which the pursuers found their claim is not a policy of insurance, nor does it evidence any contract or agreement to insure. It is a proposal for an insurance made to the defenders by their agent on behalf of the pursuers, but a proposal which the defenders were at liberty to adopt or reject. The pursuers sought to represent the writ in question as a covering-note or slip which is not infrequently issued by insurers to evidence a contract of insurance actually made until the formal policy can be prepared and issued. But such covering-notes (so far as I have ever seen) set forth that a contract of insurance has been made, and with whom it has been made, and contain a receipt for a sum paid in name of or towards the stipulated premium. There is nothing of that kind here. I can only suppose that the writ produced by the pursuers was given to them by the defender's agent to show what proposal had been made on their behalf.

LORD MONCREIFF concurred.

The Court adhered.

Counsel for the Pursuers and Reclaimers—Younger—Sandeman. Agent—Arthur Morgan, Solicitor.

Counsel for the Defender and Respondent—Salvesen, K.C.—Wilton. Agent—William Douglas, S.S.C.

Tuesday, June 9.

FIRST DIVISION.

[Lord Pearson, Ordinary.

SKINNER'S CURATOR BONIS, PETITIONER.

Judicial Factor—Curator Bonis to Lunatic—Powers—Special Powers—Authority to Elect between Testamentary Provisions and Legal Rights—Succession—Process—Judicial Factors Act 1849 (Pupils Protection Act) (12 and 13 Vict. c. 51), sec. 7.

The curator bonis of an insane ward presented a note in terms of the Judicial Factors Act 1849 (Pupils Protection Act) sec. 7, and other relative statutes, craving the Court, *inter alia*, to authorise

him on behalf of the ward to elect to accept the provisions in favour of the ward contained in the trust-disposition and settlement of her deceased husband. In a report by the curator to the Accountant of Court he set forth the reasons in respect of which he desired to accept these testamentary provisions in lieu of the ward's legal rights of terce and *jus relictæ*. The Accountant of Court stated his opinion in favour of the power being granted. The Lord Ordinary reported the note as regards the prayer in question to the First Division of the Court.

The Court found that it was competent for the curator to apply to the Court for authority to make the election, and for the Court to direct the curator as to the manner in which he ought to make the election; and in respect the election proposed by the curator was under the circumstances in the interest of the ward, remitted to the Lord Ordinary with instructions to grant the prayer of the note.

Opinion (per Lord Adam) that the provisions of section 7 of the Pupils Protection Act 1849 apply to all applications by a *curator bonis* for special powers.

The Judicial Factors Act 1849 (Pupils Protection Act) (12 and 13 Vict. c. 51), sec. 7, enacts as follows:—"And be it enacted that if at any time it shall appear to the factor that there is a strong expediency for granting abatement of rent . . . he shall report the same to the Accountant, who may order any necessary inquiry, and shall state his opinion thereon in writing, and such report and opinion may be submitted by the factor to the Lord Ordinary with a note praying for the sanction of the Court to the measures proposed, and the Lord Ordinary shall, with or without further inquiry, report the matter to the Court, who, if they consider it expedient and consistent with due regard to the amount of the estate at the time, may sanction the measure, and the decision of the Court shall be final and not subject to appeal; . . . and if any factor having charge of the estate of any lunatic or other person incapable of managing his own affairs shall deem it proper for the comfort or welfare of such person that the whole or a part of such estate should be sunk on an annuity, he shall report the matter to the Accountant, who shall state his opinion thereon in writing, and such report and opinion shall be submitted by the factor, with a note as aforesaid, to the Lord Ordinary, who shall report the matter to the Court, and it shall be in the power of the Court to sanction the measure, and the decision of the Court shall be final and not subject to appeal, and in all other matters in which special powers are, according to the existing practice, in use to be granted by the Court, the Court shall have power to grant the same in like manner and form as is above provided."

James Robert Hodge, chartered accountant, 135 Buchanan Street, Glasgow, was