

No. 262.—IN THE HIGH COURT OF JUSTICE (KING'S BENCH
DIVISION).—18th June, 1902.

COURT OF APPEAL.—18th February, 1903.

HOUSE OF LORDS.—15th March, 1904.

HUNTER v. THE ATTORNEY GENERAL.⁽¹⁾

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Income Tax.—Sec. 54 of the Income Tax Act, 1853.—Life Insurance premiums partly paid in cash, and partly (as contended by the Appellant) advanced by the Insurance Association on the security of the policy.

Held, that allowance only can be claimed in respect of the portion of the premiums paid in cash.

(1) Reported (1904) A.C. 161.

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SPECIAL CASE stated and agreed between the Suppliant
and His Majesty's Attorney-General.

1. The Suppliant Robert Lewin Hunter of No. 9 New Square Lincoln's Inn in the county of London, a member of the firm of solicitors Messrs. Hunter & Haynes of the same place, by a policy of assurance dated the 30th day of June 1896 effected an insurance on his life with the London Life Association Limited, whose head office is at 81 King William Street London E.C., in the sum of £1,500 as hereinafter appears.

2. The policy recited that the sum of £66 17s. 6d. (including an advance of £33 under the first clause thereof) being the premium for such assurance until the 30th day of June 1897, had been paid to the association.

3. By clause 1 of the said policy it was provided that if the renewal premium (subject as thereafter mentioned) be paid to the association at its registered office on or within 15 days of every renewal date during the life of the assured, the association should subject as therein provided pay the sum assured to the legal personal representatives or assigns of the assured. Provided that after the renewal premium should have become subject to reduction under the 2nd clause if the policy should have become void only by non-payment of the renewal premium within the 15 days of grace, it might be revived within 12 months on payment of the premium and an addition of 5 per cent. thereof and 5 per cent. interest. Provided also that until the renewal premium should have become subject to such reduction, a portion viz. £33 of the renewal premium should, if the assured should so desire, be advanced by the association and be with any advance thereinbefore recited, a first charge on the policy subject to the provisions declared in respect of advances under the 4th clause.

4. By clause 2 it was provided that after the premium for seven years should have been paid or commuted, the renewal premium should be subject to any reduction which might be declared by the directors.

5. By clause 3 it was provided that the policy should be void in the event of the death of the assured within one year from its date by suicide or in consequence of a duel or by the hands of justice.

6. By clause 4 it was provided that the association might at any time advance moneys (but should not be bound to do so) for payment of any sum necessary to prevent the lapsing or avoidance of the policy, and any such advances should bear interest at 6 per cent. per annum (reducible to 4 per cent. on punctual payment) payable on or within 15 days of every

renewal date during the continuance of the advance, and any such advances and interest should be a first charge on the policy and the sum assured. A copy of the said policy is annexed to and made part of this Case.

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7. The said policy was effected on the basis of the terms of the association's prospectus of May 1896 annexed to and made part of this Case. The association's prospectuses of April 1900 and 1901 are also annexed to and made part of this Case, and may be referred to as indicating the nature and terms of the business carried on by the association.

8. A print of a leaflet issued by the association and in force at the time of the issue of the policy, and a print of the London Life Association Act 1894 (57 Vict. c. xiv.) with Schedule containing the memorandum and articles of association, are also annexed to and made part of this Case.

9. The following is the form of receipt received by the Suppliant from the said association in respect of the premium payable on the 30th June 1896—

Receipt No. 1625.

The London Life Association, Limited,
81 King William Street, London, E.C.

Received this 30th day of June 1896 the sum of £66 17s. 6d. (including £33 advanced by the association) being the first premium on an assurance of £1,500 on the life of Mr. Robert Lewin Hunter for which a policy Nod. 30540 and dated as above will be issued in due course.

C. D. HIGHAM,
Actuary and Secretary.

£66 17s. 6d. premium (including advance as above).

Countersigned
E. C. E. Sharpe.

10. The following is the form of receipt received by the Suppliant from the said association in respect of the premium payable on the 30th June 1897—

Receipt No. 1475.

The London Life Association Limited,
81 King William Street London E.C.

Policy No. 30540. Due 30th June 1897.

Received this 19th day of July 1897 the sum of £66 17s. 6d. being the amount of one year's premium, due as

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above, for the assurance of £1,500 by this policy on the life of Mr. R. L. Hunter.

£66 17s. 6d. amount paid.

C. D. HIGHAM,
Actuary and Secretary.

For one of the Directors of the Association.

Countersigned
E. C. E. Sharpe.

11. On the 8th day of July 1898 the Suppliant received a similar receipt in respect of the premium payable on the 30th June 1898.

12. On the 19th day of July 1897 the Suppliant entered into an agreement with the said association, a copy of which is annexed to and made part of this Case. The material provisions are expressed to be as follows—

“ I Robert Lewin Hunter hereby acknowledge that I
 “ have received from the undermentioned Association the
 “ sum of thirty-three pounds now advanced to me by way
 “ of loan as also a sum of the same amount advanced to
 “ me by way of loan on 30th June 1896, and in considera-
 “ tion thereof as well as of five further sums of the same
 “ amount to be advanced to me by way of loan by the
 “ London Life Association Limited under the terms of the
 “ policy of assurance do hereby as beneficial owner subject
 “ and charge the said policy and all moneys and benefits
 “ thereby assured as security for repayment to the Asso-
 “ ciation of the said principal sums advanced and to be
 “ advanced with interest thereon at six per cent. per annum
 “ (reducible to four per cent. per annum on the condition
 “ of payment being always made within fifteen days after
 “ the date on which such payment shall have become due)
 “ as mentioned in the said policy without deduction And
 “ I agree to pay to the Association the said principal sums
 “ and interest and also as long as the said principal sums
 “ or any part thereof remain owing to pay interest thereon
 “ at the rate aforesaid on the day mentioned in the
 “ Schedule hereto in each year without deduction And
 “ punctually to pay the premium and all other moneys re-
 “ quired for keeping up the said policy as the same shall
 “ have become payable And that the Association shall
 “ not be bound to receive any payment of premium on the
 “ said policy while any interest hereunder is or becomes
 “ contemporaneously due to the Association and is unpaid
 “ And I declare that in case of default the Association
 “ shall have power to cancel the said policy but that in
 “ the event of any such cancelling any surrender value
 “ which the Association would have allowed for the said

“policy on the day previous to that on which it is cancelled shall be applied in satisfaction of the security hereby or by the said policy created and all costs thereof and the balance (if any) paid to me. And that this security is in addition to and not in substitution for any security contained or implied in the said policy.”

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The SCHEDULE referred to—

Policy No.	Life Assured.	Sum Assured.	Date thereon.	Date of Interest becoming Annually due.
30,540	Robert Lewin Hunter	£ 1,500	A present loan of £33 as well as six other loans of the same amount	30th June.

In accordance with the provisions of this charge, the Suppliant has in each year paid the interest due at the rate of 4 per cent. upon the amount of the principal sums for the time being outstanding on the security of the charge.

13. For the three years 1896-7, 1897-8, and 1898-9, ending respectively 5th April 1897, 1898, and 1899, Messrs. Hunter & Haynes the firm of solicitors of which the Suppliant was a member, were assessed to income tax under Schedule D in respect of the profits of their business as solicitors, and in each year paid income tax upon the amount of the assessment which was based on the assumption that the Suppliant was entitled to relief to the amount of £33 17s. 6d. only in respect of the premium for the said policy.

14. For the year 1896-7 an assessment was made upon them by the Commissioners for General Purposes. On the 7th December 1896 the firm gave notice of appeal against such assessment to the Special Commissioners on the ground that only £33 17s. 6d. had been allowed to the Suppliant as a deduction under section 54 of the Income Tax Act 1853 instead of the sum of £66 17s. 6d. in respect of the above mentioned insurance premium. The hearing of the application for relief took place on 2nd April 1897.

15. It was contended by the Suppliant at the hearing, that under the terms of the policy the said association had advanced by loan to him the sum of £33 and that he had paid to the association the sum of £66 17s. 6d. in respect of the premium.

It was contended on the other hand on behalf of the Crown that the said sum of £33 had not been advanced to the Suppliant, and that only the sum of £33 17s. 6d. had been paid in respect of the premium.

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16. The facts which apply to each of the years in question are as follows:—

No advance in cash was made by the association to the Suppliant, and save so far as the same can be gathered from the Suppliant having made a proposal for a half premium policy, from his having accepted the same, and from the terms of the charge, no specific request was made by the Suppliant that the association would make an advance, and no receipt in respect of any alleged advance was given by the Suppliant to the association. The only moneys which passed from the Suppliant to the association in respect of payment of premium, was a payment in cash of £33 17s. 6d. only and no moneys cheques bills or otherwise were received by the association in respect of the same beyond that sum, but the Suppliant was debited in the loan register with the amount of the principal sums secured by the charge, and is debited in the renewal premium register with the full amount of the premium separately entered in two sums of £33 17s. 6d. and £33 respectively, the sum of £33 having against it the remark "on credit." Copy extracts from the loan register and the renewal premium register are annexed to and made part of this case. The premiums are treated as having been paid in full under the heading "premiums" in the revenue account of the association published in each year pursuant to the Life Assurance Companies' Act 1870. and in the calculation made for the reduction of the premiums subsequent to the seventh, while the principal sums secured by the charge are included in the balance sheet published pursuant to the said Act under the head "loans on the associations' policies (within their surrender value)."

17. The Special Commissioners refused the application being of opinion that the Suppliant was only entitled to relief in respect of the sum of £33 17s. 6d. as being the actual amount paid by him by way of premium. The duty was paid on the 8th April 1897.

18. For the year 1897-8 an assessment was made upon the Suppliants' firm by the Commissioners for General Purposes. On the 11th February 1898 the Suppliant gave notice of appeal against such assessment to the Special Commissioners on the same grounds as before. The duty was paid on the 23rd March 1898.

19. For the year 1898-9 an assessment was made upon the Suppliant's firm by the Special Commissioners. On the 17th July 1899 the Suppliant gave notice of appeal against such assessment on the same grounds as before. The duty was paid on the 22nd January 1900.

20. The Suppliant has lodged a petition of right claiming payment of the sum of £3 6s. being the income tax chargeable on the above mentioned sum of £33 for the three years in question.

The Attorney-General delivered a defence to the said petition. The said Petition and Defence may be referred to as part of this Case.

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21. The Attorney-General has consented to waive any objection made as a matter of law that a petition of right does not lie, but such waiver is not to be taken as a precedent in other cases hereafter.

22. The question for the opinion of the Court is whether upon the facts above stated the Suppliant was entitled in any of the said years to deduct from his assessment or to obtain relief in respect of £66 17s. 6d. as being the annual sum paid by him in respect of premium within the meaning of section 54 of the Income Tax Act 1853.

23. If the Court should be of opinion that the Suppliant was so entitled in any year, judgment is to be entered for the Suppliant for the sum of £1 2s. in respect of each year in which he was so entitled. If the Court should be of opinion that he was not so entitled in any year, judgment is to be entered for the Crown.

24. The Court is to deal with the costs of the suit and of the Special Case.

R. B. D. ACLAND,
For the Suppliant.

S. A. T. ROWLATT,
For His Majesty's Attorney-General.

SCHEDULE.

Page 16. Extracts from the Associations' prospectus May, 1896.
Half premiums.

* * * * *

Page 17. "By it, a participating policy may contain a condition that a portion (if amounting to £10) not exceeding a half, of the ordinary premiums during the first seven years may remain as a first charge thereon, interest at four per cent. being yearly paid, but there is no obligation on the assured to accept all the advances if it should be more agreeable to him on any occasion to pay the full premium. It is hoped that the eighth year's premium will participate in reduction at the rate of about 55 per cent. (with the prospect of further gradual diminution in after years, see page 10) and the charge may then, or at any time be repaid by instalments or continued at pleasure. The table and example on pages 32

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“and 33 have reference to yearly premiums, but similar
“moieties of half yearly and quarterly premiums may also
“be charged on a policy.”

Page 32. “Table B. Participating.

“Single Life. Whole Continuance.

“Half premiums (see pages 16 and 33 and Table A. pages 30
“and 31) and estimates on the basis of a rate of reduction of
“55 per cent. (see pages 10 to 14) in respect of policies for
“£100 subject to yearly premiums.”

Nearest Age.	Moiety payable during first seven years.	Estimated premium in eighth year.
18	£ s. d. 1 3 11	£ s. d. 1 1 6
* * *	* * * *	* * * *

Page 33. “Example under Table B. (see page 32).

“An entrant at age 23 would, under this system and the
“estimate mentioned, pay for a policy for £1,000.

	£	s.	d.		£
“ 1st year Half premium	..	13	0	0	A loan being made of .. 13
“ 2nd ” (Half premium	..	13	0	0)	.. 13
“ ” (Interest, less tax	..	0	10	2)	.. 13
“ 3rd ” (Half premium	..	13	0	0)	.. 13
“ ” (Interest, less tax	..	1	0	4)	.. 13
“ 4th ” (Half premium	..	13	0	0)	.. 13
“ ” (Interest, less tax	..	1	10	6)	.. 13
“ th ” (Half premium	..	13	0	0)	.. 13
“ ” (Interest, less tax	..	2	0	7)	.. 13
“ 6th ” (Half premium	..	13	0	0)	.. 13
“ ” (Interest, less tax	..	2	10	8)	.. 13
“ 7th ” (Half premium	..	13	0	0)	.. 13
“ ” (Interest, less tax	..	3	0	10)	.. 13
“ 8th ” (Total premium as re-	..	11	14	0)	Total loan .. £91
“ ” (Interest, less tax	..	3	11	0)	

“and so on, income tax having been allowed at 6*d.* in the £.
“Then, until the loan is repaid, the net amount of assurance
“after deduction of the advance, namely £909, would be
“secured by an annual payment not, it is anticipated, exceeding
“£15 5*s.* (premium and interest), that is at the rate of £1
“13*s.* 7*d.* per cent. with the prospect of gradual diminution
“of cost in due course (see pages 10 to 14).”

EXTRACT FROM RENEWAL PREMIUM REGISTER. A. I. PAGE 82.

Policy No.	Life Assured.	Sum Assured.	Premiums.	Due.	Remarks.	1897		1898.		1899. (And other years.)	
						£	s. d.	£	s. d.	£	s. d.
30540	Robert Lewin Hunter	£ 1,500	£ 33 17 6	30th	On credit	£ 33 0 0	19 July (Journal 1 p. 78)	£ 33 17 6	8 July (Journal 1 p. 78)		

EXTRACT FROM POLICY LOAN REGISTER (HALF PREMIUMS) 10.

Policy not lodged.

See Endt. Bk. 5 p. 9.

563 Pol. 30540 Int. June Due 30th.

Life assured R. L. Hunter.
Loan made to
Maximum Loan £33.(inttd.) G. B.
Minute Book R. p. 541.

Date of Loan.	Pol. Secs. Reqr.		Loan.		Interest.	
	£	s. d.	£	s. d.	£	s. d.
1896. June 30.	33	0 0	0	0 0	1	6 5
1897. June 30.	33	0 0	0	0 0	1	6 5
1898. June 30.	66	0 0	0	0 0	2	12 10
	33	0 0	0	0 0	1	6 5
	£99	0 0	0	0 0	£3	19 3

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In the Divisional Court Mr. Justice Phillimore gave judgment against the Crown, observing that the Suppliant "has only paid £33 17s. 6d. in hard cash but he has borrowed the remainder and he pays interest for the remainder, and he has given his personal contract for payment of the remainder (as I read the matter) upon demand. It is true he has borrowed it of the very Office to which he is going to pay the premium. To my mind that makes no difference. He has here paid, no doubt, partly with borrowed money (many a man does pay his debts with borrowed money), the premium, each of the premiums in full. He has borrowed a portion of it from the Insurance Office; but he borrowed it upon terms upon which he pays interest and repays the principal upon demand. If the case had been one where the second half of the premium was never paid but merely became a charge upon the policy and the interest also on the second half was never paid but merely became a charge upon the policy, then I think the case would be otherwise; but here the interest having been paid, and being in fact paid upon the sums advanced, and there being the personal liability for the same, I think the Suppliant here has paid the premium in full. I think in this case there has been the payment."

This decision was reversed by the Court of Appeal, *Mathew L.J.*, observing: "The transaction really here is a promise to insure for £1,500 upon payment annually of £33 and interest, and an agreement to permit the balance to be deducted from the amount of the insurance when it falls due. That money cannot be said to be paid; the half is paid and in respect to that which is not paid the income tax must be paid."

The decision of the Court of Appeal was upheld by the House of Lords (Lord James of Hereford dissenting).

Danckwerts, K.C. (*Acland, K.C.*, with him), for the Appellant: The Insurance Company treat the sum which they advanced to the assured as a mere loan, and as between them and the assured there is a complete payment of the premium, a payment, which I submit is sufficient to satisfy the requirements of the 54th section, and to entitle the appellant to the desired relief. The only right which the Company has is to recover the £33 as money lent, and it is immaterial whether the assured borrowed it from a stranger or from the Company.

The condition of the policy that the premium should be paid has been satisfied and the policy is therefore "renewed" while the position between the assured and the Company ceases to be merely that of assurer and assured, and becomes another—that of borrower and lender. The words "on credit" in the Special Case are simply office language for saying that the policy has been obtained under the Company's credit system. The income of the assured for the year is reduced by £66.

since the £33 instead of being income is converted into capital. The Judgment of the Court of Appeal is in error because they have treated the transaction as though it were a different one from what it actually is: there is no "agreement to permit "the balance to be deducted from the amount of the insurance when it falls due."

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Sir R. B. Finlay, A.G., Sir E. Carson, S.G., and Rowlatt for the Respondent: "The appellant is not entitled to the deduction because he has not paid the money. The whole merit of the scheme is that the persons who come to the Insurance Company do not have to pay more than £33; its real meaning is that the advance is a deduction from the policy money. If payment of the advance were demanded, the appellant would be entitled to refer to the leaflet and the whole scheme to show that one half of the premium was a charge upon the policy. The real facts of the case are that one half stands over on credit. To treat the appellant as having borrowed the £33 to pay the remainder of the premium would be in contravention of the whole arrangement as advertised; and on these facts I submit that he has not paid the premium.

Danckwerts, K.C., in reply: The scheme is no part of the contract; it has nothing to do with the contract. The contract is on the policy and the charge on the policy, and there is nothing in the policy or the charge to justify the argument for the Crown.

JUDGMENT.

The Lord Chancellor: My Lords, it appears to me that this judgment ought to be affirmed. The whole point is that the exemption or deduction or whatever it is to be called is to be allowed to the assured if the premium has been "paid by him," and the whole reason I give for my judgment is that it has not been paid by him. I move, your Lordships, that the appeal be dismissed with costs.

The Lord
Chancellor.

Lord Macnaghten: My Lords, I quite agree.

Lord
Macnaghten

Lord Davey: My Lords, I am of the same opinion. No doubt the argument presented by Mr. Danckwerts based on the charge on the policy appears to have some weight, because it appears as between this gentleman, Mr. Hunter, and the Insurance Company, the premium has been paid. But that is not the question: the question is whether Mr. Hunter has paid the premium so as to obtain the benefit of the exemption.

Lord Davey.

Looking at the whole transaction it appears to me that it was a scheme of some ingenuity whereby the Insurance Company invited people to insure their lives in their office on the footing of half the annual premiums for seven years not having

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to be found in cash; and the very merit of the scheme, as pointed out in some of the documents, in the invitation or prospectus, or whatever they are called, is that the insured will not have to pay in cash the whole of the premiums. In these circumstances I think the entry in the ledger is a perfectly accurate entry, that £33 17s. 6d. is paid and £33 remained "on credit." It may be that the insured was liable to be sued for that £33, but he was willing to run that risk no doubt for the sake of obtaining the very favourable terms which were offered to him by the Insurance Company, who were not likely to spoil their business by taking such a step.

Lord James.

Lord James.—My Lords, I have entertained considerable doubt in this case, and I express the opinion which I now do before your Lordships with very great hesitation as to whether I am right or not; but on the whole I have come to the conclusion that this payment does in fact exist, and that therefore the appellants are entitled to succeed.

My Lords, I am aware of the statement that this transaction as regards the £33 was described as "on credit"; that of course is substantially in favour of the opinion your Lordships have expressed. But I am disposed to look rather at the real substance of the transaction as it is found in the charge on the policy. It is admitted that the parties have acted in perfect good faith in this arrangement which has taken place; whether it is an ingenious one or not it is certainly an honest transaction and there as between the two parties this sum is treated as an advance upon loan, and it is admitted that upon that document between them an action could have been brought, so that at any time if the Company chose to take that course (although it may be one which they would not have taken in fact), they could have sued upon it.

My Lords, it appears to me there is nothing in the transaction that can be condemned either in the nature of the transaction itself or as being legally in fault. If one party chose to say to the other, I will lend you money with one hand and receive it with the other, it seems to me that that was a transaction of loan with a charge of interest upon that loan, and was treated by the parties in good faith as a loan; and that being so it would be a "payment" in the same way, as has been mentioned at the Bar, as if the money had been borrowed from a third person or as if there had been two different departments in the same office in which the transactions had taken place.

My Lords, for these reasons with very great diffidence I differ from my noble and learned friends who have expressed their opinion; for looking at the case as a whole, which is full of difficulties though it is a short one—it appears to me that the appellants are entitled to succeed.

Lord Robertson.—My Lords, I agree with the motion which has been proposed, upon the very simple and sufficient ground stated by my noble and learned friend on the Woolsack. The whole argument of the appellant has been that as in a question as between the assured and the Insurance Company, he must be held to have paid the larger sum. But in point of fact in a question of the extent by which his income was diminished during the year by the payment, there can be no doubt that it was only by £33, and not by £66.

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Lord
Robertson.

Lord Lindley.—My Lords, I am of the same opinion. I think the judgment of Lord Justice Mathew is absolutely unanswerable. I say this bearing in mind that under the old common law plea of payment you could prove a plea by settlement of account on a balance payment—but that is not such a payment as is contemplated by the Income Tax Act at all.

Lord Lindley.

Questions put :—

That the Judgment appealed from be reversed.

The Not Contents have it.

That this Appeal be dismissed with costs.

The Contents have it.