

By his will the testator bequeathed a total of 3,500 of "my shares in the South British Insurance Company Limited" to certain persons. He also disposed of his shares in the Standard Fire and Marine Insurance Company and in the Zealandia Soap and Candle Company (Limited). Subsequently to the date of the will the South British Insurance Company subdivided each of its £5 shares into five £1 shares, on which 10s. was credited as paid up, and hence at his death the testator held 23,250 £1 shares in the company.

After the will had been made the Standard Fire and Marine Insurance Company also subdivided their £10 shares into £5 shares paid up to 10s., so that at his death testator had 5,962 £5 shares in the last-named company.

Before the testator's death the latter company altered its memorandum of association and changed its name to the "Standard Insurance Company (Limited)," and a new certificate of incorporation was issued to it.

The Zealandia Soap and Candle Company (Limited) also underwent changes subsequently to the will. To effect an amalgamation with another concern this company went into liquidation, and a fresh company was formed. The liquidators of the old Zealandia Soap and Candle Company received 37,500 fully paid shares in the new company, and of these the testator received 3,318 shares in lieu of his holding in the old company.

On these facts the executors under the testator's will sought to have determined the rights of the legatees to the various shares bequeathed by the testator's will. The Public Trustee was ordered to act as guardian *ad litem* in respect of an infant whose interests were affected by the proceedings.

Section 24 of the Wills Act provides that a will is to speak and take effect, so far as regards assets disposed of, as if it had been executed immediately before the death of the testator unless a contrary intention appeared by the will. The Court held,—

- (a.) That so far as the South British shares were concerned the will contained a "contrary intention," and that the bequest must be construed and take effect with respect to the shares owned by the testator at the date of the instrument.
- (b.) That for the same reason the bequest of the Standard Fire and Marine Insurance shares must be deemed to speak from the making of the will, and that the interest of the legatees was not affected by the subdivision of the shares.
- (c.) In the case of the Zealandia Soap and Candle Company shares, however, as the shares in the new company were not identical with the original holding in the old company, the legacy failed: *Guardian, Trust, and Executors Co. of New Zealand Ltd. v. Smith* (1923, N.Z. L.R. 1284).

(5.) A testatrix gave certain lands to named children, or "such of them as shall then be living when and until the youngest of them shall attain twenty-one years," on trust to sell the lands and to pay the net proceeds "unto my sons above-named or such of them then as shall be living in equal shares." The second-youngest child died in 1916 after having attained twenty-one years. All the sons were alive when he had attained twenty-one. Another son died in 1917 aged twenty-six years, whilst the youngest son died in 1918 aged twenty years.

The trustees found difficulty in deciding who were the persons entitled to take under the wording of the will, and sought the directions of the Supreme Court on originating summons. The Court decided that only those sons who were alive at the death of the youngest son in 1918 were entitled to share: *Alley v. Public Trustee* (1924, N.Z. L.R. 223).

(6.) Under the Foreign Insurance Companies' Deposits Act, 1908, foreign insurance companies carrying on life insurance, or any other class of insurance other than fire and marine, were required to make deposits in cash or approved securities with the Public Trustee as a protection to the New Zealand policyholders. In that Act a company was defined as a "person or association, corporate or unincorporate."

This Act was repealed in 1922 by the Insurance Companies' Deposits Act, 1921–22, by which the obligation to make deposits was extended to foreign companies carrying on fire-insurance business. Under this Act deposits have to be made in cash, the deposits for British companies being £15,000 in respect of fire insurance, £15,000 for employers' liability insurance, and £5,000 for all other classes of insurance business. In the 1921–22 Act the definition of "company" was altered to mean "any association of persons whether corporate or unincorporate," the words "a person," which appeared in the definition of "company" in the 1908 Act, being omitted.

It is not an uncommon practice for persons and firms in New Zealand to take out an open policy with Lloyd's, and then to issue certificates to New Zealand policyholders against such open policy. The Lloyd's policy is subscribed by a number of Lloyd's underwriters in London, each of whom covenants to take an aliquot part of the risks, and the underwriters covenant each for himself and not one for another—i.e., their liability to the policyholder is several and not joint.

The question was recently raised as to whether or not Lloyd's underwriters who subscribed to an open policy were a company within the meaning of the 1921–22 Act, and, if so, whether the issue of policies covering fire following and arising out of an earthquake rendered the underwriters liable to make a deposit of £15,000 as for fire-insurance business. The Court held that Lloyd's underwriters were not a "company" within the meaning of the Act, and, further, that the issuing of policies covering fire following earthquake was not fire-insurance business: *Scales & Co. v. Public Trustee and Attorney-General*.