

NOVEMBER 14TH, 1904.

C.A.

DILLON v. MUTUAL RESERVE FUND LIFE ASSN.

Life Insurance—Misstatements of Insured as to Age and Disease—Evidence of Age—Admission of Parish Register—Prerequisites—Findings of Jury—Materiality of Misstatements—Insurance Act, sec. 144.

Appeal by defendants from judgment of MACMAHON, J., upon findings of a jury, in favour of plaintiff.

There had been a previous trial before BRITTON, J., and a jury, and upon the jury's answers to questions judgment had been entered for plaintiff. Upon appeal to this Court a new trial was directed (2 O. W. R. 78), which resulted as above.

The action was by the widow of John Dillon to recover \$2,000 upon a contract or policy of insurance upon his life.

The two defences principally relied upon were that the insured had misstated his age in his application for the policy, he having been born in 1847 and not in 1850 as stated, and that he had untruly stated that he had never had an abscess, whereas he had been a sufferer from abscesses all his lifetime.

The following questions, among others, were put to the jury at the second trial, and they made the following answers:—

1. Was the answer made by John Dillon that he was born on 24th August, 1850, untrue?

No, to the best of our knowledge.

2. Was the answer so given material except as to fixing the amount of premium?

No.

3. If you find Dillon misstated his age, was the answer given in good faith believing it to be true and without any intention to deceive the company?

We believe it was given in good faith.

4. Had Dillon, at the time of the application in 1891, or did he ever have, the disease of abscess or any open sore? State which.

He had a simple sore, but not at the time of his application.

5. If you find he had the disease of abscess or open sore prior to his application for insurance, state how long prior thereto.