

had proper amendments made, his desire should have been acceded to. All that can now be done only as an indulgence upon proper terms. The learned referee, I have no doubt, struggled to do substantial justice between the parties, notwithstanding the difficulties which he seems, during the trial, to have thought prevented him from going into any question of a rectification of the writing. Without saying that he failed in that struggle, I am obliged to say that in point of law his method cannot be supported. My endeavour shall be to reach the like end—substantial justice—in a manner unobjectionable to the law.

If plaintiff within 5 days elect to have the reference reopened and if he pay to defendants their costs of this appeal within 5 days after taxation, and amend—as he may—the pleadings, seeking reformation of his agreement so as to release him from any obligation to do the painting and glazing, the report will be set aside and the matter referred back for trial; otherwise the appeal will be allowed with costs and the action dismissed without costs, and the money in Court will be paid out to plaintiff; and in future plaintiff will, doubtless, be more careful in preparing and signing contracts, remembering that that which he actually agrees to do, not that which he intended to agree to do, if they differ, is, generally speaking, binding.

If a new trial is taken, all costs will then be as under order of reference originally, that is, in discretion of referee, except costs of this appeal, to be paid as above.

MEREDITH, C.J.

MARCH 31ST, 1905.

WEEKLY COURT.

RE FARLEY.

Life Insurance — Designation of Beneficiaries — "Legal Heirs"—Trust—Reservation of Power of Revocation—Declaration—R. S. O. 1897 ch. 203, sec. 159, sub-sec. 1—Construction of—Preferred Beneficiaries—Next of Kin.

Motion by Harold E. Peagam and R. S. Dinnick for a summary order determining whether the claimant John Arthur Farley was entitled to \$2,000 paid into Court by the Royal Templars of Temperance, being the moneys payable under an insurance certificate upon the life of Arthur Farley, who died on 15th May, 1904.