

CARTWRIGHT, MASTER.

OCTOBER 3RD, 1904.

CHAMBERS.

ARMSTRONG v. ARMSTRONG.

Costs—Depriving Successful Party—Good Cause—Misleading Conduct before Action.

Motion by plaintiff for leave to discontinue the action and for an order on defendant to pay the costs, or for such disposition of costs as might seem fit.

J. H. Spence, for plaintiff.

Shirley Denison, for defendant.

THE MASTER.—The solicitors for the parties reside in different county towns. The evidence of the facts on which plaintiff relies is wholly documentary. Although affidavits have been filed on both sides, there is no conflict between them on any material point. . . .

It is clear from *Huxley v. West London Extension R. W. Co.*, 14 App. Cas. 26, that the successful party cannot be deprived of costs unless there is good cause.

The question therefore is: Do the facts of this case establish the existence of such good cause?

To answer this question intelligently the facts must be stated at some length.

Plaintiff is the widow of defendant's son George, who died 1st October, 1903.

At the time of his death there were two policies on his life, one for \$500 and another for \$2,000. These were handed over after his death by the widow to her husband's brother Joseph. He afterwards sent her \$600, with which the funeral expenses of deceased and other liabilities were paid.

The widow was under the impression that she was entitled to receive \$1,500 from the proceeds of the insurances. In consequence, on 26th January, 1904, her solicitor wrote to Joseph Armstrong stating that the widow understood that her husband had policies of \$500 and \$2,000 respectively on his life, out of which, by his dying declaration and attempted disposition, she was to receive \$1,500, and that