

In this action the plaintiff at first claimed only payment of this latter amount with interest, but at the trial he added an alternative claim for the return of his premiums with interest. The learned trial Judge gave effect to this alternative claim, and found that there was misrepresentation with regard to the amount of the reserve, but not with regard to the surplus, such as to entitle the plaintiff to avoid the whole contract, and judgment was entered against the company for \$2,078.64, the amount of the premiums paid with interest.

It is not here contended for the plaintiff that there was misrepresentation as to the surplus which would entitle the plaintiff to relief. At best that amount would be extremely uncertain and nothing more than an estimate could be made, and no more was in fact professed to be given, and there is no evidence whatever of fraudulent exaggeration with regard to it. Fortunately the new Insurance Act of 1910 prohibits such estimates for the future and will remove one source of disappointment, if not dissatisfaction.

The appeal is thus narrowed to the alleged misrepresentation as to reserve, the amount of which was not at any time uncertain, but always a fixed ascertainable sum. It must be said that the plaintiff's evidence is not very clear with regard to it.

[The learned Judge then quotes from and discusses the plaintiff's evidence, and proceeds as follows]: I do not feel warranted in differing from the other members of the Court in the conclusion that the evidence was too unsatisfactory to undo a transaction entered into so many years ago. I confess, too, that I cannot bring myself to believe that there was intentional misrepresentation by McNeil in the sum stated as the amount of reserve in the slip.

[Discussion of the evidence on this point, and as to the agency of McNeil, in which the opinion is expressed that "the finding of the learned trial Judge that McNeil was the agent of the company appears . . . well warranted." The judgment proceeds]: If it were the fact that the representation as to the amount of reserve being \$527 was made before the application, that the plaintiff made the application upon the representation, that the representation was made by an agent of the company, and that such agent was acting within the scope of his authority in making representations as to the amount of reserve, and that the policy contained nothing to shew that the representation was incorrect, or put the plaintiff on his guard, there would be, in my opinion, no ground for interfering with the judgment. . . .