

MARCH 22ND, 1915.

*DEVITT v. MUTUAL LIFE INSURANCE CO. OF
CANADA.

Life Insurance—Policy—Non-forfeiture Clause—Construction—“Cash Surrender Value”—Determination by Insurance Company—“Available”—Pleading—Contract—Forfeiture—Promissory Note Given for Part of the Premium Unpaid—Waiver—Policy not in Force at Death of Assured—Costs.

Appeal by the defendants from the judgment of BRITTON, J., 7 O.W.N. 575.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL, LATCHFORD, and KELLY, JJ.

G. H. Watson, K.C., and W. H. Gregory, for the appellants.

R. S. Robertson and J. A. Scellen, for the plaintiff, respondent.

RIDDELL, J.:—The first matter for consideration is the meaning of the expression “cash surrender value” in clause 9 of the policy (set out in the reasons for judgment of Britton, J.)

It is admitted that if “cash surrender value” means the same thing in clause 9 as in the table of surrender values, the plaintiff’s case must fail on this point.

“Surrender value” is a well-recognised expression in life assurance. It means the amount of money or its equivalent which the company could afford to pay to be rid of the existing policy. Actuarially, it is a function direct of the amount of the policy, inverse of the probability of life and the amount of the premium. (Of course the amount of the premium is itself in practice a function direct of the amount of the policy and inverse of the probability of life; but there is no necessary fixed relation, and every company decides the amount for itself). So far the amount is capable of calculation within reasonably narrow limits.

But there are other elements which must be considered by an assurance company. As a matter of business the proposition must be made attractive. The company which offers the largest “surrender value” will, *ceteris paribus*, get the largest business; but at the same time surrenders are to be discouraged—