Div'l Court.]

POTTS *v.* TEMPERANCE AND GENERAL LIFE INS. CO. OF NORTH AMERICA.

*Life insurance—Surrender of policy—Contract—Avoidance of—Fraud—Deceit —Evidence of fraud.*

The rules which govern the purchase and sale of policies of insurance are the same which govern the purchase and sale of any other species of personal property; and it does not follow that, because contracts of insurance are said to be *uberrimæ fidei*, a contract for the purchase and sale of a policy is so too.

About two months before the death of the insured, when, as the insurers knew, he was very ill with heart disease, he surrendered to them a $5,000 policy, upon which premiums to the amount of $415.75 had been paid, and received $780 therefor, $250 in cash and the discharge of a debt of $530 for which the insured had pledged the policy. In an action by the executors of the insured to recover the full amount of the policy, it was contended that he was, at the time of the transaction, under the delusion that he would live a long time, and that the insurers permitted him to remain under that delusion knowing that he could not recover, and that this was such fraud as avoided the transaction. It appeared, however, that the insurers said and did nothing to induce or encourage such delusion.

*Held*, that the transaction could not be avoided on this ground, for the mere omission of the insurers to inform the insured that he was mistaken was not fraud or deceit.

*Hill* v. *Gray*, 1 Stark. 434, explained and distinguished.

*Smith* v. *Hughes*, L.R. 6 Q.B. 597, followed.

The manager of the insurers had stated to the insured that he would recommend what had been proposed, $250, for him, and that that was the best he could recommend to the committee. There was no evidence to show that this statement was not made in good faith, or that the insurers or their committee were prepared to give more, or that they were prepared to act in the matter at all except upon the recommendation of their manager, and it did not appear that the manager would have been willing to recommend anything more, had what he proposed not been accepted by the insured.

*Held*, that the statement of the manager was not evidence of fraud to go to the jury.

*Jones* v. *Keene*, 2 Moo. & R. 348, distinguished.

*J. J. Maclaren*, Q.C., for the plaintiff.

*W. Cassels*, Q.C., and *A. W. Anglin* for the defendants.

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ROSE, J.] [Dec. 29.

NIXON *v.* GRAND TRUNK R.W CO.

*Railways—Absence of cattle-guards—Animals killed—Liability—"Place where they might properly be"—51 Vict., c. 29, s. 271—53 Vict., c. 28, s. 2.*

In an action for damages for the loss of horses killed on the defendants' railway, the statement of claim alleged that the horses "escaped" from the plaintiffs' farm, passed down a concession road to an allowance for road which