

BRITTON, J.

DECEMBER 22ND, 1906.

TRIAL.

CHICAGO LIFE INSURANCE CO. v. DUNCOMBE.

Principal and Surety—Bond for Fidelity of Agent of Insurance Company—Advances to Agent and Premiums not Paid over—Construction of Bond—Application to Existing Agreement between Agent and Company—Withholding from Surety Information as to Material Facts—Release.

Action against R. L. Duncombe and T. H. Duncombe upon their bond to plaintiffs. T. H. Duncombe was surety for R. L. Duncombe, who had been and was at the time of the execution of the bond, and was styled therein, the plaintiffs' "agent for the purpose of soliciting for applications to said company for assurance upon the lives of individuals, and of performing such other duties in connection therewith as may be required by the officers of said company."

C. St. Clair Leitch, Dutton, and J. R. Green, St. Thomas, for plaintiffs.

J. M. Glenn, K.C., for defendants.

BRITTON, J.:— . . . Herbert S. Duncombe, a relative of defendants, is a director, the 3rd vice-president, and general counsel of the plaintiffs, who were incorporated only in 1902. Tierman & Stout were general agents of this company, and at first the defendant R. L. Duncombe worked under these general agents. On 11th September, 1905, R. L. Duncombe was appointed agent of plaintiffs, and a formal agreement was entered into between the parties. On 8th November, 1905, a new agreement was made, and on 29th January, 1906, there was yet another new agreement, each later agreement cancelling and superseding the former as between R. L. Duncombe and plaintiffs. On 7th May, 1906, the special agreement of 29th January, 1906, was modified, and was continued in force only subject to the supplementary agreement of 7th May.

R. L. Duncombe bought and paid for some stock in plaintiff company, which was taken in the name of H. S. Dun-