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No. 13

APPELLATE DIVISION

FIRST DIVISIONAL COURT.

MAY 29TH, 1916.

*WILLOUGHBY v. CANADIAN ORDER OF FORESTERS.

Insurance—Life Insurance—Endowment Certificate—Proof of Age of Insured—Actual Admission—Statutory Admission—Pass-book—Receipts—Absence of Notices in Red Ink—Insurance Act, R.S.O. 1914 ch. 183, sec. 166, sub-secs. 7, 9, 10, 11—Defence to Action by Beneficiary—Premature Action—Mistake or Fraud not Alleged.

Appeal by the defendants from the judgment of BRITTON, J., ante 114.

The appeal was heard by GARROW, MACLAREN, MAGEE, and HODGINS, J.J.A.

W. A. Hollinrake, K.C., for the appellants.

J. A. Hutcheson, K.C., for the plaintiff, respondent.

MAGEE, J.A., in a written judgment, referred to the endowment certificate issued to William R. Willoughby (now deceased) by the defendants on the 21st November, 1888, which stated that he had been regularly admitted a member of Court Thousand Islands, No. 6, located at Gananoque, on the 19th March "at the age of 33 years;" and said that, in view of the admission of age in the certificate, no further proof of age was necessary. On the 17th April, 1913, the plaintiff was made beneficiary by her husband, instead of the former beneficiary, his first wife. She should, therefore, recover the full amount with costs, and the appeal should be dismissed with costs.

This admission in the certificate, however, was not referred

*This case and all others so marked to be reported in the Ontario Law Reports.