

that account. The third parties if they ever gave the matter a thought, which is, I think, improbable, might well under the circumstances have relied upon the defendants to see that their own forms were properly filled up, and their instructions to their own agents followed.

Under these circumstances, there being as it is conceded, no express covenant or contract of indemnity, it would be impossible on the authorities to which I have referred, to imply one. To do so would not, in my opinion, be in furtherance of an existing contract, but to make an entirely new and different one between the parties.

For these reasons I would affirm the judgment and dismiss the appeal with costs.

MEREDITH, J.A., agreed that the appeal should be dismissed, for reasons stated in writing.

MOSS, C.J.O., and MACLAREN and MAGEE, J.J.A., also concurred.

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APRIL 1ST, 1911.

SHAW v. MUTUAL LIFE INSURANCE CO. OF NEW YORK.

*Life Insurance—Endowment Policies—Alleged Misrepresentation by Agent—Reserve—Surplus—Alternative Claim—Rescission of Contract Refused.*

Appeal by the defendants from the judgment of LATCHFORD, J., 2 O.W.N. 89, rescinding two endowment policies on the plaintiff's life, and ordering repayment of all premiums paid by him, with interest and costs. The facts are stated in the report cited, and in the judgment of MAGEE, J.A., *infra*.

The appeal was heard by MOSS, C.J.O., MACLAREN, MEREDITH, and MAGEE, J.J.A.

F. Arnoldi, K.C., and D. D. Grierson, for the appellant company.

G. H. Kilmer, K.C., for the plaintiff.

MAGEE, J.A.:—The plaintiff was canvassed in September, 1889, by two persons, Belfry and McNeil, separately and together, claiming to act as agents for the defendant company, and was induced by them to sign an application dated 27th Septem-