

The plaintiffs, must, however, upon payment, deliver the machine to the defendants, and the judgment should be amended so as thus to direct.

The appeal should be dismissed with costs.

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FIRST DIVISIONAL COURT.

MAY 15TH, 1916.

DRAIN v. CATHOLIC MUTUAL BENEFIT ASSOCIATION  
OF CANADA.

*Insurance—Life Insurance—Benefit Society—Assessment Rates—  
Power of Trustees—4 & 5 Geo. V. ch. 136 (D.)—Increased  
Rates—Paid-up Policies—Cash Surrender Value Scheme.*

Appeal by the defendants and cross-appeal by the plaintiff from the judgment of MIDDLETON, J., ante 104.

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

Christopher C. Robinson, for the defendants.  
D. O'Connell, for the plaintiff.

The judgment of the Court was read by HODGINS, J.A., who said that he entirely agreed with the judgment below as to the matters in question upon the plaintiff's appeal, and had nothing to add to the reasons of Middleton, J. That appeal should be dismissed with costs.

With regard to the declaration that it was not competent for the trustees to issue paid-up policies based on table No. 5, Hodgins, J.A., said that he had not been able to arrive at the same conclusion as Middleton, J. Section 20 of the association's Act, as enacted by 4 & 5 Geo. V. ch. 136 (D.), provides: "To make the association actuarially solvent the grand trustees in the name of the association may make any contract with its members for increasing the rates, reducing the amount payable on certificates of insurance . . . as they may deem necessary in the interests of the association." Making a contract for a paid-up policy payable on the death of the insured reduces (as shewn by the tables) the amount payable on a certificate then held by him, and comes literally within the wording of the Act.

The point is, that the entire insurance liability will be made up by the acceptance by the members of one or other of three options; and, if the first of the options is sound, and the others are said to rest upon the same basis and to be also actuarially sound, they are