

## SHEPARD v. SHEPARD—DIVISIONAL COURT—JUNE 5.

*Will—Construction—Line of Division of Farm—Intention of Testator.*]—Appeal by the defendant, Albert James Shepard, from the judgment of LATCHFORD, J., ante, 1012. The members of the Court (FALCONBRIDGE, C.J.K.B., BRITTON and RIDDELL, JJ.) were unable to agree with the view of the learned trial Judge as to the division of the farm, which he had arrived at with some hesitation, and gave written reasons allowing the appeal, thus giving effect to the appellant's contention, which was that the testator's intention was to divide his farm into two parts equal in area, and that Joseph should take the north half, and Albert James the south half of the land in this lot owned by the testator. W. E. Raney, K.C., for the appellant, Albert James Shepard, A. G. F. Lawrence, for the plaintiffs. S. C. Smoke, K.C., for the defendant, Helen Shepard. E. C. Cattnach, for the infants.

ECKERSLEY v. FEDERAL LIFE ASSURANCE CO.—MIDDLETON, J.—  
JUNE 7.

*Life Insurance—Homans Plan—Alleged Misrepresentation—Costs.*]—Action by a policyholder in the defendant company for rescission of the contract on the ground of fraud or misrepresentation. The policy was on what is known as the Homans plan, by which the assessments increase from year to year during its currency. MIDDLETON, J., said that he had read very carefully all the correspondence and considered the evidence given by the plaintiff and had come to the conclusion that there was no fraud or misrepresentation inducing the contract. The policy must be construed as it is written and both parties are bound by its terms. After explaining the nature of the Homans plan and its difference from the ordinary level premium insurance, and the proper construction of the policy in question, the judgment proceeds: "I can see no course open save to dismiss the action, and in doing so I do not give costs, not because of any unfair conduct of those now in charge of the company (they appear to have been both fair and frank), but to shew my disapproval of the original form of policy, which seems to me to be tricky and calculated to deceive. I think the rates should have been carried on so as to shew the great and prohibitive cost when the insured lives beyond seventy." J. H. Ingersoll, K.C., and A. C. Kingstone, for the plaintiff. G. H. Watson, K.C., and T. C. Haslett, for the defendants.