

The laches of the liquidator in making the claim was sufficient to defeat this action if otherwise it could have been maintained.

The right of the liquidator to cancel the policy existed under the terms of the condition; but he refrained from exercising that right until the policy had expired, and the right could no longer be exercised. In this way he treated the policy as an existing one, on which he could assert liability, and he now sought to treat it as non-existing for the purpose of recovering the premium.

The reinsurance covered the risk upon the original policy, and was not intended to be a reinsurance against liability to refund premiums.

Action dismissed with costs.

MIDDLETON, J.

OCTOBER 6TH, 1920.

BARTHELMES v. BICKELL & CO.

Brokers—Transactions on Foreign Exchange for Customer—Profits Payable in Foreign Currency—Benefit of Customer from Depreciation of Canadian Currency—Exchange—Contract—Evidence.

Action against a firm of brokers by a customer to recover \$11,344.75, representing the difference in value between Canadian and United States currency, in respect of a sum payable by the defendants to the plaintiff.

The action was tried without a jury at a Toronto sittings.

A. G. Slaght and T. H. Barton, for the plaintiff.

Strachan Johnston, K.C., for the defendants.

MIDDLETON, J., in a written judgment, said that the question involved in this action was the right of the defendants to discharge themselves from liability to the plaintiff by paying in Canadian currency the balance due to him. The defendants were brokers, carrying on business in Toronto. In June, 1918, the plaintiff began trading with them as his brokers, in the purchase and sale of stocks, the transactions being almost entirely upon the New York Exchange. The trading continued until February, 1920, when the account was closed by the payment of the amount admitted by the defendants to be due and the handing over of a few shares,