

BOYD C.

MARCH 17TH, 1906.

CHAMBERS.

RE MCGREGOR v. UNION LIFE INS. Co.

Division Courts—Removal of Plaintiff to High Court—Grounds for—Question Raised by Claim of Set-off—Construction of Contract — Other Litigation Depending on Similar Contracts—Absence of Right of Appeal in Division Court Case.

Motion by defendants to remove an action from a Division Court into the High Court.

Joseph Montgomery, for defendants.

R. D. Hume, for plaintiff.

BOYD, C.:— . . . Plaintiff's cause of action is a very simple one, arising on a contract dated 28th October, 1905, under which he rendered certain services to defendants as their special agent, for which he now makes claim.

The matter of difficulty on account of which defendants seek a certiorari grows out of another claim made by them against plaintiff on a prior instrument of 19th August, 1905, when he was acting as ordinary agent. The company seek to make plaintiff liable for some \$75 on account of lapses in policies of insurance by reason of non-collection of the premiums, which it is said has been guaranteed by him to the company under the first agreement, as ordinary agent.

Both agreements are prepared on very elaborate printed forms by the company, and if there is difficulty in the construction of the first in date, it is occasioned by their own drafting. Besides, the company are not obliged to make defence on the ground of set-off; they can reserve it for or use it in an independent action against plaintiff in the High Court, if they wish a decision in the Superior Court, and are not content to have the whole matter disposed of in the Division Court. No matter of law of general interest is involved. The whole difficulty arises from the assumed ambiguous or obscure document prepared by defendants themselves. Why should plaintiff suffer for this by having his action removed from the Court of his choice?