

accepted" in advance "the principles and methods" which the defendants might adopt in the distribution of the surplus. This ratification doubtless applies only to principles that are correct and to methods that are honest. But there is no evidence before me that the defendants in dealing with the surplus acted incorrectly or dishonestly, and the plaintiff cannot base his action for rescission on the representation made in regard to the amount he was stated by McNeil to be likely to receive as "surplus."

But the representation made by McNeil in regard to reserve was . . . "guaranteed." It was positive and unequivocal. It was either false and made with a knowledge of its falseness, or McNeil made it recklessly, not caring whether it was true or false. . . .

[Reference to *Mutual Reserve Co. v. Foster*, 20 Times L. R. 715, 717.]

Holding, as I do, that McNeil has not been shewn to have been authorised by the defendants to make the representation which he did make in regard to the reserve, it follows that the plaintiff is not entitled to recover the amount which McNeil guaranteed he would receive on that account. But he is, I think, entitled to have the contract rescinded as one induced by a false representation of fact made by McNeil. . . .

[Reference to *Provident Savings Co. v. Mowat*, 32 S. C. R. 147; *Kettlewell v. Refuge Association*, [1908] 1 K. B. 545, 549, 552, [1909] A. C. 243; *Barwick v. English Joint Stock Bank*, L. R. 2 Ex. 259; *Swift v. Tewsbury*, L. R. 9 Q. B. 301, 312; *Langdon v. North-West Mutual Life Insurance Co.*, 199 N. Y. 188.]

There will, accordingly, be judgment that the plaintiff recover back from the defendants the premiums he has paid them, with interest and costs. If the parties cannot agree as to the amount payable, there will be a reference to the proper officer. The costs of the reference (if any had) to be reserved until after the Master has made his report. The policies will be declared rescinded.