

Western Life of Chicago December 29th, 1899, and they transferred it to defendants, August 1st, 1900. On September 10th, 1900, Spooner received a circular letter from the defendant company stating that they assumed every policy or certificate in good standing on September 1st, 1900, upon the legal reserve basis, the reserve so far as it had not been paid in cash to be a lien against the insurance. On September 14th, 1900, Spooner paid a premium to defendants which was accepted by them. On January 14th, 1901, the defendants issued Spooner a new policy in lieu of the old, a certificate of a lien against it being given by him. Defendants claim that the North Western Life had no license to do business in Canada, that they issued the policy dated Jan. 14th, 1901, by mistake, thinking it a North Western Life Policy, which they submit it was not, that they received said premium by mistake, and that policy was obtained by Spooner and his wife by fraudulent misrepresentations and without consideration.

G. F. Shepley, K.C., and J. C. Rykert, K.C., for plaintiff.

G. T. Blackstock, K.C., for defendants.

ROBERTSON, J., held, that the defendants had not been fraudulently dealt with by the plaintiff and her husband, and that this is not a contest between two companies as to which should pay plaintiff her claim, but a case of contract between plaintiff as beneficiary under the original policy, or under the new policy dated January 14th, 1901, and the defendant company.

The plaintiff is entitled to recover, but her dealings were not altogether fair in their character, and consequently she will have to pay costs. She is entitled to \$1,000 less lien against the policy. Reference as to any additional loan or charges.

J. C. Rykert, St. Catharines, solicitor for the plaintiff.

MacMurchy, Denison, & Henderson, Toronto, solicitors for the defendants.

FALCONBRIDGE, C.J.

AUGUST 28TH, 1902.

TRIAL.

# SAUNBY v. LONDON WATER COMMISSIONERS.

*Water and Watercourses — Prescription — Mandatory Injunction — Damages.*

Action for injunction, mandatory order, and damages. Plaintiff is the owner of lands bordering on the river