

## HIGH COURT DIVISION.

MIDDLETON, J.

JUNE 7TH, 1911.

## ECKERSLEY v. FEDERAL LIFE ASSURANCE CO.

*Life Insurance—"Homans" Plan—Fraud and Misrepresentation—Construction of Policy—Action for Rescission—Dismissal without Costs.*

Action by a policy-holder in the defendant company for rescission of the contract of life insurance evidenced by the policy, on the ground of fraud and misrepresentation.

J. H. Ingersoll, K.C., and A. C. Kingstone, for the plaintiff.

G. H. Watson, K.C., and T. C. Haslett, for the defendant company.

MIDDLETON, J.:—I have read very carefully all the correspondence, and considered the evidence given by the plaintiff, and conclude that there was no fraud or misrepresentation inducing the contract.

At the trial I was somewhat impressed by the statement made by the plaintiff that he was assured that the premium could never exceed the maximum named in the policy, and, from 60 on, the premium would be level. No such claim is made in the pleadings or in the long correspondence prior to the action, in which the plaintiff many times set forth his grievances.

The policy must be construed as it is written, and both parties are bound by its terms.

The Homans plan of insurance has been generally misunderstood by policy-holders, and is one that readily lends itself to misrepresentation, and hence has been discredited in practice. Life insurance has come to be regarded as investment, and in the case of ordinary level premium insurance this is the case. In that type of insurance the members pay premiums which, when invested, would, if the member lived exactly the average life, produce the sum agreed to be paid. Those who do not reach the expected age gain, those who exceed the age lose, but in the long run there cannot be either gain or loss. The policy-holder takes his chances of being a gainer or loser, but the fundamental idea is investment.