

be allowed to impede by requiring his former client to give security for costs. *Re Carroll*, 2 Ch. Ch. 305, may be referred to.

Motion dismissed. Costs in the cause.

STREET, J.

SEPTEMBER 29TH, 1903.

TRIAL.

HAMILTON v. MUTUAL RESERVE LIFE INS. CO.

*Life Insurance — Surrender of Policy — Inducement — Misstatements of Agent — Release — Subsequent Repudiation — Fraud — Trial of Preliminary Issue in Action on Policy.*

Trial of a preliminary issue in an action by the personal representatives of Robert D. Hamilton, deceased, upon a certificate or policy assuring \$2,000 upon the life of the deceased.

J. P. Mabee, K.C., for plaintiffs.

W. Cassels, K.C., and Shirley Denison, for defendants.

STREET, J.—The insurance was effected on the 20th March, 1888, and the deceased died on the 19th July, 1902. In July, 1901, the policy was alleged to have lapsed for non-payment of a premium, but the deceased applied to have it reinstated in accordance with a condition contained in it; he was instructed to go to Dr. D. B. Fraser and submit to a medical examination, and answer in writing the questions contained in a printed form supplied to him. This he did, and he was informed that his policy had been reinstated, and subsequent premiums were accepted by the defendants upon his policy. In March, 1902, he applied to the defendants under another clause, called "the total disability clause," in his policy, for the immediate payment of \$1,000 on account of the sum insured. No decision upon this application was communicated to the deceased, but on 6th May, 1902, D. E. Cameron, a general claim agent of the company, instructed by the head office, called at the house of the deceased, and remained with him for some two or three hours, at the end of which time the deceased received from Cameron a draft on the company for \$500, in full of all his claims under the policy, and executed a release under seal which Cameron had already prepared, and he delivered the policy up to Cameron, who took it away. Within half an hour Cameron returned with Mr. McPherson, a solicitor and notary public, to whom the deceased in answer to questions stated that he knew he was releasing his policy of \$2,000, in consideration of the payment of \$500, and he added that he was glad to get rid of the company; that they