

LATCHFORD, J.

OCTOBER 13TH, 1910.

SHAW v. MUTUAL LIFE INSURANCE CO. OF NEW
YORK.

Life Insurance—Endowment Policies—Unauthorised Representations by Agent as to Payments out of Reserve and Surplus—Rescission of Contract—Return of Premiums.

In 1888 the plaintiff applied to the defendants, through one McNeil, for insurance to the extent of \$2,000, to be covered by two policies, each for \$1,000. In his application the plaintiff agreed that "in any distribution of surplus the principles and methods which might be adopted by the company in such distribution, and its determination of the amount equitably belonging to said policy, shall be and are hereby ratified and accepted by and for every person who shall have or claim any interest under the contract."

Certain representations, oral and written, were made by McNeil, the defendants' agent, before the plaintiff received the policies.

The plaintiff paid his premiums through the twenty-year period, which expired on the 2nd November, 1909, and then exercised the option to surrender the policies and reserve and surplus to which he was entitled. Instead of paying \$527 as reserved and \$486 as surplus, or \$1,013 upon each policy, the defendants offered the plaintiff upon each but \$672.82, which the plaintiff refused to accept, and brought this action for \$1,013 upon each policy, and also asked for the rescission of the contract and the return of the premiums paid with interest, alleging that the representations of the agent were binding upon the defendants, and were relied on by him (the plaintiff).

G. H. Kilmer, K.C., for the plaintiff.

F. Arnoldi, K.C., for the defendants.

LATCHFORD, J.:— . . . There is no evidence before me that the defendants authorised the representations which McNeil made. The surplus represented by McNeil to be \$486 falls short of that amount by more than one-half. But the plaintiff had notice that the surplus was merely an estimate; and in regard to the surplus which the defendants offer to pay he has, upon the evidence, no right to complain. By his application he "ratified and