

J. CLEOPHAS LAMOTHE (DE- } APPELANT; 1907  
 FENDANT) ..... } \*Oct. 7, 8.

AND

THE NORTH AMERICAN LIFE }  
 ASSURANCE COMPANY (PLAIN- } RESPONDENTS.  
 TIFFS) ..... }

ON APPEAL FROM THE COURT OF KING'S BENCH, APPEAL  
 SIDE, PROVINCE OF QUEBEC.

*Life insurance—Wagering policy—Misrepresentation—Questions for  
 jury—Arts. 424, 427, C.P.Q.—Charge to jury.*

**A**PPEAL from the judgment of the Court of King's Bench, appeal side, affirming the judgment entered by Doherty J., in the Superior Court, District of Montreal, on the verdict of the jury, at the trial, maintaining the respondents' action for the cancellation of a policy of life insurance and dismissing the appellant's action to recover the amount of the policy.

The actions were consolidated for trial in the Superior Court and were tried together by His Lordship Mr. Justice Doherty with a jury. The assignments of facts to be submitted to the jury were settled, before the trial, by His Lordship Mr. Justice Taschereau, upon suggestions made by both parties, in conformity with articles 424 and 425 of the Code of Civil Procedure, but were subsequently amended, during the trial, by order of the trial judge, the appellant taking objection to such amendment.

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\*PRESENT:—Sir Charles Fitzpatrick C.J. and Girouard, Idington, Maclellan and Duff JJ.

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Upon answers by the jury to the questions submitted judgments were entered in favour of the company in both actions and these judgments were affirmed by the judgment now appealed from. The present appellant appealed to the court below for a judgment in his favour, *non obstante veredicto*, or for a new trial, on grounds of misdirection by the trial judge, verdict being against the weight of evidence and the admission of illegal evidence as well as the irregularity complained of in the amendment of the assignment of facts, and these grounds were again urged on the present appeal. It was argued, on behalf of the appellant, that the trial judge had erred in his charge to the jury on questions as to the wagering character of the policy and as to certain representations made by the assured being materially incorrect and wilful misstatements. The appellant asked for judgments in his favour in both cases or for a new trial.

*T. Chase-Casgrain K.C., Aimé Geoffrion K.C. and Henry J. Elliott*, appeared for the appellant.

*Brosseau K.C. and Holt K.C.* for the respondents.

After hearing the arguments for the appellant by Messrs. *Casgrain* and *Geoffrion*, and without calling upon the respondents' counsel for any argument the appeal was dismissed with costs.

The judgment of the court was delivered by

THE CHIEF JUSTICE (oral).—This appeal is dismissed with costs, and the application for a new trial is refused, on the ground that there was no misdirec-

tion by the judge which occasioned substantial prejudice to the appellant; and, in view of the whole evidence, the jury could, in our opinion, reasonably find the verdict complained of.

*Appeal dismissed with costs.*

Solicitor for the appellant: *J. C. Lamothe.*

Solicitors for the respondents: *Brosseau & Holt.*

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