

New Jersey Court of Errors and Appeals.

KATE OWEN, <i>Pl'tff and Defend't in Error,</i> <i>vs.</i>	} <i>On Contract.</i> <i>On Writ of</i> <i>Error.</i>
METROPOLITAN LIFE INSURANCE COMPANY,	
<i>Defend't and Pl'tff in Error.</i>	

BRIEF OF CONOVER ENGLISH FOR DEFEN- DANT AND PLAINTIFF IN ERROR.

This case comes up on writ of error to the Supreme Court. The case was tried at the Morris Circuit before Mr. Justice Garretson and a jury. At the conclusion of the case a motion for a direction for a verdict for the defendant was made and overruled, and certain requests to charge on behalf of the defendant were likewise refused by the learned trial judge. This writ of error calls in question the propriety of these rulings.

The suit was brought by Kate Owen, the beneficiary named in the policy, on the life of John Henry Owen, \$500. The application for the policy was dated September 14th, 1901. The policy itself was dated September 18th, 1901. The insured died November 18th, 1901. Payment of the policy was refused on the ground of breaches of warranty on the part of the insured, and also that he was not in good and sound health at the time of the issuing of the policy.

By the terms of the policy sued on, the statements and agreements in the application were expressly made warranties, and it was agreed that payments of the premiums should be made subject to certain conditions, which were made part of the contract and executed by the insured and assured as a part thereof. The language of the policy is (p. 65) :

“Metropolitan Life Insurance Company, in consideration of the answers and statements contained in the application for this policy, copy of which is hereto annexed as part of this contract, upon the life of John Henry Owen, of Morristown, State of New Jersey, hereinafter called the insured, all of which answers and statements are hereby made warranties, and of the payment of the annual premium etc. * * * doth hereby agree, subject to the conditions set forth on the third page hereof, each and all of which are hereby made a part of this contract, and are accepted by the insured and assured, as part hereof, as fully as if herein recited, to pay etc.”

The policy also contained the following clause:

“No obligation is assumed by the company until the first premium has been paid, nor prior to this date, nor unless, upon this date, the insured is alive and in sound health.” (p. 66, l. 2).

The second of the conditions upon which the policy was issued was (p. 69, l. 35) :

“Second. If any statement in the application herein referred to is not true, or if any premium or instalment of premium be not paid when due, this policy shall be void, and all premiums paid shall be forfeited to the company, except as provided in paragraph first of Benefits and Privileges.”

The application which was thus made a part of the contract, and which was proved to have been signed by the insured (p. 31, l. 25) contained the following provisions (p. 71, l. 14; p. 79, l. 8) :

"Wherever nothing is written in the following paragraphs, it is agreed that the warranty is true without exception * * * To induce the said company to issue said policy, and as consideration thereof, I warrant and agree on behalf of myself, and of any other person who shall have or claim interest in any policy issued under this application, as follows:"

Then followed a list of questions and answers, and the statement then continued (p. 73, l. 10; p. 8, l. 11)

"And I further declare, warrant and agree that the representations and answers made above are strictly correct and wholly true; that they shall form the basis and become part of the contract of insurance, if one be issued, and that any untrue answers will render the policy null and void, and that said contract shall not be binding upon the company unless, upon its date and delivery the insured be alive and in sound health."

The defendant, in addition to the general issue, pleaded specially a number of defences, setting up the breach of the sound health clause, and breach of several of the warranties.

The breaches of warranty relied on at the trial, and specially pleaded were these:

"4. The following is the name of the physician who last attended me, the date of the attendance, and the name of the complaint for which he attended me. Dr. Becker, two years, rheumatism." (p. 71, l. 36; p. 79, l. 36; plea, p. 16 &c).

"5. I have not been under the care of any physician within two years, unless as stated in previous line, except . ." (p. 72, l. 1; p. 80, l. 1; plea, p. 16 &c).

"6. I have never been under treatment in any dispensary, hospital or asylum, nor been an inmate of any almshouse or other institution except two years ago for rheumatism." (p. 72, l. 5; p. 80, l. 4; plea, p. 10, l. 10 &c).

In addition to the foregoing, the insured had warranted by Question 2 (p. 71, l. 21 etc; p. 79, l. 25.) that he had never had "disease of the heart." A breach of this was also pleaded. (p. 15, l. 20.)

The application containing these warranties was dated Sept. 14, 1901. (p. 82, l. 11.) Had there been no breaches of warranty, the learned trial judge would have undoubtedly been right in leaving it for the jury to say whether or not the sound health clause had been violated.

But he also left it for the jury to say, and in this we think he erred, whether or not the answers to the questions which were concededly warranties, were made by the insured in good faith, or with the purpose to deceive. It was not claimed or pretended by the plaintiff that the answers given to the 4th, 5th, and 6th questions were "strictly correct and wholly true."

I.

THE ANSWERS MADE BY THE INSURED TO THE 2ND, 4TH, 5TH, AND 6TH QUESTIONS WERE FALSE IN FACT.

The defendant in the course of its case, attempted to prove these facts by having the witness read from, and by introducing in evidence, the entry No. 442, in the House Register of the Morristown Memorial Hospital containing a record and history of the case of the insured while confined in that institution during the winter of 1899 and 1900. (p. 34, l. 20 to p. 35, l. 12.) The offer was refused and an exception taken.

A similar offer was likewise made in reference to entry No. 630 of the same record-book, containing a history of the case of the insured while confined in the hospital in Sept., 1901. This offer was also refused and an exception taken. (p. 36, l. 12 &c.)

These records were proved to be the official records of the hospital and were produced from the proper custody."

This House Register was the official record of the hospital, kept in the daily course of the hospital business, and was in the nature of a public document. It seemed to be the surest and best proof of the in-macy of Owen in the institution.

In *Dimick vs. Metropolitan Life Ins. Co.*, 40 Vr. 384, one of the breaches of warranty relied on was the false answer to the question "Have you ever been an inmate of an asylum or hospital, if so when and for what." Proof was made by having the resident physician testify from the records of the hospital;— even though he had no personal knowledge of the records, not having been connected with the hospital at the time. (This does not appear from the report of the case, but does appear from the record sent up.) Neither Mr. Justice Dixon, who presided at the trial, nor afterwards this court, questioned the propriety of this form of proof.

In *Hancock vs. Catholic Benevolent Legion*, 28 Vr. 614, this court expressly held that the register of a parish church, kept according to the rules of the church, was admissible in evidence.

It may be, however, this error of the trial judge, was at the most, harmless error, for Dr. Becker, who attended Owen in the hospital, in the winter of 1899-1900, testified apart from the records to the fact of his confinement and the nature of his disease as follows: (p. 42. c. 36)

"Q Have you any recollection, leaving out the book entirely, when in 1899 Mr. Owen was confined in the hospital?

A I have.

Q When?

A December 22, 1899.

Q How long was he confined in the hospital as you recollect?

A For at least two months.

Q And during those two months beginning with December 22, 1899, he suffered from what?

A Organic heart disease."

This evidence was not contradicted or denied. Remember that the application containing the warranties was signed on Sept. 14, 1901. The insured was first confined in the hospital on Dec. 22, 1899—or a period of over a year and nine months prior to the date of application. He was confined there for two months, and so on the day he left, had been an inmate of the hospital within a period less than a year and seven months from the date of the application. During that time he suffered from organic heart disease. Consequently his answer to Question 2, that he had never had "disease of the heart" was false.

So was his answer to Question 4, that the name of the physician who *last* attended him, the date of the attendance and the name of the complaint was, "Dr. Becker, two years, rheumatism."

His statement (by leaving the question unanswered) that he had never been under the care of any physician except as stated in answer to Question 4, was likewise false. So was his statement in answer to the sixth question that he had never been under treatment in or been an inmate in, any hospital or institution.

II.

THE STATEMENTS OF THE INSURED IN ANSWER TO THE QUESTIONS SET FORTH IN THE APPLICATION WERE WARRANTIES.

By the terms of the policy, and by the applicant's own agreement, the statements contained in his application were made warranties. It is no longer an open question in this State that when the policy by

its very terms refers to the application and makes it a part of the contract of insurance, and the statements therein contained, by express agreement, are made warranties, the legal effect is to make a false answer void the policy.

Dewees vs. Manhattan Ins. Co., 6 Vr., 366.

American Life Ins. Co. vs. Day, 10 Vr., 89.

Franklin Fire Ins. Co. vs. Martin, 11 Vr., 568.

Carson vs. Jersey City Ins. Co., 14 Vr., 300.

Metropolitan Life Ins. Co. vs. McTague, 20 Vr., 587.

Glutting vs. Metropolitan Life Ins. Co., 21 Vr., 287.

Finn vs. Metropolitan Life Ins. Co., 38 Vr., 17, affd. 41 Vr., 255.

Dimick vs. Metropolitan Life Ins. Co., 40 Vr., 384.

Hanrahan vs. Metropolitan Life Ins. Co., 43 Vr., 504.

Fish vs. Metropolitan Life Ins. Co., 64 Atl. Rep., 109.

III.

THE ANSWERS AND STATEMENTS BEING WARRANTIES, MUST BE STRICTLY CONSTRUED AS TO THEIR TRUTH OR FALSITY.

The question submitted in the application for insurance called for strictly truthful answers by the insured. Any deviation from the truth, even in unimportant particulars, works a forfeiture. The warranty extends to the statement as actually made, and where an answer, though incomplete, is false, a forfeiture follows. This is *res adjudicata* in this State.

In *Carson vs. Jersey City Ins. Co.*, 14 Vr., 301, p. 304, Justice Depue stated:

“A warranty in a policy of insurance excludes all argument in regard to its reasonableness, or the probable intent of the parties. If the policy contains a condition which in law amounts to a warranty on the part of the assured, he can de-

rive no benefit from the policy, unless the condition has been literally performed, and it is immaterial to what cause non-compliance is attributable; for if it be not in fact complied with, the assured will forfeit all his rights under the policy, unless the forfeiture has been waived by the insurer. (Citing cases)."

In *Metropolitan Life Ins. Co. vs. McTague*, 20 Vr., 587, the court said, in reference to statements in the application which by the terms of the policy were made warranties (p. 591):

"The falsity of any of them will avoid the contract."

In *Glutting vs. Metropolitan Life Ins. Co.*, 21 Vr., 288, the court said:

"The legal effect of the foregoing stipulation was to render the statements in the application with regard to the subject of insurance, warranties, and to annul the contract of insurance if any of those statements were found to be untrue. (Citing cases)."

In *Hanrahan vs. Metropolitan Life Ins. Co.*, 43 Vr., 504, this court held that where a statement in an application for life insurance warranted to be true, is false as far as it goes, but fails to answer the whole inquiry, there is a breach of warranty which avoids the policy. The insurer waives an answer to that part of the inquiry only which is left unanswered.

See also and to the same effect

Franklin Fire Ins Co. vs. Martin, 11 Vr., 586.

Bennett vs. St. Paul Fire &c. Ins Co., 26 Vr., 377.

Lippincott vs. Royal Arcanum, 35 Vr., p. 309.

Dimick vs. Metropolitan Life Ins. Co., 40 Vr., 384.

Finn vs. Metropolitan Life Ins. Co., 38 Vr., 17; *affd.* 41 Vr. 255.

IV.

THE LEARNED TRIAL JUDGE ERRED IN REFUSING TO DIRECT A VERDICT FOR THE DEFENDANT, AND IN REFUSING TO CHARGE AS REQUESTED, AND IN SUBSEQUENTLY CHARGING THE JURY THAT THEY MIGHT CONSIDER WHETHER THE STATEMENTS MADE BY THE INSURED IN THE APPLICATION, WERE MADE IN GOOD FAITH BY HIM, OR FOR THE PURPOSE OF DECEIVING.

The evidence, as already pointed out, is uncontradicted to the effect that the insured had, within a period of from one year and nine months, to one year and seven months, been confined in the Morristown Hospital, where he was attended by physicians for the disease of organic heart disease.

There are, of course, two well defined lines of authority bearing on the question of good faith in answer to warranties in an insurance application. The one line is represented by the case of *Dimick vs. Metropolitan Life Ins. Co.*, (*supra*) in this court where the principle is laid down that "where a policy of life insurance makes the answers and statements contained in the application warranties, and constitutes them a part of the contract, an untrue statement concerning a matter of fact, that is or ought to be within the personal knowledge of the applicant, constitutes a breach of warranty, and renders the policy void."

The other line of authorities is represented by the case of *Henn vs. Metropolitan Life Ins. Co.*, (*supra*) in this court. The principle is laid down that "if the question asked relates to a matter upon which the insurer should know that the insured could not have the knowledge to fully answer, the warranty will not be held to be more than a warranty in the fair sense of the question, namely, to the belief of the insured."

As to what facts are considered those which are or ought to be within the personal knowledge of the applicant, the following cases are instructive:

In *Lippincott vs. Royal Arcanum* (*supra*) the applicant certified that he had never undergone any surgical operation, and that he had never been afflicted with catarrh. The evidence showed that he had, at the time of the application for insurance, been suffering from catarrh of the throat, and was under medical treatment for that disease. It also appeared that he had undergone a surgical operation for the removal of the sub-maxillary gland on the left side of his jaw. The court, therefore, considering this evidence, said (p. 311):

“He must have known when he declared that he had never suffered from catarrh, that this was untrue, for he was then being treated by his physician for that disease. He likewise must have known that he was making a false statement when he declared that he had never undergone a surgical operation.”

In *Dimick vs. Metropolitan Life Ins. Co.*, (*supra*), the insured had said, in answer to the question “State amount of insurance you now carry on your life” the false answer “None;” and in reply to the question “Is there any other insurance in force on your life?” the false answer “None;” and in reply to the question “Have you ever been an inmate of an asylum or hospital, and if so when, and for what?” the false answer “No.”

The court, in discussing the argument raised by the plaintiff that the answers should be deemed warranties only of the *bona fide* belief and opinion of the applicant, in accordance with the rule laid down in the *Henn* case, said (p. 393):

“But this distinction will not avail the present plaintiff. The inquiries under consideration related to matters that, within the contemplation of the contract, were or ought to have been with-

in the personal knowledge of the applicant. Both related to definite matters of fact. By the undisputed evidence, the recorded answers were in both instances untrue to the knowledge of the applicant."

Remember that one of the questions in that case or here, was in reference to whether he had ever been an inmate of a hospital.

In *Finn vs. Metropolitan Life Ins. Co.*, (*supra*), the insured had warranted that no proposal or application to insure his life had ever been made to any company or agent, for which a policy had not been issued for the amount applied for. The proof showed that the insured had previously applied for insurance to the defendant company, and that his application had been rejected, and that the insured had been notified of such rejection prior to the application for insurance upon which the policy in suit was issued. The court said (p. 256) :

"It is clear that this question related to a matter upon which the insured could fully answer."

In *Hanrahan vs. Metropolitan Life Ins. Co.* (*supra*), the applicant was asked to state the name of the physician who last attended him, the date of the attendance, and the name of the complaint, the question being identical with Question 4 in the application now before the court. The answer was "Fifteen years ago. Pneumonia." The proof showed that the applicant had been attended by a physician for three weeks a little over two years before he signed the application. The court, in construing the question and answer said (p. 507) :

"We think the clause as to date of attendance is to be referred to the clause immediately preceding as to the name of the physician who *last* attended; this is not only intended by the close collocation of the two clauses, but by the subsequent clause as to 'the name of the complaint

for which *he* attended me; the pronoun which I have italicised can refer only to the last physician who attended the applicant. The whole warranty must mean that the date of the last attendance was fifteen years ago, and the complaint pneumonia. This statement was false, and as the applicant agreed that if his statements were not strictly correct and wholly true, the policy should be null and void, the plaintiff cannot recover, unless the fact that the answer was obviously incomplete in failing to name the physician, constitutes a waiver."

The court then distinguished between cases in which the defence relied on an imputation of fraud, and those in which it put itself merely upon a breach of warranty, and said:

"In such a case the failure to state a fact may amount to a fraudulent concealment, but there can be no breach of warranty where the insurer chooses to accept an incomplete statement and the statement is true as far as it goes. The case is, however, very different where the statement is not only incomplete, but is false as far as it goes. In both cases the warranty extends only to the statement actually made, but where the incomplete answer is true there is no breach; where the incomplete answer is false there is a breach. The present case is of the latter character. That the assured had been attended by a physician for three weeks only a little over two years before was a fact which must have been known to him. The case is therefore within *Dimick vs. Metropolitan Life Insurance Co.*, 40 Vroom, 384, and not one of the class of cases of which *Henn vs. Metropolitan Life Ins. Co.*, 38 Vroom, 310, is an instance."

Having in mind these authorities, the ruling of the trial judge in refusing to direct a verdict for the defendant, and to charge as requested, and his subsequent charge to the jury, were undoubtedly erroneous.

(a). The motion for a verdict for the defendant should have been granted.

The law governing the trial Judge in such cases has been clearly laid down by this court.

In *Henn vs. Metropolitan Life Ins. Co.*, 38 Vr. 310, p. 311, this court said:

“Where there is conflict in the evidence, or lack of conclusive and unquestioned proof of the falsity of a warranty, the question is one for the jury. There must exist no rational theory upon which the jury might find the non-falsity of the answers of the insured, before the court can direct a verdict for the defendant. If there be a rational doubt of the falsity of the statement, the case is for the jury.”

In *Lippincott vs. Royal Arcanum*, 35 Vr., 309, Chief Justice Gummere in delivering the opinion of this court said, in laying down the rule in reference to a false statement, the truth of which had been made a warranty (p. 311):

“The unimpeached testimony in the case is conclusive upon this point, and a verdict for the plaintiff cannot be supported without disregarding it. This being so, it was the duty of the trial court to control the jury in its action, and direct a verdict for the defendant. *Baldwin vs. Shannon*, 14 Vr., 596; *Crue vs. Caldwell*, 23 Vr., 215; *Haines vs. Merrill Trust Co.*, 27 Vr., 312.”

Assuming, on this phase of the case, that the inquiry as to whether or not the insured had disease of the heart, was such an inquiry as to bring his answer to Question No. 2 (p. 79, l. 33) within the line of authorities represented by the *Henn* case, there can be no possible question but that the inquiries contained in the fourth, fifth and sixth questions referring to his attendance by physicians and inmacancy in the hospital were such as he could fully answer, and they come within the line of authorities represented by the *Dimick* case.

The recent case of *Fish vs. Metropolitan Life Ins. Co.*, 64 Atl. 109, is absolutely squarely in point. The fifth and sixth questions referred to in the opinion are identical in language with the fourth and fifth questions in the application before the court in this case, and the express provision in the application referred to in the *Fish* case, that "wherever nothing is written in the following paragraph, it is agreed that the warranty is true without exception," is found also in the language of the application at bar (p. 71, l. 8; p. 79, l. 9).

In the *Fish* case Mr. Justice Swayze, speaking for this court said (p. 110) :

"The warranty is contained in two clauses of the application which read as follows: '(5) The following is the name of the physician who last attended me, the date of the attendance, and the name of the complaint for which he attended me: Typhoid fever; Jan., 1893; Dr. Braymer. (6) I have not been under the care of any physician within two years, unless as stated in previous line, except.' The proof was that Dr. Jarrett had attended the assured for illness on September 25, 26, 28, and 30, and October 2, 3, 4, and 5, in 1901, and that the ailment which required the doctor's attendance was rheumatism in the shoulder. Whether or not being under the care of a physician and being attended by a physician are synonymous it is not now necessary to decide. The fact that paragraph 6 refers to the previous line (evidently meaning paragraph 5) indicates that the two were regarded as synonymous, at least by the company which prepared the form of application. Whether the expressions are synonymous or not, we think that the facts show a breach of the warranty that the assured had not been under the care of a physician. We cannot assume that a physician who attends a patient for rheumatism in the shoulder eight times within ten days gives him no care. The natural inference is to the contrary. Nor do we think the fair meaning to be attributed to the warranty is that the patient

is under the sole care of, and that his conduct is wholly directed by, the physician. The ordinary meaning of the words is that a physician had been giving care to the patient."

In the case at bar, the proof shows that the insured was confined to the hospital for two months, suffering from organic heart disease. It would be doing violence to both the language of the questions, and to common sense, to say that the insured had not, under those circumstances, been "attended" by a physician, or been "under the care of" a physician. The answer to the fifth question being left blank, leaves the situation exactly as it was in the *Fish* case.

The answer to the sixth question to the effect that he had never been under treatment in any hospital, except two years ago for rheumatism, was a matter entirely within his knowledge, and the answer was false in fact.

The trial court erred in refusing the defendant's second and third requests to charge (p. 57). The second request directed the jury to find for the defendant if they found that the insured had in fact been confined in a hospital for a period of within two years of the date of the warranty.

The third request directed the jury to find for the defendant, if they found that the insured had in fact been under the care of a physician within two years from the date of the warranty.

A verdict for the defendant should have been directed, as requested, and the trial court erred in refusing.

(b). The trial judge erred in leaving it for the jury to say whether the false statements had been made purposely, or with intent to deceive.

The court, in his charge to the jury, ignored the fifth question. He specifically referred to the fourth and sixth questions.

In referring to the answer to the fourth question, which was: "The following is the name of the physician who last attended me, the date of the attendance, and the name of the complaint for which he attended; Dr. Becker, two years, rheumatism," the court said (p. 55, l. 20):

"The defendant says that that statement is untrue in this particular, that it was a year and seven months or nine months, when he was attended by Dr. Becker, prior to the time when this application was made, and that he was attended by Dr. Becker for heart disease; organic heart disease. In considering this statement, you may also consider whether the statement was made by the insured in good faith as he made it, or whether it was made for the purpose of deceiving."

The court then proceeded to analyze the question and answer as follows:

"As to the name of the physician, there does not seem to be any question as to his good faith, or as to the truth of the statement in that respect. As to 'two years' the claim is that that is untrue, and it should have been a year and seven months, instead of two years. It is for you to say whether that difference in time was purposely introduced by the insured, whether he knew exactly, and whether if he knew exactly, he purposely said two years, in order to deceive and mislead the company. You must say about that. If he stated it in good faith, then there is no breach in that respect. The disease he stated to be rheumatism; the disease for which he was attended was organic heart trouble. This is also a question for you to determine, whether in that respect the statement as to the disease for which he was attended, was made by him untruthfully; whether he knew he was attended for any heart trouble or for rheumatism. If he thought he was attended for rheumatism, and so stated, then there is no breach of warranty."

The information which the question was desired to elicit was the name of the *last* physician who attended the insured, the *last* complaint for which he had been attended, and the date of the attendance. The answer as given could only mean that he had been last attended two years previous to the date of the application, by Dr. Becker for rheumatism.

The question was one upon which he could answer fully, to his own knowledge. He knew that he had been at the hospital within a period of two years. He also knew that he had not been attended for rheumatism at that time. He could not honestly have been deceived as to the period of time, for he left the hospital within a year and seven months from the date he signed the application, and he could not have mistaken heart disease for so dissimilar a malady as rheumatism. The fact that he may have stated correctly the name of the doctor who attended him at the hospital, does not help the plaintiff's case any. The answer which he gave was false in fact, and comes within the purview of the class of cases above cited, represented by the Dimick case. The learned trial judge therefore erred in charging the jury as he did.

In reference to the sixth question and answer, which was: "I have never been under treatment in any dispensary, hospital, or asylum, or been an inmate of any almshouse or other institution, except two years ago for rheumatism." The trial judge said, in charging the jury (p. 56, l. 15):

"That of course is an admission and statement that he was under treatment in the dispensary, hospital, or asylum—at least you may gather that from it—two years ago for rheumatism. The defendant company claims that that statement is not true; that he was under treatment a year and seven months before for organic heart trouble. You must apply to that the same rule, and say whether that statement was made by the insured in good faith, or whether it was made for the purpose of deceiving the company."

The learned trial judge seems to have misapprehended the design of the question. The question was not as to whether the applicant had been treated for some specific disease in a hospital, but whether he had, as a matter of fact, been under treatment in a hospital at all. Had the question been as to what disease he had been suffering from, it is conceivable, although not probable, that the insured might not have known that he was suffering from organic heart disease, and so would have made a question for the jury to have passed upon, but there can be no possible ground to hold that a man who had been confined in a hospital for two months, should not be cognizant of that fact, and should not have been cognizant of the time when he had been discharged therefrom. In stating in his answer, therefore, that he had been confined to a hospital for rheumatism, he was stating an answer which was not material to the question. In stating that he had been confined two years previous to the date of the application, he was making a statement which was false in fact, and false to his knowledge.

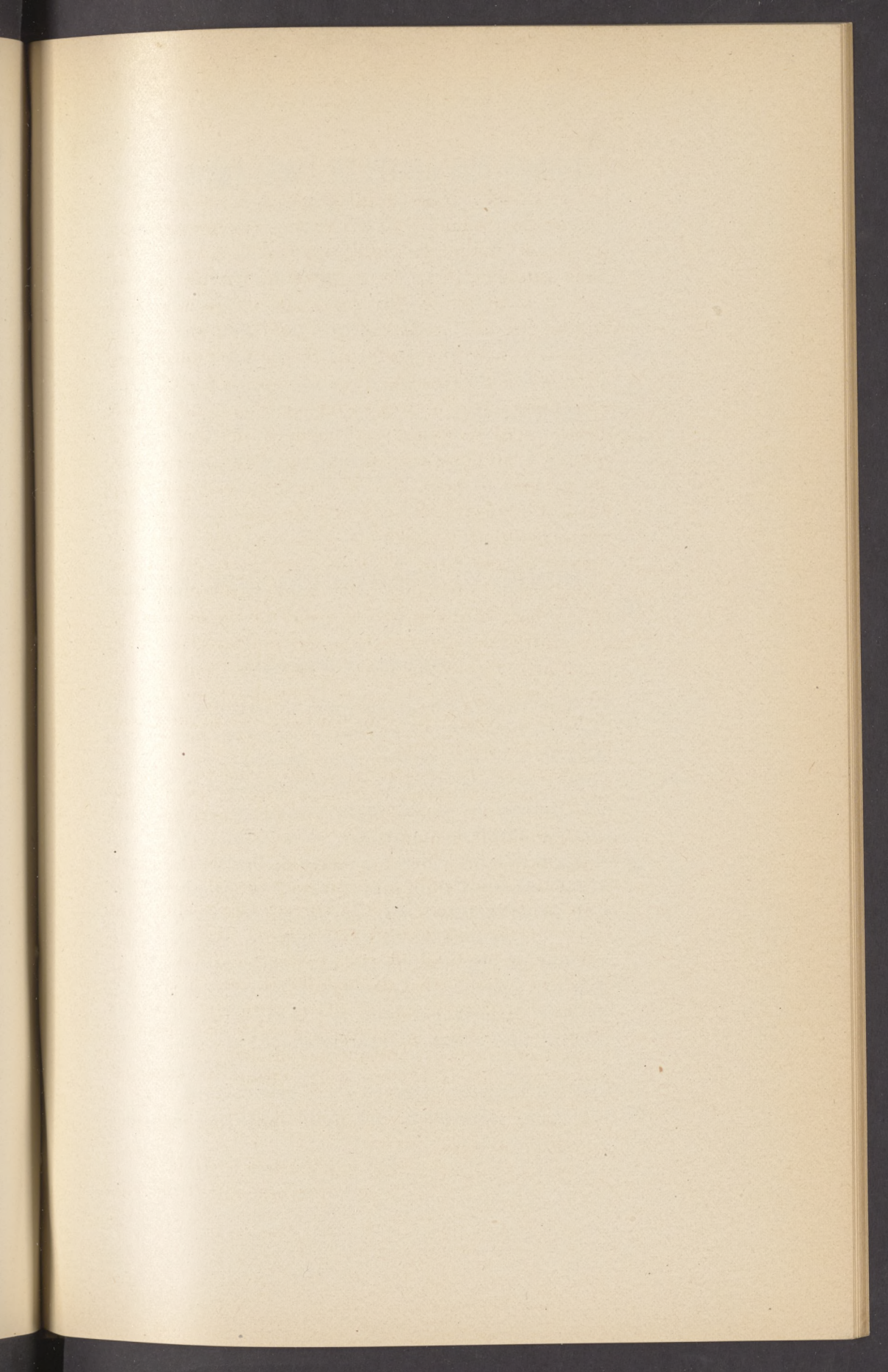
Following the reasoning of this court in the Hanrahan case "the whole warranty must mean that the date of the last attendance" was two years ago, and the complaint rheumatism.

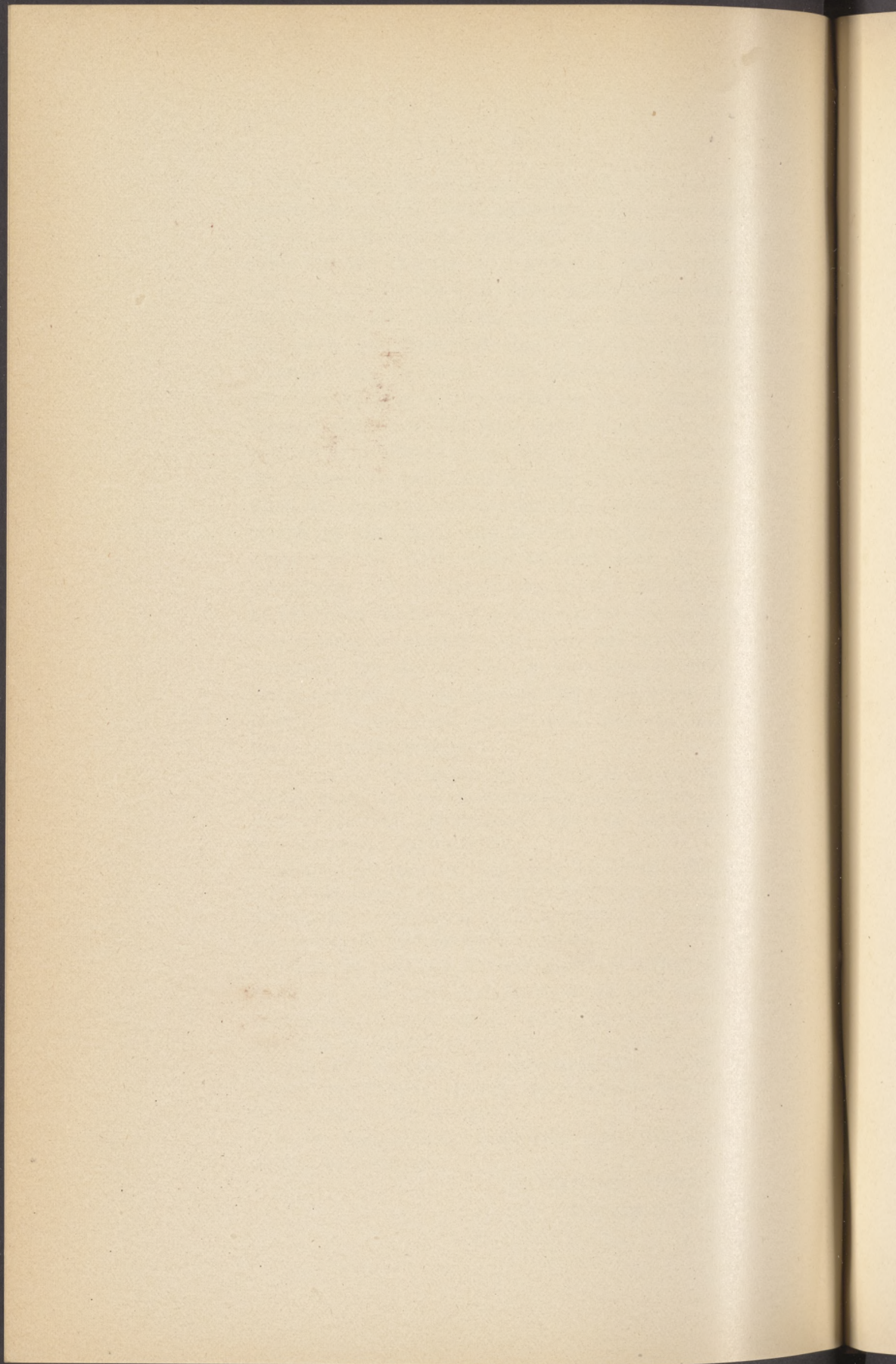
Remember that in this case, as in the Hanrahan and Fish cases, the applicant had agreed that if his statements were not strictly correct and wholly true, the policy should be null and void.

There is nothing in this case to differentiate it from the well settled authorities in this court, governing this class of cases. The contract by which the plaintiff is bound, is specific. The proof showing a breach of warranty is uncontradicted. The facts, which are falsely stated, were within the personal knowledge of the insured.

It is respectfully submitted that the judgment should be reversed.

CONOVER ENGLISH,
Attorney of Defendant.





New Jersey Court of Errors and Appeals

KATE OWEN,
Pl'ff. and Def't. in Error,
vs.
METROPOLITAN LIFE
INSURANCE COMPANY,
Def't. and Pl'ff. in Error.

On Contract. 10
ON WRIT
OF ERROR.

BRIEF FOR DEFENDANT IN ERROR

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Statement of the Case

This is a writ of error to the Supreme Court to reverse and set aside a verdict for the said defendant in error rendered by a jury at the trial of said cause at the Morris Circuit of said Supreme Court. The plaintiff in error assigns for error certain rulings of the trial Justice regarding admission of evidence, his refusal to direct a verdict for the defendant, his charge to the jury, and his refusal to charge as requested, and questions the correctness of the trial Justice's rulings in these particulars. 30

The action was on contract, brought to recover the amount due on a policy of insurance, on the life of John H. Owens, to the beneficiary therein named, who is the defendant in error, and mother of the insured.

An alleged breach of certain warranties contained in the application for insurance, and the 40

policy issued thereunder, was set up as a defence to the action. The warranties in question at the trial narrowed themselves down to two, viz.:

10 1. "The following is the name of the
"physician who last attended me, the date
"of the attendance, and the name of the
"complaint for which he attended me:
"Dr. Becker, two years. Rheumatism.

"I have not been under the care of any
"physician within two years, unless as sta-
"ted in previous line, except

"I have never been under treatment
"in any dispensary, hospital or asylum,
"nor been an inmate of any almshouse or
"other institution, except two years ago
"for rheumatism.

20 2. "No obligation is assumed by the
"Company until the first premium has
"been paid, nor prior to this date, nor un-
"less upon this date the insured is alive
"and in sound health."

The application for the policy was dated Sep-
tember 14, 1901. (p. 74, l. 9)

The applicant was examined by the Company's
examining physician on September 14, 1901. (p. 84,
l. 1.)

30 The policy of insurance is dated September 18,
1901 (p. 66, l. 9).

The policy of insurance was delivered to the
beneficiary therein named September 21, 1901. (p.
26, l. 35)

The first premium was paid prior to September
28, 1901. (p. 51, l. 20)

40 By the terms of the policy the statements in the
application, so far as they were set forth in the copy
annexed to said policy, were made warranties by the
following language. (p. 65, l. 10)

“In consideration of the answers and
 “statements contained in the application
 “for this policy, a copy of which is hereto

“annexed as a part of this contract, upon
 “the life of John Henry Owen, of Morris-
 “town, New Jersey, hereinafter called the
 “insured, all of which answers and state-
 “ments are hereby made warranties * 10
 “ * * doth hereby agree, subject to
 “the conditions set forth on the third page
 “hereof, each and all of which are hereby
 “made a part of this contract, * * *.”

In the conditions set forth on what is called the
 third page of said policy, it is stated (p. 69, l. 35):

“If any statement in the application
 “herein referred to is not true, * * *
 “this policy shall be void * * *.” 20

In the application for insurance, signed by the
 insured, occurs the following (p. 73, l. 11):

“And I further declare, warrant and
 “agree that the representations and an-
 “swers made above are strictly correct and
 “wholly true, that they shall form the
 “basis and become part of the contract of 30
 “insurance if one be issued, and that any
 “untrue answers will render the policy
 “null and void, and that said contract
 “shall not be binding upon the Company,
 “unless upon its date and delivery the in-
 “sured be alive and in sound health.”

Brief of the Argument

1. The statements of the insured in his an- 40

swers to the questions in the application are warranties. This is the well settled law, and is not disputed or denied.

10 2. The statements made by the insured in his answers to the questions in the application for insurance, being warranties, must be strictly construed with regard to their truth or falsity, so far as they concern a matter of fact that is, or ought to be, within the personal knowledge of the insured. The answers will be deemed warranties only of the bona fide belief and opinion of the applicant.

20 3. The answer to statement 2 of the application regarding the diseases which applicant said he had never had fall clearly within the foregoing definition. The questions called for no definite statement of fact, but for statements of belief or opinion regarding the diseases therein named, and there is nothing to show that the applicant did not give a truthful answer, bona fide, so far as his knowledge went. If the question asked relates to a matter upon which the insurer should know that the insured could not have the knowledge to fully answer, the warranty will not be held to be more than a warranty in the fair sense of the question, namely, to the belief of the insured.

30 4. The contention that the insured gave a false answer to statement 6, when he said he had never been under treatment in any hospital, "except two years ago for rheumatism," because he had been treated at a hospital one year and nine months before, cannot avail plaintiff in error. The answer is not false. The statement did not call for an exact date. "Two years ago" could clearly and plainly mean the calendar year insured was referring to. Furthermore, the answer did inform the insurer that the insured had quite recently been under treatment in a hospital, and if the insurer desired a fuller answer to the question, it should have insisted upon it at the time.

40 5. The learned trial Justice correctly and

properly refused to direct a verdict for the plaintiff in error. It was properly left to the jury to say whether the evidence showed the insured was honest about the answer made by him relating to obscure diseases; and likewise with reference to the time when the insured was under treatment in a hospital.

6. The learned trial Justice's charge to the jury was correct and in accordance with the settled law of this State. His refusals to charge were also correct and likewise in accordance with correct principles, repeatedly adjudicated. 10

7. The rulings of the learned trial Justice on the admission and rejection of evidence were proper and correct. In any event, plaintiff in error succeeded in introducing in evidence the matters ruled out, so far as they aided its case, and was not, therefore, harmed by the rulings.

Argument

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1

The statements of the insured set forth in the answers to questions in the application are warranties.

There is no doubt about this proposition. It is no longer an open question in this State. 30

Met. Life Ins. Co. v. McTague, 49 N. J. L. 587.

Glutting v. Met. Life Ins. Co., 50 N. J. L. 287.

Finn v. Met. Life Ins. Co., 67 N. J. L. 17.

Dimick v. Met. Life Ins. Co., 69 N. J. L. 384.

2

Such statements, being warranties, so far as they concern a matter of fact that is, or ought to be, with- 40

in the personal knowledge of the insured, will be strictly construed.

There is likewise no doubt about this proposition. It is also no longer an open question in this State. But forfeitures are not favored in the law. If by any intendment a ground can be found to defeat them, the Court will apply it.

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Hampton v. Hartford Ins. Co., 65 N. J. L. 265, 267.
Henn v. Met. Life Ins. Co., 67 N. J. L. 310, 311

20

The fact that such statements are warranties by the letter of the contract are not necessarily controlling, if they are not warranties within its fair meaning and spirit. With respect to questions that relate to matters which the insurer must know are not within the personal knowledge of the insured, and with respect to those that call, not for definite statements of fact, but for statements of belief or opinion (as, for instance, whether the insured has ever had a certain obscure disease), the letter of the contract is to be controlled by its spirit and purpose; and the answers will be deemed warranties only of the bona fide belief and opinion of the insured.

Dimick v. Met. Life Ins. Co., 69 N. J. L. 384, 393

30

So much for the law. Now, does this distinction avail defendant in error? Does she come within its beneficent protection? Did the inquiries under consideration relate to matters that, within the contemplation of the contract, were, or ought to have been, within the personal knowledge of the insured? There are two of them—or, possibly, three:

40

(a) "2. I have never had any of the following complaints or diseases: Apoplexy, asthma, bronchitis, cancer or other tumor, consumption, disease of brain,

"disease of heart, disease of kidneys, dis-
 "ease of liver, disease of lungs, disease of
 "urinary organs, dropsy, fistula, fits or
 "convulsions, general debility, habitual
 "cough, hemorrhage, insanity, jaundice,
 "paralysis, pleurisy, pneumonia, rheuma-
 "tism, scrofula, spinal disease, spitting or
 "raising blood, ulcer or open sores, vari-
 "cose veins, except rheumatism for two 10
 "years.

"4. The following is the name of the
 "physician who last attended me, the date
 "of the attendance, and the name of the
 "complaint for which he attended me: Dr.
 "Becker, two years. Rheumatism.

"6. I have never been under treat-
 "ment in any dispensary, hospital or asy-
 "lum, nor been an inmate of any almshouse
 "or other institution, except two years ago 20
 "for rheumatism.

(b) "No obligation is assumed by
 "the company until the first premium has
 "been paid, nor prior to this date, nor un-
 "less upon this date the insured is alive and
 "in sound health.

(c) "3. I am now in sound health."
 (This seems to be included in division b)

The first question (a) very naturally divides 30
 itself. With reference to the obscure diseases, cer-
 tainly the answer can be deemed a warranty only of
 the bona fide belief and opinion of the insured.
 With reference to being under treatment in a hospi-
 tal and the name of the physician who last attended
 the insured, they are both definite matters of fact,
 which were, or ought to have been, within the per-
 sonal knowledge of the insured.

Now, so far as these obscure diseases go, there is absolutely nothing in the case to show that the insured had not suffered from rheumatism for two years. Note the answer: "I have never had any of the following diseases * * * except rheumatism two years" (p. 71, l. 31). So far as appears from the evidence this is absolutely true. No witness testified that the insured had not suffered from rheumatism.

- 10 The testimony of Dr. Becker is certainly conflicting. Being asked to look at the hospital record (p. 32, l. 1), and to read the part therein in his own hand writing, to tell what disease affected the insured during his confinement in the hospital in 1899, he says, "organic rheumatism," (p. 32, l. 19) and later on (p. 32, l. 34) "organic heart disease." He further testified (p. 33, l. 7) that he did not remember the insured. He further testified (p. 42, l. 10), that according to the hospital record, insured was admitted to the hospital on December 27th, and from his own recollection he says (p. 43, l. 1) the insured was admitted to the hospital on December 22, 1899, was there two months (p. 43, l. 5) and during those two months suffered from "organic heart disease" (p. 43, l. 8). There is no attempt to correct and harmonize this evidence, or to show the witness was mistaken. It is absolutely contradictory, and it was clearly the province of the jury to believe either one statement, or the other, or to reject the whole of
- 20 this testimony. For Dr. Becker testified (p. 43, l. 10) that without the hospital record to refresh his memory he would not remember when the insured was admitted to the hospital; and further (p. 46, l. 1), that he did not remember ever attending the insured, and on September 14, 1901, he "didn't remember the man" (p. 46, l. 8) and did not remember treating the insured in the hospital. (p. 46, l. 12)

Nor does the plaintiff in error fare better with the testimony of Dr. Pierson. This witness remembered the insured as a patient in the hospital in

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1901 (p. 37, l. 8), but he could not give the date without looking at a record not in his own handwriting, but in the handwriting, he thinks, of Dr. Becker (p. 37, l. 35). As a matter of fact these records were in the handwriting of Miss Laird (p. 34, l. 17; p. 36, l. 9), matron of Memorial Hospital. It is also to be noted that this witness, in answer to the question: "Have you any recollection of this particular case which would enable you to say?" (referring to the length of time insured had suffered from "organic heart disease" prior to September 27, 1901) answered, "That would be a general guess. I would not be willing to say to that. It might have been a good while" (p. 39, l. 3). And further, giving him the fullest benefit of his evidence, "Well, the impression would be that that disease must have lasted some little time" (p. 39, l. 23). 10

Now, place this testimony in juxtaposition with the evidence of the witness on cross-examination. The cause of death, he certified, was "chronic nephritis and pneumonia" (p. 40, l. 13). He thought this was true when he made the certificate (Nov. 18, 1901, p. 75, l. 7). And the pneumonia therein referred to is "passive pneumonia" (p. 39, l. 40), where "the lungs fill up and clog up," (p. 40, l. 1), which was the cause of death (p. 40, l. 14), and this "comes and goes. They might have clogged up in a day or two" (p. 39, l. 18). So much for the pneumonia which this witness says caused the death of the insured. 20

Now, what does he say with reference to the "chronic nephritis" which was the other disease he says caused death? That is "chronic inflammation of the kidneys" (p. 38, l. 37). He thinks the insured would have suffered from it "a matter of some months at least" (p. 39, l. 10). 30

Contrast this with the evidence of Dr. Becker (p. 83, l. 23), who made an examination of insured on September 14, 1901 (p. 84, l. 1) and who says "there is no evidence or history of disease of the 40

liver, stomach, intestines, or genito-urinary tract" (p. 83, l. 23). It is also to be observed that this physician on this date (September 14, 1901) upon an examination made for that express purpose, found and said "the character of the heart's action uniform, free and steady, its sound and rhythm regular and normal, and there are no indications of disease of this organ, or of the blood vessels" (p. 83, l. 10).

10 Now, bearing in mind this testimony, can it be said that the insured knew he was suffering from "chronic nephritis, organic heart disease and dropsy," on September 14, 1901, or had any reason to suspect that he was? Can it be said that these were matters which call for definite statements of fact? We certainly think not. We think the case comes fairly within the distinction pointed out in the able opinion of this Court in *Dimick v. Met. Life Ins. Co.*, 69 N. J. L. 384, 393, above quoted.

20 Now, with reference to the other division of question (a) regarding physician who last attended the insured, date of attendance, and complaint for which he attended the insured, and the being under treatment in a hospital by the insured. These being definite statements of fact, were, or ought to have been, within the personal knowledge of the insured. Were the answers false? What is the evidence in the case?

The proof is "conclusive and unquestioned" 30 that Dr. Becker was the last physician who had attended the insured. There is not a syllable of evidence to the contrary.

The date of attendance. To this the answer is "two years" (p. 71, l. 40) Now this answer is wholly meaningless, unless taken in connection with the next question in the application, No. 5 (p. 72, l. 1). Construing the answers to questions 4 and 5 together it then appears from the testimony that Dr. Becker attended the insured for "at least two 40 months" from December 22, 1899 (p. 43, l. 1 and l.

4), making his last care or attendance February 22, 1900, so that the insured did answer truly in saying he had been treated by Dr. Becker, and the lack of any answer to question 5 shows that it was within two years. We do not see how any other answer could have truthfully been given, unless the insured had given the date when Dr. Becker began treating him in 1899, and the date when he ceased to do so in 1900. Inasmuch as the plaintiff in error did not require these exact dates, and accepted the answers given, it can not now complain. We think this fairly comes within the holding of this Court in *Henn v. Met. Life Ins. Co.*, 67 N J L 310, 316, where it was rightly held 10

“If the Company desired a fuller answer to the question, it should have insisted upon it at the time.”

The complaint for which the physician attended the insured. The answer is, “rheumatism.” Was this false? Dr. Becker, in his examination in chief, says (p. 32, l. 19), regarding the entry made by him in the hospital record, referring to the insured, that he wrote therein “organic rheumatism,” and further along (p. 32, l. 34) “organic heart disease.” We do not pretend to say which is correct. We merely show his testimony. There is absolutely no evidence that he told the insured he was suffering from “organic heart disease.” Now the definition of “rheumatism” in the Standard Dictionary is given as 30

“A variable, shifting inflammation, or neuralgia, or malady, with aching pain, affecting sometimes the muscles, sometimes the joints, and sometimes other structures; flying gout; as rheumatism of the limbs generally; rheumatism of the stomach or of the heart. 40

So far as the evidence goes there is nothing to show that the insured was not suffering from rheumatism. The insurer certainly knew, or should have known, that the rheumatism insured said he was suffering from could have been rheumatism of the heart.

10 It handles thousands of cases and has a staff of physicians who examine all cases, and no doubt have had just such cases as this. Its physicians and medical examiners knew that the rheumatism insured said he had suffered from was as likely to affect one part of the body or one organ as any other.

At most there was a conflict of the evidence presented by plaintiff in error respecting the disease the insured had suffered from. We think this argument also applies equally to the answer to question 6 regarding treatment in the hospital. Our argument as to obscure diseases applies to this question. Clearly it was for the jury to say, in the
20 face of this conflicting testimony, whether or not the answers were false.

With reference to the sound health clauses. These have apparently been abandoned, as there is no assignment of error covering them. The evidence is also conflicting in that connection. Dr. Becker's testimony (see his certificate, p. 82, and p. 83, l. 4, l. 5) is that the insured on September 14, 1901, was "in good health," and that his "constitution is sound."
30 The insured could not answer this question any more surely or certainly than the physician who examined him on that date.

The report of the examining physician is a part of the application. By its terms he was made the agent of the insured (p. 80, l. 34). So that Dr. Becker's report, being in evidence, (p. 47, l. 34) was proof that the insured was "in good health," and his "constitution sound," on September 14, 1901. And this is only contradicted by the evidence of
40 Dr. Pierson who "guessed" and had an "impres-

sion" that the "heart disease must have lasted some little time. I should think more than a month. I could not say positively" (p. 39, l. 3, 23, 27). And it does not appear from the testimony of Dr Pierson that he ever, at any time, examined the insured, whereas Dr. Becker certainly did examine him on September 14, 1901. Of course, under these circumstances, it was for the jury to say whether or not these warranties were false. And surely the evidence of Dr. Becker in that connection was entitled to as much weight as that of Dr. Pierson. And it seems to us that the language of Mr. Justice Harlan in this connection is most appropriate. He said ~~Met. Life Ins. Co., 67 N. J. L. 810, 316, where it was~~ (Moulton v. Am. Life Ins. Co., 111 U. S. 335):

"If those who organize and control life insurance companies wish to exact from the applicant, as a condition precedent to a valid contract, a guarantee against the existence of diseases, of the presence of which in his system he has and can have no knowledge, and which even skillful physicians are often unable, after the most careful examination, to detect, the terms of the contract to that effect must be so clear as to exclude any other conclusion."

We think it difficult to distinguish between the terms of the warranty in the contract sued on and that in the case last cited, or to fail to discern the force of that decision upon the questions before this Court, as was so well said in Henn v. Met. Life Ins. Co., supra.

3

The learned trial Justice properly refused to direct a verdict for the defendant.

The learned trial Justice was eminently right in refusing to direct a verdict in favor of the plaintiff in error because of the testimony above analyzed and dissected. For the rule governing the trial court in such an event is quite plain and clear. This Court, in *Henn v. Met. Life Ins. Co.*, 67 N. J. L. 310, 311, said:

10

“Where there is a conflict in the evidence, or lack of conclusive and unquestioned proof of the falsity of a warranty, the question is one for the jury. There must exist no rational theory upon which the jury might find the non-falsity of the answers of the insured before the Court can direct a verdict for the defendant. If there be a rational doubt of the falsity of the statement, the case is for the jury. If the question asked relates to a matter upon which the insurer should know that the insured could not have the knowledge to fully answer, the warranty will not be held to be more than a warranty in the fair sense of the question, namely, to the belief of the insured.”

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This Court, in the case last cited, quoted approvingly the words used by the present learned Chief Justice in *Lippincott v. Royal Arcanum*, 64 N. J. L. 309, declaring that

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“It is only when the unimpeached testimony of the case is conclusive upon the point, and a verdict for the plaintiff cannot be supported without disregarding it, * * * that it is the duty of the trial court to control the jury in its action, and direct a verdict for the defendant.”

40

It seems to us that a simple perusal of the digest above given of the testimony of the two physicians who were sworn, will show conclusively that the trial Justice correctly apprehended the rule and intelligently applied it. The conflict in the evidence, and the lack of conclusive and unquestioned proof of the falsity of the answers in question seems overwhelming, aside from the fact that there is not a scintilla of evidence that the insured was told for what he was treated when in the hospital in 1899, 10 or that he was sick or suffered or was treated for any disease from the time he left the hospital in 1900, to the time he went back there in September, A. D. 1901, and that Dr. Becker says the insured suffered from "organic rheumatism" in 1899, but was in good health on September 14, 1901.

4

The learned trial Justice's charge to the jury 20 was correct and proper. His refusals to charge further than he had already charged were likewise correct.

Under the rule governing the trial court, in such cases, above referred to, we believe there can be no just cause of complaint in the charge fifthly, sixthly and seventhly assigned for error. And we think our argument under the second point, above set forth, is convincing that the charge complained of 30 was correct. This being so, the learned trial Justice was compelled to decline to charge the requests to charge other than as already charged.

5

The rulings of the learned trial Justice refusing to admit certain evidence were correct.

The energetic and enthusiastic counsel of the 40

plaintiff in error attempted to introduce in evidence:

(a) "What purports to be a record
"of the Memorial Hospital in this city and
"direct your attention to entry 442 under
"the name of John Owen" (p. 32, l. 2).

10

"Q. I show you a book which is la-
"beled on the outside 'House Record,' and
"ask you what that is?

"A. It is the hospital record—the
"admission book.

"Q. The admission book of—

"A. The Morristown Memorial Hos-
"pital" (p. 33, l. 33, et seq.)

20

After he then proved that this record or book
was in the handwriting of a Miss Laird, since de-
ceased, who was matron of said Hospital, and with-
out showing that the record or book was kept by
any authority, or the manner in which it was kept,
he asked:

(b) "Will you kindly read the entry
"under No. 442?" (p. 34, l. 21).

Then, after the trial Justice over-ruled the
question, he made the following offer:

30

(c) "I would like to offer in evi-
"dence the entry in the house register of
"the Memorial Hospital, No. 442, con-
"taining a history of the case of one John
"Owen" (p. 35, l. 3).

Then counsel proves another entry in the same
book under the name of John H. Owen, also in the
hand-writing of Miss Laird, (p. 35, l. 18), and
makes the following offer:

40

(d) "I offer in evidence the entry in

“the record of the Memorial Hospital, No. 630, purporting to be the history of the case of one John Owen” (p. 36, l. 13).

The Court over-ruled the offer and allowed an exception. The next question and answer are as follows:

“Q. Is there any other writing in this book that refers to John H. Owen?” 10
 “A. There is not” (p. 36, l. 23).

This witness recollected that a John H. Owen was confined in the hospital September 27th, 1901, but she did not remember what was the matter with him (p 36, l. 4).

Now, with regard to these offers and testimony we have to observe—

1. The book from which it was proposed to read entries, so far as the evidence shows, was “the admission book” of a hospital, and nothing more. 20

2. It appears that it was kept by the former matron, and the entries referred to were all in her hand-writing, according to the testimony of Miss Lustig (p. 34, l. 4; p. 35, l. 21).

3. It appears from the testimony of Dr. Pierson that the entries referring to John H. Owen, (or one of them) were in the hand-writing of Dr. Becker (p. 37, l. 36). 30

4. No law, authority, or hospital regulation requiring the record to be kept was shown or attempted or offered to be shown.

5. The manner of keeping the same was not shown, or offered to be shown.

6. It did not appear that Miss Laird wrote the entries at the request of any one, or had any order to do so, or any knowledge which would enable her to write down the diseases the patients were suffering from, and it does appear that the record, in her 40

handwriting, purported to give the disease John H. Owen had and suffered from (p. 34, l. 17; p. 42, l. 6; p. 42, l. 24).

7. The entries from said book were not competent evidence of the history of the case of John H. Owen.

8. There was no offer to show that the John H. Owen mentioned in the hospital record was the insured, nor was there any evidence showing that the man in the hospital was the insured.

9. The hospital record would have shown what disease some doctor thought a John H. Owen was suffering from, providing Miss Laird correctly wrote therein what that doctor told her, and nothing more.

10. There was no offer to show that what Miss Laird wrote in the record was what some doctor told her to write.

11. Notwithstanding the ruling of the trial Justice, the counsel of plaintiff in error succeeded in introducing the evidence he tried to show by the hospital record.

12. We can find no reported case in this State holding that such records as those offered are admissible in evidence.

13. There was nothing in the offers to show that the hospital record would furnish evidence that the insured was not in sound health on September 18, 1901, or that he was confined in the hospital on that date.

14. It was shown that the insured was in the hospital on December 22, 1899, and on September 27, 1901, without the use of the hospital records, nor was it contended they would or could show more than this.

15. Assuming that the offers were broad enough to cover the introduction of the hospital record, still we contend the records would not be evidence against the defendant in error, unless it was shown that the insured knew the contents thereof.

The head note to the decision of the United States Supreme Court (*V. & M. R. R. Co. v. O'Brien*, 119 U. S. 99, 30 L. Ed. 299), is as follows:

“In an action against a railway corporation to recover damages for personal injuries, a written statement, made by a physician prior to the commencement of the suit, as to the condition of the injured party, and stated by the physician in his deposition to be a correct description of the patient’s condition at the times mentioned, was inadmissible under the circumstances of the case as evidence of the facts therein alleged.” 10

When the statement of the physician above referred to was offered, counsel for the defendant Company objected to its admission on three grounds: 1. Because the statement was not made by the witness under oath, in the presence of the Company, or with its knowledge or consent; 2. Because it was hearsay and incompetent; 3. Because in any event it could only be used to refresh recollection of witnesses. The objection was over-ruled by the trial court. The Supreme Court, referring to said ruling said: 20

“We are of opinion that this ruling cannot be sustained upon any principle recognized in the law of evidence.” 30

And, after citing some particular cases where for certain purposes such evidence might be admissible, proceeds:

“But there are adjudged cases which declare that, unless prepared in the discharge of some public duty, or out of some duty arising out of the business 40

“relations of the witness with others, or in
 “the regular course of his own business, or
 “with the knowledge and concurrence of
 “the party to be charged, and with the pur-
 “pose of charging him, such a memoran-
 “dum cannot, under any circumstances, be
 “admitted.”

10 Previously, the same Court, in *Parsons v. Wil-
 kinson*, 113 U. S. 656, 28 L. Ed. 1037, had held,

“A memorandum in writing, of a trans-
 “action twenty months before its date, and
 “which the person who made the memoran-
 “dum testifies that he has no recollection
 “of, but knows it took place because he had
 “so stated in the memorandum, and be-
 “cause his habit was never to sign a state-
 “ment unless it was true, cannot be read in
 “aid of his testimony.”

Entry in a baptismal register is competent to
 prove only the fact and date of baptism.

Blackburn v. Crawford, 70 U. S. 175, 18 L. Ed. 186

30 And Massachusetts seems to have gone this far
 with reference to such records. It has been decid-
 ed in that jurisdiction that the entry of a baptism,
 contemporaneously made by a Roman Catholic
 priest, in the discharge of his ecclesiastical duty, in
 his church record of baptisms, is competent evidence
 after his death of the date of the baptism, if the book
 is produced from the proper custody; although he
 was not a sworn officer, and the record was not re-
 quired by law to be kept.

40 *Kennedy v. Doyle*, 10 Allen 161; cited in
Whitcher v. McLaughlin, 115 Mass. 167.

We have previously said that we were unable to find any case in New Jersey authority for the proposition that hospital books may be admitted in evidence as offered by the counsel for plaintiff in error. But we have found a charge to a jury by the late Chief Justice Depue, sitting for trial of indictments at the Essex County Oyer and Terminer, February Term 1886. The superintendent and steward of the Essex County Insane Asylum were on trial for misfeasance in office. The indictment charged these officials with serving ill-cooked and improper food to the inmates whereby they suffered from sickness, disease and complaints. From the charge we judge that certain ward books were admitted in evidence. 10

“These were official records of the condition of the health of patients from day to day, made by the ward physicians from their own inspection and from information got from attendants contemporaneously with the events to which they relate. * * * The by-laws provide for the appointment of assistant physicians; it appears that the board of freeholders is authorized to appoint, and prescribe the duties of these physicians. The by-laws provide that the assistant physicians shall reside in and devote their entire time to the asylum; * * * that they shall make two visits a day (to the wards assigned them), and that every patient in their wards must be seen, and that they must note in the ward books all particulars of importance, and all medical or other treatment prescribed. * * * In pursuance of these duties ward books were kept in which such entries were made * * * by the ward physicians every 20
30
40

“morning on their daily visits.”

9 New Jersey Law Journal, 118.

It can readily be seen that such books were admissible in evidence to show the general health of the inmates of the institution. But there seems to be a clear and wide distinction between the admission of such books, so kept, for such a purpose, and
 10 the offer of the record made by counsel of plaintiff in error on the trial below. And we fail to discover any analogy between the two cases which would justify the admission of the evidence offered and over-ruled.

But to get a step further. Was plaintiff in error harmed by the refusal to admit the hospital record in evidence? So far as can be judged from the offers, the records would have shown—giving the
 20 widest latitude to the offer—that the insured was in Memorial Hospital from December 22, 1899, to February 22, 1900, and was then treated for organic rheumatism and organic heart disease; that he was there again in September or October, 1901, and died there, being treated at that time for chronic nephritis and pneumonia. It appears from the printed case that this was proved without the record.

Now, does the offer of the record show, or is there anything in the offer going to show, that the insured was not in sound health on September 18,
 30 1901? All the evidence on that subject on the part of the plaintiff in error is that of Dr. Pierson. This was admitted on the trial (p. 54, l. 27). And Dr. Pierson's testimony is in direct conflict with that of Dr. Becker as shown by the report of his examination made on September 14, 1901. There is no contention that the insured contracted any disease between September 14, 1901, and September 28, 1901. So we have one of the witnesses of plaintiff in error saying the insured was in sound health on September
 40 ber 14, 1901, and the other one saying he probably

was not. And we think there was nothing in the offer of the hospital book which would show the contrary. And this is likewise true regarding the time insured was in the hospital.

It is respectfully submitted that there was no error below and the judgment should be affirmed.

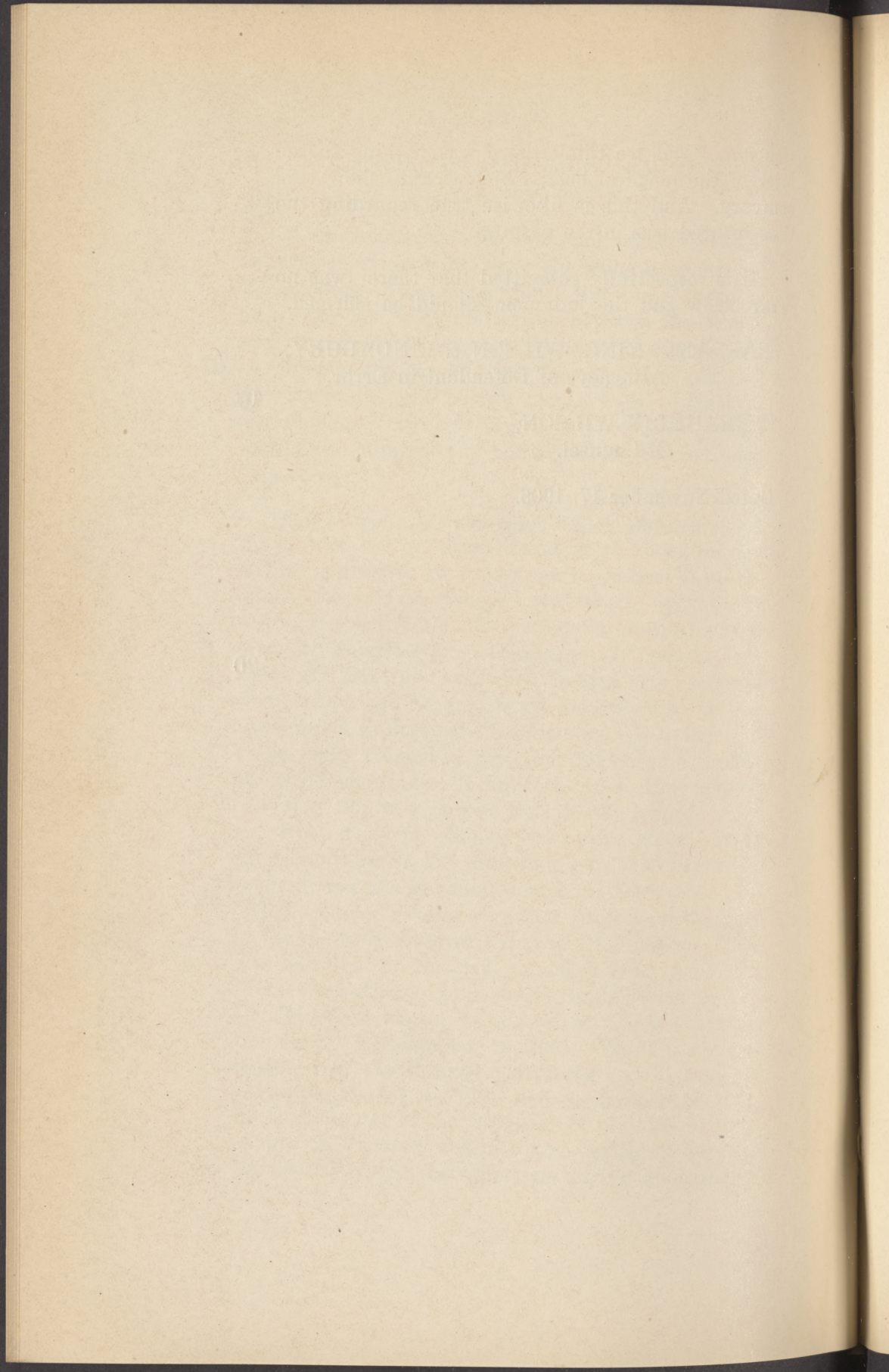
VREELAND, KING, WILSON & LINDABURY,
Attorneys of Defendant in Error.

C. FRANKLIN WILSON,
Of Counsel.

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Dated November 17, 1906.

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1874

New Jersey Court of Errors and Appeals.

KATE OWEN,

Plaintiff and Defendant in Error,

vs.

METROPOLITAN LIFE INSURANCE

COMPANY,

Defendant and Plaintiff in Error,

10

On Contract.

WRIT OF ERROR.

NEW JERSEY, *ss.*: The State of New Jersey to the
Chief Justice, and the other Jus-
tices of our Supreme Court of Ju-
dicature, GREETING:—

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(L. S.)

Forasmuch as in the record and
proceedings, and also in the giv-
ing of judgment in a certain
plaint which was in our Supreme
Court of Judicature before you,

between Kate Owen, plaintiff, and Metropolitan Life
Insurance Company, a corporation, defendant, in an
action on contract, manifest error hath intervened to
the great damage of the said Metropolitan Life Insur-
ance Company, as is said, we being willing that the
error, if any there be, should in due manner be cor-
rected, and full and speedy justice done to the parties
aforesaid in this behalf, do command you that the
record and proceedings, with all things touching the
same, to our Judges of our Court of Errors and Ap-
peals in the last resort in all causes at Trenton, on the
second day of July next, together with this writ, you
distinctly and openly send, that the record and pro-

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ceedings aforesaid being inspected, we may cause to be further done thereupon for correcting that error what of right and according to the law and custom of the State of New Jersey ought to be done.

WITNESS our Chancellor and President Judge of our said Court of Errors and Appeals at Trenton aforesaid, the thirteenth day of June, in the year of our Lord one thousand nine hundred and six.

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S. D. DICKINSON,

Clerk.

McCARTER & ENGLISH,

Attorneys.

The answer of the Justices of the Supreme Court of the State of New Jersey within named.

The record and proceedings whereof mention is within made, with all things touching and concerning the same, we do certify to the Court of Errors and Appeals of said State in a certain schedule to this writ annexed, as within we are commanded.

WM. S. GUMMERE,

C. J. (L. S.)

NEW JERSEY SUPREME COURT.

KATE OWEN,

*vs.*METROPOLITAN LIFE INSURANCE
COMPANY.} *On Contract.*

DECLARATION.

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NEW JERSEY SUPREME COURT,
of the twenty-third day of November,
in the year of our Lord one
thousand nine hundred and three.

MORRIS COUNTY, ss.

Metropolitan Insurance Company, a body corporate, the defendant herein, was summoned to answer unto Kate Owen, the plaintiff herein, in an action on contract, and thereupon the said plaintiff, by Vreeland, King, Wilson & Lindabury, her attorneys, complains:

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For that, whereas, heretofore, to wit, on or about the eighteenth day of September, in the year of our Lord one thousand nine hundred and one, the said defendant did by a certain policy or agreement in writing, which the plaintiff here and now brings into court, agree with the said Kate Owen that, in consideration of the payment of a sum of money (which payment had been previously made) to the said defendant, and also in consideration of certain warranties and the truth of certain facts which were true, as warranted and stated, it, the said defendant, would, upon the death of one John H. Owen, the son of the said plaintiff, unless the said death occurred under the circumstances referred to in the said policy aforesaid, pay to the said Kate Owen the sum of five hundred dollars; and the said plaintiff avers that the said John H. Owen died on the eighteenth day of November, in the year of our Lord one thousand nine hundred and one, and, although all the conditions of the

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said policy of insurance have been complied with, and although the plaintiff herein has held to and met all the requirements in the said policy set forth, and although all the agreements in said policy made have been kept and performed by the plaintiff herein, and the said John H. Owen, in his lifetime, and although the death of the said John H. Owen did not occur under the circumstances mentioned in said policy, as
10 exempting the said defendant from the obligation to pay the money or sum of five hundred dollars, yet the said defendant unjustly refuses to pay to the plaintiff the said sum of five hundred dollars, so due as aforesaid, or any part thereof, although often requested so to do by the said plaintiff as aforesaid, to the damage of the said Kate Owen of one thousand dollars.

And for that, whereas, heretofore, to wit, on the eighteenth day of September, in the year of our Lord one thousand nine hundred and one, at Morristown,
20 in the County of Morris aforesaid, by a certain instrument or policy of life insurance, which the plaintiff here and now brings into court, it was agreed that the said defendant, Metropolitan Life Insurance Company, in consideration of the answers and statements contained in the application for said policy, and the stipulations and agreements therein contained, and the payment of an annual premium of twenty-three dollars and sixty-four cents, on or before the delivery of the said policy, and of the like amount on or before
30 the eighteenth day of September, of each and every year, to the defendant, during the life of the insured, did insure the life of John H. Owen in the sum of five hundred dollars, payable to Kate Owen, mother of the insured, upon receipt by the company, at its home office, and its approval of the proofs of the death of the insured, made in the manner, to the extent, and upon the blanks required by the said defendant, and upon the surrender of the said policy; and the said plaintiff avers that the said policy of insurance was delivered to the said John H. Owen, and
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that the said John H. Owen did, at the time of the making and delivery of said policy of life insurance, to wit, on or about the eighteenth day of September, one thousand nine hundred and one, pay to the said defendant the said premium sum of twenty-three dollars and sixty-four cents, and did in fact comply with all the conditions, terms and requirements of the said policy on his part to be performed and complied with; and the said plaintiff avers that afterwards, to wit, 10
on or about the eighteenth day of November, in the year of our Lord one thousand nine hundred and one, at Morristown, in the County of Morris aforesaid, the said John H. Owen died, the said plaintiff then being his mother as aforesaid; and the plaintiff avers that heretofore and subsequent to the said last mentioned date, due notice and satisfactory proofs of the death of the said John H. Owen were given and made by the plaintiff and received and accepted by the defendant, 20
and the said policy surrendered to the defendant at the office of the defendant, in accordance with the terms of the said policy; and although the said John H. Owen, in his lifetime, did in all things conform to and fulfill and keep all things in the said policy of insurance contained, and the said terms and conditions on the part of the said John H. Owen to be observed and performed according to the tenor, form and effect of the said policy of insurance, and although the said plaintiff has in all things conformed to, fulfilled and performed, according to the tenor, form and effect of 30
the said policy of insurance, on her part to be fulfilled, performed and kept, of all of which said several premises the said defendant aforesaid had due notice, and although often requested by the said plaintiff to pay her, the said plaintiff, the said sum of five hundred dollars, did not, nor would, when requested as aforesaid, or at any time before or since, pay the said sum of five hundred dollars, or any part thereof, but has hitherto wholly neglected and refused so to do, and still neglects and refuses so to do, to wit, at Morris- 40

town, in the County of Morris aforesaid, to her damage one thousand dollars.

And for that, whereas, the said defendant heretofore, to wit, on the ninth day of November, in the year of our Lord one thousand nine hundred and three, at Morristown, in the County of Morris aforesaid, was indebted to the said plaintiff in the sum of one thousand dollars for goods, wares and merchandise before that time sold and delivered by the said plaintiff to the said defendant at its request; and in the sum of one thousand dollars for work and labor before that time done and performed, and materials furnished by the plaintiff for the said defendant at its request; and in one thousand dollars for so much money by the plaintiff before that time loaned and advanced to the said defendant at its request; and in one thousand dollars for so much money before that time paid for the use of the defendant at its request; and in one thousand dollars for so much money by the defendant before that time had and received for the use of the plaintiff; and in one thousand dollars for interest due and for the forbearance by the plaintiff to the defendant at its request; of divers large sums of money before that time due and owing from the defendant to the plaintiff; and in one thousand dollars for so much money then and there found to be due from the defendant to the plaintiff on an account stated between them; and being so indebted, the defendant in consideration thereof, then and there promised the plaintiff to pay the said several sums of money on request, yet the said defendant has wholly disregarded its said several promises, and has not paid the said several sums of money, nor any part thereof, although often requested so to do, but to do so has hitherto wholly refused and still does refuse, to the damage of the plaintiff of one thousand dollars, and thereupon she brings her suit, &c.

VREELAND, KING, WILSON & LINDABURY,
Attorneys of Plaintiff.

NEW JERSEY SUPREME COURT.

KATE OWEN,

v.

METROPOLITAN LIFE INSURANCE
COMPANY.*On Contract.*

PLEAS.

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And the said defendant, Metropolitan Life Insurance Company, as to the first and second counts of the said declaration, by McCarter, Williamson & McCarter, its attorneys, comes and defends the wrong and injury when, etc., and says that the said supposed writing obligatory or policy of insurance is not its deed, and of this the said defendant puts itself upon the country, etc.

And for a further plea in this behalf, as to the first and second counts of the said declaration, the said defendant by leave of the court here first had and obtained, according to the form of the statute in such case made and provided, comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain her aforesaid action thereof against the said defendant because it says that the said writing obligatory or policy of insurance was not made on the eighteenth day of September, nineteen hundred and one, as in the said first and second counts of the said declaration is alleged, and this defendant avers that the said supposed writing obligatory or policy of insurance was not made, nor delivered, nor was the first premium paid thereon until the twenty-eighth day of September, nineteen hundred and one, and this defendant further avers that in the said supposed writing obligatory or policy of insurance, it is expressly provided as follows: "No obligation is assumed by the Company until the final premium has been paid, nor prior to this date, nor unless

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upon this date the insured is alive and in sound health;" and this defendant further avers that prior to the delivery of the said supposed writing obligatory or policy of insurance, and prior to the payment of the first premium thereon, to wit, on the twenty-seventh day of September, nineteen hundred and one, the said insured, John H. Owen, was not in sound health, but was sick and afflicted with the disease of mitral insufficiency and under medical treatment in the Memorial Hospital in the City of Morristown, and attended by a physician, and this it the said defendant is ready to verify, wherefore it prays judgment if the said plaintiff ought to have or maintain her aforesaid action thereof against it, the said defendant.

And the said defendant, as to the first and second counts of the said declaration, for a further plea in this behalf, by like leave as aforesaid, comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain her aforesaid action thereof against the said defendant, because it says that the second condition contained in the said supposed writing obligatory or policy of insurance is as follows: "If any statement in the application herein referred to is not true, or if any premium or instalment of premium be not paid when due, this policy shall be void, and all premiums paid shall be forfeited to the Company, except as provided in paragraph first of 'Benefits and Privileges;'" that the application referred to is the application upon which the said policy was granted, and is copied in and made part of said writing obligatory or policy of insurance, and was signed by the applicant for said policy of insurance; that the first question and answer in said application for insurance made by the insured, John H. Owen, is as follows: "My occupation is—Cook, and I have no other occupation except—Hatter." And the said defendant avers that the said statement contained in said first question and answer in said application was false and untrue, because

it says that the said insured at the time of the signing of the said application did not have the occupation or trade of a cook or hatter, but that he was without occupation or steady work of any kind, by means whereof said writing obligatory or policy of insurance is void, and this the said defendant is ready to verify, wherefore it prays judgment if the said plaintiff ought to have or maintain her aforesaid action against it, the said defendant.

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And the said defendant as to the first and second counts of the said declaration, for a further plea in this behalf, by like leave as aforesaid, comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain her aforesaid action thereof against the said defendant, because it says that the second condition contained in the said supposed writing obligatory or policy of insurance is as follows: "If any statement in the ap-
 "plication herein referred to is not true, or if any
 "premium or instalment of premium be not paid when
 "due, this policy shall be void, and all premiums paid
 "shall be forfeited to the Company, except as provided
 "in paragraph first of 'Benefits and Privileges;'" that the application referred to is the application upon which the said policy was granted, and is copied in
 and made part of said writing obligatory or policy of insurance, and was signed by the applicant for said
 policy of insurance; that the fourth question and answer in said application for insurance made by the in-
 sured, John H. Owen, is as follows: "The following is
 "the name of the physician who last attended me, the
 "date of the attendance, and the name of the com-
 "plaint for which he attended me—Dr. Becker, two
 "years, rheumatism." And the said defendant avers that the said statement contained in the said fourth question and answer in said applicaion was false and untrue, because it says that the said insured had lately theretofore, to wit, one year and nine months prior to the making of said application, been sick and afflicted

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with the disease of aortic insufficiency, and had been attended by one Dr. G. A. Becker, and by other physicians, by means of which said writing obligatory or policy of insurance is void, and this the said defendant is ready to verify, wherefore it prays judgment if the said plaintiff ought to have or maintain her aforesaid action thereof against it, the said defendant.

10 And the said defendant, as to the first and second counts of the said declaration, for a further plea in this behalf, by like leave as aforesaid, comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain her aforesaid action thereof against the said defendant, because it says that the second condition contained in the said supposed writing obligatory or policy of insurance is as follows: "If any statement in the appli-
 20 "cation herein referred to is not true, or if any pre-
 "mium or instalment of premium be not paid when
 "due, this policy shall be void, and all premiums paid
 "shall be forfeited to the Company, except as pro-
 "vided in paragraph first of 'Benefits and Privi-
 "leges;" that the application referred to is the appli-
 cation upon which the said policy was granted, and is copied in and made part of said writing obligatory or policy of insurance, and was signed by the applicant for said policy of insurance; that the sixth question and answer in the said application for insurance made by the insured, John H. Owen, is as follows: "I have
 30 "never been under treatment in any dispensary, hos-
 "pital, or asylum, nor been an inmate of any alms-
 "house or other institution, except two years ago for
 "rheumatism." And the said defendant avers that said statement contained in said sixth question and answer in said application was false and untrue, because it says that the said insured had lately theretofore, to wit, one year and nine months prior to the making of said application been confined to a hospital, to wit, the Memorial Hospital in the City or Morris-
 40 town, for the space of sixty-five days, and had been

under treatment therein for a disease, to wit, aortic insufficiency, by means whereof the said writing obligatory or policy of insurance is void, and this the said defendant is ready to verify, wherefore it prays judgment if the said plaintiff ought to have or maintain her aforesaid action against it, the said defendant.

And the said defendant as to the third count of the said declaration, by McCarter, Williamson & McCarter, its attorneys, comes and defends the wrong and injury when, etc., and says that it did not undertake or promise, in manner and form as the said plaintiff hath above thereof complained against it, and of this it, the said defendant, puts itself upon the country, etc. 10

McCARTER, WILLIAMSON & McCARTER,
Attorneys of Defendant.

STATE OF NEW YORK, }
COUNTY OF NEW YORK, } ss. 20

Geo. B. Woodward, of full age, being duly sworn, on his oath deposes and says that he is the Third Vice-President of the Metropolitan Life Insurance Company, the defendant in the above pleas mentioned. And deponent further says that the said pleas are not interposed for the purpose of delay, and that he, this deponent, verily believes that the said defendant has a just and legal defence to said action on the merits of the case. 30

GEO. B. WOODWARD.

Sworn to and subscribed before me,
a Notary Public in and for the
County and State of New York,
this 8th day of January, 1904.

EDMUND C. CARSHAW,

(SEAL) *Notary Public, Kings Co.*

Certificate filed in N. Y. Co. 40

NEW JERSEY SUPREME COURT.

KATE OWEN,

v.

METROPOLITAN LIFE INSURANCE
COMPANY.*On Contract.**REPLICATIONS.*

10 And the said plaintiff, Kate Owen, as to the plea of the said defendant, Metropolitan Life Insurance Company, by it firstly above pleaded, and whereof it has put itself upon the country, does the like.

20 And the said plaintiff as to the plea of the defendant, by it secondly above pleaded, says, that the plaintiff, by reason of anything by the defendant in that plea alleged, ought not to be barred from having and maintaining her aforesaid action thereof against the defendant, because she says that the said writing obligatory or policy of insurance was made on the eighteenth day of September, nineteen hundred and one, as in the first and second counts of the said declaration herein is alleged, and that it is not in the said writing obligatory or policy of insurance expressly provided as follows: "No obligation is assumed by the Company until the final premium has been paid, nor prior to this date, nor unless upon this date the insured is alive and in sound health," and that on the date of the said writing obligatory or policy of insurance the insured, John H. Owen, was in sound health and not afflicted with mitral insufficiency, and was not under medical treatment in the Memorial Hospital in the City of Morristown, and attended by a physician, and this she, the plaintiff, prays may be inquired of by the country, &c.

30 And the said plaintiff as to the plea of the defendant, by it thirdly above pleaded, says, that the plaintiff, by reason of anything by the defendant in that plea alleged, ought not to be barred from having and maintaining her aforesaid action thereof against the defendant, because she says that the statement con-

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tained in said first question and answer in said application was not false and untrue, and that the said insured, at the time of signing said application, did have the occupation or trade of a cook and hatter, and was employed at his trade or occupation of cook, and this she, the plaintiff, prays may be inquired of by the country, &c.

And the said plaintiff, as to the plea of the defendant, by it fourthly above pleaded, says, that the plaintiff by reason of anything by the defendant in that plea alleged, ought not to be barred from having and maintaining her aforesaid action thereof against the defendant, because she says that the statement contained in the said fourth question and answer in said application was not false and untrue, and that the said insured had not, within one year and nine months prior to making of said application, been sick and afflicted with aortic insufficiency and attended therefor by Dr. G. A. Becker and other physicians, and this she, the plaintiff, prays may be inquired of by the country, &c.

And the said plaintiff as to the plea of the defendant, by it fifthly above pleaded, says, that the plaintiff by reason of anything by the defendant in that plea alleged, ought not to be barred from having and maintaining her aforesaid action thereof against the defendant, because she says that the statement contained in the said sixth question and answer in said application was not false and untrue, and that the said insured had not been confined to the Memorial Hospital in the City of Morristown for the space of sixty-five days, within one year and nine months prior to making said application, and had not been under treatment therein for aortic insufficiency, and this she, the plaintiff, prays may be inquired of by the country, &c.

And the said plaintiff as to the plea of the defendant, by it sixthly above pleaded, and whereof it has put itself upon the country, does the like.

VREELAND, KING, WILSON & LINDABURY,
Attorneys of Plaintiff.

NEW JERSEY SUPREME COURT.

KATE OWEN,

*v.*METROPOLITAN LIFE INSURANCE
COMPANY.*On Contract.*

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ORDER.

Counsel for the plaintiff consenting hereto,

It is hereupon ordered, on this 2nd day of May, nineteen hundred and six, on motion of McCarter & English, attorneys of defendant, that the said fourth plea heretofore filed herein be amended by adding the words "and other diseases of the heart" after the words "aortic insufficiency," and ahead of the words "and had been attended by one Dr. G. A. Becker," etc.

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And it is further ordered that the following pleas be filed in addition to the pleas already filed on behalf of defendant:

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And the said defendant as to the first and second counts of the said declaration, for a further plea in this behalf, by like leave as aforesaid, comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain her aforesaid action thereof against the said defendant, because it says that the second condition contained in the said supposed writing obligatory or policy of insurance is as follows: "If any statement in the application herein referred to is not true, or if any premium or instalment of premium be not paid when due, this policy shall be void, and all premiums shall be forfeited to the Company, except as provided in paragraph first of 'Benefits and Privileges;'" that the application referred to is the application upon which the said policy was granted, and is copied in and made

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part of said writing obligatory or policy of insurance, and was signed by the applicant for said policy of

insurance; that the second question and answer in the said application for insurance made by the insured, John H. Owen, is as follows: "2. I have never had "any of the following complaints or diseases: Apoplexy, Asthma, Bronchitis, Cancer or other Tumor, "Consumption, Disease of Brain, Disease of Heart, "Disease of Kidneys, Disease of Liver, Disease of "Lungs, Disease of Urinary Organs, Dropsy, Fistula, "Fits or Convulsions, General Debility, Habitual 10
"Cough, Hemorrhage, Insanity, Jaundice, Paralysis, "Pleurisy, Pneumonia, Rheumatism, Scrofula, Spinal "Disease, Spitting or Raising Blood, Ulcer or Open "Sores, Varicose Veins, except Rheumatism, 2 years."

And said defendant avers that said statement contained in said second question and answer in said application was false and untrue, because it says that the insured had lately theretofore, to wit, one year and nine months prior to the making of said application, and at various times, both before and after that time, 20
been sick and afflicted with disease of the heart, by means of which said writing obligatory or policy of insurance is void, and this the said defendant is ready to verify, wherefore it prays judgment if the said plaintiff ought to have or maintain her aforesaid action thereof against it, the said defendant.

And for a further plea in this behalf, the said defendant as to the first and second counts of the said declaration, by like leave as aforesaid, comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain her aforesaid action thereof against the said defendant, because it says that the second condition contained in the said supposed writing obligatory or policy of insurance is as follows: "If any statement in the application herein referred to is not true, or if any premium or instalment of premium be not paid when "due, this policy shall be void, and all premiums shall "be forfeited to the Company, except as provided in paragraph first of 'Benefits and Privileges,'" that the 30
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application referred to is the application upon which the said policy was granted, and is copied in and made part of said writing obligatory or policy of insurance, and was signed by the applicant for said policy of insurance; that the fifth question and answer in the said application for insurance made by the insured, John H. Owen, is as follows: "5. I have not been under the care of any physician within two years, unless as stated in previous line, except . . ."

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And said defendant avers that the said statement contained in said fifth question and answer in said application was false and untrue, because it says that the said insured had lately theretofore, to wit, one year and nine months prior to the making of said application, and at various times thereafter, been under the care of several physicians, to wit, Dr. Stephen Pierson, Dr. H. B. McCarroll, and Dr. G. A. Becker, at the Memorial Hospital in the City of Morristown, by means of which said writing obligatory or policy of insurance is void. And this the said defendant is ready to verify, wherefore it prays judgment if the said plaintiff ought to have or maintain her aforesaid action thereof against it, the said defendant.

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And the said defendant, as to the first and second counts of the said declaration, for a further plea in this behalf, by like leave as aforesaid, comes and defends the wrong and injury when, etc., and says that the said plaintiff ought not to have or maintain her aforesaid action thereof against the said defendant, because it says that the second condition contained in the said supposed writing obligatory or policy of insurance is as follows: "If any statement in the application herein referred to, is not true, or if any premium or instalment of premium be not paid when due, this policy shall be void, and all premiums shall be forfeited to the Company, except as provided in paragraph first: 'Benefits and Privileges;'" that the application referred to is the application upon which the said policy was granted, and is copied in and made

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part of said writing obligatory or policy of insurance, and was signed by the applicant for said policy of insurance; that the twelfth question and answer in the said application for insurance made by the insured, John H. Owen, is as follows: "12. No proposal or application to insure my life has ever been made to any company or agent upon which a policy has not been issued of the amount applied for, except as follows. "And by the word 'Company' I mean as defined in the "previous statements. " And 10

the said defendant avers that the statement contained in the said twelfth question and answer was false and untrue, because it says that the said insured had lately theretofore, to wit, six months prior to the making of the said application, made an application to this defendant for a policy of insurance, which policy was not issued, but was distinctly rejected, by reason whereof said policy of insurance or writing obligatory is void, and this the said defendant is ready to verify. 20

Wherefore it prays judgment if the said plaintiff ought to have or maintain her aforesaid action thereof against it, the said defendant.

MCCARTER & ENGLISH,
Attorneys of Defendant.

We consent to the entry of the foregoing order.

VREELAND, KING, WILSON & LINDABURY,
Attorneys of Plaintiff.

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April 28, 1906.

Let the foregoing order be entered in the minutes of the court.

A. Q. GARRETSON,
J. S. C.

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NEW JERSEY SUPREME COURT.

 KATE OWEN,

v.

 METROPOLITAN LIFE INSURANCE
 COMPANY.

} *On Contract.*10 *REPLICATIONS TO AMENDED PLEAS.*

Counsel for the defendant in the above-entitled matter consenting hereto, in open court,

It is, thereupon, on this second day of May, A. D. 1906, on motion of Vreeland, King, Wilson & Lindabury, attorneys of plaintiff in said cause, ordered that the replications heretofore filed herein be amended by adding the words "and other diseases of the heart" after the words "aortic insufficiency" and ahead of the words "and attended therefor by Dr. G. A. Becker," &c.

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And it is further ordered that the following replications be filed in addition to the replications already filed on behalf of the plaintiff.

And the said plaintiff as to the first of the further pleas filed by the said defendant in addition to the pleas already filed by it, above pleaded, says, that the plaintiff by reason of anything by the defendant in that plea alleged, ought not to be barred from having and maintaining her aforesaid action thereof against the defendant, because she says that the statement contained in the said second question and answer in said application was not false and untrue, and that the said insured had not lately theretofore, to wit, one year and nine months prior to the making of said application, and at various times, both before and after that time, been sick and afflicted with disease of the heart, by means of which said writing obligatory or policy of insurance is void; and this she, the said plaintiff, prays may be inquired of by the country, &c.

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And the said plaintiff as to the second of the further pleas filed by the said defendant in addition to the pleas already filed by it, above pleaded, says, that the plaintiff by reason of anything by the defendant in that plea alleged, ought not to be barred from having and maintaining her aforesaid action thereof against the defendant, because she says that the statement contained in said fifth question and answer in said application was not false and untrue, and that the said insured had not lately theretofore, to wit, one year and nine months prior to the making of said application, and at various times thereafter, been under the care of several physicians, to wit, Dr. Stephen Pierson, Dr. H. B. McCarroll and Dr. G. A. Becker, at the Memorial Hospital in the City of Morristown, by means of which said writing obligatory or policy of insurance is void; and this she, the said plaintiff, prays may be inquired of by the country, &c.

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And the said plaintiff as to the third of the further pleas filed by the said defendant, in addition to the pleas already filed by it, above pleaded, says, that the plaintiff by reason of anything by the defendant in that plea alleged, ought not to be barred from having and maintaining her aforesaid action thereof against the defendant, because she says that the statement contained in the said twelfth question and answer was not false and untrue, and that the said insured had not lately theretofore, to wit, six months prior to the making of said the said application, made an application to said defendant for a policy of insurance, which policy was not issued, but was distinctly rejected, by reason whereof said policy of insurance or writing obligatory is void; and this she, the said plaintiff, prays may be inquired of by the country, &c.

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A. Q. GARRETSON,
J. S. C.

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NEW JERSEY SUPREME COURT.
MORRIS COUNTY.

KATE OWEN,

v.

METROPOLITAN LIFE INSURANCE
COMPANY.

} *On Contract.*

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Stenographer's transcript of testimony taken on the trial of the above stated cause at Morristown, May 2, 1906, before His Honor Abram Q. Garretson, Justice of the Supreme Court, and a jury.

APPEARANCES.

Vreeland, King, Wilson & Lindabury (Mr. Wilson) for the plaintiff.

McCarter & English (Mr. English) for the defendant.

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PLAINTIFF'S CASE.

Mr. Wilson. I offer in evidence the policy of insurance sued upon, the execution of which has been admitted.

(Marked P. 1.)

Mr. Wilson. I would like to offer in evidence certified copy of the certificate of death of John H. Owen,—the certificate as required by the evidence act.

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(Marked P. 2.)

The Court. This is the certificate required by the health department?

Mr. Wilson. Yes, sir filed with the bureau of vital statistics.

Mr. English. I object to this certificate for any other purpose except to prove the death of John H. Owen.

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Mr. Wilson. We offer no other part of it at present.

The Court. The purpose is simply to prove that he died?

Mr. Wilson. November 18, 1901.

CHARLES A. SCHINDLER, a witness sworn on the part of the plaintiff, testifies as follows:

Direct examination by Mr. Wilson.

Q Your name is Charles A. Schindler? 10

A Yes, sir.

Q Where do you live?

A Madison, N. J.

Q And what is your occupation?

A Agent of the Metropolitan Life Insurance Company.

Q How long have you been such agent?

A Five years it was February 11th.

Q Did you write as such agent an application for insurance for five hundred dollars upon the life of John H. Owen? 20

Mr. English. I object to that unless the application is shown to him.

Mr. Wilson. I have given you notice to produce it.

Mr English. I have it here.

Question withdrawn.

Q I show you, Mr. Schindler, exhibit number one on the part of the plaintiff, and ask you if you have seen that policy before? 30

A Yes, sir, or a correct copy of it. If that is not the original, I have seen a correct copy of it.

Q When did you receive that policy and what did you do with it?

A To the best of my recollection and according to my book here the policy was received by me about the twenty-first of September.

Q What year?

A 1901.

Q What did you do with it? 40

A I sent it to Mrs. Owen with a letter.

Q The beneficiary named in the policy?

A The beneficiary named in the policy.

Q Where did you send it?

A I sent it to Connecticut.

Q What town?

A I think it was Danbury.

Q Did you receive the first premium named in that policy from Mrs. Owen?

10 A Within a week after the time I sent it I received it; yes, sir.

Q What did you do with it?

A It was handed over to my superior, the assistant superintendent of the Metropolitan Life Insurance Company.

Q (Showing witness) I show you a check and ask you if you have ever seen that check before?

A I could not swear that I ever have. The amount the check came for I could swear to.

20 *By Mr. English.*

Q You are not asked that. You are asked whether you have ever seen that check before.

A I could not swear that I have ever seen it before.

By Mr. Wilson.

Q Do you think you have?

A I think I have. It covers more than the other policy.

30 *Mr. Wilson.* I offer in evidence this check.

Mr. English. I object upon the ground that it is not properly proved. The witness does not recollect whether he ever got that check or not.

Mr. Wilson. I will withdraw it for the present.

Q Do you remember the amount of the premium upon the five hundred dollar policy?

A I cannot tell exactly what the age was now. It was over the amount of the premium because he paid
40 a premium—

By Mr. English.

(Interrupting) You are not asked that; you are asked if you remember the amount of the premium?

A I don't remember.

By Mr. Wilson.

Q What is the premium in the policy?

A Whatever the age is.

Q It is on the first page? 10

A Yearly premium. \$23.64. The check covers more than that because he paid for a previous policy.

Mr. English. I move that that be stricken out as not properly proved.

The Court. Mr. Wilson, you have produced here the policy and have shown the death of the assured; is not the case complete?

Mr. Wilson. The payment of the first policy.

Mr. English. I move to strike out the last answer. 20

Mr. Wilson. I will let it be stricken out.

Q What did this check include beside the first premium on this policy?

Mr. English. I object.

The Court. I will allow that question. I suppose this check paid that first premium. It might have included more, perhaps. You may have an exception if you think it is important. 30

A All over the \$23.64 that the check includes paid for a policy in force to fill out the balance of the year.

Q That was \$5.20?

A Add \$5.20 to the \$23.64. That is what it will be.

Q Making the amount of the check?

A That is what it is. This check paid the premium on the policy and paid the premium on another policy in force. 40

Mr. Wilson. I offer the check in evidence.

The Court. Do you object to it?

Mr. English. No sir, not now.

(Check is marked P-3.)

Q Are you acquainted with the writing of Mr. Hamil?

A Yes, sir.

Q Is that endorsement in his writing?

10 A I should swear it was; yes, sir.

Q What was Mr. Hamil's position?

A Assistant snperintendent.

Q Of the defendant?

A Of the Metropolitan Life Insurance Company.

Q Located where?

A Morristown.

Cross examination by Mr. English.

Q You did not insure State Brothers, did you?

20 A No, sir.

Q I see that this check is signed "State Brothers." That is true, is it not?

A How is that?

Q That check is signed State Brothers, is it not?

A I suppose it is. It is payable for insurance, though.

Q Do you mean to say that you sent the policy to Mrs. Owen before the premium was paid?

30 A To the best of my recollection, and my book will show that the policy went to her before the premium was paid.

Q Have you not previously said that you mailed that policy a week or ten days after you received the check for it; have you not said that?

A It has been said; yes.

Q You said it in the presence of Mr. Lowenstein?

A I said so last week to the best of my belief; yes. I go according to evidence. My best evidence is my book here.

40 *Mr. English.* I move to strike that out.

Q It is against the rules of the company to deliver a policy before the premium is paid?

Mr. Wilson. I object.

The Court. I don't see how that is a defense, and besides it is not cross examination.

Q What was the other policy in force that you speak of?

A It is what we call an industrial policy,—premium of ten cents a week. 10

Q They usually make payments on account of that every week? .

Mr. Wilson. I object; it is not cross examination.

The Court. I don't see how that is competent.

Q (Showing witness) I show you an application in the Metropolitan Life Insurance Company for insurance on the life of John H. Owen, and ask you if that is your signature. 20

Mr. Wilson. I object to that as not being cross examination.

The Court. It is not competent as cross examination.

HARRIET OWEN, sworn as a witness on the part of the plaintiff, testifies as follows:

Direct examination by Mr. Wilson.

Q Where do you live? 30

A Danbury, Connecticut.

Q What is your mother's name?

A Kate Owen.

Q Is your mother the beneficiary named in this policy of insurance—

A (interrupting) She is.

Q Which we have offered in evidence here?

A Yes; she is.

Q You have seen that policy?

A Yes, sir; I have. 40

Q And your mother is the mother of John H. Owen named here?

A Yes, sir.

Q Where does she live?

A Danbury, Connecticut.

Q What is her physical condition at this time?

A She has rheumatism at the present time.

Q Is she able to appear here?

10 A No, sir.

Q Is she able to leave the house?

A Only at times.

Q Was she able to leave yesterday?

A No, sir.

Q I show you a check marked Exhibit P-3 on the part of the plaintiff and ask you if you have ever seen that before?

A Yes, sir; State Brothers made it out for me.

Q For you on behalf of your mother?

20 A Yes, sir.

Q You gave State Brothers the money?

A The money.

Mr. English. Don't lead.

Mr. Wilson. I will withdraw it.

Q What did you do to get this check; how did you get the check?

A Why, I went down to State Brothers and gave them the money, and they gave me the check. I told them what I wanted it for.

30 Q What did you do with the check?

A I sent it to Mr. Schindler, the agent at Morris-town.

Q Had the policy been received by your mother at the time the check was sent?

A Yes, sir; to the best of my recollection she had received it when I sent the check.

Q The check was sent to the agent in payment?

A Yes, sir.

Q Do you know the date of your brother's death?

40 A November 18th is what I think.

Q 1901?

A 1901.

Q Was he buried in Danbury, Connecticut?

A Yes.

Q You know he is dead?

A Yes, sir.

Q Do you know when he was buried there?

A Well, I think it was on a Wednesday morning.

Q And if November 18th was on Monday, do you think it was on the following Wednesday? 10

A The following Wednesday.

Q Of the year 1901?

A 1901; yes, sir.

Mr. English. Have you the receipt we gave you notice to produce?

Mr. Wilson. I have not.

Cross examination by Mr. English. 20

Q A receipt was sent to your mother for the premium, was there not?

A I believe there was.

Q Do you know what has become of it?

A It must have been returned with the policy as far as I know. I could not say for sure.

Q When you say "it must have been returned with the policy," what do you mean?

A I gave the policy to my lawyer in Connecticut.

Q You think you delivered the receipt to him at that time? 30

A Yes, sir.

Q There was a receipt. You are quite sure of that?

A Yes; I am quite sure.

Q Do you remember how it read?

A No; I do not.

Q Your brother never paid the premium on this policy, did he?

Mr. Wilson. I object to that. It is not cross 40

examination. Her examination in chief is that her mother paid it.

Q Does your mother write?

Mr. Wilson. I object to that as not cross examination.

Mr. English. I think it may be before we get through.

10 *The Court.* I don't know whether it is or not. She was asked about her mother and whether her mother was not the beneficiary. The defendant has a right to examine upon all matters that relate to the fact of her being the beneficiary. If she has written something to show that she is not the beneficiary, it is certainly competent to show that she has done so.

Mr. Wilson. Objection withdrawn.

Q (Showing witness) Is this your mother's mark?

20 A I could not—

Q (interrupting) She does not write, does she?

Can she write? Can she sign her name? Does your mother sign her name?

A No; she does not.

Q Tell me: Is State Brothers a banking concern?

A No, sir; they are grocers and meat dealers.

Q Grocers and what?

A Meat dealers.

30 Q You gave them some money and they took it and wrote a check at your request?

A Yes.

Q Is that it?

A Yes, sir.

Q Who mailed this check—did you or your mother?

A I did.

Q You addressed it to Mr. Schindler?

A Yes.

Q At Morristown or Dover?

40 A At Morristown.

- Q You say you received the policy before that?
- A Yes; to the best of my knowledge, I did.
- Q You are not sure about that, though?
- A Well, not pretty sure.
- Q Well, what fixes it in your mind?
- A Well, because I think I remember getting the letter that he had—
- Q (interrupting) Have you got that letter?
- A No, sir; all the letters were given to my lawyer in Danbury. 10
- Q What did he do with them?
- A I don't know what he did with them.
- Q Did he not give them back to you?
- A No.
- Q He gave the policy back to you?
- Mr. Wilson.* No; he didn't.
- Q How did the policy get out of the possession of your Danbury lawyers; did they give it to you? 20
- A Why, no; I think they sent it here.
- Q How did they happen to send it here—at your request?
- A Well, I suppose so; I would not be positive.
- Q Do you remember asking them to send it here to your Morristown lawyers?
- A Well, I would not say for sure, but I think I must have done it, or else they would not have done it.
- Q Didn't you direct them to send the receipt and other papers? 30
- A I didn't say anything about it; for I supposed, of course, they would do so.
- Q Did you request in person or by letter?
- A Personally.
- Q Did you call at their office?
- A Yes.
- Q What did you say about sending the papers?
- A Really, I don't know as I could repeat what I did say.
- Q Did you request them to send on all the papers? 40

A I don't know as I mentioned all the papers.

Mr. Wilson. I object as not cross examination.

The Court. I don't see that it is.

Q How long had your brother been away from Danbury?

Mr. Wilson. I object. That is not cross examination.

10 *The Court.* How is that cross examination?

Mr. English. It might be, but I will withdraw it.

PLAINTIFF RESTS.

DEFENDANT'S CASE.

GUSTAV A. BECKER, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. English.

20 Q You live in Morristown?

A I do.

Q And you are a practicing physician here?

A I am.

Q How long have you been practicing here?

A In Morristown?

Q Yes.

A Since 1887.

30 Q And I think you are one of the medical examiners of the defendant company, are you not?

A I am.

Q I show you an application for five hundred dollars insurance, Policy No. 202,672, which is Exhibit P-1, and ask you if it bears the signature of John Henry Owen?

A It does.

Q It was signed in your presence?

A It was.

40 *Mr. Wilson.* What is this paper now that you are offering?

Mr. English. This is the original of that which is copied in the policy.

Mr. Wilson. This is the application?

Mr. English. Yes.

Q How did the application come to your hands?

A I don't remember whether the agent or assistant superintendent handed it to me.

Q It came to you through the Metropolitan Life Insurance Company? 10

A It did.

Q What is the regular course of procedure after an application has been written by an agent, as far as you are concerned?

Mr. Wilson. I object.

A Either the agent or the assistant superintendent sends it to my office.

Q Then what do you do?

A Then I find the applicant and examine him. 20

Q Was that the course followed in this case?

A It was.

Q You sought out Mr. Owen?

A I did.

Q And in the course of that proceeding he signed that signature?

A He did.

Q How, doctor, are you one of the staff of the Morristown Hospital?

A I am. 30

Q How long have you been such?

A Since the organization of the hospital. I could not tell you how many years.

Q Within five years?

A It is longer than that.

Q You occupied that position in September and November and December, 1901?

A I did.

Q And in the early part of 1902?

A I did. 40

Q I show you what purports to be a record of the Memorial Hospital in this city and direct your attention to entry 442 under the name of John Owen, and ask you if any of the writing under that entry is in your handwriting?

A Yes.

Q Kindly read what is in your writing?

10 *Mr. Wilson.* I object to the question in that way as to what purports to be the record of the Morristown Memorial Hospital, upon the ground that that is not the proper way to prove the record of the hospital.

The Court. I don't understand that there is any offer of proving a record. The only effect of this is to introduce a memorandum made by him there at the time.

A "Organic rheumatism."

20 *The Court.* He cannot read that.

Q Are there any entries there in your handwriting?

A Yes.

Q Looking at that for the purpose of refreshing your recollection, can you tell us what was the disease affecting Mr. Owen during his confinement in the hospital, according to that record?

30 *Mr. Wilson.* Objected to on the ground that it does not appear that the entry relates to John H. Owen.

The Court. I will allow it.

Mr. Wilson. I ask an exception.

A Organic heart disease.

Q Has that, or has it not, refreshed your recollection from the record there?

The Court. That last question is overruled.

Q Does looking at that writing there refresh your recollection any?

40 A It does.

Q Having refreshed your recollection, can you tell the court and jury from what Mr. Owen suffered during his confinement in the hospital, assuming that he was in the hospital?

Mr. Wilson. I object to that.

Q Do you remember Mr. Owen?

A I do not.

Mr. English. I suppose I can withdraw the doctor and prove that Mr. Owen was there, and then ask him this question? 10

The Court. Try the case according to your own idea.

GERTRUDE LUSTIG, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. English.

Q Do you live in Morristown? 20

A Yes, sir; I do.

Q Are you connected with the Memorial Hospital of Morristown?

A Yes; I am connected with the Memorial Hospital.

Q In what capacity?

A Matron.

Q At the present time?

A At the present time.

Q How long have you been connected with the hospital? 30

A Three years.

Q I show you a book which is labelled on the outside "House Record," and ask you what that is?

A It is the hospital record—the admission book.

Q The admission book of—

A (interrupting) The Morristown Memorial Hospital.

Q Of this city?

A Of Morristown.] 40

Q I call your attention to entry 442, bearing the name of John Owen and ask you in whose handwriting that is?

A Miss Laird's.

Q Who was Miss Laird?

A Matron at Memorial Hospital.

Q Is she living at the present time?

A No; she is not.

10 Q She is dead?

A She is dead.

Q You are familiar with her handwriting?

A I am.

Q Have you seen her writing?

A I have.

Q Are those entries made in her handwriting?

A They are.

Q What was her position, if you know, in the Memorial Hospital in the winter of 1899-1900?

20 A She was matron of Memorial Hospital.

Q Will you kindly read the entry under No. 442?

Mr. Wilson. I object.

The Court. Where do you get authority for the position that such a record as that is evidence?

Mr. English. It seems to me that it is the official record kept by the hospital, showing the confinement there of the patients.

30 *The Court.* I don't understand that this is any record required by law to be kept by a hospital. It is nothing more than a memorandum. I overrule the question.

Mr. English. I pray an exception.

Exception allowed; let it be sealed and it is sealed accordingly.

(SEAL) A. Q. GARRETSON, *Judge.*

40 *The Court.* Of course there is a rule of law about the admission of certain records that are not required—parish records.

There was a case not long ago where the record of a parish church in Ireland was allowed.

Mr. English. I would like to offer in evidence the entry in the house register of the Memorial Hospital, No. 442, containing a history of the case of one John Owen.

The Court. Overrule it.

10

Mr. English. I pray an exception.

Exception allowed, let it be sealed and it is sealed accordingly.

(SEAL) A. Q. GARRETSON, *Judge.*

Q Have you any other records there?

A I have.

Q What are there? Have you an entry there under the name of John Owen or John H. Owen?

A John H. Owen.

20

Q In whose handwriting is it?

A Miss Laird's.

Q Were you connected with the hospital in 1899?

A I was not.

Q Were you connected with the hospital in 1901?

A I was.

Q At the time that entry was made?

A Yes, sir.

Q Do you remember John H. Owen?

A Yes, sir; I do.

30

Q Aside from that book, do you remember whether or not he was confined in the hospital September 27th, 1901?

Mr. Wilson. I object to that on the ground that it does not make any difference whether he was confined in the hospital on September 27th. The policy says "from this date," and it is dated the eighteenth of September. He is trying to ask this witness whether the man was confined in the hospital on the twenty-seventh.

40

The Court. There may be something in that, that will show that when the premium was paid, he was not in sound health.

A Yes, sir; I do.

Q Do you remember what was the matter with him at that time?

A I do not.

Q Is that entry in the handwriting of Miss Laird?

10

A It is.

Q The lady who has since died?

A Yes, sir.

Mr. English. For the purpose of exception, I offer in evidence the entry in the record of the Memorial Hospital, No. 630, purporting to be the history of the case of one John H. Owen.

The Court. I overrule the offer.

Mr. English. I pray an exception.

20

Exception allowed, let it be sealed and it is sealed accordingly.

(SEAL)

A. Q. GARRETSON, *Judge.*

Q Is there any other writing in this book that refers to John H. Owen?

A There is not.

No cross examination.

STEPHEN PIERSON, sworn as a witness on the part of the defendant, testifies as follows:

30

Direct examination by Mr. English.

Q You are a practicing physician of Morristown?

A Yes, sir.

Q How long have you been such?

A Since 1873.

Q Have you ever been connected with the Memorial Hospital in this city?

A Yes.

Q And were you so connected in the year 1901?

40

A Yes.

Q Are you at the present time?

A Yes, sir.

Q And you were connected with the hospital in 1899?

A Yes, sir.

Q Do you remember a patient there by the name of John H. Owen at any time?

A I remember him in 1901. I have not a very distinct impression as to the earlier date. 10

Q You do recollect that he was there at an earlier date?

A I would not say positively about that.

Q What date, do you remember his being confined there the last time?

A Well, I couldn't hardly give the precise dates without referring to the records. I remember that he was there, and that he died there. I couldn't give you the dates without— 20,

Q (Showing witness) Are these the records of the hospital that I show you?

A Yes.

Q Would looking at this record refresh your recollection?

A Let me look at it and see.

Mr. Wilson. I object on the ground that it is not shown that the record was made by the witness.

Q Have you ever seen that record before this time? 30

A Yes.

Q When, do you suppose, did you see it before?

A Two or three months ago I know I looked at it.

Q Did you see it at the time that it was made?

A No; I did not: It is not in my handwriting at all. It is Dr. Becker's handwriting I think.

Q At the time that you remember his being there, what was he suffering from, if you remember?

A He was suffering from organic heart disease and from general dropsy,—anasarca,—

Q (interrupting) What is "anasarca?" 40

A That is general dropsy. That is another name for dropsy.

Q Can you approximate the time from your recollection when that was?

A Why, I could not come very close to it without referring to these records.

Q Well, doing the best you can without referring to the records?

10 A Well, I think it was three or four years ago—something like that—four or five years ago; I could not be definite.

By the Court.

Q This is the time he died, I understand?

A Well, he was there for a few days and then discharged. He was dissatisfied with the treatment and so forth and wanted to go home. That is my recollection of it. I saw him there at the time. Dr. Becker
20 did the most of it; he was the assistant. This was practically his last illness. He came in there some time in September and was discharged in October, and I think he was only out a short time and then brought back, and I think he remained then until he died.

By Mr. English.

Q Both of these times he was suffering from that disease?

A Yes.

30 Q Assuming that he had been there in September suffering from that disease, how long had he been suffering from that, if you can tell, judging from the character of the disease as you recollect it?

A I could not answer that.

Q Will you name this disease now?

A He had organic heart disease; he had dropsy; he had nephritis, that is, chronic inflammation of the kidneys, and he had congestion of the lungs.

40 Q Assuming that a man had organic heart disease in September, 1901, how long prior to that date would

you say he had been suffering from it, being in the condition that you recollect him?

A That would be a general guess. I would not be willing to say to that. It might have been a good while.

Q Assuming that he had chronic nephritis at the time that you recollect him, how long would you say it was since he first suffered from it?

A That would have been a matter of some months at least. 10

Q What was the other disease that you named?

A Congestion of the lungs.

Q Assuming that he had congestion of the lungs in September, 1901, how long prior to that date would you say he had been suffering from it, judging from the condition he was in when you saw him?

A They might have clogged up in a day or two. It comes and goes.

Q And the heart disease you would not venture an opinion on. Have you any recollection of this particular case which would enable you to say? 20

A Well, the impression would be that that disease must have lasted some little time.

Q Do you mean a week, or a month, or two months, or three months?

A I should think more than a month. I could not say positively.

Cross examination by Mr. Wilson.

Q Do you know what killed him? 30

A Which particular one of those symptoms?

Q What was the cause of his death?

A It was a general combination of things. He had more than he could stagger under.

Q Was pneumonia the cause of his death?

A Not pneumonia in the sense that you understand it.

Q In any sense was it the cause of his death?

A There is a form of pneumonia which is called "passive pneumonia" which is not pneumonia at all. 40

It is simply called pneumonia. The lungs fill up and clog up. It is called pneumonia, but it is not true pneumonia at all.

Q You made the death certificate, didn't you?

A Yes.

Q That certificate is true?

A I thought so at the time I signed it.

10 Q (Showing witness) I will ask you if you think that is a copy of the death certificate prepared by you?

A I guess it is.

Q What does that say?

A That says chronic nephritis and pneumonia, which was the form of pneumonia that I just explained to you.

Q You think that is a copy of the one that you made?

A Yes; I believe so.

20 *Mr. English.* Is that a copy of the death certificate or a copy of the proof of death?

Mr. Wilson. A copy of the death certificate filed in Trenton.

Re-direct examination by Mr. English.

Q (Showing witness) You made a statement for the Insurance Company in this case. Look at that and see if that is your signature.

A Yes; that is my signature.

30 Q And that is in your handwriting?

A That is my handwriting.

Q The whole body of it?

A Yes.

Q Look at that and see if you can tell whether or not Mr. Owen was confined in the hospital September 27th, 1901?

A That is what I certify to on that date.

Q And that was true?

A I have no doubt of it.

Q You swore to it I think?

40 A Yes.

Q At that time you say that he was suffering from organic heart disease. Having testified that Mr. Owen was in the hospital on September 27th, and having testified that at that time, according to your recollection, he was suffering from organic heart disease, I ask you how long prior to September 27th he was suffering from heart disease.

Mr. Wilson. I object.

The Court. He has a right to refresh his recollection. The purpose of this question is to show that for some time prior to that he had been suffering from heart disease, and so did not come within the sound health clause. He testified that he could not tell how long he had been suffering with heart disease. If he made a memorandum at the time that he examined him, which shows that he had, it is competent. 10

The Witness. There is nothing in this memorandum which shows anything about that. 20

Mr. Wilson. Then we object to that memorandum.

The Court. There is nothing in that memorandum that refreshes his recollection as to how long this man had been suffering with organic heart disease.

Mr. English. But it does fix the date when he first went in the hospital. 30

The Court. We have passed that. 30

GUSTAV A. BECKER, a witness already sworn on the part of the defendant, recalled and testifies as follows:

Direct examination by Mr. English.

Q I want to know what your custom is as visiting physician of the Memorial Hospital in the making of entries in the house record?

Mr. Wilson. We object to that. 40

The Court. What difference does it make what his custom is?

Q Now, I ask you, refreshing your recollection from the entry, what Mr. Owen suffered from in December, 1899?

A Organic heart disease.

Q And he suffered from that how long, as you recollect?

10 A Why, according to this he was admitted to the hospital on December 27th—

Mr. Wilson. Object to that.

By the Court.

Q You look at this and see whether that refreshes your recollection, and then you testify from your recollection so refreshed.

A Then he had organic heart disease when he was taken to the hospital.

20 *By Mr. English.*

Q From that memorandum have you any recollection of when he was admitted to the hospital?

A Not in my handwriting.

Q I am not asking you about your handwriting. I am asking you from what you have seen in that book, if you have any recollection of when Mr. Owen was admitted to the hospital?

A I have.

30 Q What is your recollection?

Mr. King. I object. The objection is because he has incorporated in his question a memorandum from that book as to which he has no recollection, when it was made, who made it, and does not know anything about it.

Q Have you any recollection, leaving out the book entirely, when in 1899 Mr. Owen was confined in the hospital?

A I have.

40 Q When?

A December 22, 1899.

Q How long was he confined in the hospital as you recollect?

A For at least two months.

Q And during those two months beginning with December 22, 1899, he suffered from what?

A Organic heart disease.

Cross examination by Mr. Wilson.

Q Dr. Becker, without the record of the hospital, do you now recall when Owen was admitted there; without the record in the hospital book would you remember it? 10

A Do you mean without refreshing my memory from this?

Q Yes.

A I would not.

Mr. Wilson. We move to strike out the evidence he has given because he says that he cannot recollect except by using the book. 20

The Court. I won't strike it out.

Mr. Wilson. We pray an exception.

Q Doctor, your association with the defendant company is what?

A Their examiner.

Q In Morristown?

A Yes.

Q And as such examiner employed by the company you examined John H. Owen, did you? 30

A I did.

Q You don't remember the date, do you?

A The date is on that application.

Q Whatever this application shows is the date?

A Yes, sir. You will find the date of the examination on the bottom of the inside first page.

Q Are the answers to these questions in your handwriting?

A The original is. I don't know whether that is the original or not. 40

Q (Showing witness) I show you this paper.

A Yes; that is in my handwriting.

Q Then this is the original application which was presented to you?

A Yes.

Q Was it by the agent, or the home office, or the district agent?

A The assistant superintendent.

10 Q And these answers are answers given to you by the applicant?

A They are.

Q Did you ask him what his—

Mr. English. I object to that.

The Court. I don't see how it helps the case one way or the other to ask the doctor whether he asked the questions.

20 Q I show you this application and ask you if you marked "disease of the heart" underscored with a lead pencil, and put a cross mark on it?

Mr. English. I object to that.

The Court. This application is part of the case.

Mr. English. I offered that as a paper signed by the insured.

The Court. A paper made out by Dr. Becker.

Mr. English. I simply offered the signature.

30 *The Court.* You must have the whole thing.

Q Did you underscore "Disease of the heart" with a lead pencil and put a check mark on it?

A I did not.

Q (indicating) Did you underscore this?

A I did not.

Q Did you make this lead pencil check opposite—

A (interrupting) I did not.

Q Did you make a lead pencil check opposite

Question 4?

40 A I did not.

Q Did you make a lead pencil check opposite Question 5?

A No.

Q Did you make a lead pencil mark opposite Question 6?

A No.

Q Did you make a lead pencil mark opposite Question 12?

A No. 10

Q Did you make a lead pencil mark opposite the warranty under Question 12?

A No.

Q Did you underscore in pencil "And the premium has actually been paid to and accepted by the company during my life time?"

Mr. English. I can save counsel time by informing him that I made those marks myself, if it is of any interest to him. 20

Q You say you wrote these answers?

A I did.

Q In Question No. 2—I never had any of the following complaints or diseases, naming them, "except rheumatism two years," did you write that?

A I did. I meant by that—

Mr. English. Never mind what you meant. It speaks for itself.

Q Question No. 4—"The following is the name of the physician who last attended me, the date of the attendance, and the name of the complaint for which he attended me.—Answer: Dr. Becker, two years, rheumatism." You wrote that? 30

A I did.

By the Court.

Q Did that Dr. Becker there refer to yourself?

A I don't know.

Q You don't know?

A No.

Q You wrote down what he said? 40

A I simply wrote down his answers. I don't remember of ever attending the man, but there is no other Dr. Becker in Morristown; so it must refer to me.

Q. He was in the hospital December, 1899, and this was September, 1901?

A Yes; but at the time I wrote that I didn't remember the man.

10 *By Mr. Wilson.*

Q You remember treating him in the hospital?

A I do not; only according to this record by refreshing my memory.

Q Question No. 6—"I have never been under treatment in any dispensary, hospital or infirmary, or been an inmate of any dispensary, hospital or infirmary, except two years ago in hospital." You wrote that answer?

A I did.

20 Q Turning over to the report of the examining physician made by you, and signed "G. A. Becker," I ask you if all of those answers are made by you?

A Do you mean written by me?

Q Yes.

A They are.

Q Question No. 8—"Have you made a physical examination of the lungs and heart?" Answer: "Yes, sir."

30 *Mr. English.* I don't think counsel ought to read this.

Mr. Wilson. I am going to ask him if the answers are true.

Mr. English. I don't think it is proper to read it to the jury.

The Court. This refers to what time?

40 *Mr. Wilson.* September 14, 1901. This is a question and answer, and I am going to ask the doctor if that is not his answer.

Mr. English. I object to that.

The Court—(to *Mr. English*)—One of the breaches of warranty claimed by the defendant is that this insured was not in sound health at the time the policy was issued; that he warranted that he was sound. You are attempting to prove that he was not sound at the time the policy was issued. Why is this not competent evidence that he was sound?

10

Mr. English. For the reason that the contract makes these answers to questions warranties, and the law is well settled that if there is an untrue answer it is a breach of warranty.

The Court. If it is untrue to the knowledge of the person who makes it. But if he is asked "Are you sound?" and he says "Yes" and at the same time a doctor is called in, and the doctor says at that time that he is sound, is there any breach of warranty?

20

Mr. English. Possibly not.

The Court. I don't see why that is not competent evidence on that branch of the case at any rate. I will allow it.

Mr. English. I pray an exception.

Exception allowed, let it be sealed and it is sealed accordingly.

(SEAL)

A. Q. GARRETSON, *Judge.*

30

Mr. Wilson. I withdraw the question. The paper is in evidence.

Mr. English. I am going to offer in evidence this warranty which has been proved by Dr. Becker, and I am going to offer the sheet and everything else that goes with it. I have no objection to it all going in evidence. Do you admit the signature of Mr. Owen?

40

Mr. Wilson. Sure.

(Application for insurance is offered in evidence and marked D-1.)

Mr. Wilson. We understand that this paper is in evidence for all purposes:

Mr. English. It is in evidence.

10 AUGUSTUS J. LOWENSTEIN, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. English.

Q What is your business?

A Life insurance business.

Q With the defendant company?

A Yes.

Q What position do you occupy now?

A I am connected with the agency division in the home office.

20 Q What position did you occupy in September, 1901?

A Superintendent of the Dover district.

Q Where were you located?

A Dover, N. J.

Q Does the Insurance Company keep a record of the policies that are issued out of the Dover district?

A It does.

Q Did it at that time?

A It did.

30 Q Have you got it here?

A I have.

Q Turn and see if there is an entry of the policy of one John H. Owen or John Owen—

By Mr. King.

Q (interrupting) Was that made by you?

A. Made by my clerk who is here present.

The Court. What is this?

40 *Mr. English.* I am going to prove the date when the premium was paid.

By Mr. English.

Q What does that register which you have contain?

A Names of insured, numbers, plan of policy, date when due, premium, date when paid.

Q Does it show the policy of John H. Owen?

A Yes.

Q When does it appear that the premium was paid by that entry? 10

A September 28.

Q What year?

A 1901.

Q Is that the official record of the company?

A It is the official record kept in the Dover office.

Q I think the local office makes report to the home office?

A We did.

Q Who made that report?

A My clerk made this report. 20

Q I mean the report which goes to the home office?

A It is the superintendent's report, but the clerk fills it out.

Q You were the superintendent?

A I was.

Q Tell me how that report was made out—under your supervision?

A Yes; made out under my supervision. 30

Q Signed by you?

A No; it is signed by the clerk.

Q Did you look at it before it went?

A Yes.

Q And that contains what in reference to that book—a copy of those entries?

A Yes; it contains the policy number, the name, the form, date when premium due, date when paid.

Q That is the record which goes to the home office?

A That is the record which goes to the home office.

Q What date appears on that— 40

Mr. King. Does that make any difference?
Nobody questions the book.

Q What date does it appear from that that the premium was paid?

Mr. King. I object.

The Court. I will admit it.

Mr. King. We ask an exception.

10 A September 28th.

Cross examination by Mr. Wilson.

Q Paid where and to whom?

A Reported to me by my assistant at Morristown and it was paid there September 28th.

Q Reported to you that it was paid there?

A Yes.

20 *Mr. Wilson.* We ask that this evidence be all stricken out. He testifies that he received a report from Morristown.

The Court. I will let it stand.

Mr. King. What this man has testified to is that the record of his office at Dover showed that this premium was paid on the twenty-eighth of September. We don't dispute that it does. We don't know when it came there.

DEFENDANT RESTS.

30

REBUTTAL.

CHARLES A. SCHINDLER, a witness already sworn on the part of the plaintiff, recalled in rebuttal.

Direct examination by Mr. Wilson.

40 Q You testified on direct examination that the policy was mailed to Mrs. Owen the twenty-first of September. Do you recollect when you received the check from her?

The Court. I think this has been gone into.

A Within a week after I mailed the policy to her I received the check.

Q A week after would have been September 28th, would it not?

A From the 21st.

Q From the twenty-first to the twenty-eighth?

A That is counting seven days a week.

Q You said you lived in Madison. How often do you come to Morristown? 10

A The middle of the week. Generally on Wednesday and Saturday of each week.

Q Did you receive the check on Wednesday or Saturday?

A According to my books here it was the twenty-eighth.

Q That is when you came up to Morristown, on the twenty-eighth?

A Twenty-eighth; yes. 20

Q And found the check here?

A Yes.

Cross examination by Mr. English.

Q Let us see your book.

Mr. Wilson. He has not referred to his book. The book has been kept wrapped up.

CASE CLOSED.

Mr. English. I move for the direction of a verdict for the defendant upon the ground that there have been breaches of warranties. By the terms of the policy the answers and statements contained in the application are made warranties. There is no question before the court of the materiality of the answers; the question is simply their truth or falsity to the knowledge of the insured. He says he was treated by a physician two years ago for rheumatism, when in fact within that time he was under treatment in Morristown Me- 40

morial Hospital. He also says: "I have not been under treatment in any dispensary, hospital or asylum nor been an inmate of any almshouse or other institution except two years ago for rheumatism," when in fact within a year and nine months he had been an inmate of Morristown Memorial Hospital.

10 *The Court.* You say that a statement that it was two years ago, when it ought to have been a year and nine months, will amount to a breach of warranty. It seems to me that it must be left to the jury to say whether the evidence shows whether this defendant, when he made these answers, was honest about them. How can a man tell an obscure disease? Then the other breach is in the answer: "I have not been under treatment in any dispensary, hospital or asylum nor been an inmate of any almshouse or other institution, except two years for rheumatism." You say that there is a breach of that warranty in the fact that a year and nine months before the application was made he was confined in the hospital. I think that is a question to be left to the jury to say; I cannot as a matter of law say that it is a breach of the warranty.

20

I deny the motion to direct a verdict.

Mr. English. I ask an exception.

30 Exception allowed, let it be sealed and it is sealed accordingly.

[SEAL]

A. Q. GARRETSON, *Judge.*

THE CHARGE.

The Court. (Garretson, J.)

Gentlemen of the Jury: The plaintiff, Kate Owen, sues the defendant to recover the amount of a policy of life insurance which the defendant issued upon the life of John H. Owen, for the benefit of Kate Owen. The execution and issue of the policy is admitted; the death of the person insured is proven. Ordinarily, proof of those facts would be all that would be necessary to entitle the plaintiff to recover. In this case, however, the defendant says that it ought not to be called on to pay the amount of this policy for various reasons. 10

When application for life insurance is made, the person who desires to be insured is presented with a printed blank containing certain questions to which he is required to make answer, and the courts have held that he warrants the truth of the answers that he makes to those questions, and if afterwards in a suit upon the policy it turns out that those answers are untrue to the knowledge of the one who makes them, that that is a breach of warranty of their truth and he cannot recover. 20

In this case it is alleged that various questions were answered by the insured, and that in various particulars those answers were untrue to the knowledge of the insured, and that there is therefore a breach of warranty of the truth of the answers, and that the plaintiff in this case cannot recover. 30

As I understand, the first breach of warranty which the defendant claims exists in this policy is, that at the time the policy was issued the insured was not in sound health. You are to consider in the first place whether that is true or not, and the court directs you if it appears from the evidence in the case that the insured was not in sound health when the policy was issued, to his own knowledge, and he represented that he was, the plaintiff cannot recover under this policy. 40

When the defendant sets up such a breach of warranty, it must prove it; prove that the insured was not in sound health and prove that the insured knew that he was not in sound health. Now what is the evidence on that subject? I think we may assume that the insured represented that he was in sound health? What is the evidence to show that he was not? That is a question for you to determine. If the evidence does not satisfy you that this representation of his that he was in sound health was untrue, then to that extent the defendant fails to make out a defence.

I understand from the evidence, the insured said when this policy was issued, "I am in sound health." The defendant says he was not in sound health, and he knew he was not in sound health; and to sustain that contention, they produce the evidence of Dr. Pierson, that, (the policy being dated on the 18th of September,) on the 28th of September the insured was in a hospital and suffering from various diseases, one or two of which the doctor says in his judgment must have existed prior to the 18th of September.

I think that is all the testimony there is going to prove or said to be going to prove, that he was not in sound health on the 18th of September; if there is any other I ask counsel to call it to my attention.

Mr. English. I do not think there is; no, sir.

The Court. It depends therefore on the testimony of Dr. Pierson, as it is given. Does that testimony prove to you that this man was not in sound health on the 18th of September? If it does not, then we pass by that question.

Dr. Pierson has given his testimony, and you have heard it. On the other hand, on the part of the plaintiff, it is said, "why Dr. Becker, the examining physician of this defendant company, testifies, or certifies in the application which is before you, that this man was in sound health on the 14th of September." Does it therefore appear from the evidence that the insured

stated on the 14th of September, that he was in sound health? If he did not so state, knowing it to be untrue, then that is out of the case and we go on to the next question.

The next warranty of which it is claimed there is a breach is in this statement in the application: "The following is the name of the physician who last attended me, the date of the attendance and the name of the complaint for which he attended. Dr. Becker; two years; rheumatism." I gather from the argument in the case that this is relied upon as the main breach of warranty to defeat a recovery on the part of the plaintiff, so that you need to give it your careful attention. 10

Now the statement is: "The following is the name of the physician who last attended me, the date of the attendance and the name of the complaint for which he attended. Dr. Becker; two years; rheumatism." The defendant says that that statement is untrue in this particular that it was a year and seven months, or nine months, when he was attended by Dr. Becker, prior to the time when this application was made, and that he was attended by Dr. Becker for heart disease, organic heart disease. 20

In considering this statement, you may also consider whether the statement was made by the insured in good faith as he made it, or whether it was made for the purpose of deceiving. As to the name of the physician, there does not seem to be any question as to his good faith or as to the truth of the statement in that respect. As to "two years," the claim is that that is untrue and it should have been a year and seven months instead of two years. It is for you to say whether that difference in time was purposely introduced by the insured; whether he knew exactly, and whether if he did know exactly he purposely said two years in order to deceive and mislead the company. You must say about that. If he stated it in good faith then there is no breach in that respect. 30 40

The disease he stated to be rheumatism; the disease for which he was attended was organic heart trouble. This is also a question for you to determine, whether in that respect the statement as to the disease for which he was attended was made by him untruthfully; whether he knew he was attended for any heart trouble or for rheumatism. If he thought he was attended for rheumatism and so stated in good faith, then there is no breach of warranty.

The other statement is, "I have not been under treatment in any dispensary, hospital or asylum, or been an inmate of an almshouse or other institution, except two years ago for rheumatism." That of course is an admission and a statement that he was under treatment in a dispensary, hospital or asylum—at least you may gather that from it, two years ago, for rheumatism. The defendant company claims that that statement is not true; that he was under treatment a year and seven months before for organic heart trouble. You must apply to that the same rule and say whether that statement was made by the insured in good faith, or whether it was made for the purpose of deceiving the company.

These are the only questions that I recall which are to be submitted to the jury in this case.

If you conclude the plaintiff is entitled to recover, then she is entitled to recover a verdict for five hundred dollars, with interest from the 18th of November, nineteen hundred and one, to the fifth day of June, nineteen hundred and six, four years and six months. If you conclude that there have been breaches of the warranties made by the insured, then your verdict will be for the defendant.

The jury then retired.

The Court. I decline to charge as requested, otherwise than charged.

Mr. English. I pray an exception to so much of your Honor's charge in which you left it to the jury to

say whether the alleged misstatements in the application were made purposely, with the intention of deceiving the defendant or whether they were made in good faith,—whatever your Honor said about that in that part of the charge; there were a number of instances, and I would like to have the exception cover all parts of the charge.

Exception allowed, let it be sealed and it is sealed accordingly. 10

(SEAL) A. Q. GARRETSON, *Judge*.

Defendant's counsel requests the court to charge as follows:

1. There should be a verdict for the defendant.

The court refused to charge the above request otherwise than as already charged.

Defendant's counsel prays an exception.

Exception allowed, let it be sealed and it is sealed accordingly. 20

(SEAL) A. Q. GARRETSON, *Judge*.

2. If the jury find that the insured had in fact been confined in a hospital for a period within two years of the date of the warranty contained in the application, which is September 14, 1901, there should be a verdict for the defendant.

The court refused to charge the above request otherwise than as already charged.

Defendant's counsel prays an exception. 30

Exception allowed, let it be sealed and it is sealed accordingly.

(SEAL) A. Q. GARRETSON, *Judge*.

3. If the jury find that the insured had in fact been under the care of a physician within two years from the date of the application, then there should be a verdict for the defendant.

The court refused to charge the above request otherwise than as already charged. 40

Defendant's counsel prays an exception.

Exception allowed, let it be sealed and it is sealed accordingly.

(SEAL) A. Q. GARRETSON, *Judge.*

10 4. If the jury find that the insured was suffering from dropsy or heart disease or any other disease and so was not in good sound health at the date of the policy, September 18, 1901, then the verdict should be for the defendant.

The court refused to charge the above request otherwise than as already charged.

Defendant's counsel prays an exception.

Exception allowed, let it be sealed and it is sealed accordingly.

(SEAL) A. Q. GARRETSON, *Judge.*

20 5. The insured having warranted the truth of his statements contained in the application, any deviation from the truth, even in immaterial matters, is sufficient to constitute a breach of warranty, and the verdict should be for the defendant.

The court refused to charge the above request otherwise than as already charged.

Defendant's counsel prays an exception.

Exception allowed, let it be sealed and it is sealed accordingly.

30 (SEAL) A. Q. GARRETSON, *Judge.*

40 ~~Afterwards, to wit, at a Circuit Court holden at Morristown, in and for the County of Morris, before his Honor, Abram Q. Garretson, one of the Justices of the Supreme Court, on the second day of May, in the year of our Lord one thousand nine hundred and six, according to the form of the statute in such case~~

JUDGMENT

Therefore let a jury thereupon come before our Chief Justice, or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit to be holden at Morristown, in and for the County of Morris, on the first Tuesday of May, in the year of our Lord one thousand nine hundred and six, by whom &c., and the same day is given to the parties aforesaid there, &c.

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And now, at this day, to wit the second day of May, A. D. nineteen hundred and six, before our said Supreme Court at Trenton comes the said plaintiff, by her attorney aforesaid, and the justice before whom &c., having first sent hither his record had before him in the words, to wit.

Afterwards, to wit, at a Circuit Court holden at Morristown, in and for the County of Morris, before his Honor, Abram Q. Garretson, one of the Justices of the Supreme Court, on the second day of May, in the year of our Lord one thousand nine hundred and six, according to the form of the statute in such case made and provided, comes as well the said plaintiff as the said defendant, by their respective attorneys within mentioned, and the jurors of the jury, between the parties aforesaid, in the pleas aforesaid, being summoned, also come, who, to speak the truth of the matters and things within contained, being chosen, tried and sworn, say upon their oath that the said defendant, Metropolitan Life Insurance Company, did undertake and promise in manner and form as the said plaintiff, Kate Owen, hath in her said declaration alleged; and they assess the damages of the said plaintiff, by reason of the not performing said promises and undertakings, over and above the costs and charges by her about her suit in this behalf expended, at the sum of six hundred and thirty-five dollars (\$635.00), and for those costs and charges cents.

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Therefore it is considered that the said plaintiff do recover against the said defendant her said damages, by the jury in form aforesaid found to six hundred and thirty-five dollars, and also sixty-eight dollars, and eight cents, costs and charges as aforesaid, by the court now here adjudged to the said plaintiff, and with her assent; which said damages, costs and charges in the whole amount to seven hundred and three dollars and eight cents.

10 Judgment signed this fifth day of June, A. D., nineteen hundred and six.

WILLIAM S. GUMMERE,
C. J.

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made and provided, comes as well the said plaintiff as the said defendant, by their respective attorneys within mentioned, and the jurors of the jury between the parties aforesaid, in the pleas aforesaid, being summoned, also come, who, to speak the truth of the matters and things within contained, being chosen, tried and sworn, say upon their oath that the said defendant, Metropolitan Life Insurance Company, did undertake and promise in manner and form as the said plaintiff, Kate Owen, hath in her said declaration alleged; and they assess the damages of the said plaintiff, by reason of the not performing said promises and undertakings, over and above the costs and charges by her about her suit in this behalf expended, at the sum of six hundred and thirty-five dollars (\$635.00), and for those costs and charges cents.

A. Q. GARRETSON,

J. S. C.

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NEW JERSEY COURT OF ERRORS AND
APPEALS.

	KATE OWEN, <i>Plaintiff and Defendant in Error,</i> <i>v.</i> METROPOLITAN LIFE INSURANCE COMPANY, <i>Defendant and Plaintiff in Error.</i>	} <i>On Contract.</i> <i>On Writ of</i> <i>Error.</i>
10		

ASSIGNMENTS OF ERROR.

20 Afterwards, that is to say, on the second day of July, nineteen hundred and six, in the New Jersey Court of Errors and Appeals, comes the said, the Metropolitan Life Insurance Company, by McCarter & English, its attorneys, and says that in the record and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions, and also in giving the verdict and judgment aforesaid, there is manifest error in this, to wit:

30 *First.* For that the aforesaid Justice before whom the said action was brought, at and upon the aforesaid trial of the issue joined between the said parties, committed error in refusing to permit the defendant's witness, Gertrude Lustig, to answer the following question: "Will you kindly read the entry under No. 442?"

30 *Second.* There is error also in this, to wit, for that the said Justice before whom, etc., at and upon the said trial, refused to permit the defendant's counsel to offer in evidence "the entry in the House Register of the Memorial Hospital, No. 442, containing the history of the case of one John Owen."

40 *Third.* There is error also in this, to wit, for that the said Justice before whom, etc., at and upon the said trial, refused to permit the defendant's counsel to offer in evidence "the entry in the record of the Memo-

rial Hospital, No. 630, purporting to be the history of the case of one John Owen."

Fourth. There is error also in this, to wit, for that the said Justice before whom, etc., at and upon the said trial, although requested so to do by the counsel of the defendant, refused to direct a verdict for the said defendant.

Fifth. There is error also in this, to wit, for that the said Justice before whom, etc., at and upon the said trial committed error in his charge to the jury in particular in charging them as follows: "The next warranty of which it is claimed there is a breach is in this statement in the application: 'The following is the name of the physician who last attended me, the date of the attendance and the name of the complaint for which he attended. Dr. Becker; two years; rheumatism.' I gather from the argument in the case that this is relied upon as the main breach of warranty to defeat a recovery on the part of the plaintiff, so that you need to give it your careful attention." 10 20

"Now the statement is: 'The following is the name of the physician who last attended me, the date of the attendance and the name of the complaint for which he attended. Dr. Becker; two years; rheumatism.' The defendant says that that statement is untrue in this particular, that it was a year and seven months, or nine months, when he was attended by Dr. Becker, prior to the time when this application was made, and that he was attended by Dr. Becker for heart disease, organic heart disease." 30

"In considering this statement, you may also consider whether the statement was made by the insured in good faith as he made it, or whether it was made for the purpose of deceiving. As to the name of the physician, there does not seem to be any question as to his good faith or as to the truth of the statement in that respect. As to 'two years,' the claim 40

“is that that is untrue and it should have been a year
 “and seven months instead of two years. It is for you
 “to say whether that difference in time was purposely
 “introduced by the insured; whether he knew exactly,
 “and whether if he did know exactly he purposely
 “said two years in order to deceive and mislead the
 “company. You must say about that. If he stated it
 “in good faith then there is no breach in that respect.”

10 *Sixth.* There is error also in this, to wit, for that
 the said Justice before whom, etc., at and upon the
 said trial committed error in his charge to the jury in
 particular in charging them as follows: “The disease
 “he stated to be rheumatism; the disease for which he
 “was attended was organic heart trouble. This is
 “also a question for you to determine, whether in that
 “respect the statement as to the disease for which he
 “was attended was made by him untruthfully; whether
 “he knew he was attended for any heart trouble or for
 20 “rheumatism. If he thought he was attended for
 “rheumatism and so stated in good faith, then there
 “is no breach of warranty.”

30 *Seventh.* There is error also in this, to wit, for
 that the said Justice before whom, etc., at and upon
 the said trial committed error in his charge to the jury
 in particular in charging them as follows: “The other
 “statement is, ‘I have not been under treatment in
 “any dispensary, hospital or asylum, or been an in-
 “mate of an almshouse or other institution, except
 “two years ago for rheumatism.’ That of course is
 “an admission and a statement that he was under
 “treatment in a dispensary, hospital or asylum—at
 “least you may gather that from it, two years ago, for
 “rheumatism. The defendant company claims that
 “that statement is not true; that he was under treat-
 “ment a year and seven months before for organic
 “heart trouble. You must apply to that the same rule
 “and say whether that statement was made by the in-
 “sured in good faith, or whether it was made for the
 40 “purpose of deceiving the company.”

Eighth. There is error also in this, to wit, for that the said Justice before whom, etc., at and upon the said trial although duly requested thereto by the said defendant, refused to charge the jury as follows: "1. "There should be a verdict for the defendant." "The "court refused to charge the above request otherwise "than as already charged."

Ninth. There is error also in this, to wit, for that the said Justice before whom, etc., at and upon the said trial although duly requested thereto by the said defendant, refused to charge the jury as follows: "2. "If the jury find that the insured had in fact been "confined in a hospital for a period within two years "of the date of the warranty contained in the applica- "tion, which is September 14, 1901, there should be "a verdict for the defendant." "The court refused to "charge the above request otherwise than as already "charged." 10

Tenth. There is error also in this, to wit, for that the said Justice before whom, etc., at and upon the said trial, although duly requested thereto by the said defendant, refused to charge the jury as follows: "3. "If the jury find that the insured had in fact been "under the care of a physician within two years from "the date of the application, then there should be a "verdict for the defendant." "The court refused to "charge the above request otherwise than as already "charged." 20

Eleventh. There is error also in this, to wit, for that the said Justice before whom, etc., at and upon the said trial, although duly requested thereto by the said defendant, refused to charge the jury as follows: "4. If the jury find that the insured was suffering "from dropsy or heart disease or any other disease "and so was not in good sound health at the date "of the policy, September 18, 1901, then the verdict "should be for the defendant." "The court refused to "charge the above request otherwise than as already "charged." 30 40

Twelfth. There is error also in this, to wit, for that the said Justice before whom, etc., at and upon the said trial, although duly requested thereto by the said defendant, refused to charge the jury as follows: "5. "The insured having warranted the truth of his statements contained in the application, any deviation from the truth, even in immaterial matters, is sufficient to constitute a breach of warranty, and the verdict should be for the defendant." "The court refused to charge the above request otherwise than as "already charged."

Therefore, the said Metropolitan Life Insurance Company prays that the judgment aforesaid, by reason of the aforesaid errors and of other errors appearing in the record and proceedings aforesaid, be reversed, annulled and for nothing holden, and that the said Metropolitan Life Insurance Company may be restored to all things it hath lost on occasion of the said judgment, and that the said Kate Owen may re-join to the said errors, etc.

McCARTER & ENGLISH,
Attorneys for, and of Counsel with Defendant,
and Plaintiff in Error.

Common joinder in error filed.

Exhibit P. No. 1.

United States of America.

No. 202,672 C. Age, 30.

METROPOLITAN LIFE INSURANCE COMPANY.

Incorporated by the State of New York.

Home Office, New York City.

[SEAL OF COMPANY.]

In consideration of the answers and statements contained in the application for this policy, a copy of which is hereto annexed as a part of this contract, upon the life of JOHN HENRY OWEN, of Morristown, State of New Jersey, hereinafter called the insured, all of which answers and statements are hereby made warranties, and of the payment of the annual premium of twenty-three dollars and sixty-four cents, on or before the delivery of this policy, and of a like amount on or before the eighteenth day of September of each and every year during the continuance of this policy, doth hereby agree, subject to the conditions set forth on the third page hereof, each and all of which are hereby made part of this contract, and are accepted by the insured and assured as part hereof as fully as if herein recited, to pay at its home office, in the city of New York, upon the surrender of this policy, at the expiration of twenty years from the date hereof, to the said insured the sum of five hundred dollars, and doth further agree, subject to the conditions above mentioned, each and all of which are accepted by the assured as part of this contract as fully as if herein recited, in case the insured shall die prior to the date above mentioned and while this policy is in force, to pay the above mentioned sum to Kate Owen, mother of the insured, herein called the assured, if living, otherwise to the legal representatives of the insured upon the receipt by the company at its home office and its approval of the proofs of death of the insured, made in the manner, to the extent and upon the blanks required by Condition Sixth, and upon the surrender of this

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policy, deducting therefrom the premium, if any, for the balance of the policy year. No obligation is assumed by the Company until the first premium has been paid, nor prior to this date, nor unless upon this date the insured is alive and in sound health.

In witness whereof, the Metropolitan Life Insurance Company has, by its President and Secretary, signed and delivered this instrument, at its office, in the city of New York, on the eighteenth day of September,
 10 1901.

JNO. W. HEGEMAN,
 President.

GEO. B. WOODWARD,
 Secretary.

Form C 221—Endowment 20 years.

BENEFITS AND PRIVILEGES.

20 FIRST.—A non-participating paid-up Policy, payable in the same manner as the original policy, will be granted for the amount specified in the following table of paid-up values, after the premiums for three full years shall have been paid and this policy satisfactorily released and surrendered therefor to the company at the home office while in force, or within six months from default of payment of any premium.

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TABLE OF PAID-UP VALUES.

At the end of	3 Years.	4 Years.	5 Years.	6 Years.	7 Years.	8 Years.	9 Years.	10 Years.	11 Years.	12 Years.	13 Years.	14 Years.	15 Years.	16 Years.	17 Years.	18 Years.	19 Years.
DOLLARS.	75	100	125	150	175	200	225	250	275	300	325	350	375	400	425	450	475

SECOND.—The company will loan the amounts specified in the following table at FIVE per cent. interest, payable annually, in advance, upon receiving satisfactory assignment of this policy as collateral security while in force.

TABLE OF LOAN OR CASH SURRENDER VALUES.

Age.	After 3 Years.	After 4 Years.	After 5 Years.	After 6 Years.	After 7 Years.	After 8 Years.	After 9 Years.	After 10 Years.	After 11 Years.	After 12 Years.	After 13 Years.	After 14 Years.	After 15 Years.	After 16 Years.	After 17 Years.	After 18 Years.	After 19 Years.	Age.
12	\$27	\$38	\$50	\$63	\$77	\$93	\$110	\$130	\$152	\$174	\$200	\$226	\$254	\$289	\$334	\$384	\$439	12
13	27	38	50	63	77	92	109	129	151	173	200	226	254	283	333	384	439	13
14	27	38	50	63	77	92	108	128	150	172	199	225	253	287	333	383	439	14
15	27	37	49	62	76	91	107	127	149	171	198	224	252	287	332	383	439	15
16	26	37	49	61	75	90	106	126	148	170	197	223	252	286	332	382	438	16
17	26	36	48	60	74	89	105	125	147	169	196	222	251	285	331	382	438	17
18	26	36	47	59	73	88	104	124	146	168	195	221	250	285	331	382	438	18
19	25	35	46	59	72	87	103	123	145	167	194	221	249	284	330	381	438	19
20	25	35	46	58	71	86	103	123	145	167	193	220	249	284	330	381	437	20
21	24	34	45	57	71	86	102	122	144	166	193	219	248	283	329	381	437	21
22	24	34	45	57	70	85	102	122	144	166	192	219	248	283	329	380	437	22
23	24	34	44	57	70	85	101	121	143	165	192	219	248	283	329	380	437	23
24	24	33	44	56	70	85	101	121	143	165	192	218	247	282	329	380	437	24
25	23	33	44	56	70	84	101	121	143	165	192	218	247	282	328	380	437	25
26	23	33	44	56	69	84	101	121	143	165	191	218	247	282	328	380	437	26
27	23	33	44	56	69	84	101	120	142	164	191	218	247	282	328	379	437	27
28	23	33	44	56	69	84	101	120	142	164	191	218	247	282	328	379	437	28
29	23	33	44	56	69	84	100	120	142	164	191	217	246	281	328	379	436	29
30	23	33	44	56	69	84	100	120	142	164	191	217	246	281	327	379	436	30
31	23	33	44	56	69	84	100	120	142	164	191	217	246	281	327	379	436	31
32	23	33	44	56	69	84	100	120	142	164	191	217	246	281	327	379	436	32
33	23	33	44	56	69	84	100	120	142	164	190	217	246	281	327	378	436	33
34	23	33	44	56	69	84	100	120	142	164	190	217	245	280	327	378	436	34
35	23	33	44	56	69	84	100	120	142	164	190	216	245	280	326	378	436	35
36	23	33	44	56	69	84	100	120	142	163	190	216	245	280	326	378	435	36
37	23	33	44	56	69	84	100	120	141	163	190	216	245	279	326	377	435	37
38	23	33	44	56	69	84	100	120	141	163	189	216	244	279	325	377	435	38
39	23	33	44	56	69	84	100	120	141	163	189	215	244	279	325	377	435	39
40	23	33	44	56	69	84	100	119	141	163	189	215	244	278	324	376	435	40
41	23	33	44	56	69	84	100	119	141	162	189	215	243	278	324	376	434	41
42	23	33	44	56	69	84	100	119	141	162	188	214	243	277	323	375	434	42
43	24	33	44	56	69	84	100	119	141	162	188	214	242	277	323	375	434	43
44	24	33	44	56	69	84	100	119	140	162	188	214	242	277	323	374	433	44
45	24	34	44	56	70	84	100	119	140	161	187	213	241	276	322	374	433	45
46	24	34	44	56	70	84	100	119	140	161	187	213	241	276	321	373	432	46
47	24	34	44	56	70	84	100	119	140	161	187	212	240	275	321	373	432	47
48	24	34	45	57	70	84	100	119	140	161	186	211	239	274	320	372	431	48
49	24	34	45	57	70	84	100	119	139	160	185	211	239	273	319	371	431	49
50	24	34	45	57	70	84	100	118	139	160	185	210	238	272	318	370	430	50
51	24	34	45	57	70	84	100	118	139	159	184	209	237	271	317	369	430	51
52	24	34	45	57	70	84	100	118	139	159	184	209	236	270	316	368	429	52
53	24	34	45	57	70	84	100	118	139	159	183	208	235	269	314	367	428	53
54	24	34	45	57	70	84	100	118	138	158	183	207	234	268	313	366	427	54
55	24	34	45	57	70	84	100	118	138	158	182	206	233	267	312	365	426	55

THIRD.—After two years this policy shall be non-contestable except for the non-payment of premiums as stipulated, or for fraud.

FOURTH.—After this policy shall have been in force five years, such dividend shall be payable annually in cash or (at the written request of the holder) in additions to the policy as in the judgment of the officers and directors of the company the policy shall have earned.

FIFTH.—Should this policy become void for non-payment of premiums, it may be revived within one year after non-payment of premiums, upon payment of all arrears with interest at six per cent. and presentation of evidence satisfactory to the company that the insured is in good health.

10

OPTIONS.

Guaranteed Settlements at End of Endowment Period.

1. Cash Guaranteed at End of Twenty Years....\$500

or,

2. Paid-up PARTICIPATING Policy at End of Twenty Years\$846

20

or,

3. Cash, \$204 and Paid-up PARTICIPATING Policy at End of Twenty Years.....\$500

Evidence of good health will be required when option selected calls for continuance of insurance.

CONDITIONS.

Referred to on First Page as Part of this Contract.

FIRST.—If the insured within one year from the issue hereof die by his own hand or act, whether sane or insane, the company shall not be liable for a greater sum than the premiums which have been received on this policy.

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SECOND.—If any statement in the application herein referred to is not true, or if any premium or installment of premium be not paid when due, this policy shall be void, and all premiums paid shall be forfeited to the company, except as provided in Paragraph First of "Benefits and Privileges."

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THIRD.—Absolute proof of age may be required with proofs of claim hereunder, and the amount payable shall be the insurance that the actual premium paid would have purchased at the true age of the insured.

FOURTH.—Premiums are payable at the home office in the city of New York, but at the pleasure of the company suitable persons may be authorized to receive such payments at other places, but only on the production of the company's receipt signed by the president or secretary, and countersigned by the person receiving the payments.

FIFTH.—Any assignment of this policy is void unless assented to in writing by the secretary; but in no case does the company guarantee the validity of any assignment.

SIXTH.—Proofs of death shall be made to the home office in the manner and to the extent required by blanks furnished by the company, and shall contain answers to each question propounded to the claimant, physicians and other persons indicated in the blanks, and shall further contain the record and verdict of the coroner's inquest, if any be held. The proofs of death shall be evidence of the facts therein stated in behalf of, but not against the company.

SEVENTH.—No suit shall be brought or action commenced against this company after two years from the date of death of the insured, and it is expressly agreed that if such suit or action be commenced after two years the lapse of time shall be conclusive evidence against any claim, the provisions of any and all statutes of limitation to the contrary being hereby expressly waived.

EIGHTH.—The contract between the parties hereto is completely set forth in this policy and the application therefor taken together, and none of its terms can be varied or modified, nor any forfeiture waived or premiums in arrears received except by agreement in writing signed by either the president, vice-president

or secretary, whose authority for this purpose will not be delegated; no other person has or will be given authority.

— — — — —

COPY OF APPLICATION FOR THIS POLICY.

Wherever nothing is written in the following paragraphs it is agreed that the warranty is true without exception.

I hereby apply to the Metropolitan Life Insurance Company, through its Intermediate Branch, for \$ insurance.

10

To induce the said company to issue said policy, and as consideration therefor, I warrant and agree, on behalf of myself and of any other person who shall have or claim interest in any policy issued under this application, as follows:

1. My occupation is cook, and I have no other occupation, except hatter.

20

2. I have never had any of the following complaints or diseases: Apoplexy, Asthma, Bronchitis, Cancer or other tumor, Consumption, Disease of Brain, Disease of Heart, Disease of Kidneys, Disease of Liver, Disease of Lungs, Disease of Urinary Organs, Dropsy, Fistula, Fits or Convulsions, General Debility, Habitual Cough, Hemorrhage, Insanity, Jaundice, Paralysis, Pleurisy, Pneumonia, Rheumatism, Scrofula, Spinal Disease, Spitting or Raising Blood, Ulcer or Open Sores, Varicose Veins, except Rheumatism two years.

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3. I am now in sound health. I am not blind, deaf or dumb, nor have I any physical or mental defect or infirmity of any kind, except

4. The following is the name of the physician who last attended me, the date of the attendance, and the name of the complaint for which he attended me: Dr. Becker, 2 years. Rheumatism.

40

5. I have not been under the care of any physician within two years, unless as stated in previous line, except

6. I have never been under treatment in any dispensary, hospital or asylum, nor been an inmate of any almshouse or other institution, except 2 years ago for rheumatism.

10 7. I am not in any way connected with the manufacture or sale of ale, wine or liquor.

8. I have never been a pensioner, and no application for a pension to me is pending or contemplated, except as follows:

9. I have never met with any serious personal injury, nor ever been seriously ill, except as stated below, and for the complaints named and no other, when I was attended by the following named physicians, and no other:

20 10. No one of my parents, grandparents, brothers or sisters ever had consumption, or any pulmonary or scrofulous disease, except

11. I have no other insurance on my life, except in the following named companies and for the following amounts. And by the word "company" I mean any company, association, society or order granting life insurance. 10 cents per week in Metropolitan Industrial.

30 12. No proposal or application to insure my life has ever been made to any company or agent upon which a policy has not been issued of the amount applied for, except as follows. And by the word "company" I mean as defined in the previous statements.

40 I agree that this application has been made, prepared and written by myself or my own proper agent, and that inasmuch as only the officers at the home office of the company, in the city of New York, have authority to determine whether or not a policy shall issue upon any application, and as they act on the

written statements, answers, warranties and agreements herein made, no statements, promises or information made or given by or to the person soliciting or taking this application for a policy, or by or to any other person, shall be binding on the company, or in any manner affect its rights, unless such statements, promises or information be reduced to writing and presented to the officers of the company at the home office.

10

And I further declare, warrant and agree that the representations and answers made above are strictly correct and wholly true, that they shall form the basis and become part of the contract of insurance if one be issued, and that any untrue answers will render the policy null and void, and that said contract shall not be binding upon the company, unless upon its date and delivery the insured be alive and in sound health.

I further agree that in any distribution of surplus or apportionment of dividends on any policy issued upon this application, the principles and methods which may be adopted by the company for such distribution or apportionment, and its award of the amount belonging to such policy, shall be and are hereby ratified, confirmed and accepted.

20

I hereby waive the provisions of Section 834 of the Code of Civil Procedure of the State of New York, and of similar provisions in the laws of other States. And I expressly agree and stipulate that in any suit on the policy herein applied for, any physician who has attended, or may hereafter attend me, may disclose any information acquired by him in anywise affecting the declarations and warranties herein made.

30

I further agree that the company shall incur no liability under this application until it has been received, approved and the policy issued thereon by the company at its home office in New York, and the premium has actually been paid to and accepted by the company during my lifetime and while I am in good health.

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Notice that each and every premium is due at the dates named in the policy is given and accepted by its delivery, and I waive any further notice required by any statute.

Signature of life proposed :

JOHN HENRY OWEN.

Every answer must be true or the policy will be void.

Dated at Morristown, Sept. 14, 1901.

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Endorsement.

No. 202,672 C.

METROPOLITAN LIFE INSURANCE COMPANY.

NEW YORK.

(Intermediate Branch.)

ENDOWMENT POLICY.

Term Twenty Years.

Insurance on the life of

JOHN HENRY OWEN,

Morristown, N. J.

20

Amount, \$500.

Annual Premium, \$23.64.

Date of policy, September 18, 1901.

Agent, A. J. LAUENSTEIN,

Exhibit P No. 2.

Certified Copy of

CERTIFICATE OF DEATH

of

JOHN OWENS.

30

STATE OF NEW JERSEY.

CERTIFICATE OF DEATH.

See Penalty for Non-Report.

1. Full name of deceased, John Owens. (If an infant not named, so state and give sex.)

2. Age, about 30 years. Color, white.

3. Single. Occupation

4. Birthplace, Danbury, Conn.....

5. Last place of residence, Morristown, N. J.

40

6. How long resident in this State, 1¼ years.

7. Place of death, Memorial Hospital, Morristown, N. J.

8. Father's name.....Country of birth.....

9. Mother's nameCountry of birth.....

10. I hereby certify that I attended the deceased during the last illness, and that he died on the 18th day of November, 1901, and that the cause of death was chronic nephritis and pneumonia.

Length of sickness
Stephen Pierson, 10
Medical Attendant.

Residence
REQUESTED, BUT OPTIONAL.

a. Primary disease

b. Secondary disease (how long)

c. Remarks

Name and residence of undertaker, A. McIlravy, Morristown, N. J.

Place of burial, Danbury, Ct. 20
STATE OF NEW JERSEY.
Bureau of Vital Statistics.

I, HENRY MITCHELL, medical superintendent of the Bureau of Vital Statistics of the State of New Jersey, do hereby certify that the foregoing and annexed is a true copy of a certain Certificate of Death, as taken from and compared with the original now remaining on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the official seal of said Bureau, at Trenton, this seventeenth day of March, A. D. 1904. 30

(SEAL) HENRY MITCHELL, M. D.,
Medical Superintendent.

Attest:
DALLAS REEVE,
Registrar.

Exhibit P. No 3.

Danbury, Conn., Sept. 24, 1901. No. 566.
The Danbury National Bank pay to the order of 40

The Metropolitan Life Insurance Co. \$28 84-100
(Twenty-eight 84-100) dollars.

Oct. 3—Paid.

STOLL BROS.

(Endorsed: "Metropolitan Life Ins. Co., Wm. Hammell, Agt.

Endorsement Guaranteed. Morristown, N. J. National Iron Bank.

10 Pay Fourth St. Nat'l Bank, Philadelphia, Pa., or Order. National Iron Bank, Morristown, N. J. Lewis D. Kay, Cashier.

Nat'l Pahquioque Bank. Oct. 3, 1901. Paid.

Endorsements Guaranteed. Pay any bank or banker or order, Oct. 1, 1901. The Fourth Street Nat'l Bank of Philadelphia, E. F. Shanbacker, Cashier.

Pay any National Bank or order. Connecticut National Bank, of Bridgeport, Conn. H. S. Shelton, Cashier.")

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Exhibit C. No. 1.

Form C 136

Intermediate Branch, Received Sept. 17, 1901.

Entered, M.

Application to the

METROPOLITAN LIFE INSURANCE COMPANY.

(Incorporated by the State of New York.)

Pol. Form No. 221.

Part A to be filled out by agent and signed by life proposed.

30

Part B is to be filled out and signed by the agent. (This space to be filled out at home office and not by agent.)

No. 202,672 C. Plan.....District, A. J. Lauenstein, Dover, N. J., Date of Policy, Sep. 18, 1901.

Age 30. Amount \$......Premium, \$23.64 payable.....

Name of agent, Chas. Schindler; at Dover, N. J. Under Assist. Supt., W. Hammell.

40

A. 1. Full name of life proposed for insurance, John Henry Owen.

2. Amount of insurance, \$500.
- 2a. Plan of insurance, 20 year endowment.
3. Residence, No. 69-71 Speedwell avenue, Morristown, N. J.
- 3a. Post office address, Morristown, N. J.
4. Race—white or black? White.
5. Married or single? Single.
6. Sex—male or female? Male. 10
7. Date of birth, April 6, 1871.
8. Age nearest birthday, 30 years.
9. Where born? (Name town, state and country.)
Danbury, Conn.
10. Occupation, cook. Place of business, 69-71 Speedwell avenue.
11. How are premiums to be paid? \$23.64 annually.
12. By whom will the premiums on this insurance be paid? Name, Insured and Beneficiary. Relationship to life proposed. 20
13. Is said life now insured in this company? If so, give numbers of all policies. 19,779,432.
- 13a. Any other policy in force? No.
14. Is the insurance applied for to be an increase to the insurance in force? No.
- 14a. If not, what policies are to be discontinued? 19,779,432.
15. Is said life now insured in any other company or society, or association? If so, give names and amounts. No. 30
- 15a. Any other? No.
16. Has said life ever been insured in this company? Yes.
- 16a. If so, give policy numbers. See No. 13.
17. Has said life ever applied to any company, order or association for life insurance, and been declined, or postponed, or refused the exact kind and amount of insurance applied for? (If yes, give particulars.) No. 40

18. Name, etc., of beneficiary, subject to provisions of policy applied for as to payment.—Name, Kate Owen. Residence, No. 20 Chappell street, Danbury, Conn. Occupation, housewife. Relationship, mother. Age, 52 years.

No agent allowed to sign for life proposed under any circumstances.

An applicant who cannot write must make a mark.

10

JOHN HENRY OWEN.

Signature of life proposed.

Approved, Sep. 17, 1901.

[Initials of person approving.]

Medical Examiner will call.....at.....o'clock
.....M.

Mr. Owen will call at your office.

AGENT'S CERTIFICATE.

20

1. Did you see the person to be insured at the time this application was written? Yes.

2. Was each question put to the person and answered as recorded? Yes.

3. Does the person appear to be a good risk in every respect, and do you recommend that a policy be issued? Yes.

4. Was this application signed in your presence by the life proposed? Yes.

30

5. Is the person any relative of yours or of any employe of this company? No.

6. Does the person appear older than age stated? No.

7. Has the person to your knowledge ever been insured in this company? If so, give policy number or such information as will enable the home office to locate it. 19,779,432.

40

8. Has the person to your knowledge ever made an application to this company on which a policy was not issued? If so, give date. No.

9. What amount of advance payment have you collected on this application?

C. H. SCHINDLER, Agent.

Dated Sept. 14, 1901.

This side of the form is to be completed (except as to signature of Life proposed) by the Medical Examiner only. Wherever nothing is written in the following paragraphs it is agreed that the warranty is true without exception. 10

I hereby apply to the Metropolitan Life Insurance Company, through its Intermediate Branch, for \$. . . . insurance.

To induce the said company to issue said policy, and as consideration therefor, I warrant and agree, on behalf of myself and of any other person who shall have or claim interest in any policy issued under this application, as follows:

1. My occupation is cook, and I have no other occupation, except hatter. 20

2. I have never had any of the following complaints or diseases: Apoplexy, Asthma, Bronchitis, Cancer or other tumor, Consumption, Disease of Brain, Disease of Heart, Disease of Kidneys, Disease of Liver, Disease of Lungs, Disease of Urinary Organs, Dropsy, Fistula, Fits or Convulsions, General Debility, Habitual Cough, Hemorrhage, Insanity, Jaundice, Paralysis, Pleurisy, Pneumonia, Rheumatism, Scrofula, Spinal Disease, Spitting or Raising Blood, Ulcer or Open Sores, Varicose Veins, except rheumatism two years. 30

3. I am now in sound health. I am not blind, deaf or dumb, nor have I any physical or mental defect or infirmity of any kind, except

4. The following is the name of the physician who last attended me, the date of the attendance, and the name of the complaint for which he attended me: Dr. Becker, two years. Rheumatism. 40

5. I have not been under the care of any physician within two years, unless as stated in previous line, except

6. I have never been under treatment in any dispensary, hospital or asylum, nor been an inmate of any almshouse or other institution, except two years ago for rheumatism.

7. I am not in any way connected with the manufacture or sale of ale, wine or liquor.

8. I have never been a pensioner, and no application for a pension to me is pending or contemplated, except as follows:

9. I have never met with any serious personal injury, nor ever been seriously ill, except as stated below, and for the complaints named and no other, when I was attended by the following named physicians, and no other:

10. No one of my parents, grandparents, brothers or sisters ever had consumption, or any pulmonary or scrofulous disease, except

11. I have no other insurance on my life, except in the following named companies and for the following amounts. And by the word "company" I mean any company, association, society or order granting life insurance. 10 cents per week in Metropolitan Industrial.

12. No proposal or application to insure my life has ever been made to any company or agent upon which a policy has not been issued of the amount applied for, except as follows. And by the word "company" I mean as defined in the previous statements.

I agree that this application has been made, prepared and written by myself or my own proper agent, and that inasmuch as only the officers at the home office of the company in the city of New York have authority to determine whether or not a policy shall issue upon any application, and as they act on the written statements, answers, warranties and agreements

herein made, no statements, promises or information made or given by or to the person soliciting or taking this application for a policy, or by or to any other person, shall be binding on the company, or in any manner affect its rights, unless such statements, promises or information be reduced to writing and presented to the officers of the company at the home office.

And I further declare, warrant and agree that the representations and answers made above are strictly correct and wholly true, that they shall form the basis and become part of the contract of insurance if one be issued, and that any untrue answers will render the policy null and void, and that said contract shall not be binding upon the company, unless upon its date and delivery the insured be alive and in sound health. 10

I further agree that in any distribution of surplus or apportionment of dividends on any policy issued upon this application, the principles and methods which may be adopted by the company for such distribution or apportionment, and its award of the amount belonging to such policy, shall be and are hereby ratified, confirmed and accepted. 20

I hereby waive the provisions of Section 834 of the Code of Civil Procedure of the State of New York, and of similar provisions in the laws of other states. And I expressly agree and stipulate that in any suit on the policy herein applied for any physician who has attended or may hereafter attend me may disclose any information acquired by him in any wise affecting the declarations and warranties herein made. 30

I further agree that the company shall incur no liability under this application until it has been received, approved and the policy issued thereon by the company at its home office in New York, and the premium has during my lifetime and while I am in good health, actually been paid to and accepted by the company 40

Notice that each and every premium is due at the dates named in the policy is given and accepted by its delivery, and I waive any further notice required by any statute.

Signature of life proposed.

JOHN HENRY OWEN.

- 10 Every answer must be true, or the policy will be void.
Dated at Morristown, Sept. 14, 1901.

After seeing the above warranty signed by the Life proposed, Part C on page 3 is to be completed and signed by the physician.

Note to the Examiner.—If any exceptions are to be noted, it is important that full particulars be entered. Especial care should be taken in this respect in statements 4, 5 and 11.

20 REPORT OF EXAMINING PHYSICIAN.

- C. 1. Age given, 30 years. Apparent age, . . . years.
2. Height and weight, 5 ft. 4 in. 137 lbs.
3. Figure, medium.

4. Are you convinced of the identity of the person examined with the Life proposed? Yes.

5. Family history. Father,——. Mother, age 52. Condition of health, if living. Good. Brothers living?

- 30 0. Sisters living? 2, ages, 31 and 27. Condition of health, if living. Good. Father? Age 45. Cause of death, if dead. Don't know. Mother? Brothers dead? 1, age 7. Cause of death, if dead. Diphtheria. Sisters dead? 0.

6. Are you the attending physician of applicant or his family? No.

7. Having carefully read the statements made in this application, is there anything of importance to be noted or any suspicion that the relationship of the proposed beneficiary is not correctly stated? No.
40

8. Have you made a physical examination of the lungs and heart? Yes.

9. A. Is the respiratory murmur clear and distinct over both lungs? A. Yes. B. Is the character of the respiration full, easy and regular? Give rate. B. Yes. Respirations per minute, 18. C. Are there any indications of disease of the organs of respiration? C. No.

10. A. Is the character of the heart's action uniform, free and steady? A. Yes. B. Are its sound and rhythm regular and normal? B. Yes. C. Are there any indications of disease of this organ, or of the blood vessels? C. No. 10

11. A. State the rate and other qualities of the pulse. A. 74. Good. B. Does it intermit, or become irregular or unsteady at this examination? B. No.

12. Is the person ruptured? No.

12a. If so, is well-fitting truss worn? 20

13. To what daily extent does the Life use alcoholic stimulants? Moderately.

14. Is there any evidence or history of disease of the liver, stomach, intestines, or genito-urinary tract? No.

15. Are you aware of intemperance, or any other circumstance connected with the Life proposed, not herein recorded, which the company ought to know? No.

16. Anything objectionable in the manner of living or general surroundings of Life proposed? No. 30

17. Compared with the average of lives of the same age and sex, do the chances of life seem to you first-class, or fair only, or doubtful or bad? (If other than first-class, state what makes you accord only the lower rating.) First-class.

18. A. If a female, when last pregnant? A.—. B. Any miscarriages or difficulty in labor? B.—. C. Are uterine functions now regular? C.—. If extinct, give length of time this condition has existed. 40

I have this 14th day of Sep. 1901, personally seen and examined the Life proposed for insurance, and saw the signature made on preceding page, and am of the opinion that said Life is in *good health; that said Life's constitution is †sound, and I therefore recommend said Life to be ¶accepted at ‡first-class rates.

G. A. BECKER,

10

Examining physician's signature.

*State whether good, indifferent or bad. †State whether sound or impaired. ¶Fill in "accepted" "postponed," or "rejected." ‡Fill in first or second.

1st class should be unexceptionable lives. 2d class—lives in which the unfavorable circumstances are very slight.

20

Note to the Examiner.—If you have not sufficient space in the form to record answers, or if you think the company should be given any information not elicited by the questions, this space may be used to amplify the answers or record the additional information.

Stamp.

10 M D

Sep, 17, 1901.

