

## NEW JERSEY

# Court of Errors and Appeals

---

ANNIE McCARTHY,  
*Defendant in Error,*  
*vs.*  
THE METROPOLITAN LIFE INSURANCE  
COMPANY,  
*Plaintiff in Error.*

---

### Brief of Willard P. Voorhees, of Counsel with the Plaintiff in Error.

Annie McCarthy instituted this suit against the Metropolitan Life Insurance Company to recover two thousand dollars (\$2,000), the amount of a policy issued upon the life of her husband, Thomas McCarthy. The application was made May 8, 1905 (p. 12), amended May 17, 1905, on written request of plaintiff and her husband (p. 133).

The policy was delivered and first premium paid May 17, 1905.

The defenses pleaded were:

*First.* That the plaintiff caused the death of the insured (p. 14).

*Mutual Life v. Armstrong*  
117 U. S. 591

*Prather v. Ins. Co.* 19 Fed

*Schreier v. Foresters* 35 L  
Appeal

*Knights v. Menckhausen*  
209 Ill. 27  
101 Am. St. 2

*Jack v. Mutual River*  
113 Fed R.

*Second.* That the plaintiff conspired to cause the death of the insured (p. 15).

*Third.* That the plaintiff procured the death of the insured;

And by an additional plea—

*Fourth.* That the insured died by his own hand, and under an express provision of the policy it became void, except as to premium paid (p. 18, p. 121, line 30).

Thomas McCarthy, the insured, died June 14, 1905 (p. 26), just twenty-eight days after the delivery of the policy.

The premiums were payable quarterly, so that only one quarter's premium of \$27.84 was actually paid before the death.

At the trial the following facts appeared in evidence:

Thomas McCarthy was buried at South Amboy, June 16, 1905, two days after his death (p. 29). No embalming fluids had been injected into his body (pp. 29-30). It was exhumed October 13, 1905 (pp. 29-30), in the presence of the county physician, Dr. Deghueue, the chemist, and others. The undertaker recognized the body thus exhumed as that of Thomas McCarthy (p. 31, l. 10). Dr. Deghueue, a chemist, who was present, took away from him for the purpose of examination the bladder, kidney, heart, stomach, intestines and liver (p. 32, l. 30). They were examined at his laboratories, No. 518 Fifth avenue, New York City (p. 33). In these organs arsenic was found to the amount of 1.73337 grains (p. 37), a tabulated statement of which will be found on page 106.

It will be noticed that one and one-half grains were found in the liver. The action of arsenical poison is described on page 141. Dr. Deghueue says this was sufficient to produce death (p. 42, l. 19).

The two best known tests, the Marsh test and the Reinsch test were used by this chemist (p. 44, l. 10).

Dr. Hobart A. Hare, a well-known toxicologist of Philadelphia, also stated that this quantity was sufficient

to cause death, and that the amount found in these organs was necessarily very much less than that which passed the mouth. (See p. 114, l. 30; also p. 115.)

Thomas McCarthy worked on the coal docks for John Scully. His brother-in-law, Daniel Kennedy, was a fellow worker (pp. 70-71). It seems that he was on night duty (p. 71, l. 20). He had been working from six o'clock in the evening of the day when he was first taken sick, the twelfth of June (p. 78, l. 10). He had been home at twelve o'clock at night to get his supper (p. 78, l. 20). He was taken sick on the coal docks (p. 71, l. 10) and asked to go home (l. 20), so they went home about four o'clock in the morning, Kennedy and McCarthy (p. 71, l. 20).

He had eaten his supper at twelve o'clock that night at home (p. 78, l. 20), all the time in Kennedy's company. On page 77, line 20, it appears that he was ill along the streets on his way home that night. These symptoms are all those of arsenical poisoning. It seems that Kennedy went to see him a couple of nights afterwards (p. 71, l. 30), McCarthy having died early the next morning. The date is fixed as being the 13th, the night that Dr. Meacham came (p. 75, l. 20), and it appears that Dr. Meacham was there on the evening of June 13th, between eight and nine o'clock (pp. 64-65).

Dr. Albright, a local physician, had been called in the morning of the twelfth of June (pp. 55-56). He saw Thomas McCarthy and his wife. The symptoms were: pain in the stomach, nausea, aching all over, diarrhoea and cramps (p. 56, l. 20). The prescriptions given by Dr. Albright were calomel, bicarbonate of soda; no arsenic at all was prescribed (p. 57, l. 8). He diagnosed the case as one of gastritis and malaria.

Dr. Meacham was called in on the thirteenth of June; found Kennedy there (p. 65, l. 10). Dr. Meacham prescribed bismuth (p. 66, l. 20).

Patrick Anderson was present at the time of his death (p. 80) and went for his spiritual adviser. He described his symptoms in the same way.

Thomas McCarthy is reported by Dr. Burnett, the physician who examined him in the May before as a healthy man (pp. 84-85).

Sarah Welsh, a neighbor, was called by Mrs. McCarthy the night before McCarthy died to go for the priest (p. 87). She describes the house (p. 87, l. 22). They occupied the whole house, two stories, two rooms down stairs and three rooms up stairs and a hallway.

Mr. McCarthy was in the front bedroom up stairs (p. 88), no beds were down stairs. The night that Kennedy went to see McCarthy, he says: "McCarthy asked his wife for a drink of water." She said, "Why don't you die like any man?" (p. 73, l. 5). John Deveron had been living at the McCarthy house for some time before the death of Thomas McCarthy (pp. 72-73), and it appears that he was quite intimate with Mrs. McCarthy in April, after the death of Thomas McCarthy. (See pp. 107, 108 and 109.)

That this amount of arsenic found in the body was sufficient to cause the death is corroborated by Dr. Smith (p. 89), Dr. George B. Gale (p. 97), Dr. Hobart A. Hare (110); all well-known physicians, and the last named a noted toxicologist.

Just before the close of the case the learned trial judge states (p. 129) as follows: "Undoubtedly the weight of evidence from the expert testimony in this cause standing alone would establish the fact that this man died from poisoning, and that he either administered that poison to himself or someone else administered it to him."

At the close of the defendant's case the trial judge directed a verdict for the plaintiff to which the defendant excepted; and whether the judicial action was proper is now the subject of review.

*It is insisted that there was sufficient evidence on the part of the defendant to be submitted to the jury.*

That there was full evidence that Thomas McCarthy died from poisoning is not to be gainsaid. Even the

learned trial judge admitted that. The question then arises, how was the poisonous substance administered to the decedent? The rule used by this Court in *Blackmore vs. Ellis*, 41 *Vr.* 264, is:

"In civil cases where the action or defense is based upon a criminal act such criminal act may be established by a preponderance of evidence."

*Kurz vs. Doerr*, 180 *N. Y.* 88; 72 *N. E. Rep.* 826, also 105 *Am. State Rep.* 716, holds that the presumption of innocence is not indulged in a civil action though it is to recover for the doing of an alleged criminal act.

It would appear, therefore, that in civil actions the facts alleged need be proved only by a preponderance of the evidence, although ~~they~~ involves a criminal act, and that there is no presumption of innocence.

Now, the facts presented and uncontradicted are these:

Mr. McCarthy lived with his wife and children. He was a working man and worked nights. On the night that he was taken sick he had eaten his supper at home at midnight. He was taken sick just before four o'clock in the morning, and died two days afterwards. The symptoms were those of arsenical poisoning, and the testimony shows that the poison was actually found in the body in sufficient quantities to have produced death. The wife the night before he died asked him why he didn't die like a man. She was afterwards seen to be upon intimate relations with a man who had before that lived in her house. It is ~~not~~ shown that Mr. McCarthy was <sup>not</sup> at any place where he could have had the poison administered to him from the time that he ate his supper at twelve o'clock until he came home, exhibiting the symptoms of poisoning.

The motive for committing such an act may be attributed to the desire to acquire the insurance. It is not necessary in this case to ~~wave~~ <sup>wave</sup> testimony because nothing has been alleged to contradict these facts.

The simple question is whether the facts are sufficient to be submitted to the jury to show whether in their opinion the poison was administered by the plaintiff.

It is not in every case that direct proof can be made, but certain facts being established it becomes the province of the jury to infer conclusions as was done in the case of *Hanson vs. P. R. R.*, 43 Vr. 407.

All possible chance of obtaining the poison from anyone else seems to be eliminated. The plaintiff has not denied it, and there is no presumption of innocence in this case.

It was suggested by the trial court (p. 127) that no poison was even found in the house, no suggestion was made that the plaintiff purchased any, nor was it shown to be anywhere where this plaintiff, or anyone else who had access to the deceased, could have procured it.

In these days, when it is so easy to procure poison, it is not likely that <sup>guilty</sup> a person would leave any about to be found. The trial judge dwelt upon the fact that she was at the bedside of her husband, where she should be, at the time of his death. That is not the point. The fact that all the chain of circumstances eliminated everyone else from complicity in this matter but the wife, is the point. The proof that she was at her husband's bedside becomes an immaterial fact, nor was such fact argued as against the wife. Whatever may have been done by her was done anterior to the death. The fact that the attending physician did not intimate that the deceased was poisoned was quite natural, because the symptoms were such as attend other diseases, but they were true symptoms of arsenical poisoning, and being added to the discovery of that substance ~~found~~ in the body after the death would show conclusively that the deceased did die from that cause.

Even the trial judge, in the former part of his remarks contained on page 126, is driven to that conclusion. Nor is it material or significant that the decedent gave no expression himself, intimating that he had been poisoned. Certainly not, if it had been done it was administered in his food. I presume he was not able to tell, nor is it to be expected that he could diagnose his own case in this particular.

The trial judge further says (p. 128): "It is not shown that the plaintiff sought this insurance upon the life of her husband, or even suggested it."

The proof in the case shows beyond controversy that the plaintiff knew of the existence of this insurance, and collected other insurance which was on her husband's life. Now, the mere fact that there was no proof that she sought this insurance would simply counteract an inference that she had procured the insurance with that intention some months before, but the resolution to obtain the benefit of the policy might have been formed in her mind only shortly before the act, and if anything <sup>so</sup> may be a theory much more credible, certainly a theory that she had formed this intention some four weeks before and had fostered it, and then carried it out deliberately, would show a much more hardened character possessed by the plaintiff than ~~that~~ she should have determined to commit this offense shortly before carrying it out, but all the while with the knowledge of the benefit which would accrue to her.

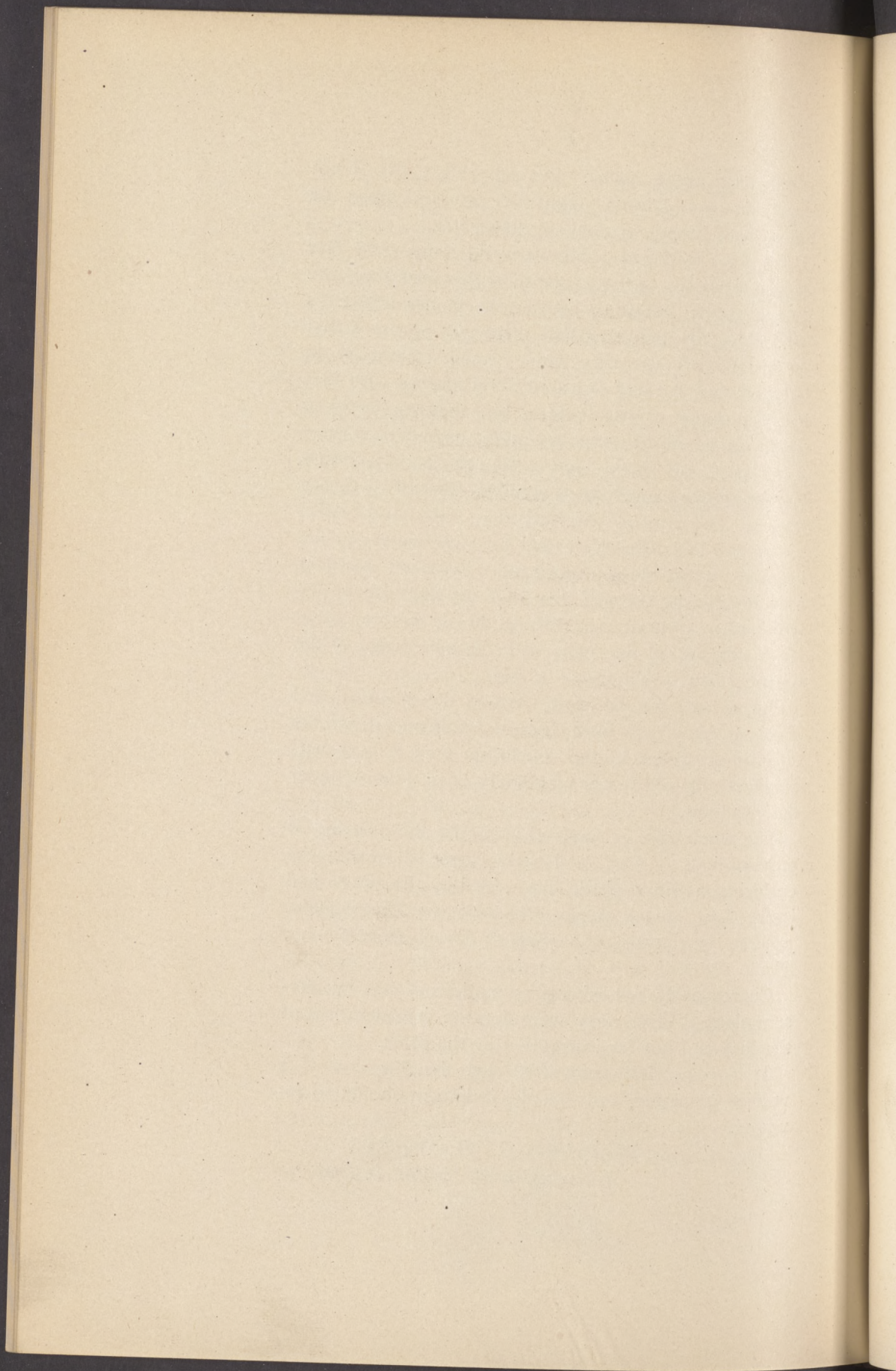
But, if we take the other horn of the dilemma, and conclude that the plaintiff did not administer it, we are irresistibly driven to the conclusion that it was self-administered, which was an equally good defense under the pleadings.

The whole case is summed up under the doctrine of presumptions of fact, and these cases fall within the exclusive province of the jury, aided by the advice and instructions of the judge. *Snediker vs. Everingham*, 3 *Dutch*. 143, 150, 153. *Wabash Screen Door Co. vs. Black*, 126 *Fed*. 725.

Consequently, not being presumptions of law, but presumptions of fact, they were for the consideration of the jury and not for instruction by the court.

It is respectfully submitted that the direction of a verdict was error, and that the judgment should be reversed.

WILLARD P. VOORHEES,  
*Of Counsel with Plaintiff in Error.*



# New Jersey Court of Errors and Appeals.

ANNIE McCARTHY,

Defendant in Error,

vs.

THE METROPOLITAN LIFE

INSURANCE COMPANY,

Plaintiff in Error.

In Error.

BRIEF OF JOHN A. COAN AND GEORGE S.  
SILZER, COUNSEL FOR DEFENDANT  
IN ERROR.

---

## STATEMENT OF FACTS.

Annie McCarthy, defendant in error, the plaintiff below, brought suit to recover on a policy of insurance issued on the life of her husband, Thomas McCarthy. The declaration consisted of two counts; a special count, and the common counts.

Justice Fort, before whom the case was tried, directed a verdict for the plaintiff, on which direction error is assigned.

The assignments of error are three:

(1) That the declaration and the matters therein contained are not sufficient in law for the said Annie Mc-

Carthy to have her said action against the said plaintiff in error.

(2) That the justice who tried the said cause directed the jury to find a direct verdict for the said defendant in error.

(3) Because the said justice who tried the said cause refused to submit the said cause to the consideration of the jury.

I.

THE DECLARATION IS CLEARLY SUFFICIENT TO SUSTAIN THE VERDICT.

It may be well to state at the outset a summary of the record-history of this case.

A demurrer was interposed to the first count of the declaration originally filed; and to the common counts the general issue was pleaded.

A motion to strike out the demurrer as sham and frivolous was denied and thereupon, by leave of the Court, the first count of the declaration was amended, and to this amended declaration the pleas on which the issue was brought, were interposed.

It seems to us that the proper time to take advantage of any alleged insufficiency in the declaration was either when the amended declaration was filed or at the time the trial was had below.

No exception was then taken, no objection made, to the insufficiency of the declaration. Any insufficiency in the pleadings was not called to the attention of the Court, and it is respectfully submitted that no attention should now be given to the first assignment of error.

The declaration consists of a special count and the common counts. Both counts are good. The common counts, with a copy of the policy attached as a bill of particulars, are undeniably so.

The error now assigned has at most the effect of a

general demurrer, one of the counts being good, the demurrer must necessarily fail.

Karneff v. Kelch, 40 Vr., 499.

Mayor, etc., v. City Trust Co., 40 Vr. 44.

Hendrickson v. Penn. R. R., 14 Vr., 464, at page 467 and cases there cited.

It is not, however, in any way admitted that the first count is in the least faulty. On the contrary it is insisted that both counts, singly or collectively, set forth a good cause of action, non-demurrable, and sufficient to sustain the action.

#### II and III.

#### DIRECTION OF VERDICT WAS PROPER.

The second and third assignments of error are so nearly akin as to be practically one, and we shall therefore treat them as one.

The objection is to the direction of a verdict by the Court, and refusal to submit said cause to the consideration of a jury.

These assignments depend largely on questions of fact. It is, then, the established law of this State that the Court may direct a verdict "wherever a verdict contrary to that directed would not be permitted to stand."

Meyer vs. Birch, 30 Vr., 238.

Baldwin vs. Shannon, 14 Vr., 596.

Meyer vs. Madreperia, 39 Vr. 260, and cases there cited.

Therefore, if in this case a verdict for the defendant below on the testimony submitted, would not have been permitted to stand, the Court did right in directing a verdict. The words of the Justice before whom the case was tried are material on this point. In directing the verdict, he said:

"I have, therefore, reached the conclusion that on

that branch of the case, as to the weight of the evidence, or AS TO THERE BEING ANY EVIDENCE which should go to the jury imputing to this plaintiff the poisoning of her husband, I am utterly unable to find it or perceive it, and I should be very unwilling to let a verdict stand for a single moment on testimony of this character without further evidence of some nature connecting the plaintiff with any poisoning." And on the question of suicide "I do not see that there is ANYTHING IN THIS CASE AT ALL to establish the fact that the insured died by his own hand, so that I do not think that even under the suicide clause of the policy there is any proof justifying the case to go to the jury."

Now let us see what is in the case itself.

The plaintiff made the formal proofs and rested. The defendant opened the case without even charging that the plaintiff was in any way responsible for the death of the insured. His words were: (p. 28, l. 7-18) "And we shall show you that the symptoms with which this man was attacked were those attending poisoning of that character (arsenical poisoning). And we will show you that arsenic was there. Now, if that arsenic was administered by or in complicity with the plaintiff in this case, this company ought not to pay this claim; and that is what you gentlemen are to investigate here in this suit, simply the facts whether there was arsenic administered, which caused his death, and the complicity of the plaintiff in this case. If we satisfy you of those facts, we shall ask you to give a verdict for the defendant."

Thus from the opening of defendant it appears he makes no offer to prove that deceased came to his death either by the hand of the beneficiary under this policy, or by her conspiracy or connivance with others. He simply says, "It will be for you to investigate."

Let us look at the case in the light most favorable to the defendant below. What are the proofs?

(a) That five months after death a chemical analysis

of some of the organs was made, and some 1.75 grains of arsenic found.

(b) Expert testimony to show that so much arsenic as was found indicated that the cause of death was arsenical poisoning.

(c) That the symptoms of the last illness were akin to those of arsenical poisoning. There was not a particle of testimony to show that either the deceased or the assured ever had one whit of arsenic in their possession. Nor was any motive shown either for suicide or for poisoning.

Now as was said by the Justice before whom the case was tried: "But even if it be conceded that it is proven by the weight of evidence that the deceased did die from arsenical poisoning, still that does not make a defence against the plaintiff on the policy in this suit. She or others acting for or with her, must have caused the death of the insured, through the poisoning, to justify a verdict for the defendant. Nor can it be said that the weight of evidence in this case points to any act or acts of the plaintiff that would justify, **EVEN INFERENTIALLY**, such a conclusion? I am not able to so construe it, or to think the evidence of such a character on this point as to justify the belief, even, that two reasonable minds could differ about it. There is not a particle of direct evidence suggesting the belief that the plaintiff poisoned her deceased husband. \* \* \* Jurors cannot be expected to guess out verdicts, in order to avoid insurance policies after the death of the insured, and to do it upon mere suspicion. And I do not mean by this statement to intimate that I think **THERE IS EVEN THE SLIGHTEST REASON OR SUSPICION TO HOLD THIS PLAINTIFF FOR HAVING POISONED HER HUSBAND.** \* \* \* Now on the question of suicide \* \* \* what is the burden of proof with regard to that?

It is not enough for an insurance company, on a policy of life insurance, to show that a party died from

poisoning, in order to establish suicide. I think the insurance company must show that the deceased administered the poison. \* \* \* The company holds the burden of proof, and it **MUST SHOW THAT HE DID DIE BY HIS OWN HAND AND ACT, NOT THAT HE HAD** poison in him, not that there was sufficient poison found in the body after death to warrant the claim that it could cause his death, but that it was there because of something which he did by his own hand or his own act. **I DO NOT SEE THAT THERE IS ANYTHING IN THIS CASE AT ALL TO ESTABLISH THE FACT THAT THE INSURED DIED BY HIS OWN HAND**, so that I do not think that even under the suicide clause of this policy there is any proof justifying the case to go to the jury. I think, therefore, gentlemen of the jury, it is the duty of the Court to direct a verdict in favor of the plaintiff for the full amount of the claim, with interest and costs."

The insurance company is liable unless it shows by the burden of proof, that plaintiff intentionally caused the death of the insured.

4 Cooley's Briefs on Insurance, 3153-31-55.

The burden of proof is on the defendant and to entitle it to a verdict it is bound to establish the alleged guilt of the plaintiff by clear and satisfactory proof.

American Mut. Ins. Co. vs. Anderson, 4 Vr., 151.

There was proof that arsenic was found in deceased five months after death; whether administered before or after death does not appear. Whether the druggist made a mistake, or how the arsenic got into the body does not appear—many ways are possible.

Beyond the proof of finding arsenic, and that such amount, if given, would cause death, there is no testimony.

Not one iota of evidence exists showing that plaintiff

had anything to do with it, or was in any way connected with her husband's death, and under the testimony no other verdict was possible.

It is almost impossible to conceive a case so devoid of defence.

The whole defence was as follows:

Drs. Meacham and Albright were attending physicians, and described the symptoms found by them.

Dr. Burnett said deceased was in good health when examined by him before the policy was issued.

Dr. Deghuae analyzed organs and found arsenic.

Drs. Hall, Smith and Gale testified that from symptoms and the amount of arsenic found, they believed deceased died from arsenical poisoning.

Daniel Kennedy testified that wife jokingly stated to deceased, "Why don't you die like a man?"

Patrick Anderson testified that deceased and plaintiff lived happily together, were affectionate toward each other, and that deceased, just before he died, said he "Hoped God would look after the wife and children."

Sarah Welsh testified that plaintiff asked witness to go for a priest.

Madeline Simpson, a female detective, who attempted to show that seven months after McCarthy's death the plaintiff entertained male "callers"

From all of which it will be seen that there was absolutely no evidence of poisoning or suicide.

It is therefore apparent that the testimony in the case would not have supported any other verdict than that directed by the trial judge, and that in the instruction and direction complained of, there was consequently no error.

Respectfully submitted,

JOHN A. COAN,

GEORGE S. SILZER,

Counsel for Defendant in Error.



Claimant must furnish a CERTIFIED COPY OF THE RECORD OF DEATH as shown by the books of the Health Department, Registrar, County Clerk, or other officer having charge of such records.

# I. CLAIMANT'S STATEMENT.

To be made by the person claiming the insurance.

POLICIES.		DATE.			FULL NAME OF DECEASED.	AMOUNT CLAIMED.
No.	YEAR.	MONTH.	DAY.			
No. 565888-91 C	1905	May	12	Thomas Mc Carthy	\$ 2000.00	
No. _____ C	_____	_____	_____		RESIDENCE.	\$ 83.52
No. _____ C	_____	_____	_____		11 Stockton St. So. Auboy, N. J.	\$ _____
USE INK ONLY. EVERY QUESTION MUST BE FULLY ANSWERED OR THE PROOFS WILL BE RETURNED.					Total,	\$ 1916.48

1. (a) Birthplace of deceased? Town _____ County <u>Limerick</u> State or Country <u>Ireland</u>	2. Place of death of deceased? Street and No. <u>11 Stockton St.</u> Town or City <u>South Auboy</u> County <u>Middlesex</u> State <u>N. J.</u>	3. Date of Death? Year <u>1905</u> Month <u>June</u> Day <u>14</u>
(b) Date of Birth YEAR. MONTH. DAY. <u>1860 Aug 1</u>		

4. Cause of Death? (Give full particulars.) <u>Hyxentary</u>	5. Occupation of deceased? (If more than one, specify in detail.) <u>Coal trimmer</u>
---	--

6. Was deceased at any time connected, directly or indirectly, with the ale, wine or liquor business? If so, when? <u>Had a saloon for about 9 months, 7 years ago</u>	7. Name and address of deceased's last employer? Name <u>John Scully</u> Occupation <u>Coal Dock</u> Street _____ City <u>So. Auboy</u> State <u>N. J.</u>	8. When did deceased quit work, and why? <u>June 12, 1905 worked about his home until too weak to stand.</u>
---	---	---

9. Upon what date did deceased first consult a physician for last sickness? <u>June 12, 1905</u>	10. Give names and addresses of all Physicians who attended or were consulted by deceased during last sickness. <u>Dr. J. C. Albright, Broadway, So. Auboy.</u> <u>Dr. Meacham (Consultation) " "</u>
---	---

11. For how long was deceased confined to house and prevented from attending to business by last sickness? <u>3 days</u>	12. What was the duration of deceased's last sickness? Years _____ Months <u>3</u> Days _____	13. Had deceased ever been an inmate of or received treatment at any Hospital, Dispensary or other Institution? If so, give full particulars. <u>no</u>
---	--	--

14. What sickness previous to the last one has deceased ever had? Give full particulars of each sickness, with dates and duration of each. <u>none for years</u>	15. Give names and addresses of all Physicians who attended deceased at any time prior to last sickness. <u>none for years</u>
---	---

16. (a) Did deceased ever meet with any accident or undergo any surgical operation? If so, give dates and full particulars. <u>no</u> (b) Were deceased's habits of life correct, sober and temperate? <u>only drank moderately</u> (c) Had they always been so? <u>yes</u>	17. (a) Has this Company ever paid a claim on any member of deceased's family? If so, give particulars. <u>no</u> (b) Had any application for insurance ever been made to any Company Society or Association on which a policy was NOT GRANTED? <u>no</u>
--	--

18. Are there any other Policies on deceased in this Company? If so, give numbers and amounts. <u>20 88 4360</u> <u>23 62 4358</u>	19. Was deceased ever insured in any other Company or Society? If so, state names of Companies or Societies and amount of Insurance in each. <u>Foresters \$100.</u> <u>Colonial 10 &amp; prev.</u> <u>59 "</u>	20. Who made application for this insurance? State name and relationship. <u>Thomas Mc Carthy</u> <u>Secy</u>	21. By whom have the premiums been paid? <u>Thomas Mc Carthy</u>
--	--	---	---

22. Was deceased in receipt of a Pension? If so, state date granted and where. <u>no</u>	23. Was deceased blind, deaf, dumb, or afflicted with any mental disease or physical infirmity or deformity? If so, give full particulars and state how long such had existed. <u>no</u>	24. (a) Was deceased married? <u>yes</u> (b) If married, is widow or widower alive? <u>yes Annie Mc Carthy</u>
---	---	---

Claimants are required to produce, at their own expense, such medical testimony as to cause of death and duration of sickness, as shall be satisfactory to the Company.

25. Are deceased's father and mother living?

*mother living age 90*

IF DEAD, give the following particulars:

	AGE AT DEATH.	FULL NAME.	CAUSE OF DEATH.	PLACE OF DEATH.	DATE OF DEATH.
FATHER	<i>about 65</i>	<i>William Mc Carthy</i>	<i>don't know</i>	<i>Ireland</i>	<i>about 1895</i>
MOTHER					

26. Give names in full and ages of deceased's brothers and sisters LIVING.

NAME.	AGE.	NAME.	AGE.	NAME.	AGE.
<i>Alice Lwyer</i>	<i>don't know</i>	<i>James Mc Carthy</i>	<i>don't know</i>		
<i>Margaret Kennedy</i>	<i>don't know</i>	<i>John</i>	<i>"</i>		
<i>Mary A Berke</i>		<i>Ann</i>	<i>"</i>		
<i>Kate Ryan</i>					

27. Give the following particulars of deceased's brothers and sisters who are DEAD?

NAME IN FULL.	AGE AT DEATH.	CAUSE OF DEATH.	PLACE OF DEATH.	DATE OF DEATH.
<i>none except infants</i>				

28. Give names in full and ages of deceased's children now living.

*William Mc Carthy*  
*Michael*  
*Alice*

29. Has father, mother, brother, or sister, ever had Consumption or any Pulmonary, Scrofulous, or Constitutional Disease or Insanity? If so, give names, relationship, causes of death and dates of death.

*no*

30. Are you now or have you ever been in the employ of this Company? If so where and in what capacity?

*no*

31. Are you in any way related to anyone in the employ of this Company? If so, to whom, where located, and what is the relationship?

*no*

32. (a) By what right or relationship do you claim the proceeds of the Insurance?

*wife beneficiary*

(b) If policy was ever assigned, give date and purpose of assignment.

*none*

The undersigned hereby certifies that the foregoing answers apply to the life heretofore insured under the above-numbered Policy; that all premiums under said Policy have been duly paid; that the undersigned has a good and valid interest to the amount assured in the life of said deceased; and that whatever other and further proofs may be required by the METROPOLITAN LIFE INSURANCE COMPANY, will be furnished by the undersigned upon demand by said Company.

STATE OF *New Jersey*

COUNTY OF *Middlesex*

*Annie Mc Carthy* Age *26*

*11 Stockton St. So. Aulbury N. J.* Residence.

Notary or Justice of Peace must attach Certificate of Authority (from County Clerk or Court of Record) to administer oath.

Before me, a *Justice of the Peace*, in and for the above County and State, this *22nd* day of *June*, *1905*

appeared *Annie Mc Carthy* known to me, and made oath that *she* personally signed the above statement

[SEAL.] and that the answers by *her* given to the foregoing questions are true and full to the best of *her* knowledge and belief.

*Robt. P. Maslow* Justice of the Peace

SECTION 578 OF THE PENAL CODE OF THE STATE OF NEW YORK: "A person who, knowing it to be such, either presents or causes to be presented a false or fraudulent claim, or any proof in support of such claim, for the payment of a loss upon a contract of insurance, is punishable by imprisonment for not more than one year or by a fine not more than five hundred dollars or by both such fine and imprisonment."

TO THE METROPOLITAN LIFE INSURANCE COMPANY: I desire to file the following statement by attending physician with and as part of the Proofs of Death submitted by me to your Company on account of Policy No. *565888-91* Name of Insured *Thomas Mc Carthy*

*Robt. P. Mason Justice of the Peace*

SECTION 578 OF THE PENAL CODE OF THE STATE OF NEW YORK: "A person who, knowing it to be such, either presents or causes to be presented a false or fraudulent claim, or any proof in support of such claim, for the payment of a loss upon a contract of insurance, is punishable by imprisonment for not more than one year or by a fine not exceeding \$1,000."

I desire to file the following statement by attending physician with and as part of the Proofs of Death submitted by me to your Company on account of Policy No. 565-888-21 Name of Insured Thomas Mc Carthy  
 Dated at South Amboy N. J. this 22nd day of June 1905  
 Witness Robert P. Mason Annie Mc Carthy Claimant.

**ATTENDING PHYSICIAN'S STATEMENTS.**

As the Company preserves a record of its mortality experience, the report of the Attending Physician will be of great service if precise and full answers are given to the following questions; it will also facilitate prompt examination of the claim.

Before signing, kindly read over your answers, to see whether they are as exhaustive as you can make them.

Note.—If you have any facts which you prefer not to enter upon this certificate, please make them the subject of special correspondence with the Home Office, New York.

1. Full name of Deceased? <u>Thomas Mc Carthy</u>		3. Occupation? <u>Coal Dock</u>	5. Age at death? <u>45</u>
2. Residence? No. <u>11 Stockton</u> Street. City or Town <u>South Amboy</u> State <u>N. J.</u>		4. White or colored? <u>White</u>	6. Apparent age at death? <u>45</u>
7. Date of death? Year <u>1905</u> Month <u>June</u> Day <u>14</u>	8. Cause of death? I. Chief or Primary <u>Malarial Dysentery</u> II. Contributing or Secondary <u>Heart Failure</u>		9. How long had Deceased been ill when you were called to attend? <u>about 5 days</u>

10. For what disease or diseases have you at any time attended Deceased PRIOR to last illness, and what was their duration?

DATES OF ATTENDANCE.			DISEASES.	DURATION OF DISEASES.
DAY.	MONTH.	YEAR.		
<u>15</u> <u>to</u> <u>25</u>	<u>May</u>	<u>1905</u>	<u>Laceration of Thumb</u>	<u>About two weeks</u>

11. Did Deceased ever suffer from Phthisis Pulmonalis, or any other form of Consumption or Pulmonary disease? If so, please specify. <u>no</u>	12. Was Deceased afflicted with any infirmity, deformity, or chronic disease? If so, please specify. <u>no</u>	13. Did any member of Deceased's family die of Consumption? If so, please give relationship and date of death. <u>no</u>
14. Was Deceased ever treated by any other physician or at any hospital or other institution prior to, during or subsequent to your attendance? If so, please specify. <u>no</u>	15. Was death the result of Deceased's own hand or act? <u>no</u>	16. Have you previously filled out a Certificate for this or any other Company of this death? If so, please specify. <u>yes</u> Colonial
17. Are there any other particulars relating to the sickness or habits of Deceased with which you think the Company should be made acquainted? If so, please specify. <u>no</u>	18. To what extent, if any, did Deceased use intoxicants? <u>moderately</u>	19. Was death caused, directly or indirectly, by the use of intoxicating drink, opium, or other drug? <u>Indirectly it had</u>
		20. Was an inquest or Post Mortem examination held? <u>no</u>

I Hereby Certify that I attended the Deceased from June 12'05 to June 14 1905, that I signed the Certificate on file at the office of the Board of Health or Register of Vital Statistics, and that the answers as above recorded are complete and true to the best of my knowledge and belief.

Signature of Physician J. C. Albright, M.D.  
 Residence: No. and Street 194 Broadway City or Town So. Amboy State N. J.

STATE OF New Jersey  
 COUNTY OF Middlesex }  
 Before me, a Justice of the Peace in and for the above County and State,  
 this 22nd day of June 1905 appeared J. C. Albright M.D. known to me as a physician in regular standing, and made oath that he personally signed the above statement and the answers by him given to the foregoing questions are true and full to the best of his knowledge and belief.

[SEAL.]

*Robt. P. Mason, Justice of the Peace*

Notary or Justice of Peace must attach Certificate (from County Clerk or Court of Record) of authority to administer oath.

I desire to file the following statement by attending physician with and as part of the Proof of Death submitted by me to your Company on account of Policy No. 258888-7-C Name of Insured Thomas Mc Carthy

Name of Deceased Thomas Mc Carthy  
 Date of Death June 17, 1912  
 City or Town London, Ohio

**ATTENDING PHYSICIAN'S STATEMENTS.**

As the Company reserves a right of re-examination, the attending physician will be of great service to the Company if he will fill out the following statement in full and return it to the Company as soon as possible. Before signing, kindly read over your answer, to see whether they are as accurate as you can make them.

1. Full name of Deceased: Thomas Mc Carthy  
 2. Residence: 11 Blackburn  
 City or Town London, Ohio  
 3. Date of death: June 1912  
 Year 1912  
 Month June  
 Day 17  
 4. Cause of death: Heart failure  
 I. Chief or Primary Heart failure  
 II. Contributing or Secondary Heart failure  
 5. How long had Deceased been ill when you were called to attend? about a week

6. For what disease or diseases have you at any time attended Deceased PRIOR to last illness, and what was their duration?

DAYS OF ATTENDANCE	DAY	MONTH	YEAR
	15	May	1912
	16	May	1912
	17	May	1912

7. DURATION OF DISEASE: about two weeks

8. Did Deceased ever suffer from any other disease or ailment? No  
 9. Was Deceased afflicted with any chronic disease? No  
 10. Was Deceased ever treated by any other physician or at any hospital or other institution prior to being or subsequent to your attendance? No  
 11. Have you previously filed out a Certificate for this or any other Company of this district? No  
 12. Are there any other certificates relating to the disease or ailment of Deceased with which you think the Company should be made acquainted? No  
 13. Do you recall any other illness or ailment of Deceased? No  
 14. Was there an autopsy of Deceased? No

I, J. C. Mc Carthy, M.D. of London, Ohio County of Madison State of Ohio do hereby certify that I attended the Deceased from June 17, 1912 to June 17, 1912 and that I signed the Certificate on file at the office of the Board of Health or Health Officer of said County and that the answers as above recorded are complete and true to the best of my knowledge and belief.

Signature of Physician: J. C. Mc Carthy, M.D.  
 Residence: No. and Street 11 Blackburn  
 City or Town London, Ohio  
 State Ohio  
 Notary or Justice of Peace must attach Certificate (from State Clerk or Court of Record) of authority to administer oaths.



W D De Po Co AP PL RR PP JJ A

Witness: Robt. P. Brown  
Date of Death: June 11 1895  
Name of Deceased: James M. Brown

### ATTENDING PHYSICIAN'S STATEMENTS.

As the Company desires a record of its monthly experience, the report of the Attending Physician will be of great service. It should be filled out and given to the following questions; it will also facilitate a general examination of the same.

Before signing, kindly read over your answers, to see whether there are any corrections as you can make them.

Note:—If you have any facts which you prefer not to enter upon this certificate, please write them on a separate sheet of paper and send them to the Home Office, New York.

1. Full name of Deceased?		<u>James M. Brown</u>	
2. Residence?		<u>Blackton St. No. 10.</u>	
3. Date of death?		<u>June 11 1895</u>	
4. Cause of death?		<u>Heart failure</u>	
5. How long had Deceased been ill when you were called to attend?		<u>about three weeks</u>	

10. For what disease or diseases have you at any time attended Deceased PRIOR to last illness, and what was their duration?

DATE OF ATTENDANCE		DISEASE	DURATION OF DISEASE
DAY	MONTH		
<u>18</u>	<u>June</u>	<u>Misadventure</u>	<u>about three weeks</u>

Ex. P. 2.  
May 17/06.

11. Did Deceased ever suffer from Pathologic Transmutation or other form of Consumption or Tubercular disease? If so, please specify.

12. Was Deceased ever treated for any other disease at any hospital or other institution prior to death or subsequent to your attendance? If so, please specify.

13. Was Deceased ever treated by any other person than yourself? If so, please specify.

14. Was Deceased ever treated by any other person than yourself? If so, please specify.

15. To what extent, if any, did Deceased use of any medicine, or other drug?

16. Was an autopsy or Post Mortem examination held?

I hereby certify that I attended the deceased on the above stated date, and that the answers as above recorded are complete and true to the best of my knowledge and belief.

Signature of Physician: E. O. Richardson

City or Town: Blackton

State of New York

Subscribed and sworn to before me a Justice of the Peace in and for the above County and State, this 27th day of June 1895.

Witness my hand and seal this 27th day of June 1895.

Notary Public: Robt. P. Brown

Notary or Justice of Peace must attach Certificate (from County Clerk or Town or Board) of authority to execute this certificate.

## INDEX.

Writ of Error.....	1
Declaration.....	3
Policy .....	5
Conditions in Policy.....	8
Application for Policy.....	9
Pleas.....	14
Replication.....	15
Postea.....	16
Judgment.....	17
Additional Plea.....	18

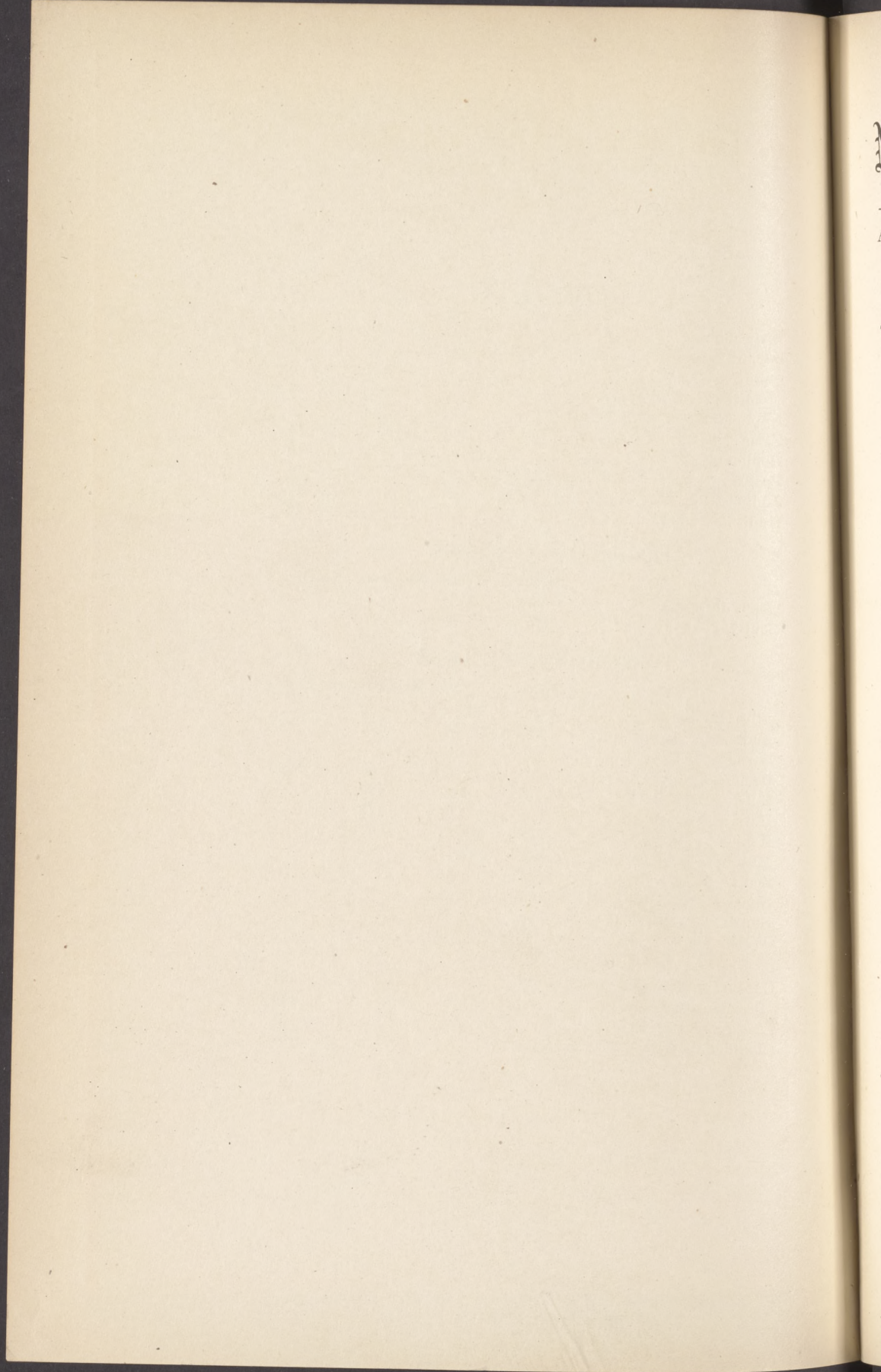
### PLAINTIFF'S WITNESSES.

	Direct	Cross	Re-Cross	Re-Dir.
Coan, John A.....	23	...	....	....
Scully, John J.....	25	26	27	....

### DEFENDANT'S WITNESSES.

	Direct	Cross	Re-Cross	Re-Dir.
Albright, John C.....	55	61-64	63	....
Anderson, Patrick.....	79	82	83	83
Burnett, Charles B.....	83	85	....	....
Deghuee, Joseph A.....	31	42	50	53
Gale, George B. Dr.....	97	100	105	....
Hare, Hobart A. Dr.....	110	116	119	....
Kennedy, Daniel.....	70	75-78	77	.. .
Meacham, Eugene.....	64	67-68	68	....
Scully, John J.....	29	31	....	....
Simpson, Madeline.....	106	110	....	....
Smith, Arthur L.....	89	93	....	....
Welsh, Sarah.....	86	89	....	....

Motion to Direct a Verdict.....	121
Decision of the Court .....	125
Assignment of Errors.....	131
Joinder in Error.....	132



# New Jersey Court of Errors and Appeals.

---

ANNIE McCARTHY,  
*Defendant in Error,*

vs.

THE METROPOLITAN LIFE INSUR-  
ANCE COMPANY,  
*Plaintiff in Error.*

---

10

## WRIT OF ERROR.

Returnable June 21, 1906.

WILLARD P. VOORHEES, Attorney.

Filed June 8, 1906.

S. D. DICKINSON, Clerk.

20

---

*State of New Jersey, ss.*

The State of New Jersey to the Justices  
[L.S.] of our Supreme Court of Judicature of the  
State of New Jersey. Greeting:

Because in the record and proceedings and also in the giving of judgment in a certain plaint which was in our said Supreme Court before you, between Annie Mc- 30  
Carthy, plaintiff, and The Metropolitan Life Insurance Company, defendant, in an action upon contract, manifest error hath intervened, to the great prejudice of the said Metropolitan Life Insurance Company, as by its complaint we are informed; we being willing that the said error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you that if judgment be thereupon given, then you do distinctly and openly send, under your seal, the record and pro-

ceedings aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals in the last resort, to be holden at Trenton, on the twenty-first day of June, 1906, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and according to law ought to be done.

Witness, William J. Magie, Esq., our Chancellor and President Judge of our Court of Errors and Appeals,  
 10 at Trenton, aforesaid, the second day of June, in the year nineteen hundred and six.

S. D. DICKINSON, Clerk.

WILLARD P. VOORHEES, Attorney.

---

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  
 20 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.

ANNIE MCCARTHY, vs. THE METROPOLITAN LIFE INSUR- ANCE COMPANY,	}	On Contract. On Postea. John A. Lovely, Attorney.	10
---	---	--	----

As yet of the fourteenth day of September, A. D.  
 nineteen hundred and five.

Witness, WILLIAM S. GUMMERE, Esquire,  
 Chief Justice.

WILLIAM RIKER, JR., Clerk.

---

20

*Middlesex County, ss.*

The Metropolitan Life Insurance Company, the de-  
 fendant in this action, was summoned to answer unto  
 Annie McCarthy, the complainant therein, in an action  
 upon contract, and thereupon the said plaintiff, by John  
 A. Lovely, her attorney, complains:

For that whereas heretofore, to wit, on the twelfth  
 day of May, 1905, the said defendant, by a certain con-  
 tract commonly called a policy of insurance, duly exe-  
 cuted and delivered by the said defendant and signed by  
 its president and attested by its assistant secretary, a true  
 copy whereof is hereto annexed, in consideration of the  
 answers and statements contained in the application for  
 the said policy, which was thereby made part of said  
 contract, and of the payment of the quarter-annual pre-  
 mium of twenty-seven dollars and eighty-four cents,  
 which was paid by the said Thomas McCarthy in ad-  
 vance to the said defendant on the delivery of the said  
 policy, and of a like sum to be paid on or before the  
 twelfth day of May, August, November and February

30

of each and every year during the continuance of said policy, did promise to pay at its home office in the City of New York unto Annie McCarthy, wife of said Thomas McCarthy, therein designated as the assured, the sum of two thousand dollars upon the receipt by the company at its home office and its approval of the proofs of death of the insured, during the continuance of the said policy subject to certain conditions, acknowledgments and considerations printed on the back  
10 of said policy, with all of which the said Thomas McCarthy and the said plaintiff have at all times complied.

And the plaintiff avers that the said Thomas McCarthy duly paid the sum of twenty-seven dollars and eighty-four cents as and for the first quarterly premium aforesaid upon the delivery of the said policy, and that in his lifetime in all things complied with and performed all conditions precedent on his part to be performed, as fully as in and by said policy and the writings therein referred to he was required to do, and that the said  
20 Thomas McCarthy afterwards and while said policy was in force, to wit, on the fourteenth day of June, 1905, died, of which the said defendant thereupon, to wit, on the day and year last mentioned, had due notice, and proofs of which death were received by and approved by the said defendant at its home office in the City of New York.

And the plaintiff further avers, that although said policy was then and there in force, and the said plaintiff and said defendant and the said Thomas McCarthy  
30 have in all things complied with and performed all conditions precedent required to be performed according to the tenor and effect of the said policy and the writings therein referred to, and although the said defendant at its home office in the City of New York has received and approved of the proofs of death of insured in the manner, to the extent, and upon the blanks required by said defendant and agreed upon in said policy, and furnished by said defendant company to the plaintiff, yet the said defendant has hitherto refused and still does refuse to pay to the said plaintiff the sum of two thousand dollars (deducting therefrom the premium, if any, for the

balance of the policy year), so due by the terms of the said policy as above set forth, or any part thereof, although often requested so to do by said plaintiff.

And for that whereas the said defendant heretofore, to wit, on the first day of August, nineteen hundred and five, at South Amboy, in the said County of Middlesex, was indebted to the plaintiff in the sum of Four Thousand Dollars for goods sold and delivered by the plaintiff to the defendant at its request; and in like sum for work done and materials furnished by the plaintiff for the defendant at its request; and in like sum for money lent by the plaintiff to the defendant at its request; and in like sum for money paid by the plaintiff for the use of the defendant at its request; and in like sum for money received by the defendant for the use of the plaintiff; and in the like sum for interest for the forbearance by the plaintiff at the defendant's request of money due and owing from the defendant to the plaintiff; and in like sum for money due from the defendant to the plaintiff on an account then and there stated between them; and being so indebted the defendant in consideration thereof then and there promised the plaintiff to pay to her the said several sums of money on request, yet the said defendant disregarded its said several promises and has not paid the said several sums of money, nor any of them, nor any part thereof, although often requested so to do; but to do so hath wholly refused and still doth refuse, to the damage of the plaintiff four thousand dollars, and therefore she brings her suit, etc. 20 30

The following is a copy of the policy of insurance mentioned in the foregoing declaration:

United States of America.

Nos. 56588891 C.

Metropolitan

Life Insurance

Age

Company.

45.

Incorporated by the State of New York. Home Office New York City.

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 Thomas McCarthy of South Amboy, State of New Jersey, hereinafter called the insured, all of which answers and statements are hereby made warranties, and of the payment of the quarter annual premium of Twenty-seven dollars and eighty-four cents, on or before the delivery of this Policy, and of a like amount  
 10 on or before the twelfth day of May, August, November, February, of each and every year during the life of the insured, until the premiums for TWENTY full years shall have been paid to the Company, DO TH  
 20 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 THE SUM OF TWO THOUSAND  
 30 DOLLARS to Annie McCarthy, wife 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 surrender of this Policy, deducting therefrom the premium, if any, for the balance of the policy year.

No obligation is assumed by the Company until the  
 30 first premium has been paid, nor prior to this date, nor unless upon the delivery of this Policy the insured is alive and in sound health.

In Witness Whereof, The Metropolitan Life Insurance Company has caused this instrument to be signed by two of its officers in execution thereof at its office, in the City of New York, on the twelfth day of May, 1905.

J. A. HEGEMAN, President.

Form C. 227 A. Life 20 payments.

T. R. RICUMILON, Assistant Secretary.

Form C. 227 A. Life 20 payments. 1902.

## BENEFITS AND PRIVILEGES.

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.

10

*Table of paid-up values for each \$500 of insurance.*

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

Second: The Company will loan the amount specified in the following table at five per cent. interest, payable semi-annually in advance, upon receiving satisfactory assignment of this policy, as collateral security while in force.

20

\* \* \* (Table omitted.) \* \* \*

The amount of "Loan or Cash Surrender Value" for other periods will be furnished upon application.

Third: After two years this Policy shall be non-contestable 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 addition to the Policy as in the judgment of the officers and directors of the Company the Policy shall have earned.

30

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.

## 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 Premium which have been received on this Policy.

Second: If any statement in the application herein  
10 referred to is not true, or if any premium or installments or 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."

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  
20 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.

30 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 verdict of the coroner's inquests 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 items 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, Secretary or Asst. Secretary, whose authority for this purpose will not be delegated; no other person has or will be given authority. 10

(Copy)

Application to the  
Metropolitan Life Insurance Company.  
(Incorporated by the State of New York.) 20

Date May 5, 1905.

B. I intend to make application to The Metropolitan Life Insurance Company upon the following blank form and do hereby sign my name in the presence of the Company's agent, who will make report to the Company upon the proposed risk, so that my signature to the application may be identified.

THOMAS MCCARTHY,

JOHN LINS. Signature of Proposed Applicant.

Signature of Witnessing Agent.

I. C. I hereby apply to The Metropolitan Life Insurance Company, through its Intermediate Branch, for an insurance on my life in the sum of \$2,000, which, subject to the provisions of the policy as to payment shall be paid to Annie McCarthy, my wife. 30

(Enter relationship.)

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:

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

1. My age nearest birthday is 45 years.
2. My occupation is Laborer and I have no other occupation, Except
3. 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, 10  
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
4. I am now in sound health. I am not blind, deaf, or dumb, nor have I any physical or mental defects or infirmity of any kind, Except
- 20 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.
6. I have not been under the care of any physician within two years, unless as stated in previous line, Except
7. I have never been under treatment in any dispensary, hospital or asylum, nor been an inmate of any almshouse or other institution, Except
- 30 8. I am not in any way connected with the manufacture or sale of ale, wine or liquors.
9. I have never been a pensioner, and no application for a pension to me is pending or contemplated, Except as follows:
10. 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:
11. No one of my parents, grandparents, brothers or

sisters ever had consumption, or any pulmonary or scrofulous disease, Except

12. 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.

13. 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. 10

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 my 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 Officer of the Company at the Home Office. 20

And I further declare and warrant and agree that the statements and answers 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 if they are not thus strictly correct and wholly true the policy shall be null and void. 30

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.

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.

10 I further agree that the Company shall incur no liability under this application until it has been received, approved and the policy issued and delivered, and the premium has actually been paid to and accepted by the Company during my lifetime and while I am in good health.

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.

THOMAS MCCARTHY.

20 Every answer must be true, or the Policy will be void. Dated at South Amboy, N. J., May 8, 1905.

After seeing the above warranty signed by the Life Proposed, Part D. 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 5, 6 and 12 and 13.

*Endorsement on Back of Policy.*

30 Nos. 56588891 C.

Metropolitan Life Insurance Company. New York, Intermediate Branch, LIFE POLICY. Limited Payments Twenty Years.

Insurance on the life of Thomas McCarthy, South Amboy, N. J. Amount \$2000.  $\frac{1}{4}$  Annual Premium \$27.84. Date of Policy May 12, 1905. Agent R. Hitchings. Red Bank. Lins.

Notice to Policyholders.

The holder of this policy while it remains in force, after one year from its date, will have a right to vote at

the election of directors of the company, which is held in New York on the second Tuesday of April each year.

The vote may be cast in person or by proxy by giving notice. For particulars how to vote, apply to the secretary, No. 7 Madison Avenue, New York City.

Attached to the policy is the following receipt.

The Metropolitan Life Insurance Company.

Intermediate Branch. (Incorporated by the State of New York.)

Home Office 1 Madison Ave. N. Y.

10

Acknowledges Receipt of the  $\frac{1}{4}$  annual premium, amounting to \$27.84 on policy No. 56588891 C. from the owner thereof, due thereon the 12 day of May, 1905.

Countersigned May 17, 1905.

Jas. S. Roberts, Secretary.

Richard Hithings, Supt.

Signature.

Name Thos. McCarthy. District Red Bank.

This receipt is not binding upon the Company until countersigned by the cashier of the Intermediate Branch of the Home Office, or the Superintendent of the District in which payment is made, nor until the premium has actually been paid in cash. 20

Payments Made, Except in exchange for a Home Office receipt signed by the Secretary (and countersigned as above) are invalid.

The Acceptance by the Company at any time of a premium past due is to be taken as an act of grace by the Company and not as a precedent nor as a waiver of any of the policy conditions. 30

Form C. 126 C.

The plaintiff will therefore claim judgment on this action as follows:

To principal sum of said policy of insurance,	\$2000 00
Less unpaid premium amounting to . . . . .	83 52

---

\$1916 48

Interest thereon from June 14, 1905, until date of judgment herein.

Dated Sept. 19, 1905.

And the said defendant, by Willard P. Voorhees, its attorney, comes and defends the wrong and injury, when, &c., 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 the said defendant puts itself upon the country, &c.

And for a further plea in this behalf as to the first count of said declaration, the said defendant, by leave of the Court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that the proofs of death in said policy were not made by the said plaintiff to the Home Office in the manner and to the extent required by blanks furnished by the company, and were not approved by said defendant, and this the said defendant prays may be inquired of by the country.

And for a further plea in this behalf as to the first count of said declaration, the said defendant by like leave of the Court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that the said plaintiff, seeking to injure and defraud the said plaintiff, intentionally caused the death of the said Thomas McCarthy, whereby the said policy or contract of insurance became and is null and 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 the said defendant.

And for a further plea in this behalf as to the first count of said declaration, the said defendant, by like leave of the Court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that the said plaintiff, seeking to injure and defraud the said defendant, inten-

tionally conspired and combined with others unknown to this defendant to cause the death of the said Thomas McCarthy, and did in fact thereby cause the death of said Thomas McCarthy, whereby said instrument or policy became and is null, void and of no effect, 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 the said defendant.

And for a further plea in this behalf as to the first count of said declaration, the said defendant by like leave of the Court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that the said plaintiff, in order to injure and defraud the said defendant, intentionally sought and procured the death of the said Thomas McCarthy, 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 the said defendant.

---

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

And to the plea of the defendant by it secondly above pleaded, the plaintiff says that she ought not to be barred from having or maintaining her aforesaid action thereof against the said defendant, because she says that the proofs of death in said policy were made by the said plaintiff to the Home Office in the manner and to the extent required by blanks furnished by the Company, and were approved by said defendant, and of this the said plaintiff puts herself upon the country.

And to the plea of the defendant by it thirdly above pleaded, the said plaintiff says that she ought not to be barred from having or maintaining her aforesaid action thereof against the said defendant, because she says

that she did not seek to injure or defraud the said defendant, and that she did not cause the death of the said Thomas McCarthy, as in said plea alleged, and of this the said plaintiff puts herself upon the country.

And to the plea of the defendant by it fourthly above pleaded, the said plaintiff says that she ought not to be barred from having or maintaining her aforesaid action thereof against the said defendant, because she says that she did not conspire with others to cause the death  
 10 of the said Thomas McCarthy, and that she did not cause the death of the said Thomas McCarthy, as in said plea alleged and set forth. And of this the said plaintiff puts herself upon the country.

And as to the plea of the defendant by it fifthly above pleaded, the plaintiff says that she ought not to be barred from having or maintaining her aforesaid action thereof against the said defendant, because she says that she did not seek nor procure the death of the said Thomas McCarthy, as in said plea alleged and set  
 20 forth, and of this the said plaintiff puts herself upon the country.

---

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 Court to be holden at New Brunswick in and for the County of Middlesex, on the first Tuesday of April, in the year of our Lord  
 30 one thousand nine hundred and six, by whom, &c., and the same day is given to the parties aforesaid there, &c.

And now at this day, to wit, the first day of June, 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 hi srecord and before him in these words, to wit,

Afterwards, that is to say, that on the twenty-first day of May, nineteen hundred and six, in the Circuit Court held at New Brunswick, in and for the County of

Middlesex, by his Honor J. Franklin Fort, Esq., Justice of the Supreme Court in the State of New Jersey, comes as well the within named plaintiff as the within named defendant, by their respective attorneys within mentioned, and the jurors of the jury, whereof mention has been made, being sworn, also come, who, to speak the truth of the matters within contained, being chosen, tried and sworn, upon their oaths say that the defendant, The Metropolitan Life Insurance Company, did undertake and promise in manner and form as the said plaintiff, Annie McCarthy, hath in her said declaration alleged. 10

And they assess the damages of the said plaintiff by the reason of the non-performance of the said promise and undertaking, over and above the costs and charges by her about her suit in this behalf expended, at the sum of two thousand and twenty-three dollars and nine cents, and for costs and charges.

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 two thousand and twenty-three dollars and nine cents, and also fifty-seven dollars and thirty-eight cents for her costs and charges 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 two thousand eighty dollars and forty-seven cents. 20

Judgment signed the first day of June, A. D. nineteen hundred and six.

WM. S. GUMMERE, C. J. 30

I, William Riker, Jr., Clerk of the Supreme Court of the State of New Jersey, do certify that the foregoing is a true copy of the judgment entered in the above stated cause as the same remains of record in my office.

In testimony whereof I have set my hand and the seal of said Court, at Trenton, this fifth day of June, A. D. nineteen hundred and six.

(L.S.)

WM. RIKER, JR., Clerk,

ADDITIONAL PLEA FILED BY ORDER OF  
HIS HONOR, JUSTICE FORT.

And the said defendant for a further plea in this behalf as to the first count of said plaintiff's declaration, by like leave of the Court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, comes and craves oyer of the said supposed contract or policy in said declaration mentioned, and it is read, and also craves oyer of  
 10 the first condition referred to on the first page of said contract, and it is read in these words: "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." Which being read the said defendant says that it ought not to be charged with the amount alleged to be due and owing upon said supposed contract, because the said defendant  
 20 says that the said Thomas McCarthy in said declaration and contract mentioned did die by his own hand and act within one year from the issue of said contract or policy, 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, except as to said premiums.

WILLARD P. VOORHEES,  
Attorney of Defendant.

# New Jersey Supreme Court.

MIDDLESEX COUNTY CIRCUIT.

---

ANNIE McCARTHY, Admx., &c.  
 vs.  
 THE METROPOLITAN LIFE INSUR-  
 ANCE COMPANY,

---

10

Thursday, May 17, 1906.

Before Hon. J. Franklin Fort, J., and a Jury.

For the Plaintiff appear George S. Silzer and  
 John A. Coan.

For the Defendant appears Willard P. Voorhees.

20

Mr. Voorhees: I desire to file an additional plea under one of the conditions in the policies, setting up the first condition in the policy, which seems to be quite in line with the proof, which is, having craved oyer of the policy, in these words: "If the insured within one year from 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."

30

Mr. Silzer: I object to that on the ground of surprise, and that the defendant is guilty of laches for not having applied sooner to amend the plea.

The Court: This amendment is a matter in the discretion of the Court. The 126th section of the Practice Act provides that "In order to prevent the failure of justice by reason of mistakes and objections of form, the Court or a judge at all times may amend all defects and errors in any proceeding in civil actions," &c. That is discretionary.

The 123d section provides that:

“Any pleading may be amended as of course and without prejudice to the proceedings already had, at any time, before a pleading in answer thereto has been filed; and in such case a copy of the amended pleading shall be served on the adverse party within five days after filing the same, who shall plead thereto in twenty days after such service.” And then the 124th section provides that “the adverse party shall have twenty days  
10 to plead to the amended pleading; but all such amendments shall be made by leave of the Court or a judge and upon terms.”

I think it is prejudicial and against the proper administration of justice to permit insurance companies to come into court, and make amendments on the day of trial. I regret to say that I am in the minority on that question in the court above, and this will raise the question, which we have had up a number of times lately, squarely and fully, and I think I will raise it. I decline  
20 to allow this amendment to be made.

The amended plea may be filed.

The amended plea is then filed and marked Exhibit D 1.

Mr. Silzer opens for the plaintiff.

Mr. Silzer: I offer in evidence Policy No. 56588891 of the Metropolitan Life Insurance Company on the life of Thomas McCarthy, of South Amboy, New Jersey, for the sum of \$1000, payable to Annie McCarthy,  
30 his wife, dated May 12, 1905, together with the receipt attached, for the payment of the first premium, to which I understand there is no objection.

Admitted and marked Exhibit P 1.

Mr. Voorhees: The application should go in as part of that, because it should be one paper.

The Court: The application is in the pleading and ought to go in.

Mr. Silzer: Whatever is there is all I have.

Mr. Voorhees: By the terms of the policy the appli-

cation is made a part of it, and therefore we should have the whole paper. That is my insistent.

The Court: I suppose it is for Mr. Silzer to say whether he wants it or not.

Mr. Silzer: I offer the policy as it stands, and it has been admitted.

Mr. Voorhees: I object, because it says that he should have the paper—"in consideration of the answers, &c., in the application, a copy of which is hereto annexed."

10

Mr. Silzer: It is annexed.

The Court: Here it is.

Mr. Voorhees: That is only a copy. I have the original.

The Court: Let the original go in if there is any difference.

Mr. Voorhees: Where there is a variance then the original application controls (citing a case).

The Court: Yes, but that was not on a policy of insurance; that was a policy of a surety company.

20

Mr. Silzer: I call upon Mr. Voorhees to produce the proofs of death filed. Have you them?

Mr. Voorhees: I have.

Mr. Silzer: Will you produce them?

Mr. Voorhees: They are produced.

Mr. Silzer: I offer in evidence the proofs of death of the insured, made by the plaintiff in this case, Annie McCarthy, the widow of Thomas McCarthy, deceased, on blanks furnished by the company, and now produced by the company on the call of the plaintiff's counsel.

30

Mr. Voorhees: I object to that offer without proofs of the signatures, etc.

The Court: I understand that the paper was produced by the defendant on the call of the plaintiff's counsel.

Mr. Voorhees: This is all the paper we have, and I do not think it is sufficient proof.

The Court: I will admit the paper in evidence.

Plaintiff's counsel prays exception to this ruling of the Court.

Mr. Silzer: I want to advise Mr. Voorhees of the fact that I asked for interrogatories on this very subject. Your Honor will remember the discussions we had on that subject?

The Court: Yes.

Mr. Silzer: It was stated distinctly, in open court, that these proofs of death were to be admitted without  
10 proof.

The Court: The Court admits them in evidence. I understood there was an understanding had in my presence in open court some days ago, when these interrogatories were up, that the defendant would produce the proofs of death, and that they should be admitted in evidence.

Mr. Voorhees: Did your Honor understand it to that extent?

The Court: I so understand it; you may not have  
20 thought that.

Mr. Voorhees: If your Honor understood it that way, I withdraw my exception.

The paper referred to is marked Exhibit P 2.

Mr. Silzer: I now call upon Mr. Voorhees for a letter written to the Metropolitan Life Insurance Company, dated March 26, 1906, and signed "John A. Coan."

Mr. Voorhees: If the Court please, I have the letter here somewhere, but I am willing that a copy be used.  
30 But I object to the offer of the letter as incompetent and not relevant to the issue, and as something that has occurred since the suit was commenced.

The Court: I do not see how a letter from Mr. Coan can get in at this time. I may know who Mr. Coan is as an individual, but I do not know him judicially, nor do I know what connection he may have with this transaction.

Mr. Silzer: I am ready to follow it up by proof that he is the attorney of record.

The Court: I do not think you can put this in in the form you now offer it.

*John A. Coan*, sworn in behalf of plaintiff.

*Direct Examination*, by Mr. Silzer.

Q. Mr. Coan, You are and were on March 26th last the attorney of Mrs. McCarthy, the plaintiff?

A. I was.

Q. Did you on that date write a letter to the Metropolitan Life Insurance Company? A. I did.

Q. (Indicating.) Is this the letter you wrote?

A. This is a carbon copy of a letter that was written 10 by me.

Q. Had you any reply to that? A. I had no reply except the registered receipt.

Q. That is attached to the letter?

A. That is attached to the letter.

Q. And the original of which Mr. Voorhees says he has? A. Yes.

*Cross Examination*, by Mr. Voorhees.

Q. You say you are the attorney of Mrs. McCarthy? 20

A. I am the attorney by substitution.

Q. Have you been substituted in this case?

A. Yes, sir.

Q. When? I was substituted in the case along in the latter part of 1905.

Q. John A. Lovely was the attorney of record?

A. He was the attorney of record, and Mr. Silzer and myself were substituting.

Q. Has any notice of substitution been served on us?

A. I think not. 30

Q. There has been none filed? A. No.

The paper referred to is again offered in evidence.

The Court: I do not see how it is admissible. There has been no attack made on the proofs of death. It may become material later.

Mr. Silzer: I am willing to get it in in rebuttal to show that proofs have been made. Mr. Voorhees, have you the policy 20884360?

Mr. Voorhees: I have a policy of that number. I presume the one you gave me notice to produce, wasn't it?

Mr. Silzer: Yes, sir.

Mr. Voorhees: I will look and see what I have. I have 20884360.

Mr. Silzer: That is the one.

10 Mr. Voorhees: I have the policy here; I do not refuse to produce it, but if counsel takes it with the idea of offering it in evidence, I object to that.

The Court: I do not know what he proposes to do with it.

Mr. Voorhees: Counsel for defendant hands the policy requested to the plaintiff's attorney.

Mr. Silzer: I call upon you to produce the proofs of death furnished under this policy.

Mr. Voorhees: The proofs of death concern both of them.

20 Mr. Silzer: I am calling on you for proofs of death under policy 20884360.

Mr. Voorhees: Counsel for defendant replies that he has the proofs of death under the policy mentioned, but they also comprise the proofs of death under another policy, namely, 23627358, which has also been demanded of the defendant's attorney.

The Court: I suppose it is proper to offer either one or both, as they apply to each.

30 Mr. Voorhees: Counsel for defendant delivers to plaintiff's counsel the proofs of death which were demanded, or a paper purporting to be the proofs of death demanded under the two policies last mentioned, the premium receipt book, the applications,—

Mr. Silzer: (Interrupting.) I object to this.

The Court: The simple question is will you answer the call and deliver the paper called for?

Mr. Silzer: I also call upon you for the release and the check showing the payment of this policy.

Mr. Voorhees: I have given it to you already.

Mr. Silzer: I now offer in evidence policy of the Metropolitan Life Insurance Company, No. 20884360, on the life of Thomas McCarthy, for the sum of \$178.50, dated February 24, 1902, together with the proofs of death made under that policy, and the receipt of Mrs. McCarthy for the payment of that money, all produced by the defendant.

Mr. Voorhees: I object to the offer of these unless the other policy goes in with them, because it is an inherent part of it. 10

The Court: On what theory are these admissible at all?

Mr. Silzer: They are proofs of death, similar to the proofs of death now objected to.

The Court: You haven't anything to do with that. All you have to do is to offer the policy and rest.

Mr. Silzer: I withdraw the offer for the present then.

Plaintiff rests. 20

Mr. Voorhees: I move for a non-suit.

The Court: Why?

Mr. Voorhees: Because there is nothing here to show that the party is dead.

The Court: I supposed that was admitted.

Mr. Voorhees: No, I don't admit anything.

The Court: Go on and prove that if there is any question about it. 30

---

*John J. Scully, sworn in behalf of plaintiff.*

*Direct Examination, by Mr. Silzer.*

Q. Do you know Thomas McCarthy, who lived on Stockton street, South Amboy? A. Yes, sir.

Q. What is your business? A. Undertaker.

Q. Do you know his wife, Annie McCarthy, who lived there? A. Yes, sir.

Q. Is Thomas McCarthy living? A. No, sir.

Q. When did he die? A. June 14th.

*Cross Examination*, by Mr. Voorhees.

Q. What year? A. 1905.

Q. How do you know?

Witness: How do I know?

Mr. Voorhees: Yes.

A. I buried him.

10 Q. You buried him? A. Yes.

Q. You were the undertaker, were you? A. Yes, sir.

Q. And where did you bury him? A. In St. Mary's Cemetery, South Amboy.

Q. You had charge of the funeral? A. Yes, sir.

Q. Yourself? A. Myself and man, yes.

Q. Were you present? A. Yes, sir.

Q. You saw the body? A. Yes, sir.

Q. And what day was he buried? A. The 16th of June.

20 Q. The 16th of June? A. Yes, sir.

Q. Where did the body remain from the time of his death up to the 16th of June? A. In St. Mary's Cemetery, South Amboy.

Q. No, you misunderstand me. Where did his body remain from the 14th of June to the 16th of June?

A. Oh! In the house of Mrs. McCarthy.

Q. You say he died on the 14th? A. Yes, sir.

Q. When were you called in? A. At five o'clock in the morning of the 14th.

30 Q. Who was there? A. Oh, I don't know, couldn't say; didn't notice who was there; I don't take notice of those things.

Q. Did you have charge of the body from that time until the time of its burial? A. Yes, sir.

Q. Where was it kept?

Witness: Where was the body kept?

Mr. Voorhees: Yes.

A. In Mrs. McCarthy's house, or Mr. McCarthy's house.

Q. How? A. On ice.

Q. What plot was he buried in? A. I presume it was his own plot; I don't know.

Q. Do you know the number of it? A. No; no numbers there.

Q. You know exactly where it was, do you not?

A. Yes, sir.

*Re-Direct Examination*, by Mr. Silzer.

Q. This lady sitting here (referring to the plaintiff), is she the widow of the deceased, Thomas McCarthy? 10

A. Yes, sir; Mrs. Annie McCarthy.

Q. The plaintiff in this suit? A. Yes, sir.

Plaintiff rests.

---

Mr. Voorhees opens for defendant.

Mr. Voorhees: The premiums were to be paid quarterly, and less than four weeks after that we find that Thomas McCarthy is dead. Previous to that, as counsel has shown, Mr. McCarthy had two policies of insurance in this same company, issued by it, but they were older policies, and these policies were paid by the company, as counsel has shown, promptly, but during the investigation of the matter of Mr. McCarthy's death, information came to the company that his death— 20

Mr. Silzer: (Interrupting.) I object to this broad intimation.

The Court: He proposes to prove it, I suppose. If he intends to prove— 30

Mr. Silzer: (Interrupting.) What they did I do not think is objectionable, but I think hearsay is objectionable.

The Court: Oh, in opening I cannot limit counsel.

Mr. Voorhees: I say circumstances arose that led the company to believe that this death should be investigated, and the death was investigated; it was brought to the knowledge of the public authorities, and his body, which had been buried in St. Mary's Cemetery, as has been detailed to you, was, on or about the middle of

October, 1905, exhumed, and an examination was made by physicians, and a chemical analysis was made, and in that body was found arsenic distributed throughout the organs of the body, in the heart, the stomach, the kidneys, and the liver, enough, as we shall show you, to kill many more than one man. And we shall show you that the symptoms with which this man was attacked were those attending poisoning of that character. And we will show you that arsenic was there. Now, if that

10 arsenic was administered by or in complicity with the plaintiff in this case, this company ought not to pay this claim; and that is what you gentlemen are to investigate here in this suit, simply the facts whether there was arsenic administered which caused his death, and the complicity of the plaintiff in this case. If we satisfy you of those facts, we shall ask you to give a verdict for the defendant.

Mr. Silzer: I move that the defendant be called on the ground that his opening shows no defense to the

20 action whatever. He has made no statement of fact offering to show any defense to which he has pleaded in this case, and I therefore move that the defendant be called.

The Court: Why?

Mr. Silzer: He has not shown anything in his opening under one of those pleas which would justify us in—

The Court: (Interrupting.) His opening is, in effect, that the deceased came to his death either by the hand of the beneficiary under this policy, or by her con-

30 spiracy or connivance with others.

Mr. Silzer: He makes no offer to prove that. He says, "It will be for you to investigate."

The Court: I know of no practice which permits the Court to do that on an opening. I think some judges do it, but I never have.

(After further argument.)

The Court: The motion is denied.

Mr. Silzer: Your Honor will permit me an exception.

The Court: No; it is entirely within the discretion

of the Court. He need not have opened at all, if he did not care to. The pleas are here. You know what the issue is.

Mr. Silzer: I desire to make an additional motion, to call upon the defendant to open more fully his defense to this case, in such a way as to show the defense under the pleas.

The Court: He may do so if he desires. The Court will not direct him to.

Mr. Silzer: Will your Honor grant me an excep- 10  
tion?

The Court: No. Proceed.

---

*John J. Scully*, recalled in behalf of the defendant.

*Direct Examination*, by Mr. Voorhees.

Q. You have already been sworn? A. Yes, sir.

Q. And you have stated that you were the under- 20  
taker that buried Thomas McCarthy—

A. (Interrupting.) Yes, sir.

Q. On the 16th of June, 1905? A. Yes, sir.

Q. Now, subsequent to that did you have anything to do with the exhuming of the body of Thomas McCarthy? A. Yes, sir.

Q. When did that occur? A. That was on the 13th of October.

Q. 1905? A. Yes, sir.

Q. Was he exhumed? A. Yes, sir. 30

Q. Were you present? A. Yes, sir.

Q. And was the body taken out of the grave?

A. Yes, sir.

Q. Where was it taken to? A. Taken to my morgue.

Q. How do you know it was the body of Thomas McCarthy? A. It was recognizable.

Q. How had you treated the body for burial?

Witness: Do you mean preserve the body?

Mr. Voorhees: Yes.

A. Simply put it on ice.

*Q.* And had you injected anything at all? *A.* No, sir.

*Q.* There was no embalming process whatever?

*A.* No, sir.

*Q.* How was it taken to your place? *A.* In the casket, just as he was buried.

*Q.* Who were present at that time?

*Witness:* At the autopsy, do you mean?

*Mr. Voorhees:* Yes.

*A.* I don't know the gentlemen by name, but there is  
 10 a couple of them over there (indicating). Dr. Smith and the chemist—I don't know his name—and that gentleman there, Dr. Haines, and Dr. Carroll the county physician, myself and my man. Detective Murphy, he was there, and Prosecutor Berdine.

*Q.* And Dr. Deghuee? *A.* Yes, sir.

*Q.* Dr. Haines and Dr. Carroll, did you say?

*A.* Yes, sir.

*Q.* And yourself and man? *A.* Yes, sir.

*Q.* Was the Prosecutor there? *A.* He was there; he  
 20 wasn't present inside; he couldn't stand the stench.

*Q.* You say you recognized this body? *A.* Yes, sir.

*Q.* What was done?

*Witness:* What was done?

*Mr. Voorhees:* Yes.

*A.* I took the lid off the casket, and the gentlemen opened the body up for them to do the work.

*Q.* What did they do and who did it?

*A.* Drs. Carroll and Haines.

*Q.* What did they do? *A.* Opened the body.

*Q.* Was Dr. Deghuee present? *A.* He was in the  
 30 room.

*Q.* Dr. Smith, too? *A.* Yes; Dr. Smith wasn't present all the time; in and out.

*Q.* The others were present all the time? *A.* Yes.

*Q.* When they opened the body, what was done?

*A.* Opened the stomach down with a knife, cut it open, and took whatever they were after away.

*Q.* Did they take something away? *A.* Yes.

*Q.* And how did they take it? *A.* Took it in glass jars.

*Q.* Did you see them put it in? *A.* Yes.

*Q.* How many glass jars? *A.* I think it was four; I am not positive about that; four or five.

*Q.* Were they sealed up? *A.* That I couldn't tell you; I wasn't present.

*Q.* What became of the glass jars? *A.* I couldn't tell; Dr. Deghuee took them away.

*Q.* Then what was done with the body? *A.* I took it back and buried it.

*Cross Examination*, by Mr. Silzer.

10

*Q.* Did you recognize the face when you took up the body? *A.* Yes.

*Joseph A. Deghuee*, sworn in behalf of defendant.

*Direct Examination*, by Mr. Voorhees.

*Q.* Doctor, where do you live? *A.* In New York City, Borough of Brooklyn. 20

*Q.* May I ask how old you are? *A.* Thirty-six.

*Q.* And what is your profession? *A.* I am a chemist.

*Q.* And where do you carry on that profession?

*A.* At No. 518 Fifth avenue, New York City, at the Letherly Laboratories.

*Q.* And where were you educated? *A.* At Columbia University; graduated from there in 1890.

*Q.* Did you take a degree there? *A.* I took the degree of \_\_\_\_\_ of philosophy, and then I took a post graduate course and obtained the degree of doctor of philosophy. 30

*Q.* Since your graduation have you been constantly engaged in the practice of your profession? *A.* I have.

*Q.* Have you other degrees besides the ones named?

*A.* I have the degree of master of arts, which I also took in a post graduate course.

*Q.* In the course of the practice of your profession had you made a specialty of any particular branch of it?

*A.* I have; of physiological chemistry, toxicology and general sanitary chemistry.

*Q.* And do you turn your attention to that branch principally? *A.* I do.

*Q.* How long have you been turning your attention to that branch? *A.* For sixteen years, or ever since I graduated.

*Q.* Did you make any examinations of bodies for poison? *A.* I have, quite a number, yes.

*Q.* Did you go to South Amboy in October, 1905?

*A.* I did.

10 *Q.* Do you know what date it was?

*A.* It was on October 13th.

*Q.* Why did you go there? *A.* I went in response to a telegram and on the request of Professor Smith, of Rutgers College, asking me to go there at an autopsy.

*Q.* And did you go? *A.* I did.

*Q.* Who did you see there? *A.* I saw Professor Smith, Dr. Haines and Dr. Carroll and Mr. Berdine the District Attorney, and Mr. Scully, who I was informed was an undertaker.

20 *Q.* That is the gentleman who was on the stand just now? *A.* The same.

*Q.* You recognized him? *A.* Yes.

*Q.* Where did you first go and what did you do there?

*A.* We went from the railroad station to Mr. Scully's establishment in South Amboy, and then went up into the upper floor of Mr. Scully's barn, where a coffin was standing with a body in it; and then Drs. Haines and Carroll performed the autopsy, turning over the organs to me, which I placed in sealed jars and took to New York with me.

30 *Q.* Did you see the organs taken? *A.* I saw them taken from the body. The organs taken were the bladder, the kidney, the heart, the stomach, the intestines and the liver.

Mr. Silzer: Are you referring to a book?

Witness: I am referring to my note book, yes.

Mr. Silzer: It seems to me that the witness should not be permitted to refer to a book until we have ascertained what it is.

The Court: You may examine him. I suppose he is only giving a list of the organs taken.

Mr. Silzer: I object to his reading from a book.

The Court: If you wish to examine him as to the memorandum you may do so.

Mr. Silzer: As the case stands now I object to his reading from the book.

The Court: Proceed. It does not appear that he is reading.

Mr. Silzer: Were you reading from a book? 10

Witness: I was reading from my note book.

Q. (By Mr. Voorhees.) You have a note book?

A. I have.

Q. That you made in this case? A. That I made in this case.

Q. When? A. I started the note book on October 13th, at the time I went to the autopsy, and kept on making notes in it through my work in the case.

Q. And those are your original notes? 20

A. Original notes.

*By the Court.*

Q. Made at the time that you did the work concerning which the entry was made? A. Yes.

*By Mr. Silzer.*

Q. The notes you are reading now, were they made at South Amboy or after you got back? A. These notes were made just after I got back to New York. 30

Q. And the other memoranda that you have in there, I suppose after you got through with your day's work probably you would not attend to it for some days later.

A. Oh, no; the memoranda were all made at the time that the entries were made, at the time I was doing my work; I had the note book with me all the time.

The Court: Proceed.

Q. Where did you take them? A. I took them to the laboratory, 518 Fifth avenue, New York City.

Q. Did you subsequently make an examination of those organs? A. Yes, sir.

Q. Will you state what you found?

Mr. Silzer: I object to that, on the grounds that he has not yet shown himself to be an expert.

The Court: You may cross examine him if you wish to.

*By Mr. Silzer.*

10 Q. How many bodies did you ever examine for poison? A. I can't say exactly; perhaps a dozen or twenty.

Q. A dozen or twenty? A. About that.

Q. That's as near as you can get to it?

A. About that, as near as I can say.

Q. What were those poisons? A. Arsenic—

Q. (Interrupting.) How many?

The Court: Don't interrupt the witness; let him finish his answer.

20 Witness: (Continuing.) Arsenic, atropine, strychnine, morphine.

Q. Cyanide? A. No, I never had a case of cyanide poison. To the best of my recollection that covers it.

Q. How many cases of arsenic? A. I have never kept any record; perhaps—

Q. (Interrupting.) Not perhaps; the best of your recollection. A. Well, to the best of my recollection, I should say four or five.

30 Q. How recently? A. Well, the one before this was about a year before; it would be a year and a half now.

Q. When did you have one before that? A. I had several coroners' cases while at the College of Physicians and Surgeons, about eight or nine years before that, and scattered through two or three years to that time.

Q. Eight or nine years ago you had some coroners' cases? A. Yes.

Q. What did you do in those cases?

A. Examined for poison.

Q. Examined for poison? A. Yes.

Q. And then you had none after eight or nine years ago until one about a year ago? A. Yes.

Q. Among these poisoning cases did you work for the Metropolitan Insurance Company, before or afterwards? A. Never.

Q. Your specialty, Doctor, has rather been in other lines; you have only one case of arsenic examination in eight years.

A. When I give the cases, they were specific, outside cases. Of course I have made examination for arsenic very frequently. Those are all the bodies I had. I never made a specialty of taking criminal cases. I had toxicology for six years at the College of Physicians and surgeons. 10

Q. I say your specialty has been away from arsenical poisoning and its effect upon the human body, at least for the last eight years, except for the one case you had?

A. I won't say it drifted away; the cases never came to me.

Q. What do you call those coroners' cases? Were they examined by other physicians? A. No; I meant they were cases of suicide, or investigation as to the cause of death. 20

Q. Were they carried on in your laboratory entirely and under your own direction? A. They were.

Mr. Silzer: That is all.

*Further Direct Examination, by Mr. Voorhees.*

Q. You have in your laboratory specimens sent there for analysis, do you not? A. I do. 30

Q. And your estimate of fifteen or twenty bodies I understood to refer to bodies classed and examined in the manner that this was; is that so?

Mr. Silzer: I object to that as leading.

The Court: Oh, no. We are trying to get at his knowledge. I do not see any objection to that question.

(Question read by the stenographer.)

A. Yes; when I gave the number of cases I meant

cases which were sent in to me by outside parties for examination or investigation as to the cause of death, as in coroners' cases, or where there was some suspected criminal intent, irrespective of experimental work or analyses made for instruction or analyses made in the ordinary course of laboratory work, which were not necessarily human bodies.

Q. Now, excluding the cases which were made in the line that this case was made, tell me your experience in  
10 reference to those other cases.

Witness: In making examinations for poisons generally?

Mr. Voorhees: Yes.

Witness: And not necessarily of human organs?

Mr. Voorhees: Yes.

Mr. Silzer: I object to that, the question being as to arsenical poisoning.

The Court: Why do you need that?

20 Mr. Voorhees: Do not think I do need it, but I want to show the Doctor's general knowledge of the subject.

Mr. Silzer: I renew my objection on the grounds stated.

The Court: The Court thinks the Doctor is qualified to testify as an expert. You may go on, Mr. Voorhees.

Mr. Silzer: Will your Honor grant me an exception?

30 The Court: You may have an exception, but I think you know very well it will do you no good in a case of this class.

Q. Now will you state what you found?

A. I found arsenic to be present in all the organs taken and examined.

Q. Did you ascertain the amount of arsenic?

A. I did. I found in the bladder 0.00957 grains; in the kidney 0.0765 grains; in the heart 0.0183 grains; in the stomach 0.00835 grains; in the intestine 0.1015

grains; in the liver 1.5 grains, and in the abdominal tissue 0.01915 grains.

*Q.* And what is the total? *A.* Making a total of 1.73337 grains.

*Q.* When you say you found that, was that what was weighed?

*A.* Not in all cases, no. It represents the equivalent of what was weighed. In all cases I used a portion of the sample for a qualitative analysis, and then used another portion for the quantitative work, and then calculated the total amount from the amount actually weighed. In case I used one-half of the total amount I doubled the amount weighed, and in case I used one-third of the amount I trebled the amount weighed in order to get the total. 10

*Q.* Did you examine the contents of the stomach?

*A.* Well, there was no stomach contents strictly speaking; there was only the tissue of the stomach left, and if any of the contents was present it was a mere film on the surface of the tissue. I examined the stomach lining with a glass, looking for solid portions of any possible poison and failed to find them. 20

*Q.* And what you found was where? *A.* Was in this stomach tissue. We generally have the contents adhering to it; that simply taken as a whole and treated, and this amount found refers to that.

*Q.* Did you examine the bones? *A.* I did not; I did not take any samples of the bones.

*Q.* Or the muscles? *A.* None of the muscles proper, no. 30

*Q.* In this determination, can you say whether you obtained all the arsenic that was in that body?

*A.* No, I cannot.

*Q.* Well, did you? *A.* No, I—in my opinion I did not.

Mr. Silzer: I object.

The Court: That is the only possible answer he could make to the question. The witness is an expert; he is giving his opinion. If you had objected

to the question I might have ruled out the question, but your objection came too late.

Plaintiff's counsel pray an exception to this ruling of the Court, and the same is allowed and sealed accordingly.

Judge.

*Q.* Now do you know about what in weight was the proportion of the body which you examined to the whole weight of the body? *A.* No, I do not.

10 *Q.* Do you know about what the organs that you examined weighed? *A.* No, not—no, I couldn't say that, not with any degree of accuracy.

*Q.* Well, can you come within a pound of it?

*A.* No; I would not care to make an estimate of that.

*Q.* Well, did you examine a large or a small proportion of the whole weight of the body?

Mr. Silzer: I object to that on the ground that he has already stated what he examined.

20 The Court: Yes. I do not think it is competent to show only what he did examine.

*Q.* Do you know, Doctor, the amount of arsenic which is a fatal dose?

Mr. Silzer: Do you know, is the question; that's all.

The Court: Yes.

*A.* Not from personal experience. I do from the authorities, yes.

30 *Q.* In your profession or what you have acquired in your profession? *A.* Yes, sir.

*Q.* In your opinion, finding in the organs examined a total of one and practically three-quarters grains, as you have given it to us, was there or was there not more arsenic in that body?

Mr. Silzer: I object.

The Court: I hardly think that ought to be admitted, not as I see it now. What he found is in evidence, and I do not think we may speculate as

to what was in other parts of the body or what may have been in other parts of the body. You see the stomach and the liver, and the bladder and the kidneys and the heart and the intestines were all examined.

Mr. Voorhees: Yes; but there are still the brain, the bones, the muscles and the tissues.

The Court: Yes; but unless I have some further evidence showing that that is ascertainable scientifically, I will not permit it.

(Question read by the stenographer.)

10

The Court: I do not see that it is necessary to the case. I think I will exclude it at this time unless there is something further that justifies its admission.

Mr. Voorhees: Your Honor will allow me an exception?

The Court: Yes.

Q. In a body which has had arsenic administered during life, is all of that poison found in the organs which you examined? A. It is not. 20

Q. To the exclusion of the rest of the body?

A. It is not.

Q. Where is arsenical poisoning absorbed and where can it be found—in what parts of the body I mean?

Mr. Silzer: This is subject to the same objection, that the witness has not shown knowledge sufficient to justify him to testify on this particular subject.

The Court: I rather think he has shown that, Mr. Silzer. Of course he has been confining himself to the examination he made as an analytical chemist. 30

Mr. Silzer: There is nothing here to show that he had any knowledge at all on this subject.

The Court: If you are not satisfied you may examine him.

*By Mr. Silzer.*

*Q.* You have not seen arsenic administered to persons and examined the body after, have you?

*Witness:* Human beings?

*Mr. Silzer:* Yes.

*A.* No.

*Q.* All that you have gotten is practically from hearsay, isn't it? *A.* No, I have seen—

*Q.* (Interrupting.) You—

10

The Court: Don't interrupt the witness.

*Witness:* (Continuing.) I have seen arsenic administered to animals and have examined the organs of the animals afterwards. I never saw it administered to a human body.

*Q.* How frequently have you seen it administered to animals? *A.* About a dozen times.

*Q.* Covering what period? *A.* From 1890 to '96, twice each year.

20

*Q.* Is there any difference in the action of arsenic administered to an animal and arsenic administered to a human being? *A.* There is in some animals, yes.

*Q.* And individuals differ, too, don't they? *A.* Yes.

*Q.* And with the exception of animals—that is the only practical personal experience you have had coming under your own observation, of the giving of arsenic and watching the result on the body afterwards?

*A.* That is all.

30

*Mr. Silzer:* I insist that the witness is not qualified to answer.

*Mr. Voorhees:* That is all the knowledge anybody has, isn't it, Doctor?

*Mr. Silzer:* I object.

The Court: Now what is the question?

(The stenographer reads Mr. Voorhees' last question, as follows: "Where is arsenical poisoning absorbed and where can it be found—in what parts of the body, I mean?")

*Mr. Silzer:* I object.

The Court: I will permit the testimony.

Plaintiff's counsel pray an exception to this ruling of the Court, and the same is allowed and sealed accordingly.

Judge.

*A.* It is found in the stomach, the liver, intestines, the bladder, the kidneys, the heart, the brain, in the muscles, and sometimes in the bones.

*Q.* Have you ever known of a case where poison has been administered that it was confined in its appearance to the organs which you examined? 10

Objected to.

The Court: How could he answer that question the way you put the question?

Mr. Voorhees: I will withdraw that question.

*Q.* When arsenical poison is administered to the system what becomes of it?

Same objection. 20

Same ruling.

Plaintiff's counsel pray an exception to this ruling of the Court, and the same is allowed and sealed accordingly.

Judge.

Witness: What becomes of the arsenic?

Mr. Voorhees: Yes.

*A.* A portion of it is usually thrown off from the body. Arsenic being an irritant poison it produces nausea and irritation of the stomach, and some of it is usually thrown off by vomiting. Another portion will remain in the stomach, especially if given in solid form, will adhere to the lining of the stomach. Other portions go into the intestines, and other portions will be absorbed in the circulation of the system; and it has a tendency to concentrate in the liver. Also portions will be absorbed by other organs of the body, practically be scattered throughout the whole body after it once gets into circulation. 30

*Q.* And some will pass off?

*A.* And some will pass off.

Q. You found 1.73+ grains in the organs that you examined. What is your opinion as to what was in the remainder of the body? A. Well, there must have been something more than that in the whole body, but how much more I couldn't say.

Q. In your opinion, the amount that you found distributed as you have mentioned, would that be a sufficient contributing agency to produce death?

Objected to.

10

The Court: Would the amount of arsenic he discovered in the body cause death—is that the question?

Mr. Voorhees: Yes.

The Court: I think that is permissible.

Plaintiff's counsel pray an exception to this ruling of the Court, and the same is allowed and sealed accordingly.

Judge.

20 A. It was sufficient to cause death.

*Cross Examination*, by Mr. Silzer.

Q. Doctor, there are various processes—

The Court: (Interrupting.) Just a moment. The question that was objected to a while ago by you, Mr. Voorhees, to the ruling of the Court on which an exception was allowed you, has been practically answered by these latter questions, has it not?

30

(By direction of the Court the stenographer reads the record, beginning with the question, "In your opinion, finding in the organs examined a total of one and practically three-quarters grains, as you have given it to us, was there or was there not more arsenic in that body?" and ending with the granting of an exception to Mr. Voorhees to the ruling of the Court.)

The Court: In order that that may be out of the record the Court will now admit that question.

Q. (Read by stenographer.) "In your opinion, find-

ing in the organs examined a total of one and practically three-quarters grains, as you have given it to us, was there or was there not more arsenic in that body?"

A. Yes, there was.

The Court: Now you may proceed with the cross examination.

*Cross Examination*, by Mr. Silzer.

Q. What processes did you use in your chemical analysis? 10

Witness: Do you wish me to go into the details?

Q. Is it known as a certain man's process?

A. Well, not the process as a whole. Some of the individual tests are known by men's names, yes.

Q. Can you state first in a general way so that it can be recognized?

A. Why, yes. I treated the organs with hydrochloric acid and colored potash, filtered the resulting mass, passed sulphurated hydrogen, having reduced the solution by means of sulphurous acid and pouring out the excess sulphurous acid, then passed sulphurated hydrogen through the resulting solution. I filtered the precipitate from the liquid, dissolved that in acid—No, pardon me. I dissolved that in ammonia, reprecipitated that with acid, filtered off the precipitate, redissolved that the second time in ammonia, evaporated that down to dryness. I added a little sodium carbonate and nitrate, charred the mass. I took that up with hydrochloric acid and water, and in the case of the liver I precipitated by means of sulphurated hydrogen again, collected the precipitate, washed it with carbon bi-sulphide and weighed it. In the case of the other organs I placed the material in a Marsh apparatus—that is, a hydrogen apparatus—precipitated the arsenical mirror by means of a bruner in a hand glass tube, cut out the portion of the tube which contained the mirror, weighed that, dissolved out the mirror from the tube, washed the tube, cleaned it and dried it, and reweighed the tube—the difference in the two weights giving me the weight of the mirror. 20 30

*Q.* That was your process in your examination of all these portions of the body? *A.* That is a general line of the process, yes.

*Q.* In the course of your examination can you tell me the processes by the names they are known?

*A.* Well, these processes have been modified so frequently, I don't know that that general process has a name as a whole. The final test—precipitating with the mirror—is known as the Marsh test.

10 *Q.* Are there any other tests that you made?

*A.* Yes. In making the qualitative tests I made what is known as the Reinsch test.

*Q.* Any others? *A.* Well, there is a test named for the resulting precipitate obtained, the so-called Schiels-Greene test.

*Q.* Any others? *A.* No, I don't think the others have any names, at least that I recollect.

*Q.* Did you take the entire liver in making this examination, or a piece of it? *A.* I took the entire liver.

20 *Q.* But with the other organs you simply took a portion of them? *A.* No, I took the entire organ in each case.

*Q.* In the ultimate result wasn't it a matter of calculation—you did not see the arsenic, weigh the arsenic?

*A.* I started with the entire organs, but after I once obtained the solution I worked on, measured a portion of that solution.

*Q.* Well, you took the whole organ and dissolved it. You then took a portion of it? *A.* Yes.

30 *Q.* Then what you found in there you multiplied by the number of times the whole organ bore to that portion? *A.* Yes.

*Q.* So that as a matter of fact there was no weight of the organ, but was a matter of calculation?

*A.* Calculation based on the actual weight obtained.

*Q.* I say the total result is not by actual weight at all, but simply the result of calculation made by you?

*A.* Why, yes, naturally.

*Q.* Have you told us all that you found—have you told us everything that you found in your examination?

*A.* No; in the liver I found indication of the presence of lead.

*Q.* Why didn't you tell us that before?

*A.* I was not asked.

*Q.* You were asked to tell what you found, weren't you, by Mr. Voorhees? *A.* Yes.

*Q.* Why didn't you state that you found lead there?

*A.* Because at the moment I didn't think of it.

*Q.* Lead is a poison, isn't it? *A.* Yes.

*Q.* Comes into the body in various ways, doesn't it? 10

*A.* It does.

*Q.* How much lead did you find?

*A.* I didn't determine it.

*Q.* You didn't determine that? *A.* No.

*Q.* Did you find anything else there? *A.* No.

*Q.* Sure now? *A.* No other poison, no.

*Q.* What? *A.* I say no other poison.

*Q.* Have you been paid?

Witness: Have I?

Mr. Silzer: Yes. 20

*A.* Naturally, yes.

*Q.* Paid by the Metropolitan Life Insurance Company? *A.* I was not.

*Q.* Didn't the money come from there? *A.* I don't know. As far as I know—I didn't see the check that was given in payment, but my check came from the County of Middlesex.

*Q.* Don't you know, from your visit here, that that money was paid by the Metropolitan Life Insurance Company? *A.* No. 30

*Q.* Didn't you hear about that? *A.* No.

*Q.* Are you sure about that? *A.* No; I have been under the impression that it came from the county. I simply don't know one way or the other.

The Court: For whom did he do the work?

Mr. Silzer: The Metropolitan Insurance Company.

The Court: They may have paid the money.

*By the Court.*

*Q.* For whom were you making the analysis?

*A.* I was requested to make the analysis by Professor Smith, of Rutgers College, and he said that Mr. Berdine, the district attorney, was responsible.

*By Mr. Silzer.*

*Q.* You did not know at the time and have not known since that the parties really paying for it were the Metropolitan Insurance Company.

10 *A.* I did not know it and I don't know it now.

*Q.* What became of these portions of the body that you had?

Witness: What became of them?

Mr. Silzer: Yes.

*A.* After I got through with them there wasn't much left.

*Q.* None left at all? *A.* Yes, a portion of the solution was left, which I have locked up in the laboratory  
20 in New York, yes.

*Q.* A solution of which part? *A.* Portions of the solutions which were not used in making the tests.

*Q.* Those portions are still in existence?

*A.* They are still there, yes.

*Q.* And they are still in a condition where they can still be examined for arsenic, are they? *A.* Yes.

*Q.* What was put back in the body after you got through?

Witness: Put back in the body?

30 Mr. Silzer: Yes. Was there anything put back in the body after the analysis?

The Court: The analysis was made in New York.

*Q.* Was anything put back in the body? *A.* After the doctors gave me these orders I put them in jars and left the place. I don't know what became of the rest of the body.

*Q.* You did not send them back to be buried again?

*A.* No, I did not.

*Q.* You knew that you were going to search for arsenical poisoning when you took the organs to New York, didn't you? *A.* I did; I was directed to look for arsenic.

*Q.* And took the organs in which you would be most likely to find it? *A.* Yes, I took the organs usually taken in poison cases.

*Q.* Isn't it a fact that any additional arsenic that might be in the body would be infinitesimal?

*A.* I wouldn't call it infinitesimal; no. 10

*Q.* What would you call it?

*A.* It may be an arrivable amount.

*Q.* As compared with the rest it would be a very small portion, wouldn't it? *A.* It would probably be smaller than I found.

*Q.* Very much smaller? *A.* That I can't say.

*Q.* Why not? *A.* Because it depends partially upon what became of the stomach contents.

*Q.* Did you have the stomach contents in this case?

*A.* I did not. 20

*Q.* Where were they? *A.* Scattered through the coffin probably. These organs were in very bad condition; the stomach was one solid mass and the intestines were one solid mass, and the other organs were very much disintegrated.

*Q.* Decayed?

*A.* Partially decayed, yes, on the surface; and the stomach contents had practically run out; there were no stomach contents.

*Q.* I say the amount that would be absorbed by the rest of the body would be very small as compared with what you found in the particular organs that you examined for that particular purpose; isn't that so? 30

*A.* As far as I know, yes.

*Q.* Of course you could not say with any degree of certainty as to how much that would be without examination? *A.* How much there would be, no.

*Q.* What do you say the conditions of the stomach was when you saw it? *A.* The stomach was simply a mass of tissue.

*Q.* Decayed—soft? *A.* It was soft.

*Q.* Disintegrated? *A.* It appeared to be disintegrated, yes.

*Q.* Doesn't arsenic preserve a body? *A.* Sometimes, yes; usually it does; but in some cases it does not.

*Q.* Those are the unusual cases?

*A.* Comparatively so, yes.

*Q.* So that when you found what you did find there must have been other conditions which you don't usually find? *A.* Well, I don't believe the cause of that is very well known.

*Q.* So the conditions that you found there must have been conditions that you don't usually find? Just answer the question.

*A.* Well, it is rather an unusual condition, yes.

*Q.* So that the examination for results depends largely on what the previous conditions were, doesn't it, in the individual during his lifetime?

The Witness: I don't understand your question.

20 (Question read by the stenographer.)

*A.* Why, not at all; the finding of arsenic does not depend at all on the conditions of the organs.

*Q.* You say it makes no difference at all?

Witness: The finding of arsenic?

Mr. Silzer: My question is, taking the condition of finding an unusual situation, which you have just described, and bearing that in mind, I ask you if in your investigation for arsenic and its effects upon human life, whether those unusual conditions don't show that in one individual, and comparing that with another individual, that it makes a difference in getting any result at all?

*A.* I fail to grasp the question; I simply don't understand the question.

*Q.* You can't answer the question?

*A.* I simply don't understand it; no.

*Q.* Where you find any unusual condition, one which is not ordinarily found, does that not indicate to you that you would get different results from different individuals, depending upon their condition in lifetime, or

the condition of the stomach? *A.* I beg pardon; I don't know what you mean by result—what kind of a result?

*Q.* What result were you looking for?

*A.* I was looking for arsenic.

*Q.* That's what we are talking about.

*A.* No, it wouldn't make a particle of difference what the condition was.

*Q.* Is it a fact that arsenic in the stomach will preserve the tissues, preventing them from decay? 10

*A.* It very often does.

*Q.* Usually? *A.* That depends on the amount which—

*Q.* (Interrupting.) Usually. Then if it is a small amount it does not—

*A.* (Interrupting.) Not as much as with a large amount.

*Q.* But it usually preserves it? *A.* Yes. Length of time has a great deal to do with it. There are a number of different conditions that have a bearing.

*Q.* The condition that you found there, doesn't it indicate to you that there was no arsenic or little arsenic? 20

*A.* No.

*Q.* Now the quality. You have already told us that the quantity was secured not by actual weighing, but by your calculation? *A.* Yes.

*Q.* You arrived at the quality in the same way, didn't you?

Witness: By calculation?

Mr. Silzer: Yes.

*A.* Why, no. 30

*Q.* Didn't you say so to Mr. Voorhees?

*A.* Why, not at all.

*Q.* You did not say so? *A.* No.

*Q.* And it was not?

Witness: A qualitative test from calculation?

Mr. Silzer: Yes.

*A.* Why, no.

*Q.* You examined the stomach, didn't you, with a glass? *A.* I did.

Q. And you found no arsenic there, looking for it with a glass? A. No.

Q. If that were taken into the stomach in solid form, that would be very likely to have been found there, wouldn't it? A. It might be found there.

Q. Very likely to? A. I couldn't say.

Q. You looked? A. I always examine the stomach to see whether there are any solid particles there.

Q. And you found none? A. I found none.

10 Q. How does lead poison get into the body?

Witness: Lead?

Mr. Silzer: Yes.

A. There are a great many ways.

Q. As, for instance? A. It might be swallowed intentionally, it might be given to a person, might be taken accidentally.

Q. That's all one method—swallowing? A. Yes.

Q. Let's have the others. A. That is the most common method of getting it into the body—by swallowing.

20 Q. What others? A. It might be absorbed through the skin in one of a number of different ways. That or being swallowed are the only ways, about, that it might get in.

Q. Did you measure the amount of lead that was in the body? A. I did not.

Q. You did not even calculate it, did you?

A. I did not.

*Re-Direct Examination, by Mr. Voorhees.*

30 Q. You said that the preservative quality of arsenic depended upon its quantity? A. I did, yes.

Q. Now, the quantity necessary to kill a human being, would that be sufficient to exercise its preservative influence? A. Not necessarily.

Q. To any degree? A. The question of the preservative action of arsenic is still imperfectly understood. There are cases on record where a considerable amount of arsenic has been found and the organs even after a short time were in a very bad condition and had decayed very much. It is simply a general tendency

which has been observed in cases of arsenical poisoning. It is not at all an invariable indication of the presence or absence of arsenic. I was looking for any indication, anything of that character, but failed to find it.

*Q.* By the way, what is arsenic?

*A.* Arsenic itself is an elementary body.

*Q.* That is what you measured I understand?

*A.* That is what I actually weighed in the Marsh tubes.

*Q.* That itself is not soluble, is it?

10

*A.* Not in water, no.

*Q.* There are, of course, compounds of arsenic, as you have mentioned? *A.* There are.

*Q.* Oxide of arsenic, is that a common name?

*A.* Arsenious oxide is a chemical compound of arsenic.

*Q.* Is that soluble in water?

*A.* To a slight extent it is.

*Q.* There are compounds of arsenic that are soluble in water, are there? *A.* Yes.

20

*Q.* If you had been able to get at the contents of the stomach, in your opinion, from your finding of this amount in the tissues and organs, would you have expected to have found more arsenic there?

*A.* I couldn't say. It would depend on too many other conditions.

*Q.* Given the administration of arsenic and the subsequent finding of quantities as you found in this body, is it your opinion that the greater part of that portion administered would have been expelled by reason of vomiting?

30

*A.* That is usually the case, yes.

*Q.* I believe it has an action on the bowels, has it not? *A.* It has.

*Q.* And would you be of the opinion that the greater part of the arsenic administered would have passed away in that method?

Objected to as leading.

The Court: That is leading.

Mr. Silzer: I also object to it on the ground

that he has not shown himself qualified to testify on the action of arsenic on the organs of the body.

The Court: I think the witness has qualified. I will sustain the objection on the ground that the question is leading.

Mr. Voorhees: Well, I will preface the question.

Q. Arsenic has an action on the bowels, has it not?

A. It has.

Q. Decided?

10

Mr. Silzer: I object on the same ground.

The Court: I will admit that question.

Plaintiff's counsel pray an exception to this ruling of the Court, and the same is allowed and it is sealed accordingly.

Judge.

A. Yes.

Q. What would you say as to the probable proportion of the dose administered which would pass off by the bowels, say within a week?

20

Mr. Silzer: I object.

The Court: This is hardly re-direct examination.

Mr. Voorhees: I will reframe that question.

Q. Assuming that you found one and practically three-quarters grains of arsenic in the organs you have mentioned, in your opinion would the greater portion of that have passed off from the patient by means of the bowels?

30

Mr. Silzer: I object to that on the further grounds that it is not re-direct examination.

The Court: I know, but that is largely discretionary, and I will not rule it out on that ground.

A. I couldn't say the greater portion; I should say some portion of it would pass away.

Q. What did you mean when you said it was rather an unusual condition?

Witness: What condition is that?

Mr. Voorhees: It was in answer to a question—

Mr. Silzer: (Interrupting.) Finding the stomach not preserved.

A. In answering the question about the unusual condition, as I recollect the question it related to the fact of the organs not being very well preserved; and in the cases, in the reported cases of arsenical poisoning it is more frequent to find indications of the preservation of the organs of the person afflicted with arsenical poisoning rather than a high state of decay. 10

Q. Now, if the arsenic had been absorbed throughout the system, would you then expect to find that preserved condition?

A. As I say, that depends so much on the amount of arsenic, the length of time after death, and conditions entirely unknown, that you could not base any definite opinion on that as to whether arsenic were present or not from a mere observation of the organs. It is, as I stated, simply a piece of general observation. 20

*Re-Cross Examination*, by Mr. Silzer.

Q. You spoke of weighing the arsenic you found in the stomach, .008 of a grain. A. Yes, a trifle over .008 of a grain.

Q. Yes. Now, how large is a grain?

Witness: How large?

Mr. Silzer: Yes.

A. It depends on what it is. 30

Q. Arsenic. A. A grain is a very small portion.

Q. The size of the pointed end of a pin?

A. Oh, it is more than that. I wouldn't— Roughly estimated I would say about the size of a small pea, if it were in a little pill form.

Q. Would you call that a grain?

A. Yes; a very small pea.

Q. That you would call one grain?

A. Yes, roughly estimated. I would not want to

undertake to measure out a grain of arsenic by the eye accurately.

*Q.* How do you ascertain a grain?

*A.* By weighing it.

*Q.* How much does it weigh?

*A.* A grain weighs a grain.

*Q.* One grain on a chemist's scale? *A.* Why, no; a grain of arsenic is a definite weight, is a standard weight.

10 *Q.* What I want to know is what size arsenic has to be to look at it, see it?

*A.* As near as I can remember it, it would be a very small pea, about that size. As I say, I would not undertake to measure out a grain by the eye, for fear it might be a grain and a half, or even two grains.

*Q.* And when you take .008 of a grain it would be a pretty small thing to see, wouldn't it? *A.* Why, yes.

20 *Q.* When you speak of it not being soluble in water, you mean that when you take that .008 of grain and put it in water it will not dissolve? *A.* It would depend on how much water you put it in.

*Q.* Would it in any quantity? *A.* Why, yes.

*Q.* It will dissolve? *A.* It will dissolve, yes, if you use enough water.

*By Mr. Voorhees.*

*Q.* The quantity that you found in the stomach, had that been absorbed? *A.* I couldn't say.

30 *Q.* That which you found in the liver, had that been absorbed? *A.* That had been absorbed.

*Q.* That was a grain and a half, as I recollect it?

*A.* That was a grain and a half.

*By the Court.*

*Q.* Doctor, you told us that you found sufficient arsenic there to cause death? *A.* Yes.

*Q.* How much arsenic is sufficient to cause death?

*A.* Well, that is a very difficult question to answer by giving a specific weight of arsenic; in fact with any point. It depends on the idiosyncrasies of the person

or animal. There are cases on record where very large amounts of poison have been swallowed, the people recovering; on the other hand there are cases where very small amounts taken have caused death, which same amount taken by another person would not cause death. The amount of arsenic which has caused death, less than two grains are reported as having caused the death of human beings.

*By Mr. Silzer.*

*Q.* You did not know Mr. McCarthy in his lifetime? 10

*A.* I did not.

*Q.* You did not know his idiosyncrasies?

*A.* I did not.

*Q.* Nor his condition? *A.* I did not.

*Q.* Or anything about him? *A.* I did not.

*Q.* And you are not prepared to state that the arsenic in his body killed him? *A.* I cannot.

*Q.* Or would have killed him? *A.* I could only say it might have killed him. 20

*John C. Albright, sworn in behalf of defendant.*

*Direct Examination, by Mr. Voorhees.*

*Q.* Doctor, you are a practising physician?

*A.* Yes, sir; I am.

*Q.* And you live in South Amboy? *A.* I do.

*Q.* How long have you been practising there? 30

*A.* Thirteen years.

*Q.* Did you know Thomas McCarthy? *A.* I did.

*Q.* Were you called in to attend him in his last illness? *A.* I was.

*Q.* Did you attend him in his last illness?

*A.* Yes, sir.

*Q.* Do you know when that was? *A.* I was called there first on the 12th of June, 1905.

*Q.* 12th of June? *A.* Yes, sir.

*Q.* At what time of day? *A.* I think it was in the forenoon, sometime before noon.

*Q.* Between nine and twelve, say? *A.* Yes.

*Q.* You went there? *A.* Yes, sir.

*Q.* And who did you see there? *A.* I saw Mr. McCarthy, he was in bed, and his wife, Mrs. McCarthy.

*Q.* Anybody else? *A.* I don't think there was anyone else there at that time; I am not positive.

*Q.* Did you examine Mr. McCarthy? *A.* Yes; I felt  
10 of his pulse and took his temperature.

*Q.* What was his pulse? *A.* His pulse, if I remember aright—I have no record of it, I couldn't tell—was rather quick; I couldn't just tell you what it was.

*Q.* What was his temperature? *A.* Slightly elevated; I think somewhere about a hundred; I am not positive, because I have no record of it.

*Q.* Did you find out what his symptoms were?

*A.* Yes, sir.

*Q.* What did you find? *A.* Well, he complained of  
20 pain, headache.

*Q.* Where? *A.* Pain in his stomach, or bowels, rather, and nausea; a sick stomach and aching all over the whole body.

*Q.* Anything else?

*A.* That is about all as a prominent symptom.

*Q.* Any diarrhea? *A.* Yes, he had some diarrhea.

*Q.* Cramps in his stomach? *A.* Yes, pain in his stomach.

*Q.* Did he have any cramps in his legs? *A.* I don't  
30 think he complained of any cramps in his legs, no.

*Q.* He didn't say so? *A.* No.

*Q.* What else? *A.* I don't remember anything else in particular.

*Q.* He didn't indicate anything else to you? *A.* No.

*Q.* Was he thirsty? *A.* I don't remember that he was in particular.

*Q.* He didn't indicate it to you? *A.* No.

*Q.* Did he complain of his throat at all? *A.* No.

*Q.* Did you prescribe for him? *A.* I did.

*Q.* Do you know what you prescribed? *A.* Yes, sir.

*Q.* What? *A.* First I prescribed small doses of calomel, bicarbonate of soda, and for the pain in his head I gave him some acentanilid in powders, three powders; they were taken one hour apart; and afterwards I gave him simply Sun cholera tablets for diarrhea and pain in his bowels.

*Q.* Was there any arsenic in the calomel? *A.* No, sir.

*Q.* Did you give him any arsenic at all?

*A.* No, sir; I did not.

*Q.* When did you next see him? *A.* I don't remember whether I saw him once or twice after that; I think twice; I am not positive about that. 10

*Q.* Can you fix the dates? *A.* I cannot, because I didn't keep any record. He belonged to an order, and I don't keep any of those dates.

*Q.* When do you think it was?

*A.* Next day, I think.

*Q.* Do you know what you found then? *A.* The symptoms were about the same the next day; if anything I thought he was a little better, as far as I remember. 20

*Q.* What did you diagnose the ailment as?

*A.* Well, I— He told me he had been drinking a lot of bad water—he worked on the coal docks—and it made him sick, and as he was a man who was a pretty hard drinker I diagnosed his case as one of gastritis; and he developed, had more or less malaria—malaria, diarrhea or dysentery, I came to the conclusion the next time I saw him.

*Q.* Those symptoms you think were characteristic of malaria, do you? *A.* Well, the kind of malaria we have there, in chronic form, the kind we have at South Amboy. 30

*Q.* What time of day did you see him on this second visit? *A.* I don't remember.

*Q.* Were you sent for to go there that day especially?

*A.* I think I was.

*Q.* That is, you did not make your second visit because of what you discovered at your first visit?

*A.* I did not, because I am not obliged to visit pa-

tients, and I think that the trouble is due to drink, I am not obliged to treat them, either; and of course I didn't bother much with him, didn't go again until they came after me again. I know he was a hard drinking man, I saw him more or less; saw him going across—

*Q.* Never mind that. Did you prescribe for him on this second visit, Doctor? *A.* Yes, I did.

*Q.* Do you know what you prescribed?

*A.* I think I gave him some calomel tablets, I am not  
 10 positive, or calomel powders, a small minute dose, one-tenth of a grain, I think; and then at that time I think I gave him a mixture for malaria, either a mixture or a tablet quinine.

*Q.* What was it? *A.* Quinine.

*Q.* Did you administer the medicine yourself?

*A.* No, sir.

*Q.* How did you give this, in the form of a written prescription? *A.* Yes.

*Q.* Do you know where that prescription was filled?

20 *A.* It was filled right in my store.

*Q.* In your store? *A.* Yes, sir.

*Q.* Did you fill them yourself? *A.* Yes, sir; I filled—I know I did some of them; I don't know that I did all of them; I couldn't say about that; I don't remember.

*Q.* (Indicating.) That is not yours, is it, Doctor?

*A.* No, sir; that is not mine.

*Q.* I show you three papers. Are those the prescriptions? *A.* (Indicating.) That is one, and that one, and one prescription is not here.

30 *Q.* Are they dated, Doctor? *A.* Yes, sir.

*Q.* Just pick out the first one in order of date.

*A.* (Indicating.) That is the second prescription; the first one isn't here.

*Q.* And where is the third? *A.* I think that is the—the first prescription was calomel, bicarbonate and the acetanilid, the three powders, that isn't here.

Mr. Voorhees: I offer those in evidence.

*Q.* I offer the first one. Will you read what it is?

*A.* "Tablets; Sun-cholera, No. 16."

Q. What is the direction? A. One every half-hour until relieved.

Q. When was that administered? A. First day.

Q. I show you another paper. A. I think that was the second day, not the first day.

Q. Will you read what that is, Exhibit P 3?

A. "Acetanilid, 20 grains; lacquer iodine compound, solution; fluid extract acetanilid: sixteen drops syrup of quinine tasteless No. 2." That is the two mixtures. No. 2 has five grains of quinine, a solution of five grains of quinine, an ounce and a half of that. Syrup yerba, one ounce, and water a sufficient quantity to make three ounces. 10

Q. When was that prescribed? A. The second day, I think.

Q. Now I show you the third of these three papers. Tell us what that is. A. Tablets, calomel, one-tenth of a grain each, No. 20.

Q. When was that prescribed? A. I couldn't say whether it was the second or third day. 20

Q. Were these prescriptions all filled? A. Yes, sir.

Q. At your store? A. Yes, sir.

Q. Do you know who they were delivered to?

Mr. Silzer: Have you any knowledge?

A. I couldn't say about that. I think Mrs. McCarthy was down herself once or twice; I am not sure about that.

At this point the Court took a recess of one hour. 30  
After recess.

*John C. Albright* resumes the stand.

*Further Direct Examination*, by Mr. Voorhees.

Q. When you made your second visit to McCarthy, as you have stated, who did you see there?

A. I don't remember who else was there besides Mrs. McCarthy; she was there.

Q. Was anybody else there? A. I don't remember about that.

*Q.* Do you know what time of day that was?

*A.* No, sir; I do not.

*Q.* Can you state whether it was afternoon, morning or night? *A.* I can't state positively because I don't remember; I have no record of it at all.

*Q.* But you were sent for? *A.* I think I was, yes.

*Q.* You treated him at the second visit for the same symptoms as the first? *A.* Yes, sir.

*Q.* When was your third visit? *A.* The third visit  
10 was on the night that he died, I think.

*Q.* On the night that he died? *A.* Yes, sir.

*Q.* That was on the 14th of June? *A.* The 14th or 15th; I don't just remember the date.

*Q.* What time of day was it? *A.* It was shortly after midnight; between midnight and morning.

*Q.* Who did you see there then? *A.* I saw Mrs. McCarthy, and Father Brady, the parish priest.

*Q.* Anybody else? *A.* I think at one time Mr. Anson was in there; I am not positive; I think so; I won't  
20 say for sure.

*Q.* At one of the visits? *A.* Yes.

*Q.* What is his first name? *A.* I don't know what his first name is.

*Q.* Did you speak to McCarthy on the third visit?

Witness: Speak to him?

Mr. Voorhees: Yes.

*A.* Yes, I spoke to him.

*Q.* Did he answer you? *A.* I don't think he was able to answer me.

30 *Q.* What was his condition? *A.* He was in a comatose—that is, he was a man that was practically dying.

*Q.* Did you administer any remedies? *A.* I went back to my office to get some remedies, but before I returned he was dead.

*Q.* What did you bring? *A.* I brought some aromatic spirits of ammonia; that is all I remember that I brought with me.

*Q.* Were any other physicians in attendance upon him? *A.* I believe so, yes.

Q. Do you remember who they were?

A. Dr. Meacham was called in once, I believe.

Q. Had McCarthy been sick before the 12th?

A. I treated him, I think, two or three weeks before that, for an injury to his thumb.

Q. But not after that? A. No, sir; never gave him anything internally; no medicine internally.

Q. Were you able to get any reply from him at all at your last visit? A. No, sir.

Q. Did you make any examination of him then? 10

A. I examined his heart and found he was dying.

Q. Did you feel of his pulse? A. Yes, sir; I felt of his pulse.

Q. Did you feel his extremities? A. Yes, sir; they were cold.

Q. They were cold? A. Yes.

Q. Was there any sweating? A. I can't say positively about that; I don't remember.

*Cross Examination, by Mr. Silzer.*

20

Q. You have a drug store, don't you? A. Yes, sir.

Q. And these prescriptions you wrote out? A. Yes.

Q. And then turned them over to your drug department to be filled there A. Yes.

Q. And some of these, you say, may have been filled by your assistant? A. Yes, my clerk.

Q. He is a registered druggist, I suppose?

A. Yes, sir; a registered pharmacist.

Q. What form were these prescriptions in when filled? A. Tablets. 30

Q. That speaks for itself? A. Yes.

Q. But the others? A. In liquid form.

Q. All of them? A. Yes, sir.

Q. No powders? A. The first was powders, yes.

Q. What kind of powders? A. The calomel, soda bicarbonate and acetanilid. You haven't a copy of that there; that was a white powder.

Q. That is the same color as white arsenic, isn't it?

A. Yes.

*Q.* Do you have arsenic in your store, Doctor?

*A.* Yes, sir.

*Q.* You found this man, you say, suffering from malaria and dysentery? *A.* Yes, sir.

*Q.* And your opinion is that the cause of death was dysentery? *A.* That was my opinion, yes.

*Q.* You made the death certificate? *A.* Yes, sir.

*Q.* And gave that as the cause of death? *A.* Yes, sir.

*Q.* You were right there when he died, weren't you?

10 *A.* Yes.

*Q.* You stated that Mr. McCarthy was a drinking man? *A.* Yes.

*Q.* Did you get that from your own observation?

*A.* Yes, sir.

*Q.* What you term a hard drinker? *A.* He was one of those steady drinkers, of the very poorest stuff that was sold.

*Q.* Do you know whether arsenic ever appears in drinks? *A.* I don't know about that.

20 *Q.* Beer? *A.* I don't know anything about that.

*Q.* When you called on McCarthy the first time what time of day was that, do you remember? *A.* It was in the forenoon, sometime between nine and twelve o'clock.

*Q.* He had been sick since the night before about one o'clock when he left his work and came home?

*A.* I think longer than that, but I am not sure; I think he had been complaining longer than that. The day I was first called I think was Monday, and he had been sick, I think, since the Saturday before.

30 *Q.* But he had not been at home? *A.* I can't say about that; I think he was.

*Q.* Did he tell you that he had gone to work the night before you came, and—

Objected to.

*Q.* (Continuing.) That he went to work about six o'clock, and had to leave work about twelve o'clock because he had drank some water from a canal boat, which made him sick? *A.* I remember his speaking about

drinking water and I don't remember his saying about being sick.

*Q.* Did he say what made him sick was drinking that water from that barrel? *A.* Yes, I remember that.

*Q.* Did he say where the barrel was? *A.* No.

*Q.* But he told you that that was the—

The Court: (Interrupting.) He said that.

Mr. Silzer: I was not sure, your Honor.

*Q.* Did your observation of him, your diagnosis of 10 the case, carry out in your mind his statement as to how he had been taken sick? *A.* Yes, sir.

*Q.* And that was the same view as was carried out by you when you gave the certificate naming the cause of death, dysentery? *A.* Yes.

*Re-Direct Examination*, by Mr. Voorhees.

*Q.* Of course you don't know what liquor he drank, do you? *A.* I do not.

*Q.* You said that your opinion was that the cause of 20 death was dysentery. What is your opinion now? Would it modify your opinion at all if you believed that arsenic had been found in his body?

*A.* Well, I would still believe that he had the malarial dysentery, that he had the malaria; I still believe that.

*Q.* You still believe that? *A.* Yes, sir; I still believe that he had malaria.

*Q.* If you believed that arsenic had been found in his body, would you still believe that malarial dysentery 30 was the cause of his death? *A.* Well, I might have to modify that belief.

*Q.* Have you had a case of malaria where death occurred in that length of time? *A.* Yes, sir; I have.

*Q.* From it? *A.* Yes, sir.

*Q.* Can you tell me who? *A.* I don't just remember who now, but I have had cases, I think, where they had a chronic form of malaria, and death was very acute, so acute sometimes as to bring on a congestive chill, and they died sometimes very quickly.

*Q.* Did this man have a congestive chill?

*A.* I couldn't say about that; I don't remember about that.

*Q.* What did you base your diagnosis of malaria upon, Doctor? *A.* Well, the temperature and the severe pains in the head and the body and limbs, aching all over. We oftentimes get sudden vomiting and diarrhea in those cases.

*Q.* The diarrhea and vomiting and pain would all be  
10 consonant with arsenical poison? *A.* Yes, sir.

*Further Cross Examination, by Mr. Silzer.*

*Q.* How many years have you been a physician?

*A.* I graduated in 1887 and have practiced ever since.

*Q.* From your observation of this man, right there upon the scene, the three days you went there, there was nothing to your mind to indicate that there had been arsenical poisoning at all, was there?

*A.* No, sir; I didn't think of it at all.

20

---

*Eugene Meacham, sworn in behalf of defendant.*

*Direct Examination, by Mr. Voorhees.*

*Q.* You are a practicing physician in South Amboy?

*A.* Yes, sir.

*Q.* How long have you been such? *A.* I have been in South Amboy for seven and a half years, about.

80 *Q.* Practicing there? *A.* Yes, about seven and a half years.

*Q.* Did you know Thomas McCarthy? *A.* Well, no, I didn't know him previous to his illness, until I was called in to see him.

*Q.* Where did he live? *A.* He lives on Stockton street, South Amboy.

*Q.* Do you know Mrs. McCarthy, who sits here in court? *A.* Yes, sir; very well, for a long time.

*Q.* Were you called in in June, 1905, to attend this man? *A.* Yes, on the evening of June 13th, about eight

o'clock in the evening, I think somewhere between eight and nine o'clock in the evening.

*Q.* Who called you? *A.* I don't really remember who was the messenger. If I remember rightly I was not at home at the time; I found the message there, if I remember accurately.

*Q.* Did you find the messenger there, or was it a written message? *A.* I don't remember.

*Q.* You went there? *A.* I went there.

*Q.* About what time? *A.* About eight o'clock, or 10 shortly after, somewhere around eight o'clock.

*Q.* On the 13th? *A.* On the 13th.

*Q.* Did you see McCarthy? *A.* Yes.

*Q.* Who was there with him? *A.* His wife was there, and another man; I think his name is Kennedy; I won't be sure about the name, but I think it is Kennedy.

*Q.* Did you talk to McCarthy? *A.* Yes.

*Q.* Where was he? *A.* Sitting up in bed.

*Q.* Did you find out what his symptoms were?

*A.* Yes.

20

*Q.* What were they? *A.* There was a history of vomiting and diarrhea—vomiting whenever he took anything into his stomach; he'd vomit it up. But while I was present there was no vomiting, no retching at all. They were really the only symptoms he complained about.

*Q.* Any pains? *A.* No, no pains while I was there; he seemed in very good humor, talked and laughed, and I asked him about his bowels, and he talked about having to go so often. Evidently he had been out in the 30 yard.

*Q.* Did you ascertain whether he did that frequently or not? *A.* Yes.

*Q.* Was it frequently? *A.* Yes.

*Q.* Did you ascertain how frequently? *A.* Not just the number of times. I couldn't get a direct answer from him. He was in good humor. He said, "Trotting, trotting"—like that.

*Q.* His wife was there all the time? *A.* Yes.

*Q.* And Kennedy was there?

*A.* I think his name was Kennedy.

*Q.* What did you prescribe? *A.* Bismuth.

*Q.* Anything else? *A.* No, sir.

*Q.* Any arsenic in it? *A.* I think it is present in very minute quantities, so minute that it amounts to nothing at all when it is two or three months old; twenty or thirty grains to an ounce.

*Q.* This was on the 13th? *A.* Yes.

10 *Q.* How much did you give him? *A.* My prescription was two drams of bismuth, two drams to a sixteen ounce bottle; that's two drams to sixteen doses; that would be one-eighth of a dram to a dose.

*Q.* Did you take it to the house? *A.* No; someone called at my office at the time that prescription was given. That's a copy of the prescription from my book. I had the original prescription down in my case book, and I made it for this gentleman, some long time afterwards.

20 *Q.* I can't read that. *A.* "Bismuth, sub-nitrate; two drams."

*Q.* That refreshes your recollection as to the quantity, doesn't it? *A.* Yes; water to make two ounces; that's sixteen doses.

*Q.* Do you know where that was put up?

*A.* I put it up myself.

*Q.* Did you deliver it to him? *A.* No.

*Q.* Who did you deliver it to? *A.* Someone called at my house; I don't know; couldn't tell.

30 *Q.* Did you have any conversation that night while you were in the room with the others? *A.* Only between the patient and I, and the others joining in; no private conversation.

*Q.* Do you know why it was you were called there?

*A.* No, I don't; just sent for me.

*Q.* Were you his physician? *A.* I had attended his wife and children off and on since I have been in town.

*Q.* Do you know whether Dr. Albright had attended him at that time? *A.* Yes, they told me he had been to see him.

Q. And was there any remarks made by you in consequence of their telling you that Dr. Albright had been in attendance? A. Not that I remember now.

Q. How was it that you attended him if Dr. Albright was his physician? A. They sent for me; and if a person wants a doctor they can have anyone they please, you know.

Q. Well, did you consider yourself the physician in charge of the case then? A. At that time, yes, naturally.

10

Q. You had no communication with Dr. Albright?

A. No; an everyday occurrence with our physicians.

Q. What? A. That's an everyday occurrence, one physician being in charge, and they get another doctor; we don't think anything of that.

Q. I don't know anything about the ethics among physicians. A. That's the method adopted, at least in our district.

Q. And you considered that you were in charge of the case? A. Yes, sir; until the other doctor, if they 20 don't want him any more.

Q. You didn't ascertain that? A. No, sir.

Q. You simply took charge? A. Yes.

Q. Was that your only visit? A. Yes.

Q. You didn't know whether your patient got well or not? A. No; well, yes; the next day I heard he was dead; that was in the evening.

Q. That was not a common occurrence in your practice, was it? A. Well, no, not common, but—

30

*Cross Examination*, by Mr. Silzer.

Q. Did you ascertain the cause of death, Doctor?

A. No, I didn't see the man after that, only one visit, Mr. Silzer.

Q. What you saw the night you were there, what was your opinion of the cause of death?

A. Well, I thought--when I heard that he was dead my opinion was that the man had heart trouble, probably heart disease.

Q. From what? A. I didn't know at first; but I have

been informed that he was a heavy drinker, and there are men who are hard drinkers who die very suddenly. It calls for a condition of the heart from which they die suddenly.

Q. What did you give him bismuth for?

A. For diarrhea.

Q. Did you see any signs of malaria at the time?

A. I didn't make that diagnosis.

10 Q. But you saw no sign that indicated to you what-  
ever that there was anything like arsenical poisoning, did you?

A. It never occurred to me. He has, had stated, as Dr. Albright said, that he had been—this was Tuesday, that he had drunk a lot of water down at his place on Saturday evening that had brought on this sickness and had a lot of trouble following it.

*Re-Direct Examination, by Mr. Voorhees.*

20 Q. Did he complain at all of thirst? A. Yes; you  
would expect that in a man vomiting.

Q. What expression did he use when he complained of thirst? A. He said he was thirsty, that is all.

Q. Did he state it in those words? A. I couldn't say positively; that was the significance of it.

Q. Do you remember any other words he might have used? A. No.

Q. Were you told that night that Dr. Albright was out of town? A. I don't remember.

30 Q. You say someone told you about his drinking  
water. Who told you that? A. He told me.

Q. He told you himself? A. Yes.

*Further Cross Examination, by Mr. Silzer.*

Q. I didn't understand what you said about bismuth.

A. Arsenic is one of the ingredients of bismuth in very minute quantities. It seems that they cannot manufacture bismuth without having some minute quantity of arsenic in it.

Q. But in all bismuth there is some arsenic?

A. I believe so, yes.

Q. Depending on the variety of the manufacture, I suppose? A. A good deal, I think.

Q. And the more careful the manufacturer the less arsenic? A. Yes; but we give children bismuth. A dose of bismuth is up to sixty grains; that's a dram. We give that to a child, and a very, very small amount of arsenic is contained in it.

Q. How much arsenic is there in a grain of bismuth?

A. I don't know.

Q. Bismuth might be called a specific for nausea, isn't it? A. No, no, it is not. 10

Q. It is not? A. No, sir.

Q. It is given for nausea, isn't it?

A. It is given, but it isn't a specific.

Q. Your idea of a specific is that it always cures what it is given for? A. It does a great deal.

Q. But it is a well known remedy administered by the profession for nausea, isn't it? A. Yes; that is my object in giving it.

Q. That is what you gave it for? A. Yes. 20

Q. Arsenic given to a person will produce nausea, will it not? A. In very small doses arsenic is sometimes used for nausea, in minute doses.

Q. I say nausea will be produced by arsenic, will it not? A. Yes.

Q. And a small dose of arsenic will be as low as a sixtieth or an eightieth of a grain? A. A sixtieth, an eightieth or a hundredth of a grain; that is what we call a small dose.

Q. Was there as much as one grain of arsenic in the amount of bismuth you prescribed? 30

Mr. Voorhees: I object on the ground that the witness does not know, as he made no chemical analysis of the particular medicine.

The Court: He is speaking ordinarily.

A. Oh, no, there was not; shouldn't have been a thousandth of a grain.

The Court: The question and the answer are both proper. Of course, they mean in a normal

condition. Of course, it does not mean anything charged with arsenic. It must relate to that.

Mr. Silzer: I pray an exception.

*By Mr. Voorhees.*

Q. I understood that you put up this bismuth yourself? A. Yes.

Q. Did you have that bismuth in your office?

A. Yes.

10 Q. Had you then and have you since used out of that same bismuth? A. Yes.

Q. Have you had any arsenical poisoning following it? A. No.

*By Mr. Silzer.*

Q. How large a quantity would two drams of bismuth make? A. Oh, about—

Q. (Interrupting.) As large as a marble?

A. There are different sized marbles.

20 Q. Ordinary size? A. More than that.

The Court: Compare it with a teaspoon; we can judge better from that.

Witness: Well, about an even teaspoon full; perhaps a little more.

*Daniel Kennedy, sworn in behalf of the defendant.*

30 *Direct Examination, by Mr. Voorhees.*

Q. Mr. Kennedy, where do you live?

A. South Amboy.

Q. And how old are you, Mr. Kennedy?

A. I couldn't exactly tell you; I am going over fifty, anyway.

Q. Did you know Thomas McCarthy in his lifetime?

A. I did.

Q. Did you know him intimately?

Witness: What?

Mr. Voorhees: I say did you know him intimately?

A. Yes.

Q. Are you a relative of his? A. I am, yes.

Q. What relative? A. I am a brother-in-law of his; I am married to his sister.

Q. You married his sister? A. Yes.

Q. Did you work near him? A. Worked with him.

Q. Around the coal docks? A. Yes.

Q. For John Scully? A. I did, yes.

Q. Do you remember June, 1905, McCarthy being taken sick? A. I remember some night; I don't know what night it was.

Q. Just tell us about it. Was he taken sick?

A. He was.

Q. Where? A. Right on the coal docks.

Q. How was he affected? A. He went heaving off with his stomach.

Q. Did you see him?

A. I was with him; he was on night duty; he came to me and he said instead of letting anybody go home, to let him go home, and I said, "Never mind, we will all go home in ten or fifteen minutes," and he said he was sick, so we did go home about four o'clock in the morning.

Q. Did you go home with him? A. Yes, sir.

Q. Did you go into the house with him? A. No, sir; he passed my door and went on home.

Q. Was there anything the matter with him except sick to his stomach? A. That is all I saw, sick to his stomach.

Q. When did you next see him? A. I didn't bother; a couple of nights after he said, told me he was sick—

30

Objected to.

Witness: I went up to see him.

Q. Where did you see him?

A. On the bed. I asked him would I go for a priest, and he said no, for the priest would say it was through drink and would give him the deuce, and he said he would be all right in a day or two. After that he was

heaving off from his stomach, and I said, "Why don't you get another doctor, to see if you can stop that heaving off?" So Mrs. McCarthy got Dr. Meacham, and he came and ordered milk and lime, and I told him if he got any worse to let me know; and I didn't get any word from him that he was dead.

*Q.* Did you see Mrs. McCarthy that night? *A.* Yes.

*Q.* Do you know Mary Nickerson? *A.* I know her; I know her to see her.

10 *Q.* Did you see her that night? *A.* No.

*Q.* Mrs. McCarthy, did she say anything to you about Mary Nickerson? *A.* Never said a word to me about Mary Nickerson.

*Q.* Never? *A.* Never.

*Q.* At no time? *A.* No.

*Q.* Then or afterwards? *A.* No.

*Q.* Did you see Mary Nickerson and Mrs. McCarthy together? *A.* Never; never seen Mary Nickerson and Mrs. McCarthy together.

20 *Q.* Do you know John Davitt? *A.* I do.

*Q.* Where does he live? *A.* South Amboy.

*Q.* Whereabouts? *A.* At that time he lived in Stockton street.

*Q.* With whom, whose house? *A.* McCarthy's.

*Q.* Did he live in McCarthy's house? *A.* Yes.

*Q.* Do you know where he lives now? *A.* I do not.

*Q.* Have you seen him in South Amboy since that night? *A.* Yes.

*Q.* Where? *A.* In South Amboy.

30 *Q.* Whereabouts in South Amboy?

*A.* Around the streets.

*Q.* Ever seen him in any house since that night?

*A.* I never go into a house except my own, except a saloon.

*Q.* You don't know where he has lived since then?

*A.* I do not.

*Q.* How long had he been living at Thomas McCarthy's at the time when you went to see McCarthy?

*A.* I couldn't tell you; I don't know how long.

Q. Do you know whether he had been living there some time? A. Yes, he was living there some time.

Q. Did he live there after McCarthy died?

A. No; after he left.

Q. Were you at McCarthy's funeral? A. I was.

Q. Did you hear Mrs. McCarthy say anything to Mr. McCarthy the night you were there? A. He asked her for a drink of water; she said—I don't know what she meant—"Why don't you die like any man?" That's all I heard.

10

Q. She said that to Mr. McCarthy that night in your presence, did she? A. Yes.

Q. Do you know what McCarthy's and his wife's relations were?

Mr. Silzer: I object.

The Court: You may answer just yes or no to that.

A. I don't know nothing about it.

Q. You know nothing about it? A. No.

20

Q. Do you know anything about John Devron and Mrs. McCarthy being away together at any time?

A. Never; I never knew anything about it.

Q. You knew nothing about it? A. No.

Q. Did you learn at any time of anything suspicious about McCarthy's death?

Objected to.

The Court: Oh, no; he cannot characterize things as being suspicious.

30

Q. Did you go to see the Prosecutor of the Pleas?

Objected to.

The Court: You need not answer that. These are all leading questions and he is your witness, Mr. Voorhees. But I rule it out because it is not competent. Anybody can go to the Prosecutor that wants to.

Q. Mr. Kennedy, how long have you known Mc-

Carthy? *A.* I knew him since he was about twelve years old.

*Q.* Did you know him in the old country? *A.* I did.

*Q.* Do you know how old McCarthy was?

*A.* I do not.

*Q.* Do you know what year he was born in? *A.* I do not; I don't know what year myself was born in.

*Q.* Where were you born?

10           Objected to as immaterial.

The Court: I will let it stand.

*A.* County Limerick, Ireland.

*Q.* Where was McCarthy born? *A.* The same place.

*Q.* (Indicating.) Have you ever seen that paper?

*A.* No, sir.

*Q.* Can you read? *A.* No, sir; I can only read a little

*Q.* Only a little. Can you read writing? *A.* I can.

*Q.* You say you have never seen that paper? *A.* No.

20           *Q.* (Indicating.) Did you ever see that?

*A.* I never see any writing at all; never seen any letter; never seen nothing.

*Q.* You don't know anything about that letter?

*A.* I do not.

*Q.* Do you know whose handwriting that is?

*A.* I do not.

*Q.* Will you look at it? *A.* I can't see good.

*Q.* My glasses would not do any good, would they?

*A.* No.

30           *Q.* Try and see if you know whose handwriting that is, to please me? *A.* I know very well it isn't mine.

*Q.* No, it is not yours. *A.* I don't know the handwriting.

*Q.* You don't know it at all? *A.* No.

*Q.* Did you see the Prosecutor of this county at any time since the death of Thomas McCarthy?

Objected to as immaterial.

*A.* I decline to answer.

The Court: You need not answer. How is that by any possibility competent?

Mr. Voorhees: It is only leading up to—

The Court: (Interrupting.) Up to what? Anything he said to the Prosecutor would not be admissible. What he does surely is not evidence against this plaintiff.

*Cross Examination*, by Mr. Silzer.

Q. You spoke of the night when McCarthy asked his wife to get him a drink of water. 10

Witness: (Interrupting.) What say?

Mr. Silzer: I say you spoke of the night when McCarthy asked his wife to get him a drink of water.

A. Yes.

Q. She got it for him, didn't she? A. Yes.

Q. She was taking care of him, wasn't she?

A. Yes, sir.

Q. Was Dr. Meacham there then? A. No, sir.

Q. Had he been there then? A. He hadn't come yet. 20

Q. Hadn't arrived yet? A. No, hadn't arrived yet.

Q. Who went after him? A. Mrs. McCarthy.

Q. When was it this remark took place?

A. Right in the house.

Q. While out for Dr. Meacham?

A. No, while she was in the bedroom.

Q. McCarthy was full of fun and joking at that time?

A. He was heaving off from the stomach.

Q. Wasn't he in pretty good mood, joking when Dr. Meacham arrived? A. He was. 30

Q. Wasn't he before that, too?

A. Oh, no; he wasn't in good humor before that.

Q. Wasn't this all in a joking manner?

A. I never thought anything else.

Q. Did McCarthy say anything? A. He said, "Don't bother; she don't mean it."

Q. When Mrs. McCarthy went for the doctor, you stayed with him, didn't you? A. Yes, sir; I did.

Q. How long were you there with him alone?

A. Maybe a couple of hours, maybe more.

*By the Court.*

Q. Alone? A. I was a couple of hours with him.

Q. All the time? A. All the time.

Q. The question is how long were you alone with him while Mrs. McCarthy went for the doctor?

A. I went down to my own house, then back again, and came back after Dr. Meacham came; when I seen the doctor come up I went in.

10 Q. The question is how long did you stay with McCarthy alone, while she went for the doctor?

A. I stopped until Dr. Meacham came.

Q. How long was that? A. About an hour; maybe a half an hour; I couldn't tell exactly how long, your Honor.

*By Mr. Silzer.*

Q. Mr. Kennedy, You were not and are not on particularly friendly terms with Mrs. McCarthy?

Witness: What?

20 Mr. Silzer: You are not particularly friendly with Mrs. McCarthy?

A. Always friendly.

Q. Always have been? A. Yes.

Q. You remember when McCarthy went to Chicago?

A. I do.

Q. He was single then, wasn't he? A. He was.

Q. And he came back with Mrs. McCarthy as his wife? A. Yes.

30 Q. Before that hadn't he said that his property would go to you or your boys?

A. Never said any such thing.

Q. Or words to that effect? A. Never said it to me.

Q. Well, to your wife? A. I don't know.

Q. Isn't it a fact that your boy received some property before he went to Chicago?

Witness: My boy?

Mr. Silzer: Yes, or your wife.

A. No, no; my boy nor my wife never received any property only what I paid for.

Q. You expected, if anything happened to McCarthy

before he married the second time, it would go to your wife or children, didn't you?

Witness: What's that?

Mr. Silzer: Before McCarthy married the present Mrs. McCarthy you expected, if he died, that you would get his property, or your children?

A. No; McCarthy was a younger man than myself; I didn't expect nothing from McCarthy.

Q. They were naturally the ones who would get it?

Objected to.

10

A. I don't know nothing about it.

The Court: One moment. I think this ought not to be admitted. This witness has said nothing to justify any criticism on this testimony.

*Re-Direct Examination*, by Mr. Voorhees.

Q. When you walked up that evening or morning from the dock, when McCarthy was first taken sick, was he sick along the street? A. He was.

20

Q. How many times on the way up?

A. Well, pretty near right from the coal dock he was heaving off from his stomach; he said he thought he got some water from the schooner that made him sick to his stomach.

Q. The night you saw him did he have anything to say to you as to how he felt? A. He said that his stomach and all was burning—his throat was burning.

Q. His throat was burning? A. When he was heaving up he said his throat was burning from heaving up—burned from heaving up, hurt him.

30

Q. Did he say anything about himself that night?

A. No.

Q. Did you see him go for his bowels that night?

Witness: I don't understand you.

Mr. Voorhees: Did he have to get up out of bed and go out?

A. Yes.

Q. How often? A. A couple of times while I was there.

Q. Did you help him? A. Yes.

Q. Did you go with him? A. Yes.

Q. Did you hear him complain of any pain anywhere?

A. Pains in his stomach, he told me, and he had pains all over him.

Q. What did he say, if anything, about his stomach?

A. He didn't say nothing.

Q. You came home with him that first day about four o'clock in the morning? A. Yes.

10 Q. How long had he been at work? A. He was from six o'clock in the evening till four o'clock that morning.

Q. He was working? A. Yes.

*Further Cross Examination, by Mr. Silzer.*

Q. He told you that night that he thought this water that he drank from the barrel on the schooner made him sick? A. He did.

Q. And that was after he had worked for nine or ten hours? A. He worked nine hours.

20 *By Mr. Voorhees.*

Q. Men who work all night, do they eat anything through the night? A. Certainly; they eat at twelve o'clock at night.

Q. Did McCarthy eat that night? A. Yes, went home to his supper; came home in the day time; came home and got his supper.

Q. Went home and got his supper? A. Yes.

Q. In the middle of the night?

30 A. Yes, sir; twelve o'clock.

Q. Went home to get it? A. Yes.

Mr. Silzer: Does the witness know?

The Court: We will see.

Q. How do you know? A. I was home with him.

Q. And then you went back to work?

A. Yes, and he went back with me.

Q. It was in the morning that he was taken sick?

A. In the morning he was taken sick.

*Q.* Do you know whether anybody else drank of that water but McCarthy? *A.* I do not.

*By Mr. Silzer.*

*Q.* As you came home that evening with McCarthy, didn't he suggest to you that he wanted to stay home, and you said, "Come on' let's go back"? That's right, isn't it?

*Witness:* Which?

*Mr. Silzer:* The night you came home when he had 10  
his supper.

*The Court:* Twelve o'clock at night.

*Mr. Silzer:* Didn't McCarthy say, "I want to stay home," and you said, "Come on back to work"?

*A.* No, your Honor; he didn't say nothing about stopping home until four o'clock in the morning, when he said, "If you send anybody home let me go home."

*Q.* You were McCarthy's boss, weren't you?

*A.* Yes, that night.

*Q.* At twelve o'clock, when he went home to supper, 20  
didn't he say, "I would like to stay off"?

*A.* I won't swear to that; I disremember.

*Q.* You wouldn't say that he did not ask you that?

*A.* I could not; I wouldn't say one way or the other.

*Patrick Anderson*, sworn in behalf of defendant.

*Direct Examination*, by Mr. Voorhees.

30

*Q.* Where do you live, Mr. Anderson?

*A.* South Amboy.

*Q.* How long have you lived there?

*A.* About twenty-six years.

*Q.* What is your business? *A.* Coal heaver.

*Q.* Did you know Thomas McCarthy? *A.* Yes.

*Q.* Did you work anywhere near him? *A.* Yes.

*Q.* He was a friend of yours, wasn't he?

*A.* Well, he was a neighbor.

*Q.* Do you remember the time he died? *A.* Yes, sir.

*Q.* Had you seen him while he was sick? *A.* Yes, I seen him the morning he died; I used to see him every day that time, pretty near.

*Q.* You would go every day to see him? *A.* Well, I would see him about; we'd see one or another pretty near every day.

*Q.* After he was taken sick did you go to see him?

*A.* Yes.

*Q.* How many times? *A.* Once.

10 *Q.* When was that? *A.* The morning he was dead.

*Q.* How long before he died?

*A.* About four hours, I guess.

*Q.* Was he able to speak? *A.* Oh, yes.

*Q.* What was his condition? Describe it.

*A.* Well, very sick.

*Q.* How sick? *A.* I couldn't say.

*Q.* How do you know he was sick?

*A.* I heard him call me by name.

*Q.* Yes? *A.* Yes.

20 *Q.* That did not tell you he was sick. Did you see him vomit? *A.* Yes, trying to.

*Q.* How often? *A.* Well, I couldn't say.

*Q.* Did you hear him vomiting when you were not in the room? *A.* No; I couldn't hear him when I wasn't in the house.

*Q.* Were you there when Dr. Albright came?

*A.* Yes, sir.

*Q.* Did you hear Mr. McCarthy complain at all?

*A.* Yes; he told me he was sick.

30 *Q.* What did he say?

*A.* He wanted me to go for his spiritual adviser.

*Q.* Yes? *A.* Yes.

*Q.* What else did he say?

*A.* That was all the business he had with me.

*Q.* That was all the business he had with you?

*A.* Yes, or I with him.

*Q.* Did you hear him speak about anything at all?

*A.* Yes, sir; I heard him speak about his wife and children.

*Q.* Did McCarthy say anything to you about how

he was sick, or how sick he was, or anything of that sort? *A.* Well, no; he didn't tell me how he was sick, for I see it myself; I believe he didn't know what way he was sick; he was sick all over; I don't know; I ain't a physician.

*Q.* What did he say to you?

*A.* He wanted me to go for his spiritual adviser.

*Q.* Is that all he said to you?

*A.* That's all at that time.

*Q.* At any other time? *A.* He had compassion for 10 his wife and children, and he said he hoped the power of God would help them along through life.

*Q.* What else did he say besides that?

*A.* That's all I know that he said.

*Q.* Did you hear him complain at all of any pain?

*A.* Well, I didn't hear him complain.

*Q.* Did you hear him speak of any pain? *A.* Not that I know of. He was trying to heave off of his stomach, and he was heaving off; and he had diarrhea. 20

*Q.* You know that he had diarrhea? *A.* Yes, and I will never forget it either.

*Q.* And you helped him, didn't you? *A.* Yes, sir.

*Q.* He was your friend and you helped him?

*A.* Well, he was my neighbor.

*Q.* Did you go out with him at all? *A.* No, sir.

*Q.* He couldn't get out at that time? *A.* Well, he didn't try to. I helped him in the bed.

*Q.* Did he say, speak anything about it?

*A.* Yes; he wanted the doctor. 30

*Q.* Yes. *A.* Yes.

*Q.* When he called for that did he say anything about his feelings? *A.* No. I felt it allright.

*Q.* No. Did he say anything about his feelings, Mr. Anderson? *A.* Well, he felt sick, inward pain.

*Q.* Did he tell you that? *A.* Well, I think so; at least I forget now. I wasn't keeping any record and things weren't troubling me. If I thought it would come to this I would try and remember more.

*Q.* Then you don't remember what he said?

A. Not much. All he said to me was to get his spiritual adviser.

Q. That's all you remember? A. That's all he said to me. That's all the conversation he had off me.

Q. Do you remember whether he was thirsty or not?

A. He took a drink of water while I was there.

Q. About how many times? A. Well, I think once. The Doctor was there at one time.

Q. What doctor was that? A. Doctor Albright.

10 Q. Was McCarthy a healthy man? A. Well, I couldn't say.

Q. You don't know? A. No.

Q. Had you ever known him to be sick before this?

A. We all always feel not well all the time.

Q. Had you ever known him to be sick in his bed at his house? A. Well, sometimes.

Q. When? A. I couldn't say. But I remember times he told me he wouldn't feel well. He stayed home at times. I lived right across the way from him.

20 Q. When was the time he stayed home?

A. Well, I couldn't say.

Q. Did you hear McCarthy that night complain as to his throat at all? A. No, sir.

Q. Or his chest? A. No, sir.

Q. Did you hear him cough any? A. No, sir.

Q. Did he cough—did you see him cough?

A. Well, I couldn't really. He had kind of a feeling both ways according to the company, and I says to him I was very glad to get out of the house; I didn't  
30 want to be there long.

*Cross Examination, by Mr. Silzer.*

Q. Mr. Anderson, I understand you to say that McCarthy said he hoped the power of God would help his wife and children through life? A. Yes, sir.

Q. You were a neighbor of them? A. Yes, sir.

Q. Did you see McCarthy and his wife and children together? A. Yes, sir.

Q. What was their relation, did you see?

A. I always seen them keeping good society.

Q. How were they toward each other?

A. Well, very affectionate.

Q. Mrs. McCarthy to her husband and her husband to her? A. Yes.

*Re-Direct Examination, by Mr. Voorhees.*

Q. Do you know how old Mrs. McCarthy is?

A. No, sir.

Q. How long were they married?

A. I couldn't say whether they were ever married. 10

*Re-Cross Examination, by Mr. Silzer.*

Q. How many children are there, Mr. Anderson?

A. Well, I can't say; there's some there. I guess they had about five, to the best of my knowledge; five or six, I believe.

Q. How old is the littlest one? A. I think about eleven years.

Q. I mean the youngest? A. Really I don't know. Although I am sponsor for the baby I couldn't tell the date. 20

Q. About four or five years old? A. Yes, I guess so.

---

Charles B. Burnett, sworn in behalf of the defendant.

*Direct Examination, by Mr. Voorhees.*

Q. You are a practicing physician? A. I am. 30

Q. How long have you been such?

A. Thirteen years, about.

Q. Did you know Thomas McCarthy? A. I never knew him previous to my examination of him; no.

Q. Where do you live? A. South Amboy.

Q. When did you first know Thomas McCarthy?

A. At the time of my examination was my first meeting with him; the date I can't recall.

Q. How long was it before he died?

A. That I couldn't say.

*Q.* Well, about? *A.* Well, really, Mr. Voorhees, I couldn't even approximately give you about the date, because I never had met the man before, and to my knowledge, I never saw him after that. I presume something like a month.

*Q.* Something like a month? *A.* I am not positive.

*Q.* Did you examine him? *A.* I did.

*Q.* Tell me what sort of a man he was as to health?

*A.* Why, apparently he was in first-class condition,  
10 physically.

*Q.* Any disease? *A.* Not that I could discover.

*Q.* (Handing witness photograph.) Look at that picture and see if you recognize it. Do you recognize who that is? *A.* I think so; yes.

*Q.* Well, who is it? *A.* I think that is him, Mr. McCarthy. You must remember that I only saw the man once to my knowledge. I wouldn't swear it is him, but—

20 Mr. Voorhees: We will have the picture marked for identification.

*Q.* How much of an examination did you make of McCarthy at that time? *A.* All the examination called for on the examiner's blank.

*Q.* Did you find anything the matter with his heart or liver? *A.* No, sir.

Mr. Silzer: I object to that as too remote, your Honor.

30 The Court: Oh, well.

*Q.* Kidneys? *A.* No, sir.

*Q.* Stomach? *A.* No, sir.

*Q.* Any intestinal trouble? *A.* Not that I could discover.

*Q.* Did you at that time consider him a good risk for life insurance? *A.* I think I can refer you to my examination paper and give you a better idea than I can give you, for I think I must have recommended him as a first-class risk, otherwise they would not have accepted him.

Q. I show you Exhibit P-1 and ask you to look at that? A. Yes, sir.

Q. Is that the report of your examination?

A. The report of my examination; yes, sir.

Q. What is the date of it? A. May 8th, 1905.

Q. Where was that examination made?

A. At the applicant's home.

Q. Whereabouts? A. On Stockton street, South Amboy.

Q. Who notified you to go there? A. I think an agent by the name of Mr. Lanes wrote the application, but came to my office and handed this application to me. 10

Q. Who was present when you made the examination? A. His wife, I presume; this lady sitting opposite (indicating the plaintiff).

Q. Did you have anything to say to her or she to you that day? A. No, nothing particular.

Q. Do you remember anything at all? A. Why, no; I have no special reason for remembering that occasion more than any occasion. I never anticipated that that any such thing was going to come up as this case. 20

Q. From your examination, I ask you whether you would have any reasonable expectation of sudden death from heart disease? A. No, sir; decidedly no.

Q. Or from any other disease? A. No, or else my report would have been negative.

*Cross Examination, by Mr. Silzer.*

Q. I suppose there are often times when you have no reason to expect death where death happens very suddenly? A. There are. 30

Q. And it could happen very easily between May 8th and June 14th, without expecting it?

A. Very easily.

Q. What examination did you make for intestinal trouble? A. I simply asked the man how he felt and his general condition at that time.

Q. And from your observation of him?

A. Yes, just superficially in regard to—

Q. (Interrupting.) You looked at his general appearance and asked him the ordinary questions?

A. Yes. I found no symptoms.

Q. If he had had diarrhea at that time you wouldn't have known it? A. If he had a severe attack I think I would.

Q. If he had a mild attack? A. It depends on what you designate mild. If he indulged in beer or something and had a very slight attack I couldn't tell it, or  
10 no one else.

Q. Did he tell you at that time that he was taking out this policy to take the place of one that he had lost by reason of the Catholic Benevolent Legion going up?

A. I don't remember him saying anything like that.

Q. Or that he took that because the rates in the Catholic Benevolent Legion were becoming excessively high? A. I don't recall that.

Q. You don't remember that? A. Don't recall it.

Q. How long were you at his house?

20 A. Why, probably half an hour.

Q. Most of those coal trimmers in South Amboy have malaria? A. Malaria is a term that covers a multitude of diseases.

Q. And covering that multitude, most of the coal trimmers have that? A. I wouldn't say so.

Q. A great many of them? A. In my practice very few of those coal trimmers come under my observation. For that reason I can't say, Mr. Silzer.

30

---

*Sarah Welsh*, sworn on behalf of the defendant.

*Direct Examination*, by Mr. Voorhees.

Q. You live in South Amboy? A. Yes, sir.

Q. Do you know Mrs. McCarthy? A. Yes, sir.

Q. She is a friend of yours, isn't she?

A. No; only a neighbor.

Q. And a friend also? A. No, sir.

Q. Haven't you known her a good many years?

A. Yes.

*Q.* And you see her frequently? *A.* No; once or twice in two or three months.

*Q.* You go to her house sometimes? *A.* No, sir.

*Q.* Never go there? *A.* Once in a while.

*Q.* You knew Thomas McCarthy in his lifetime, didn't you? *A.* Yes, sir.

*Q.* Were you there at the time he died?

*A.* No, sir.

*Q.* Were you in his house during his illness?

*A.* Mrs. McCarthy called for me the night before he died and wanted somebody to go for a priest. 10

*Q.* She called for you? *A.* Yes; Mrs. McCarthy sent word over and I went and stayed a little while, and that is all I know.

*Q.* Do you remember when you went to McCarthy's that night? *A.* One o'clock that night.

*Q.* Could you hear McCarthy from the street?

*A.* No, sir.

*Q.* Did you hear him halloa from the street at all?

*A.* No, sir. 20

*Q.* That is not so? *A.* No, sir.

*Q.* You were in the hall? *A.* Yes, sir; the hall is right here and the bedroom here (indicating).

*Q.* Did you hear him? *A.* Yes, in the hall.

*Q.* How many rooms are there there where McCarthy lived? *A.* Three little rooms.

*Q.* They lived on one floor? *A.* Yes.

*Q.* How many stories to the house? *A.* Two.

*Q.* Which story did they live in? *A.* In the upper one. 30

*Q.* Who lives in the lower one? *A.* Mrs. McCarthy occupies the house all herself.

*Q.* Two stories? *A.* Yes, sir.

*Q.* How many rooms on the ground floor?

*A.* Two downstairs and three up.

*Q.* And a hallway? *A.* Yes.

*Q.* And the stairs to go upstairs? *A.* Yes.

*Q.* And two rooms upstairs? *A.* Three .

*Q.* A hall room and two other rooms? *A.* Yes, sir.

*Q.* Which room was McCarthy in? *A.* In the front bedroom.

*Q.* Upstairs? *A.* Yes.

*Q.* What is the back room used for?

*A.* As a bedroom.

*Q.* And the hall room? *A.* For a bedroom.

*Q.* No wcome down stairs. The front room down stairs? *A.* A front room and a kitchen.

*Q.* Are there any beds down stairs at all?

*A.* No, sir.

*Q.* How many children had McCarthy?

10 *A.* Three as I know.

*Q.* Three? *A.* Yes. There is some dead; I don't know how many dead.

*Q.* I mean living at the time of his death?

*A.* Three living.

*Q.* And what are their names?

*A.* Willie and Michael and Alice.

*Q.* Willie and Michael and Alice? *A.* Yes, sir.

*Q.* Can you tell me their ages? *A.* No, sir; I can't. I can't tell my own.

20 *Q.* How old is the oldest? *A.* I don't know.

*Q.* You don't know? *A.* No, sir.

*Q.* Did you know John Deveron? *A.* Well, just by eyesight, no more.

*Q.* Where does he live? *A.* Well, I don't know.

*Q.* Does he live at McCarthy's? *A.* Well, I couldn't tell you.

*Q.* Why not? *A.* Well, I don't live on the street with the McCarthy's; on the next street.

*Q.* You know John, don't you? *A.* Just by eyesight, 30 just as I am looking at you.

*Q.* You don't know where he lives?

*A.* No, sir; I do not.

*Q.* Do you know who lived in the McCarthy house altogether? *A.* I do not.

*Q.* How long did you remain in the house that night?

*A.* Well, I couldn't tell you.

*Q.* Were you there until he died? *A.* No, sir; I was not.

*Q.* You lived in the next street, you say?

*A.* Yes, sir.

Q. There are nearer neighbors than you?

A. Yes, sir.

Q. How did Mrs. McCarthy call on you that night?

A. She rapped at the door and told me her husband was pretty bad, that he was dying, and I got up and ran over, and she asked me to go for the priest with her, and I went with her, and I stayed there a little while and then left. Mr. McCarthy vomited once while I was in the hall, and that is all I know.

Q. How far do you live from the McCarthy house? 10

A. Well, I live more than a block away from her.

Q. More than a block? A. Yes, sir.

Q. And she came over after you and asked you to go for the priest? A. Yes, sir; with her.

Q. Did you go for the priest? A. Yes, sir; with Mrs. McCarthy.

Q. With her? A. Yes, sir.

*Cross Examination, by Mr. Silzer.*

Q. Is Mr. Deveron in Court? A. Yes, he is in Court. 20

*Arthus L. Smith, sworn on behalf of the defendant.*

*Direct Examination, by Mr. Voorhees.*

Q. Dr. Smith, do you live in New Brunswick?

A. I do.

Q. How long have you lived there? A. Fifteen years.

Q. What is your profession? A. Physician. 30

Q. Practicing in New Brunswick? A. Yes, sir.

Q. Where did you graduate? A. University of Pennsylvania.

Q. How long ago? A. Sixteen years.

Q. Do you know the symptoms which the administration of arsenic produces upon the human system?

A. I think so.

Q. Will you state what they are?

Mr. Silzer: I desire to cross examine the witness.

*By Mr. Silzer.*

*Q.* When have you had a case of arsenical poison?

*A.* I had a case three or four years ago; I have forgotten just the date.

*Q.* In the City of New Brunswick? *A.* Yes, sir.

*Q.* Did the patient die? *A.* No, sir.

*Q.* How much had he taken? *A.* I don't know.

*Q.* When did you have one before that?

*A.* I don't remember any.

10 *Q.* You never had any before that?

*A.* Just this one case.

*Q.* And you don't know how much the patient took?

*A.* No.

*Q.* And he lived? *A.* Yes.

Mr. Silzer: I object to this examination.

The Court: It is not a question of personal experience; it is a question of knowledge. Personal experience may add to the weight of the testimony,

20 but it does not defeat the right to testify.

*Q.* Did you study in college the subject of arsenical poisoning? *A.* As a student; it came in our course.

*Q.* Just incidentally? *A.* Part of our course.

*Q.* You took no special course in it? *A.* No, sir.

*Q.* How long ago was that? *A.* I graduated in 1890.

*Q.* That is sixteen years ago? *A.* Yes, sir.

*Q.* And since that time you have only had, in addition, this once case a year or two ago?

*A.* That is all.

30

The Court: Go on, Mr. Voorhees.

Plaintiff's counsel prays an exception to the above ruling of the Court.

*By Mr. Voorhees.*

*Q.* Will you state what the symptoms of arsenical poisoning are? You may take the medicinal dose first, and I will ask you, what is a medicinal dose?

*A.* From 1/60th to 1/20th of a grain.

*Q.* And what are the symptoms of that? *A.* It acts

as a stimulant, a stimulant to the digestive apparatus and to the circulatory apparatus, and in full doses, when given to the limit of endurance, produces puffiness under the eyes. I would like to add also that it is a nerve tonic as well, given for nerve disturbance.

*Q.* Now I ask you for the symptoms of a toxic dose?

*Mr. Silzer:* What is a toxic dose—what do you mean by that?

*A.* Poison, irritation of the throat, dryness, colic, pains in the abdomen, nausea, vomiting, diarrhea, frequent stools; sometimes they are what is known as rice-water stools, sometimes contain blood; collapse and death. 10

*Q.* What is a toxic dose, doctor. *A.* The dose that will poison the individual.

*Q.* And what is a toxic dose as to quantity?

*A.* Personally I don't know. My reading, my experience in the general knowledge, gives two grains as the human dose, fatal dose. 20

*Q.* Now by that you mean the minimum which was passed through the lips? *A.* Yes, sir.

*Q.* Into the system? *A.* Yes, sir.

*Q.* When that is passed through the mouth it goes into the stomach? *A.* Yes, sir.

*Q.* What action ensues? *A.* It produces an irritation of the stomach.

*Q.* Does it remain in the stomach? *A.* No, sir; it absorbs, passes through the general system; some of it, most of it I think, is eliminated by the kidneys, some by the bowels. 30

*Q.* How about the nausea? *A.* The vomiting returns.

*Q.* If a dose of two grains were given, do I understand you that a portion of that would be eliminated by the urine and the excretia and by vomiting, if those sources were in operation?

*Mr. Silzer:* I object to that on the ground that the witness has not said anything of the kind.

*The Court:* Suppose we let him say. Don't

lead him. Most of it, he said, would be eliminated through the kidneys, some through the bowels, and I don't know what else he said.

Witness: And the nausea would get rid of a portion.

*Q.* And what would become of the rest? *A.* It would remain in the body, that which had not been eliminated, largely.

10 *Q.* That that remains in the body, what would become of that? *A.* It would be absorbed.

*Q.* Where would the result of that absorption show itself—in what part?

The Witness: Do you mean where it would lodge?

Mr. Voorhees: Yes.

*A.* Well, on that I am testifying from my personal knowledge, not from personal experience, understand.

*Q.* Yes. *A.* The liver, kidneys and intestines—mostly in the visceral organs.

20 *Q.* Now that part of a toxic dose which is eliminated, as you have stated, does no harm, as I understand? *A.* No, sir.

*Q.* And what portion does the harm?

*A.* The portion that remains.

30 *Q.* Doctor, assuming that a man of the age of forty-five years, a coal trimmer by occupation, previously in good health, is suddenly attacked with vomiting, diarrhea, thirst, and a burning sensation in the throat and chest, which symptoms continue for a space of about three days, when death ensues; and assuming that said person is buried without being embalmed, and that about four months after such burial the body is exhumed, and upon chemical analysis being made the following amounts of arsenic are found in the following organs, namely: the bladder, .00957 grains; the kidney, .0765 grains; the heart, .0183 grains; the stomach, .00835 grains; the intestines, .1015 grains; the liver, 1.5 grains; the abdominal tissue, .01915 grains; the total being 1.73337—what in your opinion would you say was the cause of death? *A.* I would say that it was arsenical poison.

*Q.* Without repeating the hypothetical part of the question in words, but assuming that it was repeated to the doctor, I would predicate another question upon that. In your opinion would the quantities of arsenic so found and distributed be an efficient producing cause of death? *A.* I should say so; yes, sir.

*Q.* Assuming that the hypothesis was again repeated to the doctor, I predicate another question. Would the presence of arsenic in the quantities aforesaid and as above distributed, be in your opinion, an efficient producing cause of death to the exclusion of other causes? 10

*A.* I could only say that that was a sufficient cause of death in my opinion.

*Q.* Can you say, doctor, whether a greater quantity of arsenic than the amounts which I have indicated, found in the organs which I have indicated, would have passed the mouth, in your opinion, of the subject?

*Witness:* Do you mean that he could have taken a larger amount than that?

*Mr. Voorhees:* Perhaps you don't understand 20 the question.

*The Court:* I confess that I do not understand the question unless it has some scientific meaning.

*Q.* If there was found the amount of 1.73 grains in the organs I have indicated and the subject had purged and been affected with diarrhea, before his death, and this had been found at a time four months after his death, can you state what the relative quantity of arsenic must have been that was swallowed by the subject to leave this residue in the system? *A.* I can't tell, he must have swallowed more, probably; I can't tell the relative amount. 30

*Q.* Can you say whether he must have swallowed more than that? *A.* He probably did.

*Cross Examination, by Mr. Silzer.*

*Q.* In cases of arsenical poisoning the trouble is quite easy of being diagnosed by a physician?

*A.* Usually, as a rule; if you get the history of the case, as a rule.

*Q.* You see the puffing under the eyes, don't you?

*Witness:* Do you mean when under medicinal treatment?

*Mr. Silzer:* No; when they have taken arsenic.

*A.* You don't have time for that to develop in acute toxic cases.

10 *Q.* What's that? *A.* I say you don't have time for that to develop in acute toxic cases.

*Q.* When it goes on for a space of three or four days, you know? *A.* For the acute; yes, sir.

*Q.* Fivs days? *A.* For a man to die in five days, I should say that was quite acute.

*Q.* And you would not see any sign of puffing under the eyes? *A.* I don't think so.

*Q.* What? *A.* I don't think so.

20 *Q.* You are not certain about it? *A.* No, sir; I don't think so.

*Q.* Are you the physician of the Metropolitan Life Insurance Company? *A.* No, sir.

*Q.* Have been? *A.* No, sir.

*Q.* Are you an expert employed by them?

*A.* I was asked to come here.

*Q.* And these questions were submitted to you before you came here, weren't they? *A.* No, sir.

*Q.* You say from your reading. When was the last time you read about this? *A.* This morning.

30 *Q.* This morning? *A.* This morning; yes, sir.

*Q.* And what book did you read? *A.* Dr. Osler.

*Q.* Osler? *A.* Yes; and Dr. Stevens.

*Q.* Who else? *A.* Dr. Stevens of Philadelphia, and Dr. Roy of Baltimore.

*Q.* These authorities, I understand you to say, say that it would take about two grains to kill a man?

*A.* Most of them give about two grains as the minimum killing dose.

*Q.* That is the minimum dose given by authorities?

*A.* Yes.

*Q.* That differs in different individuals? *A.* Yes.

*Q.* Some might have to have two and a half grains to three? *A.* Yes.

*By the Court.*

*Q.* Does that mean two grains given in the mouth or absorbed through the system? *A.* Through the mouth.

*By Mr. Silzer.*

*Q.* It does not necessarily throw off, does it? 10

*A.* Not necessarily.

*Q.* A man might take arsenic and retain all of it?

*A.* He might.

*Q.* And absorb it into his system? *A.* He might, but it usually causes enough irritation in the stomach to produce vomiting.

*Q.* You won't say, after reading the authorities that you have stated, that there must be a minimum of two grains—you won't say that a man who has taken a grain and three-quarters necessarily had arsenical poisoning? *A.* Common sense would tell me that a man whose abdominal organ contains a grain and three quarters after death, must have died of arsenical poisoning. 20

*Q.* I ask you to state, in view of the authorities stating that two grains must be taken, and in view of the fact that all of that must be retained and absorbed, you are not willing to swear that a man taking one and three-quarters grains necessarily died of arsenical poisoning? *A.* I don't say must necessarily, but probably. 30

*Q.* You have answered me. Now taking the hypothetical question which Mr. Voorhees put to you, and adding to it the fact that the man was under the care of two physicians, both of them examining the man and prescribing for him, when he gives his opinion that the man died of dysentery, would that affect your opinion as to what that man died of?

*Mr. Voorhees:* One moment. I think the doctor should be told how often he was visited by the

physicians. And also he speaks of an examination; the examination, as I understand it, was feeling his pulse and taking his temperature.

The Court: The Court of Errors have just held that "under the care of" and "in attendance" are exactly the same thing, and they are about to hold it in another case. I held the other way, but the Court didn't agree with me.

10 Mr. Voorhees: My point is this: That if that question is asked of the doctor he should be given the facts attending the examination.

The Court: He is given the fact that another physician has expressed an opinion by giving his certificate. I think he should be permitted, if that is sufficient on which to base an opinion, to answer the question. I think he is entitled to answer it.

Witness: I don't see how I can answer it in that form.

20 Q. Not in that form? A. I don't see how I can.

Q. It would not modify your opinion as to the cause of death, if, in addition to the facts stated, you heard that a reputable practicing physician in this county called upon McCarthy in his illness and saw no sign of arsenical poisoning, diagnosed the case as malarial dysentery and prescribed for him as such, and when he died stated that that was the cause of death?

Mr. Voorhees: I object to that.

30 The Court: I do not think that is a hypothetical question in any sense. That is taking the opinion of one man on a given state of facts and asking another to base his opinion upon it. I do not think it is admissible.

Mr. Silzer: I will eliminate from the question the statement that the doctor gave a certificate of death.

The Court: You did not have that in the question, so you can hardly eliminate it. I do not see how that evidence is competent. You might ask this doctor his opinion upon the evidence itself, but

to ask him to express an opinion upon the opinion of somebody else is not permissible. You may ask him to state his opinion based on the facts.

Q. Assuming the facts stated in the hypothetical question asked by Mr. Voorhees, that you called upon that patient during his lifetime, and saw him and talked with him and found yourself no signs of arsenical poison, but did find evidence of dysentery, and prescribed for such complaint, and after his death it was your opinion that he died of dysentery, would you, under those circumstances, say that that man could have died from arsenical poisoning, or was likely to have died from that? 10

Mr. Voorhees: I object to that.

The Court: I think he can answer that. Why not? He is asked to say whether after having reached one conclusion he would reach another. I think, Mr. Silzer, that this is utterly useless to you. There has been nothing testified to on these lines. 20

Mr. Silzer: I don't want any chance of an exception by my friend, so I withdraw the question.

---

*George B. Gale*, sworn in behalf of defendant.

*Direct Examination*, by Mr. Voorhees.

Q. Doctor, where do you reside? A. Newark.

Q. And how long have you lived there? 30

A. Three years.

Q. What is your profession? A. Physician.

Q. How long have you been practicing?

A. Ten years.

Q. Where do you practice? A. I practice at the present time in Newark; previously in Rutherford and Arlington, above Newark.

Q. You have been here in court during the morning session? A. I have.

*Q.* You have heard the testimony of Dr. Deghuee, have you? *A.* Yes, sir.

*Q.* The chemist? *A.* Yes.

*Q.* You have had some experience in poisoning matters? *A.* I have.

*Q.* And have you had a course in toxicology?

*A.* Yes, sir.

*Q.* And have you been called upon to exercise that in the course of your profession? *A.* Yes; I have been in  
10 consultation in many cases.

*Q.* Doctor, what are the symptoms of arsenical poisoning?

*A.* The first symptom is usually vomiting. Nature makes an effort to get rid of the poison in that method. The second symptom would be diarrhea, with bearing down, collapse of abdominal walls, in order to force out the poison in there. I am describing now an acute case of poisoning. The patient complains of intense abdominal pains, often of cramps in the legs, a burning thirst,  
20 a smarting of the throat all the way down and intense burning of the stomach itself. He often gets better for a little while, for a few minutes or a few hours, or perhaps a day, or two or three, and then the symptoms return with all their former force, and death is often very sudden. That gives about the typical acute case of poisoning.

*Q.* What is a toxic dose? *A.* From one to two or three grains; one grain has often caused death.

*Q.* When I ask you about a dose, what do you mean  
30 by a dose? *A.* The amount taken into the mouth or that could be injected through the rectum.

*Q.* You mean the amount taken into the body originally? *A.* Yes.

*Q.* What becomes of that after it passes the mouth? Describe.

*A.* As a rule and very often— As a rule it is thrown off by vomiting, a greater proportion of it, and sometimes it is entirely thrown off. In fact there are many cases where death occurs from arsenical poisoning where the patient has been seen to take it, where an

examination of the viscera has failed to show any absorption. We consider, if any absorption has taken place so it can be recognized by any test known, that it is sufficient to cause death.

*Q.* Assuming, Doctor, that a grain and three-quarters of arsenic was found in an examination of the bladder, kidney, heart, stomach, intestines, liver and abdominal tissues, no other parts of the body having been examined, what would you say as to the quantity which must have passed the mouth of the subject, assuming that arsenic had been administered through the mouth? 10

*A.* Many times the amount found must have been taken.

*Q.* Will you say why?

*A.* In the first place, the effort of nature is usually successful in getting rid of much of it right away by vomiting and by the other channels—that is, the bowels and kidneys. The kidneys excrete it very rapidly. So that if that amount were found in the tissues mentioned, there must have been a very much larger amount taken in. And then the other organs and tissues of the body store up nearly an equal amount, leaving out the liver, which usually is the largest depository for arsenic—that is, that catches it first. The other tissues absorb it all about alike. It has been found in every muscle and in every nerve tissue and in every bone in the body. 20

*Q.* You say the liver is the place where most of it lodges?

*A.* Well, the liver has a limit to its capacity. The most that was ever found in any liver, according to Reese and Allan McLane Hamilton and others, is two grains. In this case it was one and a half grains, which is nearly the limit. 30

Mr. Silzer: I object to arguments. The Doctor should state in answer to the question.

The Court: That is proper.

At this point the Court adjourned until Monday, May 21, 1906, at ten o'clock in the forenoon.

New Brunswick, N. J., May 21st, 1906.

The trial proceeded this day pursuant to adjournment.

Only eleven jurors appearing, after some delay, the Court made the announcement that there were only eleven jurors present, and asked counsel if they were willing to proceed with the trial of the case with eleven jurors, without waiting for the appearance of the absent juror. Both counsel consented to do this in open court, and the case thereupon proceeded.

10 *Dr. George B. Gale* resumes the stand.

*Direct Examination* (continued), by Mr. Voorhees.

Q. What is the taste of arsenic? A. It is tasteless.

Q. If arsenic were introduced into a person's food, would it be noticeable?

Mr. Silzer: Objected to as having no application to this case at all.

Objection overruled.

20 A. It could not be detected.

Q. Do you know of a poison known as Rough on Rats? A. I do.

Q. Do you know its constituents? A. I do not know the exact chemical formula of it, but it is principally arsenic.

Mr. Silzer: I object, if he does not know.

The Court: His answer is that it is principally arsenic. That may be allowed to stand.

30 Plaintiff excepts.

Exception allowed and sealed accordingly.

Justice.

The Witness: It is a proprietary article and very hard to get an exact analysis.

Q. Do you know as to the taste of that?

A. It is tasteless.

*Cross Examination*, by Mr. Silzer.

Q. Did you ever taste Rough on Rats?

A. I have; yes, sir.

*Q.* When? *A.* About six months ago, on one occasion, and five or six years ago on another.

*Q.* In what quantity did you taste it?

*A.* A small dose.

*Q.* What? *A.* A little bit on the tongue with my finger.

*Q.* A grain? *A.* No.

*Q.* How much? *A.* I did not weigh it.

*Q.* Where do you practice medicine? *A.* In Newark.

*Q.* Whereabouts in Newark?

10

*A.* The Langrange Apartments, Lincoln Park.

*Q.* Do you have an office there? *A.* I have.

*Q.* How long have you been there?

*A.* About three years.

*Q.* Are you engaged in the general practice of medicine? *A.* General and special, medico-legal.

*Q.* Medico-legal? *A.* Yes, sir.

*Q.* Then is your specialty in the trial of trolley cases and in cases of this kind? *A.* Yes.

*Q.* You are what is commonly known among lawyers as a trolley doctor? *A.* Well, I don't know how I am known. 20

*Q.* Well, you are employed frequently by the trolley company, testifying on behalf of the company, where people have been injured? *A.* I have, in a great many cases.

*Q.* What companies are you employed by, the Public Service Corporation? *A.* I do a great deal of work for them; I am not under salary to any company.

*Q.* But you do a great deal of work for them?

30

*A.* Yes, sir.

*Q.* You have been retained by the defendant in this case, have you not? *A.* I have.

*Q.* And you have assisted Mr. Voorhees in preparing this case here in the court room? *A.* Here in the court room; yes, sir.

*Q.* And you are here under a stipulated per diem, I suppose, for your services? *A.* No, I did not; I was not thoughtful enough to arrange that beforehand; I suppose it will be satisfactory, however.

Q. You suppose it will be all right? A. Yes, sir.

Q. You suppose they will use you all right?

A. They should; I know Mr. Voorhees very well.

Q. If it comes out all right, you will get a little better off than if it does not, I suppose?

Mr. Voorhees: Objected to.

Objection sustained.

Q. What experience have you had in arsenical poisoning cases? A. About twenty cases, under my personal supervision.

Q. Where? A. Part of them in Philadelphia, some in Rutherford, Hackensack, Hasbrouck Heights, Newark, Arlington, and so on.

Q. Did you practice in all those places in ten years?

A. Yes; they are all closely together.

Q. Isn't it rather unusual to have so many arsenical poisoning cases in so short a practice?

A. I think not; no, sir.

Q. It is more than the average doctor has, isn't it?

A. Probably; I have been known as a student in that line, and probably I have been consulted oftener on that account than I would have been in ordinary practice.

Q. Have you read the authorities Dr. Smith spoke of the other day when he was here on the stand?

A. I have read nearly all.

Q. You do not agree with those authorities as to the minimum dose which would kill a man, do you?

A. With some of them.

Q. Dr. Smith said that the minimum dose would be two grains to kill a man. You don't agree with that, do you? A. Why, I think two grains by the mouth would be the minimum, yes.

Q. Do you state that if there is any absorption at all having taken place of the arsenic which may have been taken by anybody, that that is sufficient indication that that was the cause of death? Do you say that?

A. In my opinion; yes, sir.

Q. Do you know of any authority to sustain that?

A. Well, I know of my own experience, in one or

two cases where a very minute quantity was found, where death occurred.

*Q.* What case was that? *A.* I can give it to you if it is required.

*Q.* I will ask it. *A.* I will give it if it is necessary...

*Mr. Voorhees:* I don't think it is permissible to give the names of patients.

*The Court:* Why do you want that?

*Mr. Silzer:* I want to test this man. He is here as an expert, and I propose to find out whether his testimony is true or not after this case is finished. I think I am entitled to know. He says he had a case, and it must have been a case which was exhumed. 10

*Mr. Voorhees:* He did not say the case was exhumed.

*Mr. Silzer:* I will find out how much the facts agree.

*The Court:* You may ask him about that; you can test him as to that. 20

*Mr. Silzer:* I repeat the question.

*The Court:* If there is any reason why he should not give the name, it will not be required to go on the record. The Court will permit the doctor to withhold that.

*Mr. Voorhees:* I don't see that the name tends to enlighten us at all.

*The Court:* No. I will exclude that.

Plaintiff excepts.

Exception allowed and sealed accordingly. 30

Justice.

*Q.* I call upon you, Doctor, to give me the names of persons upon whose or in whose bodies there was arsenic absorption, absorbed after death, to which you have just referred, and as to whether there was an autopsy in those cases.

*Mr. Voorhees:* I object to it so far as the names are concerned.

*The Court:* I will permit the doctor to answer

as to whether there were autopsies or not and the other details inquired about in the question, but as to requiring the doctor to give the names, I exclude it.

Plaintiff excepts.

Exception allowed and sealed accordingly.

Justice.

*A.* There were autopsies in both of the cases I mentioned.

10 *Q.* Who was the chemist? *A.* In one case I conducted it myself with Professor Morris of Philadelphia.

*Q.* When was that? *A.* In 1896.

*Q.* That is two years before you began to practice, isn't it? *A.* No, sir; it was the year I began to practice

*Q.* It was the year you began to practice?

*A.* When I was out of my student career.

*Q.* Is Professor Morris still living?

*A.* No, Professor Morris is dead.

*Q.* Was there an autopsy performed in that case?

20 *A.* There was.

*Q.* Who performed that analysis?

*A.* I performed the autopsy and I sent the organs to the Carnegie Laboratory. Now, I am not sure whether I sent them to the Carnegie Laboratory, or Professor Smith. I don't exactly remember to who I sent it.

*Q.* What Professor Smith? *A.* In New York. He is the only analytical chemist of that name that I know there.

*Q.* What institution is he connected with?

30 *A.* He has his own institution.

*Q.* Do you know where? *A.* I don't know; I would have to look it up.

*Q.* That was the other case? *A.* Yes, sir.

*Q.* When was that? *A.* About two years ago.

*Q.* Are you a chemist, too? *A.* No; but when I had more time I did a great deal of chemical work; but I do not do any of that now.

*Q.* You have not taken chemistry, have you?

*A.* I have taken it, yes.

*Q.* So that you can analyze? *A.* Yes, anything.

Q. It does not take very much experience, I suppose, to analyze and to reduce things to their component parts, things of this kind, does it?

A. It takes a good deal of work.

Q. It does not take much ability?

A. I should say so.

Q. How much chemical experience have you had in that line? A. I have had the ordinary course of chemistry in college; I took a special course of chemistry under Paul Pitkin, who was a specialist. In my early days of study I took special interest in chemical work and followed it on all occasions. After I took to practicing I had some time on my hands and I experimented I think on about forty-eight dogs with different poisons, about eighteen or twenty of them from arsenical poisoning, and in those cases I made the autopsies and the chemical analyses of the organs and parts and tried to figure out the amount of arsenic per pound of animal matter that it took to kill. 10

Q. How old are you? A. Thirty-eight years old. 20

Mr. Voorhees: If your Honor please, I find that in the uncertainty occasioned by the adjournment I omitted to put a hypothetical question to the doctor, which I ask leave to do now.

The Court: Yes, you may.

*Re-Direct Examination*, by Mr. Voorhees.

Q. Assuming that a man of the age of forty-five years, a coal trimmer by occupation, previously in good health, is suddenly attacked with vomiting, diarrhea, thirst, burning sensation in the throat, pains in the abdomen, which symptoms continue for a space of three days until death ensues, at the end of that time, from the first attack; and, assuming that said person is buried without being embalmed, that about four months after such burial the body is exhumed, and, upon chemical analysis being made the following amounts of white arsenic are found in the following amounts, to wit: 30

Arsenic equivalent to white arsenia contained in

The bladder .....	.00957 grains
The kidneys .....	.0765 grains
The heart .....	.0183 grains
The stomach .....	.00835 grains
The intestines .....	.1015 grains
The liver .....	1.5 grains
The abdominal tissues .....	.01915 grains

---

- 10 Total ..... 1.73337 grains  
 What, in your opinion, would you say was the cause of death? *A.* Arsenical poisoning.

*Q.* Repeating to you the hypothesis of the question, in your opinion would the quantities of arsenic so found and distributed be an efficient producing cause of death?

*A.* Of the man, I understand?

*Q.* In your opinion, would the quantities of arsenic so found and distributed, be an efficient producing cause of death? *A.* I do not quite catch that question. I don't

- 20 want to answer that indirectly. I understand the hypothetical part of it.

*Q.* Assuming that to have been the case, would, in your opinion, the quantities of arsenic so found and so distributed in the body, be an efficient producing cause of death? *A.* I do think so.

---

*Madeline Simpson*, sworn as a witness on behalf of the defendant, testifies as follows:

- 30 *Direct Examination, by Mr. Voorhees.*

*Q.* Where do you live? *A.* At Newark, N. J.

*Q.* Have you seen Mrs. Annie McCarthy? *A.* I did.

*Q.* When did you first see her? *A.* April 18th, I think, 1906.

*Q.* Where did you see her? *A.* At her home at South Amboy, N. J.

*Q.* What street was that? *A.* Stockton, 11 Stockton street.

*Q.* How did you come to get there? *A.* I was sent there by Chief Gregory, of Newark, N. J.

*Q.* And you went to her house? *A.* I did.

*Q.* How long did you stay at her house?

*A.* I think I was there about a week.

*Q.* How many rooms are there in the house, downstairs? *A.* There are two downstairs.

*Q.* What are they? *A.* A parlor and a kitchen, also a hall.

*Q.* Upstairs, what rooms are there? *A.* I saw three 10 rooms, a front room and two rear rooms.

*Q.* Did you remain there at night? *A.* I did.

*Q.* What room did you occupy?

*A.* I had the parlor downstairs.

*Q.* Who occupied the rooms upstairs? *A.* Mrs. McCarthy, her cousin Miss Davin, Miss Ann Davin, and her son, at the time that I was there, her little girl staying with me downstairs in the parlor.

*Q.* I call your attention to the 24th of April?

*A.* Tuesday, the 24th? 20

*Q.* Yes. What occurred then? *A.* Well, do you mean a person coming to her house in the morning?

*Q.* Yes. *A.* Her cousin, John Davin, of Brooklyn, came there.

*Q.* How did you know that he was her cousin?

*A.* Mrs. McCarthy told me so.

*Q.* Had he been expected? *A.* I think so; Mrs. McCarthy told me she was expecting him.

*Q.* What did she say on that subject? *A.* She said he would be there to midnight, and should I hear any 30 noise that I should not become frightened as it would be her cousin Johnny Davin from Brooklyn.

*Q.* Did he come at midnight? *A.* I think not, so Mrs. McCarthy told me the next morning, that he had come at five o'clock, having missed the midnight train.

*Q.* Did you hear him when he came in? *A.* I heard a noise at the kitchen, but I did not know at the time it was John Davin until later.

*Q.* Do you know who let him in? *A.* Mrs. McCarthy told me that she let him in.

*Q.* Did you notice where this person who was let in went ? *A.* Mrs. McCarthy said he went to the front room, her room, on the second floor.

*Q.* That was over the room that you occupied?

*A.* That was over the room that I occupied; yes, sir.

*Q.* Did you hear it? *A.* I did.

*Q.* When did you see Mrs. McCarthy first after John had been let in? *A.* I think it was about six o'clock in the morning, she came to my room.

10 *Q.* How was she dressed? *A.* Well, at the time she had on a chemise, a black skirt, I don't think any shoes or stockings.

*Q.* What happened then, what occurred then?

*A.* Well, I asked her if she was not cold, she said "No," that she was used to it.

*Q.* Did you have breakfast? *A.* We had breakfast about ten o'clock.

*Q.* Was John Davin there? *A.* John Davin was not there.

20 *Q.* Where was he, do you know? *A.* He was in bed.

*Q.* What happened after breakfast, after you had eaten your breakfast ? *A.* After I had eaten my breakfast, or at the time?

*Q.* Or at the time, what did she do? *A.* At the time, Mrs. McCarthy took his breakfast to his room.

*Q.* Did you see her? *A.* I did.

*Q.* Did you hear her go upstairs? *A.* I did.

30 *Q.* Did she return? *A.* She did, in about fifteen or twenty minutes, I think.

*Q.* Had he eaten his breakfast? *A.* He had not touched anything.

*Q.* Did she bring back his breakfast?

*A.* She brought his breakfast back ?

*Q.* Did you see it? *A.* I did.

*Q.* Did John come down with her—John Davin?

*A.* Not at that time, no.

*Q.* He still remained in his room? *A.* He still remained in his room.

*Q.* What happened after that? *A.* Mrs. McCarthy went to his room again, I think.

*Q.* How long did she remain there? *A.* Well, not a long time, fifteen minutes, probably.

*Q.* And then what happened? *A.* Well, while she was still at the room?

*Q.* Yes. His sister called to her once.

*Q.* Did she come down? *A.* Not immediately, but soon after.

*Q.* Do you know whether she returned, or not, to his room? *A.* I think she did, because she came down-stairs to my room about twelve o'clock I believe. 10

*Q.* When you were there did you ever have any conversation with Mrs. McCarthy about where John Davin was living? *A.* Well, yes, at one time Mrs. McCarthy told me that he had been living at her house, but just how long I don't know.

*Q.* When you say had been living at her house, did she say when with reference to the death of her husband? *A.* No, she told me at the time that her husband was working John Davin was living there; John Davin was living there at the same time, they were both working at the coal docks. 20

*Q.* Do you remember a man by the name of Mulcahy? *A.* I do

*Q.* Where was he? *A.* At that time, dou you mean? On Tuesday morning?

*Q.* Yes. *A.* He was in the rear room.

*Q.* Did you hear any conversation between Mulcahy and Mrs. McCarthy that morning? *A.* I did. 30

*Q.* I mean now, with reference to John Davin?

*A.* Mrs. McCarthy told Jim Mulcahy when he came to his breakfast that his cousin from New York was there, and Jim Mulcahy asked who his cousin was, and Mrs. McCarthy told him Miss Ann Davin's brother; I believe they had not seen each other before that, Mrs. McCarthy said—

Mr. Silzer: Don't let us have what you believe, but just what was stated. I ask that that part be stricken out.

Motion granted. What the witness said she believes is ordered stricken out.

The Witness: Mrs. McCarthy said that they had not seen each other before, and that she did not disturb him to put John Davin in his room, in Jim Mulcahy's room; she did not like to disturb Jim Mulcahy, as he had been up all the night before with her little son who had been sick.

10 Q. And did she say anything further?

A. Yes, that she put him in her room.

Q. Put who in her room? A. John Davin.

Q. In her room? A. In her room.

Q. What did Mulcahy say, if anything, about having seen John Davin before or not? A. He said he had never met him before, he had never seen him.

The Court: When was it that this deceased died?

20 Mr. Voorhees: He died on the fourteenth of June, 1905, and was buried on the sixteenth.

*Cross Examination, by Mr. Silzer.*

Q. What is your name? A. Madeline Simpson--

The Court: Mr. Silzer, it does not seem to the Court that it will be necessary for you to cross-examine this witness, unless you desire to do so.

Mr. Silzer: That is all. I ask that the testimony be stricken out.

30 The Court: No, I will not strike it out, but I want the witness to remain in Court, not to leave the room, and I will allow you to cross examine her if in the further progress of the case it becomes necessary. She must remain.

---

*Dr. Hobart A. Hare, affirmed as a witness on behalf of the defendant, testifies as follows:*

*Direct Examination, by Mr. Voorhees.*

Q. Where do you reside? A. At Philadelphia.

*Q.* What is your profession? *A.* Physician.

*Q.* How long have you been a physician?

*A.* Twenty-two years.

*Q.* Are you connected with any institution?

*A.* Yes, sir; with the Jefferson Medical College, in Philadelphia.

*Q.* What position do you occupy there? *A.* I am the professor of therapeutics, or the use of drugs in the treatment of disease.

*Q.* How long have you occupied that chair? 10

*A.* Fifteen years.

*Q.* Will you state shortly, where you graduated, and where you have been acting and practicing since your graduation? *A.* I graduated in the medical department of the University of Pennsylvania in 1884, and received the degree of M. D. from the Barnard Medical College in 1893. After graduating at the University I taught there, the same branch as I am teaching at the Jefferson Medical College now, namely, the study of the influence of drugs upon man. And since that time, in addition to my practice, I have made a specialty of toxicology, or the action of poisons, having testified in a number of cases as expert; in the matter of arsenic cases, I testified in the case of the Commonwealth of Pennsylvania vs. Hossey, for the Commonwealth; in the case of Dance, for the Commonwealth; in the case of Williams for the defense; in the Mabel Haines case in New Jersey, Mount Holly, for the prosecution. All those were arsenical cases. 20

*Q.* Have you published any books. *A.* I have; yes. 30  
A book upon therapeutics, or the use of drugs in the treatment of disease, and the effect of poisonous doses of those drugs. Also a book with two other men, known as the National Standard Dispensatory, for the use of physicians and druggists, in which the action of drugs, both as medicinal agents and poisons is discussed; also a book on the practice of medicine, in which certain poisons are discussed.

Mr. Voorhees: Would you like to cross examine the doctor on his qualifications?

Mr. Silzer: No, sir.

*Q.* What are the symptoms following the administration of arsenic to a human being? *A.* In medicinal or poisonous doses?

*Q.* Well, I ask you first of medicinal doses, and then of poisonous doses? *A.* There are many symptoms following the administration of the ordinary medicinal  
10 doses, unless they are continued for so long a period of time in quantities which border upon the poisonous, in which case those doses produce certain symptoms, connected with the nervous symptoms, chiefly localized and general forms of palsy or paralysis, and irritation of kidneys and of the bowels.

*Q.* Now, as to the administration of poisonous doses?

*A.* A poisonous dose produces within a very short time, or sometimes not for several hours, depending upon its size and whether the stomach contains fluid or  
20 food, vomiting, purging, severe abdominal pain, dryness of the mouth, marked thirst, and after the vomiting and purging have existed long enough to tend to produce collapse, that symptom or that condition which is commonly called collapse develops in which the extremities become cold and the circulation feeble; these symptoms of collapse, being due, however, not solely to the diarrhea and vomiting which has been present, but also being due in part to the absorption of the arsenic into the system and its depressing effect upon the  
30 body in general. Not rarely the urine becomes suppressed or greatly diminished in quantity, by reason of the irritation of the kidneys and the passage of the arsenic through those organs.

*Q.* You have spoken about food. If food was present in the stomach, or assuming that arsenic was administered in the food, would the manifestation of the symptoms be hastened or retarded? *A.* They would be retarded. Pardon me for one moment. On general principles they would be retarded, it might happen that a man might have quite an irritable stomach, and even

with the presence of food there he would vomit in a very much shorter time than some people; some people have very much more tolerant stomachs than others.

*Q.* Assuming that a man has taken food, say, at midnight, between midnight and one o'clock, and assuming that arsenic had been placed in that food, and he was affected with symptoms of arsenical poisoning, say, five to six o'clock in the morning, what would you say as to the time that— *A.* Do you mean as to whether it would be possible for the effect of arsenic taken at twelve o'clock not to develop the symptoms until five or six in the morning? 10

*Q.* Yes. *A.* That is quite possible; yes.

*Q.* Assuming that a man at the age of forty-five years, a coal trimmer by occupation, previously in good health, is attacked with vomiting, diarrhea, thirst, burning sensation in the throat and pains in the abdomen, which symptoms continue for about the space of three days and until death ensues at the end of that time, and, assuming that said person is buried without being embalmed, and that about four months after such burial the body is exhumed and upon chemical analysis being made the following amounts of white arsenic are found in the following organs, namely: 20

The bladder .....	.00957 grains	
The kidneys .....	.0765 grains	
The heart .....	.0183 grains	
The stomach .....	.00835 grains	
The intestines .....	.1015 grains	
The liver .....	1.5 grains	30
The abdominal tissues .....	.01915 grains	

Total ..... 1.73337 grains

What, in your opinion, would you say was the cause of death? *A.* Arsenical poisoning.

*Q.* Assuming the foregoing hypothesis, as represented and repeated to you, in your opinion, would the quantities of arsenic so found and so distributed in the organs of the body, be an efficient producing cause of death?

*A.* Yes, sir.

*Q.* When you speak of a dose of arsenic being a minimum poisoning dose, what do you mean as to quantity, that which is afterwards found in the body or that which passes the mouth? *A.* That which passes the mouth, of course.

*Q.* Assuming that one, and practically three-quarter grains of arsenic were found in a body in the organs which I have mentioned in my previous question, would that represent the whole quantity of arsenic which had  
10 passed the mouth? *A.* No, sir.

*Q.* Can you form any approximate idea or opinion as to the relative quantities of that which must have passed the mouth and that which is found? *A.* Well, of course, that would be an exceedingly rough guess. There are a great many factors that are involved, but, very roughly, very roughly, I should say, about one-third, probably, was found.

*Q.* In your study of toxicology, have you turned your attention at all to the chemical analysis of bodies for the  
20 finding of these poisons? *A.* No, sir; except in an indirect way.

*Q.* Do you know of the approved methods?

*A.* I know of them, but I am not an expert in their application.

*Q.* Did you hear Dr. Deghuee testify on Thursday last? *A.* I did, sir.

*Q.* As to the methods which he employed?

*A.* Yes, sir.

*Q.* Can you say whether those are or are not the ap-  
30 proved methods of ascertaining the quantities of poisoning? *A.* I cannot testify that the minute details of his methods are the well recognized methods, because I am not an expert, but I heard him say that he used the Reinisch and Marsh's tests, and those tests are the best recognized tests in chemistry, that are known in any department, I think.

*Q.* When arsenic is administered, the sequence, manifestation of it in vomiting, does that tend to dissipate the quantity in the body? *A.* Yes, sir; vomiting is an

effort on the part of the stomach to get rid of the poisons which irritate it.

*Q.* Are the other methods of nature which tend to the same results? *A.* The purging is for the same purpose.

*Q.* And any other? *A.* The kidneys eliminate the arsenic in the urine.

*Q.* Absorption has been mentioned here, what is that? *A.* I did not get the word, absorption.

*Q.* Absorption of the arsenic? *A.* The absorption of the arsenic is the passage of the arsenic from the inner portion of the stomach through the walls of the stomach into the blood vessels or lymphatics, whereby the lymph in the lymphatics or the blood in the blood vessels carries the arsenic to the various portions of the body. 10

*Q.* If arsenic were found in the bladder, kidney or heart or liver, would you say there had been any absorption of it? *A.* That would be positive proof of it.

*Q.* Are there other portions of the body, and, if so, what, where arsenic, if searched for, would be found by absorption? *A.* In cases of poisoning, do you mean? 20

*Q.* Yes. *A.* Why, it is found in considerable quantities in the bones, also found in the nervous system, in the brain and spinal cord, in the muscles, I think almost every tissue of the body contains traces of it in most cases.

*Q.* Had you that fact in mind when you said that a larger proportion of arsenic had been administered than was found in those organs? *A.* I don't think I quite said that; I think I said that I could roughly approximate the fact that one-third— 30

*Q.* I did not ask you about the quantity. I said when you said there had been more, would undoubtedly have been more arsenic administered than was found in those organs? I did not ask you about the exact quantity.

*A.* I beg your pardon. May I ask to have the question repeated.

*Q.* Had you that fact in mind when you said that a larger proportion of arsenic had been administered than

was found in those organs ? *A.* Yes. I also had another fact in mind, namely, that it is a well recognized fact in toxicology, that even if an infinitesimal quantity of arsenic is found in a suspected case, that that may have quite as much bearing as if a large quantity were found, because arsenic may enter a body, be rapidly absorbed and be rapidly eliminated and produce its death dealing influence just as a cyclone may sweep through a town and level a block, and, in one sense there is no trace of the cyclone after it has swept through. So that a very  
 10 minute trace of arsenic, in association with those symptoms, far smaller than that which has been shown by the analysis, would justify you in saying that the symptoms were those of arsenical poisoning.

*Cross Examination, by Mr. Silzer.*

*Q.* Assuming the hypothetical question that Mr. Voorhees has put to you, which you will remember, I ask you if you will say that all other causes of death  
 20 besides arsenical poisoning are eliminated? *A.* I cannot testify to that as an expert. I was not there, I did not see the man, I did not have an opportunity to examine him, I did not treat him. He might have been struck by lightning for all I know.

*Q.* So that, it might be possible that he died of something else besides arsenical poisoning, assuming the facts which were given to you in this hypothetical question ? *A.* It is possible, but not probable.

*Q.* So that you would not positively swear to the fact  
 30 that arsenical poisoning was the cause of death?

*A.* I would swear that those symptoms associated with those chemical findings indicate that.

*Q.* I ask you if you will swear positively that arsenical poisoning was the cause of death, and will you answer that "Yes" or "No"? *A.* I cannot answer that, "Yes" or "No."

*Q.* If a man had administered to him a dose containing five grains of arsenic— *A.* When you say arsenic, what do you mean?

*Q.* Well, what is equivalent to—I will withdraw

that. What have you meant by arsenic? *A.* I have meant what is known as arsenic tri-oxide, used to be called arsenious acid.

*Q.* Are there two kinds of arsenic? *A.* Well, there is the element arsenic which was never used in medicine, which is practically never used for poisoning, it is always some preparation of that element.

*Q.* So that there are various kinds? *A.* There are various kinds of what we actually term arsenic, each having different properties and different qualities, each able to produce the symptoms of arsenical poisoning, but they vary in their degree and their action on the circulation. 10

*Q.* Suppose there should be administered a dose of five grains of the kind of arsenic that you have been testifying to, what would be the effect upon the person who took that dose? How soon would you see it?

*A.* That would depend entirely. You have asked me two questions, which do you want me to answer first; you ask me first what would be the effect, and then, how soon would you see it; shall I take the last question first? 20

*Q.* Either way. *A.* Well, the question how soon you would see the effects would depend first upon how tolerant the person's stomach was to the reception of the irritant; second, it would depend upon how much food and liquid there was in the stomach which would protect the mucus membrane, of the stomach from contact with the drug, and, third, it would depend to a certain extent upon the character of that food and liquid, as to whether it was of such a nature as to readily dissolve that arsenic, so that it could easily be absorbed, or if it was of a character which would prevent the dissolution of the arsenic, making it difficult of absorption. I think that covers the point of how soon the symptoms would develop. In a majority of the cases of arsenical poisoning, the symptoms develop in from half an hour to four or five hours, acute arsenical poisoning, of course, I am speaking now of acute arsenical poisoning. The second question I will have to ask you to repeat to me. 30

*Q.* Suppose there should be administered a dose of five grains of the kind of arsenic that you have been testifying to, what would be the effect upon the person who took that dose? *A.* The symptoms would be identical with those which have been described in the hypothetical question addressed to me by Mr. Voorhees, and which I described, I think, at the beginning of my testimony, as to the symptoms, as being the symptoms of acute arsenical poisoning.

10 *Q.* How does arsenic affect the stomach of a man who is commonly known as a heavy drinker, as to whether it acts quicker or slower? *A.* Well, that would depend absolutely upon how lately he had been doing heavy drinking.

*Q.* Well, lately? *A.* Well, if he had taken a large quantity of undiluted or very raw whiskey, or some irritant in the form of an alcoholic drink, within a short time which by irritation would have increased the circulation in his stomach and stimulated it to increased activity, the arsenic would probably act as a severe irritant very rapidly, adding its irritation to that produced by the alcohol.

*Q.* He would vomit very quickly, wouldn't he?

*A.* May I answer that question; the former one.

20 *Q.* Yes. *A.* If, on the other hand, he was a chronic alcoholic, whose stomach was accustomed to pretty frequent libations, and who had become, to use a slang phrase, copper lined, by those frequent libations which had not been sharp enough to produce an acute inflammation of the stomach, then the arsenic might lay in the stomach for perhaps twenty-four hours without being absorbed. Even the most stimulating kinds of food sometimes lie in a drunkard's stomach for many hours without being influenced in any way by the gastric juice, so that I cannot answer that question directly.

30 *Q.* How long, ordinarily, would it take for five grains to produce death, in an ordinary case? *A.* That again would depend entirely upon the rapidity of absorption, which also depends entirely upon the speed with which the stomach resented the presence of the irritant poison.

The Court: Take the normal condition, let us testify to the normal conditions.

The Witness: Well, I will answer approximately, is the question as to death or to the development of symptoms, pardon me?

Q. Death? In a case where there is almost immediate vomiting, or within a couple of hours? A. Death usually comes about the third day in arsenical poisoning.

Q. That depends upon the man and the dose? 10

A. It depends upon the man and the dose; it depends upon the quantity which is gotten rid of by vomiting before it could do much damage, it depends upon the vital resistance of the individual and the susceptibility of his different organs to the action of the poison.

Q. You say it usually would be about the third day?

A. Yes, sir.

Q. What did I understand you to say the minimum dose was which would cause death? A. I think the minimum case on record is about a grain or a grain and a half, but I am not certain of that. 20

Q. That is the smallest dose on record, isn't it?

A. Yes, sir.

Q. What is the average? A. Well, I don't know what the averages doses of poisonings have been.

Q. That is the least? A. Yes.

Q. That is the minimum? A. That is the smallest amount that I know of on record which has caused death in an adult. 30

*Re-Direct Examination, by Mr. Voorhees.*

Q. When you say the smallest amount on record, what do you mean by that, the amount administered?

A. Yes, sir.

Q. Not the amount found in the body? A. Oh, no. The point in regard to that matter is this, that the mere finding of arsenic in a man's stomach does not necessarily indicate that he dies of arsenical poisoning, because it may have just been put into his stomach; but, if it has been absorbed into his liver and into his kid-

neys, and into his bones and other tissues, indicating that it has entered into the body instead of merely having been put into a small cavity like the stomach, those organs that give us the information that you have, and the fact which you stated that the liver contained a very large proportion of arsenic, showed that it had gotten beyond the stomach into the tissues and vital organs, and therefore was in a position to produce its effects.

- 10 *Q.* You said in answer to counsel's question that McCarthy might have been struck by lightning. Assuming that all the surrounding symptoms and conditions have been described to you in the hypothetical question which was put to you, can you be more definite in your answer as to the cause of death?

20 *Mr. Silzer:* Objected to. He cannot assume that they were all in there, because they were not; it does not appear what the physicians prescribed, what they did, what the man's appearance was and so on.

*The Court:* I think the hypothetical question was a fair question. The question itself was not objected to, and I think this question is admissible.

Objection overruled.

Plaintiff excepts.

Exception allowed and sealed accordingly.

- 30 *Justice.*  
*A.* Of course there were no symptoms of the patient having been killed by lightning; I only meant to bring that point forward for the purpose of emphasizing the fact that I was testifying as an expert and was not there.

*Q.* You have not answered me only negatively, and I wish you would answer it? *A.* May I have the question again?

*Q.* You said, in answer to counsel's question, that McCarthy might have been struck by lightning. As-

suming all the surrounding symptoms and conditions that have been described to you in the hypothetical question which was put to you, can you be more definite in your answer as to the cause of death? *A.* Yes; the cause of death was typically that of arsenical poisoning.

Defendant rests.

Testimony closed.

---

10

Mr. Silzer: I move for the direction of a verdict.

The Court: I do not care to hear you on that now.

I was about to suggest that, at the beginning of this case, an application was made to amend by inserting a plea alleging suicide, and the Court refused to permit the introduction of that plea. I now desire to ask counsel for the defendant whether, if the Court should permit that plea to be interposed it will make any difference to him in the matter of defense which he has put in, or which he would propose to put in, or would have made any difference if the Court admits that plea at this point? 20

Mr. Voorhees: I will say to your Honor that I should not have had any other testimony than that which has already been offered in this case.

The Court: Even if the Court had allowed you to interpose that plea?

Mr. Voorhees: Yes, sir.

The Court: Well, I am inclined, Mr. Silzer, at this point to permit that plea to be interposed in this case in view of that statement by Mr. Voorhees, because I think this case ought to be determined on all lines. Have you any objection to that? 30

Mr. Silzer: No, your Honor.

The Court: Then the plea will be deemed as having been amended in accordance with the plea which was presented and marked Exhibit D 1, which alleges suicide.

Now let the case proceed.

Mr. Silzer: If the Court please, I move for the direction of a verdict for the plaintiff.

The declaration is upon this insurance policy. The pleas are the general issue first, and second, that the proper proofs of death were not made.

The Court: Is that relied on?

Mr. Silzer: That has not been controverted.

10 Third, the plea was that the plaintiff conspired and combined with others to cause the death of Thomas McCarthy, and did in fact cause the death of Thomas McCarthy.

Now, they have failed absolutely on that. There is no proof either of a conspiracy on the part of this plaintiff with some other person or any proof that she herself poisoned her husband.

20 The fourth plea is that in order to injure and defraud this defendant the plaintiff intentionally sought and procured the death of Thomas McCarthy. There is absolutely no proof of that. And that same plea is put in different forms, that this plaintiff either poisoned her husband or conspired with others to do it. Now, I say that there is absolutely no proof before this Court connecting this plaintiff in any particular with the administration of poison to her husband or showing that she was instrumental in any way if poison was administered. It seems to me that the case is absolutely devoid of proof. We have the proof of the doctors, who only testify that perchance he died of arsenical poisoning, and that is all there is except inuendoes; and the other matters testified to about someone else living in  
30 the house had no bearing at all upon the case.

The Court: What other proof would it be possible to make of the fact of arsenical poisoning having caused the death of a person than by expert testimony? Except, of course, if someone was present when it was administered?

Mr. Silzer: I say, assuming for the purposes of this argument that it is proven that he died of arsenical poisoning, I say there is no proof that this plaintiff administered that poison. We cannot assume without

proof, from the mere fact that a man died of poison, that his wife administered it. It appears in the case that he had been taking a drink out of an old water barrel; what might have been in that no one knows. There may be a hundred different explanations of how the man died of poisoning, how he secured that poison, how it was given to him. Someone might have given it to him, but that does not prove that this plaintiff gave it to him, and I submit that there is absolute absence of proof to show that this plaintiff either caused or con- 10  
spired with others or had any part in giving poison to her husband, or causing his death. Therefore, there should be a direction of a verdict for the plaintiff in this case.

There is no proof of suicide here either.

And there is no proof of motive; there is not even a scintilla of proof that this plaintiff has a motive for the administration of poison to her husband.

The Court: Mr. Voorhees, I will hear you on that.

Mr. Voorhees: In reply I first address the Court 20  
with reference to the time of making this motion. Let us see how the case stands. The case is here on the plaintiff's testimony, the defendant has now put in its defense—

The Court: And there is no rebuttal?

Mr. Voorhees: Now, has counsel said that there is no rebuttal?

The Court: Well, the Court will so deem it.

Mr. Silzer: I do not see anything to answer.

Mr. Voorhees: If counsel has closed his case then I 30  
am ready to argue the case.

The Court: The Court is ready to hear you.

Mr. Voorhees: I understand that counsel is not going to put in any testimony?

The Court: The Court is ready to hear you on that theory. He has made his motion.

Mr. Voorhees: I understand that the motion for the direction of a verdict comes after the case is closed, and with that understanding, that counsel has closed his case, I am here to answer the argument.

The Court: Proceed. The Court will hear you.

Mr. Voorhees: The proof of the administration of poison, I presume, would be no more strict in a civil case than it would be in a criminal case. In fact, we all know that in a criminal case we would have to prove that much more clearly than in a civil case.

The Court: The rule is, beyond a reasonable doubt, in a criminal case.

10 Mr. Voorhees: Yes, sir; and it does not obtain in a case like the one in hand. There have been circumstantial convictions found in criminal cases, and it is not to be supposed for a moment that in a majority of cases, even in a large number of cases, that a defense of this kind can be shown by people who have witnessed the administration of poison. Why, the number of cases, if that were the rule of law, that could be made out would be infinitesimal, and, as I take it, it is not the rule of law that we must show that this woman gave the poison.

20 What we have to do, if I understand the rules of evidence, is that we must produce facts to the jury which will satisfy them that that was the inevitable cause of these facts. There you find the deadly dose in this man, you find the man living with his wife, she taking care of him, in the same house, preparing his meals; he takes a meal at twelve o'clock, he goes out, and is brought home with the symptoms from which he never recovers. Physicians are brought in, they give him nothing but calomel, and a little bismuth to quiet his stomach,

30 and he dies at the end of the third day.

Now, where did he get it? Isn't it fair, isn't it proper, to leave it to the jury to say where his opportunity was for getting that poison?

The Court: But where ought a man's wife to be? What should a man's wife do? It is her place to be at home. It is her business to prepare her husband's food. Surely the law does not imply from the fact that she is doing what she must do by her moral and legal obligation, that she can be charged with poisoning her husband.

Mr. Voorhees: Well, let me go a step further. Your Honor saw that I had witnesses here, more or less unwilling witnesses; naturally they were unwilling witnesses. I don't know that I can blame them for their mental attitude toward me; but even then, when that man was dying, and when in his thirst he called upon his wife, and what was her reply to him? Now, that alters the case of a man's wife being in her proper place and doing her proper duty to her husband, when he in his dying moments calls upon her and she makes a reply 10 of the character that was testified to here; and that has not been denied, and here is the woman to deny it. To be sure the witness said, he said, "Don't mind her; she don't mean what she says." And counsel asked, "Wasn't he in a joking spirit?" "No," said the witness, "he was not; he was sick."

Now, I say that is enough to take this case to the jury.

Then you must recollect the motive. There is a strong pecuniary motive— 20

The Court: Now, upon that point, the motive, of course, would be to get the policy. But there is no proof in this case, that I recall, that she ever suggested obtaining this policy on this man's life.

Mr. Voorhees: That she ever moved to get this policy?

The Court: That she suggested to take it out on this man's life.

Mr. Voorhees: No, I have not any proof on that subject at all. But she knew it was there. 30

The Court: I suppose she did.

Mr. Voorhees: Just a few weeks before this occurred she knew it.

The Court: The view I have taken of this case, and I have given it a very great deal of thought, leads me to a conclusion, which seems to be my duty in regard to it.

The defense in this case is under the pleas that the plaintiff, or the plaintiff in conspiracy with others, caused the death of the insured.

Death is said to have been caused by arsenical poisoning, and to establish this the fact that about one and three-quarter grains of arsenic was found in the stomach and vital organs examined is relied upon.

And I think, under the testimony of the physicians in this case, there is sufficient proof to say, by the weight of the evidence, that the deceased probably came to his death from arsenical poisoning. At least, as the case now stands, that must be so.

- 10 The first question that naturally presents itself is, Does the proof establish that the insured did die from poisoning? What I have just said upon that indicates that I think there is sufficient proof in the case to justify the finding that there is a probability that his death did come from arsenical poisoning.

The defense relies, of course, to establish this, upon the results of the chemical analysis and the testimony of those experts to which I have made reference.

- 20 While this evidence would seem to establish the probability of death from poisoning, there is a fact in this case that is quite potential in its determination, and that is, that neither of the two attending physicians discovered or thought—they both expressed it that way—that arsenical poisoning was the cause of the death. The regular attending physician who gave the certificate stated it as bismuth. Now, it may be that an ordinary practicing physician, without great familiarity with arsenical poisoning, would not be able to detect it, or might not think of it, but the testimony of these two  
30 witnesses, if the question were to go to the jury on that issue, would furnish reasonable ground for them to hesitate upon the question of the proof in this case establishing that the insured died from arsenical poisoning.

But, if it be conceded that it is proven by the weight of evidence that the deceased did die from arsenical poisoning, still that does not make a defense against the plaintiff on the policy in this suit. She, or others acting for or with her, must have caused the death of the insured, through the poisoning, to justify a verdict for the defendant.

Now, can it be said that the weight of evidence in this case points to any act or acts of the plaintiff that would justify, even inferentially, such a conclusion?

I am not able to so construe it, or to think the evidence of such a character on this point as to justify the belief, even, that two reasonable minds could differ about it. There is not a particle of direct evidence suggesting the belief that the plaintiff poisoned her deceased husband. No poison was even found in the house; no suggestion is made that she purchased any or that any other person, for that matter, purchased any for her, or for her or the insured's use. If there was proof that he had arsenic around about where it was accessible to someone in the house, it might be different. Nor was it shown to have been in the house, or to ever have been there or brought there by anyone. Nor was it shown to be anywhere where this plaintiff or anyone else who had access to the deceased, could have procured it. 10

Jurors cannot be expected to guess out verdicts, in order to avoid insurance policies after the death of the insured, and to do it upon mere suspicion. And I do not mean by this statement to intimate that I think there is even the slightest reason or suspicion to hold this plaintiff for having poisoned her husband. 20

It would surely not do to impute to the plaintiff guilt of the charges suggested against her on such proof in a criminal case, nor to permit the defendant to escape its just obligations, by simply showing opportunity and a possible motive, and nothing more. 30

She was at the bedside of her husband during his last illness, rightfully. There is where she should be. There is nothing suspicious or incriminating in that fact. It would have been very suspicious and appear much more incriminating if she had not been there.

The attending physician never suggested, nor intimated, that the deceased was poisoned. The insured himself gave no expression indicating it. The married life of the insured and the plaintiff has not been shown to be other than pleasant. I think, on the other hand,

that the proof is that it was pleasant, all the witnesses who have testified to it say their relations have been pleasant, and they have a number of little children, and they have lived together for years, and there is not a breath of suggestion in this case that can be said to intimate that their relations were not affectionate and that he did not have regard for her as his wife and she for him as her husband.

It is not shown that the plaintiff sought this insurance upon the life of her husband or even suggested the—

10 Mr. Voorhees: It is here. I want to show your Honor the proof on the application for insurance. This is one of the signatures for the application.

The Court: That may be; that paper has not been brought to my attention before. These papers have not been shown to me in court, and if I am in error as to the statement just made it is because of that fact.

Mr. Silzer: The application is attached to the policy, your Honor, and signed by the man himself.

20 The Court: Let me examine that. (Examines paper.) This appears to be some sort of an amendment to the policy.

Mr. Voorhees: That was a misstatement of the age, at the same date as the application.

The Court: This does not show that she signed the application, but that, after the application had been made and she became the beneficiary, then this amendment seems to have been signed by her and by the assured both. It was probably found necessary to correct the error after the application was signed.

30 Mr. Voorhees: I simply wanted to bring it to your Honor's notice so that you would not be misled.

The Court: It was within the power of the defendant to show by its soliciting agent, if such were the fact, that she had solicited this insurance; sought out the agent and endeavored to procure insurance upon the life of her husband. That does not appear in the case. The suggestion made by counsel in the paper which he now hands me, which is the application itself, shows that it might appear by this paper that she did make

application, but it appears that the application itself is signed by the insured, and in making the application some mistake was made in the application after the name of the beneficiary had been written in the application, and in the slip of paper attached to the application in order to amend it, of course, the beneficiary was required to sign, but that does not show any connection with the plaintiff other than that made necessary by the condition of the application after the signing of it.

I have, therefore, reached the conclusion that on that branch of this case, as to weight of evidence, or as to there being any evidence which should go to the jury, imputing to this plaintiff the poisoning of her husband, I am utterly unable to find it or perceive it, and I should be very unwilling to let a verdict stand for a single moment on testimony of this character without further evidence of some nature connecting the plaintiff with any poisoning. 10

Now, on the question of suicide. Undoubtedly the weight of evidence from the expert testimony in this cause standing alone would establish the fact that this man died from poisoning, and that he either administered that poison to himself or someone else administered it to him. But, what is the burden of proof with regard to that? 20

It is not enough for an insurance company, on a policy of life insurance, to show that a party died from poisoning, in order to establish suicide. I know of no case that holds that. I think the insurance company must show that the deceased administered the poison. The language of the contract under which the company claims exemption is, "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," etc. Now, under that the company holds the burden of proof, and it must show that he did die by his own hand or act, not that he had poison in him, not that there was sufficient poison found in the body after death to warrant the claim that it could cause his death, but that it was there because of something 30

which he did by his own hand or by his own act. I do not see that there is anything in this case at all to establish the fact that the insured died by his own hand, so that I do not think that even under the suicide clause of this policy there is any proof justifying the case to go to the jury.

Now, on the proof in this case, of the detective, I doubt whether I should even refer to that. I think the least said about the testimony and demeanor of that woman on the witness stand, the better. No defendant, 10 or plaintiff, it seems to me, should resort to testimony of that character for the purpose of getting evidence in order to defeat an ordinary contract. It is bad enough for the State to do it in a criminal case. The evidence of the detective is not of such a character as to appeal to the Court, and particularly when that evidence in no way touches the time of the death or antecedent to the death, but relates to a period seven or eight months afterwards. The plaintiff in this case would have had 20 the legitimate right, if she had seen fit to do so, to have entertained persons at her house, eight months after her husband's death. The propriety of it might be questioned, probably, in polite society, but the legality of it is not at all in question; and so it would seem that that testimony ought not to bear the slightest upon the determination of the issues in this case.

I think, therefore, gentlemen of the jury, it is the duty of the Court to direct a verdict in favor of the plaintiff for the full amount of this claim, with interest and costs.

30 The defendant excepts to the direction of a verdict.

Exception allowed and sealed accordingly.

J. FRANKLIN FORT, J. S. C.

# New Jersey Court of Errors and Appeals.

---

ANNIE McCARTHY,  
*Defendant in Error,*  
 vs.  
 THE METROPOLITAN LIFE INSUR-  
 ANCE COMPANY,  
*Plaintiff in Error.*

---

10

## ASSIGNMENT OF ERRORS.

• Filed July 21, 1906.

And now, on this day the plaintiff in error assigns the following causes of error:

And now, to wit, on this twenty-first day of July, in the year nineteen hundred and six, before the Court of Errors and Appeals of the State of New Jersey, comes the said Metropolitan Life Insurance Company, by Willard P. Voorhees, its attorney, and says that in the record and proceedings, and also in the giving of judgment in the said action in said Supreme Court, there is manifest error in this:

First. That the declaration and the matters therein contained are not sufficient in law for the said Annie McCarthy to have her said action against the said plaintiff in error.

Second. That the Justice who tried said cause directed the jury to find a verdict for the said defendant in error.

Third. Because the said Justice who tried said cause, at the close of said cause, refused to submit said cause to the consideration of the jury.

WILLARD P. VOORHEES,  
 Attorney of Plaintiff in Error.

Service hereof acknowledged this twentieth day of July, 1906, for the defendant in error.

GEORGE S. SILZER.  
 Attorney of Defendant in Error.

**JOINDER IN ERROR.**

And whereupon, afterwards, the said Annie McCarthy, by John A. Coan and George S. Silzer, her attorneys, comes into Court and says there is no error either in the record and proceedings aforesaid, or in the giving of judgment aforesaid, and she prays that the Court may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that the judgment aforesaid in the manner aforesaid given, may in all things be affirmed.

JOHN A. COAN,

GEORGE S. SILZER,

Attorneys and of Counsel with the  
Defendant in Error.

20

30

## EXHIBIT P I.

## COPY OF THE APPLICATION.

Same as found on pages 9, 10, 11 and 12 of book, down to line 28, incorporated in policy, with this addition—

9-29-04-10m

565888-91C

Form C148

Pertaining to APPLICATION ON LIFE of Thos. McCarthy.

FORWARDED BY R. Hutchings, Supt. Red Bank,

Agt. Lins.

To The Metropolitan Life Insurance Company.

The undersigned hereby amend the Application for Life Insurance made to your Company dated May 8, 1905, in the following particulars; and these amendments and declarations are to be taken and considered as a part of the said application and subject to the agreements, covenants and warranties therein contained, and the said application and these amendments are to be taken as a whole and considered as the basis of and as a part of the contract of insurance,

By making paragraph 1 a part C read—My age nearest birthday is 45 years, instead of 44 years.

In all other respects said application is correct and true, and . . . . .hereby ratify and confirm the statements therein made.

Dated at So. Amboy N. J. this 17 day of May 1905.

THOMAS N. MCCARTHY

Signature of the person whose life is proposed for insurance.

Witness John Lins

ANNIE MCCARTHY

Signature of the person for whose benefit the insurance is proposed.

Witness John Lins

To be filled in and signed in INK only.

