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Petition of Appeal.

(Filed July 5, 1929.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10 Between

THE PRUDENTIAL INSURANCE COM-
PANY OF AMERICA, a corpora-
tion,

Complainant-Appellant,

*and*WILLIAM A. CONNALLON,
Defendant-Appellee.

20

On Appeal from
the Court of
Chancery.

Petition of Appeal.

*To the Honorable The Court of Errors and Ap-
peals in the Last Resort in All Causes:*The petition of The Prudential Insurance Com-
pany of America, appellant in the above entitled
cause respectfully shows that:

1. Petitioner finds itself aggrieved by a Final
Decree made in the Court of Chancery by his
Honor Edwin Robert Walker, Chancellor of the
State of New Jersey, on the advice of Vice-Chan-
cellor James F. Fielder, bearing date the 16th day
of June, A. D. 1930, in a certain cause in the said
Court of Chancery, wherein your petitioner was
complainant and William A. Connallon was de-
fendant, in this respect, to wit: That the said de-
cree adjudges and decrees that the bill of com-
plaint of your petitioner as complainant in the
said cause, be dismissed and in the further respect
that the said decree adjudges and decrees that
the said defendant be allowed his costs to be taxed

Petition of Appeal.

in the said cause, including a counsel fee of \$200., allowed to the solicitor of the said defendant.

2. And your petitioner appeals from the decree of the Chancellor, which decrees as aforesaid, upon the ground that the same is erroneous, in that the same should have decreed that the relief prayed for in the prayer of complainant's bill of complaint as filed in the said cause, be in all things granted and allowed; and that the policy of insurance issued by your petitioner upon the life of Martin Connallon as set forth in the said bill of complaint be rescinded and surrendered for cancellation; and that the said policy did not take effect on its said date, or at any other time; that the same is void and of no effect; and that an injunction issue against the said defendant, William A. Connallon, restraining and enjoining him from assigning, transferring or parting with any right, title or interest he may claim in the said policy of insurance, and from instituting any proceeding against your petitioner therein; and that your petitioner as complainant in the said cause have its costs as against the said defendant, including an allowance of counsel fee to the solicitors therein of your petitioner.

Your petitioner therefore prays that the said decree of the Chancellor may be wholly reversed, set aside and for nothing holden, and that petitioner may have such other relief in the premises as to this Court shall seem proper.

PERKINS & DREWEN,
Solicitors for and of counsel with The
Prudential Insurance Company of
America, a corporation, appellant's
attorneys, for appellant.

Answer to Petition of Appeal.

(Filed July 10, 1929.)

NEW JERSEY COURT OF ERRORS AND
APPEALS.

10

Between

THE PRUDENTIAL INSURANCE COM-
PANY OF AMERICA, a corpora-
tion,

Complainant-Appellant,

*and*WILLIAM A. CONNALLON,
Defendant-Appellee.

20

On Appeal from
the Court of
Chancery.Answer to Peti-
tion of Appeal.

The answer of William A. Connallon, the above named appellee, to the petition of appeal of The Prudential Insurance Company of America, a corporation, the above named appellant.

30

This appellee, not admitting the truth of all or any of the matters in the said petition of appeal contained, for answer thereto nevertheless admits that a decree was, on June 16th, 1930, made and entered in the Court of Chancery of New Jersey, in the above entitled cause, for the purposes in said petition mentioned and as therein set forth; but as to the substance and form of said decree, this appellee begs leave to refer thereto when the same shall be produced.

This appellee is advised and believes that the said decree is agreeable to equity and he prays that the same may be affirmed with costs to be taxed in favor of this appellee.

40

DONALD M. WAESCHE,
Solicitor of Appellee.
JAMES F. MALONEY,
Of Counsel.

Bill of Complaint.

(Filed August 2, 1929.)

IN CHANCERY OF NEW JERSEY.

To His Honor,

EDWIN ROBERT WALKER, 10
 Chancellor of the State of New Jersey.

Complainant, the Prudential Insurance Company of America, a corporation of the State of New Jersey, having its principal office in the City of Newark, County of Essex and State of New Jersey, respectfully shows:

1. Complainant is a corporation engaged in the business of life insurance and authorized to conduct such business in this state. 20

2. That on the 23rd day of July, 1928, one Martin Connallon, then residing at 99 Sussex Street, in the City of Jersey City, New Jersey, made written application to complainant for a policy of insurance on his life in the sum of \$1,000, which application was signed by the said Martin Connallon, and by said application the said Martin Connallon made certain answers and statements to questions propounded to him in said application. 30

3. That annexed hereto and forming a part hereof and marked Schedule A, is a true copy of said application.

4. That in and by the said application, the said Martin Connallon declared that all the statements and answers to the questions in said application were complete and true and agreed that said statements and answers, together with his declaration, should constitute the application and be- 40

Bill of Complaint.

come a part of the contract of insurance applied for, provided a copy thereof was attached thereto. The said Martin Connallon further declared and agreed that the policy applied for should be accepted subject to the privileges and provisions therein contained and that unless the full first premium was paid by him at the time of making the application, the policy should not take effect until issued by the company and received by him, and the full first premium thereon paid, while the health and occupation of the said Martin Connallon were the same as described in his application, and further that if at the time of signing the application, the full first premium was paid, the insurance should take effect from the date of the application, only in case the said Martin Connallon was then, on the date of the application, in sound health, and the application was approved and accepted by the complainant.

5. That in and by said application, the said Martin Connallon represented to the complainant company that the then present condition of his health was good; that he had never been seriously sick; that he had never been sick of any disease whatever; that he had no physical or mental defect or infirmity; and that his occupation was truck-horse driver.

6. That the said Martin Connallon stated, represented and declared in said application that he had never suffered from consumption, asthma, spitting of blood, habitual cough, disease of the liver, dyspepsia, and other illnesses therein particularly described.

7. That in answer to the question, "On what dates and for what complaints has life proposed been attended by a physician during the past three

Bill of Complaint.

years?", the said Martin Connallon answered "None". He further stated and represented and declared in said application that he had not received treatment within three years previous to the 23rd of July, 1928, at any dispensary, hospital or sanitarium.

10

8. Complainant further shows that the said application and the answers and statements therein made by the said Martin Connallon were offered to the complainant as a consideration for and as a basis of a contract of life insurance with said complainant under any policy which might be issued by complainant on said application.

9. Complainant, relying upon the truthfulness of the answers and statements and agreements made by the said Martin Connallon, and relying upon the truthfulness of all of said answers and statements and believing them to be true, complainant did on the 6th day of August, 1928, issue and deliver to the said Martin Connallon, a policy of insurance in pursuance of the said application, a true copy of which policy is hereto annexed and forms part of this bill of complaint and is marked Schedule B.

20

10. That in and by the said policy of insurance it was expressly stipulated and provided that the policy should not take effect if, on the date thereof, the said Martin Connallon be in unsound health.

30

11. Complainant further shows that in and by said policy of insurance it agreed with the said Martin Connallon that immediately upon the death of said Martin Connallon, and subject to the provisions of said policy, that it would pay the sum of \$1,000, upon receipt of due proof of

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Bill of Complaint.

the death of the said Martin Connallon and legal surrender of the policy and evidence of premium payment thereunder, to William A. Connallon as beneficiary, a brother of the said Martin Connallon.

10 12. Complainant further shows that the said
Martin Connallon in his said application for
said policy made certain false statements, which
the said Martin Connallon knew to be false at
the time of making thereof, as follows: The said
Martin Connallon stated that he had never suf-
fered from consumption, asthma, spitting of
blood, or habitual cough, disease of the liver or
dyspepsia, whereas in fact and truth the said
20 Martin Connallon had suffered from said illnesses
and was, at the time of the signing of said appli-
cation, actually suffering from said illnesses.

13. The said Martin Connallon in said appli-
cation, when asked the question, "When last
sick?" answered, "Never seriously". That said
answer in said application was false and fraudu-
lent to the knowledge of Martin Connallon; that
at the time of making of his application and for
a long period of time prior thereto, the said Mar-
tin Connallon was seriously sick and was sick of
30 an illness of which he died.

14. That said Martin Connallon, in his said
application, stated that he had never been sick
of any disease whatever, whereas in truth and
fact, to the knowledge of the said Martin Con-
nallon, he had suffered from illnesses and was
then suffering from disease, and that he had suf-
fered from the disease of consumption, asthma,
spitting of blood, habitual cough, disease of the
40 liver and dyspepsia.

Bill of Complaint.

15. That said Martin Connallon, in his said application, stated and represented to complainant that no physical defect or mental infirmity existed in him and that the then condition of his health was good, whereas in fact and truth, to the knowledge of the said Martin Connallon, he did suffer at the time of said application from a physical defect or infirmity and the condition of his health was not good. 10

16. That in said application the said Martin Connallon stated and represented to complainant that he had not been attended by a physician for any complaint whatever within the then last three years, whereas in fact and truth, to the knowledge of the said Martin Connallon, he had been attended by a physician for complaints within the said period of three years. 20

17. That in said application the said Martin Connallon stated and represented to complainant that he had not received treatment within the then past three years, at any dispensary, hospital, or sanatorium, whereas, in fact and truth, to the knowledge of the said Martin Connallon, he had received treatment within the then past three years at a dispensary, hospital or sanatorium. 30

18. Complainant further shows that all of the answers and statements so made by the said Martin Connallon were false to his knowledge and were fraudulently made by him for the purpose of procuring said policy of insurance from the complainant, and that the complainant, relying upon the said statements of the said Martin Connallon, and without any knowledge of their falsity or that they were fraudulently made and believing them to be true, issued its said policy of in- 40

Bill of Complaint.

surance as aforesaid, on the 6th day of August, 1928, to the said Martin Connallon.

10 19. Complainant further shows that the said Martin Connallon was admitted to a hospital on the 19th day of March, 1926, and was attended by a physician in a hospital at various times thereafter and remained in attendance at said hospital, suffering from a serious illness, until the 3rd day of April, 1926.

20 20. Complainant further shows that on the 12th day of December, 1927, the said Martin Connallon was admitted to a dispensary, hospital or sanitorium and received treatment therein by a physician, from the 12th day of December, 1927, until the 22nd day of December, 1927, and that on the 24th day of June, 1928, the said Martin Connallon received treatment at a dispensary, hospital or sanitorium, by a physician and continued to receive such treatment until the 21st day of July, 1928.

30 21. Complainant further shows that the said Martin Connallon represented that he lived at 99 Sussex Street at the time of making said application, whereas in truth and fact, to his knowledge, he did not so reside thereat.

22. Complainant further shows that on other various times within three years from the date of said application, said Martin Connallon had been attended by a physician for illnesses and complaints and that he had, at several hospitals, sanitoriums and dispensaries, received treatments for illnesses and complaints.

40 23. That in said application he denied that he had ever received treatment for any illness, either by a physician or at a dispensary, hospital or sanitorium, within the said period of three years.

Bill of Complaint.

24. Complainant further shows that all of the statements and representations hereinabove referred to, were made by the said Martin Connallon with the intent to deceive the complainant and that said false statements materially affected the risk and hazard assumed by the company.

25. That all of said statements were false and fraudulent to the knowledge of said Martin Connallon and were believed to be true and relied upon by the complainant, in the issuance of said policy.

10

26. Complainant further shows that by reason of the untrue and fraudulent statements of the said Martin Connallon, and the fact that the said Martin Connallon was not in sound health on the date of said policy, the said policy by its terms, did not take effect.

20

27. That the said policy was procured by and through false and fraudulent representations and statements of the said Martin Connallon, and is void, null and of no effect.

28. Complainant further shows that it did not discover the fraud of the said Martin Connallon, nor the fact that he was not in good health at the time of the signing of said application or the delivery of said policy, until after his death, and that as soon as it discovered the said fraud, it tendered to the person claiming to be the beneficiary of the said policy, the total amount of premiums paid on account of said policy, with interest thereon and requested and demanded the surrender of said policy.

30

29. Complainant further shows that the said Martin Connallon, on the 25th day of June, 1929, died at the Jersey City Hospital, of pulmonary

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Bill of Complaint.

tuberculosis, with myocarditis as a contributing cause. That afterwards proofs of death were filed with complainant by William A. Connallon, the beneficiary named in said policy, and the payment of said policy demanded by him.

10 30. Complainant further shows that the said policy of insurance was issued on the 6th day of August, 1928, and contained the following clause: "This policy shall be incontestable after one year from its date of issue, except for non-payment of premium."

20 31. That no suit has been instituted by the said beneficiary against the complainant company and that after the expiration of one year from the date of said policy, under the said clause, the said policy may be incontestable, notwithstanding the fraud perpetrated upon the company, and the defenses which the company now has on said policy.

Complainant is without adequate remedy in the courts of law and therefore prays:

1. That the said William A. Connallon, the defendant in this suit, may answer this bill of complaint, without oath, and each statement therein made.

30 2. That the said defendant may set forth and discover the truth concerning the matters and things set forth in this bill of complaint, and particularly, whether said answers and statements set forth in this bill of complaint were made by the said Martin Connallon in his said application, and whether the said Martin Connallon had suffered from illnesses alleged in this bill of complaint.

40 3. That the said William A. Connallon may set forth and discover whether the said Martin Connallon had been attended by a physician for a

Bill of Complaint.

complaint within three years previous to the date of said application and whether he had received treatment within said period, at a dispensary, hospital or sanitorium.

4. That the complainant may have a decree that said policy of insurance, issued by the said complainant on the 6th day of August, 1928, was fraudulently obtained by the said Martin Connallon, and that said contract of insurance be rescinded and surrendered for cancellation. 10

5. That complainant may have a decree that the said policy did not take effect on its said date, or at any other time, and that the same is void and of no effect.

6. That it may be decreed that no liability exists on said policy and that the same may be surrendered up for cancellation. 20

7. That an injunction may issue against the said William A. Connallon from assigning, transferring or parting any right, title or interest he may claim in said policy of insurance, and from instituting any suit against complainant on said policy of insurance.

8. That a writ of subpoena may issue commanding said defendant to answer this bill of complaint and to abide by such decree as this court may make in the premises. 30

PERKINS & DREWEN,
Solicitors for and of counsel
with Complainant.

Affidavit of John H. Olmsted.

STATE OF NEW JERSEY, }
 COUNTY OF HUDSON, } ss. :

JOHN H. OLMSTED, of full age, being duly sworn
 according to law, upon his oath deposes and says:

10

1. I am Superintendent of the Jersey City branch office of The Prudential Insurance Co. of America, and have been such for the past thirteen years; and am familiar with the matters and things set forth in the foregoing bill of complaint.

20

2. On the 23rd day of July, 1928, Martin Connallon signed an application, partly in printing and partly in hand, for a policy of insurance in The Prudential Insurance Co. of America in the amount of \$1,000, a copy of which application is annexed to the bill of complaint and forms a part hereof.

30

3. In said application, the said Martin Connallon stated that the then present condition of his health was good. When asked when last sick, he answered, "Never seriously". When asked of what disease, he answered, "None," and stated that no physical or mental defect or infirmity existed in him; that he resided at 99 Sussex Street, Jersey City; that he had never suffered from consumption, asthma, spitting of blood, habitual cough, disease of the liver, dyspepsia or any of the other diseases mentioned in said application. When asked, in question No. 27 in said application, "On what dates and for what complaints has life proposed been attended by a physician for the past three years?" he answered, "None". In answer to question 28, "Has life proposed received treatment within the past three years at a dispensary, hospital or sanitarium? If so, state where,

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Affidavit of John H. Olmsted.

when and for what illness", the said Connallon answered, "No".

4. In said application said Connallon signed the following declaration:

"I hereby declare that all the statements
and answers to the above questions are com- 10
plete and true, and I agree that the foregoing,
together with this declaration, shall consti-
tute the application and become a part of the
contract of insurance hereby applied for, pro-
vided a copy hereof shall be attached thereto.
I further agree that the policy herein applied
for shall be accepted subject to the privileges
and provisions therein contained, and that
unless the full first premium is paid by me 20
at the time of making this application, the
policy shall not take effect until issued by the
Company and received by me and the full
first premium thereon is paid, while the health
and occupation of the life proposed are the
same as described in this application. It is
understood and agreed, however, that if at
the time of signing this application the full
first premium is paid, the insurance shall take
effect from the date of this application, in ac-
cordance with the provisions of the policy 30
hereby applied for, provided life proposed is
in sound health on the date of this application
and provided this application is approved and
accepted at the Home Office of the Company,
in Newark, New Jersey, under the plan, for
the premium paid and amount of insurance
applied for.

I request that any dividends under said
policy be applied to the purchase of paid-up
additions until or unless I shall select any 40

Affidavit of John H. Olmsted.

other option in accordance with the terms of said policy.”

10 5. On the 6th day of August, 1928, the policy of life insurance on the life of said Martin Connallon was issued through my office in the Prudential Insurance Co. of America for the sum of \$1,000, the policy being based on the application of which a copy is annexed to the bill and is hereinabove referred to. The said policy contains a preliminary provision as follows:

“This policy shall not take effect if on the date hereof the insured be not in sound health.”

20 In issuing said policy of insurance, The Prudential Insurance Co. of America relied upon the truthfulness of the statements made by said Martin Connallon in his said application, and believed them to be true.

30 6. The said Martin Connallon died in the Jersey City Hospital on the 25th day of June, 1929, of pulmonary tuberculosis, with myocarditis a contributing cause, and proofs of his death have been filed with the company by William A. Connallon, the beneficiary mentioned in the policy; and the copy of the policy annexed to the bill of complaint is a true photostatic copy thereof.

40 7. Upon investigation, I have ascertained that the answers and statements made by said Martin Connallon in his said application and above referred to, were false and fraudulent to his knowledge; that he suffered from severe illnesses at the time of the making of the application, and for a period of at least two years prior thereto; that his statement that the condition of his health was

Affidavit of John H. Olmsted.

good was a false statement, the said Martin Connallon having made such statement on the 23rd day of July, 1928, when only two days previous to that date, namely, July 21st, 1928, he was discharged from a hospital where he was suffering from a serious illness, having been admitted to the said hospital on the 24th day of June, 1928. 10

8. In said application, made on the 23rd day of July, 1928, the said Martin Connallon stated and represented that he had never been attended by a physician within three years, and that he had never received treatment in a dispensary, hospital or sanitarium in three years, when as a matter of fact two days previously he had been discharged from a hospital where he had been suffering from illness and treated therefor by a physician. The said Martin Connallon, on the 12th day of December, 1927, was admitted to a hospital for treatment, and was there treated by a physician, and was discharged from said hospital on the 27th day of December, 1927; that previous thereto, and on the 19th day of March, 1926, said Martin Connallon was admitted to a hospital and treated by a physician for illness, and was discharged from said hospital on the 3rd day of April, 1926; that within less than sixty days after the making of said application, said Martin Connallon was again admitted to a hospital and treated there by a physician for illness, and finally, in June, 1929, died in a hospital of a serious illness. 20 30

9. At the time of signing said application, said Martin Connallon was not in sound health; on the contrary, he was suffering from illness to which he eventually succumbed.

10. I am informed, and believe it to be true, that the statement he made in said application 40

Affidavit of John H. Olmsted.

that he resided at 99 Sussex Street, Jersey City, is false; and at the time he made such application, he did not reside at 99 Sussex Street, Jersey City.

10 11. The policy of insurance above referred to was delivered on the 6th day of August, 1928. At the time of its delivery to said Martin Connallon, he was not in sound health, and his health was not the same as described in his application dated July 23rd, 1928.

20 12. The said policy contains a provision of incontestability after one year of the date of its issue. No suit has been instituted by the defendant, William A. Connallon, on said policy; but the said Connallon has demanded, and is demanding, payment of said policy. On the 6th day of August, 1929, one year from the date of the issuance of said policy, will expire.


JOHN H. OLMSTED.

Subscribed and sworn to before me }
this 2nd day of August, A. D. 1929. }

JOHN P. NUGERT,
Attorney at Law
of New Jersey.

30

—PHOTOSTAT—

(Opposite) 

40

Answer to Bill.

7. Paragraph 18 is denied.

8. Defendant has no knowledge or information sufficient to form a belief as to the statements contained in paragraphs 19 to 23 inclusive.

9. Paragraphs 24 to 28 inclusive are denied.

10. Defendant admits that Martin Connallon died on June 25th, 1929, in the Jersey City Hospital and that he filed proofs of the death of Martin Connallon with complainant and demanded payment of complainant of said policy but he has no knowledge or information sufficient to form a belief as to the other allegations contained in paragraph 29.

11. Defendant begs leave to refer to the contract of insurance as to the time it was issued and as to the contents thereof.

12. Defendant admits that he has not brought suit against complainant as alleged in paragraph 31.

13. Defendant further answering says that the application for said policy was made on June 11th, 1928, at which time the first premium was paid. A copy of the receipt for the first premium is hereto annexed and marked Schedule A.

14. The application for said policy of insurance was not endorsed upon or attached to the policy when issued.

15. The premiums on said policy have been paid for the months of June, July, August, September, October, November and December in the year 1928, and for the months of January, February, March, April, May and June, in the year 1929.

DONALD M. WAESCHE,
Solicitor of Defendant.

Schedule A.

The Prudential Insurance Company of America,
Home Office, Newark, N. J.

6-11-28

10 Received from Martin Connallon the sum of
Two.....92/100 Dollars being payment of first
monthly premium on account of intermediate
monthly premium policy applied for in The Pru-
dential Insurance Co. of America, on the life of
above.

20 It is understood that if this payment is equal
to the full first monthly premium on said policy
(but not otherwise) the insurance shall take effect
from the date of the application in accordance
with the provisions of the policy applied for, pro-
vided said application is approved and accepted
at the Home Office of the Company, in Newark,
New Jersey, under the plan, for the premium paid
and amount of insurance applied for and pro-
vided the life proposed was in sound health on the
date of the application. It is further agreed that
said Company will return the amount mentioned
hereon if it declines to grant a policy on the above
life.

30

E. H. HAHN, Agent.

Replication.

(Filed in common form.)

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Opinion.

(Filed May 22, 1930.)

May 22, 1930.

IN CHANCERY OF NEW JERSEY.

(75-38)

10

Between

PRUDENTIAL INSURANCE COMPANY
OF AMERICA,

Complainant,

*and*WILLIAM A. CONNALLON,
Defendant.On Bill, &c.
Conclusions.

20

A clause in a policy of insurance that the policy shall not take effect if the insured be not in sound health at its date must be read in connection with another clause making the policy incontestable after one year from its date of issue. After one year from the date of issue, the insurer cannot contest the policy on the ground that the insured was not in sound health at the date of the policy. 30

The death of the insured within one year from the date of issue of the policy will not suspend the operation of the incontestability clause.

The date of the policy does not necessarily determine its date of issue. If the insurer agrees that the policy shall be effective from the date of application therefor, the application date will be considered the date of issue and the incontestability clause will run from the earlier date. 40

Opinion.

If a copy of the application be not endorsed upon or attached to the policy, the insurer cannot set up the falsity of any statement in the application in avoidance of the policy or as a defense to a claim thereunder.

10 Messrs. Perkins & Drewen for complainant.
Mr. Donald M. Waesche for defendant.

FIELDER, V. C.:

20 The complainant issued its monthly premium policy of insurance, dated August 6, 1928, on the life of Martin Connallon, wherein the defendant William A. Connallon is named as beneficiary. The insured died June 23, 1929, and the complainant by its bill filed August 2, 1929, seeks a decree that the policy never took effect, because at its date the insured was not in sound health and that the policy was obtained through fraudulent representations made by the insured as to his condition of health and freedom from certain diseases and prays a restraint against the beneficiary from bringing suit on the policy and for surrender of the policy for cancellation.

30 The complainant contends that the insured was not in sound health at the date of the policy and therefore the policy did not take effect and it bases its contention on a clause in the policy which reads: "This policy shall not take effect if on the date hereof the insured be not in sound health." In a case involving a policy containing a similar provision, our Court of Errors and Appeals held that the sound health of the insured at the date of the policy was a condition precedent to the liability of the insurer and, not being complied with, the policy had no legal effect (*Levandoski v. Equitable Society*, 103 N. J. Law, 643).

40 The policy contract here under consideration con-

Opinion.

tains another provision which was not considered in the *Levandoski* case and which should be read in connection with the sound health clause. It is as follows: "This policy shall be incontestable after one year from its date of issue, except for non-payment of premium." The complainant argues that this provision cannot be given effect for two reasons: First, if the policy did not take effect, it was *ab initio* void and no provision thereof could become operative; second, the death of the insured within one year from the date of the policy suspended the operation of the incontestability provision. 10

The substance of the complainant's first contention is that the incontestability clause was intended to be conditional, that is, conditional upon the policy taking effect. Under such construction the clause is deceptive, meaningless and ineffectual to the insured because although it purports to state that the policy shall be incontestable for any reason after one year, it shall nevertheless be contestable at any time on the ground here urged. If the policy is to be regarded as never in force so as to permit the insurer to show that the insured was not in sound health at its date, although the insured's death may not occur until many years after the policy date, then an incontestability clause is of but little value and is a deceptive inducement to an insured to accept it. I think the sound health clause here in question must be read with the incontestability clause and that the two, taken together, must be construed to mean that if within one year after the complainant issued its policy, it discovered that the insured was not in sound health at its date, the contract could be rescinded, but that when one year had elapsed the policy would be considered 20 30 40

Opinion.

in force and incontestable for any reason, except non-payment of premium (*Drews v. Metropolitan, &c., Co.*, 79 N. J. L., 398; *Wright v. M. B. L. Association*, 118 N. Y. 237; *Webster v. Columbian, &c., Co.*, 116 N. Y. Supp. 404, affirmed 196 N. Y., 523; *Chinery v. Metropolitan, &c., Co.*, 182 N. Y. Supp., 555; *Mutual, &c., Association v. Austin*, 142 Fed. 398; *Commercial, &c., Co. v. McGinnis*, 50 Ind. App. 630; *Monahan v. Fidelity, &c., Co.*, 242 Ill. 488; *Dibble v. Reliance, &c., Co.*, 170 Cal. 199; *Healy v. Metropolitan, &c., Co.*, 37 D. C. App. 240; *Mohr v. Prudential, &c., Co.*, 78 Atl. (R. I.) 554).

The complainant's second reason is that by the incontestability clause the complainant agreed to make no defense against the policy after one year, provided the policy remained in force for that period; that the death of the insured within the period terminated the policy as a risk and converted it into an obligation to pay. An incontestability clause is for the benefit of the beneficiary as well as the insured and it cannot be taken to mean that the policy will become incontestable only in case the insured shall live one year. It makes the policy incontestable for any reason not excepted, whether the insured lives or dies within the period therein mentioned (*Mutual, &c., Co. v. Hurni*, 263 U. S., 167; *Feierman v. Eureka, &c., Co.*, 297 Pa. 507).

This brings us to the consideration of the question whether the complainant has contested the policy within one year from its date of issue. The defendant has brought no action thereon and this suit is the only proceeding by way of contest of the policy. The policy is dated August 6, 1928, and the bill of complaint was filed August 2, 1929, so that on the fact of this proceeding, the com-

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plainant is not barred by the incontestability clause, but the defendant contends that there is a distinction to be made between the date of the policy and its date of issue and that the policy was in effect issued at a time prior to its date.

The defendant testified that on June 11, 1928, the complainant's agent, who solicited the insurance for which the policy was issued, showed him an application for insurance bearing the signature of the insured and that the defendant thereupon paid the agent the first monthly premium and received the agent's receipt therefor, which receipt the defendant produced and put in evidence. The receipt is a printed form used by the complainant and bears date June 11, 1928. It contains the following provision: "It is understood that if this payment is equal to the full first monthly premium on said policy * * * the insurance shall take effect from the date of the application, in accordance with the provisions of the policy applied for, provided said application is approved and accepted * * * and provided the life proposed was in sound health on the date of the application." The defendant further testified that before he received the policy (which was delivered to him and not to the insured), he paid another monthly premium and he produced and put in evidence an ordinary slip of paper purporting to be an agent's receipt for such payment, dated July 16, 1928. When the policy was delivered to the beneficiary he received with it a premium receipt book, in which were entered the two payments of June and July, 1928. No form of application for the insurance was produced other than an original application produced by the complainant, signed by the insured. Attached to it is the agent's certificate under date of July

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- 23, 1928, certifying to the applicant's signature and to the payment of a monthly premium in advance. The application contains the following provision: "It is understood and agreed * * * that if at the time of signing this application the full first premium is paid, the insurance shall take effect from the date of this application in accordance with the provisions of the policy hereby applied for, provided life proposed is in sound health on the date of this application and provided this application is approved and accepted at the Home Office." The complainant says that it was on this application that its policy dated August 6, 1928, was issued; its premium receipt book also shows a premium payment under the policy date and payments monthly thereafter.
- 10
- 20 The date of a policy does not necessarily determine its "date of issue". The incontestability clause as written by the complainant apparently recognizes a distinction, because it is not stated to run from the date of the policy but from the date the policy was issued. The insurer and the insured may agree that a policy shall issue, that is, become effective, as of an earlier or later date than the day it is signed by its officers. Here the complainant agreed that upon payment of the first full premium, the insurance should take effect from a date earlier than the date given to the policy, namely, the date of the application, provided the application was accepted. The premium was paid, the risk was accepted and the policy was delivered and to ascertain the true date of issue the policy must be read with the application. Thus the complainant made the date of the application the point of time when the policy became effective and that is the date from which
- 30
- 40 the year began during which the policy was con-

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testable. I find it unnecessary to determine whether an application for this insurance was actually made June 11, 1928, as evidenced by the premium receipt of that date, or whether, if so made, it was accepted and the policy issued thereon, because if the policy was not issued on that application, it was issued on the application dated July 23, 1928. The incontestability clause began to run from one of those dates and if it ran from the later one, nevertheless the complainant cannot be heard on its bill filed August 2, 1929, to contest its policy (*Jefferson, &c. Co. v. Wilson*, 260 Fed. 593; *Schwartz v. Northern, &c. Co.*, 25 Fed. (2d) 555; *Mutual, &c. Co. v. Hurni, supra*; *Monahan v. Fidelity, &c. Co., supra*; *Anderson v. Mutual, &c. Co.*, 164 Cal. 712; *Meridian, &c. Co. v. Milam*, 172 Ky. 75). 10

In the application of July 23, 1928, the insured represented that his condition of health was good; that he had never been seriously sick; that he had never suffered from certain named diseases, including consumption; that he had not been attended by a physician during the past three years and that within three years he had not received treatment at a dispensary or hospital. In the application the insured declared that his application should become part of the contract of insurance applied for, provided a copy of the application should be attached to the policy. This form of policy is one issued by the complainant without medical examination. 20 30

The evidence satisfies me that the insured was not in sound health either at the date of the application or at the date of the policy and that the above mentioned statements made by him in his application were knowingly false. He died from 40

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pulmonary tuberculosis about one year after making the application.

10 But the insured's false statements cannot avail the complainant in this contest of the policy because of the provisions of the incontestability clause and for the further reason that a copy of the application was not annexed to the policy. The failure of the complainant to attach such copy to the policy, prevents it from using its contents against the beneficiary's claim, although the beneficiary may use the application to establish the date of issue of the policy, because the complainant's neglect cannot prejudice the beneficiary's rights.

20 P. L. 1925, Chapter 436, provides that policies of life insurance shall contain certain provisions, among which is a provision (Sec. 4) that the policy shall contain the entire contract between the parties and that nothing shall be incorporated therein by reference to any application unless it is endorsed upon or attached to the policy. In compliance with the statutory requirement this policy contains the following clause:

30 "This policy contains and constitutes the entire contract between the parties hereto and all statements made by the insured shall in the absence of fraud be deemed representations and not warranties and no statement shall avoid the policy or be used as a defence to a claim thereunder unless it be contained in the application for the policy and unless a copy of such application be endorsed upon or attached to the policy when issued."

40 An assistant superintendent for the complainant testified that he received the original policy

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from the home office and that a copy of the insured's application was attached thereto by clips punched through the policy and through the copy of the application and that he handed the policy to an agent to deliver. The agent was not produced as a witness and the defendant beneficiary testified that the policy was delivered to him by said agent and has been in his possession ever since and that a copy of the application was not attached thereto and did not accompany it. 10

The policy is a printed form consisting of two sheets and the two sides of each sheet contain the contract provisions. A copy of the application is not endorsed thereon and neither sheet bears evidence that anything was attached thereto either by adhesion or by clips punched through a sheet. Some small pin holes appear in the sheets, but I cannot think that such an important paper as the copy of the application would have been loosely fastened to the policy by a pin and in view of the testimony of the complainant's assistant superintendent that the method of fastening was by clips punched through the policy and considering the beneficiary's testimony, I must find as a fact that a copy of the application was not attached to the policy. 20

The policy does not incorporate the application by reference and it must therefore be assumed, as against the complainant, that the policy alone expresses the contract between the parties (*American, &c., Co. v. Day*, 39 N. J. Law 89); indeed, the quoted clause of the policy so declares. In the absence of statutory provision or contrary agreement between the parties, fraudulent statements by the insured which induced the issuance of the policy, would void it, but the com- 30 40

Opinion.

10 plainant by its contract, has gone beyond the statutory requirement and has agreed that, failing to endorse on or attach to the policy a copy of the application, no statement in the application "shall avoid the policy or be used as a defence to a claim thereunder". The complainant is therefore estopped from pleading in defence of an action on the policy, the falsity of any statement in the application and it cannot use parol evidence to show that the insured made false statements therein (*Manhattan Life Ins. Co. v. Albro*, 127 Fed. 281; *Lenox v. Greenwich Ins. Co.*, 165 Pa. 575; *Cooley's Briefs on Insurance*, 2nd Ed., pp. 1091, 1092 and cases cited therein).

20 The bill of complaint will be dismissed.

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Final Decree.

(Filed June 16, 1930.)

IN CHANCERY OF NEW JERSEY.

Between

THE PRUDENTIAL INSURANCE COM-
PANY OF AMERICA, a Corpora-
tion,

Complainant,

and

WILLIAM A. CONNALLON,
Defendant.

10

On Bill, &c.
Final Decree.

This cause coming on to be heard in the pres-
ence of Randolph Perkins of Perkins & Drewen,
Solicitors of the Complainant, and Donald M.
Waesche, Solicitor of the Defendant, and the
Court having read and considered the pleadings
and having taken testimony orally and in open
court and having read the briefs submitted by
counsel for the respective parties and considered
the arguments therein and being of the opinion
that the complainant is not entitled to the relief
prayed for in its bill of complaint;

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IT IS on this 16th day of June, 1930, ORDERED,
ADJUDGED AND DECREED that the complainant's bill
be and the same is hereby dismissed.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED
that the defendant be allowed his costs to be
taxed, including a counsel fee of Two hundred
Dollars, which is hereby allowed Donald M.
Waesche, Solicitor of the Defendant.

Respectfully advised:

JAMES F. FIELDER,
V. C.

E. R. WALKER,
Chancellor.

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Testimony.

IN CHANCERY OF NEW JERSEY.

10	Between THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, Complainant, <i>and</i> WILLIAM CONNALLON, Defendant.	}	On Bill, &c.
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20 Transcript of shorthand notes of testimony taken on final hearing in above stated cause, March 27, 1930, at Chancery Chambers, Jersey City, before His Honor, James F. Fielder, Vice Chancellor.

Appearances:

MESSRS. PERKINS & DREWEN (Mr. PERKINS)
for complainant.

DONALD M. WAESCHE, Esq., for defendant.

30 COMPLAINANT'S CASE.

AUGUST P. KNEPPEL, sworn as a witness on the part of the complainant, testifies as follows:

Direct examination by Mr. Perkins:

Q. Where do you live? A. 119 Fern avenue, Lyndhurst, New Jersey.

Q. What is your business? A. Assistant superintendent in the Prudential Insurance Company.

40 Q. How long have you been connected with the

August P. Kneppel, for Complainant—Direct.

Prudential Insurance Company? A. It will be four years in June.

Q. I show you a paper which bears your signature. A. Yes, sir.

Q. As witness? A. Yes, sir.

Q. What paper is that? A. That is an application for life insurance. 10

Q. Were you present when that application was signed by Martin Connallon? A. Yes.

Q. Is this his signature? A. Yes.

Q. Did you hear the questions there read to Mr. Martin Connallon? A. Yes, sir.

Q. And the answers given by him? A. Yes, sir.

Q. And were the answers given by him correctly transcribed? A. Yes.

Q. Do they represent the statements that Mr. Martin Connallon made at that time in your presence? A. Yes, sir. 20

Mr. Perkins: I offer this paper in evidence.

By Mr. Waesche:

Q. Did I understand you to say that you were assistant superintendent for the past four years? A. No, sir; I have been connected with the Prudential for nearly four years. 30

Q. What was your capacity when you signed this paper? A. Assistant superintendent.

Q. Where was this signed by Martin Connallon? A. In his sister's home on Sussex street.

The Court: The question is merely as to the admissability of this paper. I do not know whether Mr. Perkins is through with his examination or not.

Mr. Perkins: No, sir; I am not through. 40

(Paper is marked Exhibit C-1.)

August P. Kneppel, for Complainant—Direct.

By Mr. Perkins:

Q. Do you know whether the company issued a policy on this application? A. Yes; I do.

Q. Did that policy come to your hands as the assistant superintendent in the case? A. Yes, sir.

10 Q. And from what source did it come to you?
A. It came from the home office in Newark.

Q. What, if anything, did you have to perform with reference to that policy? A. Why, I had to ascertain whether the policy was issued on the correct life and corresponded with the life register sheet of the agent who was in charge of that debit.

Q. Did you examine the policy? A. Yes, sir.

20 Q. I show you the bill of complaint in this case, to which there is attached as part of it, a photostat copy of a policy of insurance on the life of Martin A. Connallon, payable to William Connallon, dated the 6th day of August, 1928? A. Yes, sir.

Q. Can you tell whether that is a correct photostat copy of the original policy? A. Yes, sir.

30 Q. And annexed to the photostat copy, which is annexed to the bill, is a paper which purports to be a copy of the application. Do you know whether the application annexed is a copy of the application made in the case? A. I believe so; yes, sir.

Q. Now, at the time the policy was issued, to whom did you send it? A. I sent it over to the agent. He, in turn—

Q. (Interrupting) And did the policy have annexed to it a copy of the application which is marked Exhibit C-1? A. Yes, sir.

40 Q. How long had you known Martin Connallon?
A. Not very long, sir.

August P. Kneppel, for Complainant—Cross.

Q. That does not give us much light—a few days or more? A. Why, approximately a couple of days—two or three days.

Q. Mr. Kneppel, the application appears to be dated the 23rd day of July, 1928? A. Yes, sir.

Q. Can you tell the Court whether or not that was the date that Martin Connallon signed the application which is marked Exhibit C-1? A. Yes, sir; it was. 10

Cross-examination by Mr. Waesche:

Q. Where was this application signed? A. In his sister's home.

Q. At what address? A. I disremember the address. On Sussex Street.

Q. Near what street? A. Near Warren. 20

Q. On what side of Sussex Street? A. The right hand side coming from Washington Street, nearer Warren.

The Court: That would be the north side.

Mr. Perkins: That would be the north side, I think.

The Court: Walking from Washington Street to Warren Street, on Sussex Street, he says it was the right hand side. 30

Q. Who was present when this was signed? A. The insured, the agent and myself, and his sister was in the room.

Q. Was she in the room with you at the time these questions were asked and the application signed? A. I don't remember now whether she was there or not. The agent was talking to him.

Q. Do you know how long the agent knew Martin Connallon? A. No; I do not. 40

August P. Kneppel, for Complainant—Cross.

Q. Will you say that at the time the policy on this application was issued, it came to the office in Jersey City? A. Yes.

Q. It came to you, in your hands? A. Yes.

10 Q. Whom did you deliver it to? A. Why, the form, that is, the routine we go through, we examine the policy as it comes from the home office and we in turn—

By the Court:

Q. The question was: To whom did you deliver the policy after you got it? A. To Agent Hahn.

Q. How did you deliver it to him? A. I placed it in his ledger.

Q. Where? A. At his desk.

20 Q. Where is his desk? A. In my office.

By Mr. Waesche:

Q. Now, at that time, do you remember when that was, how soon after this application was signed—a matter of a few days or a week? A. Why, it usually takes a week—sometimes ten days.

30 Q. And at that time do you know whether or not the first full monthly premium had been paid on the policy?

Mr. Perkins: I object. This is not cross-examination.

Mr. Waesche: The application refers to the first full monthly premium.

The Court: Objection overruled.

A. I don't remember that.

40 Q. You don't know? A. I don't know whether he paid Hahn there or whether Hahn collected it after.

August P. Kneppel, for Complainant—Cross.

Q. Is this the policy? A. To the best of my knowledge, it is, sir, without the photostat copy.

By the Court:

Q. What do you mean: "Without the photostat copy"? A. Of the original application.

10

By Mr. Waesche:

Q. Is that the condition the policy was received by you in your office? A. No, sir.

Q. Well, how does it differ? A. The photostat copy is absent.

By the Court:

Q. You mean when you received the policy from the home office it had a photostat copy of the application annexed or attached to it? A. Yes, your Honor.

20

By Mr. Waesche:

Q. How was it attached? A. Why, sort of clips like.

Q. What kind of clips? A. Punched on with clips.

30

By the Court:

Q. So that it would easily slip off? A. No, no; it was perforated right through the application.

Q. I show you the bill of complaint fastened with clips. Was it fastened with clips like the fasteners in the bill of complaint? A. Yes, sir.

By Mr. Waesche:

Q. This kind of clips? A. Not exactly this kind of clips; I didn't say that.

40

August P. Kneppel, for Complainant—Cross.

Q. Well, clips punched through the policy? A. Yes, sir.

By the Court:

10 Q. Punched through the policy and through the application? A. Yes, your Honor.

By Mr. Waesche:

Q. And the photostat copy is the same size as the original application? A. Yes, sir.

Q. Do you know on what page of the policy it was clipped to the policy? A. Yes, sir.

Q. Whereabouts? A. (Indicating) Here.

20 Q. Can you indicate with this original policy, how it was placed on there? A. (Illustrating) That way, approximately; something like that.

Q. Where was it clipped? A. Why, on the left-hand corner.

Q. Where were the clips put in it; was there more than one clip? A. Well, now, that is—I don't remember whether it was more than one clip or not. It was clipped through. All I remember, the photostat copy of the application was attached to the original policy.

30 Q. It was clipped in in that position? A. Yes, sir.

Q. Punched through the paper of the policy and through the paper of the application? A. Yes, sir.

Q. Who asked these questions of Martin Connallon? A. The agent.

Q. Question No. 21 on the application is: "When last sick?" In answer to that he answered: "Never seriously"? A. Yes, sir.

40 Q. Did you ask him what he meant by that or was he asked what he meant by that statement? A. Was who asked?

Donald Ulope, for Complainant—Direct.

Q. Was Martin Connallon asked what he meant by "Never seriously" sick? A. Well, that answers the question.

Q. And that is all that was said with regard to that? A. Just asked him whether he was ever seriously sick and he said "Never seriously".

Q. Is this your signature here? A. Yes, sir. 10

The Court: What is the paper you are showing the witness?

Q. I show you "Intermediate Monthly Payment Receipt Book" of the Prudential Insurance Company, bearing your signature as the signature of the agent in receipt for the monthly premium for the month of June, 1929; is that correct? A. That is my signature. 20

Mr. Waesche: Will you admit this, Mr. Perkins?

Mr. Perkins: Yes.

DONALD ULOPE, sworn as a witness on the part of the complainant, testifies as follows:

Direct examination by Mr. Perkins: 30

Q. What is your official position? A. Assistant manager of the Prudential Insurance Company of America.

Q. Assistant division manager? A. Yes, sir.

Q. Have you any papers from the home office of the Prudential Insurance Company with you this morning? A. I have some industrial claims that we paid.

Q. Yes, or no? A. Yes, sir. 40

Katherine Gallagher, for Complainant—Direct.

Q. Have you produced any policies of insurance on the life of—

10 Mr. Perkins: May I withdraw the witness? The young woman from the City Hospital that we have been waiting for, has appeared, and I would like to call her and take her testimony.

The Court: Any objection?

Mr. Waesche: No, sir.

KATHERINE GALLAGHER, SWORN as a witness on the part of the complainant, testifies as follows:

20 *Direct examination by Mr. Perkins:*

Q. Tell us what your position is? A. I am statistician of the Jersey City Hospital.

Q. And in response to a subpoena, do you produce any papers from the Jersey City Hospital this morning? A. Yes, sir.

Q. Will you tell the Court what you produce? A. The full records in Martin Connallon's case. Records of his admission and discharge and the doctors who treated him.

30 Q. When is the first one? A. The first one is March 19, 1926.

Q. Dealing with that one alone, what is that paper that you produce? A. This is a case record of Martin Connallon.

Q. Kept where? A. In the hospital.

Q. By whom? A. By the hospital.

Q. Taken from the records kept in the hospital? A. Yes, sir.

40 Q. Records kept in accordance with the provisions of law? A. Yes, sir.

Katherine Gallagher, for Complainant—Direct.

Q. Whom does it show treated this man? A. This is Dr. Paterno's writing.

Mr. Perkins: I offer this in evidence.

Mr. Waesche: I object. I do not think it ought to go in evidence, because there is nothing there to identify that record with the assured in this case. 10

The Court: Probably there is an address on this record, showing where he lived, which will tie up with the address on the application for insurance.

Q. What address is given? A. 112 Sussex Street.

Q. Do you know whose home that was? A. Well, I don't know. It says his nearest relative is his sister, Mrs. Kane. I don't know where she lives. 20

Mr. Waesche: I object to it as being a record not proved by the person who made it.

Mr. Perkins: I ask to have it marked for identification.

(Marked C-2 for Identification.)

Q. In point of time, what is the date of the next record you produce? A. December 12, 1927. 30

Q. Whose record? A. Martin Connallon's.

Q. From the Jersey City Hospital? A. Yes.

Q. Where does it show he lived? A. He lived at 102 Green Street.

Q. His business? A. He is a chauffeur.

Q. How old? A. Thirty-five.

Q. Is this the ordinary record kept of the case of Martin Connallon in the hospital? A. Yes. 40

John R. Cammorata, for Complainant—Direct.

Mr. Perkins: I ask to have that marked for identification.

(Marked Exhibit C-3 for Identification.)

10 Q. In point of time, what is the date of the next record? A. Martin Connallon, admitted June 24, 1928.

Q. What address is given there? A. 112 Sussex Street.

Q. Whose house? A. I don't know.

Q. What does it say? A. It says: "Nearest relative, Mrs. Kane".

Q. What does it show as to her address? A. Same address.

20 Q. What is this record which you produce now? A. This is the hospital record of Martin Connallon.

Mr. Perkins: I ask to have it marked for identification.

(Marked Exhibit C-4 for Identification.)

Mr. Perkins: In order to save time, I am going to hold this other record out.

(No cross-examination.)

30

JOHN R. CAMMORATA, sworn as a witness on the part of the complainant, testifies as follows:

Direct examination by Mr. Perkins:

Q. What is your profession? A. A physician.

Q. Were you at any time connected with the Jersey City Hospital? A. Yes, sir.

40 Q. In what capacity? A. As visiting physician.

John R. Cammorata, for Complainant—Direct.

Q. For how long have you been such? A. For the last ten or eleven years.

Q. I show you a paper which has been marked for identification as C-4, and ask you if you recognize any portion of that paper? A. I recognize this as my signature and my final diagnosis of the case. 10

Q. From the records of what case is it? A. Martin Connallon.

Q. What address? A. 112 Sussex Street.

Q. Nearest relative? A. Mrs. Kane.

Q. Of what address? A. Same address.

Q. Did you attend Martin Connallon? A. I attend all patients that fall in my service at the City Hospital, and the only recollection of the case is what is on the record of this chart. I don't remember. 20

Q. Please refresh your memory by the chart and tell us what you did in connection with Martin Connallon? A. Making the rounds, I issued the orders that need corroboration as to my clinical suspicion of the disease, and this chart shows that I ordered a study of the heart, X-ray of the chest, urine, blood Wasserman and record of temperature and pulse and so on.

Q. Did you finally diagnose the case of Martin Connallon? A. Yes. 30

Q. What was your final diagnosis? A. Pulmonary tuberculosis.

Q. What date, if shown by the record, was he suffering from pulmonary tuberculosis? A. Well, from the records here, 6/24/28 until discharge 7/21/28. That is the only time I had him.

By the Court:

Q. What was the date of discharge? A. 7/21/28. 40

John R. Cammorata, for Complainant—Direct.

Mr. Perkins: Two days before the application was signed.

By Mr. Perkins:

10 Q. Would you say that Martin Connallon, who was a patient there, was suffering from tuberculosis at the time of his discharge on the 21st day of July, 1928? A. Yes.

Q. Have you got a chart on his case at all? A. Yes; here are all the diagrams. I see the blood test. Here is the x-ray. These are all the records.

Q. Were they all made under your supervision and control? A. Yes, sir.

20 Mr. Perkins: Now I offer this paper in evidence.

Mr. Waesche: No objection.

(Marked Exhibit C-4.)

30 Q. From the record it appears that Martin Connallon was aged thirty-six. Would you say that that was the correct age? A. I would have to depend on the record. I do not remember. I have so many people in the wards—they come in and out every day—I have no recollection of how the man looked. I have to depend on these records.

Q. Did you also diagnose that he was suffering from acute alcoholism? A. No. That was the provisional diagnosis by the interne.

Q. From your knowledge of the case, as disclosed by this document marked in evidence, Exhibit C-4, what was the condition of health of Martin Connallon on the 23rd day of July, 1928? A. Far from being well.

40 Q. Would he still be suffering from tuberculosis? A. The lesions, as we call them, in the lungs

John R. Cammorata, for Complainant—Direct.

are more or less permanent. If they heal up, there is always scar tissue in evidence.

By the Court:

Q. Was he discharged as cured? A. No; "improved".

10

By Mr. Perkins:

Q. I show you another record, dated September 21, 1928, of Martin Connallon. Do you recognize any part of this as your work? A. That is Dr. Street's.

Q. If this man was suffering from tuberculosis in September, 1928, what would you say his condition was two days after he was discharged, in July, 1928; would he still be suffering from tuberculosis? Would you say it would have been a continuous illness on his part? A. Yes, sir.

20

Q. If he was suffering on April 4, 1929, with tuberculosis, would you say that his tuberculosis was continuous from the time you attended him? A. Yes.

Q. If he was suffering on June 25, 1929, from tuberculosis, would you say it was continuous from the time you attended him? A. Yes.

Q. If he eventually died in the month of June, 1929, suffering from tuberculosis, would you say that condition was continuous from the time you first diagnosed his case as tuberculosis? A. What form of tuberculosis did he die of? My diagnosis was of pulmonary tuberculosis.

30

Q. I am speaking of pulmonary tuberculosis. If he died of pulmonary tuberculosis? A. It is the same disease.

Q. If he died of pulmonary tuberculosis with an extensive involvement of the left chest, on the 25th day of June, 1929, would you say that the

40

John R. Cammorata, for Complainant—Cross.

tuberculosis was continuous from the time you diagnosed it first? A. It quietens down and then becomes activated, but it is the same disease.

Q. So that during all of that time he would have been suffering from— A. Pulmonary tuberculosis.

10

Cross-examination by Mr. Waesche:

Q. Doctor, this record, which is marked Exhibit C-4, shows that Martin Connallon was admitted to the hospital on June 24, 1928? A. Yes.

Q. And he was then in the hospital from that date continuously until he was discharged? A. Yes.

Q. Which was what date? A. July 21, 1928.

20 Q. Does that record show for what reason he was brought to the hospital? A. Yes.

Q. And what is that reason as shown on the record? A. The admission note says that— Is it permissible to read this?

Q. Yes. A. That he has trouble with his left leg, numbness, since last Thursday; he has spots before his eyes, accompanied by dizziness; says he cannot read; this has been so for some weeks past; thinks that his trouble may be due to the fact that he sleeps on the floor.

30

Q. He was not then brought to the hospital because he felt ill from pulmonary tuberculosis; is that correct?

Mr. Perkins: I object. The doctor cannot testify from that.

The Court: He can only testify to what the record shows.

40 A. This is in the admission room. I have nothing to do with the admission room. This is a note by the admitting doctor.

John R. Cammorata, for Complainant—Cross.

Q. You don't know what brought him to the hospital? A. Except what is written here.

Q. After he came to the hospital you made the usual examination? A. I make my rounds and make the examination.

Q. You found him suffering from pulmonary tuberculosis. To what extent had the disease developed? A. I cannot tell you except from the record. 10

Q. What does that show? A. That there were areas of infiltration. The word "infiltration" means that there are changes going on of an inflammatory nature in the lung substance. These areas affected both lungs.

Q. Could he be suffering from that disease at that time, as far as it had then developed, and not know that he had such a disease? A. That is possible; yes, sir. 20

By the Court:

Q. Do you know whether you told him what his trouble was? A. I don't rememebr. I usually don't tell the patients. I tell the house physician.

Q. When he was discharged, he was discharged as improved, but he still had evidence of the disease? A. Tuberculosis; yes, sir.

Q. Do you know whether he was warned at that time about what treatment he should pursue? A. We instruct all patients that leave the hospital what to do. 30

Q. They must receive some information then as to the nature of their disease, the thing that they have been suffering from, and the care they must take? A. Yes; we tell about the trouble being with the lungs, to get plenty of sleep and food and fresh air and so on. Those are the general instructions given on discharge. 40

Daniel V. Street, for Complainant—Direct.

By Mr. Waesche:

Q. You do not know whether he was told he had pulmonary tuberculosis or not? A. No, sir.

By Mr. Perkins:

10 Q. Did he know that he was seriously sick? A. Well, I do not recall these things. These are too minute and some time back. In fact, I have no mental image of this man.

Q. When he was discharged under the conditions that you have described, he would know two days later that his health was not good, would he not? A. Yes, sir.

20 Q. Do you know whether or not up to that time he ever had blood spitting? A. I don't have any record.

Q. He would have known two days after the 21st of July, 1928, that he had been attended by a physician, would he not?

The Court: I assume that if he was in the hospital for four weeks he was there for medical attention.

30 A. We would not keep him four weeks unless he had some medical condition to be treated.

DANIEL V. STREET, SWORN as a witness on the part of the complainant, testifies as follows:

Direct examination by Mr. Perkins:

Q. You are a practicing physician? A. Yes.

40 Q. As such, how long have you been connected with the Jersey City Hospital? A. About ten years.

Daniel V. Street, for Complainant—Direct.

Q. I show you Exhibit C-4. Will you please look at that and see if there is anything in there indicating your attendance on the patient named there? A. I see none.

Q. Now, I show you a record, produced by the custodian of records in the City Hospital, regarding Martin Connallon, which has the name Dr. Street down there. You are the doctor referred to? A. Yes. 10

Q. Will you please look at that record and see if you can refresh your memory as to attendance upon that man, Martin Connallon? A. Yes, I signed it, with a final diagnosis of acute alcoholism.

Q. This Martin Connallon seems to have resided, according to this record, at 112 Sussex Street, with his sister, who resided at the same address? A. Yes. 20

Q. Part of this record was made by Dr. Schnickendorf? A. Yes.

Q. Can you tell us what you treated him for, if anything, at that time? A. According to this record, he was admitted to the psychopathic division as a chronic alcoholic, but I saw him as medical consultant under Dr. Hankins' service, and he was then, after he had been in the hospital two days, transferred to my service for observation, and I discharged him three days later. 30

Q. Doctor, I show you a record that also bears your name, regarding Martin Connallon, admitted June 23, 1929. Will you please look at that record and, refreshing your recollection, tell me what it shows? A. Martin Connallon, 112 Sussex Street; nearest relative, same address; admitted 6/23/29; expired 6/25/29.

Q. What does this record show as to the cause of his death? A. The diagnosis there is pulmonary T. B. 40

Daniel V. Street, for Complainant—Cross.

Q. Who treated him at that time? A. Dr. Pyle—Dr. Immanuel Pyle.

Q. Do you have your name attached there, too?
A. Yes. Dr. Pyle signed it because he was on my service.

10 Q. Will you say that he actually did die of pulmonary tuberculosis? A. No, sir.

Q. This is the ordinary record kept in that hospital? A. Yes. The hospital record is that he died of acute pulmonary tuberculosis.

Mr. Perkins: I offer this record in evidence.

(Marked Exhibit C-5.)

20 Q. I show you another record of Martin Connallon, admitted April 4, 1929. Will you see if you attended him during that period? A. I see no record of it. This is not my service.

Q. Who was the doctor? A. Dr. Wolber.

Mr. Perkins: I offer this record of September 21, 1928, in evidence.

Q. That was the one you identified? A. Yes, sir.

30 Mr. Perkins: I offer it in evidence.

(Marked Exhibit C-6.)

Cross-examination by Mr. Waesche:

Q. Did I understand you to say that he did not die of pulmonary tuberculosis? A. The record shows that he did.

William F. Hill, for Complainant—Direct.

WILLIAM F. HILL, sworn as a witness on the part of the complainant, testifies as follows:

Direct examination by Mr. Perkins:

Q. What is your profession? A. Physician. 10

Q. For how long have you been a physician?
A. For about eleven years now.

Q. Did you know Martin Connallon? A. I knew him very slightly from seeing him on the street and around.

Q. Did you attend him? A. I attended him a few times.

Q. Where did you attend him? A. I think I saw him at my office a few times.

Q. Do you know where he lived? A. Well, I imagine that he lived with his sister at 112 Sussex street. 20

Q. Did you ever go down there to see him?
A. I have no record of it. I have no complete record of it. I think I did see him there once, but not often.

Q. Can you tell the Court the time you saw him there? A. I could not, because I have no complete record of it.

Q. Assuming this man died the 25th of June, 1929, can you tell how long before that you had seen him? A. Probably a few months before he died. 30

Q. Do you know when it was with reference to the 23rd of July, 1928? A. I could not say.

Q. Could you tell whether it was before or afterwards? A. I think it was after. It was not so long before the time of his death.

Q. Did you once send him to the hospital? A. I think the records state that I did. Today I do 40

William F. Hill, for Complainant—Cross.

not really remember, but there are records on that.

Q. Do you remember what you treated him for? A. Why, I treated him for an attack of the Grippe, pains and cough, slight cough. In regard to any T B, I could not say, because I had no
10 sputum test, no X-ray or anything of that kind.

Q. What medicine did you give him for the cough? A. I gave him the ordinary coal tar derivatives, the ordinary cough medicine.

Cross-examination by Mr. Waesche:

Q. Do you know that Martin Connallon was suffering from pulmonary tuberculosis? A. I do not know that he was suffering from T B.

Q. Did he, during the time that you saw him or treated him, give any indication of having such disease? A. Not to my personal knowledge.
20

Q. Did he ever ask for any treatment for pulmonary tuberculosis? A. Well, of course, that is hard to say. A lot of people can have tuberculosis and not know it. Any cough might be a slight tuberculosis. Unless we have a sputum examination, or X-ray report possibly, nobody can say a person has tuberculosis.

30 By the Court:

Q. I understood the question to be: Did he ask for treatment for tuberculosis? A. No; he did not ask for treatment for tuberculosis.

Q. Did he tell you that he had been in the City Hospital at one time? A. He just told me he had pains and a little cough.

Q. He did not tell you that he had been treated at the City Hospital before you treated him? A.
40 He did not.

Donald Ulope, for Complainant—Direct.

By Mr. Perkins:

Q. Did you know that he had been at the City Hospital? A. Outside of the fact, if I sent him before that time, then he was there. It was probably before that time I sent him. That is the only way I would know it. 10

Mr. Perkins: I offer, by admission of the other side, proof of the death of Martin Connallon of 112 Sussex Street, the one signed by Dr. Knipe.

(Marked Exhibit C-7.)

Mr. Perkins: I also offer in evidence proof of death of Martin Connallon showing death at the Jersey City Hospital, of pulmonary tuberculosis. 20

(Marked Exhibit C-8.)

Mr. Perkins: I also offer in evidence statement of claim signed "William Connallon", on the death of Martin Connallon, 112 Sussex Street, Jersey City.

(Marked Exhibit C-9.)

30

DONALD ULOPE, a witness heretofore sworn on the part of the complainant, recalled and further examined as follows:

Direct examination (continued) by Mr. Perkins:

Q. Won't you please produce the papers which you had on the witness stand a few minutes ago?

A. (Witness does as requested.)

Q. What do you produce? A. Policies on the life of Martin Connallon. 40

Donald Ulope, for Complainant—Direct.

Q. How many policies have you produced? A. I believe there are eleven.

Q. In what company? A. Prudential Insurance Company of America.

10 Q. Will you give us the dates of these policies in the reverse order of priority? A. October 24, 1927.

Q. Next. A. October 24, 1927.

Q. Next. A. August 30, 1926.

Q. Go right on. A. June 15, 1925; December 29, 1924; May 20, 1918; May 20, 1918; May 20, 1918; May 20, 1918; November 23, 1910.

20 Q. Can you tell the Court whether these proofs of death which were offered in evidence were proofs of death offered in the cases of the policies which you have just produced? What I want to get is whether one proof of death was filed for all of the policies? A. Well, that I could not say.

Q. Do you know whether or not the policies which were produced were all paid by the company? A. Yes, sir; they were.

Q. Do you know whether they were all in existence on the 23rd day of July, 1928? A. Yes, sir.

30 Mr. Perkins: I offer the policies in evidence.

Mr. Waesche: I do not know how they are material.

The Court: I assume it is material under that part of the application as to whether he carried any other insurance.

(Policies offered in evidence are marked as one exhibit, Exhibit C-10.)

40 (No cross-examination.)

James Neilan, for Complainant—Direct.

Mary Kane, for Complainant— Direct.

JAMES NEILAN, sworn as a witness on the part of the complainant, testifies as follows:

Direct examination by Mr. Perkins:

Q. What company are you connected with? A. 10
I was connected with the Prudential Insurance Company.

Q. Do you know this Martin Connallon case?
A. Yes.

Q. Did you prepare any of the papers in it?
A. I drew up one of the papers at the time of his death.

Q. Where did he die, do you know? A. Why,
he died in Jersey City; I do not recall whether
he died in the hospital or not. 20

Q. Where did he live? A. He lived in Jersey
City, 112 Sussex street.

Q. With whom? A. With his sister, Mrs.
Kane.

(No cross-examination.)

MARY KANE, sworn as a witness on the part of
the complainant, testifies as follows: 30

Direct examination by Mr. Perkins:

Q. Where do you live? A. I have moved since
this last address on these policies. I have moved
to——

Q. What relation, if any, were you to Martin
Connallon? A. His sister.

Q. During his lifetime, the latter part of his
lifetime, where did he live? A. He lived with me. 40

William Connallon, for Defendant—Direct.

Q. How long did he live with you? A. He lived with me four years, since my father died.

Q. Beginning when? A. Beginning March, 1926.

Q. Since March, 1926, he had lived with you? A. Yes.

10 Q. Where did he die? A. He died at the City Hospital.

(No cross-examination.)

Complainant rests.

DEFENDANT'S CASE.

20 WILLIAM CONNALLON, the defendant, sworn as a witness in his own behalf, testifies as follows:

Direct examination by Mr. Waesche:

Q. Where do you live? A. 99 Sussex street, Jersey City.

Q. Are you a brother of Martin Connallon? A. Yes.

Q. With reference to 112 Sussex street, where is 99 Sussex street? A. Right across the street.

30 Q. Did you know Everett H. Hahn? A. Yes, sir; he was my agent.

Mr. Perkins: I object to the characterization of the witness that Mr. Hahn was his agent.

The Court: Strike out: "He was my agent." Let "Yes" stand.

Mr. Waesche: Is it admitted that he was an agent of the Prudential Insurance Company?

William Connallon, for Defendant—Direct.

Mr. Perkins: I will say that I admit he was an agent for the purpose of writing applications, but not a general agent.

Mr. Waesche: He was the agent that took the application?

Mr. Perkins: Yes.

10

Q. Did Hahn come to you with reference to an application for life insurance on the life of your brother Martin Connallon? A. Yes, sir.

Q. Do you remember when he first came to see you about that? A. June 11, 1918.

Q. Had he been to see you before that date at all? A. Lots of times before that. He told me that there was—

Mr. Perkins: I object to what he told him.

20

Q. With reference to what? A. A policy.

Q. On whose life? A. Martin Connallon's life.

Q. What did he want you to do?

Mr. Perkins: I object. He cannot bind the company by what this man wanted him to do.

The Court: Objection sustained.

Q. Did he bring to you an application for insurance signed by your brother, Martin Connallon? A. Yes.

30

Mr. Perkins: I object because it has no relevancy to this case. I am basing my bill on a policy of insurance issued on an application made on the 27th of July.

The Court: He may be able to show that that was not the true date.

Mr. Waesche: That is right.

40

William Connallon, for Defendant—Direct.

The Court: The question will be admitted.

Q. Did Hahn show you an application? A. Hahn showed me that in the fire house.

10 Q. Do you remember the date? A. June 11, 1928.

Q. What did he ask for? A. He said to me that he met my brother—

Mr. Perkins: I object to what he said.

The Court: Objection sustained.

Q. Did he ask you to do anything when he showed you that application? A. Yes, sir.

20 Q. What did he ask you to do? A. He asked me—

Mr. Perkins: I object.

The Court: Objection sustained.

Q. Did you pay Mr. Hahn the premium on that application for life insurance?

Mr. Perkins: I object.

The Court: Objection overruled.

A. Yes.

30 Q. Did he give you a receipt? A. Yes, sir.

Q. (Showing witness) Is that the receipt he gave you? A. That is the receipt; yes, sir.

Q. On what date did you pay that \$2.94? A. June 11, 1928.

Q. When you paid him that money, did he give you that receipt? A. Yes, sir.

Mr. Waesche: I offer this receipt in evidence.

40 Mr. Perkins: I object upon the ground that it is apparently not this same matter

William Connallon, for Defendant—Direct.

at all. The premium on the application is \$2.92 and the book shows a premium of \$2.92. He says that he paid him on June 11, and took a receipt for \$2.94.

The Court: I will admit it.

Mr. Perkins: The policy recites that the weekly premium is \$2.92 payable on the delivery of this policy and a like amount payable as hereinafter provided on 6th day of each month after the date hereof. 10

The Court: I admit the receipt in evidence.

(Marked Exhibit D-1.)

Q. When did you next see Mr. Hahn with reference to this policy of insurance? A. Around July, about the 16th, I believe. 20

Q. Had you then received the policy? A. No, sir.

Q. And what was the purpose of Mr. Hahn visiting you on that date?

Mr. Perkins: I object.

The Court: Objection sustained.

Q. Well, on that date did you pay another premium on this policy? 30

Mr. Perkins: I object to the form of that question.

The Court: It is leading. Objection sustained.

Q. Did you make any other premium payments on this policy?

Mr. Perkins: I object because the policy was not yet issued.

The Court: Objection sustained. 40

William Connallon, for Defendant—Direct.

Q. Before you received this policy did you make any other payment of premium on account of the policy? A. The receipt I received, June 11, 1928—

The Court: Strike out that answer.

10

By the Court:

Q. Please answer the question. Before you received this policy did you make any other payment of premium on account of the policy? A. Yes.

By Mr. Waesche:

Q. When? A. June 11, 1928.

20

By the Court:

Q. You have testified that you made a payment on June 11, 1928. The next time you saw Hahn was in July. You had not then received the policy? A. No, sir.

Q. The question is: Did you make any other payment of premium to Hahn before you received the policy? "Any other payment" means "any other payment than on June 11th". A. Yes; one payment.

30

Q. When? A. In July.

Q. Before you received the policy? A. Yes, sir.

By Mr. Waesche:

Q. What date in July? A. The 16th.

Q. To whom did you make that payment? A. To Hahn.

Q. Did you get any receipt? A. Yes, sir.

40

Q. (Showing witness) I show you a paper here,

William Connallon, for Defendant—Direct.

Mr. Connallon, and ask you if that is the receipt you got from Hahn on that date? A. Yes, sir.

Mr. Waesche: I offer it in evidence.

Mr. Perkins: I object to this slip of paper. I object further that that is no way to bind this complainant on a policy which was not yet issued. The contract that I filed this suit to set aside says this: "This policy contains and constitutes the whole contract between the parties hereto." 10

The Court: I will admit the receipt.

(Marked Exhibit D-2.)

Q. Had you at that time received the premium receipt book which I hold in my hand—on July 16, 1928? A. Yes, sir. 20

Q. On July 16, 1928, had you then received this premium receipt book? A. No, sir.

Q. When did you receive it? A. Around August some time.

Mr. Waesche: I offer the premium receipt book in evidence.

(Marked Exhibit D-3.)

Q. Who brought the premium receipt book to your house. A. Mr. Hahn? 30

Q. And did he bring with the premium receipt book the policy? A. Yes, sir.

Q. (Showing witness) Is this the policy that Hahn brought to your house? A. Yes, sir.

Mr. Waesche: I offer this policy in evidence.

Mr. Perkins: No objection.

(Marked Exhibit D-4.) 40

William Connallon, for Defendant—Direct.

The Court: Is this the same paper that was shown Mr. Kneppel?

Mr. Perkins: Yes; it is the same paper.

10 Q. Is this the condition that the policy was in when it was delivered to your home? A. Yes, sir; just like that.

Q. When this premium receipt book was delivered to your home, were there marked in it any payments of premiums? A. Yes, sir.

Q. How many? A. About two, I believe.

Q. Look at that premium receipt book. Which two payments were marked in it when it was first delivered to your home? A. The ones right there.

Q. Which ones? A. June and July.

20 Q. What year? A. 1928.

Q. The next premium that you paid on this policy was paid to whom? A. Hahn.

Q. Did you get a receipt from him for the next payment that you made? A. Yes, sir.

Q. What kind of a receipt did he give you? A. He wrote that receipt in the book, his name, his signature.

Q. For what month? A. For August.

Q. For what year? A. 1928.

30 Q. Did you make, subsequent to that payment, another premium payment? A. Yes.

Q. To whom? A. To Hahn.

Q. Did you get a receipt for that? A. Yes; he wrote his signature.

Q. Where did he write his signature as a receipt for that premium payment? A. In this book.

Q. For what month? A. For September.

Q. For what year? A. 1928.

40 Q. And those are his signatures there in this book for the months of August and September, 1928? A. Yes, sir.

William Connallon, for Defendant—Cross.

Q. And on the date indicated there, is that the date that you paid the premium that is there indicated? A. Yes, sir.

Q. Now, can you tell me where the next premium was paid? A. In the home office, the Bergen Branch office, Bergen Square.

Q. In Jersey City? A. Yes.

10

Q. Did you pay that premium yourself? A. I sent my little girl, Marie, up with it.

Cross-examination by Mr. Perkins:

Q. Mr. Connallon, when was the first time that you saw this paper which has been marked in evidence Exhibit C-1? A. The day he came to the fire house with it, June 11, 1928.

Q. Where was your brother then? A. He was living with my sister.

20

Q. How long had he been living with your sister? A. Ever since my father died, in 1926.

Q. He had been with your sister for several years? A. Yes, sir.

Q. How long previous to June 11 had you last seen your brother? A. I seen him now and then.

Q. That means nothing to me. When did you last see him? A. Right after his operation. He was operated on. That was a month before.

30

Q. So you had not seen your brother in a month? A. I seen him before a month. I seen him a couple of weeks before he died.

By the Court:

Q. You have told us June 11, 1928, was the time you first saw this application? A. Yes.

Q. Mr. Perkins asked you when last before June 11, 1928, did you see your brother? A. In about the latter part of May, I think it was, or June; around about the 10th of June, I think it was.

40

William Connallon, for Defendant—Cross.

Q. The day before? A. The 10th of June.

Q. You saw this man, the agent, on the 11th of June, 1928, you have testified. Now you say you saw your brother the day before? A. I am talking about the time he died, in 1929.

10 Q. Nobody is talking about the time he died. Can you get your mind on the question? How long before June 11, 1928, did you see your brother—June, 1928? A. I seen him in 1929. I seen my brother regularly; I always seen him.

Q. What is there about this application, Exhibit C-1, that enables you to identify it as the one that Hahn showed you on June 11, 1928? A. Yes.

20 Q. What is there about this application, this paper that is before you, that enables you to identify it as the one that Hahn showed you on June 11, 1928? A. Yes, sir.

By Mr. Perkins:

Q. How many applications for insurance in the Prudential Insurance Company did Hahn show you altogether? A. Hahn didn't show me any.

Q. At no time did he ever show you any? A. No.

30 Q. You never saw any applications in the Prudential Insurance Company? A. He gave me a receipt.

Q. But you never saw an application, did you? A. That there one, he showed me that.

Q. Was anything written on it then? A. Yes; he wrote his name on it.

Q. Was there anything else written on it? A. June 11, 1928.

40 Q. That is the date that it was written? A. June 11, 1928.

William Connallon, for Defendant—Cross.

Q. You are right about that, are you? A. June 11, 1928.

Q. That was written on the application, was it not? A. Yes.

Q. You are sure that June 11, 1928, was written on the application that Hahn signed and gave to you when he gave you the first receipt offered in evidence? A. Yes. 10

The Court: He didn't give it to him, he showed it to him.

Q. Now, so that we may not be mistaken about it, you say that the 11th of June, 1928, you paid Mr. Hahn \$2.94; is that right? A. Yes, sir.

Q. You are sure that is correct? A. Yes.

Q. You are sure that is the date? A. That is the receipt, yes, sir. 20

Q. That is the date, too? A. Yes, sir.

Q. And then he had an application for insurance in the Prudential Insurance Company, didn't he? A. Yes.

Q. What date was it dated? A. June 11, 1928.

Q. Now, do you know what questions were asked on that application? A. Yes, sir.

Q. What questions were asked? A. I don't know whether any questions were asked. 30

Q. Was one asked if he had ever been in a hospital? A. He didn't ask me.

Q. He didn't ask you any questions? A. No, sir.

Q. You don't know whether he asked Martin any questions, do you? A. He told me he did.

Q. He told you he had asked Martin questions? A. Yes.

Q. How many names were signed on the paper that he showed you on June 11, which was dated 40

William Connallon, for Defendant—Cross.

June 11, 1928? A. Only his own name, his signature.

Q. Was the name Nielan signed to it? A. No, sir.

Q. There was nothing else signed except Hahn's own name? A. Yes, sir.

10

By the Court:

Q. I thought you said that Hahn signed something on this application in your presence? A. Yes; that was June 11, 1928.

Q. That is the date we are talking about. I thought you said that Hahn signed his name on this application in your presence, June 11, 1928? A. Yes, sir.

Q. That was on the paper when he showed it to you? That Hahn's signature was on the paper when you saw the paper? A. Yes, sir.

20

By Mr. Perkins:

Q. Did you see Hahn sign his name there? A. He wrote it out there before me.

Q. In your presence? A. Yes.

Q. Did you see him write anything else on the paper that time? A. No, sir.

Q. Did you see him write any questions or answers? A. No, sir. He just said: "Give me the money," and he says: "he is insured. Here is the receipt."

30

Q. That all happened, did it— A. (Interrupting) June 11, 1928.

Q. Just please tell His Honor all that happened between you and Hahn on June 11, 1928? A. Nothing happened, only that he asked me for the \$2.94, and then he says: "He is insured."

40

Q. He asked for \$2.94? A. Well, \$2.92.

William Connallon, for Defendant—Cross.

By the Court:

Q. Which was it? A. That is what I paid—
\$2.94. That is what he asked me for.

By Mr. Perkins:

Q. Tell the Court all that happened between you and Hahn? A. Well, I had trouble with Hahn on my other payments— 10

Q. How many other policies did you have altogether? A. Well, I had four on Martin, \$500, and I had a lot in my family; I was paying the Prudential Life Insurance \$19.16, and he said to me one day, he says: "You owe me two weeks."

Q. Who is "he"? A. Hahn. I says: "I don't owe you no two weeks," and then I went to the home office. I said to him: "I do not want to see you lose your position, I want to be fair, and before I go up I will tell you about this." He says: "You owe two weeks." I went to the home office and Mr. Kelly was there— 20

Q. I didn't ask you about that. I asked you what happened between you and Mr. Hahn on the 11th of June, 1928? A. I made a complaint to the home office what he was charging me, and Mr. Holmstead said to me—

Q. I want to know what happened between you and Hahn. There was a dispute between you and Hahn about the premium? A. He charged me something I didn't owe. 30

Q. He said you owed more premiums than you did? A. I didn't owe them.

Q. And you insisted on getting a receipt? A. I said: "I won't pay them," and I went up to the home office and they told me they discharged that agent.

Q. There was a dispute between you and Hahn 40

William Connallon, for Defendant—Cross.

as to whether you had paid certain premiums?
A. And I paid them. They were all paid up.

By the Court:

10 Q. He asked you whether there was a dispute
between you and Hahn over premiums? A. Yes;
I had trouble with him, to tell the truth.

Q. There was a dispute? A. Yes, sir.

By Mr. Perkins:

Q. Was that discussion on the 11th of June,
1928? A. That was right after that.

Q. After what? A. That was in August, I believe.

20 Q. I am only asking what happened on the 11th
of June, 1928? A. Nothing happened on June
11, 1928. It wasn't in that month it happened.
It was the time I went to the office. The trouble
I had with him happened for two weeks.

Q. Please, Mr. Connallon, all I want to inquire
about is what did you say to Mr. Hahn on June
11, 1928, and what did he say to you? A. He
didn't say nothing to me on June 11, 1928. I said
I had——

30 By the Court:

Q. What position do you hold in the fire de-
partment? A. Captain.

By Mr. Perkins:

Q. How many applications for insurance in the
Prudential Insurance Company have you seen
altogether? A. I only seen the one he gave me,
the receipt.

40 Q. That is what you call the application, is it?
A. This is the receipt he gave me.

William Connallon, for Defendant—Cross.

Q. That is your idea. He signed this, did he?

A. Yes.

Q. That is what you mean when you say "the application"? A. That is the receipt.

Q. That is what you mean when you say on that day you saw an application? A. Yes.

Q. That is the only paper you saw on that day? 10
A. Yes.

Q. On the 11th of June, 1928, you say Hahn signed a receipt? A. Yes.

Q. That is the only paper you saw on that day?

A. On that day that is the only paper I saw.

By the Court:

Q. What did you mean when you told Mr. Waesche, that this application, Exhibit C-1, was shown to you that day by Hahn? You told Mr. Waesche— A. (Interrupting) He showed me that; yes. 20

Q. And you have just told Mr. Perkins that he did not show you anything? A. Yes, he did show me that.

Q. Get your mind on this thing and listen to the questions asked and answer the questions. On that day you say that Hahn showed you this application that is marked Exhibit C-1 in this case? A. Yes. 30

Q. You know what I mean, do you? A. Yes.

Q. You are sure of that? A. Yes.

Q. And he also signed the receipt for \$2.94? A. Yes, sir.

Q. And gave you the receipt? A. Yes, sir.

Q. But he took the application away with him, didn't he? A. He took the application. He took that away with him and he gave me this.

Q. But he had signed the application in your presence, you have already testified? A. Yes. 40

William Connallon, for Defendant—Cross.

Q. I am not talking about the receipt. I am talking about the application? A. Yes, sir.

Q. You know what I mean? A. Yes, sir.

By Mr. Perkins:

10 Q. Now, Mr. Connallon, was it just as it is now when you saw it first? A. Yes, sir.

Q. Just exactly? A. Yes, sir.

Q. You are sure? A. Yes, sir.

Q. Now, this date, July 23, was that on it? A. Yes.

The Court: He said it was just exactly then as it is now.

20 Q. Was this stamp on it here, just as it is now—M160,159? A. I did not take notice.

Q. Do you remember when you got the policy? A. June 11, 1928.

Q. You got the policy— A. The policy was in August—around August some time.

Q. Were you present when your brother signed this paper? A. No, sir.

Q. You do not know when he signed it? A. Only what Hahn told me. Hahn told me he signed it.

30 Q. How many times did you see Mr. Hahn from June 11 to August 6? A. Well, I didn't see him—I didn't have him any more. After that I paid my policies to the home office.

Q. You have already told us you paid one in July? A. That is the last time I seen him after I had that trouble. He stopped after I had that trouble. I didn't want him to come to my house any more.

40 Q. How many times had Hahn signed the paper which you say was an application? A. The only

William Connallon, for Defendant—Cross.

ones I seen him sign was June 11, 1928, and the other one in July.

Q. Which one was in July? Was this (showing witness) the one he signed in July? A. No, sir.

Q. You are talking about the receipt? A. The receipt, yes sir.

Q. Please, try and listen to me. A. Well, I didn't see him sign any of them. 10

Q. You did not see him sign this paper, did you? A. I seen him sign this. I only seen that paper. I didn't see this. I saw it before. I didn't see him sign it.

The Court: Referring to Exhibit C-1.

Q. Did you see him sign Exhibit C-1? A. No, sir. 20

Q. Do you know whether he signed it or not? A. He told me he did. That is all. He just told me everything was all right. That is all.

Q. How long afterwards did he tell you he signed it? A. I just cannot recall.

Q. Was it a month? A. After I got the policy do you mean?

Q. After you got that receipt that is in front of you. A. He had that the same day when he brought that.

Q. Didn't he tell you he would go and get Martin to sign the application? A. He had that. 30

Q. I am asking you: Didn't he tell you he would go and get Martin to sign the application? A. He said he had this when he came to the fire house. He said: "Martin is insured. You give me \$2.94."

Q. He said: "Martin is insured"? A. Yes.

Q. Did he say anything about Martin signing an application for insurance? A. Yes; he told me that Martin signed it. 40

William Connallon, for Defendant—Cross.

Q. Martin was insured eleven times. I am talking about the twelfth time. A. He said he had signed that.

Q. He said he had signed a paper? A. Yes.

Q. Did he say where the paper was? A. No; he just came and told me he signed it. That is all.

10 Q. He didn't tell you where the paper was? A. No, sir.

Q. Did he say he sent the paper to the home office? A. He said he did. He just told me I would get the policy from the home office.

Q. You say that Mr. Hahn said that Martin had signed an application? A. Yes.

Q. Did he tell you where the application was? A. No; he didn't tell me where it was.

20 Q. Did he tell you he had sent it to the home office? A. He said he did.

Q. He had already sent it to the home office? A. That is what he said.

Q. Hahn told you that at what time? A. The time I asked him for the policy. I asked him for the policy in July, on the second payment.

By the Court:

Q. What did he tell you then? A. He told me that he would have the policy in a few days.

30 Q. It was not issued? A. It was not issued until August.

By Mr. Perkins:

Q. Mr. Connallon, just one more: Where were you when Hahn gave you the receipt that is in this envelope? A. In my own home.

Q. Did he also produce an application at the time he signed this receipt? A. No, sir.

40 Q. He didn't have any application then? A. No, sir.

William Connallon, for Defendant—Cross.

Q. What did he tell you about your brother—this is also for \$2.94. A. He says: "Give me \$2.94 for July."

Q. What you were endeavoring to do was to get insurance on the life of your brother, were you not? A. No, sir. I told him that I did not want any more insurance. I was paying big money. I refused for a time. 10

Q. You never paid \$2.92 on this policy? A. I paid that to Hahn.

Q. Do you remember when you paid it first? A. June 11, 1928.

Q. You said that you paid him \$2.94? A. I paid to him what the receipt shows.

Q. How much? A. \$2.94.

Q. When you got this policy did you look at it? A. No, sir; I looked at the book. 20

Q. You did not look at the policy at all? A. No, sir.

Q. How long did you have the policy before you first looked at it? A. I looked at it first when he came in there around August some date.

Q. What? A. I looked at the policy.

Q. Did you see how much it was for? A. No, sir; I didn't look at it. I looked at the book. I didn't look at the policy.

Q. You did not look at the policy? A. No, sir; I looked at the book to see that he gave me credit. 30

Q. Did you know how much the policy was for? A. Yes; I knew when I got it out.

Q. Who told you that? A. Hahn.

Q. When did you first look at the policy after you got it? A. That night when I came home I looked at the book; I did not look at the policy at all. The first time I discovered the policy was when my brother died. That was the first time.

Q. Until your brother died you never saw this 40

William Connallon, for Defendant—Cross.

policy? A. I seen it in my home but I did not look at it up to the time of his death.

By the Court:

10 Q. The policy is folded up, you see. Did you ever open it? A. No, sir.

Q. Until after your brother died? A. No, sir; I did not.

Q. Where was it from the time Hahn gave it to you? A. In my home.

By Mr. Perkins:

20 Q. So you did not know, from looking at the policy, whether it was for \$500 or for \$1,000? A. Yes; I knew it was for a thousand. He told me it was for \$1,000.

By the Court:

Q. You did not know it from looking at the policy? A. No, sir; I did not.

Q. You did not know whether you were the beneficiary, by looking at it? A. No; not by looking at it.

By Mr. Perkins:

30 Q. As a matter of fact, you were speculating on the life of your brother? A. No, sir.

Q. You had five policies on his life, didn't you? A. I did.

Q. All got within a short time? A. No. The other policies are five years.

Q. You knew your brother had been in the hospital several times? A. No, sir; not several. I knew he was there.

40 Q. You knew he was in the hospital before you took this policy? A. Yes; in 1926.

William Connallon, for Defendant—Cross.

Q. You knew he had operations before that?

A. Three months before he died.

Q. You knew he had operations? A. Yes; one operation.

Q. You knew he was in the hospital six or seven times, did you not? A. No, I did not.

Q. You did not know much about your brother? 10

A. I seen him once—he was never in the hospital any length of time when he was there. I knew about it because I saw him every once in a while.

Q. He was not working at anything? A. Yes, he was working at the ice; taking on freight over at the freight yard, the Lehigh Valley.

Q. You knew he was working only two weeks?

A. No; he was a working man; he repaired automobiles.

Q. He never paid any premium on this policy? 20

A. I did that.

Q. Your brother was not paying any premiums on any policies on his life, was he? A. No, sir; I paid them.

Q. Just once again: What time of day was it that Hahn saw you at the fire house on June 11?

A. About a quarter to five.

Q. Who was present? A. Hahn and myself.

Q. Anyone else? A. No, sir.

Q. Hahn came there to collect premiums on 30 other insurance policies? A. No, sir.

Q. He did not? A. No, sir.

Q. What did he say to you that time? A. He said: "Martin signed the application; give me \$2.94. He is insured. Here is your receipt."

Q. Now, listen: Before that how many weeks had elapsed since you had seen Mr. Hahn? A. Before that?

Q. Yes. A. About two weeks.

William Connallon, for Defendant—Cross.

Q. You had seen him two weeks before that? A. Yes.

Q. Was there any talk about insurance? A. Yes; he asked me about it; I told him no.

Q. Two weeks before the 11th of June he asked you about more insurance and you said no? A. That is right.

Q. As a matter of fact he came to see you on the 11th of June and said: "Give me \$2.94"? A. Yes.

Q. And gave you this receipt? A. That is the receipt.

Q. What else did he say? A. He just told me that Martin was insured.

Q. He said Martin was insured. You knew that already. You had four policies on his life? A. I had four policies; yes.

Q. Is that all that he said? A. That is all he said.

Q. Did he show you any other policy? A. No, sir.

Q. Did he show you any other papers? A. No.

Q. You really refused to take the insurance? A. Yes, at the time, because my insurance was very big.

Q. On the 11th of June did you refuse to take it? A. On the 11th of June he came to the house and told me Martin was insured.

Q. That was at your house? A. Yes.

Q. You never saw the application before that, did you? A. Only this receipt.

Q. All you saw was that receipt? A. He signed that other paper, too, but I did not see him sign.

Q. You don't know when you saw that paper? A. I seen that at the same time as this.

Q. And did you know it said in there that Martin lived at 99 Sussex street? A. He never lived there.

William Connallon, for Defendant—Cross.

The Court: He says that the paper that he saw is the same identical paper.

By Mr. Waesche:

Q. Have you any other policies in the Prudential Life Insurance Company except those on the life of your brother Martin? A. Yes; I have a whole lot of them. 10

Mr. Perkins: I object to this as entirely immaterial.

The Court: I thought counsel insinuated that there was a fraudulent intent.

Q. So far as you knew, what was the condition of your brother's health on June 11, 1928? A. No, sir; I never did. 20

Q. You never did what? A. I never knew he was sick.

Q. Mr. Connallon, when did your father die?

Mr. Perkins: I object to that as immaterial.

The Court: Objection sustained.

Q. Mr. Connallon, I draw your attention to the application wherein your brother has stated that his address is 99 Sussex street, Jersey City. Can you give any reason for your brother's giving your home as his address? A. I lived at 99 Sussex street. 30

Q. Can you give any reason at all for your brother putting in that address?

Mr. Perkins: I object to that as immaterial.

The Court: Objection sustained.

Q. Was your brother married? A. No, sir, he was not. 40

Elizabeth Connallon, for Defendant—Direct.

Q. Did he have any other relatives except you and your sister?

The Court: What has that to do with this case?

10 Mr. Waesche: I think I ought to show that the brother might have considered his brother's home as his residence. I do not think it is material.

The Court: I do not think it is material at all.

ELIZABETH CONNALLON, SWORN as a witness on the part of the defendant, testifies as follows:

20 *Direct examination by Mr. Waesche:*

Q. You are the wife of William Connallon, the man who was just on the stand? A. Yes.

Q. Did you ever see this insurance policy before, Exhibit D-4? A. I saw it when Mr. Hahn brought it to the house.

30 Q. Will you look at this insurance policy marked Exhibit D-4 and tell me if it is in the same condition now as it was when it was delivered at your house? A. Exactly.

Q. Will you open it up and see if there are any changes on the inside that you can detect? A. No; it is just the same as when he brought it.

Q. When he brought it to your house, did you look at it? A. I just opened it like this (illustrating). I just took the policy and the book and put it away.

By the Court:

40 Q. Where? A. In a box. After that my husband came in.

Elizabeth Connallon, for Defendant—Direct.

Q. What happened then? A. He asked me did the policy and the book come. I told him "Yes"; so he just looked at the book to see was it marked down.

Q. He looked at the book? A. He did not open the policy.

Q. Then what did you do? A. Then I took it and locked it away. 10

Q. When did you next see it? A. Then we did not bother with it until the time of Martin's death.

Q. You did not see it again until after Martin died? A. No, sir.

By Mr. Waesche:

Q. But when Hahn first brought it to you, did you open it and look at it? 20

Mr. Perkins: Objected to as leading.

Q. At the time the policy was delivered to you, was this book also delivered? A. Yes, sir.

Q. By Mr. Hahn? A. Yes, sir.

Q. Did you part with this policy and this book after Martin's death? A. Part with it?

Q. Yes. Did you give it to anybody? A. I gave it to my husband.

Q. Did anybody call at your house for it? A. 30
No, sir.

Q. From the insurance company? A. At the time of his death they did; yes, sir.

Q. That is what I mean. A. Yes, sir.

Q. Did they take the policy away with them?
A. Yes, sir.

Q. Do you know who it was that called there?
A. Mr. Neilan, I think it was.

Q. The gentleman who was on the stand this morning? A. Yes, sir. 40

Elizabeth Connallon, for Defendant—Cross.

Q. Did you give that policy and book to him?

A. Yes, sir.

Cross-examination by Mr. Perkins:

10 Q. Now, Mrs. Connallon, when the policy first came into your sight, it had a little envelope that it went into? A. I don't remember that.

Q. What was the date you first saw the policy?

A. It was some time in August. I could not exactly tell you the date.

Q. What year? A. 1928.

Q. And in whose possession was it when you first saw it? A. In Mr. Hahn's hand.

Q. In Mr. Hahn's hand? A. Yes.

20 Q. And then to whom did he deliver it? A. To me.

Q. He did not deliver it to your husband? A. He was working.

Q. Then, Hahn brought the policy to your house? A. Exactly.

Q. And delivered it to you? A. Yes.

Q. And then you locked it up? A. Yes; until my husband came home from work.

Q. You locked it up? A. Yes.

30 Q. When your husband came in he asked if the policy had been delivered? A. Yes.

Q. And you said what? A. I said it had.

Q. Did you tell him where it was? A. Yes; I told him.

Q. Where had you locked it up? A. In a small box—in a tin box.

Q. Did it stay locked up until after Martin's death? A. Yes, sir.

40 Q. So that, as a matter of fact, your husband did not see the policy until after it was taken out of that tin box? A. No, sir; he did not.

Q. So, he never saw the policy at the time Hahn

Elizabeth Connallon, for Defendant—Cross.

delivered it? A. No, sir; he did not; I had the policy.

Q. Your husband did not have it later? A. No; he did not.

Q. He did not see it until after Martin died? A. No.

10

By the Court:

Q. So there may be no misunderstanding about that, you testified that when your husband came home from work he asked about the policy and that you took it out of the box and showed it to him? A. I took the book out.

Q. Did you take the policy out? A. No; I did not.

By Mr. Perkins:

20

Q. It was the book you took out? A. Yes.

Q. It was one of those little tin boxes that opens up from the end? A. Yes.

Q. You had other policies there, did you not? A. Yes; lots of them.

Q. What time of day did Mr. Hahn deliver the policy to you? A. Around ten o'clock in the morning.

Q. What time of day did you put it in the tin box? A. About ten minutes after he gave it to me.

30

Q. Did you read the policy? A. No; I never looked at the policy.

Q. This was a box that you used for all policies? A. Yes; like you open the cover and you take the policy out.

By the Court:

Q. Did Mr. Hahn hand you that policy folded up as it is now? A. Just like that.

40

Marie Connallon, for Defendant—Direct.

Q. Did you open it at all? A. I just opened it. I didn't look at it.

Q. Did you open it? A. I did.

Q. What for? A. I just opened it.

10 Q. For what purpose? A. I just opened it, not for any purpose. I opened it and closed it and put it away.

By Mr. Perkins:

Q. Did you read anything in it at all? A. No, sir.

Q. Did you read any words at all in it? A. Nothing at all.

20 Q. So that you are not able to identify any words of the policy? A. Just what I saw on the front; that is all.

Q. You don't know anything about what was inside of it, do you? A. No, sir; I do not. I put it away.

MARIE CONNALLON, sworn as a witness on the part of the defendant, testifies as follows:

Direct examination by Mr. Waesche:

30 Q. You are the daughter of William Connallon, the man who was on the stand? A. Yes.

Q. Did you ever see this book, Exhibit D-3? A. Yes.

Q. Did you ever pay any premiums on this? A. Yes, sir.

Q. Where did you pay them? A. At the branch office of the Prudential Insurance Company on Bergen avenue.

40 Q. Did you have this book with you? A. Yes.

Q. Will you point out and tell us which pre-

Marie Connallon, for Defendant—Direct.

miums shown in this book of the Prudential Insurance Company you paid? A. Right here.

Mr. Waesche: Indicating October, November, December, 1928.

Q. Did you pay any premiums in 1929? A. I don't remember. 10

Q. Did you pay any premium to Mr. Neilan? A. No; I always went to the office with it.

Q. Did you pay all of the premiums shown in that book after October, 1928? A. No; I think there is one I did not pay. That is to Mr. Neilan. I did not pay that.

Q. Did you pay a premium to Mr. Kneppel? A. Yes.

Q. Is he employed by the Prudential Insurance Company? 20

Mr. Perkins: I object to this as immaterial. You cannot bind the company because a man is working for it.

The Court: What do you propose to show?

Mr. Waesche: I propose to show that he was the manager of this office. I think he can bind the company.

The Court: Objection sustained. 30

(No cross-examination.)

Mr. Waesche: I believe I will have to take the stand as a witness unless Mr. Perkins will admit these letters. This policy of insurance in the Prudential Insurance Company, accompanied by this book, was delivered to Mr. Neilan. The complainant had them when this suit was started. I wrote to them and I have letters from them. 40

Marie Connallon, for Defendant—Direct.

(Further argument.)


10 The Court: It is admitted by counsel that when the proof of claim on the policy in suit was filed with the insurance company's representative, the original policy as now appears and the receipt book were delivered to the agent; that a few days after the bill of complaint in this suit was filed Mr. Waesche requested the return of the policy and the receipt book and in compliance with that request he received, through the office of Perkins & Drewen, the policy of insurance as now appears and the receipt book as now appears.

Defendant rests.

20 CASE CLOSED.

30 **Exhibit C-1.**

Application for Policy.

(*Opposite*) 

40

Application for
Intermediate
Monthly Premium
Insurance in

AGENT (PLEASE PRINT) **EDWARD H. HAHN**
Asst. **A. P. KNIPPEL**
Supt. **J. G. #1**

AUG. 6 1928 M160 159

The Prudential Insurance Co. of America

Incorporated under the laws of the State of New Jersey

HOME OFFICE, NEWARK, NEW JERSEY

FOR H. O. USE ONLY

A. D. B. Premium

16 Cents

Examined by **J. G. #1**
Approved by **[Signature]**

MARK KIND OF POLICY WANTED WITH X	X	WHOLE LIFE <i>Brown</i>	Questions to be answered by the person proposed for insurance if age is 15 years nearest birthday or over; if younger, by parent or guardian. 1. Full name of person to be insured (Please Print) MARTIN GONNALLON	2. Amount of Insurance \$1000	3. Monthly Premium	
		20-YR. PAY'T LIFE <i>Maroon</i>			Dollars	Cents
	X	20-YEAR END'T <i>Green</i>	No. 99 Street SUSSEX ST ADDRESS NEW JERSEY CITY Town or City	Floor 3	Front Room Letts	Height Letts

4. To whom is this insurance to be payable at death? (Full name. Please print.)
WILLIAM A. GONNALLON

5. Is the privilege of changing the beneficiary desired? Answer yes or no. **YES**

6. Age of Beneficiary **41**

7. Relationship to life proposed **BROTHER**

8. Present residence **99 SUSSEX ST**

9. PLACE OF BIRTH. State, province or country. U. S. A.			10. DATE OF BIRTH. Month 3 Day 24 Year 1891		11. Age Nearest Birthday 37		12. Is life proposed now insured in this Company? If so, state numbers, kinds and amounts of policies. If Infantile, state kind and premium.		
13. RACE WHITE	14. SEX MALE	15. MARRIAGE SINGLE	16. OCCUPATION (Omit if under age 13) TRUCK = HORSE DRIVER		Numbers 63689157 67933962 72288895 72888896	Kind W.L. INDUST W.L. INDUST W.L. INDUST W.L. INDUST	Amounts 500 500 500 500		

17. Is life proposed now insured in this Company under Paid-up or Extended Insurance? If so, give policy numbers and amounts. **NO**

18. Has life proposed ever been rejected or postponed by this or any other company? If so, by what company? **NO**

19. Is life proposed now insured in any other company? If so, for what amount? If Infantile, state kind and premium. **NO**

20. What is the present condition of health of life proposed?
GOOD

21. When last sick? Month **NEVER** Year **SERIOUSLY**

22. Of what disease? **NONE**

23. Does any physical or mental defect or infirmity exist? **NO**

24. Height and Weight **5 ft. 8 in. 160 lbs.**

25. Has life proposed ever suffered from consumption, asthma, spitting of blood, habitual cough, apoplexy, paralysis, heart disease, insanity, fits or convulsions, rheumatism, disease of the liver or kidneys, cancer, ulcers, tumor, dyspepsia, syphilis, influenza, or accident of any kind?
NONE

26. Has either parent or any brother or sister died of consumption? If so, give date of death. **NO**

27. On what dates and for what complaints has life proposed been attended by a physician during the past three years?
NONE

28. Has life proposed received treatment within the past three years at a dispensary, hospital or sanitarium? If so, state where, when and for what illness.
NO

29. Is life proposed now insured in this Company under *Intermediate* or *Ordinary* issued within 1 year? If so, state policy number. **NO**

30. Is application now pending for Ind., Ord. or other Inter. **NO**

I HEREBY DECLARE that all the statements and answers to the above questions are complete and true, and I agree that the foregoing, together with this declaration, shall constitute the application and become a part of the contract of insurance hereby applied for, provided a copy hereof shall be attached thereto. I further agree that the policy herein applied for shall be accepted subject to the privileges and provisions therein contained, and that UNLESS the full first premium is paid by me at the time of making this application, the policy shall not take effect until issued by the Company and received by me and the full first premium thereon is paid, while the health and occupation of the life proposed are the same as described in this application. It is understood and agreed, however, that if at the time of signing this application the full first premium is paid, the insurance shall take effect from the date of this application, in accordance with the provisions of the policy hereby applied for, provided life proposed is in sound health on the date of this application and provided this application is approved and accepted at the Home Office of the Company, in Newark, New Jersey, under the plan, for the premium paid and amount of insurance applied for.

I request that any dividends under said policy be applied to the purchase of paid-up additions until or unless I shall select any other option in accordance with the terms of said policy.

Signature of Applicant
To be made by the person whose life is to be insured if 15 years nearest birthday, or over, but if younger, by the parent or guardian.
Martin Gonnallon

State relationship of person who signs, if life proposed is less than 15 years old nearest birthday.

AGENT'S CERTIFICATE
This certificate must be signed by the Agent or Assistant Superintendent after the above questions are all answered and he has seen the person whose life is proposed for insurance, and is satisfied that the person is a first-class risk.

I CERTIFY that I have this **23** day of **JULY**, 19**28**, personally seen and questioned the person proposed for this insurance, and I have collected \$ **2.192** in advance. I believe the answers to be correct, and I recommend the Company to accept the risk. The signature above was made in my presence.

A. P. Knippel Ass. Supt. **E. Hahn** Agent





REVIEWED
BY *UPK*

THE SPACE ABOVE IS FOR HOME OFFICE USE ONLY

INSTRUCTIONS FOR THE MEDICAL EXAMINER.—Applications upon which the signature of the applicant has been previously attached to the Medical Examiner's report, in space marked "Signature of person applying for this insurance," or on which the signature is omitted under the declaration on the other side, in space marked "Signature of Applicant," should be sent to the Home Office without examination.

NOTICE.—A Medical Examination is to be made by a regularly appointed Medical Examiner of the Company, when the amount of insurance applied for, or such amount added to any Intermediate or Ordinary now in force on the same life in this Company issued within one year without medical examination, exceeds the following:

- Attained age, 45 years nearest birthday, or younger. \$2000 (combined amount)
- Attained age, 46 to 55 years nearest birthday..... \$1000 (combined amount)
- Attained age, 56 years nearest birthday, or older, Medical examination required for all amounts

In computing the combined amount, include the amount applied for and any Intermediate or Ordinary in force on the life in this Company issued within one year without medical examination.

Disregard insurance over one year in force or which was issued within a year upon medical examination.

For special laws governing medical examination requirements in the States of
IOWA—MASSACHUSETTS—MISSISSIPPI—NEBRASKA—NORTH CAROLINA—OKLAHOMA
refer to Manual of Instructions, Intermediate Monthly Premium business.

MEDICAL EXAMINER'S REPORT

1. Is Question 25, on the other side, answered correctly?	2. Has person proposed consulted a doctor in last three years? If yes, when and for what?	3. What do you believe to be the age nearest birthday?	4. Race (White or Colored?)
5. Height and Weight? ft. in. lbs.	6. Does person proposed appear to be in good health?	7. Is there any physical defect or infirmity?	8. Has person proposed ever been rejected by this or any other Company?
9. Has either parent or any brother or sister died of consumption?	10. Have you reason to suspect intemperate habits; or, if female, immoral life?	11. Has person proposed within the past five years had any serious illness or injury: Spitting Blood, Habitual Cough, etc.? If yes, give date and particulars below.	
12. Pulse rate and character?	13. Is the heart diseased?	14. Are the lungs diseased?	15. Do you detect disease of any kind?
16. Where did you personally examine the person proposed?	17. Day. Month. Year. When?	18. Is person proposed, in your opinion, a first-class, average, or poor risk?	

REMARKS: (Use this space for full particulars if required.)

Signature of person applying for this insurance

Signature of Medical Examiner.

I CERTIFY that my answers to the above questions are true and that the applicant signed in my presence.

M. D.

INSPECTION REPORT

To be made by the Agent if he has been granted the AX concession, otherwise by the Assistant Superintendent when the amount of insurance applied for and in force in this Company is less than the amount at which Medical Examination is required (see above). This report may also be completed by an Assistant Superintendent, if he deems it advisable, even though the application is written by an Agent who has been authorized to certify to the condition of health.

1. How long have you personally known the person proposed? <i>4 mos</i>	2. How much time has person proposed lost from work during past year? Give particulars. <i>NONE</i>	3. Are sight and hearing good? <i>YES</i>	4. Do you believe person proposed is older than age given? <i>NO</i>	5. Is there any evidence of speculation? <i>NO</i>
6. Do you believe person proposed is in good health and free from deformity? <i>YES</i>	7. Are the home surroundings healthful and such as to warrant the amount of insurance applied for? <i>YES</i>	8. Who is to pay the premiums? <i>APPLICANT</i>	9. Is Industrial insurance also being applied for? <i>NO</i>	
10. Is any insurance to be discontinued? <i>NO</i>	11. After personal investigation do you find person proposed has been and is of temperate habits and good moral character? <i>YES</i>	12. Do you recommend the risk to the Company and advise the issue of the policy applied for? <i>YES</i>		

REMARKS:

Signature of person applying for this insurance

Martin Connallon

I hereby certify that the above report is the result of a personal investigation by me and I hereby vouch for the reliability of the information given.

W. J. ... Title.

Exhibit C-4.

Hospital Record of Jersey City Hospital.

Name—Martin Connallon.
 Admitted—~~June 21st, 1928~~ *June 24/28*
 Discharged—~~June 24th, 1928.~~ *July 21/28* 10
 Service—Dr. Comorato.
 Address of patient—112 Sussex Street, Jersey
 City.
 Age—36.
 Sex—Male.
 Color—White.
 Nearest relative—Mrs. Cane.
 Address—Same.
 Ward—Psychopathic.
 P. D.—Acute alcoholism. 20
 P. H.—Diphtheria, pneumonia, pleuritis. Says
 that he has trouble with left leg, numbness
 since last Thursday. Has blue spots in eyes
 when bends over, accompanied by dizziness.
 Says he cannot read. This has been so for
 part week. Thinks his trouble may be due to
 fact that he sleeps on the floor.
 Provisional Diagnosis—Alcoholism (acute). Sep-
 sis oralis. Hypertension.
 Final Diagnosis—Pulmonary T. B. Chronic alco-
 holism. 30

J. COMORATO,
 Attending M.D.

History—Brief, vague history. Patient came in
 with diagnosis of acute alcoholism and be-
 ginning D. T. Symptoms attributed to car-
 diac reno-vascular disease.

Exhibit C-5.**Hospital Record of Jersey City Hospital.**

Name—Martin Connallon.

Admitted—June 23rd, 1929.

Expired—June 25th, 1929.

Service—Dr. Street.

10 Address of Patient—112 Sussex Street.

Age—36.

Sex—Male.

Color—White.

Nearest relative—Sister, Mrs. Kane.

My circumstances are such I am unable to pay the Jersey City Hospital for care and treatment.

Signature (Patient week, unable to sign.)

PALEY.

20 Past History—Patient was in hospital 2 months ago with loss of weight and strength. He did not respond very well to treatment, and left hospital with considerable loss of weight.

Family History—Mother, father and brother died of pneumonia.

June 25th, 1929—(Amended note) Patient is a re-admission, having been in this hospital twice since the 1st of the year, once in Ward 11, and 2 months ago on surgical service for hemorrhoids. Since his medical admission he has steadily lost ground, with poor appetite, loss of strength and weight, cough. At about noon today he began to cough and says he expectorated a quart of blood. Has attended recently clinics for T. B. at this hospital and at Grove Street.

30

June 25th, 1929—Expired.

DR. KNITE.

40

Final diagnosis—Pulmonary tuberculosis, with extensive involvement in left chest. Secondary (toxic) myocarditis.

DR. STREET,
Attending M. D.

Exhibit C-6.**Hospital Record of Jersey City Hospital.**

Name—Martin Connallon.
 Admitted—September 21st, 1928.
 Discharged—September 26th, 1928.
 Service—Dr. Street. 10
 Address—112 Sussex Street.
 Age—34.
 Sex—Male.
 Color—White.
 Occupation—None.
 Nearest relative—Sister.
 Address—Same.
 House Physician—Dr. Schneckendorpf.
 Provisional Diagnosis—Chronic alcoholism (alcoholic fits, acute gastritis, cirrhosis in hypertrophic of liver). 20
 Sept. 22, 1928—Patient has been a heavy drinker since 1918. Has been in here before as an alcoholic, also for pneumonia one year ago.
 Final Diagnosis—Acute alcoholism.

DR. STREET,
 Attending M.D.

30

40

Exhibit C-7.**Attending Physician's Certificate of Death.**

- Name of deceased in full—Martin Connallon.
 Residence—112 Sussex Street.
- 10 Apparent age at death—36 years.
 Correct age at death—36 years.
 Color—White.
 Place of death—Jersey City Hospital.
 Date of death—June 25th, 1929.
 Date of your first visit in last illness—June 23rd,
 1929.
 Date of your last visit—June 25th, 1929.
- Give the names of any physicians who have at-
 tended deceased—Drs. Street and Meredith.
- 20 If deceased received medical treatment at hos-
 pital, please specify and give names—Jersey
 City Hospital.
 Did deceased have consumption?—Yes, clinically
 acute type.
 State immediate cause of death—Acute pulmonary
 tuberculosis.
 State duration of illness—From personal knowl-
 edge, two days; from history of the case,
 three weeks.
- 30 How was history obtained?—Personally.
 Signature—G. B. Knite, M. D.
 Address—City Hospital, Jersey City, N. J.

Exhibit C-8.**Attending Physician's Statement.**

Full name of deceased—Martin Connallon.
 Date of death—June 25th, 1929.
 Place of death—Jersey City Hospital.
 Occupation of deceased—? 10
 How long have you known deceased?—2 days.
 Did deceased ever consult you previous to last illness?—No.
 What was immediate cause of death?—Pulmonary tuberculosis.
 What were the contributing causes of death?—Toxic myocarditis.
 Was death caused directly or indirectly by use of intoxicating liquors, opium or other drug?— 20
 No.
 Did deceased have tuberculosis in any form?—Yes, apparently acute form.
 Was deceased treated during or subsequent to your attendance?—Yes, Drs. Street and Meredith, Jersey City Hospital.

Dated June 28th, 1929.

(Signed) G. B. KNITE,
 Office Address, City Hospital, Jersey City. 30

Exhibit C-9.**Claimant's Statement.**

To The Prudential Insurance Company of America

Number of Policy—M-160159.

10 Amount claimed—\$1,000.

Full name of deceased—Martin E. Connallon.

Date of death—June 25th, 1929.

Legal residence at time of death—112 Sussex
Street, Jersey City, N. J.

Insured's occupation—Chauffeur.

Insured's date of birth—Month 9, Day 24, Year

State source from which date of birth was ob-
tained—Family record.

20 What other insurance was in force on the life?—
Prudential Life Insurance Company \$2800.

How many children survived the insured and
what are their ages?—None.

Are you related to the insured, and how?—
Brother.

What is the date of your birth?—March 15th,
1887.

Dated, June 28, 1929.

30 (Signed) WILLIAM CONNALLON,
P. O. Address,
99 Sussex Street,
Jersey City, N. J.

Witness:

JAMES A. NEILAND.

Exhibit C-10.

This exhibit comprises 10 policies of life insurance issued on the life of Martin Connallon by The Prudential Insurance Company of America. These policies bear date respectively as follows:

October 24th, 1927.	
October 24th, 1927.	10
August 30th, 1926.	
June 15th, 1925.	
December 29th, 1924.	
May 20th, 1918.	
May 20th, 1918.	
May 20th, 1918.	
May 20th, 1918.	
November 23rd, 1910.	

20

Exhibit D-1.

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,
Home Office, Newark, N. J.

6-11-28.

Received from Martin Connallon the sum of Two.....94/100 Dollars, being payment of first monthly premium on account of intermediate monthly premium policy applied for in The Prudential Insurance Company of America on the life of above. 30

It is understood that if the payment is equal to the full first monthly premium on said policy (but not otherwise), the insurance shall take effect from the date of the application, in accordance with the provisions of the policy applied for, provided said application is approved and accepted at the Home Office of the company in Newark, New Jersey, under the plan, for the premium paid and amount of insurance applied for, and provided the life proposed was in sound health on the date of the 40

Exhibits.

application. It is further agreed that said Company will return the amount mentioned hereon if it declines to grant a policy on the above life.

(signed) E. H. HAHN.

10

Exhibit D-2.

7-16-28.

Received from Mr. W. Connallon \$2.94 premium due for July on M. Connallon.

E. H. HAHN.

20

Exhibit D-3.

**Intermediate Monthly Premium Receipt Book of
The Prudential Insurance Company of America
for Payment Made on Policy No. M-160159.**

Name of Insured—Martin Connallon.

Date of Policy—August 6th, 1928.

Monthly premium—\$2.92.

	<i>Month Due</i>	<i>Date Paid</i>	<i>Amount Collected</i>	<i>Signature of Agent</i>
30	June 1928	App.	\$2.92	E. H. Hahn
	July 1928	7/11	2.92	E. H. H.
	Aug. 1928	8/16	2.92	E. H. H.
	Oct. 1928	10/2	2.92	Mannion
	Nov. 1928	11/1	2.92	Kimmerly
	Dec. 1928	12/3	2.92	Kimmerly
	Jan. 1929	12/17	2.92	Kimmerly
	Feb. 1929	1/19	2.92	Sarder
	March 1929	2/16	2.92	J. Neiland
	April 1929	3/30	2.92	Sarder
40	May 1929	5/4	2.92	Kimmerly
	June 1929	5/31	2.92	A. P. Kneppel

*Exhibit D-3—(Continued).***Notice to Policyholders.**

The record of premium payments entered on the respective pages in this book and applicable to the respective policy specified on each page constitutes an official receipt when countersigned by the Agent or other authorized representative of the Company receiving the payment. 10

EDWARD D. DUFFIELD,
President.


20

30

40

Exhibit D-4.

Policy.

(Opposite) 

THE PRUDENTIAL



INSURANCE COMPANY OF AMERICA

IN CONSIDERATION of the payment, in the manner specified, of the premium herein stated, hereby insures the person herein designated as the Insured, for the amounts named herein, payable as specified, subject to the provisions on the second and third pages hereof, which are hereby made part of this contract.

PRELIMINARY PROVISION—This Policy shall not take effect if on the date hereof the Insured be not in sound health, but in such event the premium or premiums paid hereon, if any, shall be returned.

THE INSURED MARTIN CONNALLON

FACE AMOUNT OF INSURANCE ---ONE THOUSAND--- Dollars, payable immediately upon receipt of due proof of the death of the Insured during the continuance of this Policy and upon legal surrender of this Policy and evidence of premium payment hereunder; all at the Home Office of the Company, in Newark, New Jersey.

ACCIDENTAL DEATH BENEFIT: An amount equal to the Face Amount of Insurance, payable in addition thereto, at the Home Office of the Company, in event of death by accidental means as defined in the clause headed "Provisions as to Accidental Death Benefit," on the second page hereof, subject to the provisions therein set forth.

PAYABLE TO WILLIAM A. CONNALLON, Beneficiary, Brother of the Insured.

If there be no Beneficiary living at the death of the Insured the amount of insurance shall be payable to the executors, administrators or assigns of the Insured, unless otherwise provided in the Policy. The right to change the Beneficiary has --- been reserved by the Insured.

MONTHLY PREMIUM ---Two and 92/100--- Dollars, payable on the delivery of this Policy and a like amount payable as hereinafter provided on or before the sixth day of each month after the date hereof in every year during the continuance of this Policy.

The premium specified above includes a monthly premium of sixteen cents for the Accidental Death Benefit, in accordance with the Company's table of such premiums for policies of the Intermediate class on the lives of persons engaged in the same occupation as the Insured.

PAYMENT OF PREMIUMS—All premiums are payable at the Home Office of the Company, or to an authorized representative of the Company in exchange for an official receipt signed by the President or the Secretary and countersigned by such representative; such payments to be recognized by the Company must be entered at the time of payment in the premium receipt book belonging with this Policy. If for any reason the premium be not called for when due it shall be the duty of the policyholder, before said premium shall be overdue thirty-one days, to bring or send said premium to the Home Office of the Company or to one of its district offices. The payment of any premium shall not maintain the Policy in force beyond the date when the next payment becomes due, except as to the benefits provided for herein after default in premium payment.

IN WITNESS WHEREOF, the said The Prudential Insurance Company of America, at its office in the City of Newark, New Jersey, has caused this Policy to be signed by its President and its Secretary, this sixth day of August, one thousand nine hundred and twenty-eight.



Edward D. Beuffels
President.

Willard J. Hamilton
Secretary.

Age 37

Whole Life—Annual Dividends. Intermediate Monthly Premium Policy. Premiums Payable for Life. Accidental Death Benefit. Total and Permanent Disability Provision: Waiver of Premiums, Payment of Face Amount of Insurance in Instalments.

NY M 15500
No App.

GENERAL PROVISIONS.

Grace in Payment of Premiums.—In the payment of any premium under this Policy, except the first, a grace of thirty-one days without interest will be allowed, during which time the Policy will remain in force, but if the Policy shall become a claim by death within the grace period the overdue premium shall be deducted from the amount of insurance payable.

Change of Beneficiary.—If the right to change the Beneficiary has been reserved the Insured may at any time while this Policy is in force, by written notice to the Company at its Home Office, change the Beneficiary or Beneficiaries under this Policy, such change to be subject to the rights of any previous assignee and to become effective only when a provision to that effect is endorsed on or attached to the Policy by the Company, whereupon all rights of the former Beneficiary or Beneficiaries shall cease.

Assignments.—Any assignment of this Policy must be in writing, and the Company shall not be deemed to have knowledge of such assignment unless the original or a duplicate thereof is filed at the Home Office of the Company. The Company will not assume any responsibility for the validity of an assignment.

Suicide.—If within one year from the date hereof the Insured shall die by suicide—whether sane or insane—the liability of the Company shall not exceed the amount of the premiums paid on this Policy.

Incontestability.—This Policy shall be incontestable after one year from its date of issue, except for non-payment of premium, but if the age of the Insured be misstated the amount or amounts payable under this Policy shall be such as the premium would have purchased at the correct age.

Indebtedness.—Any indebtedness to the Company on account of this Policy will be deducted in any payment or payments or in any settlement under the Policy.

Reinstatement.—If this Policy be lapsed for non-payment of premium it will be reinstated at any time after the date of lapse upon written application and payment of arrears of premiums with interest at the rate of five per cent. per annum, together with the reinstatement of all indebtedness, provided such indebtedness be not greater than the loan value of this Policy at the time of application for such reinstatement, and provided evidence of the insurability of the Insured satisfactory to the Company be furnished.

Modifications, etc.—No condition, provision or privilege of this Policy can be waived or modified in any case except by an endorsement hereon signed by the President, one of the Vice Presidents, the Secretary, one of the Assistant Secretaries, the Actuary, the Associate Actuary or one of the Assistant Actuaries. No modification or change shall be made in this Policy except such as is in accordance with the laws of the State in which the same is issued. No Agent has power in behalf of the Company to make or modify this or any other contract of insurance, to extend the time for paying a premium, to waive any forfeiture, or to bind the Company by making any promise, or by making or receiving any representation or information.

Basis of Reserve and Computations.—The reserve upon this Policy for which funds are to be held, exclusive of any reserve on account of disability insurance and accidental death benefit, shall be computed upon the New York Standard Intermediate Table of Mortality with three and one-half per cent. interest per annum by the net level premium method. All computations in accordance with the terms of this Policy involving net premiums or reserve values based on a mortality table and interest shall be made upon the basis here stated.

Entire Contract Contained in This Policy.—This Policy contains and constitutes the entire contract between the parties hereto, and all statements made by the Insured shall in the absence of fraud be deemed representations and not warranties, and no statement shall avoid the Policy or be used as a defense to a claim thereunder unless it be contained in the Application for the Policy and unless a copy of such Application be endorsed upon or attached to the Policy when issued.

DIVIDEND PROVISIONS.

Annual Dividends.—Annually, during its continuance in force, the proportion of the divisible surplus accruing upon this Policy shall be ascertained and apportioned by the Board of Directors and credited to this Policy at the end of the policy year as a dividend. Such dividend shall at the option of the Insured be (1) applied to the purchase of a paid-up addition to the Policy or (2) paid in cash or (3) applied to the reduction of the premium then due, if any, or (4) left to accumulate to the credit of the Policy with interest compounded annually at the rate of three and one-half per cent. plus such additional interest as the Company may declare on such funds and payable at maturity of the Policy or withdrawable in cash on any anniversary of the Policy, provided it has not been applied to purchase automatic extended insurance or provided it has not been applied to increase a non-forfeiture value in accordance with the terms of this Policy. The Company reserves the right to defer the payment of any cash surrender value for a period not exceeding ninety days after application for such cash surrender value. If the Insured shall select no other dividend option the dividend shall be paid in cash.

Post Mortem Addition.—If this Policy be continued in force and if it shall become a claim by the death of the Insured after one year from its date, a cash addition based on the then current dividend scale as adopted by the Board of Directors will be paid for that part of the current insurance year in which death occurs for which premiums have been paid.

Notice to Policyholder.—Owing to the low rate of premium at which policies of this nature are issued, the surplus accruing thereon will probably not be sufficient to enable the Company to credit any dividend to this Policy before the end of the second policy year from its date.)

PROVISIONS AS TO ACCIDENTAL DEATH BENEFIT.

The amount of Accidental Death Benefit specified on the first page hereof shall be payable in addition to the Face Amount of Insurance immediately upon receipt of due proof that the death of the Insured occurred during the continuance of this Policy while there was no default in the payment of premium, as a result, directly and independently of all other causes, of bodily injuries, effected solely through external, violent and accidental means, of which, except in case of drowning or of internal injuries revealed by an autopsy, there is a visible contusion or wound on the exterior of the body, and that such death occurred within ninety days of the accident, provided, however, that no Accidental Death Benefit shall be payable if the death of the Insured resulted from suicide—whether sane or insane; from having been engaged in military or naval service in time of war; or in submarine operations or in aviation or aeronautics, as a passenger or otherwise; or from a state of war, riot or insurrection; or directly or indirectly from bodily or mental infirmity or disease in any form. If the Face Amount of Insurance shall become payable in instalments on account of the total and permanent disability of the Insured these provisions as to Accidental Death Benefit shall become null and void immediately when said Face Amount of Insurance shall have been paid.

PROVISIONS AS TO TOTAL AND PERMANENT DISABILITY: WAIVER OF PREMIUMS, PAYMENT OF FACE AMOUNT OF INSURANCE.

Disability Before Age 60: Waiver of Premiums—Payment of Face Amount of Insurance in Instalments.—If the Insured shall become totally and permanently disabled, either physically or mentally, from any cause whatsoever, to such an extent that he (or she) is rendered wholly, continuously and permanently unable to engage in any occupation or perform any work for any kind of compensation of financial value during the remainder of his (or her) lifetime, and if such disability shall occur at any time after the payment of the first premium on this Policy, while this Policy is in full force and effect and the Insured is less than sixty years of age, and before any non-forfeiture provision shall become operative, the Company, upon receipt of due proof of such disability, will grant the following benefits:

(1) **Waiver of Premiums.**—The Company will waive the payment of any premium or premiums due the date of which, as specified on the first page hereof, shall occur after receipt by the Company of said proof of such disability.

(2) **Payment of Face Amount of Insurance in Instalments.**—The Company will, in addition to waiving the premiums, pay to the Insured at its Home Office the Face Amount of Insurance hereunder, less any indebtedness under this Policy, in forty quarter-annual instalments during ten years, each instalment to be of the amount of \$29.16, \$1,000 of insurance payable. The first payment shall be made immediately upon receipt by the Company of due proof of such disability and subsequent instalments shall be paid quarter-annually thereafter.

If the Insured be physically or mentally incapable of personally receiving and receipting for said instalments or any of them, the Company may, at its option, and until claim is made by the duly appointed guardian or committee of the Insured, make payment thereof to the Beneficiary or Beneficiaries, if any, designated in the Policy or to any person or institution then maintaining the Insured.

The total amount of insurance under this Policy, exclusive of the Accidental Death Benefit, at any time after one or more of such instalments have been paid shall not exceed the commuted value of such of said instalments as are not then due computed at the rate of three and one-half per cent. per annum compound interest, and loan and non-forfeiture values correspondingly modified shall be available to the Insured irrespective of said waiver of premiums. Any indebtedness incurred on account of the Policy during the instalment period shall be deducted from the commuted value of the unpaid instalments at that time, computed as above, and the amount of each of such unpaid instalments shall be correspondingly reduced.

Any insurance remaining at the death of the Insured and any disability instalments due and unpaid at that time shall be paid to the Beneficiary or Beneficiaries designated in the Policy.

Disability After Age 60: Waiver of Premiums with Reduction of the Face Amount of Insurance.—If such total and permanent disability shall occur after the Insured is sixty years of age, while this Policy is in full force and effect and before any non-forfeiture provision shall become operative, the Company upon receipt of due proof thereof, will waive the payment of any premium or premiums due the date of which, as specified on the first page hereof, shall occur after receipt by the Company of such due proof, but the Face Amount of Insurance under this Policy shall be reduced by the amount of each premium so waived, and any loan and non-forfeiture values shall thereafter be based upon the Face Amount of Insurance thus reduced.

Recognized Disabilities.—Without prejudice to any other cause of disability, the Company will recognize the entire and irrecoverable loss of the sight of both eyes, or loss by severance of both hands above the wrists, or of both feet above the ankles, or of one hand and one foot, as total and permanent disability under this Policy, provided the loss of the sight of each of both eyes or the loss of each of such members shall occur while these provisions are in full force and effect.

Proof of Continuance of Disability.—Notwithstanding the acceptance by the Company of proof of total and permanent disability, the Insured, upon demand by the Company from time to time, but not oftener than once a year after such disability has continued for two full years, for the purpose of verifying that such disability is actually permanent and not temporary, shall furnish due proof that he (or she) actually continues in the state of disability defined above; provided, however, that such demand shall not be made in the case of the "Recognized Disabilities" specified above, other than the loss of the sight of both eyes. In case of failure to furnish such proof, no further premiums shall be waived and no further instalments shall be paid on account of such disability, but any insurance then remaining under this Policy shall be continued in force subject to the payment by the Insured of any premium or premiums, based on such insurance, the due date of which premium or premiums, as specified on the first page hereof, shall occur thereafter.

The disability provisions in this Policy are granted without specific extra premium being charged therefor, but the cost thereof is included in the premium for this Policy.

LOAN PROVISIONS.

If this Policy be continued in force, the Insured may borrow from the Company, without the consent of the Beneficiary, if any, named herein, with interest at the rate of six per cent. per annum, on the sole security of this Policy, an amount up to the limit of the Cash Surrender Value hereinafter specified together with the full reserve on account of any outstanding paid-up additions, after deducting therefrom all other indebtedness on account of this Policy, by making written application for the loan and assigning the Policy to the Company as security. Failure to repay any such indebtedness or to pay interest shall not avoid the Policy unless the total indebtedness thereon to the Company shall equal or exceed the loan value at the time of such failure, nor until one month after notice to that effect shall have been mailed by the Company to the last known address of the Insured, of the person to whom the loan was made, and of the assignee of record at the Home Office of the Company, if any. The Company reserves the right to defer any loan, other than to pay premiums on policies in the Company, for a period not exceeding ninety days after application for such loan.

(NOTE.—At any time during the continuance of this Policy a statement of any outstanding indebtedness on account of the Policy will be furnished on request.)

NON-FORFEITURE PROVISIONS.

Non-forfeiture Values at End of First and Second Policy Years.—If this Policy after being in force one full year or two full years from its date shall lapse for non-payment of premium, the Company will continue in force the insurance under the Policy, exclusive of Disability and Accidental Death benefits, for a period of sixty days or of one hundred and twenty days, respectively, from the due date of such premium, as specified on the first page hereof, as indicated in the following table; provided, however, that if the death of the Insured shall occur during the period of continued insurance herein defined, there shall be deducted from the amount payable by the Company any premium, exclusive of the extra premium for Accidental Death benefits, that would have become due on this Policy up to the time of the death of the Insured if the Policy had been continued in force.

Cash Surrender Value.—If this Policy be legally surrendered to the Company within three months after the end of the third year from its date or of any year thereafter, and if all premiums to the end of that year have been paid in full, the Company will pay therefor the sum indicated in the following table together with the full reserve on account of any outstanding paid-up additions purchased by dividends and less any indebtedness to the Company on account of this Policy. The Company reserves the right to defer the payment of any Cash Surrender Value for a period not exceeding ninety days after application for such Cash Surrender Value.

Paid-up Life Policy.—If this Policy, after being in force three full years from its date, shall lapse or become forfeited for the non-payment of any premium on the date when due, as specified on the first page hereof, and if the Policy be not surrendered for its Cash Value, the Company upon the legal surrender of this Policy within three months after the due date to which premiums have been paid will issue a participating Paid-up Life Policy dated on the due date to which premiums have been paid, and for the amount specified in the following table together with the amount of any outstanding paid-up additions purchased by dividends; provided, however, that if there be any indebtedness to the Company on account of this Policy the amount of such Paid-up Life Policy will be reduced by the proportion that the total indebtedness bears to the then tabular Cash Surrender Value of this Policy together with the full reserve on account of any outstanding paid-up additions purchased by dividends. Such Paid-up Life Policy shall not provide for Disability and Accidental Death benefits.

Automatic Extended Insurance.—If this Policy, having lapsed or become forfeited as specified in the clause, "Paid-up Life Policy," above, be not surrendered for its Cash Value or for a Paid-up Life Policy, the Company will put in force in lieu of this Policy, without any action on the part of the Insured, a participating Paid-up Term Policy for the Face Amount of Insurance under this Policy together with the amount of any outstanding paid-up additions purchased by dividends and less any indebtedness on account of this Policy, with no provisions for Disability and Accidental Death benefits, such Paid-up Term Policy to continue in force from the due date, as specified on the first page hereof, to which premiums on this Policy have been paid, for such a term as the Cash Surrender Value of this Policy, increased by the full reserve on account of any outstanding paid-up dividend additions and by the amount of any dividend accumulations standing to the credit of this Policy and reduced by any indebtedness on account of the Policy, will purchase at Single Premium Term Rates. The Paid-up Term Policy will be delivered on the legal surrender of this Policy. The values in the following table of Automatic Extended Insurance have been computed in accordance with the above provisions but on the assumption that there will be no outstanding paid-up additions, dividend accumulations or indebtedness at the time of lapse and, therefore, apply only under such conditions.

Cash Surrender Values Under Paid-up Life and Paid-up Term Policies.—If this Policy shall lapse, as above, and a Paid-up Life Policy be issued or a Paid-up Term Policy be put in force in lieu thereof, such Paid-up Life or such Paid-up Term Policy may be surrendered at any time for its full reserve value at the time of such surrender. The Company reserves the right to defer the payment of any cash surrender value for a period not exceeding ninety days after application for such cash surrender value.

TABLE OF LOAN AND NON-FORFEITURE VALUES.

(Values subject to reduction on account of any outstanding indebtedness as heretofore provided.)

The Cash Surrender and Loan Values and Paid-up Life Policies stated in the following table apply to a policy of \$1000, Face Amount of Insurance. If the Face Amount of Insurance under this Policy be more or less than \$1000, the Cash Surrender and Loan Value (column 1) or the Paid-up Life Policy (column 2) available in any year will be proportionately greater or less. The terms of Automatic Extended Insurance apply to the Face Amount of Insurance under this Policy.								
(Example:—If the Face Amount of Insurance be \$500, the Cash Surrender and Loan Value or Paid-up Life Policy available in any year will be one-half the amount stated in the following table for that year. If the Face Amount of Insurance be \$2000, the Cash Surrender and Loan Value or Paid-up Life Policy available in any year will be twice the amount stated for that year.) U.S.-CA.								
*At the End of	(1) Cash Surrender and Loan Values per \$1000 of Face Amount of Insurance	(2) Paid-up Life Policy per \$1000 of Face Amount of Insurance	(3) Automatic Extended Insurance for Face Amount of Insurance	*At the End of	(1) Cash Surrender and Loan Values per \$1000 of Face Amount of Insurance	(2) Paid-up Life Policy per \$1000 of Face Amount of Insurance	(3) Automatic Extended Insurance for Face Amount of Insurance	
1 Year	None	None	(See first paragraph of "Non-forfeiture Provisions," above.) 60 Days	11 Years	\$190 00	\$353 00	10 Years, 177 Days	
2 Years	None	None	120 "	12 "	209 00	380 00	10 " 320 "	
3 "	\$41 00	\$90 00	3 Years, 188 "	13 "	228 00	406 00	11 " 75 "	
4 "	59 00	126 00	4 " 281 "	14 "	247 00	432 00	11 " 172 "	
5 "	79 00	164 00	6 " 12 "	15 "	266 00	456 00	11 " 249 "	
6 "	96 00	197 00	6 " 363 "	16 "	285 00	480 00	11 " 308 "	
7 "	114 00	229 00	7 " 318 "	17 "	304 00	503 00	11 " 350 "	
8 "	133 00	261 00	8 " 243 "	18 "	323 00	526 00	12 " 13 "	
9 "	152 00	293 00	9 " 138 "	19 "	343 00	547 00	12 " 27 "	
10 "	172 00	325 00	10 " 6 "	20 "	362 00	568 00	12 " 29 "	

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*The tabular loan value at the end of any year, discounted at the rate of six per cent. per annum, shall be available to the Insured at any time after all the premiums for that year have been paid.

The non-forfeiture values in the above table are based upon the New York Standard Intermediate Table of Mortality with three and one-half per cent. interest per annum, and the net value of any such non-forfeiture value, from the third to the end of the tenth year, is at least equal to the entire reserve on this Policy, according to the foregoing standard, less a percentage (not more than two and one-half) of the Face Amount of Insurance under the Policy; thereafter, such net value is the full reserve by said standard, omitting fractions of a dollar per \$1000 of the Face Amount of Insurance.

If this Policy be continued in force beyond the twentieth year, a table of Loan and Non-forfeiture Values, as above, after the twentieth year, will be furnished on application to the Home Office.

Due allowance will be made in computing values from the above table for that number of premiums paid over and above the premiums for the full number of years indicated; provided, however, that if premiums for more than one but less than three full years shall have been paid an allowance of five days of continued insurance will be made for each month beyond one year for which the premium has been paid.

PROVISIONS AS TO MODE OF SETTLEMENT AT MATURITY.

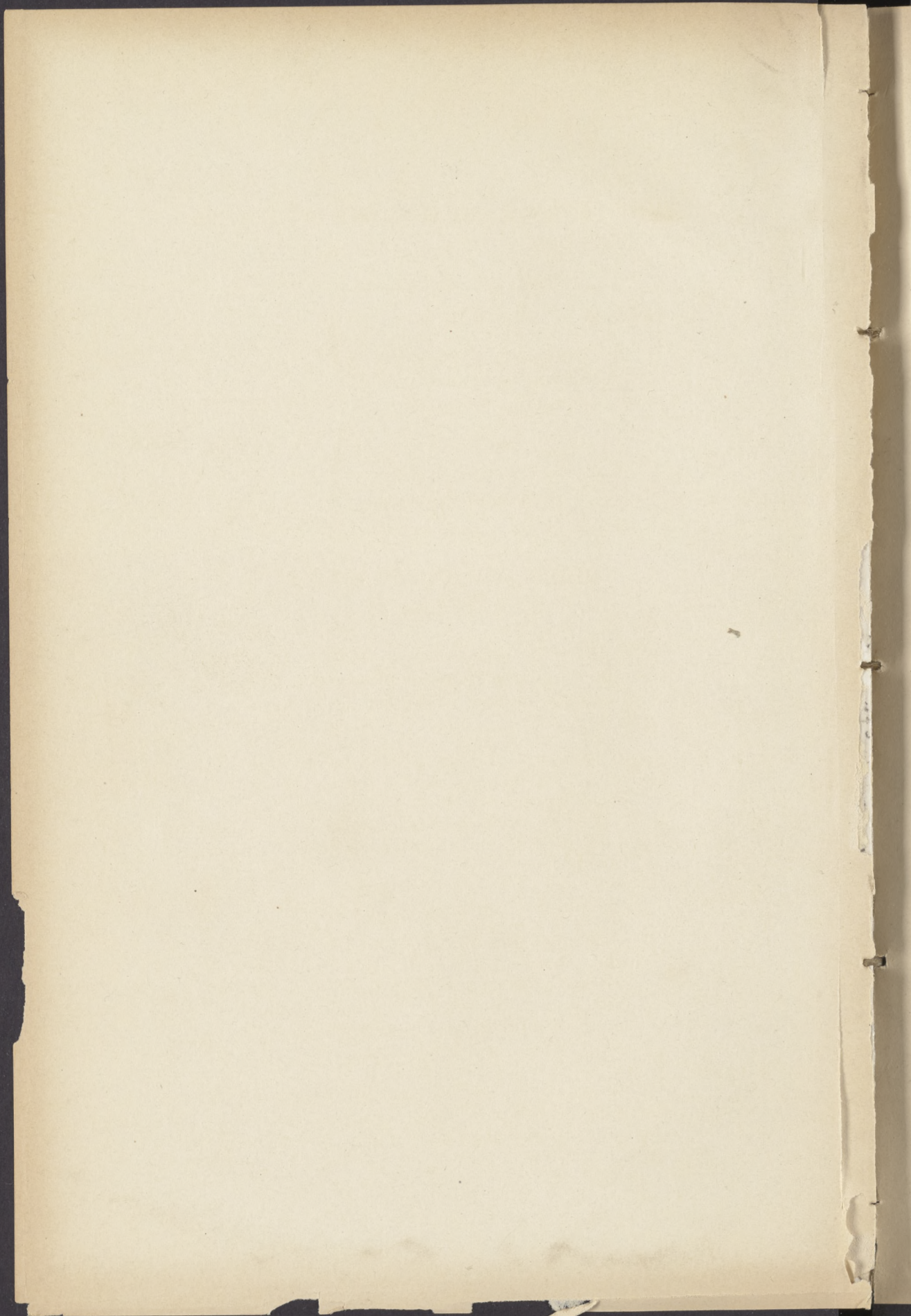
The Insured may at any time while this Policy is in force, subject to the rights of any assignee and with the power of revocation, by written notice to the Company, designate the following option as the manner in which the amount of insurance shall be payable in lieu of being paid in one sum, and the Company will then endorse on the Policy that payment shall be made according to said option, but if the Insured shall have made no such designation, the Beneficiary shall have the right of designation; provided, however, that in no event shall said option be available if the Beneficiary be a corporation or a firm.

Option.—Monthly Instalments of \$50 each.—The amount of insurance to be payable in monthly instalments of \$50 each during such a period as will be provided when the instalments are computed at the rate of three and one-half per cent. per annum compound interest. Any portion of said amount of insurance remaining after providing for the greatest possible number of instalments of \$50 each shall be paid in addition to the first monthly instalment payable.

Unpaid Instalments at Death of Beneficiary.—If one or more instalments shall actually be paid in accordance with the provisions of the option above and if the Beneficiary shall die before all instalments payable shall have been paid, and if there be no contingent beneficiary designated by the Insured, the unpaid instalments will be commuted at the rate of three and one-half per cent. per annum compound interest and paid in one sum to the executors or administrators of the Beneficiary.

Dividends with Instalments.—If the amount of insurance be payable in monthly instalments any dividend from the surplus earnings as ascertained and apportioned by the Board of Directors on account of amounts so payable will effect an increase in the instalments.

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OCT. 1. 1930

New Jersey Court of Errors and Appeals

OCTOBER TERM, A. D. 1930.

Between

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,
Complainant-Appellant,

and

WILLIAM A. CONNALLON,
Defendant-Appellee.

On Appeal from
Chancery.

BRIEF FOR COMPLAINANT- APPELLANT.

On August 6th, 1928, the Prudential Insurance Company issued a policy of insurance on the life of Martin Connallon, which contained these provisions:

“Entire Contract Contained in This Policy. This policy contains and constitutes the entire contract between the parties hereto.”

“This policy shall not take effect if on the date hereof the insured be not in sound health.”

In the opinion below, the Court said:

“The evidence satisfies me that the insured was not in sound health either at the date of the application or at the date of the policy, and that the above mentioned statements made by him in his application were knowingly false” (p. 29, bottom).

Thus we have a policy of insurance containing and constituting the entire contract, providing that it shall not take effect if the insured be not

in sound health "on the date hereof", and the Court below finding and stating the fact to be "that the insured was not in sound health * * * at the date of the policy".

No suit having been instituted by the beneficiary, the Insurance Company, on August 2nd, 1929, filed a bill in Chancery asking that Court to decree that the contract of insurance "did not take effect on its said date, or at any other time, and that the same is void and of no effect", and also to decree that the policy "was fraudulently obtained by the said Martin Connallon and that the said contract of insurance be rescinded and surrendered for cancellation".

That Court refused to grant relief, holding that :

"The failure of the complainant to attach such copy (of the application) to the policy, prevents it from using its contents against the beneficiary's claim, although the beneficiary may use the application to establish the date of issue of the policy."

It seems strange that the application being no part of the contract, may be used by the beneficiary to change the term and terms of the policy, notwithstanding "this policy contains and constitutes the entire contract between the parties".

The Court finds that the application is no part of the contract, but uses the application as though it were a part of the contract and permits the fraud doer to vary the terms of the contract by reference to the application, and on the other hand, says that notwithstanding the knowingly false and fraudulent representations made, the application is no part of the contract, and therefore, cannot be used to defeat the contract for fraud.

It is most striking that immediately after holding that the complainant could not use the application to show fraud, but that the fraud doer could use

it to change and vary the terms of the contract, the Court below said:

“1925, Chapter 436 provides that policies of life insurance shall contain certain provisions among which is a provision (Section 4) that the policy shall contain the entire contract between the parties and that nothing shall be incorporated therein by reference to any application unless it is endorsed upon or attached to the policy.”

But, in deciding the case, the Vice-Chancellor incorporated something in the contract by reference to the application, which he held was not attached to or endorsed upon the policy.

Under the policy Martin Connallon was insured from August 6th, 1929. The policy says that it contains and constitutes the entire contract. The law says the policy shall contain the entire contract between the parties, and nothing shall be incorporated therein (by Court of Chancery or anyone else) by reference to any application unless it is endorsed upon or attached to the policy.

The contract says that its date is August 6th, 1929, but the Court of Chancery says that the date of issue is not in the contract; that the policy does not contain the entire contract but that part of the contract is contained in the application, or in a premium receipt.

By disregarding the date of the policy and its provisions, by incorporating in it the date of the application or the date of a receipt for a premium, the Court found that the policy was not contestable on the second of August, 1929, in the face of the fact that its date was August 6th, 1928.

One of the general provisions of the policy is

“Incontestability”

“This policy shall be incontestable after one year from its date of issue, except for non-payment of premium * * *.”

The Court of Chancery in its learned opinion held:

“If the insurer agrees that the policy shall be effective from the date of application therefor the application date will be considered the date of issue, and the incontestability clause will run from the earlier date.”

This clearly implies that there was an agreement between the parties not expressed in the policy. It is a clear holding that there was an agreement somewhere outside of the policy that the policy should be effective from the date of the application therefor.

There is no such provision in the policy.

Both by its own terms and by the statutory law quoted in the opinion, the policy contains and constitutes the entire contract between the parties, and it was error on the part of the Trial Court to incorporate in it any alleged agreement between the parties that the date of application should be the date of issue of the policy, or that the policy would be effective from the date of the application.

I.

The Facts.

The defendant, the beneficiary named in the policy, was engaged in speculating in insurance on the life of his brother, Martin.

On page 79 William Connallon testified that he had a whole lot of policies in the Prudential Company on his brother's life. By “a whole lot”, Connallon meant twelve, including the one in question.

Udale (p. 56) assistant manager of the Company, produced eleven policies on Martin's life, all held by his brother, William, who paid the

premiums on them and who collected the proceeds of the entire eleven policies.

In this series of speculation on his brother's life, William made an abortive attempt to get the twelfth Prudential policy June 11th, 1928, and got a receipt for \$2.94 from an agent. This receipt is printed in the case as Exhibit D-1 on page 93. Note that it is for \$2.94; that the premium on the policy in question is \$2.92, and that in his answer defendant falsifies this \$2.94 receipt and makes it read \$2.92 (p. 22).

William says (p. 86, bottom):

“He (agent) asked me for \$2.94 and then he says ‘he is insured.’

“Q. He asked for \$2.94? A. Well, \$2.92.

“By the Court:

“Q. Which was it? A. That is what I paid—\$2.94. That is what he asked me for.”

So we see that in the answer filed, and in his testimony, this beneficiary of a whole lot of policies, is not altogether too disingenuous.

However, the transaction of June 11th, 1928, was one entirely between William, who was attempting to get another policy on Martin's life, and the agent. Martin had no part in it. The money was collected by the agent from William, and William got the receipt made out in Martin's name. No application was ever made for a policy on this receipt, as poor Martin's signature was not just then available. He was then suffering from acute alcoholism and T. B., and was taken to the Jersey City Hospital on June 21st, and placed in the Psychopathic ward. His case was diagnosed (see Ex. C-4, p. 87):

“‘P. D.’ Acute Alcoholism.

“‘P. H. Diphtheria, pneumonia, pleuritis. Says that he has trouble with left leg, numb-

ness since last Thursday. Has blue spots in eyes when bends over, accompanied by dizziness. Says he cannot read. This has been so for past week. Thinks his trouble may be due to fact that he sleeps on floor.

“Provisional Diagnosis — Alcoholism (Acute). Sepsis Oralis. Hypertension.

“Final Diagnosis — Pulmonary T. B. Chronic Alcoholism.”

So, the June attempt of William, the beneficiary of a whole lot of policies on the life of Martin, his brother, who is suffering from Pulmonary T. B., and chronic alcoholism, and who “sleeps on the floor”, was not productive of a policy.

But this man, with eleven other policies on the life of his sick brother, is not to be daunted.

On this occasion, Martin got out of the hospital alive. Two days later, on July 23rd, 1928, William got an application signed by Martin for the insurance policy in question (see Dr. Cammorata’s testimony, p. 45, bottom):

“By the Court:

“Q. What was the date of discharge? A. July 21, 1928.”

So the indefatigable and efficient beneficiary of a “whole lot” of policies on his sick brother, managed to get an application in for the twelfth policy in the Prudential.

On this form of policy no medical examination is made, the Company relying on the truthfulness of the statements made in the application, and on the provision in the policy:

“This policy shall not take effect if on the date hereof the insured be not in sound health.”

The promoter of all this insurance and the sole beneficiary in the twelve Prudential policies,

brother William, collected eleven policies which the Company did not dispute. But the twelfth policy was disputed. So William took no action on it and simply awaited the operation of the incontestability clause.

The date of the policy being August 6th, 1928, that clause would make the policy incontestable on August 6th, 1929.

On August 2nd, no suit at law having been commenced by William, the Company filed its bill as above stated.

The decision of the Court below is that inasmuch as the policy did not have annexed to it a copy of the application, the fraud in procuring the policy cannot avail the complainant; but that the fraud doer can use the false and fraudulent application to set back the date of the policy from August 6th, 1928, to July 23rd, 1928, or possibly some other undetermined date prior to August 2nd, 1928.

The decision goes further and says that the policy which contains the entire contract, was not contestable on August 2nd, 1929, because there is in this entire and complete contract dated August 6th, 1929, a clause which says, "This policy shall be incontestable after one year from its date of issue".

The Court held that the incontestable period is not fixed or determined by the policy, which contains and constitutes the entire contract, but by some other paper which is not a part of the contract.

Thus the Court below held that the entire contract is not the entire contract; but on the contrary, another paper not a part of the contract, fixes and determines the rights of the parties to the policy of insurance, which by law and its own terms constitutes and contains the entire contract.

The Court below actually said (Opinion, p. 28 bottom):

“The premium was paid. The risk was accepted and the policy was delivered and to ascertain the true date of issue the policy must be read *with the application.*”

POINT I.

The policy did not take effect because the insured was not in sound health on the date of the policy.

In the case of *Levandowsky v. Equitable Life Insurance Society*, 103 N. J. L. 643, this Court said:

“Until this condition has been complied with the policy has no legal effect whatever.”

And, in another part of the opinion it says:

“The validity of the policy depends not upon a knowledge of the insured and concealment by him of fraudulent intent, but from the fact contained in the policy, *as a condition precedent* to its becoming binding on the Company.”

The policy in question contains the same provision as in the above case.

The policy of insurance never came into being as a contract between the parties. It contains on the face of it this preliminary provision:

“This policy shall not take effect if on the date hereof the insured be not in sound health.”

Without doubt, this apparently escaped the attention of the Vice-Chancellor, who decided the case, as twice in his opinion, he quotes from the application but not from the contract of insur-

ance. On page 27 he quotes from a receipt of June 11th, which says:

“Provided the life proposed was in sound health on the date of the application.”

and again from the receipt, on page 28:

“Provided the life proposed is in sound health on the date of this application, and provided this application is approved and accepted by the home office.”

And the Vice-Chancellor holds in effect that a contract which by its terms never took effect, could take effect because it was not contested within a period of one year.

The confusion probably arose from the fact that the Vice-Chancellor, in his opinion, was dealing with the date of a receipt and the date of an application which was no part of the contract in question, and which refers to the condition of health of the applicant as of the date of the application.

But, standing out boldly in the second paragraph on the face of the policy, we have the preliminary provision which says:

“This policy shall not take effect if on the date hereof the insured be not in sound health.”

Unless the case of *Levanowsky v. Equitable Life Insurance Society* is reversed, the policy never took effect, and never having taken effect, the incontestability clause could never come into operation.

In the case of *Prahm v. Prudential*, 98 N. J. L. 335, affirmed 99 *Id.* 289, this Court held that the validity of the policy depends not upon the knowledge of the insured and concealment by him with fraudulent intent, but upon the fact contained in

the policy, as a condition precedent to its becoming binding on the Company.

If the contract never became binding upon the Company, of course, the incontestability clause never became binding. A wealth of cases is cited in *Levanowsky v. Equitable, supra*, to this same effect.

The quotation in the Vice-Chancellor's opinion from a receipt or from two receipts and referring to the condition of health at the time of the signing of the application, clearly shows that there was a misapprehension as to the provision under discussion.

The policy did not take effect because, as found by the Vice Chancellor, the insured was not in sound health on the day of its date, namely, August 6th, 1928. How is it possible that a clause in a contract that never became operative could prevent a defense being interposed on the inoperative contract? The contract was still-born.

Of course, the meaning of the incontestability clause is that if the contract did become operative and was a live and effective contract, it could not be contested after one year from its date of issue. Any other conclusion would have the effect of creating and putting into being a contract that never was alive. This is not a case of one dying and being resurrected; it is a case of never having been born.

What power could exist in the incontestability clause to prevent the Company from defending the policy which by its very terms did not take effect?

If the policy was void *ab initio* how could it be brought into life by a clause in the *ab initio* void contract? If it was void no provision became operative. At no time was the contract in being and at no time was the incontestability clause a part of a contract in being. The beneficiary mentioned

in the contract never had any rights under it because the contract was void and therefore he never had the right to set up a provision of the void contract that it could not be contested.

POINT II.

The policy was contestable on August 2nd, 1929, the date of filing the Bill in Chancery.

The Court below held:

“That the date of the policy does not necessarily determine its date of issue. If the insurer agrees that the policy shall be effective from the date of application therefor, the application date will be considered the date of issue and the incontestability clause will run from the earlier date.”

In this opinion the Court below did not realize that the policy in question contains and constitutes the entire contract.

In fact, it held that the application was no part of the contract. It is clear that it was not annexed to the policy; the Court so held and we admit it.

But, in reaching the conclusion below, the Court treated the application as though it contained an agreement which bound the insurer in favor of the insured, although it was no part of the contract between them.

The date of the policy is August 6th, 1928, and by its own terms and by the law it constituted and contained the entire contract.

The Court below got away from the date of the contract by confusing the situation and assuming that the premium receipt and the application were part of the contract and fixed what it called “the date of the issue of the policy” as either July

23rd, 1929, the date of the application, or some earlier and undetermined date.

The date of issue in this contract was the date of the policy and that date is of great importance in determining when the incontestability clause becomes operative.

There is absolutely nothing in the contract to justify the Court below in going out of the contract and attempting to fix another date for the contract.

All of the provisions of the contract contemplate that its date shall be its date of issue. As witness:

“Preliminary provision”

“This policy shall not take effect if *on the date hereof* * * *.”

“In witness whereof, the said Prudential Insurance Company of America, at its office in the city of Newark, New Jersey, has caused this policy to be signed by the President and Secretary this sixth day of August, 1928.”

And, in the Incontestability Clause:

“This policy shall be incontestable after one year from its date of issue, except for non-payment,” etc.

Also, see the Suicide Clause:

“If, within one year from the date hereof the insured shall die by suicide * * *”

And, again in the Post Mortem Addition Clause:

“If this policy be continued in force and if it shall become a claim by the death of the insured after one year from its date, a cash addition * * *”.

And, again in the Non-Forfeiture Provisions:

“If this policy after being in force one full year or two full years from its date shall lapse for non-payment * * *”.

And, in the Cash Surrender Value clause:

“If this policy be legally surrendered to the Company within three months after the end of the third year from its date * * *.”

And, in the Paid Up Life Policy clause:

“If this policy after being in force three full years from its date, shall lapse * * *.”

Furthermore, the entire table of loan and non-forfeiture values is based on one to twenty years, after the date of the policy.

The date of issue of the policy is the date which fixes a large part of the rights and of the liabilities of the parties to the contract. Nowhere in the contract is any other date referred to as being the date of issue or the date of the policy, except August 6, 1928.

The whole question seems to be laid at rest by the decision of the United States Supreme Court in *Mutual Life Insurance Company v. Hurni Packing Company*, 263 U. S. 167, decided in 1923.

In this case the policy was applied for on September 2nd, 1915. It was in fact executed on September 7th, but antedated as of August 23rd, 1915, and was delivered to insured about September 13th. The insured died on July 4th, 1917.

Underneath the heading of the application there was written the direction: “Date of policy August 23rd, 1915, Age 47.” The testimonium clause followed by the signatures of the officials reads:

“In witness whereof the Company has caused this policy to be executed this 23rd day of August, 1915.”

The policy acknowledged the receipt of the first premium and provided that a like amount should be paid “upon each 23rd day of August hereafter until the death of the insured”.

Mr. Justice Sutherland, writing the opinion, said:

“The determination of the case depends upon the meaning of a clause in the policy as follows: ‘Incontestability. This policy shall be incontestable, except for non-payment of premiums, provided two years shall have elapsed from its date of issue.’ The trial court held that the words ‘its date of issue’ were to be construed as referring to the date upon the face of the policy, viz: ‘August 23rd, 1915’, and this was also the view of the Court of Appeals. The first action taken by the Insurance Company to avail itself of the misrepresentation of the insured was on the 24th day of August, 1917, one day beyond the period of two years after the conventional date of the policy.”

After citing the case of *Bement & Dougherty v. Trenton Locomotive, &c*, 32 N. J. Law 513, to the effect that the primary significance of the word *date* is not time in the abstract nor time taken absolutely, but as its derivation plainly indicates, time given or specified time in some way ascertained and fixed, and continuing, Mr. Justice Sutherland said (p. 175):

“Here the words, referring to the written policy, are, ‘from its date of issue’. While the question, it must be conceded, is not certainly free from reasonable doubt, yet, having in mind the rule first above stated, that in such case the doubt must be resolved in the way most favorable to the insured, we conclude that the words refer not to the time of actual execution of the policy or the time of its delivery, but to the date of issue as specified in the policy itself.” Citing cases.

Any other construction of the contract in question would be clearly contrary to its expressed words and meaning.

¹In *Monahan v. Fidelity Mutual Life*, 242 Ill. 488, the Court held that a clause in a life insurance policy making the policy incontestable except for non-payment of premiums, provided "it shall have been in continuous force after two years from the date hereof", referred to the date of the policy.

In *Meridian Life Insurance Company v. Milam*, 172 Ky. 75 (L. R. A., 1917, B103), where a policy provided that it should be incontestable "after one year from the date hereof", the Court held that the policy became incontestable one year from the date appearing on the face of the policy.

We respectfully submit that the decree of the Court of Chancery should be reversed.

PERKINS & DREWEN,
Counsel for Complainant-Appellant.

New Jersey Court of Errors and Appeals

Between

THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA,
Complainant-Appellant,

and

WILLIAM CONNALLON,
Defendant-Appellee.

On Opinion
from
Chancery.

BRIEF OF DEFENDANT-APPELLEE.

Statement of Facts.

In this suit the complainant-appellant, The Prudential Insurance Company of America, seeks to rescind its contract of insurance as set forth in policy number M-160159 on the life of one Martin Connallon. The said Martin Connallon died on June 25th, 1929. This suit was instituted on August 2nd, 1929. The defendant-appellee is a brother of the assured and the beneficiary named in said policy (See Bill of Complaint, p. 5, State of Case). The legal representative of the estate of said Martin Connallon, deceased, is not a party to this action.

The evidence shows that on June 11th, 1928, Everett H. Hahn, who was then an agent for the complainant-appellant, called upon the defendant-appellee and showed to him an application for life insurance on the life of his brother, Martin Connallon. The said application bore the signature of said Martin Connallon as the applicant for

such insurance (p. 58, ll. 30 to 40; p. 59, ll. 1 to 40; p. 60, ll. 1 to 10, State of Case). The defendant-appellee, at the request of said agent, on June 11th, 1928, paid to the said agent the full first monthly premium on said policy and took a receipt therefor from said agent (p. 60, ll. 25 to 35, State of Case). The said receipt was put in evidence and marked Exhibit D-1 (p. 60, ll. 35 to 40; p. 61, ll. 1 to 20, State of Case).

The said receipt reads as follows:

“Received from Martin Connallon the sum of Two.....94/100 Dollars, being payment of first monthly premium on account of intermediate monthly premium policy applied for * * *” (Exhibit D-1, p. 93, State of Case).

Before the aforesaid policy was actually delivered the said agent of the complainant-appellant, E. H. Hahn, called upon the defendant-appellee for the July premium on the aforesaid policy. This premium was paid on July 16th, and a receipt was given defendant-appellee by the said agent, which receipt was put in evidence and marked Exhibit D-2 (p. 61, ll. 19 to 22; p. 62, ll. 10 to 40; p. 63, ll. 1 to 19; Ex. D-2, p. 94, State of Case).

The policy of insurance number M-160159 was delivered to defendant-appellee's wife at her home some time during the month of August, 1928 (p. 63, ll. 22 to 40; p. 82, ll. 10 to 30, State of Case). The policy was placed in evidence and marked Exhibit D-4. The policy appears to have been signed by the President and Secretary of the complainant-appellant on August 6th, 1928. It states on its face that the monthly premium is \$2.92 (See Policy Exhibit D-4, p. 96; State of Case). At the time of the delivery of the policy there was also delivered a premium receipt book. The premium receipt book was produced and

marked in evidence, Exhibit D-3 (p. 63, ll. 21 to 40, State of Case).

The premium receipt book contains this statement:

“Notice to Policyholders: The record of premium payments entered on the respective pages in this book and applicable to the respective policy specified on each page constitutes an official receipt when countersigned by the Agent or other authorized representative of the Company receiving the payment” (Exhibit D-3, p. 95, State of Case).

It also shows the payment of thirteen monthly premiums on said policy number M-160159, starting with the month of June, 1928, and ending with the month of June, 1929. It appears from said receipt book that the first premium was paid in June, 1928, *on the date of the application*, to wit, June 11th, 1928. The second premium was paid, according to the receipt book, exactly one month thereafter, to wit, July 11th, 1928 (Exhibit D-3, p. 94). These first two premiums, *i. e.*, for June and July, 1928, were entered in the premium receipt book before the said policy and book were delivered to the defendant (p. 64, ll. 8 to 20, State of Case).

The application for the insurance was not attached to the policy (p. 80, ll. 20 to 38; Exhibit D-4, p. 96; p. 86, ll. 1 to 20; Finding of Fact by V. C. Fielder, p. 30, ll. 3 to 40; p. 31, ll. 1 to 30, State of Case).

The policy of insurance contains this provision:

“Incontestability.—This policy shall be incontestable after one year from its date of issue, except for non-payment of premium, but if the age of the Insured be misstated the amount or amounts payable under this Policy shall be such as the premium would have purchased at the correct age.”

POINT I.

Complainant cannot contest the validity of the policy *sub judice* for any reason whatsoever except for non-payment of premium.

The incontestability clause in the policy *sub judice* is broad enough to include all defenses except for non-payment of the premium. The policy in the case of *Drews v. Metropolitan Life Insurance Co.*, 79 N. J. L. 398, contained the following covenant:

“This policy shall be incontestable, except for non-payment of premiums, two years from its date.”

The Supreme Court in that case, speaking through Mr. Justice Bergen on page 400, said:

“One of the rules to be observed in the interpretation of contracts of this class is that they are to be liberally construed in favor of the insured, and all doubts or ambiguities resolved against the one who prepared the contract * * * and, therefore, we are of opinion that the incontestability clause in this contract should be interpreted to *include all defenses* other than non-payment of dues.”

“A contract in the precise words of the one now being considered was dealt with by the Supreme Court of Rhode Island * * * where it was held that the clause was plain and unambiguous, and clearly meant that *no defense whatever could be interposed* after two years from the date of the contract, if the premiums had been paid according to its terms.”

In the case of *Mutual Reserve Fund Life Assn. v. Austin*, 142 Fed. 398 (Circuit Court of Appeals for the District of Massachusetts), the insurance policy contained this incontestability clause:

“If this policy of insurance shall have been in continuous force for three years from its date, it shall thereafter be incontestable except for non-payment of premiums * * *.”

The application for the policy and *also the policy* contained a provision that the contract of insurance should not take effect unless the policy is delivered and the first premium is paid while the insured is in good health. The Court says that:

*“It is established as a fact that Austin (the insured) was not in good health within the meaning of the applications and policies, either when the applications were made or when the policies were delivered, or when the first premiums were paid. * * * The company does not rely upon false or fraudulent representations, and disavows an intention to avoid its policies for breach of warranties. It contends that the good health of the applicant was a condition precedent, and that no contractual relation, therefore, ever existed between the applicant and the defendant below.”*

The Court, however, in a carefully prepared opinion, held the insurance company liable on the policy. On page 401 the Court says:

“The term ‘Incontestable’ is of great breadth. It is the ‘policy’ which is to be incontestable. We think the language broad enough to cover all grounds for contest not specially excepted in that clause.”

Thus we see that the rule applied in the interpretation of incontestability clauses in insurance policies by the United States Circuit Court of Appeals for the District of Massachusetts is the same as the rule laid down by our Supreme Court in the case of *Drews v. Metropolitan Life Insurance Company*, 79 N. J. L. 398.

See also 6 A. L. R. 448, at page 452, par. IV.

The Court of Errors and Appeals in the case of *Smith v. Fidelity & Deposit Co.*, 98 N. J. L. 534, at page 536, states the rule to be applied in the construction of policies of insurance. It is as follows:

“It is a settled rule in the construction of contracts of insurance, that policies of insurance will be liberally construed in favor of the assured so as to uphold the contract * * *. So, in the event of an ambiguity in the terms of the policy, a meaning should be given which is most favorable to the assured.”

Answering Point I of Complainant-Appellant's Brief.

The contention of the complainant-appellant that the policy did not take effect because the insured was not in sound health on the date of the policy is fully and adequately answered in the opinion of the learned Vice Chancellor who heard the case. He states in his opinion as follows:

“The complainant contends that the insured was not in sound health at the date of the policy and therefore the policy did not take effect and it bases its contention on a clause in the policy which reads: ‘This policy shall not take effect if on the date hereof the insured be not in sound health’. In a case involving a policy containing a similar provision, our Court of Errors and Appeals held that the sound health of the insured at the date of the policy was a condition precedent to the liability of the insurer and, not being complied with, the policy had no legal effect (*Levandoski v. Equitable Society*, 103 N. J. Law, 643). The policy contract here under consideration contains another provision which was not considered in the *Levan-*

doski case and which should be read in connection with the sound health clause. It is as follows: 'This policy shall be incontestable after one year from its date of issue, except for non-payment of premium'. The complainant argues that this provision cannot be given effect for two reasons: First, if the policy did not take effect, it was *ab initio* void and no provision thereof could become operative; second, the death of the insured within one year from the date of the policy suspended the operation of the incontestability provision.

The substance of the complainant's first contention is that the incontestability clause was intended to be conditional, that is, conditional upon the policy taking effect. Under such construction the *clause is deceptive, meaningless and ineffectual to the insured* (italics mine) because although it purports to state that the policy shall be incontestable for any reason after one year, it shall nevertheless be contestable at any time on the ground here urged. If the policy is to be regarded as never in force so as to permit the insurer to show that the insured was not in sound health at its date, although the insured's death may not occur until many years after the policy date, then an incontestability clause is of but little value and is a *deceptive inducement to an insured to accept it*. (Italics mine.) I think the sound health clause here in question must be read with the incontestability clause and that the two, taken together, must be construed to mean that if within one year after the complainant issued its policy, it discovered that the insured was not in sound health at its date, the contract could be rescinded, but that when one year had elapsed the policy would be considered in force and incontestable for any reason, except non-payment of premium (*Drews v. Metropolitan, &c., Co.*, 79 N. J. L. 398; *Wright v. M. B. L. Association*, 118 N. Y. 237; *Webster v. Columbian, &c., Co.*, 116

N. Y. Supp. 404, affirmed 196 N. Y. 523; *Chinery v. Metropolitan, &c., Co.*, 182 N. Y. Supp. 555; *Mutual, &c., Association v. Austin*, 142 Fed. 398; *Commercial, &c. Co. v. McGinnis*, 50 Ind. App. 630; *Monahan v. Fidelity, &c. Co.*, 242 Ill. 488; *Dibble v. Reliance, &c. Co.*, 170 Cal. 199; *Healy v. Metropolitan, &c. Co.*, 37 D. C. App. 240; *Mohr v. Prudential, &c. Co.*, 78 Atl. (R. I.) 554).

The complainant's second reason is that by the incontestability clause the complainant agreed to make no defense against the policy after one year, provided the policy remained in force for that period; that the death of the insured within the period terminated the policy as a risk and converted it into an obligation to pay. An incontestability clause is for the benefit of the beneficiary as well as the insured and it cannot be taken to mean that the policy will become incontestable only in case the insured shall live one year. It makes the policy incontestable for any reason not excepted, whether the insured lives or dies within the period therein mentioned (*Mutual, &c. Co. v. Hurni*, 263 U. S. 167; *Feierman v. Eureka, &c. Co.*, 297 Pa. 507)."

(P24 l 27 to 40; p25 l 1 to 40; p26 l 1 to 32 state of case)

Moreover, there is no proof that the insured was not in sound health on June 11th, 1928. The first evidence of any illness is on June 21st, 1928 (Exhibit C-4, p. 87, State of Case). The evidence shows that the application for the insurance was made by the insured on June 11th, 1928. That is the date from which the contract of insurance speaks (See answer to Point Two of Appellant's Brief). Defendant testified that on June 11th, 1928, he was shown an application like the one put in evidence by complainant's agent, E. H. Hahn, which application bore the signature of the insured. The said agent then asked defendant to pay the full first monthly premium on the policy therein applied for. Defendant then paid said premium and received a receipt for same, which

receipt was put in evidence and bears the date of June 11th, 1928 (p. 58, ll. 30 to 40; p. 59, ll. 1 to 40; p. 60, ll. 1 to 40; Exhibit D-1, p. 93, State of Case). Defendant further testified that before he received the policy he paid the premium for the month of July, 1928, on July 16th, 1928, and got a receipt for same, which receipt was placed in evidence and bears the date of July 16th, 1928 (p. 62, ll. 12 to 40; p. 63, ll. 1 and 2; Exhibit D-2, p. 94, State of Case). The intermediate monthly premium receipt book is in evidence and shows that premiums on the policy *sub judice* were received by the complainant-appellant for the months of June and July, 1928, and that the June premium was paid on the *date of the application* and that the July premium was paid on *July 11th* (Exhibit D-3, p. 94, State of Case).

The application (Exhibit C-1) does not state when it was signed by the insured. Below the insured's signature on the said application is a statement by the agent that he saw the applicant on July 23rd, 1928. This is a self-serving declaration and inadmissible to show the date of the making of the application.

Furthermore, if, as counsel for appellant contends, the policy is void *ab initio* if the insured be not in sound health on the date thereof, then the Court of Chancery has no jurisdiction to determine the matter (*San Giacomo vs. Oraton Inv. Co.*, 143 Atl. Rep. 329; 6 A. R. 1365). The issue and determining factor would then be the condition of health of the insured at the date of the policy. This is a question of fact to be determined by a jury in a law court like the case of *Levandosky v. Equitable Life Insurance Society*, 103 N. J. L. 643, cited in appellant's brief. This defense could be set up at any time by the appellant. Complainant-appellant sought equitable relief on the ground that the policy was fraudu-

lently procured and that it contained an incontestability clause which, after one year from its date of issue, would estop appellant from making any defense to a suit for the payment of same (See pars. 30 and 31, Bill of Complaint; p. 12, ll. 10 to 25; p. 13, ll. 9 to 15, State of Case). The charge of fraud in the procurement of the policy is not now urged by appellant as a reason for rescinding the policy, so the defendant-appellee will not treat with that point in his brief. However, the Vice Chancellor has covered that question fully in his opinion.

Answering Point II of Complainant-Appellant's Brief.

The incontestability clause provides that the policy shall be incontestable after one year from *its date of issue*. The "date of issue" means the date of the inception of the contract of insurance, which, in the present case, is June 11th, 1928.

The receipt for the full first monthly premium on the policy *sub judice* is dated June 11th, 1928, and contains the following:

"It is understood that if the payment is equal to the full first monthly premium on said policy * * * the insurance shall take effect from the date of the application, in accordance with the provisions of the policy applied for * * *'" (Exhibit D-1, p. 93, State of Case).

The policy states that the monthly premium is \$2.92 (Exhibit D-4, p. 96, State of Case), and the said receipt shows that this amount was paid. The insured made application for *Intermediate Monthly Premium Insurance—whole life* (See upper left-hand corner, Exhibit C-1, p. 86, State of Case). The policy *sub judice*, which was issued

on said application, is an *Intermediate Monthly Premium Policy—whole life*, number M-160159 (bottom of first page and on face of policy, Exhibit D-4, p. 96, State of Case). The application (Exhibit C-1) states as follows:

“It is understood and agreed, however, that if at the time of signing this application the full first premium is paid, the insurance shall take effect from the date of this application, in accordance with the provisions of the policy hereby applied for, * * *.”

The Intermediate Monthly Premium receipt book shows that monthly premiums were paid on policy number M-160159 for thirteen consecutive months, beginning with the month of June, 1928. The first premium was paid on the date of the application (Exhibit D-3, p. 94, State of Case). Furthermore, the loan provision of the policy, the non-forfeiture provision and the table of loan and non-forfeiture values are all based on the amount of the paid-in premiums. All of this proves that it is the intention that the policy shall be in effect for the period covered by the payment of the monthly premiums. How could it be otherwise?

The contract of insurance, therefore, had its inception on June 11th, 1928, and the period of incontestability started to run from that date.

This Court held in the case of *Wharton v. Stoutenburgh*, 35 N. J. Eq. 266, that an agreement was binding from the time the parties agreed as to the terms thereof, although a formal contract was to be executed at some later date.

See also the case of

Levine v. Lafayette Building Corporation, 142 Atl. Rep. 441; 6 A. R. 1196.

The United States Supreme Court, in the case of *Mutual Life Insurance Company of New York*

v. *Hurni Packing Company*, 263 U. S. 167; 68 L. Ed. 235, says:

“Here the words, referring to the written policy, are ‘from its date of issue’. While the question, it must be conceded, is not certainly free from reasonable doubt, yet, having in mind the rule first above stated, that in such case the doubt must be resolved in the way most favorable to the insured, *we conclude that the words refer not to the time of actual execution of the policy, or the time of its delivery, but to the date of issue as specified in the policy itself. * * * It was competent for the parties to agree that the effective date of the policy should be one prior to its actual execution or issue; and this, in our opinion, is what they did.*”

In the case of *Jefferson Standard Life Insurance Co. v. Wilson*, 260 Fed. 593, U. S. Cir. Court of Appeals:

“Considering together the several papers evidencing the transaction, the conclusion is that the provision in question had the effect of making the policy incontestable for any cause, other than the excepted one, after one year *from the date of the policy becoming effective.*”

New York Life Ins. Co. v. McCarthy, 22 F. (2nd) 241, at p. 245, U. S. Cir. Court of Appeals:

“Under the terms of the policy now in question, the insurer’s right to contest it would have been lost, if the insurer had not contested the policy by invoking judicial action to that end within two years *from the date the policy took effect, not from the date of the execution of the policy * * *.*”

In this case the incontestability clause read:

“This policy shall be incontestable after two years from its date of issue * * *.”

See also *Schwartz v. Northern Life Insurance Co.*, 25 F. (2nd) 555, U. S. Cir. Court of Appeals, and annotation in 31 A. L. R. 112.

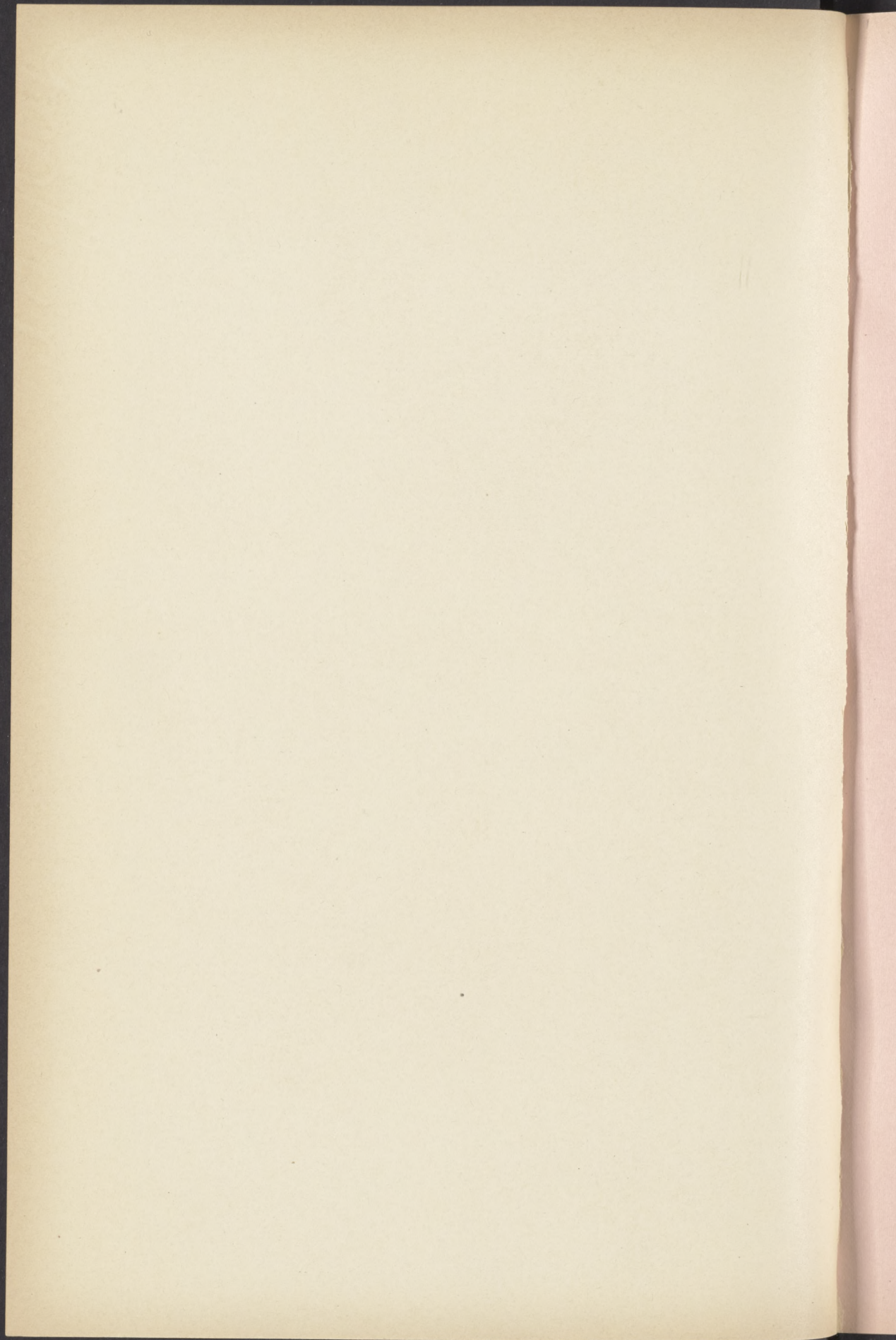
Even though the year during which the policy was contestable did not start to run until July 23rd, 1928, the date appearing on the application put in evidence (Exhibit C-1, p. 86, State of Case), complainant is nevertheless estopped from denying its obligation under the policy because this suit was not started until August 2nd, 1929. The death of the insured within a year from July 23rd, 1928, did not stop the running of the year after which the policy was incontestable. This is admitted by the complainant-appellant in paragraphs 30 and 31 of the Bill of Complaint, and is given as the reason for seeking equitable relief.

See also U. S. Supreme Court, *Mutual Life Insurance Company of New York v. Hurni Packing Company*, 263 U. S. 167; 68 L. Ed. 235, cited above, and 31 A. L. R. 109.

It is therefore respectfully submitted that the decree of the Chancellor should be affirmed.

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