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Name of Company | Amount | Kind of Policy | Issued | ^{1 year} | ^{11 in Metropolitan}
Give Policy Nos.

THE LIGHT THAT NEVER FAILS

METROPOLITAN LIFE INSURANCE COMPANY

A MUTUAL LIFE
INSURANCE COMPANY

INCORPORATED BY
THE STATE OF NEW YORK

NO 4950600 A.

— HEREBY INSURES THE LIFE OF —

ANNA CAVANAGH

herein called the Insured, in accordance with the terms of this Policy, No. 4950600 A and
Promises to Pay at its Home Office in the City of New York

FIVE THOUSAND

Dollars

upon the surrender of this Policy, to the Insured if living on the 25TH day of MAY 1947,

or to ARCHIE J. LOCKER BROTHER Beneficiary,
upon receipt of due proof of the prior death of the Insured. The right on the part of the Insured to
change the Beneficiary, in the manner hereinafter provided, is — reserved.

This Policy is issued in consideration of the Application therefor, copy of which Application
is attached hereto and made part hereof, and of the payment for said insurance on the life of the above
named Insured, of FIFTY NINE Dollars and FIVE cents,
(which maintains this Policy in force for a period of 3 months from its date of issue, as set forth below)
and of the payment hereafter of a like ANNUAL premium on each 25TH day
of MAY AUGUST NOVEMBER AND FEBRUARY (hereinafter called the due date),
until TWENTY full years premiums shall have been paid or until the prior death of the Insured.

The Provisions and Benefits printed or written by the Company on the following pages are a part
of this Policy as fully as if recited over the signatures hereto affixed.

In Witness Whereof, the Metropolitan Life Insurance Company has caused this Policy to
be executed this 25TH day of MAY 1927 which is the date of issue
of this Policy.

Jac. C. Roberts
Secretary.

W. B. Bear
Policy Registrar.

Harry Dike
President.

20 Year ENDOWMENT POLICY.

Age 25

Premiums payable for 20 years or until prior death.
Annual distribution of Divisible Surplus.

PROVISIONS AND BENEFITS

1. Payment of Premiums:—All premiums are payable, on or before their due dates, at the Home Office of the Company, or to an authorized Agent of the Company, but only in exchange for the Company's official premium receipt signed by the President, Vice-President, Actuary, Treasurer or Secretary of the Company and countersigned by the Agent or other authorized representative of the Company receiving the premium.

The payment of a premium shall not maintain this Policy in force beyond the due date when the next premium is payable, except as hereinafter provided.

If the premium shall have been paid for the period during which the death of the Insured occurs, then, if such period be greater than one month, the Company will pay, in addition to the amount otherwise payable under this Policy, that portion of such premium applicable to the policy month or months subsequent to the policy month when death occurred. A grace period of thirty-one days, without interest charge, will be granted for the payment of every premium after the first, during which grace period the insurance shall continue in force, but if the Insured dies during such period the portion of the unpaid premium for insurance for the current policy month shall be considered as an indebtedness to the Company for which this Policy is security.

On written request of the Insured, approved by the Company at its Home Office, premium payments may be changed, at any anniversary of the date of issue of this Policy, so as to be payable annually, semi-annually or quarterly in accordance with the published rates in force at the date of issue of this Policy.

2. Age:—If the age of the Insured has been misstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

3. Incontestability:—This Policy shall be incontestable after it has been in force for a period of two years from its date of issue, except for non-payment of premiums, and except as to provisions and conditions relating to

9. Options on Surrender or Lapse:—After premiums for two full years shall have been paid on this Policy, the Owner hereof or the Assignee of record, if any, upon written request filed with the Company at its Home Office, together with the presentation of this Policy for legal surrender or endorsement within three months after the due date of any premium in default, shall be entitled to one of the following options:

(a) CASH SURRENDER VALUE—

To receive the Cash Surrender Value which shall be the Reserve on this Policy (omitting fractions of a dollar per thousand of insurance) and on any outstanding Paid-up Additions at due date of premium in default, less a surrender charge during the second and third policy years of not more than two and one-half per cent. of the amount of insurance under this Policy. The Company shall deduct from such Cash Surrender Value any indebtedness to the Company for which this Policy is security, the remainder being hereinafter referred to as the "net sum;" or,

(b) PAID-UP ENDOWMENT INSURANCE—

To have the insurance continued in force from the due date of premium in default for a reduced amount of non-participating Paid-up Endowment Insurance, payable at the same time and under the same conditions as this Policy. Such Paid-up Endowment Insurance shall be for such an amount as the net sum described under (a) above will purchase (in even dollars) at the then attained age of the Insured when applied as a net single premium. Such Paid-up Endowment Insurance may be surrendered at any time for its then Cash Surrender Value (*viz.*, its full Reserve at the date of such surrender less any indebtedness to the Company on such Paid-up Endowment Insurance); or,

(c) PAID-UP TERM INSURANCE—

To have the Insurance continued in force from the due date of premium in default as non-participating Paid-up Term Insurance. If there be no indebtedness to the Company for which this Policy is security, the amount of such Paid-up Term Insurance shall be equal to the amount of insurance under this Policy, plus any outstanding Paid-up Additions, and for a term (in years and whole number of months) such as the Cash Surrender Value as defined under (a) above will purchase at the then attained age of the Insured when applied as a net single premium; should such Cash Surrender Value be more than sufficient to continue the amount of insurance under this Policy, plus any outstanding paid-up additions, to the end of the endowment period named in this Policy, the excess shall be used as a net single premium to purchase, at the then attained age of the Insured, non-participating Paid-up Pure Endowment Insurance payable at the end of the endowment period. If there be any such indebtedness the amount of the Paid-up Term Insurance, and any Pure Endowment Insurance payable at the end of the endowment term, will be reduced in such proportion as the indebtedness bears to the Cash Surrender Value as defined under (a) above. Such Paid-up Term Insurance and Paid-up Pure Endowment Insurance, if any, may be surrendered at any time for its then Cash Surrender Value (*viz.*, its full Reserve value at the date of surrender).

In the event of default in the payment of any premium, after premiums for two full years shall have been paid on this Policy, if the Owner or the Assignee of record, if any, shall not avail himself of one of the foregoing options, in the manner hereinbefore provided, within three months after the due date of the premium in default, this Policy will be continued by the Company for a reduced amount of non-participating Paid-up Endowment Insurance, as provided under Option (b) above.

The Company at its discretion may defer the payment of any Cash Surrender Value under Options (a), (b) or (c) as above for a period not exceeding ninety days after the application therefor is received by the Company.

The Reserve held for this Policy and for any Paid-up Additions and the net single premiums mentioned above, shall be computed upon the American Experience Table of Mortality with interest at three and one-half per centum per annum.

10. Reinstatement:—If this Policy shall lapse in consequence of default in payment of any premium, it may be reinstated at any time, unless the Cash Surrender Value has been paid or the non-participating Paid-up Term Insurance period has expired, upon the production of evidence of insurability satisfactory to the Company and the payment of all overdue premiums with interest at six per centum per annum to the date of reinstatement. Any loan which existed at date of default, together with interest at the same rate to the date of reinstatement, may be either repaid in cash, or, if not in excess of the cash value at date of reinstatement, continued as an indebtedness for which this Policy shall be security.

benefits in the event of total and permanent disability, and those granting additional insurance specifically against death by accident, contained in any supplementary contract attached to, and made part of, this Policy.

4. Entire Contract:—This Policy and the application therefor constitute the entire contract between the parties, and all statements made by the Insured, shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid this Policy or be used in defense of a claim hereunder unless it be contained in the application therefor and a copy of such application is attached to this Policy when issued.

5. Suicide:—If the Insured within one year from the date of issue hereof die by his own hand or act, whether sane or insane, the liability of the Company hereunder shall be limited to an amount equal to the premiums which have been received, without interest.

6. Change of Beneficiary:—When the right to change the beneficiary is reserved, and if there be no written assignment of this Policy on file with the Company, the Insured may (while this Policy is in force) designate a new beneficiary, with or without reserving the right of change thereafter, by filing written notice thereof at the Home Office of the Company accompanied by this Policy for suitable endorsement. Such change shall take effect upon endorsement of the same on this Policy by the Company. If any beneficiary shall die before the Insured, the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein.

7. Assignment:—No assignment of this Policy shall be binding upon the Company unless it be executed upon blanks furnished by the Company and filed with the Company at its Home Office in the City of New York. The Company assumes no obligation as to the validity and sufficiency of any assignment.

8. Agents:—No Agent is authorized to waive forfeitures, to alter or amend this Policy, to accept premiums in arrears or to extend the due date of any premium.

TABLE OF GUARANTEED LOAN VALUES AND SURRENDER OPTIONS

Computed in accordance with Paragraph 9 for a Policy free from indebtedness and without paid-up additions.

END OF YEAR	CASH VALUE OR LOAN VALUE	PAID-UP, NON-PARTICIPATING ENDOWMENT INSURANCE	NON-PARTICIPATING TERM INSURANCE CONTINUED FOR		NON-PARTICIPATING WITH PAID-UP PURE ENDOWMENT
			Years	Months	
2	\$ 53	\$ 94	7	5	\$
3	\$ 92	\$ 158	13	11	\$
4	\$ 139	\$ 232	16	0	\$ 70
5	\$ 178	\$ 287	15	0	\$ 149
6	\$ 218	\$ 342	14	0	\$ 224
7	\$ 260	\$ 395	13	0	\$ 297
8	\$ 303	\$ 448	12	0	\$ 366
9	\$ 349	\$ 500	11	0	\$ 432
10	\$ 396	\$ 550	10	0	\$ 496
11	\$ 446	\$ 600	9	0	\$ 557
12	\$ 497	\$ 648	8	0	\$ 615
13	\$ 551	\$ 696	7	0	\$ 671
14	\$ 607	\$ 742	6	0	\$ 724
15	\$ 666	\$ 788	5	0	\$ 776
16	\$ 727	\$ 832	4	0	\$ 824
17	\$ 791	\$ 876	3	0	\$ 871
18	\$ 857	\$ 918	2	0	\$ 916
19	\$ 927	\$ 959	1	0	\$ 959
20	\$ Matures	\$			\$
25	\$	\$			\$
30	\$	\$			\$

If the amount of insurance is in excess of \$1,000 the Loan, Cash and Paid-up and Pure Endowment Values, as shown in the table, will be proportionate.

Ord.
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Age
25

The values shown in the above table are for complete policy years, with surrender charge, if any, deducted. If the Endowment term exceeds the limit of the table, values for later years will be computed upon the same basis and furnished on request.

Should default in payment of any premium occur at any other time than at the anniversary date of the Policy, the values for the end of the preceding policy year shall be increased in an amount or for a period equal to one-twelfth of the increase in value for the then current policy year, according to the above table, for each twelfth of such year for which premiums shall have been paid.

The Cash Surrender Value at any time other than at the end of the period for which premiums have been paid shall be the Cash Surrender Value at the end of such period less interest from the date of payment to the end of such period at the rate of six per cent. per annum.

The Loan Values provided for in the above table for the end of a policy year can be obtained at any time during such policy year in the manner and according to the following clause entitled "Loans."

PROVISIONS AND BENEFITS

11. Loans.—At any time after premiums for two full years shall have been paid and while this Policy is in force, except when continued as non-participating Paid-up Term Insurance, the Company, on proper and lawful assignment of this Policy and presentation of it for endorsement, will loan to the Owner or the Assignee of record, if any, on the sole security thereof, an amount not greater than the Cash Surrender Value at the end of the current policy year. Any indebtedness to the Company on this Policy, at the date of said loan, together with interest in advance on said loan to the end of the current policy year and any unpaid premium or premiums for the current policy year, will be deducted from the amount of said loan. Said loan will bear interest at the rate of six per centum per annum payable annually on each anniversary of this Policy. If interest be not paid when due, it shall be added to the principal, until the entire outstanding indebtedness shall equal the Cash Surrender Value, in which event this Policy shall become null and void, after one month's notice shall have been mailed by the Company to the last known address of the Insured and of the Assignee of record, if any. When this Policy is continued for a reduced amount of non-participating Paid-up Endowment Insurance, payment of interest on any loan each year, in advance, to the end of the current policy year, will be required. At the option of the Company, the granting of a loan may be deferred for a period not exceeding ninety days after application therefor is received by the Company, unless such loan is to be applied solely to the payment of premiums due to the Company. At any time while this Policy is in force the whole or any part of any such indebtedness may be repaid. At the death of the Insured or at maturity of this Policy as an Endowment, any such indebtedness to the Company shall be deducted from the amount payable hereunder.

12. Participation in Divisible Surplus.—This Policy is a participating contract while in force as a premium-paying policy, and the Company will annually, as of the thirty-first day of December of each year, ascertain and apportion any divisible surplus accruing hereon. (See "Notice to Policyholder" below.) Such divisible surplus will be payable on the next anniversary of this Policy following the next succeeding thirtieth day of April and may, at the option of the Insured, or of the Assignee of record, if any, be either (a) paid in cash; or, (b) applied within the grace period towards the payment of any premium or premiums; or, (c) applied to the purchase of a participating paid-up addition to the sum insured; or, (d) left to accumulate to the credit of this Policy at such rate of interest as the Company may declare on such funds, but not less than 3½ per centum per annum, and payable at maturity of this Policy or withdrawable in cash on any anniversary date of this Policy. If no other option is selected by the Insured, or by the Assignee of record, if any, within three months after the date when such divisible surplus is payable, then the divisible surplus will be applied to the purchase of a Paid-up addition to the sum insured. Such Paid-up addition may be surrendered at any time for a cash value at least equal to the amount of the surplus originally applied to its purchase.

NOTICE TO POLICY-HOLDER.—The divisible surplus accruing under policies of this class will probably not be sufficient to enable the Company to make any apportionment under this Policy before the end of the third year.

13. Optional Modes of Settlement.—Upon written election made to, and accepted by, the Company in accordance with the provisions hereinafter contained, the whole or any part of the amount payable according to the terms of this Policy, will, upon receipt of due proof of the death of the Insured, or at the maturity of this Policy as an Endowment, be retained by the Company and paid out according to one of the following OPTIONS:

OPTION 1. (INTEREST PAYMENTS.)—By the payment of Interest, either annually, semi-annually or monthly, at the rate of three and one-half per centum per annum on said amount so to be retained by the Company, the first Interest payment being payable at the end of one year, six months, or one month respectively according to the mode of interest payment elected, and by the payment upon the death of the payee, or at the end of a certain number of years, as specified in said written election, of the amount so to be retained by the Company, together with any accrued interest, to such payee, or to the person designated in said election; or, if there be no person so designated, to the executors or administrators of such payee.

OPTION 3. (LIFE INCOME.)—By the payment of equal annual Installments for a fixed period of either ten or twenty years, and for so many years longer as the payee shall survive, in accordance with the Table below for each one thousand dollars of the amount to be so retained by the Company, the first Installment being payable immediately.

OPTION 2. (INSTALLMENT PAYMENTS.)—By the payment of equal annual or semi-annual installments during a number of years certain in accordance with the Table below, for each one thousand dollars of the amount so to be retained by the Company, the first Installment being payable immediately.

Number of Years Specified	Amount of Each		Number of Years Specified	Amount of Each	
	Annual Instalment	Semi-Annual Instalment		Annual Instalment	Semi-Annual Instalment
1	\$1,000.00	\$504.34	16	\$79.88	\$40.38
2	508.60	256.54	17	76.38	38.60

Age of Payee When Policy Becomes Payable	AMOUNT OF EACH INSTALLMENT		Age of Payee When Policy Becomes Payable	AMOUNT OF EACH INSTALLMENT		Age of Payee When Policy Becomes Payable	AMOUNT OF EACH INSTALLMENT	
	Fixed Period of 20 Years	Fixed Period of 10 Years		Fixed Period of 20 Years	Fixed Period of 10 Years		Fixed Period of 20 Years	Fixed Period of 10 Years
10 and under	\$43.24	\$44.46	33	\$49.60	\$51.68	56	\$63.44	\$75.18
11	43.40	44.64	34	50.04	52.22	57	64.00	76.88
12	43.58	44.82	35	50.52	52.78	58	64.54	78.66
13	43.76	45.02	36	51.00	53.38	59	65.04	80.50
14	43.94	45.22	37	51.50	54.02	60	65.50	82.38
15	44.14	45.44	38	52.02	54.68	61	65.92	84.30
16	44.34	45.66	39	52.58	55.38	62	66.30	86.28
17	44.54	45.90	40	53.14	56.14	63	66.64	88.28
18	44.78	46.14	41	53.72	56.92	64	66.94	90.30
19	45.00	46.40	42	54.32	57.74	65	67.20	92.32
20	45.24	46.68	43	54.92	58.62	66	67.40	94.34
21	45.50	46.96	44	55.56	59.54	67	67.50	96.36
22	45.76	47.26	45	56.20	60.52	68	67.50	98.34
						and over same as 67		
						69	100.28	
						70	102.18	
						71	104.00	
						72	105.74	
						73	107.38	
						74	108.92	
						75	110.32	
						76	111.60	
						77	112.74	
						and over same as 77		

Part A Application to the METROPOLITAN LIFE INSURANCE COMPANY
(Incorporated in the State of New York)
Form O38 K-6
ORDINARY DEPT.
 24 April 1935
 (printed in U.S.A.)

TO BE USED WHEN AMOUNT APPLIED FOR IS OVER \$2,000—ORDINARY OR INTERMEDIATE

1. FULL NAME of person whose life is to be insured. (Print)
Anna Cavanagh

2. Residence. If in country, state R. F. D. No. _____
 No. 143 Street (Print) Ackerman ave
 City or town (Print) Albany State N.Y.
 County Cattaraugus
 How long have you resided at this address? 2 years
 If less than one year give previous address: _____
 To what address shall premium notices be sent? _____

3. Place of birth: _____
 Town or City _____ State _____

4. Date of birth: _____
 Month Jan Day 10 Year 1908
 Are current birthdays? Yes
 If age and date of birth are in accord: Yes

5. Single, Married, Widowed or Divorced. (Check one)
Married

6. Occupation. If more than one, state all. Nature of Employer's business.
Stenographer & Cashier Peoples Bank
Albany N.Y.

7. Exact dates of Occupation: _____
Stenographer & Cashier

8. Any change in Occupation? If yes, give particulars: _____

9. Place of Business. (City, Street and No.) If when employed:
Main & Campbell St Albany N.Y.

10. Former Occupation. (Within the last five years):
Stenographer & Cashier

11. Do you, within the next twelve months, contemplate journeying outside the United States or Canada or making an ocean trip? If yes, state when, where, to, for what purpose and for how long? _____

12. Have you any intention of making aerial flights within the next two years? If yes, give particulars: _____

13. Have you any other application or intention for life, accident, or health insurance, new policy or replacement? If yes, give particulars: _____

14. Have you ever applied to any Company or Association without receiving insurance in the amount or on the plan applied for, or at your actual age, or at the normal premium therefor? If yes, give particulars: _____

To be completed in the case of a woman applicant, if ever married.

24. What are (in full) the sources of your income? \$50 weekly

25. Number of children living, age and occupation of each: none

26. Husband's name. (Print) Robert Frank Huber
 Age _____ Business _____

27. In what Company and for what amount is he insured in your favor? If in Metropolitan, give policy number. If not insured in your favor, state why not. Husband's insurance was in his mother's name

It is understood and agreed: 1. That the foregoing statements and answers are correct and wholly true, and, together with the answers to questions on Part B hereof, shall form the basis of the contract of insurance, if one be issued.
 2. That no agent, medical examiner or any other person, except the Officers of the Company, have power on behalf of the Company: (a) to make, modify or discharge any contract of insurance; (b) to bind the Company by making any promise respecting any benefit under any policy issued hereunder.
 3. That no statement made to or by, and no knowledge on the part of, any agent, medical examiner or any other person as to any facts pertaining to the Applicant shall be considered as having been made or brought to the knowledge of the Company unless stated in either Part A or B of this application.
 4. That the Company shall have no liability under this application until it has been received, approved, and a policy issued and delivered, and the full first premium stipulated in the policy has actually been paid to and accepted by the Company during the lifetime of the Applicant, in which case both policy shall be deemed to have taken effect as of the date of issue as recited on the first page hereof.
 5. In case of apparent errors or omissions discovered by the Company in Part A of this application, the Company is hereby authorized to amend this application by noting the change in the space entitled "Corrections and Amendments," and I hereby agree that my acceptance of such policy, accompanied by a copy of the application so amended, shall operate as a ratification of such changes or amendments, provided, however, that no change shall be made as to amount, description, plan of insurance or benefits, unless agreed to in writing by me.

Signed by Applicant and dated at Albany this 24 day of May 1935. No. 2
 Witness to Signature: J. Freedman Signature of Applicant: Anna Cavanagh

Part B USE BLACK INK FOR ANSWERS AND SIGNATURES
 CONTINUATION OF THE APPLICATION. APPLICANT'S STATEMENTS TO THE MEDICAL EXAMINER.
The space below are for the Applicant's answers only. Nothing but his answers should be inserted. Statements of or comments by the Medical Examiner must be recorded in Part C.

1. What is your occupation? (Exact duties)
Stenographer and Cashier

2. Have you ever undergone a medical examination for insurance and failed to receive the exact amount or kind of policy applied for? If yes, give particulars and name of Company: _____

3. Have you during the past year resided or been intimately associated with any person suffering from tuberculosis? If so, give particulars and precautions taken: _____

4. Has any one of your parents, brothers or sisters now, or ever had, tuberculosis, cancer, diabetes, epilepsy, insanity or any hereditary disease? If yes, give particulars: _____

5. Have you ever been an inmate of, or have you ever received treatment at an asylum, hospital, sanatorium or cure? If yes, give date, duration, name of asylum and name of institution: _____

6. Have you ever changed residence or traveled for your health? If yes, why and when? _____

7. Have you ever received or applied for a pension or disability or compensation benefit from any government or from any municipal or private corporation or have you ever received or applied for any benefit under a policy of accident or health, workmen's compensation or fraternal insurance? If yes, state reason in full: _____

8. Have you ever taken insulin treatment? If yes, state dates and for how long: _____

9. Have you ever used opium, chloral, cocaine, or other narcotics? _____

10. (a) To what extent do you use beer, wine, or other alcoholic beverages? _____
 (b) Have you ever used any of them to excess? If so, when and for how long? _____

11. Have you ever suffered from any ailment or disease of:
 (a) The Brain or Nervous System? No
 (b) The Heart or Lungs? No
 (c) The Stomach or Intestines, Liver, Kidneys or Genito-Urinary Organs? No
 (d) The Skin, Bones, Glands, Ears or Eyes? No

12. (a) Have you ever had Rheumatism, Gout or Syphilis? No
 (b) Have you ever had Paralysis or Insanity? No
 (c) Have you ever had Diabetes, Precocity or Prostatitis? No
 (d) Have you ever raised or spat blood? If so, give full details: No
 (e) Have you ever had any Accident, Injury or Occupational Disease? No
 (f) Have you ever had any Surgical Operations? No
 (g) Have you consulted a physician for any ailment or disease not included in your above answers? No

13. What physician or physicians, if any, not named above, have you consulted or been treated by, within the last five years and for what illness or ailment? If none, so state: None

14. **Living** (Name and Address of Physician, Date and Details of Illness, Results)
 (a) Name and Address of Physician: _____
 Date and Details of Illness: _____
 Results: _____

14. **Family Record** (Name and Address of Physician, Date and Details of Illness, Results)
 (a) Name and Address of Physician: _____
 Date and Details of Illness: _____
 Results: _____

15. **Dead** (Name and Address of Physician, Date and Details of Illness, Results)
 (a) Name and Address of Physician: _____
 Date and Details of Illness: _____
 Results: _____

I HEREBY CERTIFY that I have read the answers to the questions in Part A hereof and to the questions in Part B hereof, before signing, and that they have been correctly written, as given by me, and that they are full, true and complete, and that there are no exceptions to any such answers other than as stated herein.

Dated at Albany this 24 day of May 1935
 Witness to Signature: R. E. M. Conroy, M.D. Signature of Applicant: Anna Cavanagh

be, under OPTION 3, which three and one-half per centum
 under OPTION 3, semi-
 am per annum, but if in any e-half per cent., the amount y years, as the case may be,
 legal release thereof, may be lue of any stipulated Instal-
 rs, as the case may be, then al upon the payee surviving
 be the amount calculated by y virtue of the terms of said er.
 ay be made (a) prior to the n by the Insured alone; or, e beneficiary. In no event, ection.
 a sum less than \$10.
 contract will be issued by

Copy of application attached hereto.

PROVISIONS AND BENEFITS

1. Payment of Premiums:—All premiums are payable, on or before their due dates, at the Home Office of the Company, or to an authorized Agent of the Company, but only in exchange for the Company's official premium receipt signed by the President, Vice-President, Actuary, Treasurer or Secretary of the Company and countersigned by the Agent or other authorized representative of the Company receiving the premium.

The payment of a premium shall not maintain this Policy in force beyond the due date when the next premium is payable, except as hereinafter provided.

If the premium shall have been paid for the period during which the death of the Insured occurs, then, if such period be greater than one month, the Company will pay, in addition to the amount otherwise payable under this Policy, that portion of such premium applicable to the policy month or months subsequent to the policy month when death occurred. A grace period of thirty-one days, without interest charge, will be granted for the payment of every premium after the first, during which grace period the insurance shall continue in force, but if the Insured dies during such period the portion of the unpaid premium for insurance for the current policy month shall be considered as an indebtedness to the Company for which this Policy is security.

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2. Age:—If the age of the Insured has been misstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

3. Incontestability:—This Policy shall be incontestable after it has been in force for a period of two years from its date of issue, except for non-payment of premiums, and except as to provisions and conditions relating to

9. Options on Surrender or Lapse:—After premiums for two full years shall have been paid on this Policy, the Owner hereof or the Assignee of record, if any, upon written request filed with the Company at its Home Office, together with the presentation of this Policy for legal surrender or endorsement within three months after the due date of any premium in default, shall be entitled to one of the following options:

(a) CASH SURRENDER VALUE—

To receive the Cash Surrender Value which shall be the Reserve on this Policy (omitting fractions of a dollar per thousand of insurance) and on any outstanding Paid-up Additions at due date of premium in default, less a surrender charge during the second and third policy years of not more than two and one-half per cent. of the amount of insurance under this Policy. The Company shall deduct from such Cash Surrender Value any indebtedness to the Company for which this Policy is security, the remainder being hereinafter referred to as the "net sum," or,

(b) PAID-UP ENDOWMENT INSURANCE—

To have the insurance continued in force from the due date of premium in default for a reduced amount of non-participating Paid-up Endowment Insurance, payable at the same time and under the same conditions as this Policy. Such Paid-up Endowment Insurance shall be for such an amount as the net sum described under (a) above will purchase (in even dollars) at the then attained age of the Insured when applied as a net single premium. Such Paid-up Endowment Insurance may be surrendered at any time for its then Cash Surrender Value (*viz.*, its full Reserve at the date of such surrender less any indebtedness to the Company on such Paid-up Endowment Insurance); or,

(c) PAID-UP TERM INSURANCE—

To have the Insurance continued in force from the due date of premium in default as non-participating Paid-up Term Insurance. If there is an indebtedness to the Company for which this Policy is security, the amount of Paid-up Term Insurance shall be equal to the amount of insurance under this Policy, plus any outstanding Paid-up Additions, and for a term (in whole number of months) such as the Cash Surrender Value as defined under (a) above will purchase at the then attained age of the Insured when applied as a net single premium; should such Cash Surrender Value be more than the amount of insurance under this Policy, plus any outstanding paid-up additions, to the end of the endowment period named in this Policy, the excess shall be used as a net single premium to purchase, at the then attained age of the Insured, non-participating Paid-up Pure Endowment Insurance payable at the end of the endowment period. If there be any such indebtedness to the Company, the amount of the Paid-up Term Insurance, and any Pure Endowment Insurance payable at the end of the endowment term, will be reduced in such proportion as the indebtedness bears to the Cash Surrender Value as defined under (a) above. Such Paid-up Term Insurance and Paid-up Pure Endowment Insurance may be surrendered at any time for its then Cash Surrender Value (less Reserve value at the date of surrender).

In the event of default in the payment of any premium, after two full years shall have been paid on this Policy, if the Owner or Assignee of record, if any, shall not avail himself of one of the foregoing options in the manner hereinbefore provided, within three months after the due date of the premium in default, this Policy will be continued by the Company for a reduced amount of non-participating Paid-up Endowment Insurance provided under Option (b) above.

The Company at its discretion may defer the payment of the Cash Surrender Value under Options (a), (b) or (c) as above for a period not exceeding ninety days after the application therefor is received by the Company.

The Reserve held for this Policy and for any Paid-up Additions shall be computed upon the net single premiums mentioned above, shall be computed upon the Experience Table of Mortality with interest at three and one-half per cent per annum.

10. Reinstatement:—If this Policy shall lapse in consequence of non-payment of any premium, it may be reinstated at any time, unless the Cash Surrender Value has been paid or the non-participating Paid-up Term Insurance period has expired, upon the production of evidence of insurability satisfactory to the Company and the payment of all overdue premiums with interest at three per centum per annum to the date of reinstatement. Any loan which was outstanding at the date of default, together with interest at the same rate to the date of reinstatement, may be either repaid in cash, or, if not in excess of the cash value at date of reinstatement, continued as an indebtedness for which this Policy shall be security.

benefits in the event of total and permanent disability, and those granting additional insurance specifically against death by accident, contained in any supplementary contract attached to, and made part of, this Policy.

4. Entire Contract:—This Policy and the application therefor constitute the entire contract between the parties, and all statements made by the Insured, shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid this Policy or be used in defense of a claim hereunder unless it be contained in the application therefor and a copy of such application is attached to this Policy when issued.

5. Suicide:—If the Insured within one year from the date of issue hereof die by his own hand or act, whether sane or insane, the liability of the Company hereunder shall be limited to an amount equal to the premiums which have been received, without interest.

6. Change of Beneficiary:—When the right to change the beneficiary is reserved, and if there be no written assignment of this Policy on file with the Company, the Insured may (while this Policy is in force) designate a new beneficiary, with or without reserving the right of change thereafter, by filing written notice thereof at the Home Office of the Company accompanied by this Policy for suitable endorsement. Such change shall take effect upon endorsement of the same on this Policy by the Company. If any beneficiary shall die before the Insured, the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein.

7. Assignment:—No assignment of this Policy shall be binding upon the Company unless it be executed upon blanks furnished by the Company and filed with the Company at its Home Office in the City of New York. The Company assumes no obligation as to the validity and sufficiency of any assignment.

8. Agents:—No Agent is authorized to waive forfeitures, to alter or amend this Policy, to accept premiums in arrears or to extend the due date of any premium.

TABLE OF GUARANTEED LOAN VALUES AND SURRENDER OPTIONS

Computed in accordance with Paragraph 9 for a Policy free from indebtedness and without paid-up additions.

END OF YEAR	CASH VALUE OR LOAN VALUE	PAID-UP, NON-PARTICIPATING ENDOWMENT INSURANCE	NON-PARTICIPATING TERM INSURANCE CONTINUED FOR		NON-PARTICIPATING WITH PAID-UP PURE ENDOWMENT
			Years	Months	
2	\$ 53	\$ 94	7	5	\$ —
3	\$ 92	\$ 158	13	11	\$ —
4	\$ 139	\$ 232	16	0	\$ 70
5	\$ 178	\$ 297	15	0	\$ 149
6	\$ 218	\$ 342	14	0	\$ 224
7	\$ 260	\$ 395	13	0	\$ 297
8	\$ 303	\$ 448	12	0	\$ —

Insurance in excess of \$1,000 of Endowment proportionate.

PROVISIONS AND BENEFITS

11. Loans:—At any time after premiums for two full years shall have been paid and while this Policy is in force, except when continued as non-participating Paid-up Term Insurance, the Company, on proper and lawful assignment of this Policy and presentation of it for endorsement, will loan to the Owner or the Assignee of record, if any, on the sole security thereof, an amount not greater than the Cash Surrender Value at the end of the current policy year. Any indebtedness to the Company on this Policy, at the date of said loan, together with interest in advance on said loan to the end of the current policy year and any unpaid premium or premiums for the current policy year, will be deducted from the amount of said loan. Said loan will bear interest at the rate of six per centum per annum payable annually on each anniversary of this Policy. If interest be not paid when due, it shall be added to the principal, until the entire outstanding indebtedness shall equal the Cash Surrender Value, in which event this Policy shall become null and void, after one month's notice shall have been mailed by the Company to the last known address of the Insured and of the Assignee of record, if any. When this Policy is continued for a reduced amount of non-participating Paid-up Endowment Insurance, payment of interest on any loan each year, in advance, to the end of the current policy year, will be required. At the option of the Company, the granting of a loan may be deferred for a period not exceeding ninety days after application therefor is received by the Company, unless such loan is to be applied solely to the payment of premiums due to the Company. At any time while this Policy is in force the whole or any part of any such indebtedness may be repaid. At the death of the Insured or at maturity of this Policy as an Endowment, any such indebtedness to the Company shall be deducted from the amount payable hereunder.

12. Participation in Divisible Surplus:—This Policy is a participating contract while in force as a premium-paying policy, and the Company will annually, as of the thirty-first day of December of each year, ascertain and apportion any divisible surplus accruing hereon. (See "Notice to Policyholder" below.) Such divisible surplus will be payable on the next anniversary of this Policy following the next succeeding thirtieth day of April and may, at the option of the Insured, or of the Assignee of record, if any, be either (a) paid in cash; or, (b) applied within the grace period towards the payment of any premium or premiums; or, (c) applied to the purchase of a participating paid-up addition to the sum insured; or, (d) left to accumulate to the credit of this Policy at such rate of interest as the Company may declare on such funds, but not less than 3½ per centum per annum, and payable at maturity of this Policy or withdrawable in cash on any anniversary date of this Policy. If no other option is selected by the Insured, or by the Assignee of record, if any, within three months after the date when such divisible surplus is payable, then the divisible surplus will be applied to the purchase of a Paid-up addition to the sum insured. Such Paid-up addition may be surrendered at any time for a cash value at least equal to the amount of the surplus originally applied to its purchase.

NOTICE TO POLICY-HOLDER.—The divisible surplus accruing under policies of this class will probably not be sufficient to enable the Company to make any apportionment under this Policy before the end of the third year.

13. Optional Modes of Settlement:—Upon written election made to, and accepted by, the Company in accordance with the provisions hereinafter contained, the whole or any part of the amount payable according to the terms of this Policy, will, upon receipt of due proof of the death of the Insured, or at the maturity of this Policy as an Endowment, be retained by the Company and paid out according to one of the following OPTIONS:

OPTION 1. (INTEREST PAYMENTS.)—By the payment of Interest, either annually, semi-annually or monthly, at the rate of three and one-half per centum per annum on said amount so to be retained by the Company, the first Interest payment being payable at the end of one year, six months, or one month respectively according to the mode of interest payment elected, and by the payment upon the death of the payee, or at the end of a certain number of years, as specified in said written election, of the amount so to be retained by the Company, together with any accrued interest, to such payee, or to the person designated in said election; or, if there be no person so designated, to the executors or administrators of such payee.

OPTION 3. (LIFE INCOME.)—By the payment of equal annual Instalments for a fixed period of either ten or twenty years, and for so many years longer as the payee shall survive, in accordance with the Table below for each one thousand dollars of the amount to be so retained by the Company, the first Instalment being payable immediately.

OPTION 2. (INSTALMENT PAYMENTS.)—By the payment of equal annual or semi-annual instalments during a number of years certain in accordance with the Table below, for each one thousand dollars of the amount so to be retained by the Company, the first Instalment being payable immediately.

Number of Years Specified	Amount of Each		Number of Years Specified	Amount of Each	
	Annual Instalment	Semi-Annual Instalment		Annual Instalment	Semi-Annual Instalment
1	\$1,000.00	\$504.34	16	\$79.88	\$40.38
2	508.60	256.54	17	76.38	38.60
3	344.86	173.98	18	73.26	37.02
4	263.04	132.72	19	70.48	35.62
5	214.00	107.98	20	67.98	34.38
6	181.32	91.52	21	65.74	33.24
7	158.02	79.76	22	63.70	32.22
8	140.56	70.96	23	61.86	31.28
9	127.00	64.12	24	60.16	30.44
10	116.18	58.66	25	58.62	29.66
11	107.34	54.22	26	57.20	28.94
12	99.98	50.50	27	55.90	28.28
13	93.78	47.38	28	54.68	27.68
14	88.48	44.70	29	53.56	27.12
15	83.90	42.40	30	52.54	26.60

Age of Payee When Policy Becomes Payable	AMOUNT OF EACH INSTALMENT		Age of Payee When Policy Becomes Payable	AMOUNT OF EACH INSTALMENT		Age of Payee When Policy Becomes Payable	AMOUNT OF EACH INSTALMENT	
	Fixed Period of 20 Years	Fixed Period of 10 Years		Fixed Period of 20 Years	Fixed Period of 10 Years		Fixed Period of 20 Years	Fixed Period of 10 Years
10 and under	\$43.24	\$44.46	33	\$49.60	\$51.68	56	\$63.44	\$75.18
11	43.40	44.64	34	50.04	52.22	57	64.00	76.88
12	43.58	44.82	35	50.52	52.78	58	64.54	78.66
13	43.76	45.02	36	51.00	53.38	59	65.04	80.50
14	43.94	45.22	37	51.50	54.02	60	65.50	82.38
15	44.14	45.44	38	52.02	54.68	61	65.92	84.30
16	44.34	45.66	39	52.58	55.38	62	66.30	86.28
17	44.54	45.90	40	53.14	56.14	63	66.64	88.28
18	44.78	46.14	41	53.72	56.92	64	66.94	90.30
19	45.00	46.40	42	54.32	57.74	65	67.20	92.32
20	45.24	46.68	43	54.92	58.62	66	67.40	94.34
21	45.50	46.96	44	55.56	59.54	67	67.50	96.36
22	45.76	47.26	45	56.20	60.52	68	and over same as 67	98.34
23	46.04	47.56	46	56.86	61.56	69		100.28
24	46.32	47.90	47	57.54	62.64	70		102.18
25	46.64	48.24	48	58.20	63.78	71		104.00
26	46.94	48.60	49	58.88	64.98	72		105.74
27	47.28	48.96	50	59.56	66.24	73		107.38
28	47.62	49.36	51	60.24	67.56	74		108.92
29	47.98	49.78	52	60.92	68.96	75		110.32
30	48.36	50.22	53	61.58	70.42	76		111.60
31	48.76	50.68	54	62.22	71.94	77		112.74
32	49.16	51.16	55	62.84	73.52			and over same as 77

Any Instalments payable under OPTION 2, or any Instalments for the fixed period of ten or twenty years, as the case may be, under OPTION 3, which shall not have been paid prior to the death of the payee, shall, unless otherwise directed in said written election, be commuted at three and one-half per centum per annum, compound interest, and paid in one sum to the executors or administrators of the payee.

In lieu of semi-annual Instalments under OPTION 2, quarterly or monthly payments thereof, and in lieu of annual Instalments under OPTION 3, semi-annual, quarterly or monthly payments thereof, in each case for proportionate parts, may be elected.

The amounts payable under the foregoing OPTIONS are based upon an assumed interest earning of three and one-half per centum per annum, but if in any year the Company shall declare for that year, upon funds held by it under such OPTIONS, a greater interest rate than three and one-half per cent., the amount payable on the next anniversary of such payments under OPTIONS 1 or 2, or under OPTION 3 within the fixed period of ten or twenty years, as the case may be, shall be increased accordingly.

When so directed in the said written election, but not otherwise, the supplementary contract hereinafter provided for, on legal release thereof, may be surrendered for the amount so retained by the Company, with any accrued interest under OPTION 1, or for the commuted value of any stipulated Instalments yet to be paid under OPTION 2, or for the commuted value of any unpaid Instalments for the fixed period of ten or twenty years, as the case may be, then remaining unpaid under OPTION 3; such commutation under OPTION 3 shall, however, in no wise operate as to payments conditional upon the payee surviving the term during which the instalments certain would have been payable. Such commuted value under either OPTION 2 or 3 shall be the amount calculated by the Company on the basis of compound interest at the rate of three and one-half per centum per annum. A payee who has not, by virtue of the terms of said written election, the right to surrender the supplementary contract may not assign or encumber such contract or any payment thereunder.

Election of any of the foregoing OPTIONS must be made in writing, addressed to the Company at its Home Office, and may be made (a) prior to the death of the Insured, by the Insured and the Beneficiary jointly, or, if the right to change the beneficiary has been reserved, then by the Insured alone; or, (b) if there be no such election on file with the Company at the time of the death of the Insured, then such election may be made by the beneficiary. In no event, however, will any of the foregoing modes of settlement be available if the Policy is assigned and any assignment will nullify any prior election.

No election shall be effective which shall purport to require any Interest or Instalment payment to be made by the Company in a sum less than \$10.

Optional settlements may not be elected under a Policy which is payable to a corporation, co-partnership or association.

In case one of the foregoing optional modes of settlement is selected, this Policy must be surrendered, whereupon a supplementary contract will be issued by the Company for the OPTION elected.

Copy of application attached hereto.

District PATERSON, N.J.

Number 4950600 A *PL*



1 Madison Avenue, New York, N. Y.

20 Year

Endowment Policy

Insuring the Life of

ANNA CAVANAGH

in the amount of

\$ 5000

for

+ Annual Premium of \$ 59.05

Payable for 20 years from MAY 25-27
the date of issue, or until prior death.

Annual Distribution of Divisible Surplus

Premiums for Supplementary Contract

Disability Provision \$ - -

Accidental Death Provision \$ - -

Receipt of \$ 59.05, the first premium
hereunder, is hereby acknowledged.

Countersigned

19

Janet Roberts
Secretary

SIGNATURE

This Policy shall not take effect unless or until the
first premium therefor, as entered on the foregoing receipt,
has actually been paid in cash.

809-A Ord.—4-26
PRINTED IN U.S.A.

MAY 25-27

NOTICE TO POLICY-HOLDER

PLEASE READ YOUR POLICY PROMPTLY UPON ITS RECEIPT

Do not fail to notify the Company at its Home Office when you change your address.

When writing District Office

or the Home Office give your Policy Number and state clearly Name, Residence, County and State.

THE COMPANY'S AGENTS

have no authority to waive forfeitures, to alter or amend this Policy, to accept premiums in arrears or to extend the due date of any premium.

Checks, Drafts or Money Orders

in payment of premiums should be drawn to the order of Metropolitan Life Insurance Company.

Privilege of voting for Directors.

The election of Directors of the Company is to be held in New York on the second Tuesday in April, 1927, and every second year thereafter.

The holder of this Policy, after one year from its date, while it remains in force, will have a right to vote either in person or by proxy or by mail. For particulars as to how to vote, apply to the Secretary, No. 1 Madison Avenue, New York City.

In the event of the death of the Insured,

the Claimant should promptly advise the Home Office, in New York, or the District Office through which premium payments have been made.

Pay nothing to any representative of the Company for preparation of claim papers. Deliver the Policy only to the Company's representative.

The Company is glad to pay and there is no necessity for help or alleged influence in collecting.

It is not necessary to employ an attorney or any other person to collect the insurance under this Policy, or to secure any of the benefits it provides.

Premium Payments are invalid

unless made in exchange for an official Home Office receipt signed by the President, Vice-President, Actuary, Treasurer or Secretary of the

Company and properly countersigned.

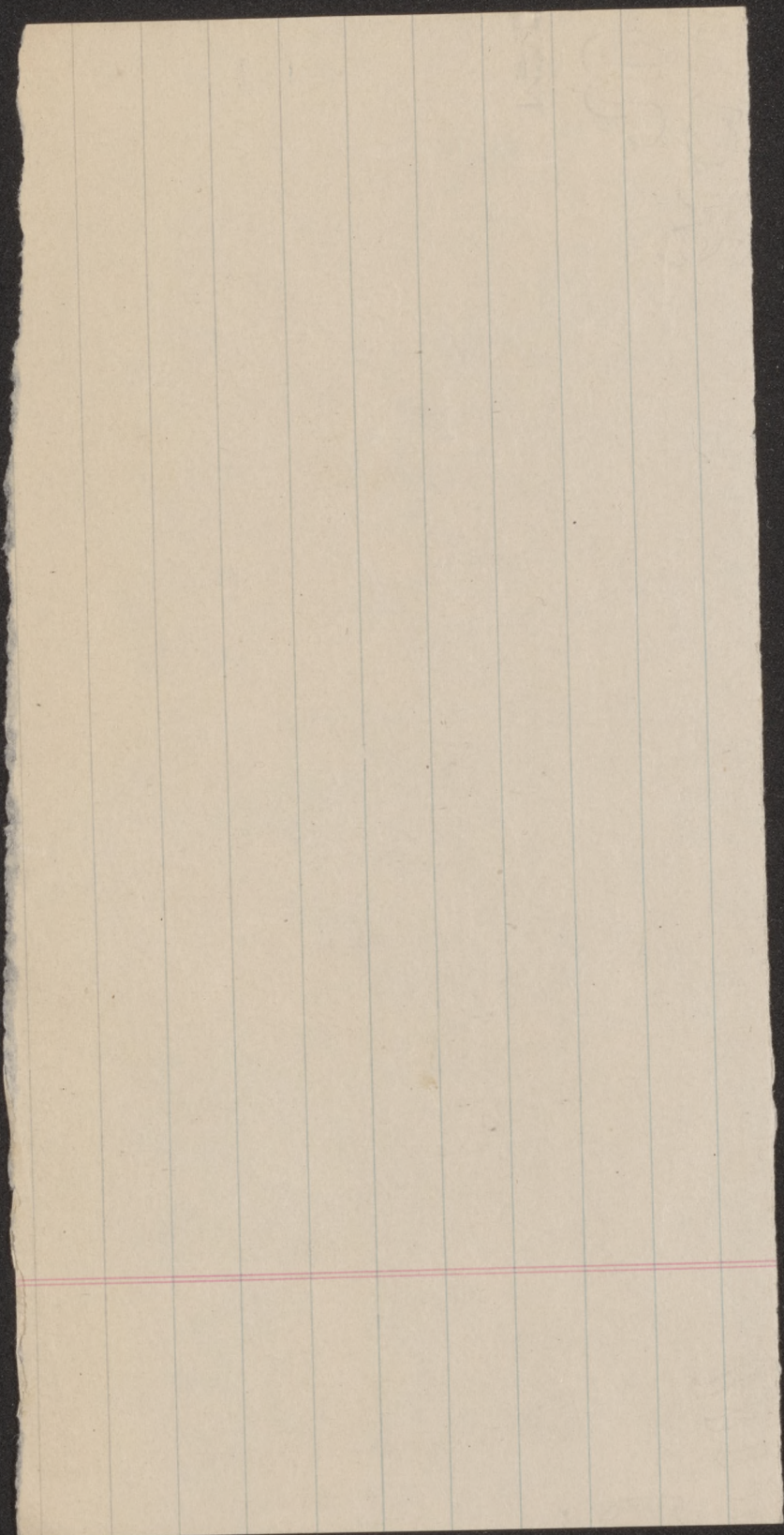
Locker

v

Metropolitan

Life Ins Co

No 36



Part *103*
 Use Black Ink
 for Answers
 and Signatures

Application to the METROPOLITAN LIFE INSURANCE COMPANY

(INCORPORATED BY THE STATE OF NEW YORK)

Form O36 K-6
 ORDINARY DEPT.
 Ed. April, 1925
 PRINTED IN U.S.A.

TO BE USED WHEN AMOUNT APPLIED FOR IS OVER \$2,000—ORDINARY OR INTERMEDIATE

1. FULL NAME of person whose life is to be insured. (Print)
Anna Cavanagh

2. Residence. If in country, state R. F. D. Route.
 No. *193* Street (Print) *Ackerman ave*
 City or town (Print) *Glen Rock*
 County *Bergen* State *N.J.*
 How long have you resided at this address? *2 years*
 If less than one year give previous address _____
 To what address shall premium notices be sent? { Residence _____
 Place of Business _____

3. Place of birth. Town or City. State.
Paterson N.J.

4. Date of birth. Age nearest birthday?
 Month *Jan* Day *10* Year *1902*
 (Be sure age and date of birth are in accord) *25* Years.

5. Single, Married, Widower or Widow? ~~Divorced~~ Separated?
no

6. Occupation. If more than one, state all. Nature of Employer's business.
Stenographer + Cashier. People not
Lower CO

7. Exact duties of Occupation.
Stenographer + Cashier

8. Any change in Occupation contemplated? If yes, give particulars.
no

9. Place of Business. (City, Street and No.) By whom employed?
Main + Campbell st People not
range n of house

10. Former Occupations. (Within the last ten years.)
Stenographer + some as above

11. Do you, within the next twelve months, contemplate journeying outside the United States or Canada or making an ocean trip? If yes, state when, where to, for what purpose and for how long?
no

12. Have you any intention of making aerial flights within the next two years? If yes, give particulars.
no

13. Have you any other application or negotiation for life, accident, or health insurance now pending or contemplated? If yes, give particulars.
no

14. Amount of Insurance desired. } \$ *10,000* Ordinary }
 } \$ _____ Intermediate }
 Prem. Payable { ~~Annually,~~
 { ~~Semi-Ann.,~~
 { ~~Quarterly,~~
 { ~~Monthly.~~

15. Plan of Insurance as designated in Rate Book *20 payment life*

16. (a) Beneficiary in case of your death. (Print)
Archie J. Locken

Relationship of Proposed Beneficiary *Brother*
 Occupation *Broker* Age *32*

P. O. Address *193 Ackerman ave*
 (b) Do you reserve the right to change the beneficiary at any time without the consent of Beneficiary herein designated? (Answer yes or no.)
yes

17. Is any one entirely dependent on you for support? If yes, give particulars.
no

18. Are you now insured in this or any other Company? If yes, give particulars.

Name of Company	Amount	Kind of Policy	Year Issued	If in Metropolitan give Policy Nos.
<i>Prudential</i>	<i>1000</i>	<i>20 Y.S.</i>	<i>1925</i>	

What amount of the above insurance carries,
 (a) Disability Provision? \$ *no*
 (b) Accidental Death Benefit? (Double Indemnity) \$ *no*

19. If now applying for Disability Provision, state amount of weekly benefit carried under Health Policies issued by this or by any other Company. \$ *no*

20. Is the policy for which you are hereby applying intended to take the place of insurance carried with this or any other Company? If yes, give particulars.
no

21. What amount have you paid in advance on account of the first premium? \$ *None*

22. Corrections and Amendments. (For Home Office use.)

23. Have you ever applied to any Company or Association without receiving Insurance in the amount or on the plan applied for, or at your actual age, or at the normal premium thereof? If yes, give particulars. *no*

Company or Association	Year	If not issued as applied for, in what respect different?	Declined or postponed.	If not advised, so state.

To be completed in the case of a woman applicant, if ever married.

24. What are (in full) the sources of your income? *\$50 weekly*

25. Number of children living, age and occupation of each.
none

26. Husband's name. (Print) *separated from Husband*
 Age _____ Business _____

27. In what Companies and for what amount is he insured in your favor? If in Metropolitan, give policy numbers. If not insured in your favor, state why not.
Husband's insurance was in his mothers name
 Is application on his life being submitted? _____

It is understood and agreed: 1. That the foregoing statements and answers are correct and wholly true, and, together with the answers to questions on Part B hereof, they shall form the basis of the contract of insurance, if one be issued.

2. That no agent, medical examiner or any other person, except the Officers of the Company, have power on behalf of the Company: (a) to make, modify or discharge any contract of insurance, (b) to bind the Company by making any promises respecting any benefits under any policy issued hereunder.

3. That no statement made to or by, and no knowledge on the part of, any agent, medical examiner or any other person as to any facts pertaining to the Applicant shall be considered as having been made to or brought to the knowledge of the Company unless stated in either Part A or B of this application.

4. That the Company shall incur no liability under this application until it has been received, approved, and a policy issued and delivered, and the full first premium stipulated in the policy has actually been paid to and accepted by the Company during the lifetime of the Applicant, in which case such policy shall be deemed to have taken effect as of the date of issue as recited on the first page thereof.

5. In case of apparent errors or omissions discovered by the Company in Part A of this application, the Company is hereby authorized to amend this application by noting the change in the space entitled "Corrections and Amendments," and I hereby agree that my acceptance of such policy, accompanied by a copy of the application so amended, shall operate as a ratification of such changes or amendments, provided, however, that no change shall be made as to amount, classification, plan of insurance or benefits, unless agreed to in writing by me.

Signed by Applicant and dated at *Paterson* this *24* day of *May* 192*7*

Witness to Signature *J. Freedman* Signature of Applicant *Anna Cavanagh*

READ these INSTRUCTIONS carefully BEFORE you WRITE the application

1. Collect FULL premium whenever possible.
2. PRINT names of applicant and beneficiary.
3. Give FULL names (not initials).
4. Use good BLACK INK.
5. Give age NEAREST birthday. First enter date of birth and then figure age at nearest birthday. Be sure that they are in accord.
6. Read to applicant EACH question AS PRINTED. Be sure to record the answers as given.
7. State OCCUPATION so as to CLEARLY DESCRIBE the applicant's ACTUAL duties and the SORT of work that HE DOES. Avoid indefinite terms, such as Machinist, Mechanic, Foreman and similar titles. CONSULT the OCCUPATIONAL RATINGS as given IN RATE BOOK.
8. State PLAN of insurance AS given IN RATE BOOK. If payable in instalments, enter the commuted value as the amount of insurance. State the amount of each instalment, whether payable monthly or yearly and for how long a period.
9. Give AGE of EACH beneficiary.
10. When the insurance is for the protection of a creditor the "Estate of the Insured" should be given as beneficiary and a letter of advice attached to the application showing name, occupation and address of creditor, amount of indebtedness and under what circumstances incurred, in order that the Company may send, with the policy, proper assignment blanks for completion.
11. When you have completed the application LOOK IT OVER CAREFULLY; you may have missed answering an IMPORTANT question. A little preliminary CARE WILL PREVENT unnecessary DELAY.
12. THIS FORM of application to be used for either ORDINARY or INTERMEDIATE when the AMOUNT of insurance applied for is OVER \$2,000.
In answer to Question 14, Part A, it must be indicated whether Ordinary or Intermediate insurance is desired, by RULING OUT (draw a line THROUGH) the kind NOT applied for.

Reserved for Policy Division Use

COMMISSION	
27 1/2%	\$ 16.24
8%	\$ 3.34
3%	\$ 1.77
2 1/2%	\$ 1.48
2%	\$ 1.18

AE
Policy No. 4950600 Form 809 ✓
Ref. No. _____ Mat. MAY 25, 1947 ✓
Life of ANNA CAVANAGH ✓
Due Date MAY 25, 1927 ✓
Beneficiary ARCHIE J LOCKER ✓
BROTHER ✓

With REVOCATION ~~Without~~
Mail to _____
District PATERSON N. J. Policy Written by _____

688	DIS. ANN.	20-YEAR END.	689	No.	DBLE INDEM.			
	<u>\$2,500</u>	AGE, <u>25</u> ✓		<u>\$3,000</u>				
Ann.	1/2	1/4	Mo.	Ann	1/2	1/4	Mo.	
111.40	57.95	29.53	9.85	Pr.	133.68	69.54	35.43	11.82
4.68	2.45	1.25	.43	Dis.	5.61	2.94	1.50	.51
3.13	1.63	.85	.30	D. I. No. 1	3.75	1.95	1.02	.36
0.25	3.25	1.70	.60	D. I. No. 2	7.50	3.90	2.04	.72
Total								

	<u>\$3,500</u>		<u>\$5,000</u> ✓					
155.96	81.13	41.34	13.79	Pr.	222.80	115.90	59.05	19.70
6.55	3.43	1.75	.60	Dis.	9.35	4.90	2.50	.85
4.38	2.28	1.19	.42	D. I. No. 1	6.25	3.25	1.70	.60
8.75	4.55	2.38	.84	D. I. No. 2	12.50	6.50	3.40	1.20
Total								

REPORT OF INSPECTION

1 Advance payment of \$ _____ Is this amount the full first premium? _____

2 Where was the application written? 193 Cokerman Ave. Glen Rock

3 Did any outside person suggest the writing of this application? If yes, give particulars. no

4 When and where have you seen the Applicant? May 5th 193 Cokerman Ave

5 From whose earnings will premiums be paid? Anna Cavanagh (Name)

6 Are the character of home surroundings and the general position in life equal to or better than those of the usual high-grade mechanic? Equal to

7 What does careful inquiry of disinterested and responsible persons disclose as to Applicant's past and present habits? Good

8 Names of persons from whom information was obtained. Chas Cohen
Thos Jewett

9 Give number of any Ordinary or Intermediate policy lapsed within a year. none

10 Will any insurance now in force or application pending elsewhere be discontinued if the policy applied for is issued? no

11 Will any person other than the Manager, Assistant Manager and Agent receive any part of the commission or be paid any consideration for the writing of this application? no

12 Race? (White or what?) White

Above is the result of my personal, careful investigation, as made on this 5th day of May, 1947

I recommend the approval of the application.

Signature of Person making the inspection. Wm Malsop Asst to Title. _____

Special—For Cases of \$5,000 or More (Including \$3,350 Endowment at Age 85, Increased Indemnity).

Has Mercantile Report been ordered? yes
(If yes, attach copy of Inquiry ticket to this Application)

Do you recommend issue of an additional policy? If so for what amount? \$ _____

Wm Malsop Asst to Mgr.'s Sig.

IMPORTANT TO THE ONE CHARGED WITH THE REPORT OF INSPECTION
DO NOT put your signature to statements YOU CANNOT PERSONALLY vouch for.
Thorough filling in of answers is not sufficient; they must be based on an absolute and thorough investigation.

Detached Office. _____
(Fill in if Policy is to be sent to Detached Point.)

POLICY TO BE ISSUED TO THE CREDIT of _____ Debit No. _____ Title _____
J. Freedman 446 agent
PRINT NAME PLAINLY
Paterson PRINT PLAINLY STATE _____

A MAY 21 1947

Part B USE BLACK INK FOR ANSWERS AND SIGNATURES

CONTINUATION OF THE APPLICATION. APPLICANT'S STATEMENTS TO THE MEDICAL EXAMINER.

The spaces below are for the Applicant's answers only. Nothing but his answers should be inserted. Statements of or comments by Medical Examiner must be recorded in Part C.

(Insert answers below)

1. What is your occupation? (Exact duties.) *Stenographer and Cashier of Joan Co.*

2. Have you ever undergone a medical examination for insurance and failed to receive the exact amount or kind of policy applied for? If yes, give particulars and name of Company. *No*

3. Have you during the past year resided or been intimately associated with any person suffering from tuberculosis? If so, give particulars and precautions taken. *No*

4. Has any one of your parents, brothers or sisters now, or ever had, tuberculosis, cancer, diabetes, epilepsy, insanity or any hereditary disease? If yes, give particulars. *No*

5. Have you ever been an inmate of, or have you ever received treatment at an asylum, hospital, sanatorium or cure? If yes, give date, duration, name of ailment and name of institution. *No D-I.*

6. Have you ever changed residence or traveled for your health? If yes, why and when? *No Ident.*

7. Have you ever received or applied for a pension or disability or compensation benefits from any government or from any municipal or private corporation or have you ever received or applied for any benefit under a policy of accident or health, workmen's compensation or fraternal insurance? If yes, state reason in full. *No*

8. Have you ever taken Insulin treatment? If yes, state dates and for how long. *No*

9. Have you ever used opium, chloral, cocaine, or other narcotics? *No*

10. (a) To what extent do you use beer, wine, or other alcoholic beverages? *none*

(b) Have you ever used any of them to excess? If so, when and for how long? *No*

11. Have you ever suffered from any ailment or disease of	"Yes" or "No"	Name of each Ailment, Disease or Injury	No. of Attacks	Date	Duration	Severity	RESULTS, and if within five years, name and address of every Physician consulted
(a) The Brain or Nervous system?	<i>No</i>						
(b) The Heart or Lungs?	<i>No</i>						
(c) The Stomach or Intestines, Liver, Kidneys or Genito-Urinary Organs?	<i>No</i>						
(d) The Skin, Bones, Glands, Ears or Eyes?	<i>No</i>						
12. (a) Have you ever had Rheumatism, Gout or Syphilis?	<i>No</i>						
(b) Have you ever had Paralysis or Insanity?	<i>No</i>						
(c) Have you ever had Diabetes, Pleurisy or Pneumonia?	<i>No</i>						
(d) Have you ever raised or spat blood? If so, give full details.	<i>No</i>						
(e) Have you ever had any Accident, Injury or Occupational Disease?	<i>No</i>						
(f) Have you ever had any Surgical Operation?	<i>No</i>						
(g) Have you consulted a physician for any ailment or disease not included in your above answers?	<i>No</i>						

13. What physician or physicians, if any, not named above, have you consulted or been treated by, within the last five years and for what illness or ailment? If none, so state.	Name and Address of Physician	Date and Details of Illnesses	Results
	<i>None</i>		

14. (Living)		Family Record		(Dead)			Ages Attained by Grandparents?	
Age	Condition of Health of Each, (If not good, give details.)	FATHER	MOTHER	Age	Cause of Death	How Long Sick	Year of Death	(Living or Dead)
					<i>Unknown</i>			Father's Father
					<i>Unknown</i>		<i>1912</i>	Father's Mother
<i>32</i>	<i>Good</i>		<i>2</i>					Father's Mother
<i>28</i>	<i>Good</i>		No. living					Father's Mother
			No. dead					Mother's Father
<i>30</i>	<i>Good</i>							Mother's Father
<i>21</i>	<i>Good</i>		<i>2</i>					Mother's Mother
			No. dead					Mother's Mother

I HEREBY CERTIFY that I have read the answers to the questions in Part A hereof and to the questions in Part B hereof, before signing, and that they have been correctly written, as given by me, and that they are full, true and complete, and that there are no exceptions to any such answers other than as stated herein.

Dated at *Paterons NJ* this *19* day of *May* 192*7*

Witness to Signature *K. P. M. Carey M. D.* Signature of Applicant *Anna Cavanagh*

Part C

I. Examination must be made in private. No agent or other person to be present or to see your report.

II. Upon completion of your report, forward immediately to the Company's Home Office—Ordinary Department. If examination is refused please return the uncompleted form to the District Manager, stating particulars.

III. In any matter of delicacy or doubt affecting the risk, or if you have any facts or impressions not covered in your report, write directly to the Medical Division and attach this report. Such communications are privileged and confidential.

The blood pressure must be taken in all cases when the amount of insurance applied for is \$2,500 or over.

Measure the applicant's height, chest and abdomen, and, if possible, weigh the applicant on an accurate scale.

MEDICAL EXAMINER'S REPORT on Anna Caronagh

(Insert Full Name of Applicant.)

NO PART OF THE APPLICANT'S DECLARATION)

Where was examination made? (Give Street and Number)	at office	12. (a) Rate and quality of pulse? If over 88 or under 54, examine at another time and report each examination.	(a) 74 Good
Race? (White or what?)	White	(b) Is pulse irregular or intermittent? (If so, state the number of intermissions per minute and the effect of exercise on rhythm.)	(b) No
How long have you known the applicant and how intimately?	now	13. Blood-pressure (auscultatory method)? See Note IV at top of page.	Systolic 106 Diastolic 80
Is applicant a relative of yours? (If so, state relationship.)	no	14. Is there any arterial sclerosis? (If present, state degree.)	no
Are you now or were you ever the family physician of the applicant?	no	15. (a) Height (in shoes)?	(a) 5 feet 2 inches
Is there anything objectionable in the manner of living or surroundings of the applicant?	no	(b) Did you measure applicant?	(b) yes
Is there any extra hazard involved in connection with the applicant's occupation or pastime?	no	16. (a) Weight (in ordinary clothing)?	(a) 108 pounds
(a) Age nearest birthday as given by Applicant?	(a) 22 5/5	(b) Did you weigh the applicant?	(b) yes
(b) Apparent age?	(b) 22 5/5	(c) Change in weight in two years?	(c) Increased none Decreased
General appearance as to health?	Good	(d) If not stationary, give cause and particulars.	(d)
Is there any lameness, deformity or loss of limb? If yes, give particulars.	no	17. Measurements under waistcoat.	
Is there any evidence of industrial poisoning or occupational disease?	no	(a) Chest at forced expiration?	(a) 28 inches
		(b) Chest at full inspiration?	(b) 30 inches
		(c) Abdomen at level of umbilicus?	(c) 27 inches
		18. (a) Is applicant ruptured? (If so, state kind, reducible or irreducible.)	(a) no
		(b) Is a suitable truss worn?	(b)

Does thorough physical examination and inquiry show any evidence of disease or impairment

(a) Of the Brain or Nervous System? Examine patella and pupillary reflexes; observe gait.	Answer Yes or No
(b) Of the Heart? (Before and after exercise.) If a murmur be present, describe in detail, giving location, time and transmission, position of apex beat and degree of hypertrophy.	no
(c) Of the Lungs, Nose, Throat?	no
(d) Of the Stomach, Liver, and other Abdominal Organs? (Examine by palpation.)	no
(e) Of the Skin, Glands, Thyroid?	no
(f) Of the Ears? (Any deafness or discharge?) Of the Eyes? (Test each eye separately.)	no
(g) Of the Genito-Urinary Organs, (including Syphilis or Stricture).	no

Full Details of Impairments (State whether past or present)

20. To be answered when the applicant is a woman.

(a) Any menstrual derangement, uterine, or ovarian disease?	no
(b) Any tumor or disease of breast?	no
(c) Change of life? If yes, how long since?	no
(d) Abortions or miscarriages? If yes, give dates, causes.	no
(e) Any serious trouble in labor?	no
(f) Number of children born?	none
(g) Date of last confinement?	none
(h) Now pregnant? If so, how far advanced?	no

21. Examination of Urine.

Have applicant void a moderate amount of urine before collecting specimen.

(a) Specific Gravity	1016	Reaction	acid
(b) Albumin	0	Test used	Head
(c) Sugar	0	Test used	Rehberg
(d) Was the specimen of urine examined by you passed in your presence?	no		
(e) Are you sending specimen to Head Office?	no		

NOTE: A specimen must be mailed to the Home Office if, (a) albumin or sugar is present; (b) history suggests advisability; (c) amount of insurance applied for plus that issued by this Company within the past twelve months amounts to \$15,000 or over. If the specific gravity of first specimen is under 1012, get a second specimen, after restricting fluids, and if the specific gravity of second specimen is still under 1012, mail a portion to the Home Office. Do not send an alkaline specimen.

22. Do you know anything relative to the character, habits, mode of living or health record, not already stated, which would unfavorably affect the applicant's insurability?

no

23. (a) Do you consider the applicant as first-class, average, doubtful, or poor?

1st class

(b) If other than first-class, give your reasons.

I HEREBY DECLARE that I have carefully examined the above named applicant with the results herein recorded.

Dated at Paterson N.J. this 19 day of May 1927

Please carefully review your entire report. See that all questions are properly answered and that Part B is signed, dated and witnessed and that any corrections or erasures are properly initialed.

R. E. McNamey Medical Examiner
57 Pompton Road Residence

Upon completion mail to Home Office in Envelope Form O11 D.O.

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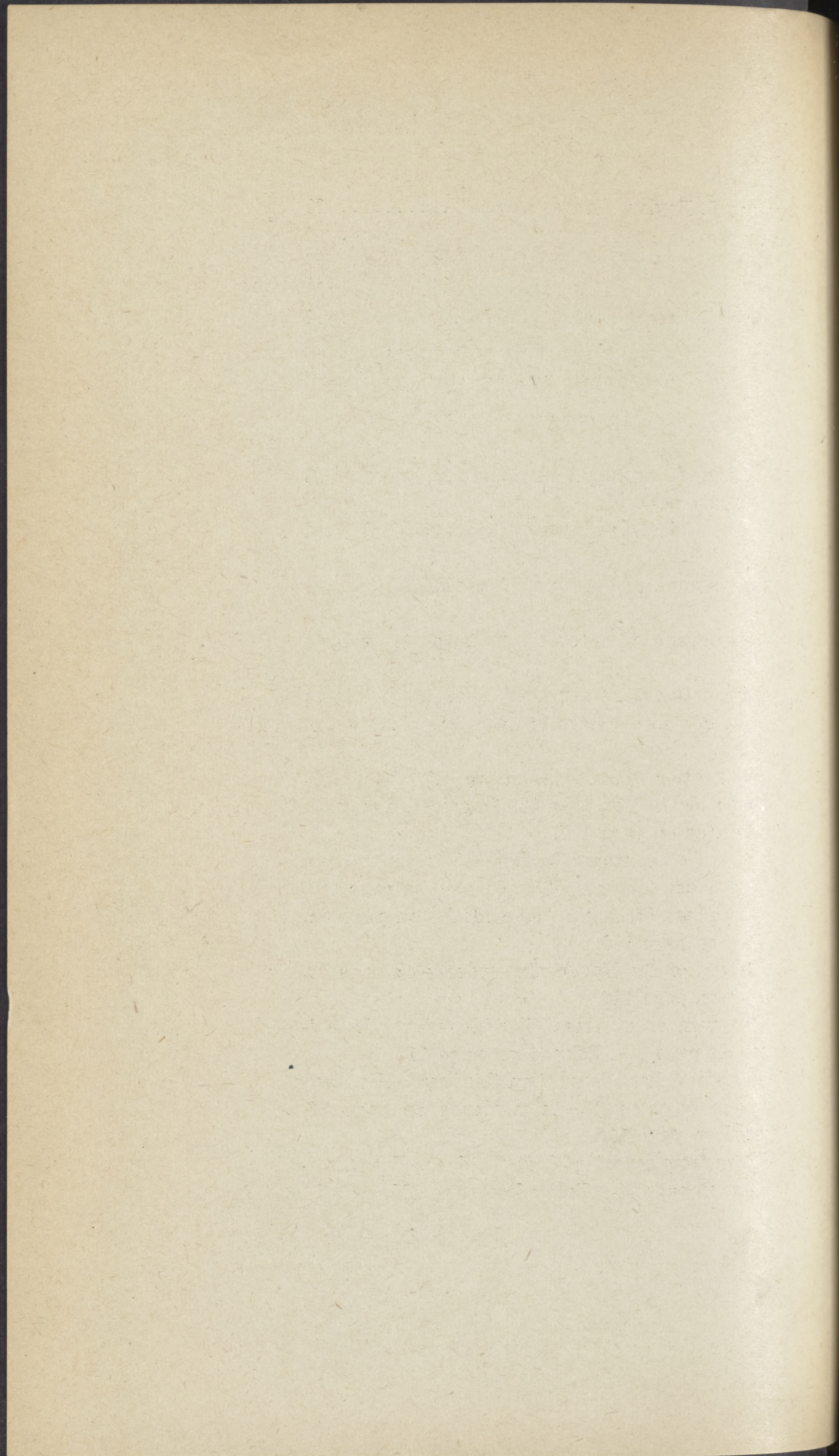
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- P-1—Policy of insurance. In evidence on page 17.
Printed on page 91.
- P-2—Proof of death. In evidence on page 19. Printed
on page 99.
- P-3—Photograph of deceased. In evidence on page
78.
- P-4—Photograph of deceased. In evidence on page
82.
- D-1—Application for insurance. For identification
on page 23. In evidence on page 25. Printed on
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- D-3—Application for admission to Glen Gardner.
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- D-4—Record of sputum. For identification on page
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- D-5—Certificate of death. In evidence on page 31.
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- D-6—Record of Dr. Hagen. In evidence on page 53.
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- D-7—Diagram chart from Glen Gardner. In evi-
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- D-8—Diagram chart from Glen Gardner. For iden-
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- D-9—Page from report at Glen Gardner. For identi-
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Notice of Appeal

(Filed Dec. 27, 1929 in County Clerk's Office)

(Certified Copy filed January 24, 1930)

PASSAIC COUNTY CIRCUIT COURT

Archie J. Locker,

Plaintiff,

vs.

Metropolitan Life Insurance
Co., a corporation of the
State of New York.

Defendant.

Action at Law

10

NOTICE OF APPEAL

To Messrs. McCarter & English:

Attorneys of Defendant.

Take notice that the plaintiff, Archie J. Locker, hereby appeals from the whole of the judgment entered in this cause to the New Jersey Court of Errors and Appeals.

Paul Rittenberg,

Attorney of Plaintiff.

20

Dated: Jan. 2, 1929.

Service of a copy of the within Notice of Appeal acknowledged this 3rd day of Jan., 1929.

McCarter & English,

Attorneys of Defendant.

30

Judgment Record

(Filed January 24, 1930)

IN THE PASSAIC COUNTY CIRCUIT COURT

Archie J. Locker,

vs.

Metropolitan Life Insurance
Company, a corporation of
the State of New York.

10

JUDGMENT RECORD

Metropolitan Life Insurance Company, a corporation of the State of New York, the Defendant in this cause, was summoned to answer unto Archie J. Locker, the Plaintiff therein, in an action at law, upon the following complaint.

Archie J. Locker, residing in the City of Paterson, County of Passaic, and State of New Jersey, says:

30

1. That on May 25th, 1927, the defendant was and still is a corporation of the State of New York, duly organized with power to insure life and to issue endowment policies of insurance therefor.

2. That on the date last aforesaid, the defendant was authorized and was, in fact, conducting the business of life insurance in the State of New Jersey and in particular the City of Paterson, County of Passaic, and State of New Jersey.

20

3. On the said date, in consideration of the payment to the defendant, by one, Anna Cavanagh, deceased, late of Paterson, New Jersey, of a premium of Fifty-nine dollars and five cents (\$59.05) and of a like sum to be paid by her every three months on the twenty-fifth day of May, August, November and February, until twenty full years' premiums shall have been paid or until the prior death of the insured, the defendant issued a

Judgment Record

twenty year endowment policy, No. 4950600A, to the said Anna Cavanagh, in the amount of Five thousand (\$5,000.) dollars, insuring her said life.

4. By virtue of the terms of the said policy the defendant agreed to pay Anna Cavanagh, the insured, the said sum of Five thousand (\$5,000.) dollars after twenty full years' premiums shall have been paid or to pay Archie J. Locker, her brother, the beneficiary named therein, the said sum of Five thousand (\$5,000.) dollars, upon receipt of due proof of the prior death of the insured. 10

5. That on August 22, 1927 the said Anna Cavanagh died and on the said date Archie J. Locker, her brother, was the beneficiary in the said policy of insurance.

6. That the said Anna Cavanagh duly performed all the terms, conditions and provisions of the said contract of insurance on her part and until her death paid her premiums on the said policy in accordance therewith. 20

7. That due proof of the death of the said Anna Cavanagh was made to the defendant in accordance with the requirements, terms and conditions of the said policy.

8. That the plaintiff has performed all conditions, terms and provisions of the said policy on his part, but the defendant refused and still refuses to pay the sum of Five thousand (\$5,000.) dollars, the amount due under the said policy of insurance, to the plaintiff, the beneficiary named therein. 30

Wherefore, the plaintiff demands as damages the sum of Five thousand (\$5,000.) dollars, together with interest and costs of suit.

Paul Rittenberg,
Attorney of Plaintiff.

Judgment Record

It is Hereby Stipulated and Agreed that the defendant have until Monday, June 18th, 1928, within which to answer the Complaint.

Paul Rittenberg,

Attorney of Plaintiff.

The answer of the defendant, Metropolitan Life Insurance Company, a corporation, duly licensed to transact business in the State of New Jersey, says that:

10

FIRST DEFENSE

1. It admits the first and second paragraphs of the Complaint.

20

2. Answering paragraphs 3 and 4 of the Complaint it admits that it issued its policy No. 4950600A on the life of Anna Cavanagh dated May 25th, 1927, and it requires the production and proof of the original policy as to the terms and conditions thereof and, except as herein admitted, it denies paragraphs 3 and 4 of the Complaint.

3. Answering paragraph 5 of the complaint it has no knowledge sufficient to form a belief as to the matters therein stated.

4. It denies paragraphs 6 and 7 of the complaint and all the allegations therein contained.

30

5. Answering paragraph 8 of the complaint, it admits that it refuses to pay the sum of \$5,000.00 mentioned in the said policy and, except as herein admitted, it denies all of paragraph 8.

SECOND DEFENSE

6. Said policy of insurance was obtained by the insured, Anna Cavanagh, through fraud.

THIRD DEFENSE

7. Said policy of insurance was obtained by the insured, Anna Cavanagh, through misrepresentation.

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FOURTH DEFENSE

8. (a) Said policy was issued in consideration of the application therefor, copy of which application is attached to and made a part of the said policy.

(b) In part (B) of said application said insured answered certain questions and certified thereto under date of May 19, 1927 as follows:

"I hereby certify that I have read the answers to the questions in Part A hereof and to the questions in Part B hereof before signing, and that they have been correctly written as given by me and that they are full, true and complete, and that there are no exceptions to any such answers other than as stated herein."

10

(c) Said insured was asked, and answered, among other things, as follows:

"5. Have you ever been an inmate of, or have you ever received treatment at an asylum, hospital, sanatorium or cure? If yes, give date, duration, name of ailment and name of institution.—No."

20

Whereas said insured had, prior to the date of making said statement in said application, been an inmate of and had received treatment at a hospital or sanatorium, namely, the New Jersey State Sanatorium for Tuberculosis at Glen Gardner, New Jersey.

30

FIFTH DEFENSE

9. (a) Defendant repeats paragraph 8 (a) of Fourth Defense.

(b) Defendant repeats paragraph 8 (b) of Fourth Defense.

Judgment Record

(c) Said insured was asked, and answered, among other things, as follows:

“6. Have you ever changed residence or travelled for your health? If yes, why and when?—No.”

10 Whereas said insured had, prior to the date of making said statement in said application, changed her residence for her health in that she had gone to and resided at New Jersey State Sanatorium for Tuberculosis at Glen Gardner, New Jersey, from May 26th, 1925 until September 23rd, 1925.

SIXTH DEFENSE

10. (a) Defendant repeats paragraph 8 (a) of Fourth Defense.

(b) Defendant repeats paragraph 8 (b) of Fourth Defense.

30 (c) Said insured was asked, and answered, among other things, as follows:

“11. Have you ever suffered from any ailment or disease of * * * (b) the heart or lungs?—No.”

Whereas said insured had, prior to the date of making said statement in said application, suffered from an ailment or disease of the lungs, namely, pulmonary tuberculosis.

SEVENTH DEFENSE

20 11. (a) Defendant repeats paragraph 8 (a) of Fourth Defense.

(b) Defendant repeats paragraph 8 (b) of Fourth Defense.

(c) Said insured was asked, and answered, among other things, as follows:

“11. Have you ever suffered from any ailment or disease of * * * (d) have you ever

Judgment Record

raised or spat blood? If so, give details.—No.”

Whereas said insured had, prior to the date of making said statement in said application, raised or spat blood.

EIGHTH DEFENSE

12. (a) Defendant repeats paragraph 8 (a) of Fourth Defense.

(b) Defendant repeats paragraph 8 (b) of Fourth Defense.

(c) Said insured was asked, and answered, among other things, as follows: 10

“(g) Have you consulted a physician for any ailment or disease not included in your above answer?—No.”

Whereas said insured had, prior to the date of making said statement in said application, consulted physicians for an ailment or disease not included in her above answer, namely, for pulmonary tuberculosis. 20

NINTH DEFENSE

13. (a) Defendant repeats paragraph 8 (a) of Fourth Defense.

(b) Defendant repeats paragraph 8 (b) of Fourth Defense.

(c) Said insured was asked, and answered, among other things, as follows:

“13. What physician or physicians, if any, not named above, have you consulted or been treated by within the last 5 years and for what illness or ailment? If none, so state.—None.” 30

Whereas said insured had, within the last 5 years of the date of said statement, consulted and been treated by physicians for an illness or ailment, namely, pulmonary tuberculosis, and failed to name in said statement said physicians, who

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were Doctors Becker, Hagen, O'Brien, English and Gramsch.

TENTH DEFENSE

Said insured in Part C of said application was asked:

"20 (h) Now pregnant? If so, how far advanced? No."

Whereas in fact said insured was at the time four months pregnant.

10

McCarter & English,

Attorneys of Defendant.

The plaintiff by way of reply to the Answer of the defendant filed herein says:

1. He denies each and every allegation contained in the First, Second and Third Defenses.

2. He has no knowledge or information upon which to form a belief as to the allegations contained in the Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Defenses.

20

OBJECTIONS IN POINT OF LAW

1. The facts set forth in the Second Defense are not sufficient to constitute the defense of fraud.

2. The facts set forth in the Third Defense are not sufficient to constitute the defense of misrepresentation.

3. The facts set forth in the Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Defenses are not sufficient to constitute any legal defense.

30

4. The facts set forth in the said Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Defenses do not constitute the defense of fraud or misrepresentation for the following reasons:

(a) The said Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Defenses fail to allege that the insured Anna Cavanagh intentionally made any misrepresentations in procuring her insurance policy from the defendant.

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(b) The said Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Defenses fail to disclose that the defendant relied upon any of the alleged misstatements of the insured Anna Cavanagh, in issuing the said insurance policy to her.

Paul Rittenberg,

Attorney of Plaintiff.

To Messrs. McCarter & English, Attorneys of the Defendant.

Take Notice that I call upon you to admit, but only for the purposes of the above entitled cause, the following facts:

1. That the original application for the insurance policy described in paragraph 3 of the complaint filed in this cause is in existence.

2. That proofs of death of the insured, Anna Cavanagh, were submitted to the defendant and are now in its possession or that of its counsel.

3. That the said proofs of the death of the insured are in accordance with the requirements, terms and conditions of the said policy.

4. That the defendant, after the application for the said policy was signed and before the said policy was issued, caused an investigation to be made as to the habits, health and reputation of the insured.

5. That a report was made to the defendant as a result of that investigation.

6. That the defendant has a record of that report either in its own possession or that of its counsel.

And take notice that in case of your refusal or neglect to make the admissions hereinabove called for, within five days after service of this notice upon you, you will be required to pay the reasonable expenses of proving the facts hereinabove set

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Judgment Record

forth, to be taxed by the court, whatever the result of the trial of this cause may be, unless the court shall consider your neglect or refusal to have been reasonable.

Paul Rittenberg,

Attorney of Plaintiff.

To Messrs. McCarter & English.

Attorneys of the Defendant.

10 Please Take Notice that I shall appear before the Honorable Clifford L. Newman, Judge of the Passaic County Circuit Court, on Saturday, November 3, 1928, at the County Court House in Paterson, New Jersey, at 10 o'clock in the forenoon, or as soon thereafter as counsel can be heard and apply for an Order directing the Defendant to make discovery on oath of all the papers, records or other documents which are, or have been in its possession, or under its control relating to any matter in question in the above entitled cause.

20

Paul Rittenberg,

Attorney of Plaintiff.

Dated October 29, 1928.

This action was tried before Judge Clifford L. Newman, with a jury, in the presence of the Counsel of the respective parties, at the Passaic County Circuit Court, on December 10th, A. D. 1928.

30 The cause having been heard and submitted to the jury, they returned their verdict in favor of the Defendant, Metropolitan Life Insurance Company, a corporation of the State of New York.

Whereupon, it is adjudged that the complaint of the Plaintiff be dismissed and that the Defendant, Metropolitan Life Insurance Company, a corporation of the State of New York, recover of the Plaintiff Archie J. Locker, its costs, which are

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taxed at the sum of Forty-eight Dollars and Seventy-five Cents, (\$48.75). Judgment entered and signed December 27th, A. D. 1928, at 11:09 A.M. Action No. 12133, Docket K, page 502.

Newton H. Porter,
Judge.

State of New Jersey, }
County of Passaic. } ss:

I, Lloyd B. Marsh, Clerk of said County and Clerk of the County Courts thereof, do hereby certify, that the foregoing is a transcript of the Judgment Record in re: Archie J. Locker, Plaintiff, vs. Metropolitan Life Insurance Company, a corporation of the State of New York, Defendant, as the same is taken from and compared with the original entry thereof in Book "B-2" of Circuit Court Judgments, for said County and now remaining of record in my Office. **10**

In testimony whereof, I have hereunto set my hand and affixed the seal of the said Courts and County, at Paterson, this Sixth day of January, A.D. Nineteen Hundred and Thirty. **20**

Lloyd B. Marsh,

Clerk.

By Floyd E. Jones,

Deputy Clerk.

*Grounds of Appeal*NEW JERSEY COURT OF ERRORS
AND APPEALS

Archie J. Locker, Plaintiff-Appellant, vs. Metropolitan Life Insurance Company, a Corporation, Defendant-Appellee.	}	Action At Law
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GROUNDS OF APPEAL

To Messrs. McCarter & English,
 Attorneys for Defendant-Appellee.

Sirs:

Archie J. Locker, the plaintiff-appellant assigns the following grounds of appeal from the judgment of the Passaic County Circuit Court in the above entitled cause:

20

1. The Trial Court erred in rendering its judgment for the defendant instead of the plaintiff.

2. The Trial Court erred in directing a verdict for the defendant.

(a) Because there was no proof of fraud, as a matter of Law adduced by the defendant.

(b) Because all the facts adduced at the trial by both plaintiff and defendant presented a jury question.

30

(c) Because there was no evidence in the case to support the verdict as directed by the Court, or the judgment entered thereon.

3. The Trial Court erred in admitting into evidence over the objection of the plaintiff, the application for a \$10,000.00—ten thousand dollar—twenty payment Life Insurance policy, which said application was attached to Exhibit P-1.

Grounds of Appeal

Which said application was irrelevant and immaterial to the issue in the said cause and was not legally a part of the Insurance policy upon which the said action was based.

4. The Trial Court erred in admitting into evidence over the objection of the plaintiff, Exhibit D-1.

Which said Exhibit D-1 was irrelevant and immaterial to the issue in the said cause, and was not legally a part of the Insurance policy upon which the said action was based.

10

4. The Trial Court erred in admitting into evidence over the objection of the plaintiff, Exhibit D-1.

Which said Exhibit D-1 was irrelevant and immaterial to the issue in said cause, and was not legally a part of the Insurance policy upon which the said suit was based.

5. The Trial Court erred in over-ruling the following question asked by counsel for the plaintiff of the witness, William Milsop on direct examination, "Can you tell us, Mr. Milsop, what the premium on a (\$10,000.00) ten thousand dollar—twenty payment Life Insurance Policy was in May 1927, on a girl's life, age (25) twenty-five?"

20

Which ruling of the Court was erroneous in that the said question was relevant, material and competent, as going to show the lack of reliance by the defendant in issuing the Insurance policy marked P-1, upon any statement made or alleged to have been made by the assured.

30

6. The Trial Court on direct examination of Dr. Becker, a witness for the defense permitted the following question asked by counsel for the defendant, "How many calls did you make altogether?"

Grounds of Appeal

Which ruling of the Court was erroneous in that the said question was irrelevant, immaterial and incompetent in that the question was based on certain statements alleged to have been made by the assured in the application attached to Exhibit P-1, and statements contained in Exhibit D-1, which said application and Exhibit D-1 were erroneously admitted into evidence by the Trial Court.

10 7. The Trial Court erred in admitting into evidence over the objection of the plaintiff, Exhibit D-4, which said Exhibit was irrelevant and immaterial to the issue in the above entitled cause, in that it contained certain evidence by way of contradiction to certain statements alleged to have been made by the assured in Exhibit D-1, and in the application attached to Exhibit P-1, which said Exhibit D-1, and the application attached to Exhibit P-1 were erroneously admitted into evidence
20 by the Trial Court for the reason stated above.

8. The Trial Court erred in admitting into evidence over the objection of the plaintiff Exhibit D-6, which said Exhibit was irrelevant and immaterial to the issue in the above entitled cause, in that it contained certain evidence by way of contradiction to certain statements alleged to have been made by the assured in Exhibit D-1, and in the application attached to Exhibit P-1, which said Exhibit D-1, and the application attached to
30 Exhibit P-1 were erroneously admitted into evidence by the Trial Court for the reason stated above.

9. The Trial Court erred in directing a verdict for the defendant instead of the plaintiff.

Paul Rittenberg,
Attorney of Plaintiff-Appellant.

Grounds of Appeal

Service of the within copy of the Grounds of Appeal Acknowledged this 11th day of February, 1930; and Conent is hereby given to file the same as of time.

McCarter and English,
Att'ys of Defendant-Appellee.

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Archie J. Locker—direct

PASSAIC COUNTY CIRCUIT COURT

Archie J. Locker,	}	At Law.
Plaintiff,		
vs.		
Metropolitan Life Insurance Company, a Corporation of The State of New York,	}	At Law.
Defendant.		

10

Paterson, N. J., December 10, 1928.

Before Hon. Clifford L. Newman, Judge, and a Jury.

Appearances: For the Plaintiff, Paul Rittenberg, Esq., and Alex. M. MacLeod, Esq.; for the Defendant, McCarter and English, Esqs., by Conover English, Esq.

20

(A jury was called and sworn and counsel for the respective parties opened the case to the jury.)

ARCHIE J. LOCKER, sworn.

Direct Examination by Mr. Rittenberg:

Q. Mr. Locker, you are the plaintiff in this case? A. Yes, sir.

30 Q. And you reside—where do you live, Mr. Locker? A. 193 Ackerman Avenue, Glen Rock.

Q. You are now in business in the City of Paterson, are you not? A. Yes, sir.

Q. Now, Mr. Locker, did you know an Anna Cavanaugh? A. I did, sir, yes, sir.

Q. Was she related to you in any way? A. My sister.

Archie J. Locker—direct

Q. Do you know whether Anna Cavanaugh had any life insurance? A. Yes, sir.

Q. In what company or companies? A. Metropolitan Life Insurance Company.

Q. Do you know the kind of a policy she had in the Metropolitan Life Insurance Company?

Mr. English—I object to that.

The Court—The policy speaks for itself. In the answer the policy is admitted.

10

Mr. Rittenberg—The answer admits the policy.

Mr. English—I want to look at it, that is all.

Mr. MacLeod—We offer it in evidence. (Paper marked exhibit P-1.)

Mr. Rittenberg—We offer it without the application, your Honor.

Mr. English—I object to that, because the application is made a part of the policy.

20

The Court—What does the policy say about that?

Mr. Rittenberg—The application isn't part of this particular policy. The policy reads: "This policy and the application therefor constitute the entire contract between the parties."

The Court—I don't suppose you can offer half of the contract.

30

Mr. Rittenberg—This is not the application for this policy.

The Court—It must be an application. It says so in the policy.

Mr. Rittenberg—No, it says "application therefor"; this policy is a five-thousand-dollar, twenty-year endowment. Applica-

Archie J. Locker—direct

tion is for a ten-thousand-dollar, twenty-payment life, two separate and distinct contracts.

The Court—It may be that there was no application for this policy, and that is a different question.

Mr. Rittenberg—There is no application for this policy attached.

(Discussion.)

10

The Court—If it is attached to the policy I don't see how you are going to offer the policy without the application.

Mr. Rittenberg—We will leave it on the policy, but—

The Court—Of course, you have to leave it there.

Mr. Ritteoberg—We contend the statements made therein are not admissible.

The Court—That is a different question.

20

Mr. Rittenberg—Yes, sir, we have the right to go into that later.

The Court—I will deal with it at that time. How are you going to offer the policy without the application?

Mr. MacLeod—We offer the policy as it is, with the application attached, for what it is worth.

The Court—It may be admitted.

30

(The paper had already been marked exhibit P-1.)

Q. Mr. Locker, do you know whether or not the premium was paid on this policy? A. Yes, sir, it was.

Q. What was the amount of it? A. \$59, if I

Archie J. Locker—direct

am not mistaken, or around that; \$59 and some odd cents.

Q. Can you tell us whether or not Anna Cavanaugh is living? A. She is dead.

Q. When did she die? A. August the 22nd, 1927.

Q. Did you notify the Metropolitan Life Insurance Company of the death of your sister? A. I did.

Q. In what manner? A. I secured the—I didn't know how to go about it in the beginning, but the undertaker advised me to get the death certificate and told me about—

Mr. English—I object to that.

The Court—Don't tell us what the undertaker said to you.

Mr. Rittenberg—Have you the proofs of death?

Mr. English—Yes.

Mr. Rittenberg—I will offer the proofs of death in evidence, your Honor.

(Papers marked exhibit P-2.)

The Court—Read the salient features of the policy, that you think are important.

(Mr. Rittenberg read from exhibit P-1.)

The Court—Just read me that part you read a little while ago about the application being attached hereto.

Mr. Rittenberg—There are two places where it is mentioned.

The Court—Read it to me.

Mr. Rittenberg—“This policy and the application therefor”—

The Court—No, the one that mentioned attached hereto. Read that.

Archie J. Locker—cross

Mr. Rittenberg—That is at the bottom. “This policy and the application therefor constitute the entire contract between the parties, and all statements made by the insured”—

The Court—There was another place, I think.

Mr. English—That is not what your Honor asked for.

10

Mr. Rittenberg—“This policy is issued in consideration of the application therefor, a copy of which application is attached hereto and made a part hereof.”

The Court—That is it. All right.

By Mr. Rittenberg:

Q. Mr. Locker, when you submitted these proofs of death marked exhibit P-2 did you also return this policy to the insurance company? A. I did, yes, sir. Yes, sir.

20

Q. Have you ever been paid the amount of \$5,000 mentioned in this policy? A. No, sir.

Mr. Rittenberg—That is all.

Cross Examination by Mr. English:

Q. Your home is on Ackerman Avenue, Glen Rock, Paterson? A. Glen Rock, New Jersey. It is just a little bit outside of Paterson; it is a suburb more or less.

30

Q. Miss Cavanaugh was your sister? A. Yes, sir.

Q. Did she make her home with you? A. Yes, sir.

Q. Yes. What was your father's name? A. Archie J. Locker.

Archie J. Locker—cross

Q. Was he also known as Archilles? A. Yes, sir.

Q. And your mother's name was Jessie? A. Yes.

Q. Jessie Fox Locker? A. Yes, sir.

Q. Your sister was married? A. Yes, sir.

Q. Not living with her husband, was she? A. No, sir.

Q. Do you know for how long a time they had been separated? 10

Mr. MacLeod—I object to it. I don't see how that is material.

The Court—Permit it.

Mr. MacLeod—Your Honor allows me an exception?

A. No, I don't know exactly.

Q. A matter of weeks or months or years? A. A matter of months. 20

Q. Her husband's name was Daniel Cavanaugh? A. Yes, sir.

Q. Now, at the time she made the application, apparently, she had a clerical position. She said that she was a stenographer and clerk. Do you remember that or not? A. Stenographer, clerk, she has done inside work in the office, cashier work, and so forth.

Q. Before that she had been a weaver, had she not? A. Yes, sir. 30

Q. In how close touch did you keep with your sister? Did she make her home with you for a period of years before her death? A. In what period of years she called my home her home? For, I will say, the last three months or three and a half months, and then she lived in Clifton prev-

Archie J. Locker—cross

ious to that and off and on for probably seven or eight or nine years.

Q. Were you in touch with her when she lived in Clifton or not? A. Very little, but occasionally she came to my home and I got down to her house where she had been living now and then.

Q. You know that she spent some months in Glen Gardner Sanatorium? A. Yes, I do.

10 Q. That was in 1925, wasn't it? A. I wouldn't be positive, but I believe you are right.

Q. You remember the fact, anyway? A. All right, yes.

Q. Did you know that she had been treated at the Tuberculosis Clinic of the City Hospital? Did you know about that? A. I didn't know what she was treated there for.

Q. You know she went there, anyway? A. Yes. ---

20 Q. Yes.

By the Court:

Q. When was that?

Mr. English—Pardon me, your Honor?

The Court—I asked him, "When was that?"

By Mr. English:

30 Q. Do you know when that was, Mr. Locker? A. She went to the City Hospital? I imagine about a week or two before her death, not more than a week before her death.

Q. I suppose you know your sister's signature, don't you, Mr. Locker? A. Yes, sir.

Q. I show you a check drawn by A. J. Locker for ten dollars to the order of Anna Cavanaugh,

Archie J. Locker—cross

endorsed Anna Cavanaugh; that is a check you wrote your sister that she signed her name to, did she not (handing a paper to the witness)? A. Yes, sir.

Q. And you identify her signature, I take it, inasmuch as it appears to be the same on this paper I show you (handing a paper to the witness)? A. I would call that her signature.

The Court—I didn't hear that.

10

Mr. English—He said, "I would call that her signature, yes." The paper I have shown the witness is a part of the application of insurance which is referred to as part B, and I will ask to have it marked for identification.

(Papers marked D-1 for identification and D-2 for identification.)

Q. I show you another paper signed "Anna Cavanaugh," with the address, "Ackerman Avenue, Glen Rock." You would identify that as her signature also, wouldn't you? A. Yes, I would.

20

Mr. English—I will identify that, the paper I showed the witness being a part of the records of Glen Gardner Sanatorium.

(Paper marked D-3 for identification.)

Mr. English—I think that is all.

30

Mr. Rittenberg—That is all. We rest, your Honor.

The Plaintiff rested.

Leo V. Becker—direct

DEFENDANT'S TESTIMONY

LEO V. BECKER, sworn.

Mr. English—I offer in evidence, if your Honor please, the application for insurance, in particular part B which was identified by the last witness.

10

Mr. Rittenberg—I object to that, your Honor, on the ground that the application isn't an application for the policy that has been marked; that has been offered in evidence and marked Exhibit 1. It is not an application for a five-thousand-dollar twenty-year endowment policy. On the further ground that it is not an exact copy, that is, an exact copy of it has not been annexed to the policy.

20

The Court—What difference is there between this and the policy? Is there anything except the signature?

Mr. English—That is all, the signature.

The Court—Is there any difference between the proposed offer and the—

Mr. Rittenberg—Yes, there is quite a difference.

The Court—What is the difference?

30

Mr. Rittenberg—Difference is this that an application for a life insurance policy—

The Court—What is the difference between this proposed offer and the policy?

Mr. Rittenberg—The signature is not an exact copy.

The Court—Is that all the difference?

Mr. Rittenberg—That is the main difference.

Leo V. Becker—direct

The Court—What difference does it make?

Mr. Rittenberg—Well, the difference is this: that the insured should be apprised at all times just what the exact contract is.

The Court—What is the point on this?

Mr. Rittenberg—It is supposed to be part of the policy, and unless the insured knows definitely what she signs—

The Court—There is no difference as I understand it, except the signature. Is there? That wouldn't apprise her of anything, would it? 10

Mr. Rittenberg—Yes, that signature is appended to certain questions and answers which she has—

The Court—I am asking you if there is any difference. Is there any difference?

(Discussion.)

The Court—I will admit it. 20

(Paper marked exhibit D-1 in evidence.)

Mr. Rittenberg—Your Honor will allow me an exception?

The Court—You may have it.

Direct Examination by Mr. English:

Q. Dr. Becker, are you a practicing physician in Paterson? A. Yes, sir.

Q. And where is your office, Doctor? A. 69 30
Ward Street.

Q. How long have you been practicing? A. Twenty-two years.

Q. You knew Mrs. Cavanaugh in her lifetime? A. Yes, sir.

Q. She was a patient of yours, I think? A. Yes, sir.

Leo V. Becker—direct

Q. Have you any record of your calls on her or her attendance at your office? A. Yes, sir.

Q. Have you got it with you? A. Why, I attended her from April the 5th 1925, till April the 21st.

Mr. Rittenberg—If your Honor please—

10 Q. 1925? A. Yes.

Mr. MacLeod—May I now say that the application attached to this policy is not the application for the policy?

The Court—The contract says it is, that you put in evidence.

Mr. MacLeod—No. I say, we offered this contract without this application.

20 The Court—The contract which you offer says the application for the policy is attached.

(Discussion.)

Mr. MacLeod—I object to any testimony as to her condition. I object to that question which was answered and ask to have it stricken out.

The Court—Not after it is answered.

By the Court:

30 Q. From April 21, 1925— A. Yes.

By Mr. English:

Q. Did you call on her at her house or did she come to your office? A. I called at her house.

Q. How many calls did you make altogether?

Leo V. Becker—direct

Mr. MacLeod—I object to that.

The Court—I will permit it.

Mr. McLeod—Exception.

Q. How many calls did you make between the dates that you gave? A. Six calls at the house.

Q. Was she confined to her bed at her house?

A. Yes.

Q. Did you diagnose her case? A. Yes, sir.

10

Q. Did you do anything to help confirm your diagnosis or suspicion?

Mr. MacLeod—I object to that on the same ground, if your Honor please; they haven't shown that we have made any statements yet.

The Court—I will permit it.

Mr. MacLeod—Your Honor will permit me to finish. We haven't made any statements yet or signed any statements as to her condition prior to getting this policy, nor in any application does it set forth anything contrary to what has been testified to.

20

The Court—I will permit it.

Mr. MacLeod—Your Honor allows me an exception.

(The question was read by the reporter.)

30

A. Yes, sir.

Q. What did you do, Doctor? A. I sent the sputum to Trenton to be analyzed, to be examined.

Q. When you say you sent the sputum to Trenton to be analyzed, what do you mean by that? What did you do?

Leo V. Becker—direct

Mr. MacLeod—May I object to all this testimony and have an exception to the question so I won't be interrupting?

The Court—You can hardly make it that way.

Mr. MacLeod—You grant me an exception to it on the same ground?

10 The Court—I will admit it. One is as good as fifty on the same ground, isn't it? You can object. One objection and forty-nine others on the same ground—one is as good as fifty, isn't it?

Mr. MacLeod—I might get better as they go along.

(The question was read by the reporter.)

20 A. Why, I obtained some of her sputum and sent it on to Trenton to be examined by the State Laboratory.

Q. Sent it down in a container? A. Yes.

Q. I show you a paper produced by a gentleman from the Board of Health. Is that paper in your handwriting, any of it? A. Yes, sir, all of it.

30 Q. All of it. And that is the paper that accompanied the sputum which you say you sent to the Board of Health? A. Yes, sir, that is the usual type.

Mr. English—I will mark the paper.

(Paper marked exhibit D-4 for identification.)

Q. Did you get a report back from the Board of Health, Doctor? A. Yes, sir.

Leo V. Becker—direct

Q. What was that report? A. It was positive for tuberculosis.

Q. When you get a positive sputum test what does that mean from a medical standpoint? A. Well, that means that if your other physical signs are positive there is tubercular bacillus in the sputum of the person.

Q. As a result of that examination and this report of a positive test, what diagnosis or medical conclusion did you arrive at as the trouble with this woman? A. Pulmonary tuberculosis. 10

Q. Pulmonary tuberculosis. What, if anything, did you do then to help her? A. I advised her to go to Glen Gardner, that is, to go to the local tuberculosis clinic and make arrangements to get to Glen Gardner.

Q. By the local you mean the Board of Health Paterson Clinic? A. Yes, for tuberculosis.

Q. As a sort of step to send her on to Glen Gardner? A. Yes, sir. 20

Q. And as far as your personal knowledge goes did she go to the local clinic and from there to Glen Gardner? A. Yes, sir.

Q. I presume she dropped out of your personal attention after that, did she, or did you see her again? A. Well, I did see her later on, after she returned from Glen Gardner.

Q. Do you remember when that was? A. No, I don't. 30

Q. Did you make an examination of her or just happen to see her? A. I don't remember whether I made a physical examination.

Q. You don't remember. Cross-examine.

Leo V. Becker—cross

By the Court:

Q. What are the dates, Doctor, that you made the calls at the house?

Mr. English—He said, your Honor, they were between April 5—

A. April 5.

10 Q. It is all in the same year? A. I made the calls at the house from April 5 to April 14, almost daily.

By Mr. English:

Q. That is 1925, Doctor? A. Then I saw her one time after that, April 21, at my office.

Q. That is 1925? A. 1925, yes, sir.

20 By the Court:

Q. When was it that you sent the sputum to Trenton? A. I don't remember the exact date.

By Mr. English:

Q. Here (handing a paper to the witness). A. April the 10th, 1925.

Cross Examination by Mr. MacLeod:

30 Q. Glen Gardner is a health resort, isn't it?
A. It is a State Tuberculosis Sanatorium.

Mr. English—It is not Glen Garden; it is Glen Gardner.

Mr. MacLeod—I thought it was Glen Garden.

Leo V. Becker—redirect

The Court—I think it is Gardner.

A. Gardner, yes.

Q. And you don't know what she died from, do you? A. No, sir.

Q. You were not there? A. No, sir.

Mr. MacLeod—That is all.

Mr. English—You Honor please, I offer in evidence a certified copy of the Bureau of Vital Statistics of the Board of Health of the City of Paterson, being the certificate of death of the insured, Anna Cavanaugh. It is admissible under the Evidence Act, your Honor will remember. 10

Mr. MacLeod—May I see it, Mr. English?

Mr. English—Yes.

(Paper marked exhibit D-5 in evidence.) 20

Mr. MacLeod—May I make my same objection on the ground that I made before?

The Court—Yes.

Mr. MacLeod—That the application in't a part and they haven't laid the foundation.

The Court—Yes.

(Mr. English read exhibit D-5 to the jury.) 30

Redirect Examination by Mr. English:

Q. Now, Doctor, the certificate of death being in the case, that she died of pulmonary Tuberculosis with complications, can you say that confirms the diagnosis you made before of her suffering from tuberculosis? A. Yes, sir.

Leo V. Becker—recross
Orville R. Hagen—direct

Recross Examination by Mr. MacLeod:

Q. Just a minute, Doctor. Completed by pregnancy? A. Complicated.

Q. Oh, pardon me. Complicated by pregnancy. In other words,—no, that is all. No further questions.

10

ORVILLE R. HAGEN, sworn.

Direct Examination by Mr. English:

Q. Doctor Hagen, you are a practicing physician of Paterson? A. Yes, sir.

Q. Have been how long? A. Twenty-four years.

Q. Where is your office? A. 170 Broadway.

20 Q. Did you in 1925 have any connection with the Board of Health? A. Yes.

Q. Tuberculosis Clinic? A. Yes, sir.

Q. Did you come in contact with Mrs. Anna Cavanaugh, the insured in this policy? A. As a matter of record I have, yes.

Q. Have you got the record here? A. Yes.

Q. Will you produce it, please, Doctor? A. (The witness handed paper to counsel.)

80 Q. You got this record from the office of the Board of Health to bring to court? A. Yes.

Q. Now, the record which you produced is made out in the name of Anna Cavanaugh, twenty-three years of age, dated April 21, 1925; that is correct? A. Correct.

Q. Yes. And this gives her address as Ackerman Avenue, Glen Rock. Does it state what her father and mother died of? A. Yes.

Orville R. Hagen—direct

- Q. What? A. Tuberculosis.
 Q. Yes. Now, is there anything—

Mr. MacLeod—That wouldn't be evidential. There is no statement in the evidence. I don't think counsel contends it.

The witness puts the words without the question.

The Court—The difficulty is the question is propounded without any objection and the witness answers. 10

Mr. MacLeod—I didn't understand the question. The question didn't call for that kind of an answer.

(The question was read by the reporter.)

Mr. MacLeod—I don't want to be objecting all the time, but I think that ought to be stricken out.

The Court—You can't wait until he answers to see whether it is favorable or unfavorable. 20

Mr. MacLeod—I will withdraw it. They will put one over once in a while.

Mr. English—I object to that.

The Court—You wouldn't do that.

Q. Doctor, is there anything on this paper in your writing? A. Yes, sir. 30

Q. What is it? A. The results of the physical examination.

Q. And what do you include in your writing as to what the result of the physical examination was? A. That on the 21st day of April, 1925, Anna Cavanaugh, of such and such an address revealed a moderately advanced tuberculosis of the right lung.

Orville R. Hagen—direct

Q. Yes. And that appears from some marks that you have made on a sort of an outline of the human chest? A. Yes.

Q. Oh, I see. A. This is the front and this is the back.

Q. And those marks I see a sort of heavy curved line there on the diagram of a person's chest.

10

Mr. MacLeod—I object to that, what you see.

Mr. English—Well, the jury sees it, and, of course, I see as well as them.

Mr. MacLeod—If they see it you don't have to tell us.

The Court—Don't lead him.

20

Q. What do those marks indicate on that diagram, the marks that you made? A. The heavy mark indicates a rather moderately advanced condition. The double plus is of the same nature.

Q. What kind of a condition? A. Referring to the voice. These here refer to what is heard without the voice.

Q. Heard without the voice. What was heard? A. Well, what was heard without the voice, according to this diagram, were loud, audible rales, very much increased on use of the voice, the speaking voice, and dullness upon striking the chest.

30

Q. What does that indicate to a medical man? A. That would indicate in that situation a moderately advanced condition of tuberculosis at that part of the lung.

Q. Yes. Now, having made that medical discovery what did you do or order this woman to do

Orville R. Hagen—direct

or what did you tell her to do? A. This record says that she was advised to go to Glen Gardner.

Q. And the notation of that is in your handwriting? A. Yes.

Q. That is, the letters "GG"? A. Yes, sir.

Q. As far as you know did she go to Glen Gardner? A. I don't know.

Q. You don't know one way or the other? A. No.

10

Q. All right.

Mr. English—I will mark in evidence the record which the doctor produces.

Mr. MacLeod—I object to that.

Mr. English—Particularly that part which has his own marks on it.

The Court—I suppose you can't introduce in evidence anything that is not his own marks.

20

Mr. English—No, it is all one page.

The Court—You are up against the proposition of offering in evidence something that the doctor hasn't made a record of. He has told us what it contains; it is just as effective.

Mr. English—Yes. Does your Honor overrule the offer?

The Court—I think so.

30

Mr. English—I will mark it for identification, then, the record which the doctor produced.

(Papers marked D-6 for identification.)

Mr. English—Cross examine.

Orville R. Hagen—cross & redirect

Cross Examination by Mr. MacLeod:

Q. What was the date that you saw her, Doctor? A. April 21, 1925.

Q. April 21, 1925. And your diagnoses are always correct, Doctor, do you think? A. Probably not.

Q. Probably not. Probably not. You may have been wrong in your diagnosis? A. Oh, un-
10 'questionably I am often wrong.

Mr. English—What was that question?

Redirect Examination by Mr. English:

Q. Doctor, did you cause any examination of Mrs. Cavanaugh's sputum to be made? A. No.

Q. Do you know whether any was made by the local Board of Health? A. There had been one.

20

Mr. MacLeod—That should be answered yes or no.

Q. Do you know? A. Yes.

Q. Did you see it? A. Yes.

Q. Made by whom—I mean was—

By Mr. MacLeod:

Q. Did you see it made or did you see the re-
30 cord? A. I saw the report.

Mr. MacLeod—I object to it unless he saw it made. It wouldn't be sufficient.

(The question was read by the reporter.)

The Court—I doubt if he could tell what somebody else made.

James A. Moran—direct

By Mr. English:

Q. Was it made under your direction? A.

No.

Q. Did you order it to be made? A. No.

By Mr. MacLeod:

Q. The answer was what? A. No.

Mr. English—He says, "No." That is all. 10

JAMES A. MORAN, sworn.

Direct Examination by Mr. English:

Q. Mr. Moran, have you any connection with the State Board of Health? A. Yes sir.

Q. What is your training and profession? A. Twenty-five years of examining tuberculosis germs. 20

Q. What? A. Twenty-five years of examining suspected tuberculosis cases.

Q. Talk up so the jury can hear you. Are you one of the official examiners, scientific examiners, constituted by the State Board of Health?

A. Yes, sir.

Q. And you have been doing that how long, did you say? A. For the past fifteen years.

Q. Have you any idea how many cases of that kind you have examined? A. Oh, I guess on an average of several thousand, possibly five or six thousand. 30

Q. How do these samples come down, speaking generally? How are they received? A. Well, the doctor sends specimens in the container; when

James A. Moran—direct

it reaches the laboratory it is opened up, and it comes in jars.

Q. But does he send any paper to identify it?

A. Oh, yes, a slip goes with it with the information.

10 Q. I show you D-4 for identification, which is a paper which Dr. Becker testified he had sent with a container to the State Board of Health. Is that produced by you from your records, under subpoena? A. Yes sir, that is the record.

Q. That is the record from the State Board of Health? A. Yes.

Q. And did you personally receive the container with that little wrapper wrapped around it? A. Yes.

Q. Did you personally examine the sputum that was sent there? A. Yes, I did so.

20 Q. What result did you get? A. I found positive T. B. present.

Q. And did you so report? A. Yes.

Q. Now, is that indicated on your record which went back to Dr. Becker? A. Yes, sir.

Q. You point to a cross? A. A cross mark.

Q. Under date of April 13 1925? A. April 13, 1925, yes.

Q. That cross was put on by you? A. Yes.

Q. And that is the date when the examination was made? A. Yes.

30 Q. Is it initialed by you? A. Yes.

Q. What is the initial? A. J. A. M.

Q. That is your initial? A. Yes.

Q. I offer in evidence D-4.

Mr. MacLeod—Objected to on the same ground.

Paper marked D-4 in evidence.

Mr. English—Cross examine.

James A. Moran—cross

Cross Examination by Mr. MacLeod:

Q. Doctor, you are in charge of all the sputum that comes there? A. Yes.

Q. Personally? A. Yes.

Q. You are the only man that handles it? A. Yes.

Q. No one else in the institution? A. Yes, once in a while.

Q. How often? A. Very seldom. Only when I am out of the office. 10

Q. When you are out of the office? A. Yes.

Q. And this was in 1925? A. Yes, sir.

Q. You were not out of the office any time during that time? A. No.

Q. You were always in the office then? A. I was in the office at the time that was received.

Q. You mean in 1925? A. Yes, I was in the office at that time.

Q. You remember specifically this slip? A. Yes, sir, I do. 20

Q. You have many slips come in like that, don't you, Doctor? A. I have on the average of forty-five or fifty a day.

Q. And you examine personally forty-five to fifty of these sputums every day yourself, personally? A. Yes.

Q. And nobody else does any of it? A. No, sir.

Q. You said a little while ago once in a while somebody does. A. What I mean by that is when I am out of the office. 30

Q. How often are you out of the office? A. Well, I have a day off once in a while.

Q. How often do you get off? A. Not very often; once in a while.

James A. Moran—cross

Q. About how often? A. Well, I can't say.

Q. Once a week? A. No.

Q. Don't get a day off a week? A. Well, I must do my work in the morning before I go off in the afternoon.

Q. Forty-five to fifty a day; you do that in the morning? A. Forty-five.

Q. You do that in the morning? A. Yes.

10 Q. That is all your work consists of; then you take the afternoon off? A. I don't take the afternoon off.

Q. I thought you said— A. I said sometimes.

Q. But you just said that as a result of you going off or not being present someone does it; that is right, isn't it? You are sure of that, aren't you? A. Positively sure.

Q. Who is the someone else that does it? A. Miss Lynn.

20 Q. A young lady? A. Yes.

Q. Is she here? A. No.

Q. And of those forty-five you do approximately every day you can remember away back in 1925 that this slip of paper which is printed and written also in ink, was received from Dr. Becker? A. Becker.

Q. Of Paterson. You can remember you received that personally? A. Yes.

Q. And you handled it personally? A. Yes.

30 Q. And you made the examination personally? A. Yes.

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

Mr. MacLeod—That is all.

James A. Moran—redirect-recross

Redirect Examination by Mr. English:

Q. How are you able to do that, Doctor? A. Because here is my signature at the bottom of it.

Q. You sign your name and your initials when you personally make the examination? A. Yes.

Q. That is how you refresh your recollection, from your signature? A. Yes.

Q. That is all. A. We have a record there, I think.

10

Recross Examination by Mr. MacLeod:

Q. You sign your name to them all, don't you? A. All? No, not all of them, only those that I examine.

Q. Maybe there are two, probably, in a year you didn't sign; is that it? A. I wouldn't say two. I don't know how many.

Q. Are there many that you don't sign? A. I sign all that I examine personally.

20

Q. Well, you just—if you don't examine them you don't sign, do you? A. Correct is the answer.

Q. What are the young lady's other duties?

Mr. English—I object to that, this young lady.

Mr. MacLeod—The question is whether this was done personally by him.

(The question was read by the reporter.)

30

The Court—I think it is proper cross examination. He may answer.

Mr. English—I pray an exception.

A. Her other duties?

Q. Well, that is another—withdraw that. You never— A. You asked me a question,—sorry.

James A. Moran—redirect

Q. You never initialed anything she did? A. Oh, no.

Q. She initials her own? A. Yes, positively.

Q. Some slips she initials? A. Yes.

Q. You are in charge and you are responsible for the sputums, aren't you? A. Yes.

Q. Personally, I mean; not her? A. No.

10 Q. When she does them she does them for you? A. No; she is assigned to it as well as I am, in that line of work.

Mr. MacLeod—That is all.

Redirect Examination by Mr. English:

Q. You spoke of some other little report, Mr. Moran. Here is the record that you also produced in response to my subpoena. What is that?

20 A. This is a record sent out by the laboratory to the doctor after receiving the specimen for examination. The report goes back to him and this is a duplicate copy of the report.

Q. This is the Board of Health's official record? A. Yes.

Q. It shows what the result of the examination of that sputum was? A. It shows tubercle bacilli are present.

Mr. MacLeod—That was made by you?

30

Q. The report was made by you? A. No, sir.

Mr. MacLeod—I am assuming this paper was made by him.

Albert L. Gramsch—direct

Q. The paper shows the result of the examination which you made? A. Yes. There is the original slip there.

Mr. MacLeod—I object to this paper, your Honor.

Mr. English—Wait a minute, Mr. MacLeod. It is not offered yet. I am trying to find out about it.

10

Q. The examination which is made by you and recorded on the same paper which comes down from the doctor— A. From the doctor.

Q. That is the first record, is it? A. Yes.

Q. And this little typewritten memorandum is made up from that? A. Yes.

Q. So the typewriting doesn't add— A. It is an outside record going to the doctor.

Q. All right, I won't bother. That is all.

20

ADELBERT LOUIS GRAMSCH, sworn.

Direct Examination by Mr. English:

Q. Dr. Gramsch, are you a licensed— A. Yes.

Q. And you have been how long? A. I have been connected with the New Jersey State Sanatorium for about ten years.

Q. For about ten years at Glen Gardner? A. Yes.

30

Q. That has been mentioned here? A. Yes.

(Interruption.)

Albert L. Gramsch—direct

Q. Dr. Gramsch did, the Glen Gardner Sanatorium receive as a patient there Mrs. Anna Cavanaugh, who has been mentioned here? A. Yes, sir, we have a record of it.

Q. Did she come under your personal attention and supervision? A. Yes.

Q. Did you examine her? A. Yes, sir, every month while she was a patient at the sanatorium.

10 Q. Have you any records from the sanatorium? A. Yes.

Q. I guess you handed them to me.

By the Court:

Q. When did she first become a patient?

Mr. English—I will let him look at his record.

20 A. Why, May 26, 1925.

By Mr. English:

Q. And she remained there how long, Doctor?

A. She remained there until September 23, 1925.

Q. May 6 to September 23, 1925? A. Yes, sir.

Q. Now, your sanatorium keeps a record of those cases? A. Yes.

30 Q. And this folio which you produced is the record of that case? A. Yes, sir.

Q. Is there anything in this which was written by you, any notations or diagrams made by you?

A. Yes, sir, these particular physical—these diagram charts.

Albert L. Gramsch—direct

Q. You refer to a page of this record headed diagram, do you? A. Yes.

Q. And all the writing on that was made by you? A. Yes.

Q. When? A. Except one here that was made—

Q. I am talking just about the page in front of you, this particular page. Was that all made by you? A. Yes, sir.

10

By the Court:

Q. Is it part of your official duties to make them, Doctor? A. Yes.

By Mr. English:

Q. Referring to Anna Cavanaugh? A. Yes.

Q. What does the—refreshing your recollection from this chart in your own writing, what does the record indicate? A. It shows that she had a lesion of the right side of the lung, and the last time I examined her she was beginning to show a little evidence in the left apex of the lung.

20

Q. I don't know whether the jury and I and his Honor know what a lesion on the right side of the lung means, exactly. What is that? A. A place where disease has already started in and when you hear what we call rales over the area.

Q. That is the same word Dr. Hagen used? A. Yes.

30

Q. That is a well-recognized symptom of tuberculosis? A. Yes.

Q. The presence of rales? A. Yes.

Q. You found the same thing when you examined her? A. Yes.

Albert L. Gramsch—direct

By the Court:

Q. Was she beginning to show a little in the apex of the left lung? A. Yes. On the first examination first on the right; the second examination—

By Mr. English:

10 Q. The other lung was beginning to be affected, too? A. Yes.

Q. That is what you mean? A. Yes.

Q. Well, now, what did you find she was suffering from when she was at the Glen Gardner Sanatorium? A. From an examination I would say she was suffering from a moderately advanced tuberculosis.

Q. Pulmonary tuberculosis? A. Yes.

20 Q. Were any examinations made of her sputum at that time? A. Yes.

Q. Under your direction? A. Why, those were made by one of our laboratory physicians.

Q. Did you get the report of that? A. Yes.

Q. What did that show? A. It showed persistent positive sputum while she was at Glen Gardner.

Q. Now, Doctor, was the fact of her condition made known to her by you? A. Why, yes, certainly.

30 Q. What did you tell her? A. I told her that she had tuberculosis and she had it in the right side the first time she was examined. I practically tell every one of my patients that.

Q. I mean, did you tell her? A. Yes, I told the patient, yes.

Albert L. Gramsch—direct

Q. And did you have any conversation with her when she left the sanatorium about her condition, give her any advice? A. I don't remember, yet in all patients I always tell them that they have got to be careful when they go back about how much rest they are getting, and that they should do—take at least four or five nights' rest, that is, going to bed between nine and half past nine.

Q. Going to bed early four or five nights a week? A. Yes. 10

Q. Did you tell her that? A. Yes, I tell practically all my patients that.

Q. Did you tell her that? That is my question. A. I told so many patients that I wouldn't—

Q. All right. Do you remember this woman? A. Yes, I recollect something now.

Q. Refresh your memory from your notes there. A. Yes.

Q. Was she cured when she left the sanatorium? A. No. 20

Mr. English—I will offer in evidence the page which the witness identified as composed only of his own notations, your Honor.

Mr. MacLeod—I object to that—just one page, all his writing?

Mr. English—That is it.

(Paper marked exhibit D-7.)

Mr. MacLeod—I have no objection to that. 30

Q. Now, Doctor, you spoke about another page. Are these notations made by you or any part of them? A. The top one was made by me.

Albert L. Gramsch—direct

Q. That was made by you (indicating)? A. Yes.

Q. What about the one to the right of that? A. The same.

Q. When was your examination made which is noted on that page? A. It was made the eighth month, twenty-fourth day.

Q. The eighth month? You mean August 24? A. Yes.

10 Q. What did her condition indicate at that time? A. She still had persistent rales in that right part of the lung.

Q. Now, there is another—some more marks on another diagram lower down on the page. That was made by somebody else? A. That was made by somebody else.

Q. Do you know who, as a matter of fact? A. It looks to me, from the writing, it looks like Dr. Gutowski.

20 Q. Dr. Gutowski was a physician attached to the sanatorium the same as you were? A. Yes.

Q. Is he there now? A. No, sir.

Mr. English—I will offer it for identification now.

(Paper marked D-8 for identification.)

Mr. English—Now, Counsel, you may want to object to this.

30 Q. The page preceding the page which was marked D-7, your page, is what apparently is a history of this woman? A. Yes.

Q. Mrs. Cavanaugh. Was that made by you? A. No, sir.

Albert L. Gramsch—direct

Q. Did she bring that with her when she came? A. No; she gave that information to the clerk.

Q. To the clerk at the sanatorium? A. Yes.

Q. Yes. And that is a part of the official record of the institution? A. Yes, sir.

Q. And gives her name and address and age?

Mr. MacLeod—That is all right.

10

Q. And all that? A. Yes.

Mr. English—There is also in this same folder—cross that out. I mark for identification the page referred to by the witness giving the report made at the Glen Garden Sanatorium.

(Paper marked D-9 for identification.)

20

(A recess was taken until 2 o'clock p.m.)

Afternoon session, 2 P. M.

ADELBERT L. GRAMSCH, resumed.

Direct Examination (continued) by Mr. English:

Q. At the time of adjournment, Doctor, I was about to show you another part of the record of the Glen Gardner Sanatorium, that part which is headed State of New Jersey, Request for Voluntary Admission of Patient. A. Yes?

30

Q. Is that a part of the records? A. Yes.

Q. Is that made in your sanatorium, or does

Albert L. Gramsch—cross

the patient bring it with her? A. That is made out at the clinic she is examined in.

Q. At the clinic here in Paterson? A. Yes.

Q. And that is the paper that comes with her?

A. Yes.

By the Court:

Q. You say she brought that paper with her?

10 A. No, that is made out at the clinic she goes to and then it is sent to us. That is our application.

By Mr. English:

Q. That is the application on which you admit the patient? A. Yes, we send those out to the different clinics.

20 Mr. English—I call your Honor's attention that is signed by the insured and identified by the plaintiff, marked D-3 for identification.

The Court—It was signed by her?

Mr. English—Signed by her and identified by the plaintiff.

I think you may take the witness.

Cross Examination by Mr. MacLeod:

30 Q. Doctor, you told all your patients that came in that they had tuberculosis, didn't you? A. I did not. I said I tried to tell them all, but there might be possibly some that I didn't get to tell.

Q. It may be you didn't tell her she had tuberculosis? A. I don't know whether I did or not.

Q. You don't know whether you did or didn't?

A. Every patient up there.

Albert L. Gramsch—cross

Q. You don't think everybody there had tuberculosis? A. Yes, every patient.

Q. Is it possible— A. All the patients up there are tuberculosis patients, and if they are not, why, then, they are sent home in one or two months.

Q. And she was sent home in three months?
A. Four months.

Q. Four months? A. In all those cases— 10

Q. Is it possible that she may not have had tuberculosis? A. The only cases that we sent home in one or two months are those that are persistently negative for two months, and if they are positive they are kept.

Q. There are a lot of patients there who don't have tuberculosis? A. Not a lot of them, no, sir; a very small per cent.

Q. There are some that go there that don't have tuberculosis? A. If they go there they go for observation, yes, sir. 20

Q. There are some that go there that don't have tuberculosis, then, aren't there? A. Well, yes, they may not have it; if they haven't, why, then, they are discharged.

Q. It is a fact that they don't have tuberculosis? A. Yes, I guess that is true.

Q. And they are discharged? A. Yes.

Q. And are there cases where it took you more than two months to find that out? A. Why, after two or three months if they are persistently negative and examined by three or four—three or four times, they are discharged as non-tubercular. 30

Q. Yes. Did you ever hear of a sputum or an examination taken of this girl through Trenton

Albert L. Gramsch—cross

that showed negative? Did you ever hear that of this particular girl? A. No.

Q. Never heard of it? A. No.

Q. Of this particular girl? A. No.

Q. Did you ever see a report of Dr. O'Brien in this case? A. Doctor Who?

Q. Dr. O'Brien? A. I don't know Dr. O'Brien.

10 Q. Now, then, do you know what this patient looked like? A. If I remember right, she was a sort of sim girl with dark hair.

Q. Did she have scrawly hair or short hair?

A. Well, I don't know. I wouldn't make any positive statement on that.

Q. You see so many of them you can't say? A. No.

20 Q. You haven't had this case in mind since 1925, anyway, have you, Doctor? A. I hadn't thought much of it.

Q. When was the first time that you discussed this case regarding this girl with anyone since 1925 when she left your institution? A. Until I got a notice that we were to be subpoenaed.

Q. A couple of weeks ago? A. Whenever it was, just recently.

Q. Just recently? A. Yes, just recently.

30 Q. You don't know what the cause of her death was, Doctor? A. Outside of the institution, no.

Q. Do you know yourself? A. I didn't see the death—

Q. You haven't seen her since she left your sanatorium? A. No.

Mr. MacLeod—That is all, Doctor.

Flora Parke—direct

FLORA PARKE, sworn.

Direct Examination by Mr. English:

Q. Miss Parke, have you any connection with the Board of Health at Paterson? A. Yes, I am supervisor of public health classes.

Q. Supervisor of public health classes? A. Yes.

Q. And the records of the department are kept under your general jurisdiction? A. Yes. 10

Q. I show you the record which Dr. Hagen produced. He got that from your office, I think he said. A. Yes, he did.

Q. That is the record, yes. Now, referring to the history of the case of Anna Cavanaugh on the page which was identified as exhibit D-6 for identification in this suit, do you know in whose writing the history of the case is? A. Estelle Young. 20

Q. And she was a nurse employed by the city? A. Yes, sir.

Q. She is now dead, I think? A. Yes.

Q. You know her writing, though, do you not? A. Yes.

Q. That is her writing? A. Yes.

Mr. English—If your Honor please, I renew the offer of D-6, which was identified by Dr. Hagen, and the balance is now proved to be in the writing of a witness who is now dead. 30

Mr. MacLeod—Let me see that. Is that what she signed originally, the insured? She didn't sign that, did she?

Mr. English—No, I don't think so.

Flora Parke—direct

Mr. MacLeod—I object to it.

The Court—I will admit it.

(Paper marked exhibit D-6 in evidence.)

10 Q. Now, Miss Parke, I show you a part of the record of the Glen Gardner Sanatorium, and particularly that part of it which I referred the last witness to, being the request for admission to the sanatorium, Anna Cavanaugh, being identified by the plaintiff in the case and marked D-3 for identification. Is that the form on which these applications to Glen Gardner are made up? A. It is.

Q. And I see that the signature of Anna Cavanaugh was witnessed, Estelle C. Young?

A. That is correct.

Q. That means registered nurse (indicating)?

A. Yes.

20 Q. That is Miss Young's signature and that is Miss Young's writing? A. Yes.

By the Court:

Q. Did you know the plaintiff? A. I don't know her.

By Mr. English:

Q. You don't know this woman at all? A. No.

30 Q. Yes.

Mr. English—I offer that.

Mr. MacLeod—Just that page. I have no objection to that page.

Mr. English—It is a double page.

Mr. MacLeod—Yes.

Walter D. Gutowski—direct

Mr. English—I offer in evidence, then, the paper headed, “State of New Jersey, Request for Voluntary Admission,” consisting of two pages written on both sides, the second page signed “Anna Cavanaugh,” and already marked D-3 for identification.

(Paper marked exhibit D-3 in evidence.)

Mr. English—That is all. Have you any cross-examination?

10

Mr. MacLeod—No questions.

WALTER D. GUTOWSKI, sworn.

Direct Examination by Mr. English:

Q. Dr. Gutowski, are you a licensed physician of the State of New Jersey? A. I am.

Q. Where is your office now? A. 393 Murtle Avenue, Irvington.

20

Q. How long have you been practicing medicine? A. I have been practicing medicine about six and a half years.

Q. Graduate of— A. Columbia University, in the City of New York.

Q. Do you specialize in any branch of medicine? A. I have specialized in diseases of the lungs.

Q. Were you at any time connected with the Glen Gardner Sanatorium? A. Yes, sir.

30

Q. Were you there in between the 6th of May and September of 1925? A. I was.

Q. Yes. Are you the Dr. Gutowski that Dr. Gramsch mentioned as having been there at that time? A. I am.

Q. Do you remember the case of Anna Cavan-

Walter D. Gutowski—direct

ough who is mentioned in this suit? A. Yes.

Q. Who applied for this insurance? A. Yes.

Q. Do you remember her? A. I do.

Q. Yes. I show you a part of the record of the Glen Gardner Sanitorium, directly page marked D-8, which Dr. Gramsch said he had made certain notations on, containing certain other notations which he thought had been made by you. Are you the author? A. I am.

10 Q. What does that indicate? A. It indicates a moderately advanced case of tuberculosis.

Q. And that is the record of an examination made by you? A. Yes, sir, it is.

Q. Under what date?

Mr. MacLeod—Was the record made by him, too?

The Witness—Yes.

20 Q. Under what date? A. September 10, 1925.

Q. I see the figures there 9/10/25; that is your writing? A. Yes.

Q. And the rest of it is your handwriting? A. Yes.

Q. On both of the sheets? A. No.

Mr. English—I offer in evidence D-8 for identification as now completely identified by the physician who made the notations.

30 (Paper marked exhibit D-8 in evidence.)

Mr. MacLeod—No objection, excepting that you haven't laid the foundation.

Q. Doctor, I take it from what you said that you personally examined this woman? A. I did.

Q. What did you find her to be suffering from?

Walter D. Gutowski—direct

A. Moderately advanced pulmonary tuberculosis.

Q. That is, I think, what we call consumption?

A. It is.

Q. It is a disease of the lungs? A. It is.

Q. How did you satisfy yourself that she had that disease? A. By physical examination and reports from the laboratory.

Q. When you made the physical examination could you detect anything with your ear? A. I did. 10

Q. What? A. Consolidation of the upper right lobe, that is infiltration of the upper right lobe and rales in the upper right lobe, anteriorly and posteriorly, also some consolidation of the upper left lobe with rales in front, that is, anterior.

Q. Rales is the word we have had before, meaning a peculiar sound? A. Peculiar sound.

Q. When the patient breathes? A. Yes. 20

Q. Is that an indication of tuberculosis? A. In this particular region it is.

Q. Was this in the region where it means that? A. Yes.

Q. Yes. She was discharged shortly after your examination in September, I think? A. Yes.

Q. As the record shows. Was she cured? A. No, sir.

Q. What is the object of having patients sent to Glen Gardner Sanatorium? A. The object of the sanatorium is to teach tubercular people how to take care of themselves after discharge. 30

Q. And they are discharged still suffering from the disease in some cases?

Walter D. Gutowski—direct

Mr. MacLeod—That is very leading. That is very leading, I think.

Mr. English—I said in some cases.

Q. Was this woman still suffering from the disease when she was discharged? A. Yes.

10 Q. Now, the proof of death in evidence as exhibit D-5, the certificate of death, rather, from the Board of Health indicates that she died and the cause of death was pulmonary tuberculosis complicated by pregnancy. That bears out the diagnosis that you made at the sanatorium? A. It does. It is pulmonary tuberculosis.

Q. So far as the pregnancy, that would come after that? A. Yes.

Q. Did you have any conversation with Mrs. Cavanaugh about her condition? A. I did.

20 Q. Did you tell her what was the matter with her? A. I did.

Q. What did you tell her? A. The question of discharge came up from that clinic.

Q. Yes? A. And I told her that she still was active and that her sputum was still positive, and that the report from the laboratory was that the sputum had tubercle bacilli, and I told her she would have to be very careful of herself.

Q. Was she an intelligent person? A. Apparently so.

30 Q. Spoke and understood English perfectly? She wasn't of foreign extraction, was she? A. I don't think so.

Q. She spoke and understood English perfectly? A. Perfectly well.

Q. Did she know what a positive sputum meant?

Walter D. Gutowski—cross

Mr. MacLeod—Wait a minute. I object to that.

Mr. English—If he knows.

Q. Did she ask you what a positive sputum was? A. She did.

Q. What did you say to her? A. I told her her sputum was still positive.

Q. Did you tell her what that meant? A. The tuberculosis people know what it means. 10

Mr. MacLeod—I ask to strike it out.

Q. I want to know whether you told her or gave her any definition or the meaning of positive sputum? A. I told her that there was tubercle bacilli still in her sputum.

Q. Did you give her any advice as to how to take care of herself? A. Yes. 20

Q. What did you tell her? A. I told her she would have to have considerable rest if she wanted to get well.

Mr. English—Cross-examine.

Cross Examination by Mr. MacLeod:

Q. You remember her distinctly, do you, doctor? A. I do.

Q. And you had many patients there, hadn't you? A. Yes. 30

Q. The last time you saw her was over three years ago? A. Yes, sir.

Q. You give them all the same examination that you gave her? A. Not necessarily.

Q. Why not? A. She was a clinic patient.

Q. Do you give all the clinic patients, then,

Walter D. Gutowski—cross

the same examination? Do you? A. Yes, we do.

Q. And there are a lot of clinic patients, aren't there? A. Quite a few.

Q. You tell us now that you gave her this examination because you gave every one of the clinic patients the same examination? A. No, because I remember her very distinctly.

10 Q. You knew she was in the advanced stage?
A. Moderately advanced.

Q. Moderately advanced. Did you see her when she first came in? A. I didn't.

Q. When was the first time that you saw her?
A. I saw her—I have seen her around the sanatorium a number of times.

Q. You remember these various times you saw her; you remember them particularly, do you?
A. No. That is, I talked to the patient and I remembered her by name.

20 Q. Talked to all the patients, didn't you? A.
No, not all patients.

Q. But you remember you particularly talked to her? A. Yes, I do.

Q. You don't know what her state was when she first came in so far as tuberculosis was concerned? A. I don't know that.

Q. But you remember on September 10? A. I do.

30 Q. How long after that was she discharged?
A. She was discharged about a week and a half to two weeks after, I believe.

Q. Did you know she had been there for over three months before that? A. That was brought—

Q. Did you know that she had been there?
A. I did.

Walter D. Gutowski—redirect

Q. About a week or so after you examined her you discharged her, didn't you? A. I did not.

Q. Well, the institution did? A. The institution did.

Q. For whom you were employed? A. Yes.

Q. And she was moderately advanced at that time? A. Moderately advanced.

Redirect Examination by Mr. English:

10

Q. Was there anything unusual about discharging a patient of that type from that institution? A. Yes.

Mr. MacLeod—I object to the unusualness of it.

The Court—I think he may state. He says yes.

Mr. English—What is your Honor's ruling?

20

The Court—He says yes.

Q. What was unusual in her case? A. Well, that she had come up and there was a question of leaving the sanatorium and she had asked me about being discharged.

Q. Did she want to leave? Did she want to go away?

Mr. MacLeod—That is leading.

30

The Court—It is a little leading.

Mr. English—All right. All right. That is all.

Walter D. Gutowski—recross
Kenneth E. McCamey—direct

Re-Cross Examination by Mr. MacLeod:

Q. Just one question, doctor: You said in reference to the death certificate that the cause of death corroborated your findings. Do you mean the whole cause of death or just part of the cause of death? A. That is, the diagnosis of pulmonary tuberculosis.

10 Q. But the pregnancy wasn't any part of your diagnosis? A. I never knew about the pregnancy.

Q. Do you know that that was the cause of her death? A. What is that?

Q. Did you know that the pregnancy was the cause of death? A. I never heard of it.

Mr. MacLeod—That is all.

20 Mr. English—The defendant rests, your Honor.

Defendant rested.

PLAINTIFF'S TESTIMONY IN REBUTTAL

KENNETH E. McCAMEY, sworn.

Direct Examination by Mr. MacLeod:

30 Q. Doctor, did you ever know the plaintiff in this case? A. Not personally.

Q. The assured, Anna Cavanaugh? A. Not personally.

Q. The assured, I mean, the assured in this policy. A. Not personally.

Q. Did you ever see her? A. Yes.

Q. Where did you see her first, doctor? A. In my office.

Kenneth E. McCamey—direct

Q. In what capacity did you see her? A. As a medical examiner for the Metropolitan Life Insurance Company.

Q. You examined her for the Metropolitan Life Insurance Company? A. Yes, sir.

Q. Was it for the purpose of reporting her condition so that a policy may or may not be issued upon her life or death? A. Yes, sir.

Q. What kind of an examination did you give her, doctor? A. Pardon me? **10**

Q. What kind of an examination did you give her at that time? A. The usual examination that you give a woman for an insurance examination.

Q. Did you find anything tubercular about her at that time? A. My memory of this—if I can have that (indicating).

Mr. English—Yes, certainly. **20**

A. I examined a great many of these and I don't remember the case.

Q. May I ask when that examination was, doctor? A. It is dated the 19th day of May, 1927.

Q. May 19, 1927. Can you tell us whether you found anything tubercular about her at that time?

A. The examination, insurance examination, didn't reveal anything in the chest at that time. **30**

Q. And you examined her chest? A. As much as you can examine a strange woman.

Q. You say you examined her chest? A. As an insurance examination.

Q. You put your ear to it and listened? A. No, a stethoscope.

Kenneth E. McCamey—cross

Q. Do you know that it was after your examination and your report to the insurance company the policy was issued? A. No, sir, I don't know that.

Q. You don't know that? A. No.

Mr. MacLeod—That is all.

10 Cross Examination by Mr. English:

Q. She was an intelligent woman, doctor? A. Yes, she struck me as being intelligent.

Q. She understood and spoke English perfectly, did she not? A. Yes.

Q. She wasn't a woman of foreign birth?

Mr. MacLeod—I am not going to raise that. We will say she was intelligent.

Mr. English—All right, that is admitted.

20

Q. Did you ask her the questions that are answered here on this part of the examination, part B, which is in evidence as D-1? A. I did.

Q. And did you write down the answers which she gave you? A. I did.

Q. If she had told you that she had suffered from tuberculosis for two years would you have passed her? A. I don't either pass or reject.

30 I put down my findings and make a recommendation. If she told me that I would not have recommended her.

Mr. MacLeod—I object and ask to have it stricken out, what he can or would not have done.

The Court—You are too late.

Mr. MacLeod—That wasn't responsive.

Kenneth E. McCamey—cross

The Court—The question called for that. (The question and answer were read by the reporter.)

Mr. MacLeod—I didn't hear that question. It is improper and I ask to have it stricken out.

The Court—You can't do it now. You can't wait for the answer and then strike it out.

Mr. MacLeod—I ask an exception. 10

The Court—Go ahead.

Q. If she had told you that you would have noted it on the application, would you not? A. Certainly.

Mr. MacLeod—I object to that.

Q. When a person tells you that they are tubercular what do you do with respect to the notations you make on the paper? 20

Mr. MacLeod—I object to it as immaterial.

The Court—I don't think that is very material.

Q. Did she tell you that she had spent some four months in the Glen Gardner Sanitorium? A. She did not. 30

Q. Did she tell you that she had gone to the tuberculosis clinic of the City of Paterson? A. She did not.

Q. Did she tell you that she had been attended by Dr. Becker or Dr. Hagen? A. She did not.

Q. Did she tell you that she had been ex-

Kenneth E. McCamey—redirect

amined at Glen Gardner by Dr. Gramsch and Dr. Gutowsky? A. She did not.

Mr. English—That is all.

Redirect Examination by Mr. MacLeod:

10 Q. You didn't ask her whether she had been to Glen Gardner, did you? A. I asked her whether—

Q. Now, you just answer my question. Did you ask her whether she had been to Glen Gardner? A. Not specifically to Glen Gardner.

Q. Not specifically to the clinic, either? A. Not specifically to any clinic.

Q. Did you ask her whether she had been treated by any of these doctors? A. I asked her if she had ever had a serious sickness, if she had ever been in the hospital or institution.

20 Q. I want to know whether you asked if she had been to any of these doctors, Dr. Becker, Hagen, and—A. Why, obviously not.

By Mr. English:

Q. You didn't know she had been there, did you? A. No.

Q. You couldn't ask a question if you didn't know anything about it?

30

Mr. MacLeod—I am not through yet.

Mr. English—I beg your pardon.

By Mr. MacLeod:

Q. She couldn't tell you if she wasn't asked, could she? A. I suppose she could have.

Q. Did she have the appearance, as you looked at her and examined her, of a tuberculosis—

Kenneth E. McCamey—recross

Mr. English—I object to it as immaterial.

The Court—It is leading, too.

Q. What was her appearance with respect to tuberculosis when you looked at her, her general appearance as you looked at her and examined her?

Mr. English—I object to that.

The Court—He may answer.

10

A. As I remember, she had—her appearance didn't indicate to me that she had tuberculosis.

Mr. MacLeod—That is all.

Recross Examination by Mr. English:

Q. Did you ask her, doctor, if she had ever had any disease of the lungs? A. I did.

20

Q. Did you ask her if she had ever consulted a physician for any ailment? A. I did.

Q. Did you ask her to name what physicians she had consulted during five years? A. I did.

Q. And did you write down the answers she gave to those questions every time? A. I did.

Q. Did you ask her if she had been an inmate of or received treatment at any hospital or sanatorium? A. I did.

Q. Did you write down the answer she gave? A. I did.

20

Q. You had no knowledge about the matter except what she told you? A. No knowledge.

Q. Never saw her before or since? A. I saw her neither before nor since.

Kenneth E. McCamey—recross

By Mr. MacLeod:

Q. And as far as you know, doctor, she never had tuberculosis, did she? A. The insurance examination I gave her—

Q. No, as far as you know. A. As far as I know.

Mr. MacLeod—That is all.

10

By Mr. English:

Q. Doctor, take a case where a woman is proved to have had a positive sputum for a period of four or five months, to have been examined by four separate physicians who found that she had rales in her lungs, and who was sent away by the local clinic to the Glen Gardner Sanatorium: Would you in that phase of the proof make any conclusion as to whether she had tuberculosis?

20

Mr. MacLeod—I object to that.

The Court—I think it is proper cross-examination.

Mr. MacLeod—I will withdraw my objection.

A. Do you mind reading that question? It was rather long.

30

(The question was read by the reporter.)

Q. May I amend that and add to that that within two years of her discharge from the sanatorium she had died of tuberculosis, complicated

Lawrence B. Boylan—direct

by pregnancy? A. Now, what is the question?

Q. The question is whether or not in that state of facts you would reach any conclusion as to whether she was suffering from tuberculosis. A. I would conclude that she was suffering from tuberculosis.

Q. Would a state of facts of that kind influence your mind as a medical examiner for the insurance company if you had known about it?

A. Very much so.

10

Mr. MacLeod—I object to that, if your Honor please. Maybe I was too late then, too.

The Court—I think you were.

Mr. MacLeod—All right, I will withdraw it. That is all. No further questions.

20

LAWRENCE B. BOYLAN, sworn.

Direct Examination by Mr. MacLeod:

Q. Dr. Boylan, are you a practicing physician of the State of New Jersey? A. Yes, sir.

Q. Where are your offices located? A. 630 Main Street.

Q. How long have you been a member of—how long have you been practicing medicine in this State? A. 1913.

30

Q. Are you a graduate of any medical college? A. Yes, sir.

Q. What college? A. P. and S., Baltimore.

Q. Are you connected with any medical institution or hospital? A. St. Joseph's Hospital.

Q. In Paterson? A. Yes, sir.

Lawrence B. Boylan—direct

Q. Now, doctor, did you know Anna Cavanaugh? A. I can't say that I know Anna Cavanaugh.

Q. Well, do you know Mr. Archie Locker, the plaintiff in this case? A. Yes.

Q. Do you know his family? A. Yes, sir.

Q. Did you ever have an occasion to treat his sister, Anna? A. I treat several of his sisters.

10 Q. Do you remember submitting a death — withdraw that. I show you a photograph and ask you if you recall that picture?

Mr. English—Yes or no, doctor, whether you do.

The Court—If you don't know, say so.

A. I don't know.

20 Q. Doctor, I refer you to exhibit P-2 and ask you whether or not you ever filed a proof of death for one Anna Cavanaugh? A. Yes, sir, this is my writing.

Q. Will that help you to refresh your recollection about the insured, Anna Cavanaugh? A. This party you speak of—

Mr. English—Pardon me, doctor. I object.

30 By the Court:

Q. Does that refresh your recollection? he asked you. A. Yes, sir.

By Mr. MacLeod:

Q. Well, do you recall ever treating that party

Lawrence B. Boylan—direct

named in that certificate or proof of death? A. If her maiden name was Locker, yes.

Mr. English—No, no, no, doctor. Excuse me for interrupting. The question is whether you recall treating her. Have you any present recollection of it? That is all the question calls for, as I understand it.

The Court—He says, "If her maiden name was Locker," he recalls treating her. 10

Q. What did you ever examine her or treat her for? A. I treated her for minor ailments such as a neuritis.

Q. Did you, doctor, in examining Anna Cavanaugh, ever find that she was suffering from tuberculosis? A. No, sir.

Q. Do you know what she died from, doctor? A. Only what it states here. 20

Q. What was that? A. The cause of her death isn't here.

By the Court:

Q. What is that? A. The cause of her death isn't on here. Childbirth.

By Mr. MacLeod:

Q. Is childbirth the cause of her death? A. That is what it states here, yes, sir. 30

Q. That is your certificate, is it not? A. Yes, sir.

Q. Did you ever treat her for tuberculosis? A. No, sir.

Q. And were you or not the family physician of the Lockers? A. I presume I was.

Lawrence B. Boylan—direct

Mr. English—I object to this as not rebuttal. It ought to be directed to—
The Court—It is not rebuttal.

(The question and answer were read by the reporter.)

10 Q. Do you know whether or not any of the Lockers, the members of the Locker family, died of tuberculosis? A. No, sir.

By Mr. English:

Q. You mean you don't know; is that it? A. Well, I don't know.

By Mr. MacLeod:

Q. Did you ever treat any of the members of the Locker family for tuberculosis? A. No, sir.

20 Q. Were you in attendance as a physician of Anna Cavanaugh at the time she died? A. No, sir.

Q. Why was that certificate issued, doctor?

Mr. English—I object to that.

The Court—What does that mean?

Mr. MacLeod—This is in evidence.

Q. She died from childbirth, did she not?

30

Mr. English—I object to that.

The Court—He wasn't there, he says.

Q. Now, doctor, this certificate, P-2, refreshes your recollection to the extent of the cause of Anna Cavanaugh's death, does it not?

Lawrence B. Boylan—direct

The Court—I don't suppose it makes much difference about that. He says he wasn't there. He wasn't her attending physician at the time. What difference does it make whether it refreshes his recollection or not?

Mr. MacLeod—Well, I just want to have the statement positive.

The Court—It can't be more positive than for him to say he doesn't know because he wasn't there. The time to emphasize to the jury is during your argument. 10

Mr. MacLeod—The point is, I don't think the doctor got the question.

The Court—I got the question, but I don't think it makes any difference about refreshing his recollection about something he doesn't know anything about.

Mr. MacLeod—I think he was in attendance at the time just before she died. 20

The Court—I understood him to say he wasn't there and didn't know what she died from, except from the certificate.

The Witness—That is all, Judge.

Q. Do you know of your own knowledge, without referring to the certificate, what she died from?

The Court—Well, he just said he didn't. 30

Q. You are positive, aren't you, doctor, that she didn't die from tuberculosis?

Mr. English—I object to it as a leading question.

Lawrence B. Boylan—cross

The Court—Sustain the objection.

Q. When was the last time you examined her, doctor? A. Definitely, I couldn't state.

Q. Approximately? A. Within the last three or four years.

Q. During those times which you examined her can you tell us whether or not you found any symptoms of tuberculosis?

10

Mr. English—I object to it unless the time is fixed. It is not rebuttal, either, your Honor.

Q. During the past three years.

The Court—During 1925.

Mr. MacLeod—Since May, 1925.

20

Mr. English—He doesn't fix any time.

The Court—It would probably go more to the weight than the admissibility. I will admit that.

(The question was read by the reporter.)

A. I never found any symptoms of tuberculosis.

Mr. MacLeod—That is all.

30

Cross Examination by Mr. English:

Q. Doctor, you say you were the family physician of the Locker family? A. I said I thought I was.

Q. Mr. Archie Locker is a friend of yours, a patient of yours? A. He is a patient, yes.

Q. Yes. His sister didn't live at his house for

Lawrence B. Boylan—cross

the past three or four years? By sister I mean Mrs. Cavanaugh, that sister. A. I don't know where she lived.

Q. Well, do you know that she didn't live at his house? A. Well, from hearsay I understand she did live there one time.

Q. If you were not in court this morning I can tell you that he testified she lived the last three or four months before death and not previously. You wouldn't undertake to say when you examined her, at any particular time, would you? A. Not definitely, no, sir. 10

Q. You wouldn't undertake to say that you examined her for tuberculosis or anything like that? A. I never examined her for tuberculosis.

Q. So, as I understand your testimony, you just looked her over for some minor ills once or twice; is that right? A. Yes, sir.

Q. Your attention was never drawn to the fact that she had gone to Glen Gardner Sanatorium for some time, was it? A. No, sir, I never knew it. 20

Q. What is that? A. I never knew it.

Q. Nor that she had been treated by the local tuberculosis clinic here in Paterson? A. I never knew it.

Q. How did you come to sign this paper? At Mr. Locker's request? A. No, that was from statements given out at the hospital. 30

Q. Oh, you looked at the records of the hospital and signed this paper? A. I either looked at the records or the house doctor told me.

Q. And you didn't personally have anything to do with her at the hospital? A. No, sir.

Q. I observe the certificate of death which is

Lawrence B. Boylan—cross

in evidence here as exhibit D-5 says that Dr. Kennedy was the attending physician? A. I don't remember the doctor at the hospital.

Q. But you personally had nothing to do with her in the hospital at all? A. No, sir.

Q. And whatever statements are made in exhibit P-2 signed by you flow from information which you got from the hospital doctor or the records or something else? A. The records or something else.

Q. What is that? A. Yes.

Q. And the only time that you ever did examine Mrs. Cavanaugh, you say, that was some three or four years ago for some minor ill? A. Yes.

Q. That is the fact, is it? A. Yes.

Q. You have no recollection of examining her after she was at the tuberculosis clinic or at the Glen Gardner Sanatorium, have you? A. I couldn't say whether it was after or before.

Q. At any rate, when you made the examination you didn't have those facts drawn to your attention? A. No, sir.

Q. And, of course, for a diagnosis, facts of that kind, the history of the case, influences the doctor? A. Sometimes, yes.

Q. Always, doesn't it, doctor? A. It depends upon the man, I suppose.

Q. Well, would you, as a physician, want to go on record as saying you would pay no attention to the history? A. No, I wouldn't like to go on record.

Q. What is that? A. No, sir.

Q. That is one of the first things the doctor wants to know, the history of the case, isn't it,

Catherine M. Pardon—direct

when he is called to make an examination? A. At times, yes.

Q. And if you were called upon to examine—scratch that out. I think that is all.

CATHERINE MAY PARDON, sworn.

Direct Examination by Mr. Rittenberg:

10

Q. Mrs. Pardon, you reside where? A. At the present time?

Q. Yes. A. At 36 Lincoln Avenue.

By the Court:

Q. Speak out loud. A. 36 Lincoln Avenue.

By Mr. Rittenberg:

Q. Do you know or did you know Anna Cavanaugh? A. I did. 20

Q. The assured in this case? A. I did.

Q. How long had you known her? A. About seven years.

Q. Can you—do you recall her appearance in May, 1927? A. It was good.

Q. Will you describe it to the Court and jury?

A. What do you mean? Describe it?

Q. Here general appearance.

30

Mr. English—I object to that as rebuttal of nothing. There is no issue about her appearance.

The Court—This can't be called strictly rebuttal, but you set up a defense that she made fraudulent statements. This, of

Catherine M. Pardon—direct

course, calls for a defense, so to speak, on the part of the plaintiff.

Mr. Rittenberg—I think it is admissible, your Honor, for the purpose of rebutting—

The Court—If you argue I might not side with you.

Q. Now, will you describe Mrs. Cavanaugh's appearance in May, 1927? A. It was very good.

10 Q. I show you a photograph and ask you whether or not you recognized that photograph (handing a photograph to the witness)? A. I do.

Q. Whose photograph is it? A. Anna Cavanaugh's.

Q. Do you know when it was taken? A. I took it.

Q. When? When did you take it? A. In May.

20 Q. What year? A. 1927, on my own porch.

Q. Is this photograph—does this photograph represent the likeness— A. Very—

Q. —of Anna Cavanaugh in May, 1927? A. Yes, sir.

Mr. Rittenberg—I offer it in evidence, your Honor.

Mr. English—What is the object of it?

30 The Court—I suppose to deny your allegation she made fraudulent answers.

Mr. English—How does the photograph deny that?

The Court—From her appearance.

Mr. Rittenberg—From her appearance.

(Photograph marked exhibit P-3.)

Catherine M. Pardon—direct

Q. Now, Mrs. Pardon, did Anna Cavanaugh live with you at one time? A. She lived with us seven years off and on.

Q. Did you ever see her spit blood? A. No, never.

Q. You have a family, have you not? A. I have.

Q. And during the time that Anna Cavanaugh lived with you did she or not, that is—was she or not in the company of your children at any time? A. Always. She slept with one of my daughters. 10

Q. She slept with one of your daughters? A. Yes, she did.

Q. Now, was Anna Cavanaugh known in the neighborhood in which you lived? A. She was.

Mr. English—I object to that. Any rumor won't help the case. 20

The Court—I don't think it makes any difference.

Mr. Rittenberg—The object is for the purpose of showing her reputation, this insured, as to her—

The Court—It doesn't make any difference about her reputation.

Mr. Rittenberg—I think the reputation of the insured would tend to show lack of intention—reputation for truth and veracity. 30

The Court—What the doctors say, it is for the jury to say whether it is fraudulent.

Mr. Rittenberg—That is all.

Catherine M. Pardon—cross

Cross Examination by Mr. English:

Q. Mrs. Pardon, you are an old friend of Mrs. Cavanaugh's, or she is an old friend of yours?

A. Yes.

Q. She used to make her home with you at times? A. Yes.

10 Q. I observed that in the application for admission to Glen Gardner, which is in evidence as D-3, she gave your name as one who knows and will testify for her. You are Mrs. Pardon, 149 Washington Avenue, Clifton? A. I used to reside 138 Washington Avenue.

Q. You used to live at 138 Washington Avenue? A. Yes.

Q. You knew, of course, that she was sent out to Glen Gardner? A. I knew she went to Glen Gardner.

20 Mr. MacLeod—I object to the being sent out.

Q. What did you say? A. I knew she went to Glen Gardner.

Q. Yes, and you knew that before that she had been treated at the local clinic? A. No, I did not.

Q. You didn't know that? A. No.

30 Q. Did she used to write to you from Glen Gardner? Did you keep in touch with her out there? A. I did.

Q. Then when she came back—do you remember when she came back from there? A. She came back, I think it was the 24th of September, if I remember rightly.

Q. She was out there about four months; is that your recollection? A. I think so, yes.

Catherine M. Pardon—cross

Q. Yes. Then did she go to your house right away from there? A. She did not.

Q. Was she very much improved by her visit out there? A. Very much improved, yes.

Q. What was she doing when she was living with you? A. She was working in the Brighton Mill.

Q. As a weaver? A. Yes.

Q. And then she had to give that up after a while, I think? A. No, she didn't have to give it up. 10

Q. Well, she did give it up? A. She did give it up of her own accord.

Q. Then what did she do for a while or didn't she do anything? A. She went to work in an office.

Q. That is her brother's office? A. Yes, I think her brother's office in Orange.

Q. Did you ever see her husband? A. Yes. 20

Q. Up to how recently have you seen him? A. I couldn't just remember.

Q. What is that? A. I don't just remember how long ago since I seen him last.

Q. A matter of several years? A. Oh, all of that.

Q. You hadn't seem him for several years? A. No.

Q. I mean before her death? A. No, none of us seen him. 30

Mr. English—I think that is all.

Mr. MacLeod—There is one picture we forgot to put in.

Mr. English—Let's see it.

L. P. Tuohy—direct

By Mr. Rittenberg:

Q. Mrs. Pardon, can you tell us of whom that photograph is? A. Anna Cavanaugh.

Q. Do you know when that was taken? A. That was in May.

By the Court:

10 Q. May of what year? A. 1927.

By Mr. Rittenberg:

Q. Does that represent a likeness of Anna Cavanaugh as she looked after May, 1927? A. Yes, yes.

Mr. Rittenberg—I offer it in evidence.
(Photograph marked exhibit P-4.)
Mr. Rittenberg—That is all.

20

By Mr. English:

Q. Was she a bright, smart, intelligent girl?
A. Yes.

Q. Spoke and understood English perfectly well? A. Yes.

Q. Wasn't of any foreign extraction? A. No.

Q. Read and wrote and all that? A. Yes.

30

Mr. English—That is all.

L. P. TUOHY, sworn.

Direct Examination by Mr. Rittenberg:

Q. Where do you live? A. Number 14 Twenty-first Avenue, Paterson, New Jersey.

L. P. Tuohy—direct

Q. Do—did you know Anna Cavanaugh? A. Yes, sir, I did.

Q. How long had you known her? A. I knew absolutely when she was born, because I am her uncle.

Q. About how old was she when she died? A. I should judge between, she would be, twenty-four and twenty-five years of age.

Q. Do you recall seeing Anna Cavanaugh in May of 1927? A. I do. 10

Q. Will you describe her general appearance to the Court and jury? A. Why, she was a girl, I should judge, about five foot four, and I should judge she would be between 123 and 126 pounds weight. I am not—I am giving you a leeway of three pounds each way.

Q. And from your observation of her in May, 1927, would you say—could you say whether or not her health was good or bad? 20

Mr. English—I object to that. He hasn't shown any qualifications.

The Court—I don't think so.

(The question was read by the reporter.)

The Court—That is a little broad. You may ask him what her appearance was.

Mr. English—Yes, sure.

Q. What was her appearance, Mr. Tuohy? 30

A. Her appearance to me was very good, seemed to be very bright and happy and never complained of any disease that she thought was serious.

Q. During the time you knew her, Mr. Tuohy, did you ever have an occasion to be in her company? A. Oh, several times.

L. P. Tuohy—cross

Q. Did you ever observe her to spit blood?

A. No, absolutely.

Q. Did you ever observe her to cough? A. No, I never knew or heard her coughing, and she has been several times in my company, in my house.

Q. Did you ever hear her cough constantly?

A. No, I did not.

10 Q. Are you related in any way to Anna Cavanaugh? A. Yes, I am her uncle by marriage.

Mr. Rittenberg—That is all.

The Court—Cross examine.

Cross Examination by Mr. English:

Q. Didn't she live at your house? A. No, but she used to visit frequently, as a niece would.

20 Q. Yes, I understand. And I suppose you were all very fond of her? A. Why, yes, we thought a lot of the girl because she was very kind to her aunts.

Q. You knew she went to Glen Gardner? A. Sir?

Q. You knew she went to Glen Gardner, didn't you? A. I did. I knew, but—

Q. Never mind. You have answered the question. Was she improved when she came back?

30 A. Why, I didn't see any improvement on her when she came back, no more than when she went away.

Q. About the same she looked to you? A. Just about the same.

Mr. English—That is all.

Archie J. Locker—direct

ARCHIE J. LOCKER, recalled.

Direct Examination by Mr. Rittenberg:

Q. Mr. Locker, will you describe the general appearance of your sister in May, 1927? A. In May, 1927, she was about five feet two or three inches in height in her stocking feet, and she weighed about 121 to 126 pounds, and she was close to my height when we both were in our stocking feet. She was a little shorter than I was. 10

Q. Would you say her general appearance—

Mr. English—No.

Q. What would you say her general appearance was in May, 1927? Good or bad? A. She was as healthy as I am right now. 20

The Court—Strike it out. He asked what her appearance was.

A. Her appearance was very good.

Q. Now, referring to P-3 marked in evidence, I ask you whether or not that photograph represents a likeness of your sister in May, 1927? A. It is an exact picture of her. Of course, it is small.

Q. During the time you knew her—that is, did you ever observe your sister to spit blood? A. No, sir. 30

Q. Cough constantly? A. No, sir.

Mr. English—I object. I don't know why these questions are asked. There is no such testimony in the case.

William Milsop—direct

Mr. Rittenberg—It is alleged in the defense—in the answer.

Mr. English—There is no proof of it.

Mr. MacLeod—I will consent to strike it out if counsel says he is not going to press it.

Mr. English—There is no proof of it.

The Court—You may proceed.

- 10 Q. Did you ever observe her coughing at all?
A. No, sir, I didn't. She lived in my house.

Mr. Rittenberg—That is all.

WILLIAM MILSOP, sworn.

Direct Examination by Mr. Rittenberg:

- 20 Q. Mr. Milsop, where are you employed? A. The local office of the Metropolitan Life Insurance Company.

Q. In what capacity? A. Assistant to the manager.

Q. Can you tell us, Mr. Milsop, what the premium on a ten-thousand-dollar twenty-payment life insurance policy was in May, 1927, on a girl's life, age twenty-five?

- 30 Mr. English—I object to it as immaterial.

The Court—What is the purpose of it?

Mr. Rittenberg—The purpose is to show the lack of reliance on any statement made or alleged to have been made by the assured.

The Court—I will sustain the objection.

Motion to Direct Verdict

Mr. Rittenberg—Your Honor will allow an exception?

The Court—Yes.

Mr. Rittenberg—No further questions.

Mr. English—No questions.

Plaintiff Rests in Rebuttal.

The Court—Is there any sur-rebuttal?

Mr. English—No, sir.

10

Both Sides Rested.

MOTION FOR DIRECTION OF VERDICT

Mr. English—I move for the direction of a verdict in favor of the defendant on the ground that there is evidence, unimpeached evidence, upon which reasonable minds cannot differ, to the effect that the insured made false statements in the application. Now, for the purpose of this motion I do not propose to go into the question of whether or not this lady knew she was suffering from tuberculosis or whether she looked well or did not look well in May of 1927 or at any other time. There are some representations made by her which cannot be the subject of dispute, and under the cases in this State, one of which I referred to your Honor, there can't be any question upon which reasonable minds could differ.

20

30

She was asked this question: "Have you ever been an inmate of or have you received treatment at any hospital, asylum, sanatorium, or cured? If 'Yes' give data, dura-

Motion to Direct Verdict

tion, name of ailment and name of institution." Answer "No."

(Discussion.)

Mr. English—Then the following question, for the purpose of this motion: "Have you ever consulted"—this question, number 11-G—"Have you ever consulted any physician for any ailment or disease not included in your answers above?" The answer to that question was "No."

10

Also this question, number 13: "What physician or physicians, if any, not named above, have you consulted or been treated by within the last five years and for what ailments or ailment?" Answer, "None."

(Discussion.)

(Mr. Rittenberg and Mr. MacLeod replied.)

20

The Court—I think the defendant in this case is entitled to a direction of a verdict.

Mr. MacLeod—We may have an exception?

The Court—Wait a minute.

This is a suit by Mr. Locker, the beneficiary of a policy of the Metropolitan Life Insurance Company, wherein they issued a policy upon the life of one Anna Cavanaugh, a brother of the plaintiff, and in which policy the plaintiff is named as the beneficiary. Now, there is an application attached to the policy which, as I view it, is the application which is binding upon the beneficiary in this case, and that seems to be the only subject-matter in dispute. Counsel has consented that there are no questions of fact other than that, such as

30

Motion to Direct Verdict

may be a question of fact, a disputed fact to be submitted to the jury. That, as I view it, is a question of law and I have already ruled that the application attached to the policy was binding upon the plaintiff in this case, for whom the policy was taken out.

There appear to be no other disputed questions of fact, and there are at least three questions in this case which have been submitted to the insured and which she had answered, and which on the undisputed testimony in this case seem to be untrue and of which there can be no doubt. They are, as I wrote them down, questions five, 11-G, and 13; the first of which was, "Have you ever been an inmate of or have you ever received treatment at an asylum, hospital, sanatorium, or cure? If 'Yes' give date, duration, name of ailment and name of institution." To that the applicant answered "No."

10

20

The undisputed testimony seems to be that she was an inmate of the sanatorium at Glen Gardner, for approximately four months shortly before the issuance of this policy and the signing of this application.

The next question, 11-G, "Have you consulted any physician for any ailment or disease not included in your above answers?" Answer, "No." As to that the undisputed testimony seems to be that she was treated by Dr. Becker from April 5, 1925, to April 21, 1925, during which time, May 5 to 14 he made six calls; that she consulted Dr. Hagen, who examined her for

30

Motion to Direct Verdict

tuberculosis in some connection with his City work; and that on April 25, 1925, about one month before the policy became effective she was examined for tuberculosis and he found she was in a moderately advanced stage of the right lung, having had the sputum examined by the State Board of Health.

10

Question 12, "What physician or physicians, if any, not named above, have you consulted or been treated by within the last five years and for what illness or ailment? If none so state." To which she answered, "None." That seems to be not in accordance with the facts shown by the testimony.

For these reasons I will order the jury to find a verdict for the defendant in this case and you may have an exception.

20

Mr. Rittenberg—Yes.

The Court—Members of the Jury: The Court has decided this case as a matter of law, relieving you from the necessity of deciding the questions of fact. I therefore direct you to find a verdict for the defendant in this case, and the clerk will take your verdict.

30

Mr. Rittenberg—The lack—the issuing of a twenty-year endowment policy in the amount of five thousand dollars instead of ten thousand dollars twenty-payment life, as applied for, doesn't constitute any reliance upon the statements made in the application.

Exhibit P-1

Metropolitan Life Insurance Company
 A Mutual Life Insurance Company—Incorporated by the State of New York
 No. 4950600A.

hereby insures the life of Anna Cavanaugh herein called the Insured, in accordance with the terms of this Policy, No. 4950300A and promises to pay at its Home Office in the City of New York five thousand dollars upon the surrender of this policy, to the Insured if living on the 25th day of May 1947 or to Archie J. Locker, brother, beneficiary, upon receipt of due proof of the prior death of the Insured. The right on the part of the Insured to change the beneficiary, in the manner hereinafter provided, is reserved.

10

This policy is issued in consideration of the Application therefor, copy of which Application is attached hereto and made part hereof, and of the payment for said insurance on the life of the above named Insured, of Fifty nine dollars and five cents, (which maintains this Policy in force for a period of 3 months from its date of issue, as set forth below) and of the payment hereafter of a like $\frac{1}{4}$ annual premium on each 25th day of May, August, November and February (hereinafter called the due date), until twenty full years' premiums shall have been paid or until the prior death of the Insured.

20

The provisions and benefits printed or written by the company on the following pages are a part of this policy as fully as if recited over the signatures hereto affixed.

20

In witness whereof, the Metropolitan Life Insurance Company has caused this policy to be executed this 25th day of May, 1927, which is the date of issue of this policy.

Jas. S. Roberts, Secretary; C. E. Bear, Policy Registrar; Haley Fiske, President.

Exhibit P-1

20 year endowment policy. Age 25. Premiums payable for 20 years or until prior death.

Annual distribution of Divisible Surplus.

PROVISIONS AND BENEFITS

10 1. Payment of Premiums—All premiums are payable, on or before their due dates, at the Home Office of the Company, or to an authorized Agent of the Company, but only in exchange for the Company's official premium receipt signed by the President, Vice-President, Actuary, Treasurer or Secretary of the Company and countersigned by the Agent or other authorized representative of the Company receiving the premium.

The payment of a premium shall not maintain this policy in force beyond the due date when the next premium is payable, except as hereinafter provided.

20 If the premium shall have been paid for the period during which the death of the Insured occurs, then, if such period be greater than one month, the company will pay, in addition to the amount otherwise payable under this policy, that portion of such premiums applicable to the policy month or months subsequent to the policy month when death occurred. A grace period of thirty-one days, without interest charge, will be granted for the payment of every premium after the first, during which grace period the insurance shall continue in force, but if the Insured dies during such period the portion of the unpaid premium for insurance for the current month shall be considered as an indebtedness to the company for which this policy is security.

30 On written request of the Insured, approved by the company at its Home Office, premium payments may be changed, at any anniversary of the date of issue of this policy, so as to be payable annually, semi-annually or quarterly in ac-

Exhibit P-1

cordance with the published rates in force at the date of issue of this policy.

2. Age—If the age of the Insured has been misstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

3. Incontestability—This policy shall be incontestable after it has been in force for a period of two years from its date of issue, except for non-payment of premiums, and except as to provisions and conditions relating to benefits in the event of total and permanent disability, and those granting additional insurance specifically against death by accident, contained in any supplementary contract attached to, and made part of, this policy. 10

4. Entire Contract—This policy and the application therefor constitute the entire contract between the parties, and all statements made by the Insured, shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid this policy or be used in defense of a claim hereunder unless it be contained in the application therefor and a copy of such application is attached to this policy when issued. 20

5. Suicide—If the Insured within one year from the date of issue hereof die by his own hand or act, whether sane or insane, the liability of the company hereunder shall be limited to an amount equal to the premiums which have been received, without interest. 30

6. Change of Beneficiary—When the right to change the beneficiary is reserved, and if there be no written assignment of this policy on file with the company, the Insured may (while this policy is in force) designate a new beneficiary, with or without reserving the right of change thereafter,

Exhibit P-1

by filing written notice thereof at the Home Office of the company accompanied by this policy for suitable endorsement. Such change shall take effect upon endorsement of the same on this policy by the company. If any beneficiary shall die before the Insured the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein.

10

7. Assignment—No assignment of this policy shall be binding upon the company unless it be executed upon blanks furnished by the company and filed with the company at its Home Office in the City of New York. The company assumes no obligation as to the validity and sufficiency of any assignment.

20

8. Agents—No agent is authorized to waive forfeitures, to alter or amend this policy, to accept premiums in arrears or to extend the due date of any premium.

Application to the Metropolitan Life Insurance Company

To be used when amount applied for is over \$2,000
Ordinary or Intermediate

Part A

30

1. Full name—Anna Cavanagh.
2. Residence—No. 193 Ackerman Ave, Glen Rock, County of Bergen, State of New Jersey.
How long have you resided at this address?
2 years.
3. Place of birth—Paterson, N. J.
4. Date of birth—January 10, 1902. Age nearest birthday 25 years.
5. Separated.
6. Occupation—Stenographer and cashier.
Nature of employer's business—Peoples Nat. Loan Co.
7. Exact duties of occupation—stenographer and cashier.

Exhibit P-1

8. Any change in occupation contemplated?
If yes, give particulars. No.

9. Place of Business — Main & Canfield,
Orange, N. J. By whom employed — Peoples
Nat. Loan Co.

10. Former occupation — Stenographer and
same as above.

11. Do you, within the next twelve months,
contemplate journeying outside the United States
or Canada or making an ocean trip? If yes,
state when, where to, for what purpose and for
how long? No. 10

12. Have you any intention of making aerial
flights within the next two years? A. No.

13. Have you any other application or negotia-
tion for life, accident, or health insurance now
pending or contemplated? No.

14. Amount of insurance desired. \$10,000 or-
dinary. Prem. payable quarterly. 20

15. Plan of insurance as designated in rate
book? 20 payment life.

16. a. Beneficiary in case of your death—Ar-
chie J. Locker. Relationship of proposed bene-
ficiary—brother. Occupation—broker. Age—32.
P. O. Address—193 Ackerman Ave.

(b) Do you reserve the right to change the
beneficiary at any time without the consent of
beneficiary herein designated? Yes.

17. Is any one entirely dependent on you for 30
support? No.

18. Are you now insured in this or any other
company? Prudential, \$1000, 20 y. e., 1925.

What amount of the above insurance carries
(a) disability provision? No. (b) Accidental
death benefit? (Double indemnity) No.

19. If now applying for disability provision,
state amount of weekly benefit agreed under

Exhibit P-1

Health policies issued by this or by any other company. No.

20. If the policy for which you are hereby applying intended to take the place of insurance carried with this or any other company? No.

21. What amount have you paid in advance on account of the first premium? None.

22. Corrections and Amendments. (For Home Office use.)

10 23. Have you ever applied to any company or association without receiving insurance in the amount or on the plan applied for, or at your actual age, or at the normal premium therefor? No.

24. What are the sources of your income? \$50 weekly.

25. Number of children living, age and occupation of each—none.

20 26. Husband's name? Separated from husband.

27. In what companies and for what amount is he insured in your favor? If in Metropolitan give policy numbers. If not insured in your favor, state why not. Husband's insurance was in his mother's name.

30 It is understood and agreed: 1. That the foregoing statements and answers are correct and wholly true, and, together with the answers to questions on Part B hereof, they shall form the basis of the contract of insurance, if one be issued.

2. That no agent, medical examiner or any other person, except the Officers of the Company, have power on behalf of the Company: (a) to make, modify or discharge any contract of insurance, (b) to bind the Company by making any promises respecting any benefits under any policy issued hereunder.

Exhibit P-1

3. That no statement made to or by, and no knowledge on the part of, any agent, medical examiner or any other person as to any facts pertaining to the Applicant shall be considered as having been made to or brought to the knowledge of the Company unless stated in either Part A or B of this application.

4. That the Company shall incur no liability under this application until it has been received, approved, and a policy issued and delivered, and the full first premium stipulated in the policy has actually been paid to and accepted by the Company during the lifetime of the Applicant, in which case such policy shall be deemed to have taken effect as of date of issue as recited on the first page thereof. 10

5. In case of apparent errors or omissions discovered by the Company in Part A of this application the Company is hereby authorized to amend this application by noting the change in the space entitled "Corrections and Amendments", and I hereby agree that my acceptance of such policy, accompanied by a copy of the application so amended, shall operate as a ratification of such changes or amendments, provided, however, that no change shall be made as to amount, classification, plan of insurance or benefits, unless agreed to in writing by me. 20

Signed by applicant at Paterson this 2nd day of May, 1927. Witness to signature—J. Freedman. Signature of applicant—Anna Cavanagh. 30

Part B.

Continuation of the Application. Applicant's Statements to the Medical Examiner.

1. What is your occupation? Stenographer and Cashier of Loan Co.
2. Have you ever undergone a medical examination for insurance and failed to receive the ex-

Exhibit P-1

act amount or kind of policy applied for? No.

3. Have you during the past year resided or been intimately associated with any person suffering from tuberculosis? No.

4. Has any of your parents, brothers or sisters now, or ever had, tuberculosis, cancer, diabetes, epilepsis, insanity or any hereditary disease? No.

10 5. Have you ever been an inmate of, or have you ever received treatment at any asylum, hospital, sanatorium or cure? No.

6. Have you ever changed residence or traveled for your health? No.

7. Have you ever received or applied for a pension or disability or compensation benefits from any government or from any municipal or private corporation or have you ever received or applied for any benefit under a policy of accident or health, workmen's compensation or fraternal insurance? No.

20

8. Have you ever taken Insulin treatment? No.

9. Have you ever used opium, chloral, cocaine, or other narcotics? No.

10. (a) To what extent do you use beer, wine or other alcoholic beverages? None. (b) Have you ever used any of them to excess? No.

30

11. Have you ever suffered from any ailment or disease of (a) the brain or nervous system? No.; (b) the heart or lungs? No.; (c) the stomach or intestines, liver, kidneys or genito-urinary organs? No.; (d) the skin, bones, glands, ears or eyes? No.

12. (a) Have you ever had rheumatism, gout or syphilis? No.; (b) have you ever had paralysis or insanity? No.; (c) have you ever had diabetes, pleurisy or pneumonia? No.; (d) Have you ever raised or spat blood? No.; (e) have you ever had any accident, injury or occupational disease?

Exhibit P-2

No; (f) have you ever had any special operation?

No; (g) have you consulted a physician for any ailment or disease not included in your answers?

No.

13. What physician or physicians, if any, not named above, have you consulted or been treated by, within the last five years and for what illness or ailment? None.

14. Family record—(dead)—father, cause, unknown. Mother—cause, unknown, in 1912.

10

Family record—living—brothers, 2, none dead. Age 32—good health; age—28 good health. Sisters, 2; none dead. Age 30—good health; age 21—good health.

I hereby certify that I have read the answers to the questions in Part A and to the questions in Part B hereof, before signing, and that they have been correctly written, as given by me, and that they are full, true and complete, and that there are no exceptions to any such answers other than as stated herein.

20

Dated at Paterson, N. J., this 19th day of May, 1927. Witness to signature—K. E. McCamey, M. D. Signature of applicant—

EXHIBIT P-2

Claim Division—Ordinary Department.

PROOF OF DEATH

Metropolitan Life Insurance Company

Declaration Made by Claimant

30

To the Metropolitan Life Insurance Company:

I desire to file the following Statement of Physician with and as part of the Proofs of Death submitted by me under Policy No. 4950600A. Name of Insured—Anna Cavanagh. A. J. Locker, Claimant. Witness—Wm. Milsop.

Exhibit P-2

STATEMENT OF PHYSICIAN

1. Full name of deceased—Mrs. Anna Cavanaugh.
2. Residence—No. 20, Madison Avenue, Paterson, N. J.
3. Date of death?—Aug. 22, 1927.
4. Sex?—Female. White or colored?—White. Age at death?—25 yrs. Apparent Age?—25 yrs.
5. Place of death?—St. Joseph's Hospital, Paterson, N. J.
6. Cause of death?—Childbirth.
Duration from personal knowledge 7 mos.
7. Date of your first visit in last illness?—March, 1927.
8. Date of your last visit?—June, 1927.
9. How long had deceased been ill when you were called to attend in last illness? Ten days.
10. Did deceased ever suffer from any form of tuberculosis?—Don't know.
11. Was deceased afflicted with any infirmity, deformity or chronic disease?—No.
12. Was death due to suicide, homicide or accident?—No.
13. Was there an inquest or post-mortem examination?—No.
14. Was deceased ever treated by another physician or at any hospital or other institution prior to, during, or subsequent to your attendance?—St. Joseph's Hospital.
15. Was there any cause, remote or proximate for the death in the habits, residence, family history, or in the use of alcohol or drugs?—No.
16. Occupation?—Housewife.
17. Did any member of deceased's family die of tuberculosis?—Don't know.

Exhibit P-2

18. Have you previously filled out a certificate for this death for this or any other company?—
No.

19. Please state the disease or diseases for which you attended deceased and dates of attendance other than asked in questions 6, 7 and 8.
From 192 to 192 for bronchitis.
Duration 2 weeks.

From 192 to 192 for bronchitis. 10
Duration 2 weeks.

20. Did you certify the death to the Board of Health or Registrar of Vital Statistics?—No.

21. From what college did you graduate and date of graduation?—M. M. C. 1913.

I hereby certify that the answers as above recorded are complete and true to the best of my knowledge and belief?—Lawrence B. Boylan, No. 630 Main St., Paterson, N. J.

State of New Jersey 20
County of Passaic

Before me, a Notary Public in and for the above county and state, this 7th day of September, 1927, appeared Lawrence B. Boylan, known to me as a physician in regular standing, and made oath that he personally signed the above statement and the answers by him given to the foregoing questions are true and full to the best of his knowledge and belief.

Ratie Schagen 30

(Seal)

Claim Division—Ordinary Department.

PROOF OF DEATH

Metropolitan Life Insurance Company

Declaration Made by Claimant

To the Metropolitan Life Insurance Company:

I desire to file the following Statement of

Exhibit P-2

Physician with and as part of the Proofs of Death submitted by me under Policy No. 4950600A. Name of Insured—Anna Cavanagh. A. J. Locker, Claimant. Witness—Wm. Milsop.

STATEMENT OF PHYSICIAN

1. Full name of deceased—Mrs. Anna Cavanaugh.
2. Residence—No. 20, Madison Avenue, Paterson, N. J.
- 10 3. Date of death?—Aug. 22, 1927.
4. Sex?—Female. White or colored?—White. Age at death?—25 yrs. Apparent Age?—25 yrs.
5. Place of death?—St. Joseph's Hospital, Paterson, N. J.
6. Cause of death?—Tuberculosis complicated by pregnancy.
Duration from personal knowledge 7 mos.
Contributory or secondary—Pregnancy.
Duration 7 mos 15 days.
- 20 7. Date of your first visit in last illness?—Aug. 20, 27.
8. Date of your last visit?—Aug. 22, '27.
9. How long had deceased been ill when you were called to attend in last illness?—Don't know.
10. Did deceased ever suffer from any form of tuberculosis?—Pulmonary T. B.
11. Was deceased afflicted with any infirmity, deformity or chronic disease?—No.
- 30 12. Was death due to suicide, homicide or accident?—No.
13. Was there an inquest or post-mortem examination?—No.
14. Was deceased ever treated by another phy-

Exhibit P-2

sician or at any hospital or other institution prior to, during, or subsequent to your attendance?—Don't know.

15. Was there any cause, remote or proximate, for the death in the habits, residence, family history, or in the use of alcohol or drugs?—Don't know.

16. Occupation?—Housewife.

17. Did any member of deceased's family die of tuberculosis?—Don't know. **10**

20. Did you certify the death to the Board of Health or Registrar of Vital Statistics?—Yes.

I hereby certify that the answers as above recorded are complete and true to the best of my knowledge and belief—Joseph F. Kennedy, St. Joseph's Hospital, Paterson, N. J.

State of New Jersey
County of Passaic

Before me, a Notary Public in and for the above county and state, this 7th day of September, 1927, appeared Joseph F. Kennedy, known to me as a physician in regular standing, and made oath that he personally signed the above statement and the answers by him given to the foregoing questions are true and full to the best of his knowledge and belief. **20**

Ratie Schagen

(Seal)

Claim Division
PROOF OF DEATH **30**

Metropolitan Life Insurance Company
Ordinary Department

1. Statement of the Claimant.

Number of policy—4950600A. Date of issue—
May 25. Amount of insurance—5000.

Exhibit P-2

1. Full name of deceased—Anna Cavanaugh.
2. Residence—Ackerman Ave., Glen Rock, N. J.
3. Date of birth—Jan. 8, 1902. Place of birth—Paterson, N. J.
4. Date of death—Aug. 22/27.
5. Cause of death—Childbirth and labor.
6. Place of death—St. Joseph's Hospital, Paterson, N. J.

10 8. Occupation of deceased — bookkeeper and managing office.

9. Give date deceased quit work—July 1st, 1927.

10. Had deceased ever received treatment at any hospital, dispensary or other institution?—No.

11. If any other policies on deceased in this company? No.

20 12. Was deceased insured in any other company or society?—Prudential Life Ins. Co. \$960.

13. By what right or relationship do you claim the proceeds of the insurance?—Brother.

14. Was the policy ever assigned, or any proceedings in bankruptcy or insolvency pending at the death of the insured?—No.

30 15. Names of every physician who attended deceased during last illness and during two years prior to death, and dates of their attendance.—Dr. Boylan, Main St. Dr. Kennedy, St. Joseph's Hospital.

The undersigned hereby certifies that the foregoing answers apply to the life heretofore insured; that all premiums have been duly paid; and that whatever other and further proofs may be required by the Metropolitan Life Insurance Company will be furnished by the undersigned

Exhibit D-1

upon demand by said company. Archie J. Locker.
Age 32. No. 193 Ackerman Ave., Glen Rock, N. J.

State of New Jersey
County of Passaic

Before me, a Notary Public in and for the
stated county and state, this 7th day of September
appeared Archie J. Locker, known to me,
and made oath that he personally signed the above
statement and that the answers by him given to
the foregoing questions are true, and full to the
best of his knowledge and belief.

10

Ratie Schagen,
Notary Public of N. J.

(Seal)

EXHIBIT D-1.

Part B.

Continuation of the Application. Applicant's
Statements to the Medical Examiner.

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1. What is your occupation? Stenographer
and Cashier of Loan Co.

2. Have you ever undergone a medical examin-
ation for insurance and failed to receive the ex-
act amount or kind of policy applied for? No.

3. Have you during the past year resided or
been intimately associated with any person suf-
fering from tuberculosis? No.

4. Has any of your parents, brothers or sis-
ters now, or ever had, tuberculosis, cancer, dia-
betes, epilepsy, insanity or any hereditary dis-
ease? No.

30

5. Have you ever been an inmate of, or have

Exhibit D-1

you ever received treatment at an asylum, hospital, sanatorium or cure? No.

6. Have you ever changed residence or traveled for your health? No.

10 7. Have you ever received or applied for a pension or disability or compensation benefits from any government or from any municipal or private corporation or have you ever received or applied for any benefit under a policy of accident or health, workmen's compensation or fraternal insurance? No.

8. Have you ever taken Insulin treatment? No.

9. Have you ever used opium, chloral, cocaine, or other narcotics? No.

10. (a) To what extent do you use beer, wine, or other alcoholic beverages? None. (b) Have you ever used any of them to excess? No.

20 11. Have you ever suffered from any ailment or disease of (a) the brain or nervous system? No.; (b) the heart or lungs? No.; (c) the stomach or intestines, liver, kidneys or genito-urinary organs? No.; (d) the skin, bones, glands, ears or eyes? No.

30 12 (a) Have you ever had rheumatism, gout or syphilis? No; (b) have you ever had paralysis or insanity? No.; (c) have you ever had diabetes, pleurisy or pneumonia? No; (d) Have you ever raised or spat blood? No; (e) have you ever had any accident, injury or occupational disease? No; (f) have you ever had any special operation? No; (g) have you consulted a physician for any ailment or disease not included in your answers? No.

Exhibit D-3

13. What physician or physicians, if any, not named above, have you consulted or been treated by, within the last five years and for what illness or ailment? None.

14. Family record—(dead)—father, cause, unknown. Mother—cause, unknown, in 1912.

Family record—living—brothers, 2, none dead. Age 32—good health; age—28 good health. Sisters, 2; none dead. Age 30—good health; age 21—good health.

10

I hereby certify that I have read the answers to the questions in Part A and to the questions in Part B hereof, before signing, and that they have been correctly written, as given by me, and that they are full, true and complete, and that there are no exceptions to any such answers other than as stated herein.

Dated at Paterson, N. J., this 19th day of May, 1927. Witness to signature—K. E. McCamey, M. D. Signature of applicant—Anna Cavanagh.

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EXHIBIT D-3

State of New Jersey

Request for voluntary admission of patient to the
New Jersey Sanatorium for Tuberculous
Diseases

To the Chief Executive Officer of the New Jersey
Sanatorium for Tuberculous Diseases.

I, Anna Cavanaugh the undersigned, residing in Glen Rock, Ackerman Ave., in the County of Bergen and State of New Jersey, am desirous of obtaining admission for Myself into the New Jersey State Sanatorium at Glen Gardner as a indigent, non-indigent, voluntary patient as one having a tuberculous disease of the respiratory organs of a

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Exhibit D-3

curable nature, and do hereby request that I be admitted for care and treatment in said institution, in accordance with Chapter 147 of the Laws of New Jersey of 1918, because of belief that I am in danger of being afflicted with such a tuberculous disease of the respiratory organs of an incurable nature.

10 I have resided in the State of New Jersey for one year continuously, immediately preceding this application, and for the past ten years have resided in the following places: 49 21st Ave., Paterson, N. J.; 43 Brighton Road, Allwood, N. J. 5 years; 66 Liberty St., Passaic, N. J., 1½ years; 177 Highland Ave., Passaic, N. J., 1½ years.

The following is a full statement of my financial ability to support or such person or persons as are chargeable by law with such support: No means but brother may give some support.

20 The names addresses and relationship of my next of kin are as follows, viz:

Grandparents Anna Locker—Not known. In Switzerland.

Parents, Deceased.

knows and will testify for me Mrs. Pardo, 149 Washington Ave., Clifton, N. J.; Mrs. J. Watson, 43 Brighton Road, Allwood, N. J.; A. J. Locker, Ackerman Ave., Glen Rock, N. J.

80 Husband: Daniel Cavanaugh—Address not known.

The patient was born on January 10, 1902, Paterson, in the County of Passaic and State of New Jersey.

If this application be approved, I promise to abide by the rules of the institution.

Dated April 21, 1925.

Exhibit D-4 D-5

Name of person making request: Anna Cavanaugh.

Street and number: Ackerman Ave., Glen Rock,
c/o A. J. Locker.

County: Bergen.

State of New Jersey.

Witness: Isabelle C. Young, R.N.

EXHIBIT D-4

(To be filled in by the physician)

10

Is this the first specimen from this case? Yes.

Date April 10, 1925. Hour 10 A. M.

Sent by Dr. L. V. Becker. Street and No. 69
Ward St. Town Paterson.

Name of patient Anna Cavanaugh. Street and
No. Ackerman Ave. Town Glen Rock.

Age 23. Sex female. Color White. Occupa-
tion Cotton weaver. Duration of disease five
months. How and where contracted Exposure.

20

Clinical diagnosis Pulmonary T. B. Are there
any other cases of consumption in the same family
or house? Mother died of Tuberculosis.

(To be filled in by the bacteriologist)

Rec'd Apr. 13 1925.

Ex X

Examined by J. A. M.

EXHIBIT D-5

Board of Health

Bureau of Vital Statistics

30

City of Paterson

Passaic County, State of New Jersey

United States of America

I, James A. Young, Registrar of Vital Statistics
of the City of Paterson, Passaic County, State of

Exhibit D-6

New Jersey, do hereby certify that the following is a true and correct transcript from the Records of Deaths in my office:

Date of Death: August 22, 1927.

Full Name of Deceased: Anna S. F. Cavanaugh

Age: 25 Years. Sex: Female. Color: White.

Condition: Married. Occupation: Housewife.

Birthplace: Paterson, N. J.

10 Residence: 20 Madison Ave., Paterson, N. J.

Place of Death: St. Joseph Hospital.

Father's Name: Archie Locker. Birthplace: Switzerland.

Mother's Name: Jessie M. Fox. Birthplace: Scotland.

Cause of Death: Pulmonary Tuberculosis complicated by pregnancy.

Medical Attendant: Joseph Kennedy M.D.

Name of Undertaker: H. Hanstein & Sons.

20 Place of Burial: Calvary Cemetery.

In Witness Whereof, I have set my hand and affixed the Seal of the Board of Health of said City this 9th day of Nov., 1928.

James A. Young,

Registrar of Vital Statistics.

(Seal)

EXHIBIT D-6.

Phone—Ridgewood 1112M. Case No. 1910.

30 PATERSON TUBERCULOSIS CLINIC

Name—Cavanaugh, Anna. Age—23 F. Date—April 21, 1925. Color—white. Religion—catholic.

Address—Ackerman Ave., Glen Rock, c-o A. J. Locker. Length of residence—3 months. Occupation—weaver. Nationality—American. Previous residence—Passaic, N. J.

Exhibit D-6

Family history—Sister Hilda has T. B. Father and mother died of T. B. Exp. to Inf.—mother.

P. H. chicken pox—no; scarlatina—no; typhoid—no; malaria—no; pneumonia—no; diphtheria—no; pertussis—no; tonsilitis—yes; measles—yes; chorea—no; grippe—no; pleurisy—yes; mumps—no; rheumatism—no; appendicitis—no; diarrhoea—no; influenza—yes.

Previous illness—last in usual health; date 1923. Stopped work; date April 4, 1925. Onset (date) and progress—gradual. 10

Previous treatment—private physician: Dr. Becker.

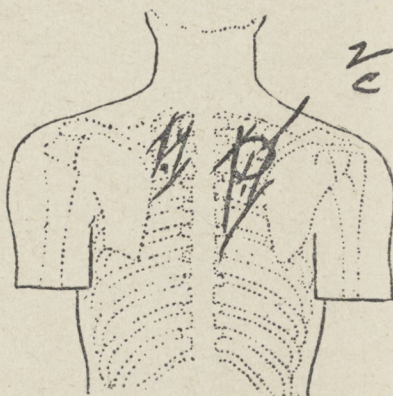
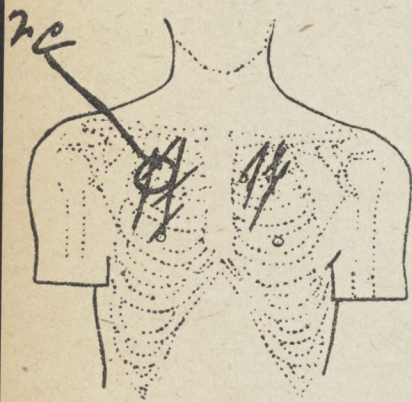
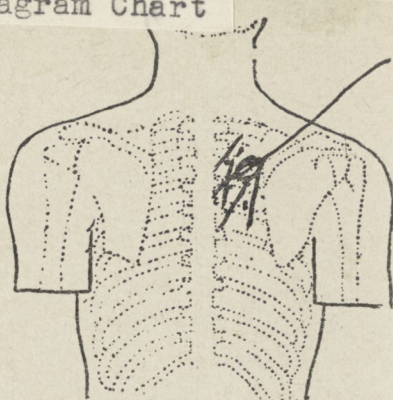
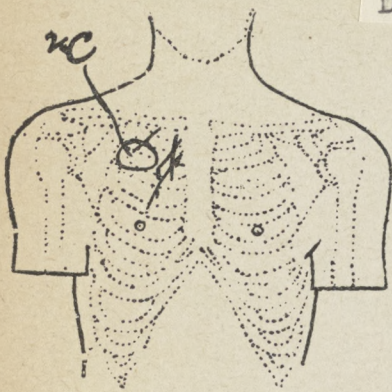
Symptoms	Present
Cough	Yes
Expectoration	Yes
Pain in Chest	Yes
Sh. of Breath	Yes
Throat	No
Hemoptysis	Yes
Elev. of Temp.	100
Pulse Range	100
Loss of Strength	Yes
Loss of Appetite	Poor
Nightsweats	Yes

Weight: usual 125; present 103 $\frac{1}{8}$.

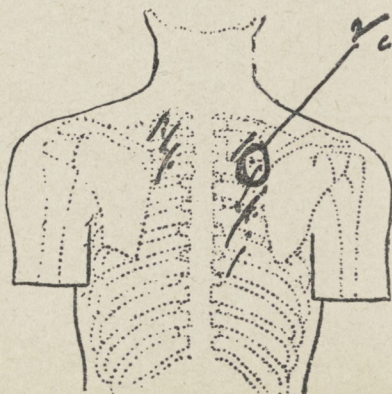
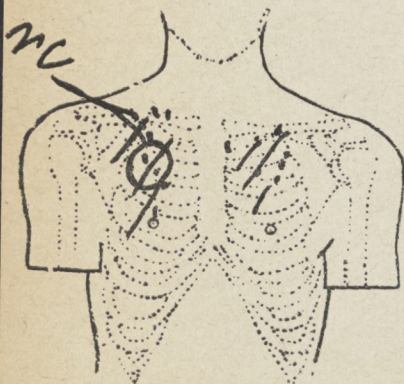
Ex. Physician—O. R. H. Anatomical Diagnosis: Rb Apex. Diagnosis: T—B.C. Advice: G. G. Died at City Hospital 8-22-27. 20

New Jersey Sanitarium For Tuberculosis Diseases
Diagram Chart

5-26-25
Dr. A. L. B.



6-23-25
Dr. A. L. B.

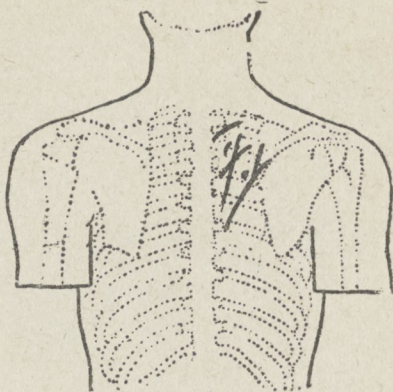
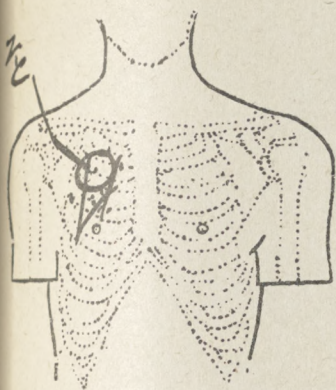


7-23-25
Dr. A. L. B.

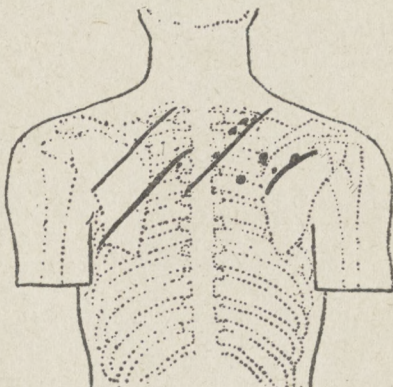
New Jersey Sanitarium For Tuberculosis Diseases
Diagram Chart

113

EXHIBIT D-8



8-24-25
Dr. A. L. B.



9-10-25
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New Jersey Court of Errors and Appeals

Archie J. Locker, Plaintiff-Appellant, vs. Metropolitan Life Insurance Company, a Corporation, Defendant-Appellee.	}	Action at Law, On Appeal
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Brief of Plaintiff-Appellant

STATEMENT OF FACTS

The appeal in this case brings up for review in this Court a judgment entered in the Passaic County Circuit Court on December 27th, 1928.

The record of the case indicates that on May 2nd, 1927, Anna Cavanagh made application to the Metropolitan Life Insurance Company, the defendant, for a Ten-Thousand Dollar, (\$10,000.00) twenty (20) payment life insurance policy. That the Metropolitan Life Insurance Company did not issue the policy applied for by the said Anna Cavanagh, and in lieu thereof issued a Five-Thousand Dollar, (\$5,000.00) twenty (20) year endowment policy to her on the 25th day of May, 1927. The premium on the said policy was paid by the said Anna Cavanagh, the assured and on August 22nd, 1927, the insured died.

Archie J. Locker, the plaintiff and the brother of the assured was the beneficiary named in the said policy. Upon the presentation of the certificate of death of the assured in accordance with the terms and provisions of the said policy the

defendant refused to pay the sum of Five-Thousand Dollars, (\$5,000.00).

Thereupon suit was commenced in the Passaic County Circuit Court by Archie J. Locker, the beneficiary as plaintiff against the Metropolitan Life Insurance Company as defendant, for the sum of Five-Thousand Dollars, (\$5,000.00) the face value of the said policy.

The defendant, Metropolitan Life Insurance Company, by way of defense to the said action set forth that the assured was guilty of fraud. It alleged that the fraud consisted in the failure of the assured to answer truthfully certain questions which appeared in the application for the Ten-Thousand (\$10,000.00) Dollar, twenty (20) payment life insurance policy.

It appears from the record of the case that the policy applied for by the assured was never issued, nevertheless the application for that policy was attached to the Five-Thousand dollar (\$5,000.00), twenty (20) year endowment policy upon which this suit was based. There is no proof in the entire case that there was ever a formal application made by the assured for the policy under consideration in this cause.

It was contended at the trial of this cause that the application for the Ten-Thousand Dollar (\$10,000.00), Twenty (20) payment life insurance policy even though physically attached to the policy actually issued by the defendant formed no legal part of the same.

It was also contended at the trial that evidence in contradiction of the statements made in the application for the Ten-Thousand Dollar (\$10,000.00), twenty (20) payment life insurance

policy was not admissible in this matter since the application formed no part of the policy upon which the plaintiff's cause of action was based.

The trial court over-ruled the above contentions and at the close of the defendant's case directed a verdict for the defendant.

This together with other rulings of the trial court the plaintiff contends was error.

POINT I.

THE TRIAL COURT ERRED IN DIRECTING A VERDICT FOR THE DEFENDANT.

A. There was no legal proof of fraud adduced by the defendant.

The defendant contends the assured's fraud consisted in her failure to truthfully answer the questions set forth in Part A, Part B and Part C of the application attached to the policy upon which this action was based. Page 4, 5, 6 and 7, State of Case.

The trial court directed a verdict because an answer to a question in the said application as to whether the insured had ever been an inmate or ever received treatment at an asylum, hospital or cure, was untrue and because a question in the application as to whether she had consulted physician for any ailment or disease was not truthfully answered and further because the assured failed to state what physician or physicians, if any, did she consult within the last five years and for what illness or ailment. State of Case, Page 88, line 24-40; Page 89, 90.

All of the questions and answers aforementioned were contained in the application annexed to Exhibit P-1, (State of Case, P. 94, l. 21; P. 98, l. 10-12; P. 99, l. 2-9).

That these questions and answers were not binding on the assured or the plaintiff is obvious.

They were all set forth in the application for Ten-Thousand Dollar (\$10,000.00) twenty (20) payment life insurance policy. (State of Case, P. 94, l. 21; P. 95, ls. 19-22.

But no such policy was issued and in lieu thereof a Five-Thousand Dollar (\$5,000.00) twenty (20) year endowment policy was issued. (State of Case, P. 91, ls. 1-40; P. 92, l. 1-2.

No contract of insurance came into existence by virtue of the said questions and the answers set forth in the application for the Ten-Thousand Dollar (\$10,000.00), twenty (20) payment life insurance policy since.

“An application for insurance is simply a request, proposition, or proposal for or offer to accept, a contract or policy of insurance and does not become a contract until it is accepted by the company; the company is at liberty to accept or reject it.” 32-Corpus Juris, 1102, Section 188.

The defendant did not accept the proposal of Anna Cavanagh because it did not issue the policy for which the application was made.

The acceptance of the application in order to be good must be of the very term offered, otherwise no contract can result. 32 Corpus Juris 1105, Section 188, First National Bank vs. Hall, 101

U. S. 43; Hemhauser v. Metropolitan Life Ins. Company, 106 N. J. Eq., page 18.

Until there has been an acceptance of the terms proposed, the meeting of the minds which is necessary to the contract is wanting. McNichol v. N. Y. Life Ins. Co., 149 Fed., 141; 9 Anotated Cases, page 220-222.

In this case the minds of the assured and the defendant did not meet with reference to the Ten-Thousand Dollar (\$10,000.00) twenty (20) payment life insurance policy.

The issuance of the Five-Thousand (\$5,000.00) twenty (20) year endowment policy was tantamount to a rejection of the assured's application for a Ten-Thousand Dollar, (\$10,000.00) twenty (20) payment life insurance policy.

"The issuance of a policy different from that applied for is in effect the rejection of the offer contained in the application and the making of a counter proposition in the place of it. The counter proposition results in a consummated contract when it is accepted by the applicant." 9 Annotated Cases, page 220-222; Mohistadt v. Mutual Life Ins. Co., 115 Fed., 81; Chase v. Hamilton Mutual Ins. Co., 20 N. Y., 52.

The issuance of the Five-Thousand Dollar (\$5,000.00) twenty (20) year endowment policy by the defendant became a contract when accepted by the assured and the premiums paid therefor.

The assured paid the premium for the Five-Thousand Dollar, (\$5,000.00) twenty (20) year endowment policy. State of Case, Page 18, lines 31-34.

There is no denial of this fact by the defendant nor was there any issue made of it at the trial.

Thus it appears that the alleged misstatements of the assured in the application for an insurance policy which was never accepted but in fact rejected cannot be said to have induced the contract of insurance upon which this action was based.

A rejected statement cannot be the basis of fraud.

In the case of Aetna Indemnity Co. v. J. R. Crowe Coal and Mining Company, 154 Fed., 545, the legal situation was identical with that presented in the case at bar.

In that case there was an application for an indemnity bond in which said application certain answers to questions propounded were to be considered as warranties or conditions precedent to the validity of the bond. The insurance company did not issue the bond applied for and in its stead issued a renewal bond. In a suit based on that bond the insurer attempted to avoid liability on the ground of alleged fraudulent statements contained in the application for the bond which was not issued. The Court held that the insurer could not escape liability.

At page 554 Judge Adams of the United States

Circuit Court of Appeals reviews the facts and the applicatory law:

“The application and statement of February 24th seems to have been intended for the purpose of originating a new contract—certainly some other contract other than the renewal of the old one of 1901. *The parties were competent to contract and had it in their power either to renew the old or make a new contract. They determined to renew the old one, because they did it, and the application of Graves for a new one to date February 1st, 1903 and running to February 15th, 1904 was not accepted because no such contract as that application contemplated was ever made. Accordingly the agreement found at the end of the statement making the answers to questions propounded in it warrants or conditions precedent to the validity of the bond has no application to this case. Parties have an undoubted right to make their own contracts and when they are reduced to writing in plain and unambiguous language they must stand as written and be enforced accordingly. It does not follow because plaintiff proposed to defendant or was willing to make the truth of certain statements a condition precedent to liability on one proposed contract, it intended to make those statements conditions of liability if some other and different contract should be afterward made by the parties. . . .*”

On page 555 and 556 he continues,

“Without dwelling on the improbability of rational and experienced men making a contract ignoring the language of the statement of February 24th and expressly making it subject to the covenants and conditions of some other instrument, if they had in fact agreed that the contract should be subject to the conditions of that statement, a brief reference to certain undisputed proof and applicatory law will on other well established principles dispose of this case. In December, 1902, when negotiations were in progress looking toward an extension of bond F. 1774 for the secured year which had then partially expired, defendants wrote its local agents in Kansas City informing them that the employee's statement on which the original bond was based was not the proper one, and enclosed a blank form on which the statement of February 24th was subsequently written to be filled out by the plaintiff. The blank contained no reference to the original contract, but with particular reference to a proposed bond. It amounted to a proposition to the defendant in effect, that if it would issue a new bond in Graves' pending application to date Feb. 1st, 1903 and run to Feb. 15th 1904, it would agree to perform certain conditions and that the performances thereof should be a condition precedent to its validity. This proposition was forwarded to the home office of the defendant in New York and received

there on the 2nd of March following. Some correspondence ensued between the defendant's local agents in Kansas City not shown to have been communicated to plaintiff. *After which, the defendant regardless of the terms of the plaintiff's proposition returned to its agents to be delivered to plaintiff a renewal of the original bond insuring it against Graves's defalcations from June 1st, 1902 to June 1st, 1903.*

After that renewal expired without any further negotiations and without making any reference to the propositions of Feb. 24th, it executed its second renewal of the old bond subjecting the plaintiff not to the covenants and conditions of the applications and statement of Feb. 24th but to terms and conditions of the old bond. The contract sued on is essentially a contract of indemnity against loss and the general rules governing the construction of ordinary life and fire insurance policies are applicable to it. Jockson v. Fidelity Co. 75 Fed., 359, 356. Guarantee Co. v. Mechanic Savings Bank, 80 Fed., 766; Champion and Co. v. American Bonding and Trust Co., 115 Ky., 863, 872. American Surety Co. v. Panly, supra. The statement of Feb. 24th was obviously made to secure favorable action on Graves' pending application and in effect formed a part of it.

It is well settled that an application for insurance is a proposition to the insurance Company which must be accepted as made, if at all. If a policy is executed and of-

ferred to the applicant different in any material respects from the application, it is in effect a rejection of the application, and a new proposition by the company which the applicant may accept or reject at his pleasure. Insurance C. v. Young Administration 23 Wall 85. Minneapolis Ry. Co. v. Columbus Rolling Mills 119 U. S. 149, McNichol v. N. Y. Life Insurance Co. 149 Fed. 141.

From the foregoing as well as from the consideration of the evidence which has been critically examined it is clearly apparent ^{we think that the defendant never accepted} the proposition found in the statement of February 24th, but for reasons satisfactory to itself proposed to renew and to continue the liability created by the original contract. That proposition of the defendant was accepted by the plaintiff. It paid for and received the renewal contract. A loss occurred under it and the defendant must be held to respond to its obligation created by it."

Application to review this case was denied in the United States Supreme Court. 207 U. S., 589.

From the foregoing case, it undoubtedly follows that statements contained in an application for an insurance policy which is never issued will not constitute the defense of fraud to another policy, different in nature, amount and premium, issued by the insurer and accepted by the insured.

The Policy itself is also consistent with this theory.

It provides: “* * * this policy is issued in consideration of the application therefor, a copy of which application is attached hereto and made a part hereof . . .”

State of Case, Page 91, lines 17-20.

The policy also provides:

“Entire Contract—This policy and the application therefor constitute the entire contract between the parties, and all statements made by the Insured, shall, in the absence of fraud, be deemed representations and not warranties, and no statements shall avoid this policy or be used in defense of a claim hereunder unless it be contained in the application therefor and a copy of such application is attached to this policy when issued.”

State of Case, Page 93, lines 17-27.

From the proof in this case there is no application for the policy upon which this action is founded, namely a Five-Thousand Dollar (\$5,000.00), twenty (20) year endowment policy, nor is there any proof in the case that any such application was annexed to that policy.

In this posture of affairs, the Five-Thousand Dollar (\$5,000.00), twenty (20) year endowment policy alone constituted the entire contract.

Manhattan Life Insurance Company vs.
Albro, 127 Fed., 281.

And any attempt on part of the assured to impose upon this policy an application for another policy is not only in derogation of the terms of the policy issued, but is in defiance of the positive law.

The legislature of this State provided:

“On and after the first day of January, nineteen hundred and eight no policy of life insurance shall be issued by any domestic company or be issued or delivered within this State to any resident thereof by any foreign company, unless the same shall contain the following provisions:

Policy to contain entire contract. Fourth. *A provision that the policy shall contain the entire contract between the parties, and nothing shall be incorporated therein by reference to any constitution, by-laws, rules, application or other writing unless the same are endorsed upon or attached to the policy when issued, and all statements purporting to be made by the insured shall, in the absence of fraud, be deemed representations and not warranties. Any waiver of this provision shall be void.* I Cum. C. S., Page 1590.

The mere fact that the insured accepted the Five Thousand Dollar (\$5,000.00) twenty (20) year endowment policy with the application for a Ten-Thousand Dollar, (\$10,000.00) twenty (20) payment life insurance policy attached thereto does not legally make such application a part of the policy.

In the case of *Nugent v. Greenfield Life Association*, 50 N. E. (Mass.) 440, the Court held:

"Where insured accepted a life policy with what purported to be a copy of the application annexed to it as required by law and paid the premium which was payable before delivery and the subsequent premium and suit was brought on the policy as it was written without objecting to the inaccuracy of the copy annexed, it did not stop the beneficiary from raising in the action the question of discrepancy."

To the same effect:

Manhattan Life Insurance Co. vs. Albro, 127 Fed., 276.

Paulhamus vs. Security Life, 163 Fed., 554.

B. The facts adduced at the trial presented a jury question.

Assuming but not conceding that the statements contained in the application for the Ten-Thousand Dollar (\$10,000.00) twenty (20) payment life insurance policy were available by way of defense to the Policy issued, *it is reasonable to deduce the inference therefrom that the defendant did not rely upon those statements.*

Reliance is an essential element of fraud. This is fundamental.

If the defendant had relied upon the statements made in the application for a Ten-Thousand Dollar (\$10,000.00) twenty (20) payment life insurance policy, it would have issued that policy.

That it did not issue the policy applied for is

plenary proof of the fact that the defendant did not rely thereon.

Thus it would seem that there was no reliance, as a matter of law, on part of the defendants.

But construing the situation most favorably to the defendant there were sufficient facts from which the jury, if permitted, might have properly and reasonably inferred that the defendant did not rely upon the statements contained in the application for the Ten-Thousand Dollar (\$10,000.00) twenty (20) payment life insurance policy, in issuing the Five-Thousand Dollar (\$5,000.00) twenty (20) year endowment policy.

At least fair minded persons might have honestly differed as to the conclusions to be drawn from the above facts.

Such being the case the questions as to whether there was any reliance and consequently any fraud should have been left for the jury.

POINT II.

THE TRIAL COURT ERRED IN ADMITTING INTO EVIDENCE EXHIBIT D-1 AND THE APPLICATION ATTACHED TO EXHIBIT P-1.

Exhibit D-1 was admitted into evidence over the objection of the plaintiff. The ruling of the Court with reference to the admission of this Exhibit was challenged by the plaintiff.

State of Case, Page 24 and 25; Page 105, lines 20-35; Page 106, Page 107, lines 1-20.
...A perusal of this exhibit indicates that it is substantially Part B of the application for the

Ten-Thousand Dollar (\$10,000.00) twenty (20) payment life insurance policy.

State of Case, Page 105 and 106; P. 97, ls. 33-40; P. 98, P. 99, ls. 1-20.

Since there was no such policy issued, this exhibit was irrelevant and immaterial to the issue presented. Assuming but without conceding that this exhibit was relevant, nevertheless, it would not be admissible since a true copy of it was not annexed to the policy which is marked as Exhibit P-1.

In Part B of the application attached to Exhibit P-1 the signature of the applicant does not appear.

State of Case, Page 99, line 25.

“And there is good authority for the proposition that omitting to copy the signature of the applicant renders the application inadmissible under a statute requiring a true copy to be attached.”

14 Ruling Case Law 886, Section 61.

To the same effect:

Seiler vs. Economic Life Association, 105 Iowa, 87, 43 L. R. A., 537.

In this state, such a statute exists which is set forth in Point One A, supra. I Cum. C., 5 page 1590.

Similarly, it follows that the application attached to Exhibit P-1 was not admissible.

However if Exhibit D-1 and the application attached to Exhibit P-1 were properly received in evidence, nevertheless their legal effect would not permit the defendant to recover.

In the case of Paulhamus vs. Security Life and Annuity Co., 163 Fed., page 554, the Court held:

“When in an action on a life insurance policy the case was before the court on a motion for judgment on a special verdict, the only material questions concerning the report of insurer’s medical examiner on which the policy was issued was as to the legal effect to be given thereto under the facts reported, it being immaterial how it was introduced into evidence.”

In this case a verdict was directed for the plaintiff against the insurer, upon the mere proof of death and the non-payment of the policy.

Any other interpretations, as we have seen would be in violation of the statute of this state, above referred to. It should be noted that in that statute there is a provision that any attempt to waive the statute will be void. The reason for this statute is tersely stated by Judge Mitchell in the case of Lenox vs. Insurance Co. 165 Pa. 755:

“It is well known that the evil aimed at in this legislation was the custom of insurance companies to put in their forms of application long and intricate questions or statements to be answered by the applicant, usually in very small type, and the relevancy or materiality not always apparent to the inexperienced and therefore liable to become traps to catch even the innocent unwary. The general intent was to keep these statements before the eyes of the insured so he might know his contract and if

it contained errors have them rectified before it became too late."

POINT III.

THE TRIAL COURT ERRED IN ADMITTING CERTAIN EVIDENCE.

The court erred in permitting Dr. Becker a witness for the defense to answer the following question over the objection of the plaintiff. "How many calls did you make all together?"

State of Case, P. 26, l. 34; P. 27, ls. 1-3.

This ruling of the court was clearly erroneous in that the evidence was by way of contradiction to one of the statements contained in Exhibit D-1 and in the application attached to Exhibit P-1. ...

State of Case, P. 99, ls. 2-10; P. 106, ls. 33-35; P. 107, ls. 1-4.

Since Exhibit D-1 and the application annexed to Exhibit P-1 were inadmissible in evidence, it logically follows that any statement by way of contradiction to the same or any part thereof was not admissible in evidence.

The Court in permitting the answer to such question over the objection of the plaintiff was therefore in error.

For all the reasons set forth herein, it is respectfully submitted that the judgment of the Passaic County ^{circuit} Court be reversed.

PAUL RITTENBERG.

Attorney for and of Counsel
with Plaintiff-Appellant.

at present the only one which is known to be
the result of the same cause.

It is not possible to determine the exact
time of the occurrence of the event.

The only evidence which is available is the
fact that the event occurred at the same
time as the other events of the same
kind.

The only evidence which is available is the
fact that the event occurred at the same
time as the other events of the same
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New Jersey Court of Errors and Appeals.

ARCHIE J. LOCKER, Plaintiff-Appellant, vs. METROPOLITAN LIFE INSURANCE COM- PANY, a corporation, Defendant-Appellee.	}	Action at Law. On Appeal.
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BRIEF FOR DEFENDANT-APPELLEE.

This case was tried at the Passaic Circuit before the late Judge Newman.

The trial judge directed a verdict for the defendant.

This suit was on a policy of life insurance and the defense was, fraudulent representation. The statement to the medical examiner in her application was dated May 19, 1927 (pp. 105, line 20 to 107, line 20).

The policy was dated May 25, 1927 (p. 91, line 37).

The insured died August 22, 1927 (p. 19, line 5) of pulmonary tuberculosis.

The answer set up a variety of defenses (pp. 4 to 8), of which the following are material on this appeal:

The second and third defenses were that the insured, Anna Cavanagh, had obtained her policy through fraud and misrepresentation (p. 4, lines 30 to 40).

The fourth defense was that she was asked and had answered as follows (p. 5, line 20) :

“5. Have you ever been an inmate of, or have you ever received treatment at an asylum, hospital, sanatorium or cure? If yes, give date, duration, name of ailment and name of institution.—No.”

The proofs were that insured had, prior to the date of making said statement in said application, been an inmate of and had received treatment at a hospital or sanatorium, namely, the New Jersey State Sanatorium for Tuberculosis at Glen Gardner, New Jersey.

The sixth defense was that she had answered falsely that she had never suffered from disease of the lungs (p. 6, line 20).

The eighth defense was that she was asked and had answered as follows (p. 7, line 11) :

“(g) Have you consulted a physician for any ailment or disease not included in your above answer?—No.”

The proofs were that insured had, prior to the date of making said statement in said application, consulted physicians for an ailment or disease not included in her above answer, namely, for pulmonary tuberculosis.

The ninth defense was that she was asked and had answered as follows (p. 7, line 27) :

“13. What physician or physicians, if any, not named above, have you consulted or been treated by within the last 5 years and for what illness or ailment? If none, so state.—None.”

The proofs were that insured had, within the last 5 years of the date of said statement, consulted and been treated by physicians for an illness or ailment, namely, pulmonary tuberculosis, and failed to name

in said statement said physicians, who were Doctors Becker, Hagen, Gutowski, and Gramsch.

In her application the insured had given herself a clean bill of health. As a matter of fact, she had been continuously suffering from tuberculosis, beginning with April of 1925; had been treated for it by Dr. Becker of Paterson; had been advised by Dr. Hagen of the Tuberculosis Clinic of Paterson Board of Health to go to Glen Gardner Tuberculosis Sanatorium; had gone to said Glen Gardner, where she remained from May 6, 1925 to September 23, 1925 (p. 44, line 26).

She did not tell the Company's medical examiner, Dr. McCamey, any of these facts (p. 65, lines 30, 31), although he asked her the appropriate questions to elicit that information (p. 67, lines 20 to 30).

I.

The Trial Court properly directed a verdict for the defendant.

The proofs in this case fully met the strict requirement laid down by this Court in *Prahm v. Prudential Insurance Co.*, 97 N. J. Law, 206, at page 210, where the Court said that there must exist no rational theory upon which the jury might find the truth or good faith of the answer of the insured before the Court can direct a verdict for the Company.

There was no room for reasonable minds to disagree upon the fact that the insured here had fraudulently represented when she stated that she had never been an inmate of or received treatment at any hospital or sanatorium; that she had fraudulently represented when she denied that she had ever consulted any physician for any ailment or disease, and that she had fraudulently represented when she denied that she had ever consulted or

been treated by any physician or physicians within the five years previous to making her application (p. 87, line 16 to p. 88, line 16).

The plaintiff admitted that the insured had spent some months at Glen Gardner Sanatorium (p. 22, line 10). He also admitted that the insured had gone to the Tuberculosis Clinic of the City Hospital for treatment (p. 22, line 15).

Dr. Becker testified, without contradiction, that the insured had consulted him as a physician and that he had attended her from April 5, 1925 to April 21, 1925 (p. 26, line 5), in the course of which he had called at her home (p. 26, line 35). He had made six calls at her house, where she was confined to her bed (p. 27, line 7). He diagnosed her case as tuberculosis and verified his diagnosis by sending a sample of her sputum to Trenton to be analyzed (p. 27, line 35). The report from the Board of Health was "positive for tuberculosis" (p. 29, line 1). This examination and report of the State Board of Health was testified to by James A. Moran, the official examiner of the State Board at Trenton, who had made the examination (see his testimony, pp. 37 to 42).

Dr. Becker advised the insured to go to the local tuberculosis clinic and make arrangements to go to Glen Gardner (p. 29, line 15).

Dr. Hagen was the physician in charge of the tuberculosis clinic (p. 32, line 20). He testified that an examination of the insured indicated that she had "a moderately advanced tuberculosis of the right lung" (p. 33, line 40), and that "she was advised to go to Glen Gardner" (p. 35, line 2).

She did go to Glen Gardner, as the plaintiff admitted. She was there from May 6th to September 23rd, 1925, as the records of the institution, corroborated by the physicians in charge, demonstrated. At Glen Gardner she was examined by Dr. Gramsch who found her suffering from tuberculosis (p. 45,

lines 20 to 35). The chart which he made at the time, showing her condition, is in evidence as Exhibit D-7, page 112. Dr. Gramsch says that he told her that she had tuberculosis (p. 46, line 30). After four months she was allowed to go home, but was not cured (p. 47, line 20).

Dr. Gutowski, another physician at Glen Gardner, also examined her and found her suffering from "a moderately advanced pulmonary tuberculosis" (p. 57, line 1). He said that when she went home in September she was not cured (p. 57, line 28; p. 58, line 7). Dr. Gutowski says that he told her (p. 58, line 23):

"that her sputum was still positive, and that the report from the laboratory was that the sputum had tubercle bacilli, and I told her she would have to be very careful of herself."

The chart which he made of her condition is in evidence—Exhibit D-8, page 113.

None of these facts was disputed or denied.

In view of this overwhelming state of the evidence, there was no room for dispute but that the insured had misrepresented when she said that she had never been an inmate of or received treatment at any hospital or sanatorium, that she had never consulted a physician for any ailment or disease, and that she had not consulted any physicians or been treated by any physicians within the last five years.

The policy provides as follows (p. 91, line 19):

"This policy is issued in consideration of the application therefor, copy of which application is attached hereto and made part hereof."

In that part of the policy headed *Provisions and Benefits*, is the following (p. 93, line 17):

"4. Entire contract. This policy and the application therefor constitute an entire contract between the parties, and all statements made by the insured shall in the absence of fraud be

deemed representations and not warranties, and no statement shall avoid this policy or be used in defense of a claim hereunder unless it be contained in the application therefor and a copy of such application is attached to this policy for issue."

The case is almost identical with that of *Kerpchak v. John Hancock Mutual Life Insurance Company*, 97 N. J. Law, 197, in this Court. In that case the policy read as follows:

"In consideration of the representations in the application herefor, a copy of which is endorsed hereon or attached hereto and made a part hereof"

In the body of the policy was the following:

*"Policy and application entire contract:—*This policy and the application herefor constitute the entire contract between the parties, and all statements made by the Insured shall, in the absence of fraud, be deemed representations and not warranties, and no such statement shall avoid the policy or be used in defense to a claim hereunder unless it is contained in a written application herefor and unless a copy of such application is endorsed on or attached to this policy when issued."

The identity of the language in the policy in suit and the one in the *Kerpchak* case is, therefore, apparent. The facts, as stated in the opinion, were (p. 197) that the policy was issued on April 3rd, 1919, and the insured died of pulmonary tuberculosis December 5th, 1919. The defendant moved for a direction of a verdict in its favor, among other things, on the ground (p. 198):

"that a statement in the application to the effect that the applicant had never consulted a physician was false and fraudulent."

The answer filed was similar in form to the answer filed in the case at bar.

In the *Kerpchak* case this Court said (p. 198) :

“The legal rule is that where, as here, a policy provides, as required by our Insurance law, that ‘all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties,’ the policy will be avoided for a misrepresentation in the application, made a part thereof, if the misrepresentation be material and fraudulent; that is to say, if it be the statement of something as a fact, which is untrue, and which the insured stated, knowing it to be untrue, and with an intent to deceive, or which he stated positively as true, without knowing it to be true, and which had a tendency to mislead; such fact in either case being material to the risk. *Prahm v. Prudential Insurance Co.* (New Jersey Court of Errors and Appeals), *post*, p. 206.

Every fact which is untruly stated or wrongfully suppressed must be regarded as material if the knowledge or ignorance of it would naturally and reasonably influence the judgment of the underwriter in making the contract at all, or in estimating the degree or character of the risk, or in fixing the rate of premium.

A false statement in the application made a part of the contract that the applicant had not consulted or been attended or treated by a physician, is material to the risk, and, if made knowingly and willfully, will avoid the policy. *Metropolitan Life Insurance Co. v. McTague*, 49 N. J. L. 587.

In the present case the application shows that the insured was asked, ‘Give name and address of physician last consulted?’ She answered, ‘Never had a doctor.’

The evidence shows conclusively that such answer was false, and when made was known to the insured to be false.

The application was made on March 30, 1919, and the policy was dated April 3d, 1919. The uncontradicted evidence shows that on March 10th, 1919, and again on March 24th, 1919, the insured went from Garfield, her home, to Dr. Lippe in Newark, near by, for treatment, and he told her that she had weak lungs and catarrh and prescribed for her. It shows that between such consultations she was visited by the district nurse, who advised her to go to the Glen Gardner sanitarium, known to the insured to be a state institution for tuberculosis patients. The question put in the application was not ambiguous, and called for the statement of a fact, not the expression of an opinion. The false answer was made understandingly, knowingly and willfully. The insured was a native of this country, intelligent and understood English. The question was put in English, and her doctor was an English-speaking physician.

Since such matters of fact were established by unimpeached witnesses and without contradiction, a verdict should have been directed for the defendant because of such fraudulent misrepresentations."

In *New York Life Insurance Company v. Renault*, 11 Fed. (2d) 281, Justice Bodine, then a Federal Judge, followed the *Kerpchak* case. That was a suit in equity to cancel a policy for fraud, the fraud being misrepresentation to the effect that the applicant had never consulted a physician or that he had ever been attended by physicians. The facts were all to the contrary. Judge Bodine said (p. 282):

"The complainant clearly showed at the trial that the insured, in making his answers, acted fraudulently, and that the false representations as to the state of his health and his freedom from illness had resulted in the issuance of the policy in question. Not only had Dr. Darnell attended the insured, but, when the

insured went to the Atlantic City hospital for his operation, he was questioned by Dr. Abraham Rechtmann, and stated to him that he had heartburn, sour stomach, and an unusually rapid heart, that 3 weeks before the examination he had an attack of nausea, felt feverish, and had lost 20 pounds since the attack, and that for the last 8 years he had had an abdominal condition, with attacks somewhat similar to the last one.

(1) To call the answers given to the medical examiner full, complete, and true is to do violence to the plain meaning of the English language. The insured could have had no purpose except to obtain for the benefit of his estate insurance which could not be had if he had made honest answers. The facts adduced clearly show fraud in all its legal significance. *Kerpchak v. John Hancock Mutual Life Ins. Co.*, 117 A. 836, 97 N. J. Law, 196."

There is no question in this case of the lack of intelligence or understanding of the insured, as was the situation in *Guarraia v. Metropolitan Life Ins. Company*, 90 N. J. Law, 682; or in *Woynarowski v. Metropolitan Life Ins. Company*, 3 N. J. Misc. Rep. 1066; 130 Atl. 544.

It was conceded by the plaintiff that the insured was an intelligent woman (p. 64, line 19) and the plaintiff's witness, Pardon, testified that she was a bright, smart, intelligent girl, and understood English perfectly well and was not of any foreign extraction (p. 82, line 25).

In the *Woynarowski case* (3 N. J. Misc. 1066, at p. 1067) the Court said:

"It may at the outset be conceded that insured died of tuberculosis, and that he was suffering from that disease and had been treated therefor by a physician before the application for the policy, and we think it must also be conceded that at the time of the application he knew and must have known that he had such disease."

The Court said further (p. 1067) :

“Insured was Polish, and while it is said that he could speak and understand English it is fair to assume that his knowledge of the language was limited.

If the questions were put to him and he understand them, then beyond question he was guilty of ‘willful untruths’, and his representations were fraudulent and at least those as to his condition of health, &c., were material and the policy was voided and the motion to direct the verdict should have resulted in a direction in favor of defendant. *Guarraia v. Metropolitan*, 90 N. J. L. 682; *Prahm v. Prudential*, 97 *id.* 206; *Kerpchak v. John Hancock &c.*, 97 *id.* 196.”

As already pointed out, no question of lack of understanding by the insured in making her application is raised in the case at bar.

The situation, therefore, is akin to that in *Lippincott v. Royal Arcanum*, 64 N. J. Law, 309, where this court by the Chief Justice, then Justice Gummere, said (p. 311) :

“He must have known, when he declared that he had never suffered from catarrh, that this was untrue, for he was then being treated by his physician for that disease. He likewise must have known that he was making a false statement when he declared that he had never undergone a surgical operation. The unimpeached testimony in the case is conclusive upon this point and a verdict for the plaintiff cannot be supported without disregarding it. This being so, it was the duty of the trial court to control the jury in its action and direct a verdict for the defendant. *Baldwin v. Shannon*, 14 Vroom 596; *Crue v. Caldwell*, 23 *Id.* 215; *Haines v. Merrill Trust Co.*, 27 *Id.* 312.

II.

Plaintiff is bound by the fraudulent representations made in the application for the policy.

Appellant argues that the plaintiff is not bound by the fraudulent representations made by the insured as set forth in the application for the policy. He says the application annexed to and made a part of the policy is not the application upon which the policy was issued, because (1) the application was for a \$10,000 policy and a \$5,000 policy was issued; and (2) the copy of the application annexed to and made a part of the policy is not a copy of the application on which the policy was issued.

(1) The application annexed to and made a part of the policy is the application upon which the policy was issued.

The policy is printed as Exhibit P-1 (p. 91, etc.). The policy states that (p. 91, line 16) :

“This policy is issued in consideration of the application therefor, copy of which application is attached hereto and made a part hereof”

and of the payment of the premiums.

The policy further provides (p. 92, line 18) :

“This policy and the application therefor constitute the entire contract between the parties.”

Part A of the application, which is made a part of the policy, is printed at page 94, line 25, etc. Part B of the policy is printed at page 97, line 33, etc.

The original Part B, copy of which was attached to the policy, is in evidence as Exhibit D-1 and is printed at page 105, line 20, etc.

Part B of the application contains the statement to the medical examiner with respect to the insured's health, etc. It is quite distinct from Part A of the application which contains statements made to the agent and states material facts other than those relating to the health of the insured.

Paragraphs 14, 15 and 16 of the application, Part A (p. 95, lines 18-19) read as follows:

"14. Amount of insurance *desired*. \$10,000 ordinary. Prem. payable quarterly.

15. Plan of insurance as designated in rate book? 20 payment life.

16. a. Beneficiary in case of your death—Archie J. Locker. Relationship of proposed beneficiary—brother. Occupation—broker. Age—32. P. O. Address—193 Ackerman Ave."

The policy issued to and accepted by the insured was identical with those requests, except as to the amount. The amount of the policy was \$5,000. The amount *desired* by the applicant was \$10,000.

The plan of insurance was 20 payment life as requested (p. 91, line 10), and the beneficiary named was the insured's brother, Archie J. Locker, who is the plaintiff (p. 91, line 12).

Appellant's argument is that because the amount of the policy, as issued, was less than the amount desired, as stated in the application, there is no relation between the application and the policy, and that the questions and answers contained in Part B of the application, made to the medical examiner, were not binding on the insured and are not binding on the plaintiff.

It may be assumed, as appellant argues, that an application for insurance is simply a request or proposal for a policy. Here the insured applied for a policy and stated that she desired one in the amount of \$10,000. The Company was willing to issue her a policy, but for a less amount than the amount desired. She acquiesced in the change.

The Company did issue a policy on her application for \$5,000, which she accepted and paid the premiums on.

The fact that the insured accepted the policy for a less amount on the application originally made, and paid the premiums thereon, is a complete answer to the appellant's contention.

Assuming again, as appellant argues, that the issuance of a policy for \$5,000 was, in effect, the rejection of the offer of the plaintiff to accept a policy for \$10,000, nevertheless, the issuance of the policy for \$5,000 and the acceptance of it by the insured, constituted the making by the company of a counter proposal which became a consummated contract upon the acceptance by the applicant.

In 32 C. J. p. 1104, sec. 191, it is said :

“A counter offer or proposal by the Company may consist of a tender or the issuance and forwarding to the applicant of a policy differing materially from the application.”

And at page 1107, sec. 196, it is said :

“Where the Company makes a counter offer by tendering or delivering a policy not conforming to the terms of the application, the retention of the policy by the applicant without objection and beyond a reasonable time constitutes an acceptance.”

And again :

“A counter offer of the Company becomes a completed contract when the applicant gives notice of his acceptance thereof to an agent of the Company.”

At page 1236, sec. 409, it is said :

“If, however, the applicant accepts and retains the policy with actual or constructive knowledge of the variance between it and the applica-

tion or the preliminary agreement for insurance, the premiums paid by him cannot be recovered back."

In other words, where there is in legal effect a counter offer made by the Company which is accepted by the applicant, and the policy is delivered and accepted and the premium paid, a binding contract results according to the terms of the policy.

Now there is no dispute in the case at bar that the policy was issued for \$5,000, that it was accepted by the insured, and that she paid the premiums on it.

Nor can there be any doubt that the policy was issued upon the application made and signed by the applicant, copy of which is annexed to and made a part of the policy by its very terms (p. 91, line 17).

The appellant says (Brief, p. 4) that the defendant did not accept the proposal of Anna Cavanagh because it did not issue the policy for which application was made.

But the fact is that it did issue exactly the policy for which application was made, namely, a twenty payment life policy, payable to her brother, Archie J. Locker, as beneficiary, and the only difference between the application as made and the policy as issued and accepted, was that in the application, Part A, the applicant stated that she *desired* that the amount of the policy should be \$10,000, whereas the Company, upon same application, expressed its willingness to and did issue to her a policy for \$5,000, which policy she accepted and upon which she paid premiums.

It must be kept in mind that there is a distinction between Part A and Part B of the application.

Part B of the application would be the same regardless of the amount applied for, over \$2,000 (p. 94, line 23).

The distinction between Parts A and B of applications of this character was commented on by this Court in *Dimick v. Metropolitan Life Ins. Co.*, 69 N. J. Law, 384, pp. 387, 389.

If the policy was not issued upon that application, upon what application was it issued?

No other application was ever submitted to the Company and no other statements were made to the Company's medical examiner, than those contained in Part B which is annexed to and made a part of the policy.

It would be absurd to say that the policy was issued without any application therefor. It is common knowledge that policies of insurance are issued only on written applications, and that the insurance companies rely on the statements made therein with respect to the physical condition of the applicant.

In *Duff v. Prudential Ins. Co.*, 90 N. J. Law, 646, this Court said (p. 648) :

"The fact that the Company asks the question shows it is material, and it is common knowledge to assume that life insurance companies do not accept for life insurance tubercular persons."

Appellant in his brief argues (Brief, p. 6) that the alleged misstatements of the insured in the application for an insurance policy which (he says) was never accepted, but, in fact, rejected, cannot be said to have induced the contract of insurance.

But the application for insurance was not rejected. The exact character of policy applied for was issued, but for a less amount than the applicant stated she desired. The policy which was issued was issued upon the faith of the statements made in the application submitted.

The fact that the applicant was content to accept a \$5,000 policy and pay the premiums thereon indi-

cates her acquiescence in the change of amount which the Company made and shows that she was willing to abandon her desire for a \$10,000 policy and to be content with a \$5,000 policy upon the same terms and conditions, issued upon the application which she made.

Appellant's reliance is upon the case of *Aetna Indemnity Co. v. J. R. Crowe Coal & Mining Co.*, 154 Fed. 545.

That case is readily distinguishable from the case at bar.

In that case the Mining Company brought its action against the Indemnity Company to recover on a contract to indemnify it against loss occasioned by the embezzlement of its funds by one Graves, its bookkeeper and cashier, during the year June 1, 1903 to June 1, 1904 (p. 547).

The instrument sued on was a renewal of the original contract of indemnity. The original contract was made June 14, 1901 and insured the plaintiff against the misconduct of Graves for the period of one year from June 1, 1901 to June 1, 1902. After that year had expired the original contract was renewed for a new consideration paid by the plaintiff, extending the insurance so as to cover the year ending June 1, 1903. A like extension followed covering the year ending June 1, 1904. During this latter period the embezzlement in question occurred (p. 548).

In the language of the Court (p. 548) :

"These different extensions were all based upon and recognized the original contract of June 14, 1901, known and numbered by the defendant as bond F. 1,774. The last renewal bore date June 30, 1903, and reads as follows :

'In consideration of the payment of the sum of \$20.00, being the premium for the third year upon bond F. 1,774 of the Aetna Indemnity Company for \$5,000, * * * said

bond is hereby continued in force until June 1, 1904, subject to all the conditions and covenants thereof.'”

One of the defenses was that of a breach of warranties made in a statement upon the faith of which, it was claimed, the contract was made (p. 547). The facts as to that were that some time before February 24, 1903, the Indemnity Company submitted to the Mining Company a blank form of statement consisting of questions, with spaces left for the insertion of answers, with the request that the Mining Company fill in the appropriate answers and sign the contract. The following were the material questions (p. 552) :

“(14) Will he be authorized to sign checks on your behalf?—Yes.

Will there be any countersignatures on such checks? If so, whose?—General managers or presidents.”

The Indemnity Company in its answer alleged that the contract sued on was made in reliance upon that statement and that it had relied upon the warranty that Graves should not sign checks without the counter-signature of either the general manager or president of the Mining Company. The proof was that Graves was permitted to sign checks without any counter-signature (p. 553).

The Mining Company contended that there was no sufficient evidence showing that the renewal contract sued on was executed or accepted on the faith of the statement of February 24th, and, therefore, that there was no breach of any warranty contained in the said statement and no failure to perform any of its promises, which could affect the plaintiff's

right to recover (p. 553). The instrument sued on was set forth in the opinion as follows (p. 553) :

“The contract sued on makes no reference to the statement of February 24th. It reads as follows :

‘HARTFORD, CONN., June 30, 1903.

In consideration of the payment of the sum of \$20.00, being the premium for the third year upon bond F. 1,774 of the Aetna Indemnity Company for \$5,000. issued June 1, 1901 on behalf of David C. Graves, in favor of the J. R. Crowe Coal & Mining Company, Kansas City, Mo., said bond is hereby continued in force to June 1, 1904, subject to all the covenants and conditions thereof. * * *

(Signed) CHARLES LINDLEY, President
E. S. PEGRAM, Secretary.’

The plain and unambiguous language of the contract just quoted shows that what the parties apparently did was to continue in force for a third year the original contract known as bond F. 1,774 ‘subject to all the covenants and conditions thereof’, and, by fair and reasonable intendment, not subject to the terms and conditions of any other instrument.”

The Court pointed out that the statement of February 24th was made in connection with a new application for a different bond on behalf of Graves, and that there was no relation between it and the renewal contract sued on. The Court said (p. 554) :

“Turning now to the statement of February 24th, we perceive nothing in the terms employed or in any implications suggested to indicate an intention to make the statement the basis of or consideration for any renewal of the old bond. The request by defendant’s secretary to answer the questions propounded found at the beginning of the statement was made in connection with the representation that Graves had just made an application to

defendant for an indemnity bond which required immediate action by defendant. The general scheme of the statement and the language used indicate that the bond contemplated was a new one, just applied for by Graves, and one which should be dated February 1, 1903, and should run to February 15, 1904. By the last clause of the statement the answers made by the plaintiff were agreed to be taken as conditions precedent to and as the basis of execution of said indemnity bond; that is, the bond to run from February 1, 1903, to February 15, 1904. No intimation can be found indicating in the slightest degree that the parties intended the answers to the questions to be conditions precedent to or to form the basis of the execution of any other bond whatsoever, and certainly not of the renewal bond F. 1,774. The application and statement of February 24th seem to have been intended for the purpose of originating a new contract—certainly some contract other than the renewal of the old one of 1901. The parties were competent to contract and had it in their power either to renew the old or make a new contract. They determined to renew the old one, because they did it; and the application of Graves for a new one to date February 1, 1903, and running to February 15, 1904, was not accepted, because no such contract as that application contemplated was ever made. Accordingly, the agreement found at the end of the statement making the answers to questions propounded in it warranties or conditions precedent to the validity of the bond has no application to this case.”

This statement of the situation shows how entirely different was that case from the case at bar. Here, the policy sued on was the very policy which was issued as a result of the application which was made by the insured for the benefit of the plaintiff. In the *Aetna* case the contract sued on was an entirely different contract from that for which ap-

plication was made, and the contract there sued on had been made and was in existence long before the application for the policy which was not issued was made. The *Aetna* case, therefore, is obviously no precedent affecting the case at bar.

Appellant argues as though a specific kind of policy or contract had been applied for by the applicant, Anna Cavanagh, and that an entirely different kind of policy or contract had thereafter been entered into between her and the insurance company, to which different kind of policy or contract the insurance company had endeavored to annex and make a part of, the application for the first mentioned policy or contract. An examination of the application as compared with the policy will demonstrate that this argument is founded on a false premise, not supported by the facts in the case.

Anna Cavanagh made application for a twenty payment life policy in favor of her brother as beneficiary. She stated in her application that she *desired* the amount of the insurance to be \$10,000.

The insurance company expressed its willingness to issue the kind of policy which she asked for, namely, twenty payment life in favor of her brother as beneficiary, but for a lesser amount than she desired, namely, for \$5,000. She was willing to accept the policy for the lesser amount, as appears from the fact that she did accept it and paid the premium thereon. She only made one application to the insurance company. A copy of that application is annexed to and made a part of the policy. This application which she made contained material statements on her part designed to influence the insurance company in issuing the policy. Upon the faith of those statements the policy in suit was issued. It is idle now to argue that the application which was made and accepted by the insurance company and upon the faith of which the policy in suit was issued, was not the application on

which that policy was issued. If the policy was not issued on that application it was not issued on any application. The court has as much right to say that it is common knowledge that a policy of insurance is only issued upon an application, as it had to say (as it did in *Duff v. Prudential Ins. Co.*, 90 N. J. Law, 646, at p. 648) that

“It is common knowledge to assume that life insurance companies do not accept for life insurance tubercular persons.”

Moreover, the proofs in the case indicate that the policy in suit was issued upon this application. The best proof of that is that a copy of the application is annexed to and made a part of the policy. That negatives the idea that any other application could have been made for this policy, or that no application was made for this policy. There is no proof or suggestion that any other application was made.

(2) The copy of the application annexed to the policy and made a part thereof is the application upon which the policy was issued.

Part B as attached to the policy (Exhibit P-1, p. 97, line 33) and Part B as signed by the insured (Exhibit D-1, p. 105, line 20) are identical.

There is a difference, however, between the original D-1 and the copy of the original annexed to the policy, P-1, as they appear in the printed State of the Case, in this respect:

In Exhibit D-1, as printed at page 107, line 20, are the words “Signature of applicant—Anna Cavanagh.”

While in Exhibit P-1, as printed at page 99, line 25, are the words “Signature of applicant— .”

As a matter of fact, a photostat of the original application, Part B, Exhibit D-1, was physically attached to the policy (Exhibit P-1). In making the photostat it is apparent, from an inspection of the original, that all of the signature was not exposed to the photographic plate when the original paper to be photographed was put in the machine. The top part of the letters "A" (Anna) and "C" (Cavanagh) appear, but the complete signature is not reproduced.

It is upon this highly technical ground that the appellant claims the copy, Part B of the application annexed to the policy, is not a true copy.

Our insurance act, as amended, P. L. 1925, p. 436, provides that every policy of life insurance issued shall contain a provision that the policy shall contain the entire contract between the parties and that nothing shall be incorporated therein by reference unless the same are endorsed upon or attached to the policy when issued, and that all statements purporting to be made by the insured shall, in the absence of fraud, be deemed representations and not warranties, and that any waiver of this provision shall be void.

The policy in suit met this requirement. It said, in the language of the statute (p. 93, line 17) that

"This policy and the application therefor constitute the entire contract between the parties, and all statements made by the Insured, shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid this policy or be used in defense of a claim hereunder unless it be contained in the application therefor and a copy of such application is attached to this policy when issued."

The policy also provided that it was

"issued in consideration of the application therefor, copy of which application is attached hereto and made part hereof" (p. 91, line 18).

The copy of the application, both Parts A and B, annexed to the policy is a photostat of the original. The only difference between the photostat and the original is that the photostat of the signature of the applicant, Anna Cavanagh, does not include the whole signature, as an inspection of it will show.

In *Goodwin v. Provident, etc. Society*, 66 N. W. 157, the Iowa Appellate Court had the original application and policy for insurance

“certified up for our inspection to aid us in determining whether a true copy of the application was attached to the policy” (p. 159).

The Iowa statute required the insurance company to

“attach to such policy or endorse thereon a *true copy* of any application or representations of the assured which by the terms of the policy are made a part thereof.”

The penalty provided in the Iowa statute was, that the omission to do so precluded the insurance company from pleading, alleging or proving such application or representations, or any part thereof or any falsity thereof or any parts thereof in any action upon the policy (p. 160).

That is a quite different statute from our New Jersey statute. The Iowa statute requires “a *true copy*” to be annexed, but even at that the Iowa courts hold a substantial reproduction to be sufficient.

In *Seiler v. Economic Life Association*, 74 N. W. 941, the Court said (p. 942):

“We do not understand this to call for a facsimile, but it certainly demands at least a substantial reproduction of the instrument.”

Also, under the Iowa statute, the courts of that State held, even though the Company omitted to attach a copy of the application,

“It is still open to the company to make any defense it may have under the terms of the policy without reference to such application.”

See *Kirkpatrick v. London, etc. Accident Co.*, 115 N. W. 1107, p. 1110.

The Massachusetts statute requires that a policy of insurance

“must have attached thereto a *correct* copy of the application, and unless so attached the same shall not be considered a part of the policy or received in evidence.”

See

Considine v. Metropolitan Life Ins. Co.,
43 N. E. 201, p. 202;

Nugent v. Greenfield Life Association, 52
N. E. 440, 441.

In the *Nugent* case the court pointed out that the statute

“is a regulation, under a penalty, of the manner in which those who write assessment insurance shall write their contracts, as well as a rule for determining the construction to be given to such contracts” (52 N. E. 440, p. 441).

The court then said (p. 441):

“Neither aspect of the section requires us to hold that the copy must be *exactly* and *literally* correct in order to be a compliance with the law. Mere clerical errors, which do not affect or alter the sense of the document, and cannot vary or alter the rights or obligations of the parties in any possible event, or in any way tend to mislead or prejudice any one, are not matters to which, in either of its aspects,

the statute is directed; and such clerical errors do not prevent a copy in which they may be found from being a correct copy, within the meaning of the law."

In *Manhattan Life Ins. Co. v. Albro*, 127 Fed. 281, cited by appellant (pp. 11 and 13 of his brief), the Federal Court for the First Circuit construed this same Massachusetts statute. After referring to the *Nugent* case, *supra*, the court said (127 Fed. 281, at p. 282) :

"The opinion in that case carefully points out that a reasonable construction of the statute does not require that the copy shall be exactly and literally correct, and that the statute would not necessarily operate upon mere clerical errors, which cannot in any possible event affect the rights or obligations of the parties. The ground of the decision in that case is that the statute is not complied with, if there are discrepancies of substance between the application actually signed and the copy attached to the policy."

Paulhamus v. Security Life & Annuity Co., 163 Fed. 554 (cited in appellant's brief, p. 13), involved a construction of the Pennsylvania statute. That statute provided that all life policies (p. 562).

"which contain any reference to the application of the insured * * * shall contain or have attached to said policies, correct copies of the application as signed by the applicant, * * * and unless so attached and accompanying the policy no such application * * * shall be received in evidence in any controversy between the parties to or interested in the said policy."

The Court said (p. 565) :

"The evident purpose of the requirement that a copy of the application shall be contained in or attached to the policy is to dis-

close to the insured the representations and statements with which he is charged, affecting the risk, on which the company has relied in accepting his application and issuing a policy, and which will have to be met in any controversy over it."

In that case the medical examiner's report, which was a part of the application, was not endorsed upon or attached to the policy, and consequently, the court held that the statements of the insured therein could not be resorted to by the company to make out the breach of warranty relied on (p. 567).

There is no penalty set forth in the New Jersey statute. Our statute does not require that a copy of the application be annexed. It merely says that no policy of life insurance shall be issued

"unless the same shall contain the following provisions: * * *

A provision that the policy shall contain the entire contract between the parties, and nothing shall be incorporated therein by reference to any constitution, by-laws, rules, application or other writing, unless the same are endorsed upon or attached to the policy when issued, and all statements purporting to be made by the insured shall, in the absence of fraud, be deemed representations and not warranties. Any waiver of this provision shall be void."

There is no suggestion in our statute that evidence may not be produced in defense of the policy to contradict the statements made in the application, in the event that a copy of the application is not annexed to the policy; and this Court has in effect so held.

In *Brunjes v. Metropolitan Life Ins. Co.*, 91 N. J. Law, 296, suits were brought on two policies. This Court pointed out that (p. 296) as to the first suit, the application was attached and made a part of the contract dated March 13th, 1911, and that as to the

second suit, the application blank and medical examiner's report were not made a part of the contract under the policy. The very objection now made was made in that case. The court said (p. 297) :

"In case No. 2, as stated, there is an additional or fourth ground of appeal. It is alleged as error that the trial court improperly admitted in evidence the application blank of the deceased containing his signed answers given to the Metropolitan physician and medical examiner and the report of the medical examiner; these were not made a part of the policy, and section 4 of the act of 1907, page 134, is invoked, which provides that the policy shall contain the entire contract between the parties and all statements purporting to be made by the insured, shall, in the absence of fraud, be deemed representations and not warranties. Any waiver of this provision shall be void.

We had under consideration and passed upon this point, in the case of *Duff v. Prudential Insurance Co.*, 90 N. J. L. 646. In the case under discussion, in the application, the insured stated, among other things, that he had never had consumption; that he was then in sound health; that Dr. Coughlin attended him in January, 1911, for grippe one week; that he had not been under the care of any physician within two years, unless as stated in the previous line. It is provided in the application that every answer must be true or the policy will be void.

We think it was not error for the trial court to admit the application blank with the signed answers of the insured and the medical examiner's report in evidence; there was no attempt to disprove or controvert the fact that these statements were untrue."

This would seem to apply with full force to the case at bar, and to fully dispose of appellant's contention.

III.

There was no error in admitting in evidence Exhibit D-1 and the application attached to Exhibit P-1.

The application attached to Exhibit P-1, the policy, was a photostat of the application, Parts A and B (Part B is Exhibit D-1). From what has been said, it is apparent that the application annexed to the policy was the application upon which the policy was issued. The statements used in defense of the policy to avoid the policy were those contained in Part B of the application. Not only was a substantial copy of that application annexed to the policy, but it was identical in every respect, except the photostat of the signature did not include the whole signature. Even under statutes requiring a correct copy to be annexed, such as Massachusetts, there was a substantial compliance with the statute, and the copy annexed was such as to fully apprise the insured of the statements which she had made, which is the object of the statute.

But our New Jersey Statute (1 Cum. Supp., p. 1590) does not in terms require a copy of the application to be annexed. It forbids anything to be incorporated in the policy by reference. There is nothing attempted to be incorporated in the policy in suit by reference. This policy, by its terms, makes the copy of the application annexed to it, a part of it. The statute does not say that a correct copy, or any copy, must be annexed. It merely says that nothing shall be incorporated by reference, and that all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties.

There is no prohibition or penalty against the use of the statements made by an insured, upon the faith of which the policy was issued, if no copy of such statements is annexed to the policy.

Such statements do not have to be annexed.

Brunjes v. Metropolitan Life Ins. Co., 91
N. J. Law, 296.

It already appears from the uncontradicted evidence that the representations made in the application Part B were false.

The judgment for the defendant should be affirmed.

Respectfully submitted,

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