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# CASE No. I.

## DECLARATION.

New Jersey Supreme Court, of the eighth day of November, in the year of our Lord one thousand nine hundred and eleven.

*Monmouth County, ss.*

Metropolitan Life Insurance Company, a body corporate, the defendant herein, was summoned to answer unto Helen H. Brunjes, the plaintiff herein, in an action on contract, and thereupon the said plaintiff, by John P. Lloyd, her attorney, complains, for that, whereas, on or about the eighteenth day of March, in the year of our Lord one thousand nine hundred and eleven, the said defendant did by a certain policy, or by an agreement in writing, which the plaintiff here and now brings into court, agreed with the said Helen H. Brunjes, that in consideration of the payment of a certain sum of money (which payment had been previously made) to the said defendant, and also in consideration of certain warranties, and the truth of certain facts which were true as warranted and stated, it, the said defendant, would upon the death of one Fred. Brunjes, the husband of the said plaintiff, unless the said death occurred under conditions referred to in the said policy aforesaid, pay to the said Helen H. Brunjes the sum of five hundred dollars, and the said plaintiff avers that the said Fred. Brunjes died on the eighth day of July, in the year of our Lord one thousand nine hundred and eleven, and although all of the conditions of the said policy of insurance had been complied with, and although the plaintiff herein has held to and met all the requirements in the said policy set forth,

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## DECLARATION

and although all the agreements in the said policy have been kept and performed by the plaintiff herein, and the said Fred. Brunjes in his lifetime, and although the death of the said Fred. Brunjes did not occur under the circumstances mentioned in said policy as exempting the said  
10 defendant from the obligation to pay the money or sum of five hundred dollars, yet the said defendant unjustly refuses to pay to the plaintiff the said sum of five hundred dollars as aforesaid, or any part thereof, although often requested so to do by the said plaintiff as aforesaid, to the damage of the said Helen H. Brunjes of one thousand dollars.

And that whereas heretofore, to wit, on the  
20 eighteenth day of March, in the year of our Lord one thousand nine hundred and eleven, at New York City, to wit, at Matawan, in the County of Monmouth aforesaid, by a certain instrument in writing, or policy of life insurance, which the plaintiff here and now brings into court, it was agreed that the said defendant, Metropolitan Life  
30 Insurance Company (in consideration of the answers and statements contained in the application for said policy, and the stipulations and agreements therein contained, and the payment  
of the annual premium of ten dollars and forty  
40 cents on or before the delivery of the said policy, and of the like amount upon each eighteenth day of March of each and every year to the said defendant during the life of the insured), did insure the life of Fred. Brunjes in the sum of five hundred dollars, payable to Helen H. Brunjes, wife of the insured, upon receipt by the Company at its home office, and its approval of the proofs of the death of the insured made in the manner,

## DECLARATION

to the extent, and upon the blanks required by the said defendant, and upon the surrender of the said policy, and the said plaintiff avers that the said policy of insurance was delivered to the said Fred. Brunjes, and the said Fred. Brunjes did at the time of the making and delivery of the said policy of life insurance, on or about the eighteenth day of March, in the year of our Lord one thousand nine hundred and eleven, pay to the said defendant the said premium sum of ten dollars and forty cents, and did in fact comply with all the conditions, terms and requirements of the said policy on his part to be performed and complied with, and the said plaintiff avers that afterwards, to wit, on or about the eighth day of July, in the year of our Lord one thousand nine hundred and eleven, at Matawan, in the County of Monmouth aforesaid, the said Fred. Brunjes died, and said plaintiff then being his wife as aforesaid, and the plaintiff avers that heretofore, and subsequent to the last mentioned date, due notice and satisfactory proofs of the death of the said Fred. Brunjes were given and made by the plaintiff, and received and accepted by the defendant, and the said policy surrendered to the defendant at the office of the defendant in accordance with the terms of the said policy, and although the said Fred. Brunjes in his lifetime did in all things conform to and fulfil and keep all things in the said policy of insurance contained, and the terms and conditions on the part of the said Fred. Brunjes to be observed and performed according to the tenor, form and effect of the said policy of insurance, and although the said plaintiff has in all things conformed to, fulfilled and performed according to the tenor, form and effect of the said policy of insurance on her part to be

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## DECLARATION

fulfilled, performed and kept, of all of which said several premises the said defendant aforesaid had due notice, and although often requested by the said plaintiff to pay her the said plaintiff the said sum of five hundred dollars, did not, nor would when requested as aforesaid, or at any time before  
 10 or since, pay the said sum of five hundred dollars, or any part thereof, but has hitherto wholly neglected and refused so to do, and still neglects and refuses so to do, to wit, at Matawan, in the County of Monmouth aforesaid, to her damage one thousand dollars.

And for that whereas, the said defendant heretofore, to wit, on the first day of August, in the year of our Lord, one thousand nine hundred and eleven, at Matawan, in the County of Monmouth  
 20 aforesaid, was indebted to the said plaintiff in the sum of one thousand dollars for goods, wares and merchandise before that time sold and delivered by the said plaintiff to the said defendant at its request, and in the sum of one thousand dollars for work and labor before that time done and performed and material furnished by the plaintiff for the said defendant at its request, and in the sum of one thousand dollars for so much money by the defendant before that time had and  
 30 received for the use of the defendant, and in the sum of one thousand dollars for interest due and for the forbearance by the plaintiff to defendant, at the defendant's request of divers large sums of money before that time due and owing from the defendant to the plaintiff on an account stated between them; and being so indebted the defendant in consideration thereof then and there promised the plaintiff to pay the said several sums of money on request, yet the said defendant has  
 40 wholly disregarded its several promises, and has

## CONDITIONS OF POLICY

not paid the said several sums of money, nor any part thereof, although often requested so to do; but to do so has hitherto wholly refused, and still does refuse, to the damage of the plaintiff of one thousand dollars, and therefore she brings her suit, &c.

JOHN P. LLOYD,  
Attorney of Plaintiff.

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## CONDITIONS OF POLICY.

Ordinary Life. Intermediate Class. Amount  
\$500.00. Annual Premium \$10.40.

In consideration of the application for this policy, copy of which application is attached hereto and made part hereof, and of the payment of the annual premium of ten dollars and forty cents, and of the payment of a like amount upon each eighteenth day of March hereafter until the death of the insured, promises to pay at the Home Office of the Company in the City of New York upon receipt of said Home Office of due proof of the death of Fred. Brunjes, of Brooklyn, State of New York, herein called the Insured, five hundred dollars, less any indebtedness hereon to the Company and any unpaid portion of the premium for the then current policy year, upon surrender of this policy, properly receipted, to Helen H. Brunjes, wife of the insured beneficiary without right of revocation.

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*Incontestability.*—This policy (and the application therefor) constitutes the entire contract between the parties and shall be incontestable after two years from the date of its issue, except for non-payment of premiums.

All statements made by the Insured shall, in

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## APPLICATION

the absence of fraud, be deemed representations and not warranties, and no such statement shall avoid this policy or be used in defense of a claim hereunder unless it is contained in the written application therefor and a copy of such application is securely attached to this policy when  
 10 issued.

APPLICATION TO THE METROPOLITAN LIFE  
 INSURANCE COMPANY.

To be signed by the applicant for insurance and proposed beneficiary.

1. Full name of applicant. Fred. Brunjes.
2. Residence. 1069 68th St., Brooklyn, N. Y.
- 20 3. Where born. Brooklyn, N. Y., Nov. 30, 1884.  
 Nearest birthday. 26.
4. Plan of insurance. Whole life.
5. Amount of insurance. \$500.00.
6. Occupation. Egg inspector, 216 Washington St., N. Y.
- 30 7. Are you directly or indirectly concerned in the manufacture or sale of any kind of alcoholic beverages, or employed in any capacity at such business? No.
8. Have you ever been so engaged? (If yes, in what capacity, for what period and how long since?) No.
9. Number of children living, and age, occupation and sex of each. None.
- 40 10. Who is dependent on you for support and maintenance. My wife.

## APPLICATION

11. State in full the source of your income. Weekly salary of 25 dollars.

12. Do you propose to pay the premiums on the policy applied for out of your own means. If not, who will pay them? Yes.

Relationship to life proposed. Myself. 10

13. Singled, married, widower or a widow? divorced or separated?

14. Are you insured in this company? (If so, give particulars below.) Policy number 44674563. Amount of insurance \$430. Premium 25.

15. Have you ever been in this company? No. If so, give policy numbers. None.

16. Are you now insured in any other company, or society, or association? (If so, give names and amounts.) No. Any other? No. 20

17. Is the insurance applied for to be an increase to the insurance in force? Yes. If not, what policies are to be discontinued? None.

18. Have you ever applied to any life insurance company, order or association for insurance on your life without receiving exact kind and amount of insurance applied for? (If yes, give particulars.) No. 30

Has any company refused to restore a lapsed policy on your life. (If yes, give particulars.) No.

19. Whom do you designate to receive the proceeds of the policy applied for in case of your death? Helen H. Brunjes.

His or her relationship to you. Wife: age 24;

## APPLICATION FORM

occupation at home; P. O. address, 109 8th St.,  
Brooklyn, N. Y.

20. Do you reserve the right to change the  
beneficiary at any time without the consent of  
beneficiary herein designated? No.

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## APPLICATION FORM.

It is agreed that inasmuch as only the officers  
at the Home Office of the Company in the City of  
New York have authority to determine whether  
or not a policy shall issue upon this application,  
and as they act on the written statements, an-  
swers and agreements herein made, no statements,  
promises or information made or given by or to  
20 the person soliciting or taking this application  
for a policy, or by or to any other person, shall  
be binding on the company or in any manner  
affect its rights, unless such statements, promises  
or information be reduced to writing and pre-  
sented to the officers of the company at the Home  
Office.

And it is further declared and agreed that the  
foregoing statements and answers, and also the  
statements and answers to the medical examiner,  
30 are correct and wholly true, and that they shall  
form the basis of the contract of insurance if  
one be issued.

It is further agreed that the company shall in-  
cur no liability under this application until it  
has been received, approved and the policy issued  
and delivered and the full first premium stipu-  
lated in the policy has actually been paid to and

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## STATEMENT TO MEDICAL EXAMINER

accepted by the company during the lifetime of the life proposed.

Signature of Applicant,  
FRED BRUNJES.

Signature of Beneficiary,  
HELEN H. BRUNJES. 10

Dated at Brooklyn, Mch. 13th, 1911.

Witness to signatures, H. S. Weinstein.

CONTINUATION OF THE APPLICATION—STATEMENTS  
MADE TO THE MEDICAL EXAMINER.

To induce the Metropolitan Life Insurance Company to issue policy, and as consideration therefor, I agree, on behalf of myself and of any other person who shall have or claim interest in any policy issued under this application, as follows: 20

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

1. My occupation is, Egg Inspector.

2. I have never had any of the following complaints or diseases, apoplexy, appendicitis, asthma, bronchitis, cancer or other tumor, consumption, diabetes, disease of brain, disease of heart, disease of kidneys, disease of liver, disease of lungs, disease of urinary organs, dropsy, fistula, fits or convulsions, general debility, habitual cough, hemorrhage, insanity, intestinal or hepatic colic, jaundice, paralysis, pleurisy, pneumonia, rheumatism, scrofula, spinal disease, spitting or raising blood, ulcer or open sores, varicose veins, except 30

3. I am now in sound health. I am not blind, 40

## STATEMENT TO MEDICAL EXAMINER

deaf or dumb, nor have I any physical or mental defect or infirmity of any kind, except

10 4. The following is the name of the physician who last attended me, the date of the attendance and the name of the complaint for which he attended me. "Dr. Coughlin. Jan., 1911. Grippe. Good results."

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

6. I have never been under treatment in any dispensary, hospital or asylum, nor been an inmate of any alms house or other institution, except

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

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

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

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

11. I have no insurance on my life except in the following named companies and for the following amounts. And by the word "Company" I mean any company, association, society or order granting life insurance. "This Co."

40 12. No proposal or application to insure my

## PLEAS

life has ever been made to any company or agent upon which a policy has not been issued of the amount applied for, except as follows. And by the word "Company" I mean as defined in the previous statements.

13. My family history is as follows. Condition of health of each. (If not good, give details.) 10

Age of father, 55. Health good.

Age of mother, 40. Cause of death, "Confinement," Brooklyn, N. Y.

How many brothers living? 2, aged 22 and 19, health good.

How many sisters living? 1 living, age 16, health good.

How many brothers dead? 1 dead; cause of death, "Infant." 20

How many sisters dead? 1 dead; cause of death, "Infant."

I hereby declare that the application to the Metropolitan Life Insurance Company for an insurance on my life was signed by me, and that I renew and confirm my agreements that as to the answers given to the medical examiner, and I hereby declare that said answers are correctly recorded. 30

Witness, F. M. Galloway, M.D.

Signature of Applicant, FRED BRUNJES.

Dated at Brooklyn this fifteen day of March, 1911.

## PLEAS.

And the said defendant, by Clifford I. Voorhees, its attorney, comes and defends the wrong and in- 40

## PLEAS

jury, when, &c., and says that it did not undertake and promise in manner and form as the said plaintiff hath above thereof complained against it, and of this the said defendant put itself upon the country.

10 And for a further plea in this behalf as to the declaration, the said defendant, by leave of the court, here for this purpose first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that the said Fred Brunjes, upon the date and at the time of making of the said contract in said declaration mentioned, was not in full health, of which the  
20 said plaintiff had notice, and of this the said defendant puts itself upon the country.

And for a further plea in this behalf as to the said declarations the said defendant, by like leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that in and by the provisions of the said policy  
30 in said declaration mentioned, it was provided that the payment in said declaration mentioned should be made upon receipt of proofs of the death, of the insured, made in the manner, to the extent and upon the blanks required in said policy, and further that the said proofs of death thereunder should be made upon the blanks to be furnished by the said defendant and should contain answers to each question propounded to the claimant, physicians and other persons, and  
40 should also contain the record, evidence and the

## PLEAS

verdict of the coroner's inquest if any were held.

And the said defendant avers that neither the said plaintiff nor anybody in her behalf, did furnish the said defendant with proofs of death upon the blanks furnished by said company and containing answers to each question propounded to the claimant, physicians and other persons, and containing the record, evidence and verdict of the coroner's inquest, if any; wherefore it prays judgment if the said plaintiff ought to have or maintain her aforesaid action thereof against it, the said defendant. 10

And for that for a further plea in this behalf as to the said declaration the said defendant, by like leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action against it, because it says that in and by the answers and statements contained in the printed and written application mentioned in and referred to by said instrument or policy in said declaration mentioned it was expressed and declared among other things that the said Fred Brunjes had never had any of the following complaints or diseases, to wit: apoplexy, appendicitis, asthma, bronchitis, cancer or other tumor, consumption, diabetes, disease of brain, disease of heart, disease of kidneys, disease of liver, disease of lungs, disease of urinary organs, dropsy, fistula, fits or convulsions, general debility, habitual cough, hemorrhage, insanity, intestinal or hepatic colic, jaundice, paralysis, pleurisy, pneumonia, rheumatism, scrofula, spinal disease, spitting or raising blood, ulcer or open sores, varicose veins; all of which answers and state- 20 30 40

## PLEAS

ments were by the terms of said application and of said instrument or policy made warranties and were therein and thereby made part of said contract.

10 And the said defendant avers that the said answers and statements so contained in the said printed and written application were false and not true, in that the said Fred Brunjes had had before and at the date of said application, consumption, or disease of the lungs, by reason whereof the said instrument or policy, according to its expressed conditions, was and is null and void, to wit, at the County of Mercer aforesaid, and this the said defendant is ready to verify.

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

30 And for a further plea in this behalf, as to the said declaration the said defendant by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that in and by the answers and statements contained in the printed and written application mentioned in and referred to by the said instrument or policy in said declaration mentioned, it was expressed and declared, among other things, that the said Fred Brunjes had not been under the care of any physician within two years then next preceding, except as stated in the line previous thereto, and that in the line previous thereto it was stated that Dr. Coughlin, in January, 1911, had attended said Fred Brunjes for grippe with  
40 good results, all of which answers and statements

## PLEAS

were by the terms of said application and of said instrument or policy made warranties, and were therein and thereby made part of said contract.

And the said defendant avers that the said answers and statements so contained in said printed and written application were false and not true, in that the said Fred Brunjes had been under the care of a physician or physicians within two years then next preceding the date of said application, other than the said Dr. Coughlin, as therein stated, by reason whereof the said instrument or policy, according to its expressed conditions was and is null and void, to wit, at the County of Mercer aforesaid, and this the said defendant is ready to verify.

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

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And for a further plea in this behalf, as to the said declaration, the said defendant, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that in and by the answers and statements contained in the printed and written application mentioned in and referred to by said instrument or policy in said declaration mentioned it was expressed and declared among other things that the said Fred Brunjes had, prior to said application, never met with any serious personal injury, nor ever been seriously ill, except as therein stated below, and for the complaints named and no other, when he was attended by the following name physicians and no other, and did not except any

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## REPLICATION

disease or state the names of any physicians, and further in and by said written application did warrant and agree that wherever nothing was written in the paragraphs in said application it was agreed that the warranty should be true without exception, all of which answers and statements were by the terms of said application and of said instrument or policy made warranties, and were therein and thereby made part of the said contract.

And said defendant avers that the answers and statements so contained in said printed and written application were false and not true, in that the said defendant had been, before said application, seriously ill with consumption, or disease of the lungs, by reason whereof the said instrument or policy, according to its expressed conditions, was and is null and void, to wit, at the County of Mercer aforesaid, and this the said defendant is ready to verify.

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

CLIFFORD I. VOORHEES,

Attorney of Defendant.

## REPLICATION.

And the said plaintiff as to the said first plea of the said defendant Metropolitan Life Insurance Company by it above pleaded, and whereof it hath put itself upon the country, doth the like.

And the said plaintiff as to the said plea of the said defendant Metropolitan Life Insurance Company by it secondly above pleaded, saith that the said plaintiff by reason of anything by the said

## REPLICATION

defendant Metropolitan Life Insurance Company in that plea alleged, ought not to be barred, prevented or precluded from having or maintaining her aforesaid action thereof against it, because she says that the said Fred Brunjes, upon the date and at the time of making of the said contract in said declaration mentioned, was in full health, of which the said defendant then had knowledge, as shown by the report of the examining physician of the defendant, F. M. Galloway, and this she, the said plaintiff, prays may be required of by the country, etc. 10

And the said plaintiff as to the said plea of the said defendant Metropolitan Life Insurance Company, by it thirdly above pleaded, saith that she, the said plaintiff, ought not to be barred, prevented or precluded from having or maintaining her aforesaid action against said defendant Metropolitan Life Insurance Company, because she says that the said defendant was furnished with the proofs of the death, of the insured, made in the manner, to the extent and upon the blanks required in the said policy, was made upon the blanks furnished by the said defendant Metropolitan Life Insurance Company, and contained answers to each question propounded to the plaintiff, physicians and other persons. And this she, the said plaintiff, is ready to verify, when, where and in such manner as the court here shall consider, etc. 20 30

And the said plaintiff as to the said plea of the said defendant Metropolitan Life Insurance Company by it fourthly above pleaded, saith that she, the said plaintiff, ought not to be barred, prevented or precluded from having or maintaining her aforesaid action against said defendant 40

## REPLICATION

Metropolitan Life Insurance Company, because she says that the said Fred Brunjes did not have, and never had had before or at the date of the said application and of the complaints or diseases contained in the printed and written application mentioned in and referred to by said instrument or policy in said declaration, or referred to in said third plea of the said defendant Metropolitan Life Insurance Company, and because she says that the answers and statements so contained in the said printed and written application were not fraudulent, but wholly true, in that the said Fred Brunjes had not had before and at the date of said application, consumption, or disease of the lungs, and because said answers and statements not being fraudulent are not by the terms of said application and of the said instrument or policy made warranties, but are declared therein in the absence of fraud to be deemed representations and not warranties, and by reason thereof the said instrument or policy, according to its expressed conditions, is not, and never has been null and void, and this she, the said plaintiff, prays may be inquired of by the country, etc.

And the said plaintiff as to the said plea of the said defendant Metropolitan Life Insurance Company by it fifthly above pleaded, saith that she, the said plaintiff, ought not to be barred, prevented or precluded from having or maintaining her aforesaid action against said defendant Metropolitan Life Insurance Company, because she says that the said Fred Brunjes had not been under the care of any physician within two years then next preceding said application, except as stated in said application that Dr. Coughlin, in January, 1911, had attended said Fred Brunjes for

## REPLICATION

grippe with good results, and because she says that the answers and statements so contained in the said printed and written application were not fraudulent, but wholly true, in that the said Fred Brunjes had not been under the care of a physician or physicians within two years then next preceding the date of said application, other than the said Dr. Coughlin, as therein stated, and because said answers and statements not being fraudulent are not by the terms of said instrument or policy made warranties, but are declared therein in the absence of fraud to be deemed representations and not warranties, and by reason thereof the said instrument or policy, according to its expressed conditions, is not, and never has been null and void, and this she, the said plaintiff, prays may be inquired of by the country, etc.

And the said plaintiff as to the plea of the said defendant Metropolitan Life Insurance Company by it sixthly above pleaded, saith that she, the said plaintiff, ought not to be barred, prevented or precluded from having or maintaining her aforesaid action against said defendant Metropolitan Life Insurance Company, because she says that said Fred Brunjes had not, prior to said application, met with any serious personal injury, nor had ever been seriously ill, except as therein stated below, and for the complaint therein mentioned, when he was attended by the physician named, and because she says that the answers and statements so contained in the said printed and written application were not fraudulent, but wholly true, in that the said Fred Brunjes had not been, before said application, seriously ill with consumption, or disease of the lungs, and because said answers and statements not being fraudulent are not by the terms of said application and of

## PROCEEDINGS AT TRIAL

the said instrument or policy made warranties, but are declared therein in the absence of fraud to be deemed representations and not warranties, and by reason thereof the said instrument or policy, according to its expressed conditions, is not, and never has been null and void, and this she,  
 10 the said plaintiff, prays, may be inquired of by the country, etc.

JOHN P. LLOYD,  
 Attorney of Plaintiff.

## PROCEEDINGS AT TRIAL,

The above entitled action was heard before the Honorable Nelson Y. Dungan, Judge and a Jury in the New Jersey Supreme Court, Monmouth Circuit, on the 9th day of June, 1915, and there-  
 20 upon the following proceedings took place:

Mr. Voorhees: Before proceeding I have a motion to make. My motion is to dismiss both causes of action, as in my judgment the opinion of the Supreme Court is one non obstante veredicto, and that therefore this court has no jurisdiction again to try the causes; that the only possible review that the plaintiff has is by appeal to the Court of Errors.

30 The Court: I will decline the motion.

(Exception noted for defendant as ground of appeal.)

(Mr. Lloyd opens for the plaintiff.)

Mr. Lloyd: The first thing I think is to introduce these interrogatories that we have taken. I will read the questions first of the interrogatories.

40 Mr. Voorhees: Hadn't it better appear on the record that interrogatories were served upon me and answered?

## STIPULATION, &amp;c.

Mr. Lloyd: Yes, interrogatories were propounded in this case to the defendant by the plaintiff and the interrogatories were served by me upon the counsel for the defendant and service was acknowledged and answers were afterwards given. There were two sets of interrogatories, I might state, and to the first act there was an exception taken and some of the interrogatories were stricken out by the court and some were left to remain, which were answered, and then there was another set of interrogatories served which were all answered. 10

(Mr. Lloyd proceeds to read the interrogatories.)

Mr. Voorhees: I want to object to offering these interrogatories at this time. These were a set of additional interrogatories that were served after an order entered by Judge Bergen on my motion to strike out. Now there was a previous set which it seems to me should be first introduced so that the proof may be orderly before this Court. 20

## STIPULATION AND OFFER OF EXHIBITS ON BEHALF OF PLAINTIFF.

The Court: Why shouldn't there be in this case, in view of the known facts, admissions practically covering these interrogatories here? These interrogatories appear now to apply to both cases. This case is not consolidated with the other as it was before, and I have no doubt that Mr. Voorhees will now stipulate such facts as are contained in the answers to interrogatories with reference to the policy in question in this suit. 30

Mr. Voorhees: Yes, sir; perfectly willing.

Mr. Lloyd: That is satisfactory. 40

## STIPULATION, &amp;c.

The Court: Now why can't the suit be simplified by that?

Mr. Lloyd: That is all I want.

The Court: Very well. Suppose you do that. You make your admission and see if there is anything else that Mr. Lloyd wants.

10 Mr. Voorhees: I will admit that Fred Brunjes, the deceased, applied in writing on March 12, 1913, for a policy of insurance amounting to \$500 on his life in favor of the plaintiff named therein as beneficiary. Upon the receipt of this application by the company a policy No. 1455701C, dated March 18, 1911, was prepared and issued. That Fred Brunjes died on the 8th day of July, 1911; whereupon the present plaintiff in this action claimed as beneficiary the proceeds of insurance of the said policy which I have recited.

20 The Court: Any question about the proof of death?

Mr. Lloyd: I think that is all right.

The Court: You admit that proper proofs of death were furnished?

30 Mr. Voorhees: I admit that proofs of death were furnished only if they are offered in proper manner by the plaintiff. I have them here if he calls upon me to produce them, so that they may be offered as part of his affirmative case, the application, policies, plaintiff's statement and the entire transaction.

The Court: Do you desire them?

40 Mr. Lloyd: I have proofs that I requested him to serve upon me himself. I have the proof that I gave him notice, he served me with copies of

## STIPULATION, &amp;c.

the original. If he has the originals I have no objection.

The Court: Suppose you call upon him now and that will save time. He says he has them here ready to produce.

Mr. Lloyd: The proof by Helen Brunjes in the \$500 policy that her husband had not been attended during the illness or grippe by any physician, if the counsel will consent to have that corrected that Dr. Robert E. Coughlin did attend him at that time. 10

Mr. Voorhees: No, I cannot consent to that. It is a very important part of our case.

Mr. Lloyd: Outside of the proof made after the death of her husband the proof called for by the company as to what sickness previous to the last one—— 20

The Court: What is your present suggestion? I don't understand you. To amend?

Mr. Lloyd: Yes.

The Court: The Court hasn't any power to do that.

Mr. Lloyd: Then the proofs may go in as they are. 30

The Court: You now demand the proofs?

Mr. Lloyd: Yes.

The Court: And you say you have them here to produce?

Mr. Lloyd: I will call first for the proof of death made by the beneficiary, Helen Brunjes, of the death of Fred Brunjes. 40

## STIPULATION, &amp;c.

Mr. Voorhees: I object at this time. First, if your Honor please, I think that proof must be presented first of the application and policy and then proof of death and claim.

The Court: I thought we were clearing away—

10 Mr. Voorhees: That is what I wanted to do, only I wanted to have the record straight.

The Court: These matters of admission I thought were clearing away at this time.

Mr. Voorhees: I would be willing to do that, only it seems to me there should be an orderly sequence.

20 Mr. Lloyd: I offer the policy then of \$500 in evidence, to which is attached the application for insurance.

The Court: It will be received.

(Paper marked Exhibit P 1.)

Mr. Lloyd: Do I understand your Honor that these interrogatories then can be simply offered in evidence without being read?

30 The Court: The admissions were intended to cover the interrogatories, and if there is anything which the interrogatories contain with reference to this \$500 policy which has not been admitted my suggestion is that you ask Mr. Voorhees to admit it, as I understand from him that he will be willing to.

40 Mr. Lloyd: I will just look over and see whether there is anything further that has not been admitted. I believe that his admissions cover about all the answers to the interrogatories. If Mr. Voorhees would consent to these interroga-

## STIPULATION, &amp;c.

tories being marked in evidence as part of the case I would like to have them go in.

The Court: Do you consent to it, Mr. Voorhees?

Mr. Voorhees: Oh, yes.

(Interrogatories marked Exhibit P 2.)

Mr. Lloyd: The proof of death of Mr. Brunjes by the beneficiary, Helen H. Brunjes, will come next.

10

Mr. Voorhees: It should appear in the interrogatories that certain parts were cut out on motion by Judge Bergen—I don't know whether that is done or not. I do not think they should go in if they have not been reviewed since the order cutting out some of them.

Mr. Lloyd: It shows what has been answered and what has not in the interrogatories.

20

The Court: I suppose there is no answer to the part that was stricken out.

Mr. Voorhees: No, there is not.

The Court: So the mere fact of the interrogatory being more extensive than it should be would make no difference?

30

Mr. Voorhees: I suppose not.

Mr. Lloyd: The proofs then of the death of the deceased. Have you the proofs of death made by the beneficiary, Helen H. Brunjes?

Mr. Voorhees: I have it here. I object to showing it unless it is to be offered in evidence.

The Court: If you produce it at his request and he fails to offer it you may offer it. He can-

40

## STIPULATION, &amp;c.

not call for a document and inspect it and then say that it shall not go in.

10 Mr. Voorhees: My objection goes further than that, speaking for the plaintiff as part of the plaintiff's affirmative case. Being called upon to produce it I have responded and I say I do so only with the understanding that it should be offered.

The Court: I think the paper should be produced when called for.

(Paper produced by Mr. Voorhees.)

20 The Court: I cannot quite see how he could maintain his case without offering it, the proof of death. It is required, I assume in the policy, usually is.

Mr. Voorhees: Yes, sir.

(Paper offered in evidence and marked Exhibit P 3.)

Mr. Lloyd: Now there is also proof of death by Dr. C. C. Straughn, the physician in the last illness. I ask for the original.

The Court: You have requested that, have you?

30 Mr. Lloyd: Yes, sir, the original of that.

(Paper produced.)

Mr. Voorhees: My same objection goes to that paper, if your Honor please, that it must be offered.

Mr. Lloyd: I offer it in evidence.

(Paper marked Exhibit P 4.)

40 The Court: I suppose it is also admitted that

## STIPULATION, &amp;c.

you have paid nothing under this policy, is it not, Mr. Voorhees?

Mr. Voorhees: It is, sir.

Mr. Lloyd: The proof of death also or certificate of William A. Rogers, the Borough Clerk of Matawan, certificate made by him of the death for the Bureau of Vital Statistics, I think it is. 10

(Paper produced and marked Exhibit P 5.)

Mr. Lloyd: I also call for the certificate of the agent, H. S. Weinstein, which is part of the proof. I have given notice to produce.

Mr. Voorhees: I have no certificate from H. S. Weinstein, I don't think.

Mr. Lloyd: I have a copy which you have furnished me in my hands, dated March 2, 1911. 20

Mr. Voorhees: I have that as part of the application to this policy, and I am willing to produce it on the same condition, that the entire instrument is offered.

(Produces paper.)

Mr. Lloyd: It has reference to the \$500 policy right on the bottom.

The Court: Do you offer that? 30

Mr. Lloyd: Yes.

The Court: It will be received.

Mr. Lloyd: It is the application of the policy for \$500 by Fred. Brunjes, the deceased, and also has statements made by the medical examiner.

Mr. Voorhees: Statements of the deceased made to the examiner. 40

## STIPULATION, &amp;c.

Mr. Lloyd: Yes, statements made to the medical examiner by the deceased.

Mr. Voorhees: Also a report of inspection by the company's agent, I understand.

Mr. Lloyd: I offer both.

10 The Court: They will be received.

(Paper marked Exhibit P 6.)

Mr. Lloyd: I also call for a report of examining physician, F. M. Galloway, made on March 17, 1911, on the policy for \$500.

Mr. Voorhees: I think you will find that in the last paper. I haven't it. All those are on that one instrument.

20 Mr. Lloyd: Yes, it is on the reverse side of it. So it is in evidence.

I would like now to have the inspection report made by H. S. Weinstein.

Mr. Voorhees: That one paper covers that.

Mr. Lloyd: Yes, I believe it is in. That is the extent of the proof, your Honor, in the case and I think that proves our case, excepting I will call Mrs. Brunjes.

30 Mr. Voorhees: I am willing to accept the testimony of Mrs. Brunjes offered at the last trial, if Mr. Lloyd is willing.

Mr. Lloyd: All I want to prove by her is that she has furnished all the proofs required to be furnished by the company to show the death of her husband, if that is admitted by Mr. Voorhees.

40 The Court: How could she testify to that in this case? That is for the court to say, isn't it?

## STIPULATION, &amp;c.

Mr. Lloyd: I think that is true. I don't think it is necessary to put her on the stand for that purpose. There is only one thing, that she has made a mistake in making out her proof that in the sickness of her husband prior to the last sickness that he had no physician. It shows in the application blank that he did have a physician; that she was in error when she said that he did not have a physician, that he was attended in January for grippe, in the report which was made after his death. But I do not see that that report is binding upon the beneficiary or the plaintiff to vitiate the policy, because they did not accept the risk upon that statement. It was something made after the insurance policy was delivered. 10

The Court: This explanation would not change the Court's view that it would be quite improper for her to take the stand now and say that she made a misstatement. 20

Mr. Lloyd: The proofs then as put in constitute our claim.

The Court: The plaintiff rests?

Mr. Lloyd: Yes.

## DEFENDANT'S TESTIMONY 30

## STIPULATION AND OFFER OF EXHIBITS ON BEHALF OF DEFENDANT.

(Mr. Voorhees open for the defendant.)

Mr. Voorhees: Now, if your Honor please, I have the deposition of Dr. Robert E. Coughlin, a non-resident witness whom I could not subpoena and whose testimony was taken by commission, Mr. Lloyd appearing for the plaintiff and Messrs. 40

## STIPULATION, &amp;c.

Grout & Grout, of New York, for the defendant. But I would say this: that the testimony that is to be offered or perhaps read is one and the same proposed suit, and it would seem an additional burden to have to go over that testimony twice to this jury. Therefore I would ask the court's suggestion to facilitate the trial of this.

10 The Court: The only suggestions that the Court has to make is that the second probably would not be to this jury. I know of no way, however, in view of counsel's unwillingness to consent to try the cases together, to read it in such a way that it would not be necessary to repeat it, because this jury will not try the next case, probably not. If they should then perhaps it will not be necessary.

20 Mr. Voorhees: I desire to offer in evidence a certified copy, a transcript from the records of deaths reported to the Department of Health of the City of New York, under seal.

Mr. Lloyd: I object to this. It does not relate to the deceased, Fred Brunjes, but relates to some other person by the name of Cornelia Brunjes, that has no connection with the decedent case.

30 The Court: That is the only ground of objection?

Mr. Lloyd: Well, the proof does not seem to be such as would throw any light upon this case, it seems to me.

The Court: Well, not yet. It might become proper. I cannot tell about that, Mr. Voorhees. I suppose the object in introducing it is that Cornelia Brunjes is perhaps a close relative of the de-

40

## STIPULATION, &amp;c.

ceased and to show her knowledge of the character of disease. Is that the object of it?

Mr. Voorhees: I will qualify it, if I may. In the direct case of the plaintiff it appears by the documentary evidence that Fred Brunjes stated that Cornelia Brunjes, his mother, had died in 1896, in confinement. That certified transcript shows that Cornelia Brunjes died of phthisis pulmonalis in 1897. Therefore another falsehood was perpetrated or committed upon this company in this application. It seems to me that is quite relevant and is offered in rebuttal or to contradict the statement in the application. 10

The Court: It will be admitted.

(Paper marked Exhibit D 1.) 20

Mr. Voorhees: I refer your Honor to the printed case. I will offer the deposition of Robert E. Coughlin.

The Court: It may be read.

(Deposition read by Mr. Voorhees.)

(Insert copy of deposition.)

Mr. Voorhees: This deposition I offer.

The Court: Is there any objection? 30

Mr. Lloyd: No, sir.

The Court: It will be admitted. It is only receivable because it is not objected to. I do not think it is the usual practice to admit a deposition the effect of which is to send printed or typewritten testimony to the jury. It is read to the jury, the same as testimony given in court. But since there is no objection it will be admitted.

Mr. Lloyd: I have no objection, your Honor. 40

PLAINTIFF'S TESTIMONY IN REBUTTAL  
(Deposition marked Exhibit D 2.)

DEFENDANT RESTS

Mr. Lloyd: If your Honor please, I wish to state to put on the record that Mrs. Brunjes has since married and that her name is now Mrs.  
10 Helen H. Burlew.

PLAINTIFF'S TESTIMONY IN REBUTTAL

MRS. HELEN H. BURLEW, sworn for plaintiff.

*Direct examination by Mr. Lloyd.*

Q. Mrs. Burlew, you are the plaintiff in this case? A. Yes, sir.

Q. And you were the wife of Fred Brunjes? A. I was.

20 Q. And what year were you married? A. In 1909.

Q. And after your marriage where did you live?

Mr. Voorhees: I object to this testimony as not being rebuttal or in any wise pertinent to the case.

Mr. Lloyd: This is only the opening, is all.

The Court: Well, these now are simply qualifying questions or introductory questions, rather, I should say.  
30

Mr. Lloyd: That is all it is offered for, introductory.

A. I lived in Bay Ridge.

Q. And you resided with your husband after marriage? A. Yes, I did.

Q. When was the first that you knew that your husband had symptoms of tuberculosis?

40 (Objected to. Objection sustained.)

## PLAINTIFF'S TESTIMONY IN REBUTTAL

Q. Did you ever know your husband to be treated by Dr. Robert E. Coughlin, other than the one time that he treated him in January, 1911, for the grippe?

Mr. Voorhees: I object to that as incompetent, immaterial and irrelevant and not rebuttal. 10

(Objection sustained.)

(Objected noted for plaintiff as ground of appeal.)

A. I did not.

Q. Did you ever know your husband to be taking any medicine from Dr. Robert E. Coughlin?

(Objected to. Objection overruled.)

A. No, I did not. 20

Q. Did your husband ever tell you that he was taking treatment from Dr. Robert E. Coughlin?

(Objected to for the same reason. Objection overruled.)

A. No, he did not.

Q. Do you know of any other instance that your husband was treated by Dr. Robert E. Coughlin than the one instance for the grippe in January, 1911?

(Objected to. Objection overruled.) 30

A. No, I did not.

*Cross examination by Mr. Voorhees.*

Q. Mrs. Burlew, in what business or occupation was Mr. Brunjes engaged in October, 1911?

Mr. Lloyd: I object. I didn't call her for this.

(Objection overruled.) 40

## PLAINTIFF'S TESTIMONY IN REBUTTAL

A. I don't remember now.

Q. You don't remember? Well, now, he died in 1911, didn't he? A. Yes.

Q. What date? A. The 8th day of July.

Q. Do you remember what business he was in in June, 1911? A. He was not in any.

10 Q. In May, 1911? A. No, I do not.

Q. Was he in any business? A. In May, 1911? He wasn't in any.

Mr. Lloyd: I object because it is not cross-examination.

(Objection overruled.)

Q. Now can't you go back to January, 1910, and tell what business he was in? A. No, for I don't remember.

20 Q. Now as a matter of fact he was not in any business, was he? A. I don't remember.

Q. Well, would you say that he was in business? A. Well, I wouldn't say for I don't remember.

Q. Where were you living in January, 1910? A. In Brooklyn.

Q. When did you leave Brooklyn? A. April 8th, 1911.

30 Q. Why did you leave Brooklyn? A. Because we came down here and found a house and it was always his desire to live in the country.

Q. What business was he engaged in then just prior to his coming down here? A. In the Brooklyn Rapid Transit.

Q. Do you know why he left the Brooklyn Rapid Transit Company? A. I do not.

40 Q. Don't you know as a matter of fact that he left that company because he was so ill he could not attend to his duties there? A. I do not.

## PLAINTIFF'S TESTIMONY IN REBUTTAL

Q. You say that he was not ill at the time?  
A. Not that I knowed of.

Q. Do you recall that Mr. Brunjes was what is known as an egg candler? A. Yes.

Q. When was he that? A. He was that when I married him, but I don't know when he left.

Q. You were married what year? A. 1909. 10

Q. And he continued in that occupation up until about when, as near as you can state? A. I don't remember.

Q. Well, when did he go with the Brooklyn Rapid Transit Company? A. I don't remember when he went there.

Q. Well, was it in April, 1911? A. I don't remember.

Q. Well, you came here in May, 1911, didn't you? A. No, came here the 8th day of April. He didn't go with the Brooklyn Rapid Transit then. 20

Q. Well, just prior to that had he been occupied in any capacity? A. Just before he came down here?

Q. Yes. A. He was in the Brooklyn Rapid Transit.

Q. What date in April did you come here? A. The 8th day.

Q. A pretty robust man? A. Yes.

Q. Strong and well? A. Seemed to be. 30

Q. Never had any sickness that you knew of? A. Not that I know of.

Q. Vigorous? A. Yes.

Q. Engaged in outdoor work? A. Well, he was on the Brooklyn Rapid Transit.

Q. And when he came down here he was doing farming at that time? A. No.

Q. Husbanding the farm? A. No.

Q. What was he doing down here? A. He wasn't doing anything. 40

## PLAINTIFF'S TESTIMONY IN REBUTTAL

Q. He was pretty sick then, wasn't he? A. No.

Q. Pretty well? A. He seemed to be.

Q. When did you first know that he was seriously ill? A. Well, I don't remember when it was.

Q. As soon as you came to Matawan, was it?

10 A. No.

Q. Where? What was the first place you came to? Was it Matawan? A. Yes.

Q. As soon as you came to Matawan did he not engage a physician? A. Well, he caught a heavy cold coming down and I had a physician there one, that was all.

Q. He caught that coming down in the train?

A. Yes. We didn't come down by train, we came down by trolley.

20 Q. And that was in the month of April? A. Yes.

Q. Was it a very cold day? A. Yes, it was, stormy.

Q. And that cold was the beginning of the end?

A. He got well after that.

Q. He got well? A. Yes.

Q. And then the medical attendance was stopped? A. Yes.

30 Q. About when did he get well? A. He got well right after. He was not sick a week.

Q. What was the cause of his death, if you know? A. Well, I don't know.

Q. You don't know? You remember saying on the former trial in this case: "Q. And what was the cause of his death? A. Consumption." Do you remember that? A. Well, it is so long ago that I didn't remember.

Q. Well, you wouldn't say that you didn't say that? A. Well, I don't remember what I said.

40

## MOTION FOR DIRECTION

Q. Well, if you did say that was it false? A. No.

Q. I say if you did say that he died of consumption was it false? A. No.

Q. But you would not say that he did not die of consumption? A. No.

Q. Now, Mrs. Brunjes, as a matter of fact don't you know that Mr. Brunjes had tuberculosis for two years, practically, prior to his death in July, 1911? A. No, I don't. 10

Q. Will you say that he didn't have? A. No. *Redirect examination by Mr. Lloyd.*

Q. That last question that was asked, would you say that your husband did not have tuberculosis for the last two years, what do you mean by saying no? A. Well, I didn't know it. 20

Mr. Voorhees: I object as to what she meant.

The Court: I was in some doubt as to what she meant. She says she didn't know it.

BOTH SIDES REST.

## MOTION FOR DIRECTION

Mr. Voorhees: Now I move for the direction of a verdict on the ground that the case has been adjudicated by the Supreme Court in 1912, and by the opinion of Chief Justice Gummere upon the identical proof admitted in the case at the former trial and this, there is no change, that the status of the Supreme Court must control the ruling of this court. I submit very respectfully we are entitled to a verdict. 30

(Mr. Lloyd replies.)

40

## DIRECTION OF VERDICT.

The Court: Counsel for the plaintiff insists that the case of *Fish vs. The Metropolitan Life Insurance Company*, recited in the opinion in *Brunjes vs. Metropolitan Life Insurance Company*, reported in 83 New Jersey Law at page 296, is not, as suggested by that opinion, identical or even similar to the case now being tried. I am inclined to disagree with that suggestion. But whether it is or not, the Supreme Court has decided that upon a certain state of facts proven upon a previous trial of this case the Court should have directed a verdict in favor of the defendant. The fifth paragraph of the application made by Mr. Brunjes states, "I have not been under the care of any physician within two years other than as stated in the previous paragraph;" and that previous paragraph states that Dr. Coughlin had attended him in January, 1911, for grippe; while Dr. Coughlin's testimony is to the effect that he had attended him for several months two years prior to his death and that he came to his office and that upon two occasions he went to his house (these two visits may have been when he had the grippe in January, 1911). He says, "He came in very irregularly to my office, probably once in two weeks, maybe he would go a month; this covering the spring of 1910." The next treatment occurred in October of 1910 and continued more or less through the winter and up to about January or February of the following year; that the first part of the treatment he had symptoms of dyspepsia and stomach trouble, up to the spring of 1910; than when he presented symptoms of tuberculosis; and that at that time the doctor told Mr. Brunjes, "You have got to be very careful of yourself, you have got to do the right thing by

## DIRECTION OF VERDICT

yourself; and in fact you have to treat yourself along the lines laid down for the treatment of tuberculosis." This, he says, was in October, 1910; and that for the good of his health he ought to get out of that employment and into the open air, and advocated the building up treatment, feeding and building up and fresh air treatment. He says all this was prior to the 5th of March, 1911. All this, of course, should have indicated to Mr. Brunjes the seriousness of his ailment, even if it did not indicate to him that he had tuberculosis, and should have required in his answer to the fifth question, or the fifth statement in his application, a qualification of the statement. 10

But at this time I am unable to treat this case as though it were being tried for the first time. The Supreme Court has said, by the opinion of the Chief Justice, that upon the testimony, the evidence in the previous case, the Court should have directed a verdict, and the evidence presented at this time is precisely the evidence presented upon the previous trial, with the exception of the testimony of Mrs. Brunjes, in which she said that she did not know of her husband being treated by Dr. Coughlin or of his taking any medicine. But that does not amount to a denial of it and I am not sure but that in her testimony in the previous trial something of that kind was testified. I have not examined it carefully. But I am very sure that the testimony which seemed to be controlling in the Supreme Court was precisely the same as the testimony which has been produced here; and for that reason alone the motion for the direction of a verdict should be granted. It has been suggested that in addition to that situation it now appears that the fifth statement in the interroga- 20 30 40

## EXHIBIT P 1. EXHIBIT 2

10 tory was untrue; a certified copy of the proof of death of the insured's mother showing that she died of pulmonary tuberculosis before this application was made, and the tenth statement is to the effect that, "No one of my parents ever had consumption or any pulmonary or scrofulous disease." However, I am not sure that that is pleaded, and I am not influenced by that proof at this time, although it is as a matter of fact a part of the testimony.

Mr. Lloyd: Your Honor I think granted me an exception when I objected to that proof going in.

20 The Court: No, because none was asked for. I noticed particularly that you did not. However, if you ask for it now——

Mr. Lloyd: I will ask for it now, if your Honor will allow it to me.

The Court: You may also have an exception to my order directing a verdict against the plaintiff in this case.

Mr. Lloyd: I do ask for it.

30 (Objection noted for plaintiff as ground of appeal.)

## EXHIBITS.

EXHIBIT P 1. POLICY OF INSURANCE <sup>\$500</sup>  
*together with application attached thereto*  
 See annexed Declaration under the term "Conditions of Policy."

EXHIBIT 2. INTERROGATORIES AND ANSWERS.

## INTERROGATORIES

## INTERROGATORIES TO ENABLE DISCOVERY BEFORE TRIAL.

To CLIFFORD I. VOORHEES, Esq.,

Attorney for Defendant.

SIR:—Please take notice, that I demand that  
 within ten days from the day of service hereof,  
 you cause answers to the following interroga-  
 tories, to be made under oath of the defendant,  
 and that you cause the same to be served upon  
 me the attorney for the plaintiff within said time.

Third Interrogatory: State what proofs of  
 death, if any, of Fred Brunjes, the insured, have  
 been furnished upon the blanks of your company,  
 to you or your representatives, and whether the  
 same contained answers to each question pro-  
 pounded to the claimant, physicians and other  
 persons, as required under the two policies set  
 forth in the separate declarations in these causes,  
 and are any proofs now lacking of the death of  
 the insured, made in the manner, to the extent and  
 upon the blanks required in said policies, and  
 the name or names of such persons who have fur-  
 nished proofs of death, and where does, or do,  
 such person or persons reside?

Fourth Interrogatory: State whether any in-  
 spection report was secured by your company  
 upon Fred Brunjes, the insured, prior to, or at  
 the time of the application for the insurance under  
 the two policies set forth in the separate declara-  
 tions in these causes, and if so, were the same  
 furnished on your request on each application,  
 and by whom made, and the date thereof, and  
 whether any employee of your company made the  
 reports.

## INTERROGATORIES

Fifth Interrogatory: Was the report of Dr. F. M. Galloway on Fred Brunjes, the insured, as examining physician under application for policy No. 44674563, dated March 5, 1911, and as examining physician under application for policy No. 1455701, dated March 15, 1911, made at the request of the company?

\* \* \* \* \*

Dated, January 5th, 1912.

Yours respectfully,

JOHN P. LLOYD,  
Attorney for Plaintiff.

## ADDITIONAL INTERROGATORIES

20 To CLIFFORD I. VOORHEES, Esq.,  
Attorney for Defendant.

Dear Sir:—

Please take notice, that I demand that within ten days of the date of service hereof, you cause answers to the following interrogatories, to be made under oath of the defendant, and that you cause the same to be served upon me the attorney for the plaintiff within said time.

30 First Interrogatory: Did the Metropolitan Life Insurance Company on or about the thirteenth day of March, A. D. 1911, execute by its President and Secretary, a policy or contract of life insurance in writing, upon the life of Fred. Brunjes, deceased, for the sum of Four Hundred and Thirty Dollars? Said policy being numbered 44674563?

40 Second Interrogatory: Did the Metropolitan Life Insurance Company on or about the eight-

## INTERROGATORIES

eenth day of March, A. D. 1911, execute by its President and Secretary, a policy or contract of life insurance in writing, upon the life of Fred. Brunjes, deceased, for the sum of Five Hundred Dollars? Said policy being numbered 1455701 C?

Third Interrogatory: Did the Metropolitan Life Insurance Company on or about the thirteenth day of March, and the eighteenth day of March, A. D. 1911, and prior to the death of said Fred. Brunjes, deceased, deliver such policies or contracts of life insurance as mentioned in above interrogatories to the said Fred Brunjes, or to anybody for the said Fred Brunjes? 10

Fourth Interrogatory: Prior to the delivery or at the delivery of the said policy or contract of life insurance numbered 44674563, did the Metropolitan Life Insurance Company receive from the said Fred. Brunjes, or anybody for him, the sum of twenty-five cents, and the weekly premiums of a like sum each week thereafter up to the date of the death of Fred Brunjes, being the premiums payable under said policy? 20

Fifth Interrogatory: Prior to the delivery or at the time of delivery of the said policy or contract of life insurance numbered 1455701-C did the said Metropolitan Life Insurance Company receive from the said Fred Brunjes, or anybody for him, the sum of Ten Dollars and Forty Cents, being the annual premium upon such policy? 30

Sixth Interrogatory: Did the Metropolitan Life Insurance Company receive proofs of death at its home office, in the manner and to the extent required by blanks furnished by the company, prior to the beginning of the above entitled action? 40

## ANSWERS TO INTERROGATORIES

Seventh Interrogatory: If the answer to the sixth interrogatory above be in the affirmative, when were the said proofs of death made to the said home office of the said company?

10 Eighth Interrogatory: Did the Metropolitan Life Insurance Company have given or surrendered to it the said policies or contracts of life insurance numbered 44674563 and 1455701-C, at the time the said proofs of death were furnished to it by the above named plaintiff, or at any other time subsequent to the death of the said Fred Brunjes?

20 Ninth Interrogatory: Does the Metropolitan Life Insurance Company, or any of its agents know the present whereabouts of F. M. Galloway, who appears on the application for insurance made herein as a witness?

Tenth Interrogatory: If the answer to the ninth interrogatory above be in the affirmative, the Metropolitan Life Insurance Company is requested to state the address or present whereabouts of the said F. M. Galloway.

Dated, January 13th, 1912.

Yours respectfully,

30 JOHN P. LLOYD,  
Attorney for Plaintiff.

## ANSWERS TO INTERROGATORIES.

To JOHN P. LLOYD, Esq.,

Attorney for Plaintiff.

40 SIR:—Please Take Notice, That the following are answers to the additional interrogatories served upon me on January 15th instant, and also answers to those interrogatories heretofore

## ANSWERS TO INTERROGATORIES

served upon me on January 5th instant, and ordered to be answered by His Honor James J. Bergen, Justice of the Supreme Court on January 13th instant.

Answer to first interrogatory: It did.

Answer to second interrogatory: It did.

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Answer to third interrogatory: I have no personal knowledge, but believe they were so delivered. The company admits that they were delivered to Fred Brunjes.

Answer to fourth interrogatory: I have no personal knowledge, but believe that it did. The company admits that it did.

Answer to fifth interrogatory:

I have no personal knowledge but believe that it did. The company admits that it did.

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Answer to sixth interrogatory:

It received certain proofs of death at its home office, prior to the beginning of the above entitled action, but not in the manner and to the extent required by the blanks furnished by the company, in that the answers were not complete and there was no certificate from Dr. Robert E. Coughlin, who, it was ascertained, was one of the attending physicians upon the deceased in his final illness, and a demand upon the claimant to produce a certificate upon the company's blanks from the said Dr. Coughlin has never been complied with.

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Answer to seventh interrogatory:

Such proofs as were submitted were received July 24th, 1911.

Answer to eighth interrogatory:

They were, but were subsequently returned on demand.

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## ANSWERS TO INTERROGATORIES

Answer to ninth interrogatory: It does know.

Answer to tenth interrogatory: —

I understand, to the best of my knowledge and belief, Dr. F. M. Galloway resides at No. 1 Sherman Street, Brooklyn, N. Y.

- 10 The following are answers to the interrogatories heretofore served upon me on January 5th instant, and ordered to be answered by His Honor James J. Bergen, on January 13th instant.

Answer to third interrogatory:

- 20 There were certain proofs of death on the company's blanks furnished under both policies in this suit, and while the answers to the questions purport to be full and complete, said proofs have not been made in the manner, and to the extent, and upon the blanks, as required under said policies.

The persons who furnished the statements in the proofs of death were the claimant, Helen Brunjes, of Matawan, N. J., and Dr. C. C. Straughn, of Matawan, N. J.

- 30 The answer to Question 10 of the claimant's statement for Policy Numbered 1455701-C, and Question 7 of the claimant's statement for Policy Numbered 44674563, in response to question, "Give the names and addresses of all physicians who attended or were consulted during the last sickness," state: "Dr. Straughn of Main Street, Matawan, N. J." And in response to Question 14 on the proofs (claimant's statement) for Policy Numbered 1455701-C and Question 14 on the blanks (claimant's statement) for Policy Numbered 44674563, said, "Had grippe last winter but no physician," are not complete.

- 40 Answer to fourth interrogatory:

## EXHIBIT 3

There is a report on Application Numbered 1455701-C, made by H. S. Weinstein, an agent of this company, residing in Brooklyn, N. Y., and on Application Numbered 44674563 by the same person, H. S. Weinstein.

Answer to fifth interrogatory: It was.  
Dated, Jan. 23, 1912.

10

Yours respectfully,

CLIFFORD I. VOORHEES,  
Attorney for Defendant

## EXHIBIT 3. PROOF OF DEATH.

## CLAIMANT'S STATEMENT.

- Policy No. 1,455,701. Amount claimed, \$500.  
Full name of Deceased. Fred Brunjes.  
Residence. Washington St., Matawan, N. J. 20
1. (a) Birthplace of deceased? Williamsburg, N. Y.
  - (b) Date of birth? 1884, Nov. 30.
  2. Place of death of deceased? Washington St., Matawan, Monmouth County, New Jersey.
  3. Date of death? 1911, July 8.
  4. Cause of death? Give full particulars.) Tu-berculosis.
  5. Occupation of deceased? (If more than one. 30 specify in detail.) Egg inspector. Has been conductor on trolley cars in Brooklyn since January.
  6. Was deceased at any time connected, directly or indirectly, with the ale, wine or liquor business? If so, when? No.
  7. Name and address of deceased's last em- 40 ployer? J. W. Butler, wholesale butter, eggs and cheese, Washington St., New York. Was employed [by Brooklyn Rapid Transit Co. in Brooklyn since January, 1911.

## EXHIBIT 3

8. When did deceased quit work, and why? Quit work on trolley about April 1, 1911.

9. Upon what date did deceased first consult a physician for last sickness? About the last of April.

10. Give names and addresses of all Physicians who attended or were consulted by deceased during last sickness. Dr. Strong, Main St., Matawan, N. J.

11. For how long was deceased confined to house and prevented from attending to business by last sickness? About three weeks.

12. What was the duration of deceased's last sickness? Since about the first part of April.

20. 13. Had deceased ever been an inmate of or received treatment at any hospital, dispensary or other institution? If so, give full particulars. No.

14. What sickness previous to the last one has deceased ever had? Give full particulars of each sickness, with dates and duration of each. Had grippe last winter but no physician.

15. Give names and addresses of all Physicians who attended deceased at any time prior to last sickness. None.

30. 16. (a) Did deceased ever meet with any accident or undergo any surgical operation? If so give dates and full particulars. No.

(b) Were deceased's habits of life correct, sober and temperate? Yes.

(c) Had they always been so? Yes.

17. (a) Has this Company ever paid a claim on any member of deceased's family? If so, give particulars. No.

40. (b) Had any application for insurance ever

## EXHIBIT 3

been made to any company, society or association on which a policy was not granted? No.

18. Are there any other policies on deceased in this Company? If so, give numbers and amounts. Industrial policy.

19. Was deceased insured in any other company or society? If so, state names of companies or societies and amount of insurance in each. No. 10

20. Who made application for this insurance? State name and relationship. Fred Brunjes, self.

21. By whom have the premiums been paid? Helen Brunjes, wife.

22. Was deceased in receipt of a pension? If so, state date granted and where. No.

23. Was deceased blind, deaf, dumb, or afflicted with any mental disease or physical infirmity or deformity? If so, give full particulars and state how long such had existed? No. 20

24. (a) Was deceased married? Yes.

(b) If married, is widow or widower alive? Yes.

25. Is deceased's father living? Yes.

Mother dead. Age at death, don't know. Full name, Cornelia Brunjes. Cause of death, don't know. Place of death, Brooklyn. Date of death, don't know. 30

26. Give names in full of deceased's brothers and sisters living. George Brunjes, age 22. Harry Brunjes, age 19. Elsie Brunjes, age 16.

27. Give the following particulars of deceased's brothers and sisters who are dead: Name in full, age at death, cause of death. Two brothers dead, but do not know names or dates of death.

28. Give names in full and ages of deceased's children now living. None. 40

## EXHIBIT 3

29. Has father, mother, brother, or sister, ever had consumption or any pulmonary, scrofulous, or constitutional disease or insanity? If so, give names, relationship, causes of death and dates of death. No.

10 30. Are you now or have you ever been in the employ of this Company? If so, where and in what capacity? No.

31. Are you in any way related to anyone in the employ of this Company? If so, to whom, where located, and what is the relationship? No.

32. (a) By what right or relationship do you claim the proceeds of the insurance? As wife and beneficiary.

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

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

HELEN BRUNJES. Age 22.

Main St., Matawan, New Jersey.

State of New Jersey,  
County of Monmouth.

40 Before me, a Notary Public in and for the above County and State, this 17th day of July, 1911, appeared Helen Brunjes, known to me, and made oath that she personally signed the above statement and that the answers by her given to the

## EXHIBIT 4

foregoing questions are true and full to the best of her knowledge and belief.

(Seal) ROBT. HITCHINGS, Notary Public.

EXHIBIT 4. STATEMENT OF DR. C. C.  
STRAUGHN, ATTENDING PHYSICIAN.  
DECLARATION MADE BY CLAIMANT.

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To the Metropolitan Life Insurance Company.

I desire to file the following statement by attending physician with and as part of the Proofs of Death submitted by me to your Company on account of Policy No. 1,455,701 C. Name of Insured, Fred Brunjes.

Dated at Matawan, N. J., this 17th day of July, 1911.

20

HELEN BRUNJES, Claimant.

Witness, Robt. Hitchings.

ATTENDING PHYSICIAN'S STATEMENT.

1. Full name of Deceased? Fred Brunjes.
2. Residence. Matawan, N. J.
3. Occupation. Egg Candler.
4. White or colored? White.
5. Age of death? 26 years, 7 months.
6. Apparent age at death? 26 years.
7. Date of death? 1911, July 8th.
8. Cause of death? I. Chief or Primary. Tuberculosis of Lungs.
- II. Contributing or Secondary.
9. How long had deceased been ill when you were called to attend? Don't know.
10. For what disease or diseases have you at any time attended deceased prior to last illness, and what was their duration?

30

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## EXHIBIT 4

11. Did deceased ever suffer from phthisis pulmonalis, or any other form of consumption or pulmonary disease? If so, please specify. Yes.
12. Was deceased afflicted with any infirmity, deformity, or chronic disease? If so, please specify. No.
- 10 13. Did any member of deceased's family die of consumption? If so, please give relationship and date of death. Don't know.
14. Was deceased ever treated by any other physician or at any hospital or other institution prior to, during or subsequent to your attendance? If so, please specify. Don't know.
15. Was death the result of deceased's own hand or act? No.
- 20 16. Have you previously filled out a certificate for this or any other company of this death? If so, please specify. Yes. This company.
17. Are there any other particulars relating to the sickness or habits of deceased with which you think the Company should be made acquainted? If so, please specify. No.
18. To what extent if any did deceased use intoxicants? Not at all.
- 30 19. Was death caused, directly or indirectly, by the use of intoxicating drink, opium, or other drug? No.
20. Was an inquest or post mortem examination held? No.

I Hereby Certify that I attended the deceased from April 8th, 1911, to July 8th, 1911, that I signed the Certificate on file at the office of the Board of Health or Register of Vital Statistics, and that the answers as above recorded are com-

## EXHIBIT 5

plete and true to the best of my knowledge and belief.

Signature of Physician: C. C. STRAUGHN,  
Matawan, N. J.

State of New Jersey,  
County of Monmouth.

10

Before me, a Notary Public in and for the County and State, this 17th day of July, 1911, appeared C. C. Straughn, known to me as a physician in regular standing and made oath that he personally signed the above statement and the answers by him given to the foregoing questions are true and full to the best of his knowledge and belief.

(Seal)

ROBERT HITCHINGS.

EXHIBIT 5. CERTIFICATE BY WILLIAM  
ROGERS, BOROUGH CLERK OF MON-  
MOUTH COUNTY BUREAU OF VITAL  
STATISTICS.

20

*State of New Jersey—Bureau of Vital Statistics.*

CERTIFICATE AND RECORD OF DEATH.

1. Place of death. County of Monmouth, Borough of Matawan.

2. Full name of deceased. Fred G. H. Brunjes.  
*Personal and Statistical Particulars.*

30

3. Sex, Male. 4. Color or race, White. 5. Single, Married, Widowed, or Divorced. Married.

6. Date of birth.

7. Age. 26 years, 7 months.

8. Occupation. Egg Candler.

9. Birthplace. U. S. A.

Parents:

10. Name of father. Charles Brunjes.

11. Birthplace of father. U. S. A.

40

12. Maiden name of mother, Caroline Ellenberger.

13. Birthplace of mother. U. S. A.

14. The above is true to the best of my knowledge.

10 (Informant) I hereby certify the above is a true copy of return filed with me.

15. Filed July 20, 1911.

WM. RODGERS, Clk.

*Medical Certificate of Death.*

16. Date of death. July 8, 1911.

17. I hereby certify that I attended deceased from April 8, 1911, to July 8, 1911, that I last saw him alive on July 8, 1911, and that death occurred, on the date stated above, at 8 p. m.

20 The cause of death was tuberculosis of the lungs; duration, 3 months.

(Signed) C. C. STRAUGHN, M.D.

7-10, 1911.

Matawan, N. J.

18. Length of residence.

19. Place of burial or removal. Rose Hill. Date of Burial, July 10, 1911.

20. Undertaker. Harvey Bedle, Keyport, N. J.

30 EXHIBIT 6. APPLICATION FOR POLICY INCLUDING STATEMENTS MADE TO THE MEDICAL EXAMINER BY THE DECEASED AND REPORT OF EXAMINING PHYSICIAN

APPLICATION

Received at Home Office, March 17, 1911.

No. 1,455,701. Date of Policy, March 18, 1911.

District, Bay Ridge.

40 Life of Fred Brunjes, Brooklyn, N. Y. Age 26.

Plan, W. L. Pol. Form, No. 547. Amount, \$500.  
Premium, \$10.40. Payable annually.

Beneficiary, Helen H. Brunjes, wife.

Revocable? No.

Decision of Home Office: Approved, Mar. 17,

1911. *Parts of application signed by deceased are printed in full on pages 6-11* 10

REPORT OF EXAMINING PHYSICIAN

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

2a. How long have you known applicant? Date of examination.

2b. Are you the attending physician of applicant or his family? No.

3. Where was examination made? His home.

4. Race, White. Apparent age, 27 years. 20

5a. Height and weight? 5 ft. 4in.; 130 lbs.

5b. General appearance? Good.

6. Have you made a physical examination of his lungs and heart? Yes.

7a. Is the respiratory murmur clear and distinct over both lungs? Yes.

b. Is the character of the respiration full, easy and regular? Yes.

c. Respirations per minute? 18.

d. Are there any indications of disease of the organs of respiration? No.

8a. Is the character of the heart's action uniform, free and steady? Yes.

b. Are its sound and rhythm regular and normal? Yes.

c. Are there any indications of disease of this organ, or of the blood vessels. No.

9a. State the rate and other qualities of the pulse. 86. Good.

b. Does it intermit, or become irregular or unsteady at this examination? No.

10a. Is the person ruptured? No.

10 10b. If so, is well-fitting truss worn? No.

11a. Any atheroma, bleeding piles, varicose veins, skin eruption, sores or ulcers? No.

11b. Any suspicion of locomotore ataxia, goitre or aneurism? No.

12. To what daily extent does the Life use alcoholic stimulants? None.

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

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

15. Anything unsanitary or hazardous in the occupation, or in the residence or place of business? No.

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

I have this 15th day of March, 1911, personally seen and examined the Life proposed for insurance; I saw the signature made on Part B to the Application on the preceding page, and am of the opinion that said Life is in good health and that said Life's constitution is sound; and I therefore

recommend said Life to be accepted at first class rates.

F. M. GALLOWAY,

Examining Physician's Signature.

REPORT OF INSPECTION.

1. When and where have you seen the applicant? At 1069 68th St., on March 13, 1911. 10
2. How long have you known applicant? Three years.
3. Have you discussed with him plan of insurance, and does he fully understand provisions of Policy applied for? Yes.
4. Premiums will be paid from earnings and income of? (Give name.) Fred Brunjes.
5. Is amount applied for, in addition to what he now has, in keeping with applicant's own means and requirements, and do you think he can afford to pay premium? Yes. 20
6. Have you satisfied yourself that application is made in good faith, that Policy if issued will be delivered and is likely to be kept in force? Yes.
7. What is the character of the home surroundings? Very good.
8. Is the applicant any relative of yours or of any employee of this Company? No. 30
9. What does outside inquiry into applicant's habits disclose? Very good.
10. Does applicant intend to discontinue any insurance now in force in this Company if the Policy applied for is issued? No.
11. Is the occupation stated correctly and in full? Yes.
12. How much advance payment did Agent collect? One dollar. 40

## EXHIBIT D 1      EXHIBIT D 2

13. From whom did he collect it. Fred Brunjes.

Above is the result of my personal, careful investigation. I regard the risk as well suited for the Intermediate Branch, and I do so recommend the issuance of the Policy.

H. S. WEINSTEIN.

10

March 14, 1911.

I deem this risk as measuring up to the standard of the Intermediate Branch and can recommend its acceptance. Received \$1 as advance payment.

109

F. D. BERKELEY.

Policy to be issued to the credit of Agent H. S. Weinstein, No. 19, under Assistant E. Newman, District Bay Ridge.

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EXHIBIT D 1. CERTIFICATE CITY OF NEW  
YORK <sup>Record of Death</sup> ~~UNDER SEAL~~ OF CORNELIA  
BRUNJES.

EXHIBIT D 2. DEPOSITION OF ROBERT E.  
COUGHLIN.

ROBERT E. COUGHLIN, being duly sworn, according to law, as a witness for the defendant, testified as follows:

30

*By Mr. Purdy.*

Q. Doctor, where do you reside? A. Brooklyn Boorugh, New York City.

Q. What is the street number? A. 428 47th Street.

Q. Are you a practicing physician? A. State of New York.

Q. And how long have you been such? A. Since 1892.

40

Q. Where has your practice been since that

# EXHIBIT D 1

A Transcript from the Records of Deaths Reported to the Department of Health  
of The City of New York.

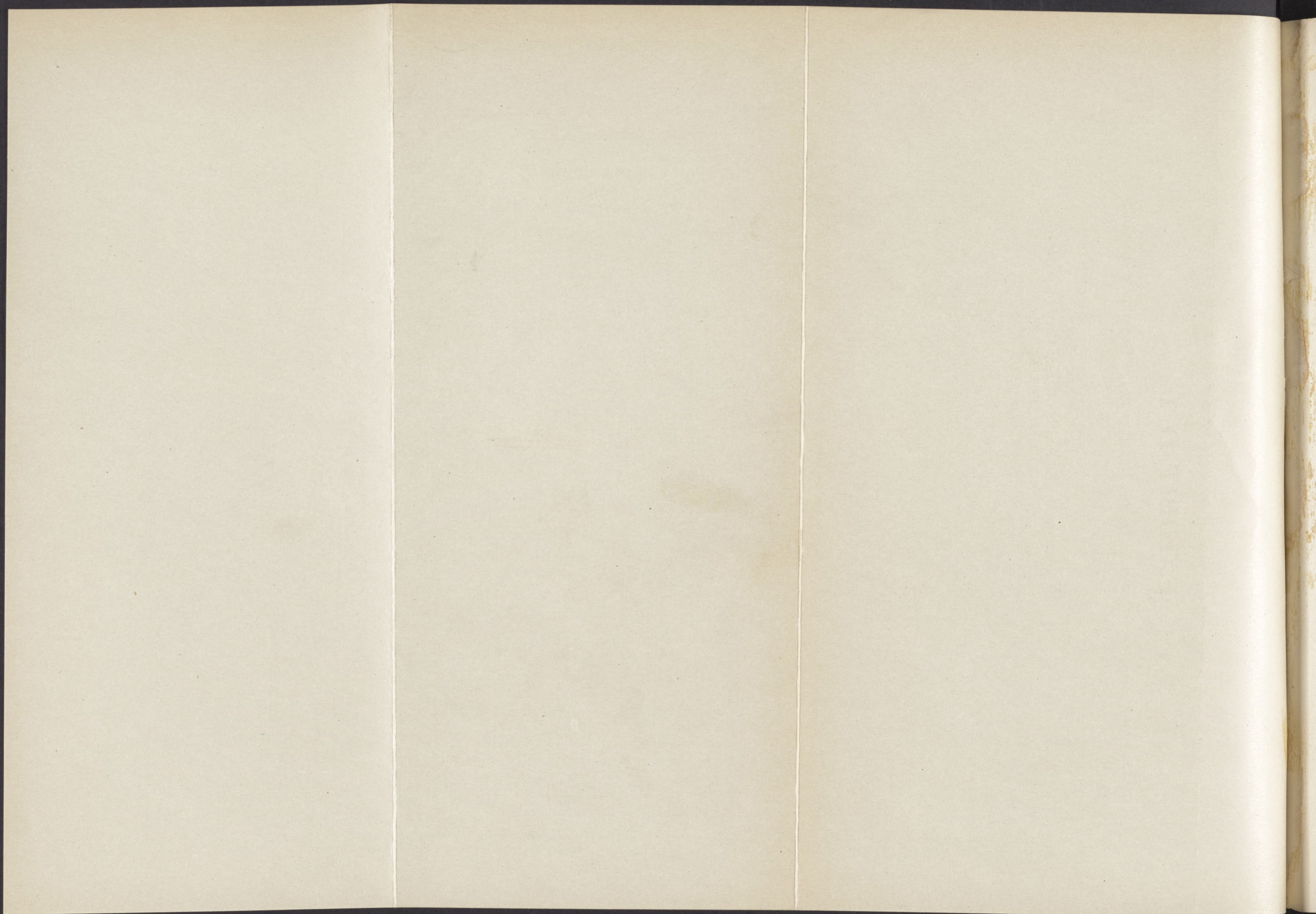
NOTICE:—In issuing this transcript of record, the Department of Health of the City of New York does not certify to the truth of the record transcribed. The seal of the Department of Health attests only the correctness of the transcript, as no inquiry as to the facts reported has been provided for by law.

1 PLACE OF DEATH		STATE OF NEW YORK	
BOROUGH OF <u>BROOKLYN</u>		Department of Health of The City of New York BUREAU OF RECORDS STANDARD CERTIFICATE OF DEATH	
No. <u>73 27th Ave St</u>		Registered No. <u>19283</u>	
Character of premises, whether tenement, private, hotel, hospital or other institution, etc. <u>Private</u>			
2 FULL NAME <u>Conelia Brunjes</u>			
3 SEX <u>F</u>	4 COLOR OR RACE <u>W</u>	5 SINGLE, MARRIED, WIDOWED, OR DIVORCED (Write the word) <u>Married</u>	15 DATE OF DEATH <u>Oct 28 1896</u> (Month) (Day) (Year)
6 DATE OF BIRTH _____ (Month) (Day) (Year)		<p>16 I hereby certify that the foregoing particulars (Nos. 1 to 14 inclusive) are correct as near as the same can be ascertained, and I further certify that I attended the deceased from <u>Mar-1895</u> to <u>Oct 28 1896</u> that I last saw <u>her</u> alive on the <u>28</u> day of <u>Oct 1895</u> that death occurred on the date stated above at <u>9 p</u> M., and that the cause of death was as follows: <u>Phthisis Pulmonalis</u></p>	
7 AGE <u>32</u> yrs. <u>1</u> mos. <u>24</u> ds. If LESS than 1 day.....hrs. or.....min.?			
8 OCCUPATION (a) Trade, profession, or particular kind of work <u>Housewife</u> (b) General nature of industry, business or establishment in which employed (or employer) _____			
9 BIRTHPLACE (State or country) <u>Brooklyn</u>			
(A) How long in U. S. if foreign born _____	(B) How long resident in City of New York <u>2 yrs</u>	duration _____ yrs. _____ mos. _____ ds.	
PARENTS OF DECEASED	10 NAME OF FATHER _____	Contributory (Secondary) _____	
	11 BIRTHPLACE OF FATHER (State or country) <u>Germany</u>	duration _____ yrs. _____ mos. _____ ds.	
	12 MAIDEN NAME OF MOTHER _____	Witness my hand this <u>29</u> day of <u>Oct</u> 191 <u>6</u>	
13 BIRTHPLACE OF MOTHER (State or country) <u>Germany</u>	Signature <u>J. M. Woodhull M. D.</u>		
14 Special INFORMATION required in deaths in hospitals and institutions and in deaths of non-residents and recent residents.			
Former or Usual Residence, _____		Address <u>1740 Coney Ave</u>	
Where was disease contracted, if not at place of death? _____		17 PLACE OF BURIAL <u>Cypress Hill</u>	DATE OF BURIAL <u>Oct 1 1896</u>
FILED <u>Oct. 30. 1896</u>		18 UNDERTAKER <u>Herbert</u>	ADDRESS <u>697 3 Ave</u>

EUGENE W. SCHEFFER,  
Secretary,  
Board of Health,  
The City of New York.

A True Copy,

E. J. Byrne M. D.  
Assistant Registrar.



## EXHIBIT D 2

time? A. Always in the same locality, on the same street.

Q. Did you know one Fred Brunjes, who formerly resided at 1069 68th Street? A. I did.

Q. For how long a period have you known him? A. Probably from about two years prior to his death—a year and a half or two years, I am not positive. 10

Q. Had you known his family? A. I had known his family, that is, by marriage.

Q. Did you ever treat or prescribe for Mr. Brunjes? A. I did.

Q. Can you tell about that time? A. As near as I can—I have no notes or anything to refresh my memory, but as near as I can figure, the first time I saw him and prescribed for him was about two years prior to his death. 20

Q. The date of his death was about the 8th day of July, 1911, is that about the date?

Mr. Lloyd: Yes, that is the date.

A. If we could figure on it, I think I saw him about six months before he married. I don't know when he married.

Q. Would that be prior to the 5th day of March, 1911? A. Oh, yes, sure.

Q. Do you remember how many times? A. I could not tell you. He came in very irregularly to my office. I made no note of it. Generally paid cash and I don't know how often. 30

Q. Could you tell approximately the number of times? A. No, I could not, probably once in two weeks he would show up, maybe he would go a month; of course, *I am only guessing*, but that is as near as I can remember.

Q. For how long a period did that cover? A. That covered up to the spring of 1910. 40

## EXHIBIT D 2

Q. He died in 1911? A. Around the spring of 1910.

Q. Did you treat him subsequent to that date?  
A. I did.

Q. When was the next treatment, about? A.  
Some time in October.

10 Q. October, 1910? A. October, 1910.

Q. And how long did the treatment continue?  
A. The treatment continued more or less through  
the winter, up to about January or February of  
the following year, 1911.

Q. Was this treatment given at the office or at  
his house? A. This was all given at the office,  
except one or two visits that were made in Janu-  
ary when he had an attack of the grippe, I think  
January or February, I cannot remember which.

20 *By Mr. Lloyd.*

Q. This treatment was all given how, Doctor?  
A. In the office. There were only a couple of  
visits at his house.

*By Mr. Purdy.*

Q. From your examination of Mr. Brunjes, are  
you able to state from what disease, if any, he  
suffered during this time? A. Yes.

30 Q. What was the disease? A. Well, the first  
part of the treatment of the disease, as near as I  
could detect were the symptoms of dyspepsia and  
stomach trouble up to the spring of 1910.

Q. What was the disease from which he suffered  
commencing with the treatment given in the fall  
of 1910, can you state from what disease he suf-  
fered? A. *He presented the symptoms of tuber-*  
*culosis.*

40 Q. Did those symptoms continue during the rest  
of the treatment? A. They continued.

## EXHIBIT D 2

Q. Tuberculosis of the lungs? A. Of the lungs.

Q. Did you ever tell Mr. Brunjes of these symptoms? A. *I hesitated about telling him that he had tuberculosis.*

Q. What did you tell him? A. But I told him, now I said Brunjes, you have got to be very careful of yourself and you have got to do the right thing by yourself and in fact you have to treat yourself along the lines laid down for the treatment of tuberculosis, that is October, 1910. 10

Q. Do you know what occupation he was employed in at that time? A. He had something to do in New York, as an egg sampler.

Q. Egg candler? A. Something of that sort.

Q. Was anything said with reference to a change of employment that you recollect? A. Yes, I told him for the good of his health he ought to get out of that employment and get out in the open air and advocated the building up treatment, feeding and building up and fresh air treatment. 20

Q. And this was all prior to the 5th day of March, 1911? A. Oh, yes.

*Cross Examination by Mr. Lloyd.*

Q. Doctor, you have stated that you treated Mr. Brunjes in October, 1910, and that he then, according to your diagnosis, showed symptoms of tuberculosis? A. Yes, sir. 30

Q. You did not inform him that he had tuberculosis, you say, because you hated to discourage the patient? A. That's it exactly. I did not know how he would stand it.

*By Mr. Purdy.*

Q. Doctor, can you state whether or not Mr. Brunjes had tuberculosis of the lungs at any time between October, 1910, and the 13th day of March, 1911? A. *In my opinion he had.* 40

## NOTICE OF APPEAL AND GROUNDS OF APPEAL

Q. Tuberculosis is a pulmonary disease, is it not? A. Yes.

Q. What is this? A. Pulmonary tuberculosis of the lungs.

*By Mr. Lloyd.*

10 Q. Doctor, did you at any time tell Mr. Fred Brunjes between October, 1910, and the 13th day of March, 1911, that he was suffering from tuberculosis? A. I did not.

ROBERT E. COUGHLIN.

Sworn to and subscribed before me, this 6th day of February, 1912.

GEO. WHITEFIELD BETTS, JR.,

Master in Chancery of New Jersey.

20

SIR:

TAKE NOTICE that the plaintiff appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds:

1. That the Court upon the objection of the defendant overruled the question as follows: "Q. Did you ever know your husband to be treated by  
30 Dr. Robert E. Coughlin other than the one time that he treated him in January, 1911, for the grippe? Mr. Voorhees: I object to that as incompetent, immaterial and irrelevant and not rebuttal. Objection sustained. Objection noted for the plaintiff as ground of appeal."

2. Because the Court at the conclusion of the trial improperly directed a verdict for the defendant.

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NOTICE OF APPEAL AND GROUNDS OF APPEAL

3. Because the Court improperly admitted the certificate of the Department of Vital Statistics.

JOHN P. LLOYD,  
Attorney for Plaintiff.

MERRITT LANE,  
Of Counsel. 10

To

CLIFFORD I. VOORHEES, Esq.,  
Attorney for Defendant.

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## CASE No. 2.

## I. DECLARATION.

10 New Jersey Supreme Court, of the eighth  
day of November, in the year of our Lord,  
one thousand nine hundred and eleven.

*Monmouth County, ss.*

Metropolitan Life Insurance Company, a body  
corporate, the defendant herein, was summoned  
to answer unto Helen H. Brunjes, the plaintiff  
herein, in an action on contract, and thereupon  
the said plaintiff, by John P. Lloyd, her attorney,  
complains, for that, whereas, on or about the  
thirteenth day of March, in the year of our Lord,  
one thousand nine hundred and eleven, the said  
20 defendant did by a certain policy or by agree-  
ment, in writing, which the plaintiff here and now  
brings into court, agreed with the said Helen H.  
Brunjes that in consideration of the payment of  
a certain sum of money (which payment had been  
previously made) to the said defendant, and also  
in consideration of warranties, and the truth of  
certain facts, which were true as warranted and  
stated, it the said defendant would upon the death  
of one Fred. Brunjes, the husband of the said  
30 plaintiff, unless the said death occurred under con-  
ditions referred to in the said policy aforesaid,  
pay to the said Helen H. Brunjes, the sum of  
four hundred and thirty dollars, and the said  
plaintiff avers that the said Fred. Brunjes died on  
the eighth day of July, in the year of our Lord  
one thousand nine hundred and eleven, and that  
one of the conditions referred to in the said policy  
aforesaid was that it the said defendant would  
only pay to the said Helen H. Brunjes one-half of  
40 the above sum if the death of Fred. Brunjes, the

## DECLARATION

husband of the plaintiff, occur within six calendar months from the date of the said policy aforesaid, and the full amount if death occur thereafter, and although all of the requirements of the said policy of insurance have been complied with, and although the plaintiff herein has held to and met all the conditions and requirements in the said policy set forth, and although all the agreements in the said policy have been kept and performed by the plaintiff herein, and the said Fred. Brunjes in his lifetime, and although the death of the said Fred. Brunjes did not occur under the circumstances mentioned in said policy, except that the death of the said Fred. Brunjes did occur within six calendar months of the date of said policy aforesaid, to wit, on the eighth day of July, in the year of our Lord one thousand nine hundred and eleven, and thereby one-half only of the said sum of four hundred and thirty dollars became payable to the said plaintiff, but in no other-wise exempting the said defendant from the obligation to pay the money or sum of two hundred and fifteen dollars, as it obligated itself to pay to the said plaintiff under the conditions referred to in said policy aforesaid, yet the said defendant unjustly refuses to pay to the plaintiff the said sum of two hundred and fifteen dollars as aforesaid, or any part thereof, although often requested so to do by the said plaintiff as aforesaid, to the damage of the said Helen H. Brunjes of five hundred dollars.

And that whereas heretofore, to wit, on the thirteenth day of March, in the year of our Lord one thousand nine hundred and eleven, at New York City, to wit, at Matawan, in the County of Monmouth aforesaid, by a certain instrument in writ-

## DECLARATION

ing, or policy of life insurance, which the plaintiff here and now brings into court, it was agreed that the said defendant, Metropolitan Life Insurance Company (in consideration of the answers and statements contained in the application for said policy, and the stipulations and agreements there-  
10 in contained, and the payment of the premium mentioned in the schedule of twenty-five cents weekly, on or before each Monday, to the said defendant during the life of the insured) did insure the life of Fred. Brunjes in the sum of four hundred and thirty dollars, payable to Helen H. Brunjes, wife of the insured, upon receipt by the Company at its home office, and its approval of the proofs of the death of the insured made in  
20 the manner, to the extent and upon the blanks required by the said defendant, and upon the surrender of the said policy, and all receipt books, and the said plaintiff avers that the said policy of insurance was delivered to the said Fred. Brunjes, and the said Fred. Brunjes did at the time of making and delivery of the said policy of life insurance, on or about the thirteenth day of March, in the year of our Lord one thousand nine hundred and eleven, pay to the said defendant the said premium mentioned in the schedule of twenty-  
30 five cents, and did in fact comply with all the conditions, terms and requirements of the said policy on his part to be performed and complied with, and the said plaintiff avers, that afterwards, to wit, on or about the eighth day of July, in the year of our Lord one thousand nine hundred and eleven, at Matawan, in the County of Monmouth aofresaid, the said Fred. Brunjes died, and said plaintiff then being his wife as aforesaid, and the plaintiff avers that heretofore, and subsequent to  
40 the last mentioned date, due notice and satisfac-

## DECLARATION

tory proofs of the death of the said Fred. Brunjes were given and made by the plaintiff and received and accepted by the defendant, and the said policy surrendered to the defendant at the office of the defendant in accordance with the terms of the said policy, and although the said Fred. Brunjes in his lifetime did in all things conform to and fulfil and keep all things in the said policy of insurance contained, and the terms and conditions on the part of the said Fred. Brunjes to be observed and performed according to the tenor, form and effect of the said policy of insurance, and although the said plaintiff has in all things conformed to, fulfilled and performed according to the tenor, form and effect of the said policy of insurance on her part to be fulfilled, performed and kept, of all of which said several premises the said defendant aforesaid had due notice, and although often requested by the said plaintiff to pay her the said plaintiff the said sum of two hundred and fifteen dollars, as the said defendant obligated itself to pay to the said plaintiff under the conditions referred to in said policy aforesaid, by reason of the death of the said Fred. Brunjes within six months of the date of said policy aforesaid, to wit, on the eighth day of July, in the year of our Lord one thousand nine hundred and eleven, did not, nor would when requested as aforesaid, or at any time before or since pay the said sum of two hundred and fifteen dollars, or any part thereof, but has hitherto wholly neglected and refused so to do, and still neglects and refuses so to do, to wit, at Matawan, in the County of Monmouth aforesaid, to her damage five hundred dollars.

And for that whereas, the said defendant here-

## DECLARATION

tofore, to wit, on the first day of August, in the  
 year of our Lord one thousand nine hundred and  
 eleven, at Matawan, in the County of Monmouth  
 aforesaid, was indebted to the said plaintiff in  
 the sum of five hundred dollars for goods, wares  
 and merchandise before that time sold and deliv-  
 10 ered by the said plaintiff to the said defendant  
 at its request, and in the sum of five hundred  
 dollars for work and labor before that time done  
 and performed and material furnished by the  
 plaintiff for the said defendant at its request, and  
 in the sum of five hundred dollars for so much  
 money by the defendant before that time had and  
 received for the use of the defendant, and in the  
 sum of five hundred dollars for interest due, and  
 for the forbearance by the plaintiff to the defend-  
 20 ant, at the defendant's request of divers large  
 sums of money before that time due and owing  
 from the defendant to the plaintiff on an account  
 stated between them; and being so indebted the  
 defendant in consideration thereof then and there  
 promised the plaintiff to pay the said several sums  
 of money on request, yet the said defendant has  
 wholly disregarded its said several promises and  
 has not paid the said several sums of money, nor  
 any part thereof, although often requested so to  
 30 do; but to do so has hitherto wholly refused, and  
 still does refuse, to the damage of the plaintiff  
 of five hundred dollars, and thereupon she brings  
 her suit, &c.

JOHN P. LLOYD,  
 Attorney for Plaintiff.

AGREEMENT OF METROPOLITAN LIFE INSURANCE CO.

In consideration of the payment of the premium  
 mentioned in the schedule below, on or before  
 40 each Monday, doth hereby agree, subject to the

## DECLARATION

conditions below and on page 2 hereof, each of which is hereby made a part of this contract and contracted by the assured to be a part hereof, and with the privileges and concession to policy holders on pages 2 and 3 hereof, which are hereby made part of this contract, to pay upon receipt of proof of the death of the insured made in the manner, to the extent and upon the blanks required herein, and upon surrender of this policy and all receipt books, the amount stipulated in said schedule. Provided, however, that no obligation is assumed by the Company prior to the date hereof, nor unless on said date the insured is alive and in sound health. The Company may pay the amount due under this policy to either the beneficiary named below, or to the executor or administrator, husband or wife, or any relative by blood or connection by marriage of the insured, or to any other person appearing to said Company to be equitably entitled to the same by reason of having incurred expense on behalf of the insured, or for his or her burial; and the production of a receipt signed by either of said persons shall be conclusive evidence that all claims under this policy have been satisfied.

Name of beneficiary and relationship to the insured: Helen H. Brunjes, wife.

## SCHEDULE ABOVE REFERRED TO.

Number of Policy, 44674563.

Date, March 13, 1911.

Name of the Insured, Fred Brunjes.

Age next Birthday, 27 years.

Weekly Premium, 25 cents.

Amount of Insurance, \$430.00.

One-half only of the above sum payable if death

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## CONDITIONS

occur within six calendar months from date, and the full amount if death occur thereafter.

In witness whereof, the said Metropolitan Life Insurance Company, has by its President and Secretary, signed and delivered this policy on the date named in the said schedule.

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## CONDITIONS.

If the age of the insured is not correctly stated herein, no greater amount will be paid than the premium hereon would have purchased at the true age at entry.

This policy contains the entire agreement between the Company and the insured and the holder and owner hereof.

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Its terms cannot be changed or its conditions varied, except by a written agreement, signed by the President or Secretary of the Company. Therefore, agents (which term includes Superintendents and Assistant Superintendents) are not authorized and have no power to make, alter or discharge contracts, waive forfeitures, or receive premiums on policies in arrears more than four weeks, or to receipt for the same in the receipt book, and all such arrears given to an agent shall be at the risk of those who pay them, and shall not be credited upon the policy, whether entered in the receipt book or not.

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If this policy be assigned or otherwise parted with, or if any erasure or alteration be made herein, except by endorsement signed by the Secretary; or if any premium shall not be paid when due, this policy shall be void. And it is agreed that the foregoing provisions which avoids the policy in case any premium shall be overdue, shall

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## CONDITIONS

not be considered in any respect waived by any act of grace by the Company in the acceptance of overdue premiums upon this or any other policy.

Unless otherwise stated in the blank space below in a waiver signed by the Secretary, this policy is void if the insured before its date has been rejected for insurance by this or any other company, order or association, or has been attended by a physician for any serious disease or complaint; or has had before said date any pulmonary disease, or chronic bronchitis, or cancer, or disease of the heart, liver or kidneys; or if any policy on the life of the insured has been issued by this company and is enforced at the date hereof, unless this policy contains an endorsement signed by the Secretary that such prior policy may be enforced. The company shall not be presumed or held to know of the existence of any previous policy, and in such case the issue of this policy shall not be deemed a waiver of this condition.

Permission granted to hold policy numbered 23701532. James S. Roberts, Secretary.

If this policy is or shall become void, all premiums paid shall be forfeited to the company, except as provided under "Privileges and Concessions to policy holders."

Proof of death under this policy shall be made upon the blanks to be furnished by the company and shall contain answers to each question propounded to the claimant, physicians and other persons, and shall contain the record, evidence and verdict of the coroner's inquest, if any be held. All the contents of such proofs of death shall be evidence of the facts therein stated in behalf of, but not against the company.

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## PLEAS.

And the said defendant, by Clifford I. Voorhees, its attorney, comes and defends the wrong and injury, when, &c., and says that it did not undertake and promise in manner and form as the said plaintiff hath above thereof complained against it, and of this the said defendant puts itself upon  
10 the country.

And for a further plea in this behalf as to the declaration the said defendant, by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that the said Fred Brunjes, upon the date and at the  
20 time of making of the said contract in said declaration mentioned, was not in full health, of which the said plaintiff had notice, and of this the said defendant puts itself upon the country.

And for a further plea in this behalf as to the said declaration the said defendant, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that  
30 in and by the provision of the said policy in said declaration mentioned, it was provided that the payment in said declaration mentioned should be made upon receipt of proofs of the death, of the insured, made in the manner, to the extent and upon the blanks required by said policy, and further that the said proofs of death thereunder should be made upon the blanks to be furnished by the said defendant and should contain answers to  
40 each question propounded to the claimant, physi-

## PLEAS

cians and other persons, and should also contain the record, evidence and the verdict of the coroner's inquest if any were held.

And the said defendant avers that neither the said plaintiff, nor anybody in her behalf, did furnish the said defendant with proofs of death upon the blanks furnished by said company and containing answers to each question propounded to the claimant, physicians and other persons, and containing the record, evidence and verdict of the coroner's inquest, if any; wherefore it prays judgment if the said plaintiff ought to have or maintain her aforesaid action thereof against it, the said defendant.

And for that for a further plea in this behalf as to the said declaration the said defendant, by like leave of the Court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action against it, because it says that in and by the answers and statements contained in the printed and written application mentioned in and referred to by said instrument or policy in said declaration mentioned it was expressed and declared among other things that the said Fred Brunjes had never had any of the following complaints or diseases, to wit: apoplexy, asthma, bronchitis, cancer or other tumor, consumption, disease of brain, disease of heart, disease of kidneys, disease of liver, disease of lungs, disease of urinary organs, dropsy, fistula, fits or convulsions, general debility, habitual cough, hemorrhage, insanity, jaundice, paralysis, pleurisy, pneumonia, rheumatism, scrofula, spinal disease, spitting or raising blood, ulcer or open sores,

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## PLEAS

varicose veins, except pneumonia when a child; all of which answers and statements were by the terms of said application and of said instrument or policy made warranties and were therein and thereby made part of said contract.

10 And the said defendant avers that the said answers and statements so contained in the said printed and written application were false and not true, in that the said Fred Brunjes had had before and at the date of said application, consumption, or disease of the lungs, by reason whereof the said instrument or policy, according to its expressed conditions, was and is null and void, to wit, at the County of Mercer aforesaid, and this the said defendant is ready to verify.

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

And for a further plea in this behalf as to the said declaration the said defendant, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that  
30 in and by the answers and statements contained in the printed and written application mentioned in and referred to by the said instrument or policy in said declaration mentioned, it was expressed and declared, among other things, that the said Fred Brunjes had not been under the care of any physician within two years then next preceding, except as stated in the line previous thereto, and that in the line previous thereto it was stated that Dr. Coughlin, in January, 1911, had attended  
40 said Fred Brunjes for grippe for one week, all of

## PLEAS

which answers and statements were by the terms of said application and of said instrument or policy made warranties, and were therein and thereby made part of said contract.

And the said defendant avers that the said answers and statements so contained in said printed and written application were false and not true, in that the said Fred Brunjes had been under the care of a physician or physicians within two years then next preceding the date of said application, other than the said Dr. Coughlin, as therein stated, by reason whereof the said instrument or policy, according to its expressed conditions, was and is null and void, to wit, at the County of Mercer aforesaid, and this the said defendant is ready to verify. 10

Wherefore it prays judgment if the said plaintiff ought to have or maintain her aforesaid action thereof against it, the said defendant. 20

And for a further plea in this behalf as to the said declaration the said defendant, by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that in and by the answers and statements contained in the printed and written application mentioned in and referred to by said instrument or policy in said declaration mentioned it was expressed and declared among other things that the said Fred Brunjes had, prior to said application, never met with any serious personal injury, nor ever been seriously ill, except as therein stated below, and for the complaints named and no other, when he was attended by the following named physi- 30 40

## REPLICATION

## PROCEEDINGS AT TRIAL

10 cians and no other, and did not except any diseases or state the names of any physicians, and further in and by said written application did warrant and agree that wherever nothing was written in the paragraphs in said application it was agreed that the warranty should be true without exception, all of which answers and statements were by the terms of said application and of said instrument or policy, made warranties, and were therein and thereby made part of the said contract.

20 And said defendant avers that the answers and statements so contained in said printed and written application were false and not true, in that the said defendant had been, before said application, seriously ill with consumption, or disease of the lungs, by reason whereof the said instrument or policy, according to its expressed conditions, was and is null and void, to wit, at the County of Mercer aforesaid, and this the said defendant is ready to verify.

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

CLIFFORD I. VOORHEES,

Attorney of Defendant.

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## REPLICATION.

Replication same as in Case No. 1.

## PROCEEDINGS AT TRIAL.

This case came on before the Honorable NELSON Y. DUNGAN, Judge, and a Jury on the 9th day of June, 1915, in the New Jersey Supreme Court, Monmouth Circuit, and the following proceedings occurred:

40 Mr. Voorhees: Now in this case I have this

## PROCEEDINGS ON PART OF PLAINTIFF

suggestion to make: that with the exception of offering formal proof that the testimony given in the case which we have tried will apply.

The Court: Are you willing?

Mr. Lloyd: Yes, I am willing.

Mr. Voorhees: May I make a motion at this time for dismissal of this cause of action, because the finding of the Supreme Court and judgment final is non obstante veredicto, and therefore the only method of review, if there is one by plaintiff, is to the Court of Errors and Appeals. 10

The Court: The motion will be denied.

(Objection noted for defendant as ground of appeal.)

Mr. Lloyd: Your Honor, the difference in this policy, I wish to state, and the other policy that was sued upon is that this is an *industrial policy* and the other was an *ordinary life policy*, in which the application blank was attached to the policy and made a part of the contract. In this industrial policy the application blank is not made a part of the contract. The industrial policy itself is the entire contract. 20

The Court: I understand that, but these statements in the policy are practically those that occur in the application blank, are they not? 30

Mr. Lloyd: No, they are not.

(Mr. Lloyd opens to the jury.)

Mr. Lloyd: The policy in this case I wish to offer in evidence.

Mr. Voorhees: I object to the admission of the policy in evidence unless the application on which it is based and founded is first offered.

The Court: The policy will be admitted. 40

## PROCEEDINGS ON PART OF PLAINTIFF

(Objection noted for defendant as ground  
of appeal.)

(Policy marked Exhibit P 1.)

10 Mr. Lloyd: I also wish to offer the receipt  
book, which is a part of this policy, and the first  
premium, the receipt for the first premium paid.

Mr. Voorhees: I make the same objection to  
the admission of the receipt book on the same  
ground.

The Court: It will be admitted.

(Objection noted for defendant as ground  
of appeal.)

(Receipt book marked Exhibit P 2.)

20 Mr. Lloyd: I believe that all the other proofs  
govern this case that have been entered in the  
other case, proofs of death of the beneficiary and  
proof of the last attending physician.

The Court: Were there separate proofs of that?

Mr. Lloyd: There were separate proofs in each  
case.

The Court: The proofs in this case have got to  
be offered.

30 Mr. Lloyd: Then I call for the proof in the in-  
dustrial policy of the plaintiff Helen Brunjes,  
made by her showing the death in this case.

Mr. Voorhees: I produce it.

Mr. Lloyd: I offer it in evidence.

Mr. Voorhees: I object to its admission on the  
same ground.

(Objection overruled.)

(Objection noted for defendant as ground  
of appeal.)

## PROCEEDINGS ON PART OF PLAINTIFF

(Paper marked Exhibit P 3.)

Mr. Lloyd: I now ask for the proof of Dr. C. C. Straughn, the physician who attended the deceased in his last illness.

(Paper produced.)

Mr. Lloyd: This was marked Exhibit P 4 in the former case. 10

Mr. Voorhees: I make the same objection.

The Court: The persistency with which you are making that objection leads me to ask if you won't state to the Court what you have in mind about that.

Mr. Voorhees: My idea is this: that no documents in this action are admissible until the foundation of the contract had been offered and admitted in evidence. If these papers are admitted in evidence it is to the effect that the policy and contract itself control the situation. My insistence is, most respectfully, that that is not so; that it is incumbent upon the plaintiff in introducing his affirmative proof to go to the very basis of this contract, and to that end he should offer the application of the deceased and then in proper sequence comes the policy, the proofs of the plaintiff and of the physicians and other proof of death. 20 30

(Continues argument.)

The Court: The objection is overruled. I think that is noted in the minutes.

Mr. Lloyd: The certificate of William A. Rogers, the Registrar of the Bureau of Vital Statistics.

(Paper produced.)

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## PROCEEDINGS ON PART OF PLAINTIFF

Mr. Lloyd: That is previously marked Exhibit P 5.

The Court: That will be admitted.

Mr. Voorhees: Now I have the same objection to all of them.

10 The Court: Yes, it is understood that your objection will apply to all of this documentary evidence, which you think should be based on the preliminary offer of the application.

Mr. Lloyd: The next proof is the inspection report of H. S. Weinstein.

The Court: That will be admitted.

20 Mr. Voorhees: If your Honor please, I do not think there is what is known as an inspection report on an industrial policy. It is quite different. He calls for certain proof here which is not forthcoming. In certain lines of insurance and this known as industrial insurance—

The Court: Well, you say you have no such document relating to this policy?

Mr. Voorhees: No, sir.

The Court: Then the offer will be rejected.

Mr. Lloyd: I call for the medical examiner's report, F. M. Galloway, on this policy.

30 Mr. Voorhees: I produce it.

Mr. Lloyd: This report also contains an application which I do not want, and I have not called for the application and the application is attached to the report and I do not want the application to go in; but the medical examiner's report is attached to the application.

The Court: It seems to be all one document.

Mr. Lloyd: Then I don't want it. I didn't know it was attached.

40 Mr. Voorhees: I submit most respectfully that

## MOTION FOR NON-SUIT

counsel must now offer that paper in its entirety, having called on me to produce it and having taken it from me, he is now under obligation to offer it.

The Court: I would agree with that if the report of the medical examiner was all that that paper contained. It containing other matter I do not think that rule would apply. 10

Mr. Voorhees: The paper in hand comprises proofs from the very beginning of the relations between the deceased and this company. It shows his statement and signature, the report of the examining physician of the company of the risk proposed. There is nothing in there that is foreign to the issue or irrelevant.

The Court: I decline to require the attorney to present the entire document. 20

(Objection noted for defendant as ground of appeal.)

PLAINTIFF RESTS.

## MOTION FOR NON-SUIT

Mr. Voorhees: I respectfully move for judgment of nonsuit, upon the ground that plaintiff has failed to comply with the requisites as regards the proving of his case; that in view of the pleadings before your Honor in this case, where a defence of fraud is interposed, it was and is incumbent upon him to show as a part of his affirmative case the relationship existing between the decedent and the company from the time of the inception of the obligation until the claim was presented and rejected by this company; that having failed to make an offer of the application upon which the contract in issue rests, he fails 30 40

DENIAL OF NON-SUIT  
DEFENDANT'S TESTIMONY

to make his case and it falls. I submit, if your Honor please, that we are entitled to judgment of nonsuit.

The Court: The motion to nonsuit will be denied.

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(Objection noted for defendant as ground of appeal.)

DEFENDANT'S TESTIMONY

(Mr. Voorhees opens for the defendant.)

Mr. Voorhees: If your Honor please, I desire to offer the application of the deceased, containing his written signed application and also his signed answers, given to the Metropolitan Life Insurance Company physician, the medical inspector, also a full report of the medical examiner, Dr. C. F. Galloway, all of which is contained in this instrument.

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Mr. Lloyd: I object to the same.

The Court: On what ground?

Mr. Lloyd: On the ground that the policy does not make the application a part of the contract, and therefore we are not governed by what might be in the application, and it is not proper that it should go in before this Court and jury, and I have not called for the medical examiner's report. The medical examiner's report I cannot see is material.

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The Court: You have already offered that yourself.

Mr. Lloyd: Which, the report of the medical examiner?

The Court: Yes.

Mr. Lloyd: No, I have not offered that. It is

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## MONITION FOR DIRECTION OF A VERDICT

attached to the application, therefore, I did not want it.

The Court: Oh, yes, I understand. You called for that.

Mr. Lloyd: Yes. that is right. *she Court!* I will admit the paper. Exception to that ruling will be noted on behalf of the plaintiff. 10

(Objection noted for plaintiff as ground of appeal.)

(Paper marked Exhibit D 1.)

The Court: Now as to your other proof it is consented that the testimony of Dr. Coughlin, read in the former trial, may apply in this trial?

Mr. Lloyd: Yes, and also the testimony of Mrs. Brunjes. 20

Mr. Voorhees: Yes, I consent to that. Also the transcript of the New York Vital Statistics Officer?

Mr. Lloyd: Yes, but I wish my exception to that.

(Objection noted for plaintiff as ground of appeal.)

BOTH SIDES REST.

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## MOTION FOR DIRECTION.

Mr. Voorhees: Now, if your Honor please, I respectfully move for the direction of a verdict upon the ground that by the terms of the contract alone the policy is void. The fourth paragraph of conditions on page 2 thereunder reads as follows: (Reads)

Upon the proof before your Honor there is no shadow of doubt, as I apprehend your Honor will 40

## DIRECTION OF A VERDICT

agree, that the deceased misstated representations that were vital and material, and relying only upon which the company issued the policy in this suit; that disregarding the question of tubercular trouble the very fact that the deceased had been attended by Dr. Coughlin for that continued period of almost two years at irregular intervals for almost two years and that he had stated that he had not received any medical attention excepting that of Dr. Coughlin in January, 1911, for grippe, with good results, together with the fact that he declared himself to be in sound health on the date of this policy—

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20 The Court: Well, I am unfamiliar with the provisions of this application. What is there that you rely upon in that? Is that in this case, the state of the case?

Mr. Voorhees: The application?

The Court: Yes.

Mr. Voorhees: Yes, sir.

The Court: I say is it in this book?

Mr. Voorhees: I think it is.

Mr. Lloyd: Yes, he set it out in here, your Honor.

30 (Mr. Voorhees continues and reads from policy.)

(Mr. Lloyd replies.)

40 The Court: Then, gentlemen, this case is very similar to the other case, and what I have said in directing you to find a verdict in favor of the defendant in the former case, so far as it applies to this case, I now repeat. There is just this difference in the situation between this and the other case, and that is that the policy in question

## DIRECTION OF A VERDICT

now provides that the policy shall be void if the assured has been attended by a physician for any serious disease or complaint or has had before said date any pulmonary disease. Now the only testimony we have in this case is that before this date, before the date of the issuing of this policy, Mr. Brunjes had a pulmonary disease; and if he had, as a matter of fact, even though he did not know it, his beneficiary cannot recover under this policy. On the subject of fraud, as has been suggested in the argument, it is necessary, in order to defeat the policy, for the assured to have known of the falsity of the statement. This policy goes further than that. This policy provides that if as a matter of fact he had had before the issuing of the policy a pulmonary disease the policy is void. Now the only testimony upon that point that we have in this case is the testimony of Dr. Coughlin, who says that undoubtedly Mr. Brunjes had pulmonary tuberculosis before that time. This is in addition to the provision or the statement to which I have referred in the previous case, the fifth statement to the effect that the assured stated that he had not been under the care of any physician within two years; which statement is the same in his application for the second policy. Both these cases before were tried together and both were before the Supreme Court and although it has been suggested in the argument that the Supreme Court evidently considered only one of these cases, the Court cannot assume that the Supreme Court did not do its full duty and consider both cases, both applications and both contracts upon which the suit was brought. It had both before it and upon this policy as well as the other policy the proof in this case is identical with that in the former case, in

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## EXHIBITS P 1, P 2, P 3

which the Supreme Court said the trial court should have directed a verdict in favor of the defendant. I feel bound by that decision. I am bound by that decision and I feel that the proof being the same in this case I have no recourse, regardless of what views I may entertain upon the subject, other than to direct you to render a verdict in favor of the defendant. And to that direction an exception on the part of the plaintiff may be entered.

(Objection noted for plaintiff as ground of appeal.)

## EXHIBITS

## P 1. POLICY OF INSURANCE.

20 See attached to Declaration, Page 68.

## EXHIBIT P 2. RECEIPT BOOK.

This is an ordinary receipt book showing receipt of premiums from the 11th day of March to the 5th day of July, 1911, both inclusive. Containing also a receipt for the first annual premium.

## EXHIBIT P 3. PROOF OF DEATH.

## STATEMENT OF CLAIMANT.

30 Policy No. 44,674,563.

Full name of deceased. Fred Brunjes.

1. Birthplace of deceased. Williamsburg, New York.

2. Date of birth? November 30th, 1884.

3. Place of death? Washington St., Matawan, N. J.

4. Date of death? July 8th, 1911.

40 5. Cause of death? Tuberculosis.

## EXHIBIT P 3

6. Duration last sickness? Seriously about three weeks sick since about April 1st.

7. Give names and addresses of all physicians who attended during last sickness. Dr. Strong, Main St., Matawan.

8. Occupation? Egg inspector and conductor on trolley. 10

9. Date deceased quit work? Don't know exactly; about first of April.

10. Name, address and occupation of last employer? J. W. Butler, Washington St., New York.

11. Date deceased first consulted physician for last sickness? About the last of April, 1911.

12. How long confined to house by last illness? About three weeks.

13. Has deceased ever received treatment at any hospital, dispensary or other institution? (Give particulars.) No. 20

14. What sicknesses previous to the last one has deceased had. (Give particulars.) Had grip last winter—no physician.

15. Give names and addresses of all physicians who attended for previous sicknesses? None.

16. Has this Company ever paid a claim on any member of deceased's family? (Give date and full name.) No. 30

17. Any other policies on deceased in this Company? (Give numbers and amounts.) Has an Industrial \$500 policy, No. 1,455,701 C.

18. Deceased insured in any other company? (State companies, amounts in each and dates of policies.) No.

19. Give the following particulars of deceased's father, mother, brothers and sisters. 40

## EXHIBIT P 3

Father: Address, Florida. Age, don't know.  
Name in full, Charles Brunjes.

Mother: Name in full, Cornelia Brunjes. Age don't know. Cause of death, don't know. Place of death, Brooklyn. Date of death, don't know.

10 Brother: Address, 67th St., Brooklyn. Age 22.  
Name in full, George Brunjes.

Brother: Address, 67th St., Brooklyn. Age 19.  
Name in full, Harry Brunjes.

Sister: Address, Bloomfield, N. J. Age 16.  
Name in full, Elsie Brunjes.

Two brothers dead, but do not know cause of death or when they died.

20 20. Was deceased married or single? Married.  
If married, give full names, ages and addresses of widow or widower, if alive, and of living children.  
Widow. Name, Helen Brunjes. Age 22. Address, Main St., Matawan, N. J. Living children, none.

21. By whom have the premiums been paid?  
Helen Brunjes, wife of deceased.

22. Are you now or have you ever been in the employ of this Company? (Where and in what capacity.) No.

30 23. By what right or relationship do you claim the proceeds of the insurance? As wife and beneficiary.

40 I, the undersigned, hereby certify that the foregoing answers apply to the life heretofore insured under the Policies hereinbefore mentioned, and are furnished as part of the proofs of the death of the insured under said Policies and under their conditions and provisions; that I have a valid insurable interest to the amount insured, and that I will furnish any further proof the Company may demand; it being distinctly understood that I

## EXHIBITS P 4, P 5 and D 1

shall not have furnished the proofs required by the terms and conditions of the policies relating to the filing of proofs of death until such demand for additional proofs has been complied with.

Signature of claimant, HELEN BRUNJES.

Age 22. Occupation, housework. Residence, Main St., Matawan, New Jersey.

10

Witness, ROBT. HITCHINGS.

Dated July 17th, 1911.

On this 17th day of July, 1911, personally appeared before me the above named Helen Brunjes, to me known, and made oath that she personally signed the above claimant's statement, and that the answers given to the foregoing questions are true and full to the best of her knowledge and belief.

20

Signed: ROBT. HITCHINGS, Notary Public.

EXHIBIT P 4. Proof of Dr. C. C. Straughn, physician who attended deceased in his last illness, same as Exhibit P 4 in Case No. 1. Page —.

EXHIBIT P 5. Certificate of William Rogers, Registrar of Bureau of Vital Statistics, same as Exhibit P 5 in Case No. 1. Page —.

EXHIBIT D 1. Application for policy of insurance containing signed statement and signed answers and report of the Medical Examiner.

30

APPLICATION TO THE METROPOLITAN  
LIFE INSURANCE COMPANY.

District, Bay Ridge, N. Y.

3 13 1911 No. 44,674,563.

Agency Number, 19. Name of Agent. Weinstein. At Bay Ridge. Under Asst. Supt. E. Newman.

40

## EXHIBIT D 1

Medical Examiner will please call Sunday.

A 1. Full Name of Life proposed for Insurance.  
Fred Brunjes.

2. Plan of Insurance. W. Life.

3. Residence. No. 1069 68th St., Brooklyn,  
N. Y.

10

Describe location accurately, as: Basement,  
ground floor, one, two, three flights up, etc. Add  
right or left in locating apartments. When apart-  
ments are numbered give number or letter.

4. Present Occupation. Egg Inspector.

4a. Any Other? No.

5. Race, White. 6. Adult. Married. 7. Sex,  
Male.

20

8. Where and When Born? At Brooklyn, on  
Nov. 30, 1884.

9. Age Next Birthday? 27 years.

10. Amount of Insurance. \$430.

11. Premium. 25.

12. Is said Life now insured in this Company?  
If so give numbers of all Policies. 23,701,532.

12a. Any other? No.

30

13. Is said Life now insured in any other Com-  
pany, or Society, or Association? If so, give  
names and amounts. No. 13a. Any other? No.

14. Name, etc., of Beneficiary, subject to pro-  
visions of Policy applied for as to Payment. Name,  
Helen H. Brunjes. Relationship, Wife. Residence,  
1069 68th St. Occupation, at home. Age, 22  
years.

If the beneficiary named is not related to Life  
proposed, or is not in accord with the Company's  
rules regarding beneficiaries, full particulars as  
to the insurable interest must be given on page 4.

40

## EXHIBIT D 1

I hereby apply for the above described Policy, and all the statements in Parts A and C of this application are made by me to induce the Metropolitan Life Insurance Company to issue said Policy of Insurance.

Signature of Life Proposed. F. Brunjes.

10

## AGENT'S CERTIFICATE.

B 1. Was this application signed in your presence at the time the application was written. Yes.

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

3. Was the Life proposed seen by you at the time signature above was made, and does he or she appear to be a good risk in every respect, and do you recommend that a Policy be issued? Yes.

20

4. Is the Life proposed any relative of yours, or of any employee of this Company? No.

5. How many weeks' advance premiums have you collected hereon? One.

6. Has Life proposed ever made an application to this Company? If so, and a Policy was issued, give number or such information as will enable the Home Office to locate it. 23,701,53?

7. If a Policy was not issued give number of rejection or postponement. None.

30

8. Give full name of person by whom premiums will be paid. "Applicant" or "Life proposed" will not be accepted as an answer. Fred. Brunjes.

Dated Mch. 2, 1911. H. S. Wents, Agent.

C This side of the form is to be completed (except as to signature of Life proposed) by the Medical Examiner only.

To the Metropolitan Life Insurance Company. 40

## EXHIBIT D 1

To induce the Metropolitan Life Insurance Company to issue Policy, and as consideration therefor, I agree, on behalf of myself and of any other person who shall have or claim interest in any Policy issue under this application, as follows:

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

1. My present occupation is Egg Inspector, and I have no other occupation, except

20       2. I have never had any of the following complaints or diseases: apoplexy, asthma, bronchitis, cancer or other tumor, consumption, disease of brain, disease of heart, disease of kidneys, disease of liver, disease of lungs, disease of urinary organs, dropsy, fistula, fits or convulsions, general debility, habitual cough, hemorrhage, insanity, jaundice, paralysis, pleurisy, pneumonia, rheumatism, scrofula, spinal disease, spitting or raising blood, ulcer or open sores, varicose veins, except pneumonia when a child.

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

30       4. The following is the name of the physician who last attended me, the date of the attendance, and the name of the complaint for which he attended me: Dr. Coughlin, January, 1911, grippe, 1 week.

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

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

40       7. I am not in any way connected with the

## EXHIBIT D 1

manufacture or sale of ale, wine or liquor, except

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

9. I have never met with any serious personal injury, nor ever been seriously ill, except as stated herein:

10. I have never had any other complaints except those mentioned, and have been attended by the following named physicians and no others:

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

12. I have no insurance on my life, except in the following named companies and for the following amounts. And by the word "company" I mean any company, association, society or order granting life insurance: This Co.

13. No proposal or application to insure my life has ever been made to any company, association, society or order granting life insurance, or to any agent thereof, upon which a policy has not been issued of the amount applied for, except as follows:

I hereby declare that the Application to the Metropolitan Life Insurance Company for an insurance on my life was signed by me, and that I renew and confirm my agreements therein as to the answers given to the Medical Examiner, and I hereby declare that said answers are correctly recorded hereon.

Signature of Applicant: Fred Brunjes.

Every answer must be true, or the Policy will be void.

Dated at Brooklyn this 5 day of Mch., 1911.

10

20

30

40

## EXHIBIT D 1

## REPORT OF THE MEDICAL EXAMINER.

D 1. Personal Appearance, Good. 2. Race, White. 3. Age given, 27 years. Apparent age, 27 years. 4. Height and weight, 5 ft. 4 in.; 130 lbs.

10 5. Family History: Living: Father, age 55, health good. Two brothers, age 2 and 19, health good. One sister, age 17, health good. Dead: Mother, age 40, confinement. One brother, infant. Four sisters, no history.

6. A. Is the respiratory murmur clear and distinct over both lungs? B. Is the character of the respiration full, easy and regular? Give rate. C. Are there any indications of disease of the organs of respiration?

20 A. Yes. B. Yes. Respirations per minute, 16. C. No.

7. A. Is the character of the heart's action uniform, free and steady? B. Are its sound and rhythm regular and normal? C. Are there any indications of disease of this organ, or of the blood vessels. (If yes, give full particulars.)

A. Yes. B. Yes. C. No.

8. State the rate and other qualities of the pulse. B. Does it intermit, or become irregular or unsteady at this examination? If yes, give full particulars.)

30 A. 84, good. B. No.

9. Is the person ruptured? No.

9a. If so, is well-fitting truss worn? No.

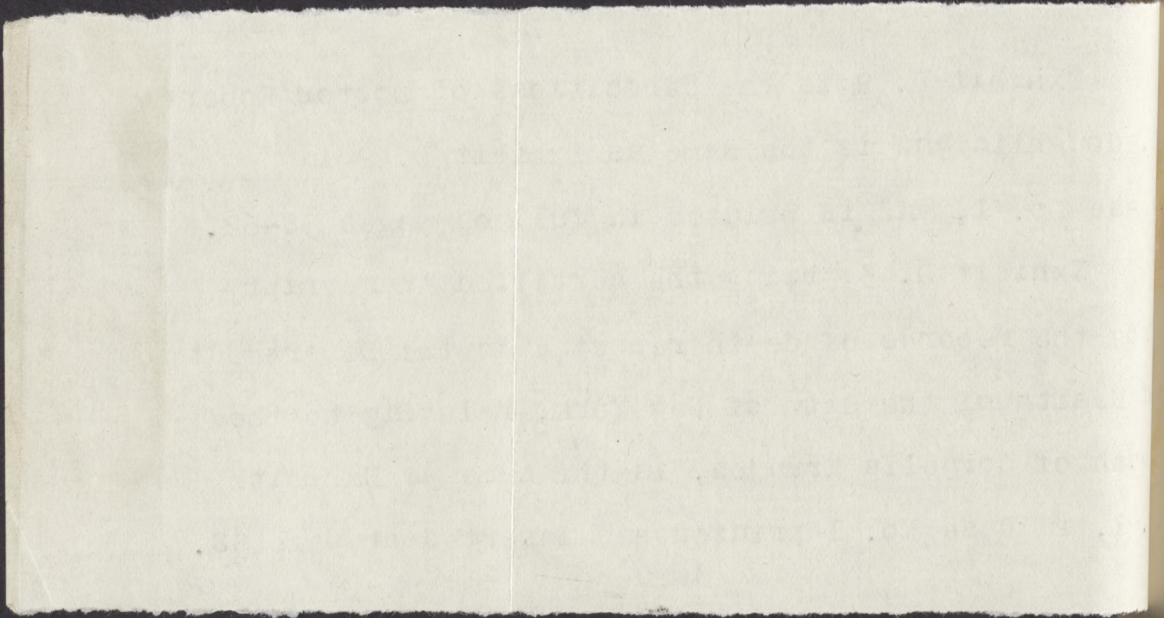
10. To what daily extent does the Life use alcoholic stimulants? None.

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

40 12. Are you aware of intemperance or any other

Exhibit D. 2 is the depositions of Doctor Robert E. Coughlin and is the same as Exhibit D. 2 in Case No. 1, and is printed in full on pages 58-62.

Exhibit D. 3, being the certified transcript from the records of death reported to the Department of Health of the City of New York, relating to the death of Cornelia Brunjes, is the same as Exhibit D. 1, in Case No. 1 printed and inserted at page 58.



## NOTICE OF APPEAL AND GROUNDS OF APPEAL

circumstances connected with the Life proposed, not herein recorded, which the Company ought to know? No.

13. Anything objectionable in the manner of living or general surroundings of Life proposed? No.

I have this 5th day of March, 1911, personally seen and examined at the address given on page 1 hereof the Life proposed for Insurance, and saw made, the signature at the end of Part C, and am of the opinion that said Life is in good health, and that said Life's constitution is sound. 10

I find the pecuniary circumstances and hygienic surrounding satisfactory and the insurance applied for in good faith with the purpose of being continued. I therefore recommend said Life to be accepted as first class. 20

F. M. GALLOWAY.

Examining Physician's Signature.

After satisfying himself of the identity of the proposed Insured.

SIE:

TAKE NOTICE that the plaintiff appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause on the following grounds: 30

1. That the trial court overruled the question as follows: "Q. Did you ever know your husband to be treated by Dr. Robert E. Coughlin other than the one time that he treated him in January, 1911, for the grippe? Mr. Voorhees: "I object to that as incompetent, immaterial and irrelevant and not rebuttal. Objection sustained. Objection noted for the plaintiff as ground of appeal."

2. That the Court admitted in evidence over 40

## NOTICE OF APPEAL AND GROUNDS OF APPEAL

the objection of the plaintiff Exhibit D 1, to wit, the application of the deceased containing his written signed application and also his signed answers given to the Metropolitan physician and medical examiner; also the full report of the Medical Examiner, Dr. F. M. Galloway, all of which  
10 is contained in such instrument.

3. The Court admitted in evidence the transcript of the Board of Vital Statistics.

4. That the Court directed a verdict in favor of the defendant.

JOHN P. LLOYD,  
Attorney for Plaintiff.  
MERRITT LANE,  
Of Counsel.

20 To:  
CLIFFORD I. VOORHEES, Esq.,  
Attorney for Defendant.

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# New Jersey Court of Errors and Appeals.

HELEN H. BRUNJES, Plaintiff-Appellant,  v.  METROPOLITAN LIFE INSURANCE COMPANY, Defendant-Appellee.	}	On Appeal. 2 Cases.
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## BRIEF AND POINTS FOR PLAINTIFF-APPELLANT.

### Statement.

There are two appeals from directions of verdicts for the defendant in two cases, for the recovery of insurance on two insurance policies issued by the defendant on the life of Fred. Brunjes, deceased.

Case No. 1 is on an ordinary life insurance policy to which the application was attached and made a part of the contract.

Case No. 2 was on what is commonly known as an "industrial policy." *The application and the medical examiner's report is not made a part of the contract under this policy.* The industrial policy itself is the entire contract.

These cases were first tried in the Monmouth Circuit as one case in 1912. A verdict was entered in favor of the plaintiff on both policies of insurance. On a rule to show cause the Supreme

Court set the verdict aside. The opinion of the Supreme Court is found in 83 N. J. Law, 296.

The suits were then tried separately in the Monmouth Circuit and resulted in the direction of a verdict for the defendant in both cases. The testimony in Case No. 1 was stipulated into Case No. 2, page 77, line 15.

The grounds of appeal in both cases are the same, with the exception that there is an additional ground of appeal in the second suit on the question of the admission of the written signed application and the answers given to, and the report of, the medical examiner.

I will therefore argue both cases together.

### **Grounds of Appeal.**

The grounds of appeal in Case No. 1 are found on pages 62-63, and in Case No. 2 on pages 95-96. The grounds of appeal in both cases are the same, with the exception that there is an additional ground in Case No. 2. They bear different numbers in both cases, but for the purpose of convenience I will in this brief consider them under the same numbers. They are as follows:

### **Both Cases.**

1. That the Court upon the objection of the defendant overruled the question as follows:

“Q. Did you ever know your husband to be treated by Dr. Robert E. Coughlin other than the one time that he treated him in January, 1911, for the grippe?”

“Mr. Voorhees: I object to that as incompetent, immaterial and irrelevant and not rebuttal.

“Objection sustained.

"Objection noted for the plaintiff as ground of appeal."

2. Because the Court at the conclusion of the trial improperly directed a verdict for the defendant.

3. Because the Court improperly admitted the certificate of the Department of Vital Statistics.

### **Case No. 2.**

4. That the Court admitted in evidence over the objection of the plaintiff, Exhibit D1, to wit, the application of the deceased containing his written signed application and also his signed answers given to the Metropolitan physician and medical examiner; also the full report of the medical examiner, Dr. F. M. Galloway, all of which is contained in such instrument.

### **ARGUMENT.**

#### **I.**

#### **The Court improperly overruled evidence offered on behalf of the plaintiff.**

On page 33 of the record the plaintiff's counsel attempted to prove by the wife of the deceased that the plaintiff had not been treated by Doctor Coughlin other than the one time that he was treated in January, 1911, for the grippe.

This testimony was overruled by the Court.

It was in rebuttal to the deposition of Doctor Coughlin which was offered in evidence.

The defendant attempted to prove that the deceased at the time of the issuing of the policies had tuberculosis. Dr. Coughlin testified solely

from memory. This is very apparent from the fact that on page 59 he said that he was "only guessing."

The question as to whether or not he did have tuberculosis at the time of the issuing of the policies was for the jury to determine. *Doctor Coughlin did not testify that he had tuberculosis at the time the policies were issued in March, 1911.*

There is no absolute proof that the deceased did have tuberculosis. Dr. Coughlin's testimony is simply to the effect that "He presented the symptoms of tuberculosis" (p. 60, l. 38) sometime before.

The testimony of Doctor Coughlin, on page 61, shows conclusively that the deceased did not know that he had tuberculosis. The doctor did not tell him and if he knew that he had tuberculosis, why should the doctor "*hesitate about telling him he had tuberculosis?*" There is nothing whatever in the testimony of Doctor Coughlin inconsistent with the fact that the deceased had merely the grippe as is stated in the application. There is nothing to show conclusively that the deceased had tuberculosis, or knew he had it or that as a reasonable man he ought to have known it. Doctor Coughlin was the man who treated the deceased and if he knew that he had tuberculosis, it would be foolish for Doctor Coughlin to hesitate to tell him so.

In view of the testimony of Doctor Coughlin, the testimony of the wife of the deceased as to her knowledge of the condition of the deceased and his treatment by Doctor Coughlin is very material and should have been admitted. It was proper for her testimony to go to the jury.

Where can there be anything spelt out from

the evidence in these cases to the effect that the deceased defrauded the company by taking out these policies, when he knew that he had tuberculosis. It is a known fact that tuberculosis very often becomes apparent and known to the patient shortly before death is caused by it. The deceased was a young man and unquestionably the jury was entitled to have before it all of the facts in order to ascertain whether first: the deceased had tuberculosis at the time the policies were issued, and second, whether he knew that he had tuberculosis or should have known it. It certainly was not so apparent that he had tuberculosis that the examining physician for the insurance company noticed it.

There is no direct statement by anybody that the deceased had tuberculosis at the time that he made the application for the policies.

Even if he did have tuberculosis, if he did not know that he had tuberculosis, or as a reasonable man ought to have known it, the plaintiff would be entitled to recover.

Furthermore, Mrs. Brunjes testified on page 37, line 15, that she did not know the deceased had tuberculosis.

## II.

**The Court at the conclusion of the trial improperly directed a verdict for the defendant.**

The argument on this point is partly covered by the argument on the preceding point.

It was clearly a question for the jury to determine. The Court below directed a verdict for the defendant on the authority of the decision of the Supreme Court on the rule to show cause

taken from the verdict returned at the first trial on these policies. (See 83 N. J. Law., p. 296.)

The Supreme Court seems to have based its decision principally upon the fact that no attempt was made on the part of the plaintiff to contradict the testimony of Doctor Coughlin or to reflect upon his credibility as a witness.

In the first place, the testimony of Doctor Coughlin was not positive as to the number of times the plaintiff had been to see him. Surely from the testimony of Doctor Coughlin it cannot be said that the deceased knew that there was anything dangerous. It might very well be, and probably was, that the deceased thought that his answer to the fourth question completely covered the matter. Unquestionably the only time when he was really ill and confined to his home was in January, 1911, and that was the only time when the Doctor told him what was the matter with him and then he did not tell him he had tuberculosis but said he had the grippe. The fact that Dr. Coughlin said he attended him for the grippe, to my mind, refutes the presumption that he had tuberculosis. It is a known fact that the majority of people do not consider grippe as a dangerous disease. There is nothing in the evidence to show that Brunjes was the kind of a man who would have any special knowledge in relation to these matters. As a matter of fact the evidence is that he was just an ordinary working man.

Unquestionably the only time when he was really sick and which had impressed itself upon his mind was the time when he was attended for the grippe at his home.

Furthermore, Dr. Coughlin's testimony is to the effect that the only time he attended the de-

ceased at his house was in January or February, 1911, when he had an attack of grippe (p. 60, line 15). Giving Doctor Coughlin's testimony its full value there is nothing to show that the deceased did not answer the questions fairly and truthfully. There is nothing inconsistent with the probability that any prior visits to the doctor's office were simply made by deceased because he did not feel very well and the doctor, not treating him or giving him any medicine, etc., told him to take care of himself and try to change his position. Does the mere fact that this happened conclusively prove that he was under the *care* of a physician? Clearly not. Certainly nothing to show any intention on his part to conceal anything or defraud the company.

If there had been any attempt on his part to defraud the company, he certainly would not have given the name of Doctor Coughlin to the medical examiner.

The Supreme Court in its determination on the rule to show cause referred to and based its decision on the case of *Fish v. Metropolitan Life Insurance Company*, 44 Vr., 619.

There is a distinction between the case at bar and the *Fish* case and it does not seem to me that both cases are identical.

In the *Fish* case there was a false statement made by the assured. At the end of paragraph five was written "January 1893—Typhoid Fever—Doctor Braymer." The proofs showed that one Doctor Jarret had attended the assured during the latter part of September, and the early part of October, in the year 1901, for rheumatism in the shoulder; this being within two years prior to the date of making the application. *This is entirely different from the facts of these cases.*

The sixth paragraph in the Fish case was to the effect that the assured had not been under the care of any physician, within two years other than as stated in the previous line.

*No false statement of this character was made in Brunjes' application.* The fourth paragraph was answered truthfully. Nothing was written in the fifth paragraph because the only physician that Brunjes had within two years to attend him was Doctor Coughlin. Further the proof is not positive that he was under the care of a physician before that.

*In the Fish case this Court commented on the fact that the Courts are anxious to avoid a forfeiture in cases of this kind.*

In the case of *Owen v. Metropolitan Life Insurance Company*, 45 Vr., page 770, Mr. Justice Pitney, writing the opinion of this Court, on page 773, said:

“Paragraph five of the application is: ‘I have not been under the care of any physician within two years, unless as stated in previous line (meaning Paragraph Four), except \* \* \*.’ So far as the proofs disclosed, this was true, the applicant not being shown to have been under the care of any physician other than Dr. Becker, within two years.”

Further down he says:

“We do not mean to say that if statements of this character were purposely made in inaccurate form, with the intent to deceive the company, the policy might not be avoided for fraud. In this case, the question of the *bona fides* of the applicant was left to the jury, whose verdict upon the point is, of course, conclusive.”

Reading paragraphs four and five of the ap-

plication, found on page 10, and these two paragraphs form the entire basis of the defense, can it be said that the proofs conclusively show that the deceased intentionally and wilfully misrepresented the facts to the insurance company. The only time Doctor Coughlin had attended him at his home was for the grippe in January, 1911. The deceased had no knowledge, as the testimony of Doctor Coughlin shows, that he had tuberculosis, or that he had any serious disease. At the most unquestionably, his mind was fixed upon the fact that he did not feel well or had colds and finally had the grippe in January, 1911, and that from that time on he had been better. He says that there were "good results," and there is no testimony to the contrary.

Can it be that because there is no answer to the fifth paragraph that the policies will be declared void?

This Court held in *Owens v. Metropolitan Life Insurance Company, supra*, that:

"The declaration in Paragraph 2 of the application, to the effect that the applicant had never had an obscure disease (disease of the heart) concerning which the insurer should know that the applicant could not have certain knowledge, saving as he might be told by a physician or other expert, is properly to be construed as a warranty only of *bona fide* belief and opinion of the applicant. *Henn v. Metropolitan Life Insurance Co.*, 38 Vr., 310; *Dimick v. Metropolitan Life Insurance*, 40 *id.*, 384, 393. Since the case is devoid of evidence to show that Owen was apprised that he was suffering from heart disease, beyond the mere fact that he was so suffering, it certainly was not conclusively proved that his *bona fide* belief and opinion upon the subject were otherwise than as warranted, and so a verdict could not properly be directed in favor

of the defendant, on this ground, even if the identity of Owen, the insured, with Owen, the patient, had clearly appeared."

It was also held in Owen case, that warranties, like all conditions that are to work a forfeiture of a contract, are to be strictly construed in order to prevent a forfeiture.

In the case of *Carson v. Jersey City Insurance Company*, the Supreme Court held that to cause a forfeiture under the policy, it must appear that the insured knowingly and intentionally swore falsely, or said or did that which is claimed to be fraudulent. Mere mistakes in stating facts or an over-valuation in making out proofs of loss, is not sufficient to sustain the defense.

In the case of *Melick v. Metropolitan Life Insurance Company*, 55 Vr., 437, Mr. Justice Garrison, in writing the opinion of the Supreme Court, says on page 439:

"It has become a settled rule in the construction of contracts of insurance, said Mr. Justice Depue, in *Carson v. Jersey City Insurance Co.*, 14 Vroom, 300, 'that policies of insurance will be liberally construed to uphold the contract, and conditions contained in them which create forfeitures will be construed most strongly against the insurer and will never be extended beyond the strict words of the policy.' This language is quoted with approval in the opinion delivered in the Court of Errors and Appeals in the case of *Hampton v. Hartford Fire Insurance Co.*, 36 *id.*, 265, with the additional declaration: 'The Court will never seek for a construction of a forfeiture clause in a policy which will sustain it, if one which will defeat it is reasonably deducible from the terms and words used to express it.'"

In the case of *Ford v. Metropolitan Life Insur-*

ance Co., 50 Vr., page 60, it was held that it is a question for the jury whether the declarations in the application were fraudulently made.

There does not seem to be any question about this rule, and it is not necessary to cite any further cases.

In the case of *Harris v. American Casualty Company*, 85 Atl., page 194, it was held that:

“It is a familiar rule that if a policy of insurance be susceptible of two meanings, that construction will be adopted, which is most favorable to the insured.”

Conditions and stipulations in such a policy are to be construed most strongly against the insurer.

In the case of *Hampton v. The Hartford Fire Insurance Company*, 65 N. J. L., page 265, it was held that:

“The Court will never seek for a construction of a fraudulent clause in a policy, which will sustain it, if one which will defeat it is reasonably deducible, in the terms of words used to express it.”

The case of *Henn v. Metropolitan Life Insurance Company*, 67 N. J. Law (Court of Errors and Appeals) is a very important case, and the authorities respecting the effect of a warranty on a life insurance policy are carefully considered.

In that case, on page 311, this Court held that forfeitures are not favored in the law, and if by any intendment, a ground can be found to defeat them, the Court will apply it. Citing *Hampton v. Hartford Insurance Co.*, 36 Vr., 265.

Further down, Mr. Justice Fort, writing the opinion of the Court, says:

“Where there is a conflict in the evidence,

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

"If the question asked relates to a matter upon which the insurer should know that the insured could not have the knowledge to fully answer, the warranty will not be held to be more than a warranty in the fair sense of the question, namely, to the belief of the insured.

"The warranty of a physical fact in answer to such a question as, 'Have you ever undergone any surgical operation?' If answered 'No,' is absolute, and if it be contradicted on the proof that the insured, prior to that statement, had been operated on for appendicitis or for the removal of a tumor or a part of the jaw bone, then a direction of a verdict would be imperative. *Lippincott v. Royal Arcanum*, 35 Vr., 309.

"The present Chief Justice, in voicing the opinion of this Court in the case just cited, declared 'that it is only when the unimpeached testimony of the case is conclusive upon the point, and a verdict for the plaintiff cannot be supported without disregarding it, \* \* \* that it is the duty of the Trial Court to control the jury in its action and direct a verdict for the defendant.'

In the case of *Marzulli v. Metropolitan Life Insurance Co.*, 52 Vr., 166, Mr. Justice Minturn, after citing several cases brought on Metropolitan Life Insurance Company policies, says:

"The rationale of these determinations is that it must be left to the jury, under the circumstances, to conclude whether in making the answers the insured was acting *mala*

*fide* or *bona fide*, and that an instruction for the defendant under such circumstances would be erroneous. Connecticut Life Insurance Co. v. Union Trust Co. 112 U. S., 250."

The whole case is of a character that a jury is entitled to pass upon and it is respectfully submitted that the Court should have sent the case to the jury.

*The Statements of the Insured Deceased Were Representations—Not Warranties.*

The statements contained in the application and answers to the medical examiner were mere *representations* and not *warranties* as held in the decision on the rule to show cause taken from the verdict in the first trial.

The Legislature of the State has so provided in Section 4 of Paragraph 1 of Chapter 72, P. L., 1907. It is there provided that "*all statements purporting to be made by the insured shall, in the absence of fraud, be deemed representations and not warranties.*"

I have quoted this section in full under the fourth point in this brief.

The policies in the cases at bar were issued in 1911, so this law applies.

The policy in the Fish case was issued prior to the passage of this law in 1907.

It is not necessary for me to comment on the reasons for the passage of the Supplement of 1907, to the insurance act. It was, briefly, to prevent forfeitures and to get away from the strictness with which the Courts felt constrained to follow in construing provisions in insurance policies inserted in advance with the business foresight and legal advice at the command of the

insurance companies in getting up their policies. Until the Legislature stepped in the Courts could do nothing but construe the provisions of the policies as a strict and binding contract.

There was no fraud proven in the cases at bar and in any event a question of fraud would have to be passed upon by the jury.

### III.

**The Court improperly admitted in evidence the certificate of the Department of Vital Statistics.**

This is Exhibit C1 in Case No. 1 and Exhibit D3 in Case No. 2.

A photographic copy of this certificate is inserted at page 58.

It purports to be a true copy of record of the death of Cornelia Brunjes, reported to the Department of Health of the City of New York.

Cornelia Brunjes was the mother of the deceased and died in 1896.

The offer of this record was made on page 30.

*Upon what theory it was admitted it is hard to state.*

In the first place it does not prove anything and is not evidence.

In addition there is a notice in the transcript to the effect that the Department of Health does not certify to the truth of the record transcribed.

Counsel for the defendant in making the offer stated that it was offered to show that the statement of the defendant in the application that his mother had died in 1896 in confinement was untrue. In the first place there is no proof that the mother of the deceased did not die in confine-

ment. So far as the evidence shows she may have been in confinement at the time of her death, even if the primary cause of her death was tuberculosis.

Further, there is nothing to show that the deceased knew that his mother died of consumption. At the time he was a boy of eleven or twelve years of age.

Furthermore, this defense is not set up in the pleas.

I respectfully submit that the admission in evidence of this transcript was error and that there is no theory upon which it could be admitted in evidence.

#### IV.

**The Court improperly admitted in evidence in Case No. 2, the application of the deceased containing a written signed application and also his signed answers given to the Metropolitan physician and medical examiner and also the report of the medical examiner.**

These papers were marked Exhibit D1 in Case No. 2. This point covers entirely the difference between Case No. 1 and Case No. 2.

In the first trial, the actions on both policies were tried together. In determining the rule to show cause, the Supreme Court did not consider the distinction between the two cases. This distinction undoubtedly was not brought specifically to the attention of the Court at that time. For that very reason, on the second trial, the two cases were tried separately.

The policy in Case No. 2 was an industrial

policy and the application and medical examiner's report was not made a part of the policy. The policy with its conditions was annexed to the declaration and are found printed in the record at pages 68-71.

The cases all hold that in order to make the application and any other papers part of the policy, it must be so stated in the policy.

Furthermore, Section 4 of Paragraph 1 of Chapter 72, Pamphlet Laws of 1907, being a Supplement to the Act, commonly known as the Act Regulating Insurance, provides as follows:

"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."

Therefore the application and statements to the medical examiner have no bearing in Case No. 2 whatever, and makes Case No. 2 an entirely different case from Case No. 1.

The Court below in directing the verdict for the defendant stated that he felt bound by the result of the Supreme Court and that he had no recourse, regardless of what views he might entertain upon the subject, other than to direct a verdict in favor of the defendant (p. 86).

I cannot impress too strongly upon the Court the fact that although these two cases are printed together and argued together, that they are two entirely separate and distinct cases.

The Court in directing a verdict further said

the policy in Case No. 2 provided that if the insured had a pulmonary disease before the policy was issued, that it is void and that therefore on Dr. Coughlin's testimony there would have to be a direction.

Dr. Coughlin did not testify that the insured had tuberculosis and the Court in directing the verdict does not say he did. (See p. 85.) Dr. Coughlin testified that "he presented the symptoms of tuberculosis." (See, p. 60, l. 38.)

See further argument under second point, also citation from case of *Owens v. Metropolitan Life Insurance Co.* under second point.

#### **Printed Record.**

The indulgence of the Court is asked for the corrections rendered necessary in the printed record. Of course, the use of italics in printing the deposition of Dr. Coughlin was improper.

#### **CONCLUSION.**

**I respectfully submit that the judgment for the defendant in both cases should be set aside, and such further proceeding had as this Court may direct.**

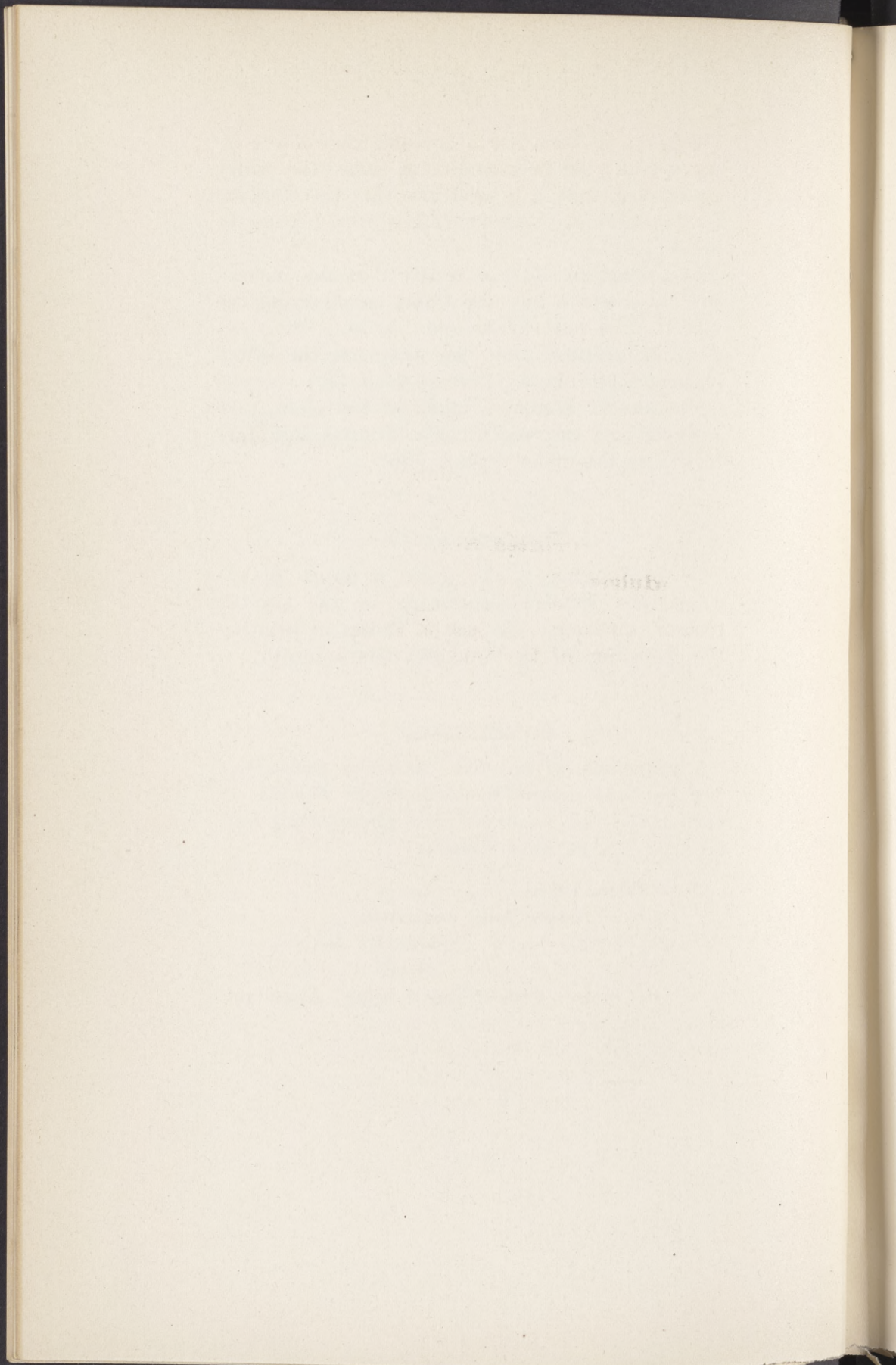
June Term, 1917.

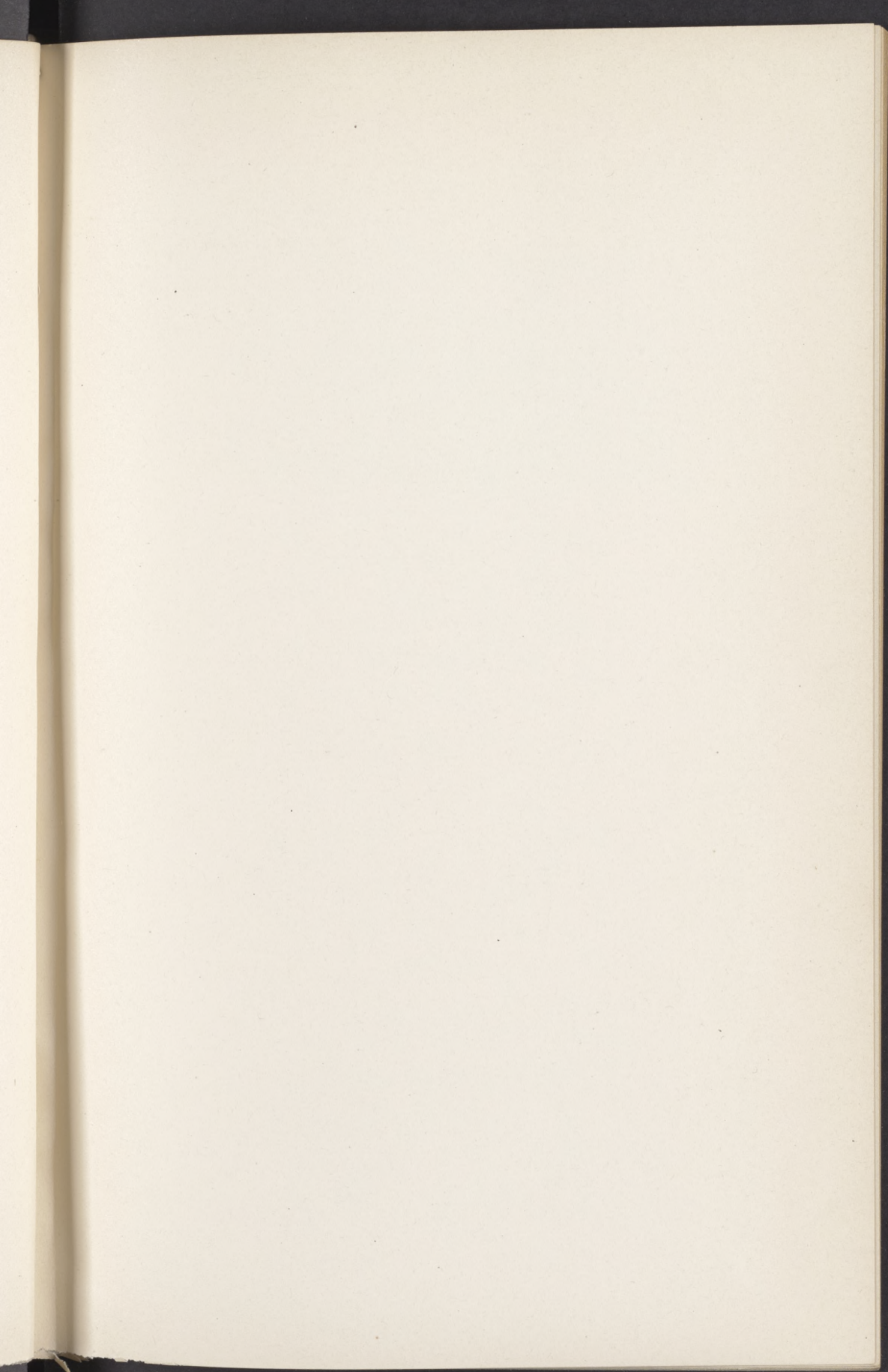
Respectfully submitted,

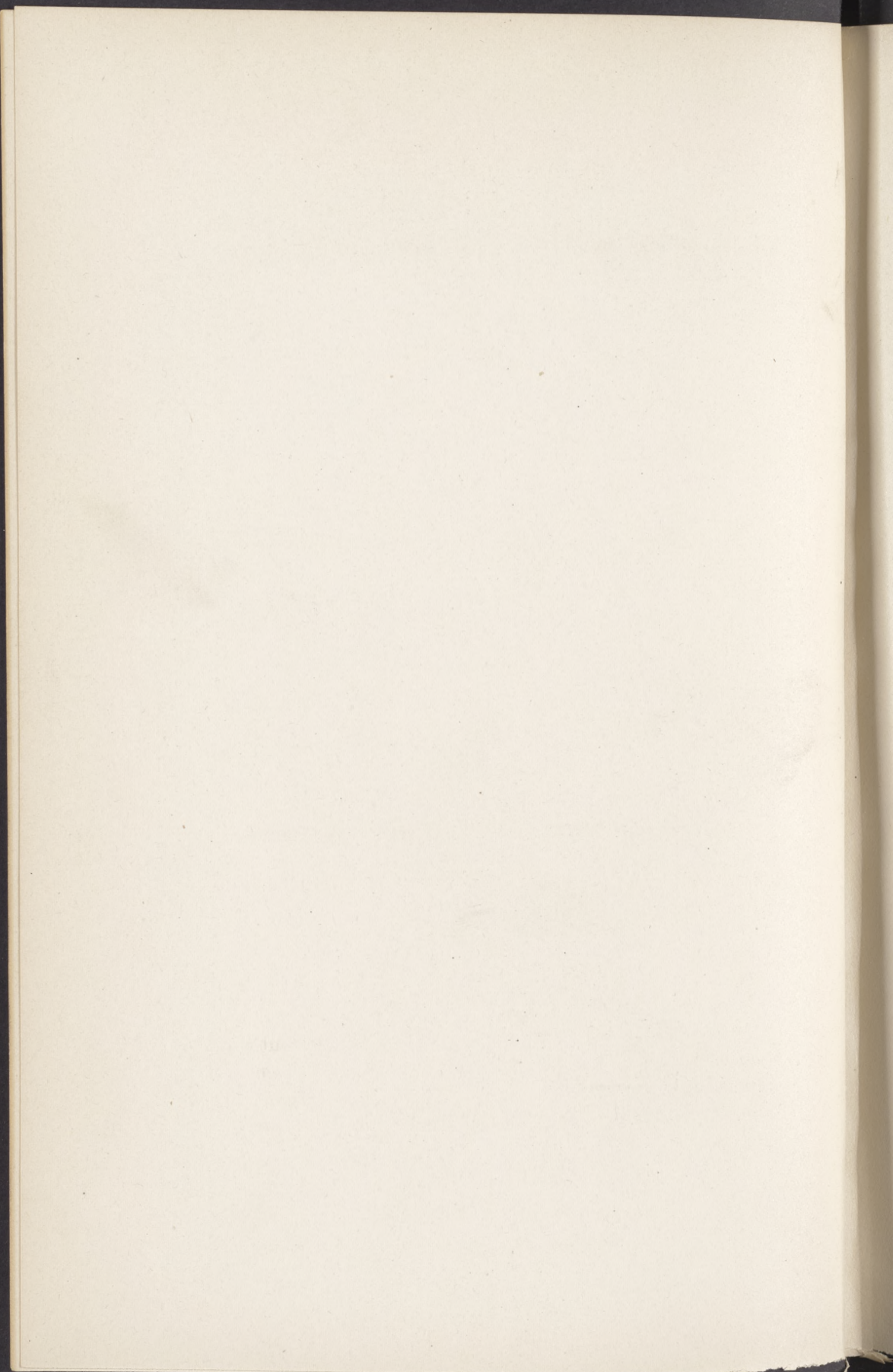
HARRY LANE,

JOHN P. LLOYD,

Of Counsel with Plaintiff below, Appellant.







# New Jersey Court of Errors and Appeals.

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HELEN H. BRUNJES,

*Plaintiff-Appellant,*

vs.

METROPOLITAN LIFE INSURANCE  
COMPANY,

*Defendant-Appellee.*

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On Appeal from  
New Jersey  
Supreme Court,  
Monmouth  
Circuit.

(2 cases)

Case No. 1  
involving Policy  
for \$500.

Case No. 2  
involving Policy  
of \$430.

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## **Brief of Clifford I. Voorhees**

Attorney for and of Counsel with Defendant-Appellee.

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These appeals bring under review two judgments entered in the Supreme Court in favor of the defendant below upon two separate verdicts directed in its favor by the trial judge sitting in Monmouth Circuit.

### Statement of Facts—History of Gases

Fred Brunjes applied in writing signed by himself, dated March 13th, 1911, to the defendant for a policy of insurance, amounting to \$500 on his life, in favor of the plaintiff to be named therein as beneficiary. Upon receipt of this application by the Company, a policy No. 1455701-C, dated March 18th, 1911, was prepared and issued. The policy and application therefor are found on pages 5 to 11, both inclusive.

He also applied in writing, signed by himself, dated March 2, 1911, to the defendant for another policy of insurance, amounting to \$430, on his life, in favor of the plaintiff to be named therein as beneficiary. Upon receipt of this application by the Company, a policy, No. 44674563, dated March 13th, 1911, was prepared and issued. The policy will be found on pages 68 to 71, both inclusive, and the application on pages 89 to 95, both inclusive.

Fred Brunjes, the insured, died on the 8th day of July, 1911, whereupon the plaintiff below as beneficiary claimed the proceeds of insurance of the said policies, which defendant resisted. Thereupon two separate actions were brought by the beneficiary, Helen H. Brunjes, in the Supreme Court.

The cases were tried together in the Monmouth Circuit, February 8th, 1912, and a verdict was rendered in favor of the plaintiff, and her damages assessed \$738.

Thereafter the defendant prosecuted a rule to show cause why the verdict should not be set aside and a new trial granted. Argument on said rule was heard by the Supreme Court at the June Term, 1912, and the rule was subsequently made absolute for the reasons set forth in the opinion of that court by Mr. Chief Justice Gummere, reported in 83 *N. J. L.* p. 296.

Thereafter, on June 10th, 1915, these cases were retried separately before Dungan, J., sitting in Monmouth Circuit, and upon defendant's motion, verdicts in its

favor were directed. The direction of verdicts will be found on pages 38 and 84. Whereupon the plaintiff below appealed to this Court from the judgments entered in the Supreme Court upon said verdicts.

Grounds of appeal have been assigned (pages 62 and 95) and will be considered in orderly sequence.

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### **Case No. I—Involving Policy For \$500.**

#### *FIRST GROUND.*

That the Court upon the objection of the defendant overruled the question as follows:

“Q. Did you ever know your husband to be treated by Dr. Robert E. Coughlin other than the one time that he treated him in January, 1911, for the grippe?”

“Mr. Voorhees: I object to that as incompetent, immaterial and irrelevant and not rebuttal.

“Objection sustained.

“Objection noted for the plaintiff as ground of appeal.”

There is no merit in this ground.

Assuming that the Court had permitted the question, and that it had been answered most favorably for the plaintiff, i. e. negatively (and the record shows that the witness did answer the question negatively, p. 33, l. 15), such answer would not have raised a contradiction of Dr. Coughlin's testimony in any respect (pp. 58-62). At best it would have been a mere disclaimer of knowledge on the part of the witness, but in no sense could it be interpreted as a denial of the physician's testimony. His testimony established conclusively that the deceased had suffered from dyspepsia and stomach trouble (p. 60, ll. 30-33), and from tuberculosis of the lungs from the fall of 1910 (p. 60, l. 37), and that deceased had been attended professionally by Dr. Coughlin for approximately two years prior to his death (p. 59,

1. 20). This testimony stands wholly uncontradicted. It was positive proof of the falsity of the statements made by Brunjes in his application for insurance. Mrs. Brunjes does not deny that her husband had been treated by Dr. Coughlin. She merely stated that she did not know of it (p. 33, l. 16, etc.), and that she did not know that he was taking Dr. Coughlin's medicine, and that she did not know he had consumption (p. 37, l. 10). The exclusion of the question was proper.

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*SECOND GROUND.*

BECAUSE THE COURT AT THE CONCLUSION OF THE TRIAL IMPROPERLY DIRECTED A VERDICT FOR THE DEFENDANT.

The direction of verdict will be found at page 38. The case of *Brunjes vs. Metropolitan Life Ins. Co.* 83 *N. J. L.* 296, controlled. The testimony was the same as was adduced at the first trial of the case (p. 39, l. 25).

The application for policy 1455701-C (p. 9, l. 15) contained, among other things, the following:

"To induce the Metropolitan Life Insurance Company to issue policy and as consideration therefor, I agree on behalf of myself and of any other person who shall have or claim interest on any policy issued under this application, as follows:

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

"2. I have never had any of the following complaints or diseases . . . Consumption . . . .  
disease of lungs . . . except

"3. I am now in sound health . . . nor have I any physical . . . defect or infirmity of any kind except

"4. The following is the name of the physician who last attended me, the date of the attendance and the name of the complaint for which he attended me: Dr. Coughlin, January, 1911, gripe—good results.

"5. I have not been under the care of any physician within two years other than as stated in previous paragraph except

"9. I have never . . . been seriously ill except as stated herein and for the complaints named and no other.

"10. No one of my parents . . . ever had consumption or any pulmonary disease.

"13. My family history is as follows . . . ;  
Cause of Mother's death 'Confinement' . . . ;"

And further on (p. 8, l. 25):

"And it is further declared and agreed that . . . the statements and answers to the Medical Examiner are correct and wholly true and that they shall form the basis of the contract of insurance if one be issued."

The following is the substance of the policy (p. 5, l. 15):

"In consideration of the application for this policy, copy of which application is attached hereto and made part hereof, and of the payment of . . . promises to pay . . . upon receipt . . . of due proof of death of Fred Brunjes . . . \$500 . . . to Helen H. Brunjes . . .

"This policy (and the application therefor) constitutes the entire contract between the parties . . .

"All statements made by the insured shall, in the absence of fraud be deemed representations and not warranties, and no such statement shall avoid this policy or be used in defense of a claim hereunder, unless it is contained in the written application therefor, and a copy of such application is securely attached to this policy when issued."

The issues material to this case were joined as follows:

First: That Brunjes at the time of the making of the contract was in full health.

Second: That Brunjes did not have, before or at the date of said application, consumption or disease of the lungs.

Third: That Brunjes had not been under the care of any physician within two years next preceding said application, other than Dr. Coughlin, except as stated.

Fourth: That Brunjes had not, prior to said application, ever been seriously ill, except as stated in said application.

(See Replication, p. 17, etc.)

The plaintiff at the trial offered in evidence Policy 1455701-C (p. 24, l. 18). The proofs of death were also offered by the plaintiff. These proofs will be found on page 47, etc.

Dr. Straughn's certificate forming part of the proof of death (p. 51) shows that Brunjes died of tuberculosis of the lungs, on July 8th, 1911.

There was no jury question presented, and the defense rested on the deposition of Dr. Coughlin (pp. 58-62) and the plaintiff's own proofs.

The Doctor's testimony shows conclusively that the deceased had suffered from dyspepsia and stomach trouble (p. 60, ll. 30-33), and from tuberculosis of the lungs from the fall of 1910 (p. 60, l. 37); that deceased had been attended professionally by Dr. Coughlin for approximately two years prior to his death (p. 59, l. 20, etc.). The evidence of Dr. Coughlin stands wholly uncontradicted. It was absolute proof of the falsity of the statements made by Brunjes in his application for insurance.

The proof is absolute that the deceased had been treated by Dr. Coughlin irregularly but continuously for approximately a period of two years prior to the date of his application for insurance; that the deceased was seriously ill at the time of his application; that he had dyspepsia and stomach trouble and that he had tuberculosis of the lungs, all of which were well known to the deceased. There is no escape from the conclusion that the deceased, in making application for insurance, wilfully and knowingly concealed certain facts and misrepresented others. The policy thereupon became void.

*Fish vs. Metropolitan Life Ins. Co. 44 Vr. 619.*  
*Brunjes vs. Metropolitan Life Ins. Co. 54 Vr. 296.*

Under such conditions, there being no contradiction of evidence, there was no question to go to the jury, and the Court ought to have given, and rightly did give, binding instructions. Any number of verdicts founded upon this testimony would be set aside.

*Baldwin vs. Shannon*, 14 Vr. 596.

*Crue vs. Caldwell*, 23 Vr. 215.

*Haines vs. Merrill Trust Co.* 27 Vr. 312.

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

There can be no doubt that the statements and answers contained in the application were made knowingly and with knowledge of their falsity by Brunjes, as well as the concealment of facts, for the very purpose of inducing the Company to insure his life.

They were representations knowingly made upon material matters, and hence the contract was vitiated, assuming that they were merely representations.

*Vivar vs. Knights*, 23 Vr. 455.

*McVey vs. United Workmen*, 24 Vr. 17.

*Holland vs. Chosen Friends*, 25 Vr. 490, at p. 494.

*Sup. Assembly vs. McDonald*, 30 Vr. 250.

*A fortiori* the policy was void under the authority laid down in *Deweese vs. Manhattan Ins. Co.* 5 Vr. at p. 247, and cases therein cited, which held that:

“A misrepresentation in an immaterial matter, not fraudulently intended will not avoid the policy unless made in reply to a specific inquiry, in which latter case, the party contracting to insure, by making specific inquiry, implies that he considers the fact inquired into material, and the other party is bound by it as such.”

But they were “not mere representations” depending upon their materiality to vitiate the contract as was the case in *Vivar vs. Knights*, *ubi supra*; they were warranties within the rule enunciated by this Court in *American Life Ins. Co. vs. Day*, 10 Vr. 89, and *Fish vs. Metropolitan Life Ins. Co.* 44 Vr. 619, *Brunjes vs. Metropolitan Life Ins. Co.* 83 N. J. L. 296.

Policies of similar kind have been construed, both by the Supreme Court in *Finn vs. Metropolitan Life Ins. Co.* 38 *Vr.* 17, and by this Court in the same case in error, 41 *Vr.* 255, and they were held to be warranties also in *Metropolitan Life Ins. Co. vs. McTague*, 20 *Vr.* 587-592, and again by this Court in *Dimick vs. Metropolitan Life Ins. Co.* 40 *Vr.* 384-392, in a very learned, exhaustive and instructive opinion by Mr. Justice Pitney, sometime of this Court.

For all of these reasons, it is contended that the direction was proper and that this ground of appeal lacks force.

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### THIRD GROUND.

BECAUSE THE COURT IMPROPERLY ADMITTED THE CERTIFICATE OF THE DEPARTMENT OF VITAL STATISTICS.

Assuming, for the purpose of argument, that the admission of the transcript of death of the decedent's mother (see Insert, p. 58) was improper, nevertheless it is contended that it was harmless, as the Court, in directing the verdict, was not at all influenced by the admission of that proof (p. 40, l. 10).

This proof was, however, properly admitted. The decedent in his application, in answer to questions propounded by the medical examiner to the decedent had stated as follows (p. 11, l. 13): "Age of Mother, 40; Cause of death, Confinement, Brooklyn, N. Y." The transcript showed the cause of death—phthisis pulmonalis—or tuberculosis. Even though this false answer had not been specially pleaded, nevertheless it was competent testimony. It showed the falsity of the decedent's answer. It served as a further accumulation of proof of false answers, misrepresentations and concealment of truth on the part of the decedent, which meth-

ods were employed in order to induce the Company to insure his life. This answer, with countless others, was not only a misrepresentation of fact knowingly made upon a material matter, and, therefore, competent and pertinent to the issue pleaded, even though not itself specially pleaded. *It was also a breach of warranty.*

A palpable fraud was practiced upon the defendant when the decedent sought and did actually obtain from the defendant the policy of insurance in dispute. The fraud of the deceased consisted in wilfully concealing material facts and in his answering falsely, and with knowledge of their falsity, these certain material questions and statements propounded by the defendant company to him in the application, among which was the question under discussion. The defendant wholly relied upon the truth of the answer as given; the truthful answers to such questions being of the most vital importance and materiality to the Company, and depending and relying only upon the truth of such answers, the policy was subsequently issued.

It is contended that any evidence to substantiate fraud and falsity on the part of the insured by the defendant company in regard to any matter or matters, either in issue or relevant to the issues concerning the policy in question and the obtaining thereof would have been competent, and hence the transcript of death was properly received.

It is, therefore, respectfully submitted that the judgment should be affirmed.

CLIFFORD I. VOORHEES,

Attorney for and of Counsel with  
Defendant-Appellee.

**Case No. II—Involving Policy of \$430.**

The grounds of appeal in this case (pp. 95-96) will be treated as follows:

*FIRST GROUND.*

That the trial Court overruled the question, as follows:

“Q. Did you ever know your husband to be treated by Dr. Robert E. Coughlin other than the one time that he treated him in January, 1911, for the grippe?”

“Mr. Voorhees: I object to that as incompetent, immaterial and irrelevant and not rebuttal.

“Objection sustained.

“Objection noted for the plaintiff as ground of appeal.”

There is no merit in this ground.

It is the same as the first ground of appeal in Case No. 1, and the same reasoning and conclusion is applicable here.

The attention of the Court is, therefore, respectfully addressed to the argument of this ground in Case No. 1, p. 3 of this brief, which is made the argument here.

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*SECOND GROUND.*

That the Court admitted in evidence over the objection of the Plaintiff, Exhibit D-1, to wit, the application of the deceased containing his written signed application and also his signed answers given to the Metropolitan physician and medical examiner, also the full report of the medical examiner, Dr. F. M. Galoway, all of which is contained in such instrument.

The Court properly admitted in evidence the application for Policy No. 44674563.

The issues material to this case were the same as in Case No. 1, and were joined as follows:

First: That Brunjes at the time of the making of the contract was in full health.

Second: That Brunjes did not have, before or at the date of said application, consumption or disease of the lungs.

Third: That Brunjes had not been under the care of any physician within two years next preceding said application, other than Dr. Coughlin, except as stated.

Fourth: That Brunjes had not, prior to said application, ever been seriously ill, except as stated in said application.

The following is the substance of this policy, No. 44674563 (pages 68 to 71, both inclusive):

"In consideration of the payment of the premium . . . doth hereby agree, subject to the conditions below and on page 2 hereof, *each of which is hereby made a part of his contract and contracted by the assured* to be a part hereof . . . to pay . . . the amount stipulated in said schedule . . . provided, however, that no obligation is assumed by the company . . . *unless on said date the insured is alive and in sound health* . . ."

"One half only of the above sum payable, if death occur within six calendar months from date . . ."

On page 2 thereof will be found the following conditions (pp. 70-71):

"This policy contains the entire agreement between the Company and the insured, and the holder and owner hereof . . . *This policy is void if the insured . . . has been attended by a physician for any serious disease or complaint, or has had before said date any pulmonary disease* . . ."

The application for this policy, signed by the deceased, contained, among other things, the following:

"I hereby apply for the above described policy and *all the statements* in Parts A and C of this application are made by me *to induce the Metropol-*

*tan Life Insurance Company to issue said policy of insurance.*" (Case, p. 91, ll. 1-10.)

And further :

*"To induce the Metropolitan Life Insurance Company to issue policy and as consideration therefor, I agree on behalf of myself and of any other person who shall have, or claim interest in any policy issued under this application, as follows:*

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

*"2. I have never had any of the following complaints or diseases . . . consumption . . . disease of lungs . . . except pneumonia when a child.*

*"3. I am now in sound health . . . nor have I any physical . . . defect or infirmity of any kind, except—*

*"4. The following is the name of the physician who last attended me, the date of the attendance and the name of the complaint for which he attended me: Dr. Coughlin, January, 1911, grippe, 1 week.*

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

*"9. I have never . . . nor ever been seriously ill except as stated herein.*

*"10. I have never had any other complaints except those mentioned and have been attended by the following named physicians and no others.*

*"11. No one of my parents . . . ever had consumption or any pulmonary disease . . ."*

(Case, pp. 92-93.)

And further :

*"I hereby declare that the application to the Metropolitan Life Insurance Company for an insurance on my life was signed by me and that I renew and confirm my agreements therein as to the answers given to the Medical Examiner, and I hereby declare that said answers are correctly recorded hereon.*

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

(Case, p. 93.)

The application in question was properly admitted. The issue was fraud, misrepresentation and breaches of warranty, and while the application was not essentially the plaintiff's proof, it was nevertheless admissible and competent testimony for the defendant. It must be borne in mind that the parties had agreed in their contract—

*“that the policy is void if the insured before said date had been attended by a physician for any serious disease or complaint, or had had before said date, any pulmonary disease.”*

(Page 71, ll. 9-15.)

This was one of the express conditions precedent to liability unequivocally agreed to by the assured and the Company, and the policy was made and accepted subject to these conditions (p. 68, l. 35, and p. 69, ll. 1-10).

The policy further provided, as above stated—

*“That no obligation is assumed by the Company unless on the date of said policy the insured is alive and in sound health.”*

(Page 69, ll. 15-18.)

The testimony of Dr. Coughlin (pages 58 to 62) established conclusively that the decedent was far from being “in sound health” on the date of the issuance of the policy, and that the decedent “had been attended by a physician for a serious disease,” and lastly, that “the decedent had, before the date of the policy, a pulmonary disease.” The express conditions having been violated, the policy was void.

The uncontradicted evidence of the Doctor showed that the plaintiff had suffered from dyspepsia, stomach trouble, and tuberculosis of the lungs from the fall of 1910, and that the deceased had been attended professionally by Dr. Coughlin for approximately two years prior to his death. He was in regular attendance upon the deceased for about that period of time (pp. 58-62).

Now, in view of the express terms of the contract,

any challenge of the defendant's right to introduce evidence of attendance by a physician, serious illness, pulmonary disease, and the fact that the decedent was not in sound health on the date of the policy, lacks force. *A fortiori*, what evidence could be more salient than the *signed application of the decedent himself* to show fraud, misrepresentation and breaches of warranty?

It is to be noted that "all the statements of Parts A and C of this application were made to induce the Metropolitan Life Insurance Company to issue said policy of insurance" (p. 91, ll. 1-10); and further "to induce the Metropolitan Life Insurance Company to issue policy," and as consideration "therefor" (p. 92, ll. 1-10) it was agreed—

"that the application . . . was signed by me and that I renew and confirm my agreements therein as to the answers given to the medical examiner, and I hereby declare that said answers are correctly recorded hereon. Every answer must be true or the policy will be void."  
(Page 93, ll. 28-38.)

Could any more relevant and pertinent testimony have been introduced than the application signed by the deceased? I apprehend not.

Mr. Cooley, in his "Briefs on the Law of Insurance," in Volume I, at page 687, states the rule to be:

"And even where the written application was not attached, it would nevertheless be admissible to show actual fraud. *Carrigan v. Mass. Ben. Ass'n*, 26 *Federal*, 230. And the insurer might show that the policy was delivered while the insured was not in sound health, contrary to the provisions of the policy. *Hood vs. Prudential Ins. Co.* 22 *Pa. Superior Court*, 244."

And, further, at page 690:

"The application is, of course, ordinarily admissible in an action on the policy." *Rawls vs. American Mutual Life Ins. Co.* 27 *N. Y.* 282.

Mr. Joyce also states the rule to be, in his work on Insurance, in Volume IV, Section 3819:

“As a general rule, in an action on a policy on the life of one for the benefit of another, the declarations of the insured, before or after the insurance, are not competent evidence against the beneficiary unless part of the *res gestae*. *Henn vs. Metropolitan Life Ins. Co.* 38 *Vr.* at p. 314.

In the case at bar, the declarations of the insured were beyond question part of the *res gestae*.

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### THIRD GROUND.

THE COURT ADMITTED IN EVIDENCE THE TRANSCRIPT OF THE BOARD OF VITAL STATISTICS.

There is no merit in this ground.

It is the same as the third ground of appeal in Case No. 1, and the same reasoning and conclusions is here applicable.

The attention of the Court is therefore respectfully addressed to the argument of this ground in Case No. 1, p. 8 of this brief, which is made the argument here.

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### FOURTH GROUND.

THAT THE COURT DIRECTED A VERDICT IN FAVOR OF THE DEFENDANT.

This ground is also without merit.

It is the same as the second ground of appeal in Case No. 1, and the same reasoning and conclusions is applicable here.

The attention of the Court is therefore respectfully addressed to the argument of this ground in Case No. 1, p. 4 of this brief, which is made the argument here.

The State of the Case as originally printed and served upon the appellee had many material parts of the defendant's testimony and exhibits inaccurately set forth, and also entirely omitted. Objections were filed there-  
by the appellee, and the appellant has revised and amended the case to some extent, but even as it appears now, salient parts of the defendant's case might be overlooked by the Court were its attention not called to this fact; and, furthermore, certain portions of the testimony of Dr. Coughlin (pp. 58-62) that were evidently considered favorable to the appellant's interests were italicized, and are now italicized in the case as now presented to the Court.

It is unnecessary to argue that in so doing the appellant has violated flagrantly the practice of this Court.

In *Cooper vs. Cooper*, 1 *Stockton*, at page 657, this Court says:

"The Court have in repeated instances, condemned the practice of marking a case by italics, or of adopting any other mode of drawing the special attention of the Court to such parts of the pleadings or evidence as the party may deem favorable to his interest . . . The Practice proceeds upon the plain ground that the party preparing the case should not be permitted to gain any advantage, however trivial, over his adversary, in bringing his case to the attention of the Court . . ."

This objection and comment is likewise applicable to Case No. 1, where the same posture of affairs exists.

It is, therefore, respectfully submitted that the judgment should be affirmed.

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Attorney for and of Counsel with  
Defendant-Appellee.

