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Summons

THE STATE OF NEW JERSEY to
PRUDENTIAL INSURANCE COMPANY OF AMERICA,
a corporation.

(L. S.) You are summoned to answer the
annexed complaint of Mary Kozloski,
Administratrix of the Estate of Adam
Kozloski, deceased, in an action at
law in the Union County Circuit
Court. And take notice that unless you file your
answer to said complaint with the Clerk of the
Union County Circuit Court at Elizabeth, within
twenty days after service upon you of this writ and
the annexed complaint, the plaintiff may proceed
in the suit and judgment may be entered against
you. 10

WITNESS, George S. Silzer, Judge of the Union
County Circuit Court at Elizabeth, this eighteenth
day of December, nineteen hundred and nineteen. 20

WILLIAM B. MARTIN,
Clerk.

STAMLER & STAMLER,
Attorneys.

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Complaint

Union
~~Essex~~ County Circuit Court

10	MARY KOZLOSKI, Administratrix of the Estate of ADAM KOZ- LOSKI, deceased,	} <i>Plaintiff,</i>	} <i>Action at</i>
	<i>vs.</i>		} <i>Law.</i>
	THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a corpo- ration,	} <i>Defendant.</i>	} <i>Complaint.</i>

The plaintiff, residing in the City of Elizabeth,
 County of Union and State of New Jersey, says:

20 That the defendant is a corporation organized
 under the laws of the State of New Jersey, and is
 engaged in the business of life insurance.

FIRST COUNT.

30 1. That on June 3rd, 1918, the defendant Com-
 pany issued a policy of life insurance No. 45,066,-
 671 on the life of Adam Kozloski, in consideration
 of a weekly premium of forty-two cents (42c.),
 and that the said weekly premium was paid on the
 said policy to defendant until the death of the
 plaintiff's intestate, which occurred on July 29th,
 1919. The plaintiff brings the said policy of insur-
 ance into court, and is the basis of this suit.

2. That the plaintiff was duly appointed ad-
 ministratrix of the estate of the said Adam Kozlo-
 ski, by the Surrogate of the County of Union, on
 December 17th, 1919, and the letters of administra-
 tion plaintiff brings into court.

40 3. That the plaintiff's intestate performed all
 the conditions imposed on him by the terms of said

Complaint

policy and that due proof of his death was given to said defendant company by the plaintiff.

4. That in accordance with the terms of the said policy, plaintiff is entitled to recover from the defendant the sum of five hundred dollars (\$500.00), together with interest thereon.

Plaintiff demands damages in the sum of one thousand dollars (\$1,000). 10

SECOND COUNT.

1. That on November 25th, 1918, the defendant company issued a policy of life insurance No. 45-971,939 on the life of Adam Kozloski, in consideration of a weekly premium of forty-two cents (42c.), and that the said weekly premium was paid on the said policy to defendant until the death of the plaintiff's intestate, which occurred on July 29th, 1919. The plaintiff brings the said policy of insurance into court, and is the basis of this suit. 20

2. That the plaintiff was duly appointed administratrix of the estate of the said Adam Kozloski by the Surrogate of the County of Union, on December 17th, 1919, and the letters of administration plaintiff brings into court.

3. That the plaintiff's intestate performed all the conditions imposed on him by the terms of said policy and that due proof of his death was given to said defendant company by the plaintiff. 30

4. That in accordance with the terms of the said policy, plaintiff is entitled to recover from the defendant the sum of five hundred dollars (\$500), together with interest thereon.

Plaintiff demands damages in the sum of one thousand dollars (\$1,000).

STAMLER & STAMLER,
Attorneys for Plaintiff.

40

Complaint

Notice to the within named defendants:

In case the within summons and complaint are served upon you personally, then take notice that if you intend to make a defense to this action you must file an affidavit of merits within ten days after the date of the service hereof upon you and must file your answer within twenty days after such
10 service and in default of filing such affidavit and answer judgment will be entered against you. Lawful service upon a corporation is deemed personal service for the purpose of this notice. (P. L., 1912, c. 394, Rule 56.)

STAMLER & STAMLER,
Attorneys for Plaintiff.

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Affidavit of Merits

MARY KOZLOSKI, Administratrix of the Estate of ADAM KOZ- LOSKI, deceased, <div style="text-align: right;"><i>Plaintiff.</i></div>	}	<i>On Contract.</i>	
<div style="text-align: center;"><i>vs.</i></div> THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a corpo- ration, <div style="text-align: right;"><i>Defendant.</i></div>		<i>Affidavit of Merits</i>	10

STATE OF NEW JERSEY, }
 COUNTY OF ESSEX. } *ss.*

Edward Gray, being duly sworn on his oath, says that he is the vice-president of The Prudential Insurance Company of America, the defendant in the above entitled cause, and he believes that it has a just and legal defense to said action on the merits of the case. 20

EDWARD GRAY.

Subscribed and sworn to before me
 this 23rd day of December, A. D.,
 1919.

JAMES GUEST,
Master in Chancery of New Jersey. 30

Answer

UNION COUNTY CIRCUIT COURT.

10	MARY KOZLOSKI, Administratrix of the Estate of ADAM KOZ- LOSKI, deceased, <div style="text-align: right; padding-right: 10px;"><i>Plaintiff,</i></div>	}	<i>Action at Law.</i>
10	<div style="text-align: center; padding-bottom: 5px;"><i>vs.</i></div> THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a corpo- ration, <div style="text-align: right; padding-right: 10px;"><i>Defendant.</i></div>		<i>Answer.</i>

The defendant, The Prudential Insurance Com-
 pany of America, a corporation, says that:

20 DEFENSE TO FIRST COUNT.

1. The defendant admits so much of paragraph
 No. 1 as alleges that, on July 3, 1918 the defend-
 ant issued a policy of life insurance No. 45,066,671
 on the life of Adam Kozloski (subject to the pro-
 tection and inspection of said policy of insurance)
 and that the said Adam Kozloski died July 29,
 1919.

30 And this defendant denies that the weekly pre-
 mium was paid on said policy of insurance as there-
 in provided for to be paid to the defendant by rea-
 son of which the said policy of insurance lapsed and
 became null and void and is of no force and effect.

2. As to the statement in paragraph No. 2 de-
 fendant has no knowledge or information thereof
 sufficient to form a belief.

3. It denies paragraph No. 3.

4. It denies paragraph No. 4.

Answer

DEFENSE TO SECOND COUNT.

1. The defendant admits so much of paragraph No. 1 as alleges that, on November 25, 1918, the defendant issued a policy of life insurance No. 45,971,939 on the life of Adam Kozloski (subject to the production and inspection of said policy of insurance), and that the said Adam Kozloski died July 29, 1919.

And this defendant denies that weekly premium was paid on said policy of insurance as therein provided for to be paid to the defendant by reason of which the said policy of insurance lapsed and became null and void and is of no force and effect.

2. As to the statement in paragraph No. 2 defendant has no knowledge or information thereof sufficient to form a belief.

3. It denies paragraph No. 3.

4. It denies paragraph No. 4.

MARTIN P. O'CONNOR,
Attorney of Defendant.

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Reply

UNION COUNTY CIRCUIT COURT.

10	MARY KOZLOSKI, Administratrix of the Estate of ADAM KOZ- LOSKI, deceased, <div style="text-align: right; padding-right: 20px;"><i>Plaintiff,</i></div>	} <i>Action at Law.</i>
20	<div style="text-align: center; padding-bottom: 5px;"><i>vs.</i></div> THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, a corpo- ration, <div style="text-align: right; padding-right: 20px;"><i>Defendant.</i></div>	

The plaintiff replying to the answer of the defendant says:

1. That the said plaintiff denies each and every allegation contained in said answer, excepting such parts of the answer which admits the plaintiff's complaint.

STAMLER & STAMLER,
Attorneys of Plaintiff.

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Appearances

UNION COUNTY CIRCUIT COURT.

January Term, 1920.

MARY KOZLISKI, Admx., of ADAM KOZLISKI, vs. THE PRUDENTIAL INSURANCE COMPANY.	} 10
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Transcript of stenographer's notes of evidence in the above entitled cause, taken before Hon. George S. Silzer, Circuit Court Judge, and a jury, at the Union County Court House, in the City of Elizabeth, New Jersey, on the ninth day of February, A. D., 1920. 20

Appearances:

Messrs. Stamler & Stamler, John J. Stamler, Esq. (present), attorneys for plaintiff.

Martin P. O'Connor, Esq., attorney for defendant.

A jury being empanelled and found satisfactory, they were sworn.

Mr. Stamler opens the case for the plaintiff.

Mr. O'Connor opens the case for the defendant.

The Court. You are suing on an insurance policy? 30

Mr. Stamler. Two policies.

The Court. And you claim the amount—

Mr. Stamler. The amount of each policy is five hundred dollars.

The Court. The man is dead?

Mr. Stamler. The man is dead, of course.

The Court. You claim the party failed to pay the premium when it was due?

Mr. O'Connor. Yes, sir. 40

Discussion

The Court. And therefore the policy lapsed?

Mr. O'Connor. Yes, sir.

The Court. What is your answer to that?

Mr. Stamler. I say they didn't.

The Court. That seems to be very simple.

Mr. Stamler. I offer in evidence the letters of administration issued by the Surrogate of the County of Union to the plaintiff in this suit.

10 (Letters of administration entered in evidence and marked Exhibit P. 1.)

The Court. Which is the premium you claim lapsed?

Mr. O'Connor. Both.

The Court. What date? Premium due at what time?

Mr. O'Connor. My contention is that the last regular payment of premiums was on the seven-
20 teenth day of May.

The Court. What year?

Mr. O'Connor. 1919.

The Court. Both these policies concurrent, same date?

Mr. O'Connor. No.

The Court. What time was the other one due?

Mr. O'Connor. But they are both paid on the same premium day.

The Court. That premium you say was not paid
30 on time. When do you say it was paid, Mr. Stamler?

Mr. Stamler. We say that on policy which is in first count of the complaint premium was paid on July twenty-ninth, 1919, the last payment made, and the payment before that time was on the eleventh day of June, 1919. Some payments were also made—

The Court. And on the second policy?

Mr. Stamler. The second policy, the last pay-
40

Discussion

ment we made on it was on the seventeenth of June, 1919.

The Court. Does the policy give—

Mr. Stamler. Five weeks. That is, five Mondays.

Mr. O'Connor. No. Four weeks. I might say this, that the defendant's contention is this: That the last regular payment of premium as appears in the premium receipt book, which is not disputed, is the seventeenth day of May. 10

The Court. The last payment?

Mr. O'Connor. The last regular payment.

The Court. Is that in both cases?

Mr. O'Connor. Yes, sir.

The Court. Then I misunderstood you. I understood you to say the payment that you said lapsed was the seventeenth of May. Then it is the payment that was due in June? Or, weekly payments, were they? 20

Mr. O'Connor. There were three weeks paid on the seventeenth of May. I hand you a copy of this book. It is the same as Mr. Stamler has.

Mr. Stamler. I do not say that.

The Court. Were these premiums payable weekly?

Mr. Stamler. Yes. Forty-two cents a week.

The Court. Now, you claim that there was a premium due on the seventeenth of May that was not paid within five weeks, is that it? 30

Mr. O'Connor. No, sir; I do not.

The Court. What do you claim?

Mr. O'Connor. I claim that the last regular payment of premium within time was the seventeenth day of May, which premium paid up to May twelfth, 1919, and which entitled the insured to a grace period which would bring the policy—

The Court. There is no grace period on that because if he paid up to May twelfth that is paid 40

Discussion

up. Now then the next payment would have been due May seventeenth.

Mr. O'Connor. The next payment would have been due May nineteenth.

The Court. That is the one you say he failed to pay on time?

Mr. O'Connor. Let me get this.

10 *The Court.* I understood you to say the last payment made within time was May seventeenth and that paid up to May twelfth. Now, if everything was paid up to May twelfth regularly then the next payment that should have been made on time was May nineteenth, wasn't it?

Mr. O'Connor. Yes.

The Court. You claim May nineteenth was not paid?

Mr. O'Connor. No.

20 *The Court.* And that is the one upon which default was made?

Mr. O'Connor. Yes, default was made.

The Court. So that is the one upon which you claim the policy lapsed?

Mr. O'Connor. Yes. But I am giving her a more favorable construction than that. If I may venture to say this—

The Court. Give me something so that I can find out what you are about.

30 *Mr. O'Connor.* The last regular payment was on the seventeenth day of May and that paid up to the twelfth day of May. Under the terms of the policy if she did not pay any more that policy was alive up to the ninth of June, four weeks. Now, the ninth of June passed and she came into the office on the seventeenth of June, after the grace period expired and paid a certain sum of money.

The Court. Now, let me ask you: wasn't the next payment due on the nineteenth of May?

40 *Mr. O'Connor.* Yes.

Discussion

The Court. And she had how many weeks from the nineteenth of May to pay the next premium?

Mr. O'Connor. Four weeks.

The Court. They claim they paid on the seventeenth of June. Would not that be within the four weeks?

Mr. O'Connor. No, sir. It is paid up to May twelfth; nineteenth of May would be one week. 10

The Court. No. The next payment was not due until the nineteenth of May.

Mr. O'Connor. Yes.

Mr. Stamler. Four weeks from the nineteenth of May to pay. There is no dispute about that.

Mr. O'Connor. She is paid up to May twelfth.

The Court. Now, her next default would be for failure to pay the nineteenth of May, wouldn't it?

Mr. O'Connor. She would have to pay on the nineteenth of May. She did not pay until the seventeenth of June. 20

The Court. You claim that is within the time, don't you, Mr. Stamler?

Mr. Stamler. The payment of money? Yes. Under the decisions it is within time.

The Court. Is that within four weeks?

Mr. Stamler. No, sir; it is one day late.

Mr. O'Connor. It is out of the grace time.

Mr. Stamler. That is, if the payments were made as they say they were made. We do not claim they were made that way. 30

The Court. You claim June eleventh?

Mr. Stamler. June sixth, June sixteenth and different dates.

The Court. Mr. O'Connor claims the last payment that paid up was May twelfth. On May seventeenth he paid the May twelfth installment, so that the next payment due was May nineteenth. Now, he says that was paid on June seventeenth, 40

Discussion

which is too late. Now, when do you say it was paid?

Mr. Stamler. I say we have two policies and they are different policies.

The Court. I am speaking about the first payment now.

10 *Mr. Stamler.* Which one do you call the first policy, Mr. O'Connor?

Mr. O'Connor. The first policy is the one bearing the dates—

The Court. The one you call as the first policy in the first count.

Mr. Stamler. I will explain my position on that. We made our payment on June sixth which paid up to and including the ninth day of June.

The Court. Paid what?

Mr. Stamler. We paid money on June sixth.

20 *Mr. O'Connor.* You are mistaken about that, Mr. Stamler.

Mr. Stamler. We claim that.

Mr. O'Connor. Isn't it a fact that June sixth is not the payment that you made, as a matter of fact?

The Court. You had better go ahead. I cannot get what you are fighting about.

30 *Mr. Stamler.* I offer in evidence the proof of claim filed with the defendant company in relation to the two policies, and it is admitted for the purpose of this case—

The Court. The only dispute in the case is that your policy lapsed and therefore you are not entitled to recover.

Mr. Stamler. That is their defense. I do want to get this into the record. And that the said proof of claim was prepared by the offices of the defendant company.

Mr. O'Connor. Presented by the plaintiff.

40 *Mr. Stamler.* Presented by and prepared by one

Eugene H. Cochran, direct

of the superintendents of the defendant company. Is that right?

Mr. O'Connor. I do not say that. It speaks for itself. It is the duty of the agent to assist the insured in preparing the proof of claim, and I assume that a great portion of that was done. For instance, the blanks, and the assistance of preparation, and she signed them. I can't tell you everything about them. 10

Mr. Stamler. I want to prove it then.

EUGENE H. COCHRAN, a witness produced on behalf of the plaintiff, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. Stamler.

Q Mr. Cochran, you are the superintendent of The Prudential Insurance Company? 20

A Yes, sir.

Q At its branch office at Elizabeth?

A Yes, sir.

Q I show you a paper and ask you whether you ever saw that paper before?

A I recognize it.

Q And what is that paper?

A Part of the proofs of death.

Q Applicable to this case?

A Yes. It is an evidence of the fact that party died. Part of the proofs. That is the claimant's statement. 30

Q Who prepared this, who wrote it?

A One of our employees. Other than the signature made by Mary Kozliski, or her mark to it.

Mr. Stamler. I offer that in evidence.

Mr. O'Connor. One minute, please. Let me mark this so-called exhibit for identification by Mr. Stamler.

Eugene H. Cochran, cross

Cross examination by Mr. O'Connor.

Q I show you P. 2 for identification and ask you whether or not that is all the proof of death?

A It is not.

(Part of proof of death marked P. 3 for identification.)

10 Q I show you P. 3 for identification and ask you whether or not that is any part of the proof of death?

A It is.

Mr. O'Connor. That is all. I object to the offering in evidence of a part of the proof of death without the entire proof of death.

The Court. It will be admitted.

20 *Mr. Stamler.* I offer in evidence first the paper P. 2 for identification and ask it be marked a full exhibit.

(Paper heretofore marked P. 2 for identification entered in evidence and marked Exhibit P. 2.)

Mr. Stamler. Now I offer in evidence the two papers marked P. 3 for identification, as a full exhibit.

(Papers heretofore marked P. 3 for identification entered in evidence and marked Exhibit P. 3.)

30 *Mr. Stamler.* I offer in evidence the policy set forth in the first count of the complaint number four-five-nine-seven-one-nine-three-nine, dated November twenty-fifth, 1918.

(Policy entered in evidence and marked Exhibit P. 4.)

Mr. Stamler. I offer in evidence the premium receipt book relating to said policy.

(Premium receipt book entered in evidence and marked Exhibit P. 5.)

40

Mary Kozliski, special

Mr. Stamler. I offer in evidence a receipt bearing date July twenty-ninth, 1919.

(Receipt entered in evidence and marked Exhibit P. 6.)

Mr. Stamler. I offer in evidence another receipt being number one hundred and fifty-three, dated August four, 1919.

(Receipt entered in evidence and marked Exhibit P. 7.) 10

Mr. Stamler. Now I offer in evidence under the second count of the complaint the policy dated June third, 1918, being policy number four-five-o-six-six-six-seven-one.

(Policy entered in evidence and marked Exhibit P. 8.)

Mr. Stamler. I offer in evidence the premium receipt book accompanying said policy.

(Premium receipt book entered in evidence and marked Exhibit P. 9.) 20

Mr. Stamler. I offer in evidence a receipt of the defendant company bearing date June seventeenth, 1919.

(Receipt entered in evidence and marked Exhibit P. 10.)

MARY KOZLISKI, called.

Special examination by Mr. O'Connor.

Q Where do you live, Mrs. Kozliski? 30

A Linden. Two months.

Q Two months in Linden?

A Before, Bayway.

Q Where did you live before you moved to Linden?

A Lived before that Bayway.

Q Bayway?

A Yes, ma'm.

Q In the City of Elizabeth? 40

Mary Kozliski, direct

A Two or three months ago, Henry street.
(Alexander Reitman sworn as interpreter.)

MARY KOZLISKI, the plaintiff, being duly sworn according to law, on her oath, saith:

Direct examination by Mr. Stamler.

(Through interpreter Reitman.)

10 Q You are the widow of Adam Kozliski?

A Yes.

Q Can you read and write English?

A I can't write or read English or any other language. I know a little Polish but not much.

Q Can she sign her name?

A No.

Q Do you remember the date when your husband died?

A July twenty-sixth.

20 Q Did he die July twenty-sixth?

A He died July twenty-sixth.

Mr. Stamler. It is July twenty-ninth. It is an admitted fact in this case it was the twenty-ninth.

Mr. O'Connor. He was injured on the twenty-sixth and died on the twenty-ninth.

Q Isn't it a fact that your husband died on the twenty-ninth of July?

30 A The company and others signed that he died on the twenty-sixth.

Q Where did your husband die, Mrs. Kozliski?

A Bridgeton, New Jersey.

Q Do you remember paying four dollars and twenty cents to the insurance company on the day when your—

Mr. O'Connor. I object.

Mr. Stamler. There is no question about it, is there? That is the receipt, July twenty-ninth.

40

Mary Kozliski, direct

Q Do you remember paying four dollars and twenty cents to the insurance company on July twenty-ninth?

A I paid in July twice.

Q The last time that you paid—

Mr. O'Connor. The answer is not responsive.

The Court. No.

Mr. Stamler. All right. Strike it out. 10

Q Do you remember paying on July twenty-ninth four dollars and twenty cents?

A My girl tore the receipt and I had to pay the second time. That is what I mean.

Mr. O'Connor. I move to strike it out.

The Court. Yes. That will be stricken out.

(Question repeated by stenographer.)

A I paid July twenty-sixth four dollars and twenty cents. I paid twice the same amount. 20

Mr. O'Connor. I object and move to strike the answer out.

The Court. Strike the last part out.

Q When you paid the first time the four dollars and twenty cents do you know whether or not your husband was living?

A I did not know if he was dead, because he was not with me. He was in Bridgeton, New Jersey. 30

Q What time did your husband die?

A He died ten o'clock at night.

Q When did you pay the money, what time in the morning did you pay the money?

Mr. O'Connor. I think that question is leading.

Q What time during the day did you pay the money?

A Around ten o'clock in the morning. 40

Mary Kozliski, direct

Q Did they give you a receipt for it?

A Yes.

Q Did they mark it in the book for you at that time?

A They did mark in the book, too.

Q I mean in her little book, did she have her book?

10 *Mr. O'Connor.* What book? I object to the question.

The Court. Why?

Mr. O'Connor. Did she mark it, holding up this book. I want to know what book. I do not think she ought to be lead to this particular book.

The Court. I will allow the question.

A They gave me a receipt. They marked some books in the office and then they gave me a receipt.
20

Q Did you have your books with you when you paid the four dollars and twenty cents the first time?

A I did have the book with me.

Q Did the collector ever come to collect money at your house?

A About three months I called at the office and paid my payments in the office.

Q And before that time?

30 A Before that time the collector used to call at my house.

Q What day of the week did he call?

A Some time Monday, some time on Tuesdays. I used to work in the factory and he couldn't catch me.

Q How many times did you pay money in June?

A Some time I paid twice in a month and sometimes three times a month.

The Court. Tell her to answer the question.

40 Q How many times did you pay in June?

Mary Kozliski, cross

A Twice I paid in June, but the third time she means she paid four dollars and twenty cents.

The Court. Strike the last part of the answer out.

Cross examination by Mr. O'Connor.

Q Where did you live Mrs. Kozlinski on the seventeenth of June? 10

A I live Maple avenue.

Q Whereabouts on Maple avenue?

A 654.

Q Where did you live on July twenty-ninth?

A I also lived Maple avenue.

Q Where did you live on August the fourth?

A I lived on Livingston street, number seventy eight.

Q On August the fourth?

A Yes, sir. 20

Q How long had your husband been living away from you?

A Since he is down to Bridgeton, New Jersey, that is about five or six weeks. He used to send me money from there.

Q When did you learn, Mrs. Kozlinski, that your husband was dead?

A July twenty-eighth, when I went there on July twenty-eighth that is the time I learned he was there. 30

Q You went there to Bridgeton on July twenty-eighth?

A Yes.

Q And then on July twenty-ninth you came to the office of the company, Broad Street, Elizabeth, and paid some money?

A I came—receipt was torn and when I came on the twenty-ninth to the office I did not have the receipt. Receipt was torn and they made me pay once more the premium. 40

Mary Kozliski, cross

Q Did you pay any money on the fourth day of August to the company?

A I couldn't remember. I can't read and I couldn't say if I paid on the fourth of August or not.

Q You signed your name to that paper, Mrs. Kozliski, that is Exhibit P. 2?

10 *Mr. Stamler.* There is no signature there, excepting a mark, is there?

Q Is that your signature Mary (mark) Kozliski?

A I like to know what date it was?

Q That was the sixth of August, the date is?

Mr. Stamler. I admit she did, Mr. O'Connor. We offered that in evidence.

20 Q Was there a man present at the time by the name of Anthony Kraus?

A I don't know. I left the money with my sister in Bayway—with my sister, the money. I don't know what happened, who was there a person. I went to Bridgeton, New Jersey.

Mr. O'Connor. That is all.

30 *Mr. Stamler.* Mr. O'Connor, do I understand that the erasures on Exhibit P. 2, made after the sixteenth day of June, 1919, and up to and including the eighteenth day of August, 1919, were made by one of your officers of the company, as it appears on said pass book?

Mr. O'Connor. Those are not the facts. I will admit that after May seventeenth, 1919, entries made therein were erased by an agent of the company or somebody in the company.

Mr. Stamler. And on Exhibit P. 5?

Mr. O'Connor. I admit the last regular entry in Exhibit P. 5 was May seventeenth.

40 *Mr. Stamler.* And the erasures made on that

Motion for Non-suit

book were made by one of the officers of the company following that date?

Mr. O'Connor. By somebody in it.

Mr. Stamler. By somebody, you say?

Mr. O'Connor. By the company. I will be bound by that.

Mr. Stamler. We rest.

MOTION FOR NON-SUIT

10

Mr. O'Connor. I would like at this time to move for a non-suit:

One, with reference to policy number four-five-o-six-six-six-seven-one which policy was issued on Monday, June third, 1918, the proof shows that the premium receipt book was paid on May seventeenth, 1918, or 1919, rather, which was the last regular payment in the book. The receipt produced in evidence by the plaintiff shows that the next payment was made on June sixth or rather June seventeenth, 1919, which is a period after the grace period under the policy expired. In other words the plaintiff had a grace period—

20

The Court. Did you accept the premiums?

Mr. O'Connor. Which premiums do you mean?

The Court. Which ones are you talking about?

30

Mr. O'Connor. First I spoke about the—

The Court. You are speaking about the payment made on the seventeenth of June, three dollars and thirty-six cents, which carries for eight weeks. Now, you accepted that payment, didn't you?

Mr. O'Connor. That was accepted conditionally, as shown by the receipt. The receipt shows. I understand Your Honor has the re-

40

Argument

10 receipt dated June seventeenth, 1919, and it says:
 "This temporary receipt is given upon the condition that under no circumstances will the company be liable under said policy in case of death or otherwise unless said policy was in force in accordance with its terms when the above payment was made." The policy was not in force at the time when payment was made on June seventeenth, 1919.

The Court. Would not that be one day past the time?

20 *Mr. Stamler.* Yes, sir. I have an answer to that. The answer to that is complete. It is true that they gave us a temporary receipt, but afterwards they made it a permanent receipt, and Your Honor will notice in the book that on August the sixth, or afterwards, they wrote in a permanent receipt in this book, referring to the same number four thousand and seventy-three which was later, which of itself is an acceptance of the premium. Four thousand and seventy-three refers to that number. That makes it a permanent receipt. And that part was erased afterwards. I do not know why. They will have to explain that. Four weeks were actually written in the book.

30 *The Court.* What do you say to that? You say this was a temporary receipt. He says it ceased having a temporary character when you entered it in the book and made it a permanent receipt.

Mr. O'Connor. There is no entry in the book showing the permanent receipt.

The Court. The entries in the book are the other receipts.

Mr. O'Connor. What are those dates?

40 *Mr. Stamler.* August the fourth.

Argument

The Court. It covers apparently four of the weeks, May nineteenth, twenty-sixth, June second, June ninth.

Mr. O'Connor. When was the money actually received, as appears by the book?

The Court. 8/6.

Mr. O'Connor. The man was dead and buried at that time. That would be August the sixth. Away beyond the grace period. 10

The Court. That is the time you entered it in the book.

Mr. O'Connor. Yes.

The Court. But the money was paid on the seventeenth of June.

Mr. O'Connor. Yes, sir. After the grace period.

The Court. And then apparently you gave a permanent receipt after the man was dead. 20

Mr. O'Connor. I do not take that view of it.

The Court. That is what Mr. Stamler contends.

Mr. Stamler. After they had actual knowledge that the man had died. As it appears by the proof of law. So we might as well cover the whole point.

Mr. O'Connor. I take the position that no agent of the company could waive the forfeiture under the policy, or change or modify the contract of insurance. 30

The Court. The question is whether there was a forfeiture.

Mr. O'Connor. Yes.

The Court. Now, the situation seems to be that you were entitled to declare a forfeiture on the seventeenth of June. The woman then pays you eight weeks payment which carry her beyond that date. You give her a temporary receipt and say that shall not be enforced if 40

Argument

the policy was void at that time. And then afterward, after the man had died, you recognized that as a valid payment and entered it upon the premium receipt book. Is not that a waiver of any forfeiture?

10 *Mr. O'Connor.* No, sir. I would like to call your Honor's attention to a case very similar to this, in fact, I think on all fours with this. It is a case of *McGrath versus Metropolitan Insurance Company*, 52 Law, 358, where it holds: that that is not a waiver and is not within the power of the agent to bind the company by giving any such receipt and inserting it in the premium receipt book. I would also call your Honor's attention to where these cases have been affirmed, 69 Law, 395, and in 62 L. R. A. 779.

20 *The Court.* Are there any facts in dispute in this case? Do you expect to put any proof in?

Mr. O'Connor. I do not see any occasion to put proof in at this particular time because it seems to me the premiums were paid out of time, and a condition receipt given.

30 *The Court.* I was going to suggest if you had any proof to put in you might put that in, and then it becomes merely a question of law, I can take it up and hear you at length, and let this jury go.

Mr. O'Connor. Well, if your Honor rules against me I will have to put proof in.

The Court. I will do that at the present. I will deny the motion at this time and hear you on a motion to direct a verdict.

40 *Mr. O'Connor.* Prays exception as to your ruling with reference to policy 45066671. And may I renew my motion for a non-suit, or rather, make my motion also for a non-suit

Eugenia Schimpff, direct

with regard to policy number 45971939, for the same reasons?

The Court. Yes.

Mr. O'Connor. Prays exception.

DEFENDANT'S CASE

10

EUGENIA SCHIMPF, a witness produced on behalf of the Defendant, being duly sworn according to law, on her oath, saith:

Direct examination by Mr. O'Connor.

Q Miss Schimpff, where do you live?

A Now? 105 Johnson avenue, Newark.

Q Were you employed at any time by the Prudential Insurance Company?

A Yes, I was.

20

Q Where?

A At the Elizabeth office at Broad street.

Q And during what time?

A I think my services began somewhere around the end of September in 1918 and ceased some time in October, 1919.

Q Do you know the plaintiff, Mrs. Kozliski?

A Yes, I do.

(Book marked D. 1 for identification.)

30

Q Miss Schimpff I show you register marked D. 1 for identification and ask you what it is?

A This is a duplicate, or rather our office record of a payment made by Mrs. Kozliski.

Q Cash entries?

A Yes.

Q I call your attention to June sixth, 1919. Was there any money received by you that day?

40

Eugenia Schimpff, direct

The Court. Do you dispute this receipt, Mr. O'Connor?

Mr. Stamler. They are all the same receipts, aren't they?

Mr. O'Connor. I don't dispute it.

The Court. Are you trying to prove now that there wasn't any?

10

Mr. O'Connor. My proof practically runs along the same lines with regard to the receipt.

Q Did you receive from her any money on June seventeenth, 1919?

A Yes.

Q How much did you receive?

A Three dollars and thirty-six cents.

Q Where did you enter it?

A Right here in this book.

20

Q Did you give her a receipt?

A Certainly. A temporary receipt.

Q Did she present the premium receipt books to you that day, if you recall?

A No, Mr. Kozliski did not.

(Receipt book entered in evidence and marked D. 2 for identification.)

Q I show you book marked D. 2 for identification and ask you what that is?

30

A This book is our cash register.

Q Will you look at that and see whether you received any money from her on July twenty-ninth, 1919?

A Yes. I received four dollars and twenty cents.

Q Did you give her a receipt?

A Yes. A temporary one.

Q And did you enter it in the premium receipt book?

40

A No.

Eugenia Schimpff, direct

Q Do you recall whether she presented the premium receipt book to you that day?

A No, she didn't.

Q Can you turn to the register under date of August the fourth and ascertain whether or not any money was received by you that day?

A Yes, I did. I received four dollars.

Q Four dollars on August the fourth?

A On August the fourth. 10

Q Do you recall who paid it?

A Yes, I do very distinctly.

Q Who paid it?

A Mr. Kraus paid it.

Q Who is Mr. Kraus?

A Mr. Kraus is the gentleman who accompanied Mrs. Kozliski to our office at the time she made her claim statement, and several times—well, once or twice at least that I know of thereafter. Mrs. Kozliski did not pay me that money. 20

Q That is the last payment, August the fourth, you have reference to?

A Yes; she didn't pay that to me.

Mr. O'Connor. I offer in evidence the cash register marked D. 1, for identification.

(Cash register heretofore marked D. 1 for identification entered in evidence and marked Exhibit D. 1.)

Mr. O'Connor. Also the cash register marked D. 2 for identification. 30

(Cash register heretofore marked D. 2 for identification entered in evidence and marked Exhibit D. 2.)

Q Do you recall the address Mrs. Kozliski gave you when she made her payment on June seventeenth, 1919, of three dollars and sixty-six cents?

A Mrs. Kozliski was at that time accompanied by her daughter, who told me that she lived at 78 Livingston street. 40

Eugenia Schimpff, cross

Q When she made the payment on July twenty-ninth, 1919, did she give you the address?

A Mrs. Kozliski came alone that time and I could not understand her very well, but she told me at that time as nearly as I could make it out that she lived at Maple avenue and Prospect street, I think, is what I understood her to say.

10 Q Was there any reference made to—what was all the conversation?

A When I could not understand her the address I explained to her that it would be necessary for us to have a correct one, and she said that she would send her daughter on Saturday to give me the correct address.

Cross examination by Mr. Stamler.

Q Miss Schimpff, assuming that I would come into your office and I was a policyholder?

20 A Yes.

Q And in good standing and good force and wanted to pay a week's premium, without my book, would you give me a similar receipt that you gave the plaintiff in this suit?

Mr. O'Connor. I object.

The Court. I will allow the question.

Q Will you answer the question? Do you understand it?

30 A Now repeat it.

(Question repeated by stenographer.)

A Yes, I would give a similar receipt but I would also explain that that didn't bind us at all. It was only conditional.

By the Court.

Q Why would it be conditional, Miss Schimpff, if the person was not in arrears?

40 A Yes, but you see I would have no way of knowing they were not in arrears.

Eugenia Schimpff, cross

Q That is just what Mr. Stamler means when the book is not brought then you give what you call a temporary receipt?

A Yes.

Q And make your receipt permanent in the book afterwards, that is right?

A Well, we don't do that. The agents—or not the agent but someone who would look that up would do it. 10

Q But your custom, if the book is not there so that the book shows what has been paid, is to give what you call a temporary receipt?

A Yes.

By Mr. Stamler.

Q You have a life register in your office?

A No.

Q You don't carry a life register at all?

A No. 20

Q In other words, if I would come in without a book, without a receipt book, or without my number of the policy and I wanted to pay a premium and I would tell you that I am a policyholder in your company?

A Yes.

Q There is no book in your office whereby you can determine whether I am or not a policyholder?

A Certainly not. But if you were an absolute stranger and I didn't know you I surely would not take your money. 30

By the Court.

Q How soon after this money is received, as you have stated was on July twenty-ninth and June seventeenth, how soon after you get it do you forward it to the home office?

A Well, the money is turned over then to the agent in this district, who would care for that, and he would get that sometimes a few hours later, or 40

Eugenia Schimpff, cross

sometimes he would get it the next morning. You see the next time he came into the office, because the men come in in the morning and then go out again. If it came in late in the afternoon the agent would not get it again until the next morning.

Q Is it forwarded the same day to Newark?

A To the agent.

10 *By Mr. Stamler.*

Q You mean by the word "agent" the person to whom that particular account is credited?

A Yes.

Q In other words, who was supposed to take care of that account, who is supposed to make collections?

A Why, a special one who is supposed to call at the house, yes.

Q Call at the house and make a collection?

20 A Surely.

Q So after you get this money in your house you turn it over to the particular collector whose duty it was to go to the house of Mrs. Kozliski and collect this money?

A Surely.

Q And after that he turns it over to the superintendent, when?

A He turns—he makes his remittance—then they have an account day on which accounts are turned in.

30 Q When is that? How soon after? Assuming that it was on a Tuesday?

A Yes.

Q How soon is the account settled between the collector and the company itself?

A Thursday morning.

Q The following Thursday?

A Accounts are always settled on Thursday.

Q On all Thursdays?

40 A Yes.

Eugenia Schimpff, cross

Q And the money then goes to the superintendent?

A The money then is passed in to the cashier who remits it to the company, yes.

Q Mrs. Kozliski paid you the money?

A Yes.

Q No later than the following day after you got it you turned it over to the agent whose duty it was to collect this premium? 10

A Yes.

Q That agent the following Thursday turns it over to the treasurer of the company at the Elizabeth office?

A Yes.

Q And that treasurer then transmits it to the Newark office, is that right?

A Yes.

Q But is the money deposited here in a local bank? 20

A Why, the actual money is sent to the bank here, of course, but the bank's statement for it is sent to Newark.

Q In other words the treasurer then deposits the money that he gets from the collector in one of the banks in Elizabeth?

A Yes.

Q And when does he do that?

A On Thursday. Well, that money—you see each day the agents turn in the money they have collected the day before. For instance, the collections of money for Monday are turned in on Tuesday morning. That money is taken to the bank immediately. But they don't render a general account of the money until Thursday. 30

Q In other words, the collector's duty is to turn in each day's collection?

A Surely.

Q And the cashier at the Elizabeth office de- 40

Eugenia Schimpff, cross

posits that money to the name of the Prudential Life Insurance Company in the bank?

A Yes.

By the Court.

Q Then they have an accounting on Thursday and then the superintendent sends in to the company, probably the following day?

10 A No; Thursday.

Mr. Stamler. No. The superintendent don't draw the check.

The Court. The cashier:

Mr. Stamler. No. The checks are drawn as I understand it by the people in Newark. No one else signs a check except the Newark people at headquarters.

A You evidently misunderstand.

20 *By Mr. Stamler.*

Q Let us understand it again. Who has a right to sign a check on the Elizabeth banks?

Mr. O'Connor. That is not cross examination. I object.

The Court. Yes, I think it is.

By the Court.

Q After this account is made, Miss Schimpff, then how does the money and when does the money
30 get to Newark? After the agent has made his account on Thursday and everything is straightened up how does the money get to Newark and when?

Mr. O'Connor. That is on the assumption that the agent gets the money when the policy has ceased to exist.

The Court. She says she got it and turned it over to the agent.

Mr. O'Connor. I do not understand that she

Eugenia Schimpff, cross

turns over to the agent the money that comes to her.

The Court. She deposits it and makes an accounting on Thursday.

Mr. O'Connor. All the money is not deposited.

By Mr. Stamler.

Q In the Kozliski case you got three dollars and twenty cents, I think, or three dollars and thirty-six cents on June seventeenth. What did you do with it? 10

A Oh, that money would not go into a regular account because that business was lapsed. I am not telling you what would happen to that money.

Q What would you do with that money?

By the Court.

Q What did you do with it? 20

A Why, I made simply a cash record of it in our book.

By Mr. Stamler.

Q Where?

A There.

Q What did you do, keep the money in your pocket? What did you do with the money?

A Put it in the drawer.

Q Were you then acting as cashier? 30

A No.

Q Who got finally the money?

A Then that cash slip there you see they are made up in duplicate, the original cash slip would go to the agent and he would turn it in, if the payments were in cash, with his money. If it is not in force, he keeps it.

Q Let us see whether we understand it now.

The Court. What did you do with it? 40

Eugenia Schimpff, cross

Q You in fact don't ever turn over the money to the agent?

A No.

Q When it once reaches the office?

A Yes.

Q You keep the money and it is deposited in the bank, is that correct now?

10 *Mr. O'Connor.* Speaking about this money.

Q This money, yes.

A Do you mean this?

Q Yes?

A No, that money would not be deposited in the bank.

Q What did you do with it?

A It would simply be held in our cash box.

Q For how long a time would you keep it here?

A Until some agent used the duplicate slip demanding we allow him that much credit.

Q When was that credit demanded?

A I don't know that.

Q Who would know that?

A Why, our office pay book would tell when it was used.

Q Where is that? Is this the book?

A Yes.

Q When was it used in this case?

A According to this that money should have
30 been used some time around the sixteenth of June.

By the Court.

Q Can you tell us what became of this three dollars and thirty-six cents? Won't your books show, or your memorandum show what became of this three dollars and thirty-six cents? What was the course of dealing with it? What happened to it? You got the three dollars and thirty-six cents, didn't you?

40 A Yes.

Eugenia Schimpff, cross

Q What became of it?

A That money would be put—

Q Not what would be. What was done with it?

A It was put in the cash drawer.

Q And then what became of it?

A And the slip made for it and put in the agent's box.

Q Then what was done?

A Then evidently some agent used it here. 10

Q It was turned over to the agent then, was it?

A Surely. The cash slip would go to the agent.

Q That is the regular course, is it?

A Yes.

Q When he had that then he would turn it in the following Thursday with his accounts, would he?

A He would if the business was in force.

Q Will your books show what he did on the following Thursday? 20

A I can't tell—I can't tell from the books whether the agent used it or not.

Q You can't tell whether he turned it into the company the following Thursday?

A No, I could not tell you.

Q The books will show that? The books will certainly show whether he handed them in on the following Thursday?

A The books won't show whether the agent who had charge of that business used it or not. No. 30

Q I didn't ask you that. Won't the books show whether the agent on the following Thursday accounted to you for it and turned it back? If he came in the following Thursday and he said among my moneys I have three dollars and thirty-six cents on this policy. Here is the money.

Mr. Stamler. He only has a slip.

The Court. He said she turned the money over to him. 40

Eugenia Schimpff, cross

A No. We turn the slip.

Mr. Stamler. The money is still in the company's hands.

By the Court.

Q Can you tell whether he accounted for it in the following Thursday's account?

A No, I cannot tell.

10 Q The books will show, won't they, or should show?

A Not necessarily, no.

Q Why?

A Because you see these slips—in our office there is a box for each assistant. We simply put these office pay slips in this box.

Q Something would show whether the agent came in and said you credited me with three dollars and thirty-six cents on this policy, is it all right? Your books will show that?

20 A Yes, but that is not the way the agent turns it in. The agents simply give us, and the account sheet and the little stack of office pays they have, and we simply see that the amounts are correct. We don't know what policy it is applied on or anything of that kind when it is turned in to us.

Q So that neither the superintendent's office nor the home office has any idea on what policies the premiums are being collected?

30 A That I don't know.

Q It can't be so, Miss Schimpff. Your agent must make an accounting of what premiums he is collecting and what ones they apply to?

A Not to our office.

Q He does to somebody, don't he?

A That I don't know.

Q Certainly the man who collects does not simply turn in and say I collected fifty dollars this week and does not say what policies they are collected on, does he?

40

Eugenia Schimpff, cross

A It is in the back of his account. On his account sheet. I have nothing to do with his account sheets. All I do is simply take the money.

By Mr. Stamler.

Q I show you the receipt of June seventeenth and in looking at the record that you showed me I notice that it is not a duplicate record. Am I correct about it?

A Just what do you mean? 10

Q In other words, this is a carbon?

A Yes.

Q Is this receipt Exhibit P. 10 written at the same time?

By the Court.

Q That is the original of which the book is a carbon?

A Oh, no. You see the original of this is the slip we give to the agent. 20

By Mr. Stamler.

Q In other words, the book you have before you is a carbon of a receipt or slip that you give the agent in lieu of cash?

A Yes.

Q I show you Exhibit P. 10, is that in your handwriting?

A Yes.

Q And you say that Mrs. Kozliski didn't have her receipt book on June seventeenth with her, is that correct? 30

A Whether she had her premium receipt book or not?

Q Yes.

A I could not remember exactly.

Q Do you recall any occasion whether she had it or not?

A I remember that Mrs. Kozliski, I believe she 40

Eugenia Schimpff, cross

told me at one time that she could not find them, but whether it was that day or not, I don't know.

Q If she had had her premium receipt book you would not have given her one of these slips?

A Oh, yes, I would.

Q You would?

A Yes.

10 Q Where did you get the number 45066671 to write on this receipt?

A Most probably from her premium receipt book, or from her policy. If she had had those with her. Or, we may have gotten it by referring to a previous office pay in looking back.

Q There is no dispute about this fact, that you intended to write the number 45066671, instead of 4506671, you skipped one "6" there, didn't you?

20 A That is undoubtedly what I intended to write, surely.

Q In other words, Exhibit P. 10 applies to policy 45066671?

A Yes, but I will tell you, Mr. Stamler, that is not the way we usually do. If she had brought me only one book and wanted to pay on her other policy, we make a practice—you could have ten policies and come to our office and we would only write down one policy number, but the payment would be applied on the whole ten.

30 Q That is the way you understand it?

A That is the way it is understood.

Q Did you tell that to Mrs. Kozliski?

A Why, certainly, Mrs. Kozliski understood it. She was paying on both her policies when she made that payment.

Q How did you make her understand that?

A Why, Mrs. Kozliski at this time was accompanied by her daughter.

Q Which time, in June?

40 A Yes.

Eugenia Schimpff, cross

Q Are you sure about that?

A I am quite sure.

Q Those were school days?

A Mrs. Kozliski came to the office with her daughter.

Q On June seventeenth? Now, just think.

A Mrs. Kozliski came to the office only once alone.

10

Q That is right, on July twenty-ninth, is that right?

A Yes. Then she must have been accompanied by her daughter on this time.

Q Must have been? You don't think that girl was there, that little girl there?

A Yes, I am quite sure she was.

Q On June seventeenth?

A Yes.

Q Do you know who made these erasures in this book, showing Exhibit— 20

A Do you mean do I know who made them?

Q Yes.

A No, I don't know who made the erasures.

Q Do you know who wrote in this book the entries that were erased?

A Why, yes.

Q Who?

A Mr. Vitolo.

Q What was his position with the company? 30

A Mr. Vitolo was at that time a new assistant superintendent.

Q When that note and annotation on the back which says, "office pay four thousand and seventy-three," it refers to one of those temporary receipts?

A The agent simply does that so that in case he comes to the office and tells us he marked a book for so much money, and perhaps he may not have the office pay, it may have been mislaid, or some- 40

Eugenia Schimpff, cross

thing. He does that simply so that we can easily refer to our cash book.

(Question repeated by stenographer.)

A Yes.

Q You also got another payment from Mrs. Kozliski of twenty cents, did you not?

A A payment of twenty cents?

10 Q Yes. Did you ever hear about that payment of twenty cents?

A I don't remember anything of that.

Q Do you recall when this receipt book was delivered back to Mrs. Kozliski?

A May I see it, please?

Q Yes. Together with her receipts?

A Do you mean after— —

Q The erasures were made?

20 A No, I don't recall that.

Q Were you present at one time when one of those receipts was destroyed, torn up by someone?

A I was in the office most probably, yes.

Q Do you recall tearing one of those temporary receipts yourself?

A No.

Q Do you recall some one else tearing one of those temporary receipts in your presence?

30 A Yes. I was in another office at the time it was done.

Q You know it was done?

A Yes, I know they were destroyed. That is our custom when a receipt is entered.

Q When was that temporary receipt destroyed that you are referring to?

A Temporary receipt that I am referring to was destroyed at the time Mrs. Kozliski filed her claim papers.

Q How many were destroyed?

40 A Three, I think.

Eugene H. Cochran, direct

Q Who destroyed them?

A I believe Mr. Vitolo destroyed them when he entered the receipts.

Q You know that to be a fact that they were destroyed?

A Yes, I know they were torn up.

Q Did you see them torn up?

A I saw them after they were torn, yes. 10

Mr. Stamler. That is all.

EUGENE H. COCHRAN, recalled.

Direct examination by Mr. O'Connor.

Q Mr. Cochran, where do you live?

A Number eleven West End Place, this city.

Q Where are you employed?

A In this district.

Q As superintendent of the local branch? 20

A Of this district.

Q Of the Prudential Company?

A For the Prudential Life Insurance Company.

Q When was your attention first called particularly to the claim of Mrs. Kozliski on the two policies in question?

A After the proof was completed, or partially so.

Q How was your attention called to it?

A By one of our men bringing the papers to me calling my attention to the fact that after having completed the proofs of death the policies were found to be on the life register cancelled. 30

Q Do you know when they were cancelled?

Mr. Stamler. Of your own knowledge.

A Yes. They were reported, the cancellation in July, and officially cancelled on our register sheet that comes down to us August the first.

Q And have you got the register sheet here? 40

Eugene H. Cochran, direct

A We have.

Q Will you produce it?

A I guess you will find it there, Mr. O'Connor, among your affects. The sheet will be dated the fourth, that reaches us on the first.

By Mr. Stamler.

Q You say August the first, 1919?

10 A Yes, sir. That is the date that the register sheet arrives here. The reported cancellation to me must go to the home office two weeks earlier. It takes two weeks to bring out the official schedule after recording it on our schedules.

By Mr. O'Connor.

Q What did you say that appeared on?

A On the sheet of August the fourth officially cancelled.

20 Q Is that the sheet?

A Right.

Q And that is dated August the fourth?

A Right.

Q What does that sheet show with reference to the policies in question?

A It shows that it is cancelled with the date of last payment.

Q When?

A As June ninth, 1919.

30 Q Where did you get that life register from?

A Such sheets are either mailed or brought to me by messenger.

Q From where?

A From the home office to my office on Thursday evening as a rule. On a few times they have been delayed until Friday morning. But they leave the home office on Thursday afternoon for my office.

40 Q With reference to the dates at the head of August the fourth do you recall when you received these?

Eugene H. Cochran, direct

A At that time I had, while having no recollection of receiving that particular parcel on any particular date, I know that at no time during the summer did I miss my issue, which also includes a salary check, so that I can positively state that arrived in my office Thursday.

By Mr. Stamler.

Q What date, sir?

10

A August the first, I believe. That would be July thirty-first, if I might correct it. Occasionally it would be the Thursday previous to August the fourth, which would be July thirty-first. I received that schedule in that mail. Because, had it not come at that time I would have missed my salary check for the week.

By the Court.

Q Does that refer to both policies?

20

A Yes.

Mr. O'Connor. Yes. I will offer the schedule of the lapse register in evidence.

Mr. Stamler. No objection.

(Schedule entered in evidence and marked Exhibit D. 3.)

By Mr. O'Connor.

Q Do you know what disposition was made of the moneys that were received from Mrs. Kozliski on the seventeenth day of June, 1919?

30

A Yes. That payment was duly used by the agent on whose register book was then in force. The agent on whose register that business was then in force.

Q That is, he used a slip?

A He took credit for it in the proper manner.

Q What was the agent's duty with respect to those policies at that time?

40

Eugene H. Cochran, direct

Mr. Stamler. I object to it. The question before is that the moneys were kept by the company and a slip given to the agent who was credited with the proceeds of the money. It is what he did, is the fact.

10 *Mr. O'Connor.* I know, but you went into that situation with the secretary or cashier on a number of suppositions.

The Court. I will allow the question.

Mr. Stamler. Prays exception.

EXCEPTION ALLOWED—SEALED ACCORDINGLY.

Judge.

A It was the agent's duty to have reported the policy for cancellation on the fourteenth of June.

20 *By Mr. Stamler.*

Q He should have done what?

A He should have reported those policies for cancellation the grace period having expired on midnight of that date.

By Mr. O'Connor.

Q When did the agent report the policies for cancellation?

A He did not report them for cancellation until July twenty-fifth.

30 Q How did he report them for cancellation?

A By way of form 23 for that purpose.

Q I show you a form and ask you whether or not that is a form twenty-three that you refer to?

A That is.

Q Was that the form used?

A That form was used.

By the Court.

40 Q In the meantime between the seventeenth of June and twenty-fifth of July what became of the money that this woman paid?

Eugene H. Cochran, direct

A That was recorded on the agent's collection book as other payments had been.

By Mr. Stamler.

Q And the company got it?

A The company got it.

By the Court.

Q And he reported it as paid on these policies? 10

A He reported it as paid on those policies.

Mr. O'Connor. I ask this be marked for identification.

(Form twenty-three marked D. 4 for identification.)

Q I show you this form D. 4 for identification and ask you to tell me what that is?

A That is a form of the company's.

Q What reference has that form to this particular case? 20

A That represents the back that the policies were reported for cancellation, the grace period having expired.

Q And what is the date of the report?

A The date of the report is July twenty-fifth, as shown on the form.

Q When did it show the policies were lapsed or cancelled?

A That is our report form and that would not show the policies cancelled. If it became lost we would have to make a duplicate. 30

Q What would show the actual condition?

A The official lapse schedule, which I had in my hand a few moments ago. Only when we receive that can we—

Q These policies were shown as lapsed on the twenty-fifth of June, is that right?

A No. July.

Q There was a payment made on the twenty-ninth of July? 40

Eugene H. Cochran, direct

A Yes.

Q What was done with that money?

A That money is held to the credit of the policyholder until the business is re-instated, or all due effort made to re-instate it.

Q Where is that money?

A That is in my office, or my district office. At
10 this office here.

Q When you speak of re-instatement what do you mean by that?

A Reviving the policy.

Q In accordance with the terms of the policy?

A Exactly. The usual procedure being—

Q On August the fourth there was a payment made to your company. What disposition was made of that money?

A That is still held at my office.

20 Q Still held at your office?

A Yes.

Q And has not been used by the company?

A Has not been.

Q Or placed to the disposition of the company?

A Of any policy.

Q It has been testified to that the original conditional receipt issued on June seventh, 1919, July
20 twenty-ninth, 1919, and August the fourth, 1919, were destroyed. Do you know whether or not that
30 is so, and if so—

Mr. Stamler. I object to that. That was not the testimony in the case. The testimony in the case was that some receipts were destroyed after the death of this man.

Mr. O'Connor. Have they any materiality to this case?

Mr. Stamler. Relating to these policies. I do not know what they were.

40 Q Do you know what receipts were destroyed?

Eugene H. Cochran, direct

A I did not actually see them destroyed but I believe the receipts of June seventeenth, July twenty-ninth and August the fourth destroyed by the—

Mr. Stamler. I move that be stricken out.

The Court. Yes. He does not know. He only surmises. Stricken out.

Q When was that brought to your attention that they were destroyed? 10

A When I noted the premiums recorded on the book. My attention in fact was brought to it by the person who destroyed them, Mr. Vitolo.

Q Who entered the premiums on the book?

A One of our men adjusting the claim, Vitolo.

Q And who was it?

A Phillip Vitolo.

Q After he had entered the premiums on the book do you know who erased them? 20

A Yes, sir.

Q Who?

A Phillip Vitolo.

Q Do you know why they were erased?

A Yes.

Q Why?

A They were erased because the request was made, or possibly a demand upon the company made by the attorney for the claimant, for the return of those books, and he erased those signatures to be in a position to return them as nearly as we could in the same manner in which we had received them from the policyholder, having at that time also made up the duplicate receipts to give the records complete to the attorney for the plaintiff 30

Q What was the idea of entering them in the book?

A That was entirely an error on the part of the assistant superintendent, Mr. Vitolo.

Q An error in what respect? 40

Eugene H. Cochran, direct

A For having failed to refer to his life register before entering them in.

Q In other words, if he had referred to his life register—

By the Court.

Q How do you know that he failed to do that? How do you know that he did not intend to let
10 this thing go? You don't know about that, do you?

A I am quite certain.

Q Except reading his mind or knowing your own thought about the matter? Where is Vitolo?

A I am quite certain he would not have entered them in the book.

Q That is your reasoning about it, but you don't know why he did it himself? Where is Vitolo?

A He is here.

20 *Mr. O'Connor.* I will put him on the stand.

The Court. This is only a matter of mental process with this man, rather than a fact.

Mr. O'Connor. I want to find out what he knows. He was in the same office.

By Mr. O'Connor.

Q Did you receive the premium receipt books at any time after the proof of death had been submitted to the company?

A Yes.

30 Q From whom did you get them?

A They were first handed to me after the proofs of death were completed by my assistant, Mr. Vitolo.

Q Were the erasures in the book at that time, in the premium receipt books?

A The book had not shown any erasures then.

Q What disposition did you make of the books?

A I forwarded the papers, complete proof of death, policy and receipt book to the company with a letter informing them of the fact that the pol-
40

Eugene H. Cochran, direct

icy had been—receipts had been in error credited thereon.

Q Did you receive them again after that?

A Yes. I later received them when a request was made by Attorney Harrington of this city who was at that time representing the plaintiff. After having received Mr. Harrington's request I called upon the claim department of our company who forwarded the papers to me. 10

Q Do you know whether or not Mr. Vitolo made the erasures in the premium receipt book of his own volition or as a result of some instructions?

A As a result of instructions.

Q From where did those instructions come?

A From the Claim Department.

Q Where?

A Home office.

Q Did you know who returned the premium receipt book and loose receipts to Mrs. Kozliski? 20

A I don't know whether they were returned to her at any time.

Mr. Stamler. They were sent to us.

A Yes, exactly.

Mr. O'Connor. You admit where the erasures were made in the premium receipt book, that the loose receipt accompanied the money showing the money paid?

Mr. Stamler. No, I don't make any such admission. I admit whatever the fact is on the books and on the receipts. They speak for themselves. 30

Mr. O'Connor. You don't say any other payments were made, except those three payments?

Mr. Stamler. I don't know anything about that.

Mr. O'Connor. Well, that is all you proved. That is all.

Mr. Stamler. No questions. 40

Philip Vitolo, direct

PHILIP VITOLO, a witness produced on behalf of the defendant, being duly sworn according to law, on his oath, saith:

Direct examination by Mr. O'Connor.

Q Mr. Vitolo, where do you live?

A 18 Brenner street, Newark.

10 Q What is your business?

A At the present time I am an agent of the Prudential.

Q Are you employed now by the Prudential Insurance Company?

A Yes, sir.

Q In what capacity?

A Why, in Irvington.

Q In Newark?

A Yes, sir.

20 Q In the home office?

A No.

Q Branch office?

A Branch office.

Q Were you at any time during the year 1919 employed at the local office at Elizabeth?

A Yes, sir.

Q In what capacity?

A Why, as an assistant.

Q Assistant what?

A Superintendent.

30 Q Do you recall a claim made by Mrs. Kozliski against the company upon the two policies in question in this suit?

A Yes, sir.

Q From whom did you get the papers?

A Why, I was called out in the office and I believe Miss Schimpff was the one handed them to me.

Q Handed you what?

40 A Why, she handed me receipts. But the papers was handed to be my Mrs.—

Philip Vitolo, direct

Q What did Miss Schimpff hand you, as you recall?

A Well, she didn't hand me no claim papers or no policy.

Q What did she hand you?

A She simply handed me nothing.

Q Nothing?

A No.

Q Didn't give you anything?

10

A Why, no. She handed me receipts. I said that before, receipts.

Q How many receipts did she hand you?

A Why, if I recall well, three.

Q What did you do with the receipts, Mr. Vitolo?

A Well, I entered them in the books.

Q You entered them in the book?

A Yes, sir.

Q I show you Exhibit P. 10 which is attached to premium receipt book and ask you whether or not you made the entry of any of those receipts that you speak of in that book?

20

A None of these, because these are not the original ones.

Q What do you mean not the original ones?

A The original ones. But these are duplicates.

Q These are not the original receipts that you got from Miss Schimpff?

A No, sir.

30

Q Is that a copy of it?

A Yes, sir.

Q Who made that copy?

A It was made in the office. I don't know by whom. They were made in the office.

Q What did you do when the receipts were handed to you?

A Why, I entered them in the book.

Q You entered them in the book?

40

Philip Vitolo, direct

A Yes, sir.

Q That was the first thing you did?

A Yes, sir.

Q Entered them in the book?

A Yes, sir.

Q Did you erase them from the book? Look at
the book now? Did you erase them from the book
10 marked P. 10?

A Yes, sir; I erased them.

Q Why did you erase them?

A By instructions of the home office.

Q Do you know why those instructions were
given to you?

A No, sir.

Q When you received from Miss Schimpff re-
ceipts marked Exhibit P. 10, P. 7 and P. 6, what
was your duty in connection with those?

20 A Why, my duty was to look up the life register.

Q To look up the life register?

A Yes, sir; and see if the business was in force.

Q That was your duty?

A Yes, sir.

Q Did you do it before you entered the receipts
I speak of in the premium receipt books?

Mr. Stamler. I object to it.

A No, sir.

(Testimony read by stenographer.)

30 *The Court.* I will allow it.

Q When did you consult the life register?

A After the claim papers were adjusted partly.

By the Court.

Q You mean after the man was dead?

A After the man had died. August the sixth.

By Mr. O'Connor.

40 Q Now, Mr. Vitolo, after you entered the re-
ceipts which I have submitted to you and called

Philip Vitolo, direct

your attention to in the premium receipt book what was the next thing you did?

A Why, the next thing I did I reported to Mr. Cochran and told him I had seen a book and found that the business had been cancelled.

Q You found that the business had been cancelled?

A Yes, sir. 10

Q What did you do next?

A Well, I left everything to Mr. Cochran. Mr. Cochran attached the claim papers, and a letter to it and the premium receipt book explaining to the company what had happened.

Q Who made up the proof of death claim?

A The proof of death?

Q Yes. I show you exhibit marked P. 2 and also exhibit marked P. 3 and ask you who made those exhibits up? 20

A Why, I did.

Q You did?

A Yes, sir.

Q When did you make up Exhibit P. 2? Now, look at it and see if you can tell when you made it up? Look at it this time.

A August the sixth.

By Mr. Stamler.

Q 1919?

A 1919. 30

By Mr. O'Connor.

Q Now then with reference to August the sixth when did you look at the life register to see whether these policies were in force or not? Before or after?

A Why, after.

Q After August the sixth?

A No. August the sixth, the very same day.

Q The very same day? 40

Philip Vitolo, cross

A Yes, sir.

Q After you perfected the proof of death?

A Yes, sir.

Q Then you looked at the life register to see whether the policies were in force or not?

A Yes, sir.

10 Q Prior to that time you had taken the loose receipts and entered them in the premium receipt book?

A Well, yes, sir. The very same morning.

Q Assuming that the policy was in force?

A Yes, sir.

Cross examination by Mr. Stamler.

Q You say you were an assistant superintendent of the company?

A Yes, sir.

20 Q And of course you knew the business, the routine business relating to policies that are lapsed, and that were in full force?

A Yes.

Q And mere inspection of the book would itself disclose to you whether or not a policy was in full force and effect on a certain day?

A Not very well.

Q Why not?

30 A For the simple reason you can't very well tell by the book. At the time the book cannot be found and we hand out receipts.

The Court. No. He says a mere inspection of the book.

Q A mere inspection of the book shows to you whether or not the policy was in full force and effect on a certain date?

A Yes, sir.

40 Q And at the time when you made the entries which were afterwards erased in these books the

Philip Vitolo, cross

mere inspection of the book would have disclosed to you, the pass book, I am speaking about?

A Yes, sir.

Q Whether or not these policies were in force?

A Yes, sir.

Q And the inspection at that time disclosed to you together with the receipts that that policy was in force?

10

A Yes, sir.

Q Is that correct now?

A Yes, sir.

Q In other words, the pass book together with the receipt that the woman had disclosed to you that the policies were in full force and effect, is that correct?

A Yes, sir.

Q And therefore you proceeded on that day to write up the book for her in accordance with the receipts?

20

A Yes, sir.

Q And that day you had actual knowledge that the man had died?

A Yes, sir.

Q Now, I want you to tell me and count up for this jury the number of erasures you made, how many weeks, totaling both books?

A Three weeks on each book. No, pardon me. I see more here. Ten on each book.

30

Q Ten on each book. Now just look again. I think you are a little nervous. Isn't it twenty-four?

A No, sir. Signature don't appear here. We only count from where the signature appears.

Q Just let us not quibble about that.

Mr. O'Connor. That is very important, Mr. Stamler. We will quibble about that.

Q I show you Exhibit D. 5 and ask you how many erasures you made in that book, on how

40

Philip Vitolo, cross

many lines, and what is the last date when you erased on?

A The last date?

Q Yes. As it appears there.

A The last date on the twenty-fourth.

Q Of what month?

A Of November.

10 Q Twenty-fourth of November?

A Yes.

Q And on the second book Exhibit P. 9, what is the last date that you erased on?

A August eighteenth.

Q You are sure about that?

A Yes, but there is nothing here marked that has been erased. There are some ditto marks here through error. But the signature is here up to August the eighteenth.

20 Q You are talking and referring to book Exhibit P. 5, is that correct?

A According to our rules and regulations of the company—

The Court. No.

Q I just want to know why you first wrote on up to—filled in into this little book P. 5 “paid to November twenty-fourth, 1919”? You did that, didn’t you?

A Yes.

30 Q And in the other book you intended and did as a matter of fact receipt that book to and including the eighteenth day of August, 1919, is that correct?

A Yes.

Q And you had receipts before you to pay these various payments?

A Up to the eighteenth of August.

Q As you wrote it up?

40 A Eighteenth of August.

Philip Vitolo, cross

Q You say to the eighteenth of August. How much money would that represent?

A Eighteenth of August, ten weeks, well, at forty-two cents a week.

Q Well, how much would that be?

A That is five—ten weeks, five dollars and twenty cents, is it?

Q Well, I don't know. I am asking you. You are superintendent? 10

A Five dollars and twenty cents, I believe.

Q You think it was five dollars and twenty cents. All right, sir. Did you also right here make an entry on pass book P. 9 "8/6," opposite the date of May nineteenth, forty-two cents?

A Yes.

Q And likewise made the subsequent four entries forty-two cents each, did you write that also?

A Yes, sir. 20

Q And when did you write that?

A 8/6.

Q You wrote that on 8/6?

A 8/6.

Q Now, are you sure about that?

A Yes.

Q You marked it so?

A Yes, I marked it.

Q I show you here on Exhibit P. 5 and ask you whether you wrote opposite May nineteenth the figure "6/6," and dittoing down for four weeks? 30

A Yes, sir. Six?

Q Yes. I am asking you whether you did that?

A It looks six, but that is supposed to be an eight. 8/6.

Q In other words, it looks like a six but you think it ought to be an eight?

A It is meant for eight.

Q It is meant for an eight?

A Yes, sir. 40

Philip Vitolo, re-direct

Q Are you sure about that now?

A Yes, sir.

By the Court.

Q It is a six, however, isn't it?

A Well, I would not exactly call it a six, because it is a—

10 Q That is a six, isn't it? Doesn't it show a six?

A No. It looks like an eight to me as well.

Q Look at it through the glass. Where is there any sign of it being an eight?

A I call that an eight.

Mr. Stamler. No further questions.

Re-direct examination by Mr. O'Connor.

Q I show you premium receipt book marked Exhibit P. 9. The entry made there "5/17 forty-
20 two cents," opposite, did you make that entry or not?

A 5/17?

Q 5/17, opposite the forty-two cents?

A No, sir.

Q What is the first entry you made in that book?

A August the sixth.

Q August the sixth was the first entry you made in that book?

30 A Yes, sir.

Q Now, Mr. Vitolo, I show exhibit marked P. 5 premium receipt book and it appears that there are a great many ditto marks on one page of the book, and I also call your attention to Exhibit P. 9, also a premium receipt book, on which you find not quite so many ditto marks. Can you tell me who made those marks originally in each book?

A Yes, sir.

40 Q How did that come about?

Philip Vitolo, re-direct

A For the simple reason I thought it was only a forty-two cent book, you see.

Q You thought there was one policy?

A One policy.

Q What did you do? Tell us just exactly what you did?

A What I did? When I first went out there the two books was not handed to me. I only received the one book and finally when I got the three receipts and figured out at eighty-four cents a week —at forty-two cents a week, I don't know just what the three receipts amounted to. I figured they all belonged in the one book. When I come to find out that she had another book then I went to work and erased here and put the other part in this other book. Split them. That is how it happened. 10

Q The last regular entry in book P. 5 was when, if you know? Last regular entry? 20

A Last?

Q Regular entry?

A 8/6.

Q No. The last regular entry before you made any entries?

A Oh, before I made any? 5/17.

Q 5/17?

A Yes, sir.

Q Now, I call your attention to Exhibit P. 9 and ask you what is the last regular entry made before you made any entries? 30

A 5/17.

Q And that signifies what if you know?

A May seventeenth.

Q When did you make the first entry in Exhibit P. 5?

A August the sixth.

Q August the sixth?

A Yes, sir. 40

Philip Vitolo, re-direct

Q When did you make your first entry in Exhibit P. 9? Look at it?

A August the sixth.

Q Why is there a difference between the dates of your entries and the dates as appear upon the receipts which you used to make your entries?

10 A For the simple reason that I didn't receive the cash. It was a receipt.

Q Do those entries, 8/6, August the sixth, mean the time you entered the—made the entries in the books?

A Yes, sir; of the receipts.

Q The the time you made?

A Yes, sir.

Q And you didn't use the receipt dates?

A No, sir.

20 Q On Exhibit P. 9 appears 8/6 opposite the printed May nineteenth, is that right?

A Yes, sir.

Q Did you make the first entry in P. 5 after the May seventeenth entry at the same time?

A Yes, sir. Not at the same time but I would say about two or three minutes after.

Q They were made, in other words, concurrently?

A Yes, sir.

30 Q And they were made on August the sixth?

A Yes, sir.

Q When was the first time you got those premium receipt books?

A Why, August the sixth, in the morning.

Q August the sixth?

A In the morning; yes, sir.

Q Did you ever see them before?

A No, sir.

40 *Mr. O'Connor.* That is all.

Philip Vitolo, re-cross

Re-cross examination by Mr. Stamler.

Q I show you Exhibit P. 10. Do you see it?

A Yes.

Q Is Exhibit P. 10 entered in the book that it belongs to? Is it entered up at all?

The Court. That is the receipt for the three dollars and thirty-two cents?

Mr. Stamler. Three dollars and thirty-six cents. 10

By the Court.

Q Is that entered in the book?

A Yes, sir.

Q Where?

By Mr. Stamler.

Q On the date of August the sixth, is not that right? 20

A That is supposed to be on the date of August the sixth.

Q That is when you made the entries of it?

A Yes, sir.

Q Is that correct now?

A Yes, sir.

By the Court.

Q That is the June payment he entered in August, is that it? 30

A Yes, sir.

Mr. Stamler. That is all.

ADJOURNED UNTIL 1:30 P. M.

Motion to Direct

AFTERNOON SESSION 1:30 P. M.

Mr. O'Connor. Is Mr. Singhauser present?

Mr. Stamler. What do you want to prove with him?

(Conference between Court and counsel not within the hearing of the stenographer.)

10 *Mr. O'Connor.* I want to prove by Mr. Singhauser that he is an employee of the defendant company, and that between July twenty-fourth, 1919, and about August the first he endeavored to locate the insured and his wife but was unable to do so.

The Court. You will admit if he went on the stand he would swear to that?

Mr. Stamler. Yes, sir.

The Court. Have you anything further?

20 *Mr. O'Connor.* That is all.

Mr. Stamler. That is our case.

MOTION FOR DIRECTION OF VERDICT

Mr. O'Connor. I want to move for a direction of a verdict:

30 First as to policy number 45066671, issued Monday, June third, 1918, I move for a direction of a verdict on the grounds that the proofs show that the last regular payment of premium was made May seventeenth, 1919; that the grace period to which the insured was entitled would bring the policy up to the week of June ninth, 1919; that on the seventeenth day of June, 1919, and after the grace period had expired, the sum of three dollars and thirty-six cents was paid to the company, and a conditional receipt given, which reads—

40 *The Court.* I have read it. There is no use reading it again.

Argument

Mr. O'Connor. I want to call the Court's attention to the condition.

The Court. I have read it.

Mr. O'Connor. It is a temporary receipt. Showing that the policy at that time was lapsed.

The Court. The whole question in my mind is whether the conduct of the company was such as to waive the forfeiture or not. Mr. Stamler, as I understand it, contends that when the fourteenth of June came, and the policy would have lapsed, that instead of permitting it to lapse and declaring the forfeiture, you waited until the first day of August before you forfeited it, and that in the meantime your conduct is such as to indicate that you waived the forfeiture. That is the whole question. 10

Mr. O'Connor. Well, that is not so. The policy is the entire contract in the case. 20

The Court. What have you to say about your having received the money, the money being transmitted to the home office, who must make some record of it, and the home office accepting the money and crediting it apparently on the policy after the time the forfeiture was supposed to have taken place? Is not that evidence from which the Jury may infer that you decided not to forfeit, but you preferred to keep each policy in existence? 30

Mr. O'Connor. No.

The Court. Why?

Mr. O'Connor. Because, first, I say the contract of insurance speaks for itself and to the rights of the parties, and it expressly and clearly states that if the premium is not paid in accordance with its terms, then the policy ceases to exist. 40

Argument

The Court. Where does it say that? Read that portion.

10 *Mr. O'Connor.* Under the title, "Policy when void": "This policy shall be void if there be in force upon the life of the insured an industrial policy previously issued by this company, unless the policy as issued contains an endorsement signed by the president or the secretary authorizing this policy to be in force at the same time; or if this policy be assigned; or if the said weekly premium shall not be paid according to the terms hereof."

20 *The Court.* Now, then, what do you say as to the situation arising where they fail to pay the premium, and you were in a position where you could have declared them forfeited; now, instead of doing that you accept premiums, it is sent to your home office, and no notice is sent to the parties that you have declared a forfeiture, until after the party is dead; now, does that not then become a question of fact for the jury to determine whether you waived your forfeiture?

Mr. O'Connor. The proofs show that it was the duty of the agent—

The Court. Your agent. Not hers.

30 *Mr. O'Connor.* Yes. Our agent. It was his duty, and his instructions, the proofs show that, to have lapsed that policy, and in disobedience of orders or his instructions or his duty he failed to do so.

The Court. How do you account for the home office taking the premium?

Mr. O'Connor. Because the home office did not know what the condition of the policy was as it appeared upon the agent's register.

40 *The Court.* Then that being the case if they

Argument

did not know it was forfeited they did not treat it as void.

Mr. O'Connor. If they did not have any knowledge of that fact, because of the failure of instructions on the part of one of their agents, an instruction that was clear not only in fact to the agent, but also to the plaintiff in the case, as appears by the policy, knowing that an agent cannot waive a forfeiture, or modify or change the policy, that is expressly stated in the policy. So when that money was taken it was taken conditionally. 10

The Court. Not by the home office. The home office evidently credited it up, which covered the period of forfeiture. It must have been.

Mr. O'Connor. Yes, that is true.

The Court. If they did that, then the home office evidently, from the payments, could see the moment they got them that they were received after the time they were due and they took them and credited them and then they did not declare a forfeiture until after August. 20

Mr. O'Connor. The policy automatically declared the forfeiture.

The Court. It does, unless you waive it. But evidently the home office decided that even though the time for forfeiture had gone by, they would take the money anyhow, and they did, and they credited it. Is not that evidence of waiver? 30

Mr. O'Connor. But due to the failure—

The Court. It does not make any difference of the failure. It was your agent and not anybody else.

Mr. O'Connor (continuing)—to obey his instructions.

The Court. Suppose when this money came 40

Argument

10 into the home office at Newark, the parties who were crediting it, the moment it came in, they said, here, this is after the time, this policy is forfeited. What was their duty then? They should have sent the money back and said to the agent, this is after time, and we declare a forfeiture. Or, they could have said, never mind the forfeiture, we will take it. Evidently they decided to do the latter, didn't they?

Mr. O'Connor. No.

The Court. That is what they did.

Mr. O'Connor. The proof is that the home office would not know, until the agent would send out—

20 *The Court.* The moment the money comes in the home office knows when to credit it. Now, when this payment of June sixteenth came in they must have seen at once that that was out of time, because the last was only paid up until the seventeenth of May. When this came in in June the home office had all the information before them. They could have said at once, here, this is out of time, we are going to forfeit this policy, this policy is void, take your money back. But they did not do that. They took it. Is not that evidence of waiver?

Mr. O'Connor. I don't consider that so.

30 *The Court.* That has nothing to do with the agent. That is right at the home office.

Mr. O'Connor. That is true. The money may have been received at the home office, but if the home office did not have before it the form number twenty-three, which is in evidence in this case, which shows the policy lapsed by the agent, which is sent to the home office, if the home office did not receive that form they would assume that the policy was in force. and the reason they did not know whether it was

40

Argument

in force or not was because the agent had failed to obey a duty set forth in the contract.

The Court. Yes, but how is the other end of this contract going to be protected against the negligence of your agents, or your home office, or anybody else?

Mr. O'Connor. I do not think we are bound by a disobedient agent. 10

The Court. He is your agent.

Mr. O'Connor. I do not think we are bound by an agent who deviates from duty. You ask me how is the other party to the contract to be protected? By payment of their premium on time.

The Court. Yes, but when she does not, but does pay afterwards, and they are willing to take it—

Mr. O'Connor. They took it conditionally. 20
This office did, but what is there to show that the home office, when they got the payment of June sixteenth, did not decide that they would continue the matter? The home office was assuming that the policy was no doubt alive.

The Court. Why do you say that? There is no proof of that. There is no proof that the home office did not know all about it.

Mr. O'Connor. Yes. The proof shows that this policy—this form twenty-three, which is 30
in evidence, did not—

The Court. Undoubtedly the home office had the payment of May seventeenth, didn't it?

Mr. O'Connor. Yes.

The Court. And then three days after this June payment was made that went into the home office. Now, then, the home office what did they have before them? They had the payment May seventeenth, which showed they were paid up to the seventeenth of May; they 40

Argument

had all that information on their own books. Then the next thing appears that a payment comes in which is two or three days behind time. The home office had all of that before them. They did not need anything more. What did they say, apparently? They apparently said, here, we have to decide now whether we will accept this, if it is out of time, or shall we forfeit this policy. Evidently they took the money.

10

Mr. O'Connor. I do not think your Honor would hardly say that a company doing a vast amount of business—

20

The Court. I am speaking theoretically. I do not assume the president sat down and looked at this particular policy. Of course, not. I am assuming theoretically, the way the thing must be considered. They had all the information before them and the home office having this before them, they had the option either to send the money back, or keep it, and they kept it.

30

Mr. O'Connor. Assuming your Honor's argument is correct, that they did waive that forfeiture, then the premiums are paid up to what time? They are paid, with the grace period, up to the seventh day of July. Now, there is no payment until the twenty-ninth day of July.

The Court. Forty-two cents a week on that policy, wasn't it, that is eight weeks?

Mr. O'Connor. Just one week. I do not think there is forty-two cents for eight weeks on that policy.

The Court. That is what the receipt shows—

Mr. O'Connor. The practice was—

The Court. It does not make any difference

40

Argument

what the practice was. You have a receipt for that.

Mr. O'Connor. It is also in evidence and as appears by the proofs offered by the plaintiff, that when she paid a sum of money her object was to keep both policies alive.

The Court. That very statement makes it a jury question. You say it should have been applied one way, and Mr. Stamler says it should be applied the other. Then it is for the jury to determine which is true. 10

Mr. O'Connor. I do not take that position at all.

The Court. In other words I say—

Mr. O'Connor. If you are going to credit them the premiums indicated by that receipt on one policy, then in that event the other policy is absolutely void. There are no payments at all. 20

The Court. We are only talking about the one now.

Mr. O'Connor. I wanted to see what your Honor had in mind. If that is true, that the court takes the position that the premiums should be credited to that one policy, then in that event there are no credits at all to go to the other policy.

The Court. And if it is credited to the other policy, then what? 30

Mr. O'Connor. Then the policy is forfeited.

The Court. What do you say about the credit of those payments, Mr. Stamler?

Mr. Stamler. I say that both policies were in force at the time the man died. The premium payments show they were paid up to and beyond the time of the death of the party. That is one of the questions I want the jury to determine. 40

Argument

The Court. This payment of June, if it is credited on one book, of course, which takes it past the period of time. Suppose, as Mr. O'Connor says, they applied it to different policies, that would not carry your other one beyond the forfeiture period, would it?

Mr. Stamler. Which one?

10 *The Court.* The other policy.

Mr. Stamler. If they applied them to the other policy, we will get four weeks' credit more than we claim. On this policy the last payment as they say was May seventeenth. We say our book shows was on the sixth of June. An entirely different date than the date represented by the payment of the receipt, which was the seventeenth of June, an entirely different payment. And they haven't shown here that they did not receive this money on the

20 sixth of June.

The Court. What was the amount of that? She said she made two payments.

Mr. Stamler. She said she made two payments in June, the amount she did not know. She is ignorant. There are the receipts, which speak for themselves.

The Court. On the other policy, how do you claim that that came out of the forfeiture period?

30

Mr. Stamler. It came out in this way: they themselves credited four—

The Court. Do you mean the payment of July twenty-ninth?

Mr. Stamler. No. I am not relying on that. I am relying on the two payments she made in June, and their own receipt here. The receipts were torn up. There were four receipts and as a matter of fact and the evidence show only

40 three we have. I do not know what the fourth

Argument

receipt was. They have the proof in their possession as to what moneys they actually received, and there is no proof here to show it, excepting that she says she paid it to them.

Mr. O'Connor. There was twenty-cents paid around August the fourth.

The Court. She speaks of two payments in June. And she also mentioned one of June the sixth. 10

Mr. O'Connor. She makes no mention of any amount.

Mr. Stamler. I think it is a jury question of the whole thing.

Mr. O'Connor. Assuming that the payments are to be credited eight weeks on the one policy, then as to the other policy there is nothing to be credited and it is absolutely forfeited.

The Court. Suppose there were payments in June that you have not credited, then what? 20

Mr. O'Connor. There are no payments in June not credited.

The Court. She swears to it.

Mr. O'Connor. She swears to nothing except a general statement she made payments. But her general testimony is of such a nature that she is not altogether certain about that. But they rely upon the receipts, and our cash records, which are not disputed, show that there were only three payments made. 30

The Court. They are disputed, because she said she had receipts, and paid others in June.

Mr. O'Connor. Are we to assume that she paid this policy up? The burden of proof is upon her to show that.

The Court. I think it is a jury question and I will deny the motion and allow an exception.

Mr. O'Connor. Let me get on the record my reasons, if you please. 40

Argument

The Court. Your reasons are that the policy lapsed by failure to pay the premiums and therefore the policy was void and she has no right to recover. That is your point, isn't it?

Mr. O'Connor. That is my point as to that policy.

The Court. On both policies, isn't it?

10 *Mr. O'Connor.* As to the other policy it is the same thing.

The Court. Exactly.

Mr. O'Connor. The premiums were not paid on time, and not in accordance with the terms of the policy, And if your Honor wishes I will descend to particulars in pointing out—

The Court. No. That is a question of argument.

Mr. O'Connor. If your Honor does not care to hear me on that, well and good.

20 *The Court.* I will allow you an exception. Exception allowed.

Mr. O'Connor sums up the case for the defendant.
Mr. Stamler sums up the case for the plaintiff.

30

40

Charge to Jury

UNION COUNTY CIRCUIT COURT

January term, 1920.

MARY KOZLISKI, Administratrix
of ADAM KOZLISKI,

vs.

THE PRUDENTIAL INSURANCE COM-
PANY.

10

Charge to the jury by HON. GEORGE S. SILZER,
Circuit Court Judge, as follows:

Gentlemen of the Jury:

The plaintiff sues upon two policies of insurance. There is no dispute that the policies were issued, that the man died, and that the proofs of loss were filed. The only defense interposed in the case is that the payments were not made as required by the policy and, therefore, the policy was void; and under the terms of the policy the provision is that unless payments are made as required, the policy is void.

20

The plaintiff answers that contention by saying that although the payments were not made on time, that they were presented after the time and accepted by the company, and that the company's conduct was such as to indicate to the plaintiff that the company had decided to waive the forfeiture of the policy and accept the premiums and continue the policy in force. And the law is that if a company has a right to a forfeiture of this kind, if, with full knowledge of the circumstances, it accepts premiums thereafter and treats the policy as valid and the payments as payments on account of premiums, that then it does not lie in its mouth thereafter to say that the policy is void. In other words, the company, with full knowledge of the situation after a forfeiture has been made possible, treats it as

30

40

Charge to Jury

not being forfeited, but being in full force and effect, and accepts new premiums, it cannot thereafter say that the policy is void. And that is the contention of the plaintiff in this case, that the company's conduct was such as to indicate that situation in their mind, and holding out that condition to the other party. They clam that the one
10 payment of June 17th of \$3.36, which paid eight weeks on one policy, if you take one construction, that that was accepted by the company with full knowledge of the situation, and that that revived the policy and kept it in full force. Their contention as to the other policy is that the payments in June which the plaintiff testifies to, kept that policy in force.

The defendants, on the other hand, say that the payment of \$3.32 was applied in the course of
20 business to each policy, so that the first policy, where the other side claims a credit of eight weeks, they say that that credit was four weeks, and that the policy was again out of time. So that is one of the circumstances you must consider, whether that was applied to one, or to both. You will also have to determine whether the other policy was kept alive by the payments which the plaintiff alleges were made in June, and which the defendants contend were not made at all.

30 So you see you will have to take up each policy separately and determine in the one case whether the payments that were made kept the policy alive by reason of the company's accepting them; and on the other policy, whether the payments of June were actually made by the plaintiff, and so the policy never did become forfeited; and also the conduct of the company in the acceptance of premiums of July 29th. That is the very simple issue; that is, simple, as stated. Of course, the facts you will
40 have to determine. Was there a payment of the premiums as of time, or was the conduct of the com-

Charge to Jury

pany such as to lead this woman to believe that they had accepted these premiums and that the policy was to be treated as alive. If the company's conduct was such, then the company must pay these policies. If it was not, then, of course, they are not responsible.

The interest is as figured, if you find for the plaintiff, fourteen dollars on each policy, I understand. 10

Mr. O'Connor. I want an exception to the charge with reference that the company received the money from her, omitting to state the fact that when the receipts were given they were conditional receipts.

The Court. Of course, the whole facts are for the jury. I cannot recite all the testimony. I will allow you an exception to that. Failure to state a particular fact.

Exception allowed. 20

Mr. O'Connor. And your failure to charge that the agents had no right, under the contract of insurance, to waive forfeitures, or change or modify the policy.

The Court. I will allow you an exception, although there was no request for anything of that kind.

Exception allowed—sealed accordingly.

GEORGE S. SILZER, 30
Judge.

The evidence being closed, the jury retired to consider of their verdict, Officer Kanane being sworn to attend them, and having returned into court say they have agreed upon their verdict and by their foreman say they find for the plaintiff and against the defendant and assess the plaintiff damages in the sum of one thousand and twenty-eight dollars (\$1,028.00) and so say they all. 40

Rule for Judgment

UNION COUNTY CIRCUIT COURT.

10	MARY KOZLISKI, Administratrix of the Estate of ADAM KOZ- LISKI, deceased, <div style="text-align: right;"><i>Plaintiff,</i></div>	}	<i>Action at Law.</i>
	<i>vs.</i>		<i>Rule for Judgment.</i>
	THE PRUDENTIAL INSURANCE COM- PANY OF AMERICA, a corporation, <div style="text-align: right;"><i>Defendant.</i></div>		

RULE FOR JUDGMENT.

20 This cause was tried before the Hon. George S. Silzer and a jury on the 9th day of February, 1920, and after the same was submitted to the jury and the said judge of said court having charged the jury, and the jury having returned to consider their verdict, come again into court and say they find in favor of the said plaintiff and against the defendant and assess the plaintiff's damage in the sum of ten hundred twenty-eight dollars (\$1028):

30 It is thereupon ordered on this tenth day of February, 1920, ordered that judgment final be entered against the said defendant, The Prudential Life Insurance Company, and in favor of the said plaintiff, May Kosliski, Administratrix for the estate of Adam Kozliski, deceased, for the sum of ten hundred twenty-eight dollars (\$1028), besides costs of suit to be taxed.

Rule actually entered this day of February, 1920.

On motion of

STAMLER & STAMLER,
Attorneys for Plaintiffs.

Certificate

STATE OF NEW JERSEY, }
 COUNTY OF UNION, } ss.

I, William B. Martin, Clerk of the County of Union and of the Circuit Court in and for said County, do hereby certify, the foregoing summons and complaint, affidavit of merits, answer, reply, and rule for judgment in the case of Mary Kozliski, Administratrix, etc., *vs.* The Prudential Insurance Co. of America, a corporation, to be full, true and correct copies as the same remain on file in my office. 10

Also a true and correct copy of the trial of the above cause, as the same is taken from and compared with the minutes of said court.

In witness whereof, I have hereunto
 (SEAL) set my hand and affixed my official
 seal which is the seal of said court,
 this 24th day of February, A. D., 1920. 20

W. B. MARTIN,
Clerk.

30

40

Judgment

UNION COUNTY CIRCUIT COURT.

10	MARY KOZLISKI, Administratrix, of the Estate of ADAM KOZLISKI, deceased, <div style="text-align: right;"><i>Plaintiff,</i></div>	} <i>Judgment Final.</i>
20	<div style="text-align: center;"><i>vs.</i></div> THE PRUDENTIAL INSURANCE COM- PANY, OF AMERICA, a corpora- tion, <div style="text-align: right;"><i>Defendant.</i></div>	

This action was tried before Judge George S. Silzer, with a jury, in the Union County Circuit Court, on February 9th, 1920. This cause having been heard and submitted to the jury, and the jury having returned into court say they find for the plaintiff and against the defendant, and assess the plaintiff damages in the sum of one thousand and twenty-eight dollars (\$1,028.00), whereupon it is adjudged that the plaintiff recover of the defendant the Prudential Insurance Company of America, the sum of one thousand and twenty-eight dollars (\$1,028.00) besides costs of suit, taxed at forty-nine dollars and ninety-six cents (\$49.96), making in the whole the sum of one thousand and seventy-four dollars and ninety-six cents (\$1,074.96).

Judgment entered March 16th, 1920.

W. B. MARTIN,
Clerk.

Certificate

I, William B. Martin, Clerk of the County of Union, and Clerk of the Circuit Court, State of New Jersey, do certify that the foregoing is a true transcript of a judgment entered in the above stated cause as the same remains on file in my office.

In testimony whereof, I have set my hand and the seal of said court at
(SEAL) Elizabeth this 14th day of March, 10
A. D., 1920.

W. B. MARTIN,
Clerk.

20

30

40

Notice of Appeal

UNION COUNTY CIRCUIT COURT.

10	MARY KOZLISKI, Administratrix, of the Estate of ADAM KOZLISKI, deceased, <i>Plaintiff, Respondent,</i> <i>vs.</i> THE PRUDENTIAL INSURANCE COM- PANY, OF AMERICA, a corpora- tion, <i>Defendant-Appellant.</i>	} <i>Action at Law.</i>
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NOTICE OF APPEAL.

20 Sir:
 Take notice that the defendant appeals to the Court of Errors and Appeals of the State of New Jersey from the whole of the judgment entered in this cause.

Dated, February 18, 1920.

Yours respectfully,

MARTIN P. O'CONNOR,
Attorney for Defendant-Appellant.

30 To STAMLER AND STAMLER,
Attorneys for Plaintiff-Respondent,
 207 Broad Street,
 Elizabeth, N. J.

Certificate

STATE OF NEW JERSEY, }
 COUNTY OF UNION, } ss.

I, William B. Martin, Clerk of the County of Union, and of the Circuit Court in and for said County, do hereby certify, the foregoing to be a true and correct copy of a certain notice of appeal as the same is filed in my office on the 19th day of February, A. D., 1920. 10

(SEAL) In Witness Whereof, I have hereunto placed my hand and affixed my official seal this 19th day of February, A. D., 1920.

W. B. MARTIN,
Clerk.

NOTICE OF APPEAL 20

Martin P. O'Connor,
Attorney for Defendant-Appellant,
 208 Broad Street,
 Elizabeth, N. J.

Service of a copy of the within notice is hereby acknowledged this 19th day of February, A. D., 1920.

STAMLER & STAMLER,
Attorney of Plaintiff-Respondent. 30

Grounds of Appeal

(Filed February 19th, 1920.)

New Jersey Court of Errors and Appeals

10	MARY KOZLISKI, Administratrix, of the Estate of ADAM KOZ- LISKI, deceased, <i>Plaintiff-Respondent,</i> <i>vs.</i> THE PRUDENTIAL INSURANCE COM- PANY OF AMERICA, a corpora- tion, <i>Defendant-Appellant.</i>	} <i>Action at Law.</i>
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20 **GROUND'S OF APPEAL.**

20 The appellant states the following grounds of ap-
 peal:

1. That the Court refused to grant the motion for a non-suit, upon the evidence given at the trial.
2. That the Court refused to grant the defend-
 ant's motion for direction of a verdict.

MARTIN P. O'CONNOR,
Attorney of Defendant-Appellant.

March 10, 1920.

30 **GROUND'S OF APPEAL.**

Martin P. O'Connor,
 208 Broad Street,
 Elizabeth, N. J.

Service of a copy of the within Grounds of Ap-
 peal is hereby acknowledged this 12th day of March,
 A. D., 1920.

STAMLER & STAMLER,
Attorneys of Plaintiff-Respondent.

40 Filed March 15, 1920.

Exhibit P. 1

EXHIBIT P. 1.



CHARLES N. CODDING, Surrogate of the County of Union,

do certify that on the Eighteenth day of December

in the year of our Lord one thousand nine hundred and Nineteen,

Administration of all and singular the goods, and chattels, rights, and credits, which were of ADAM KOZLOSKI

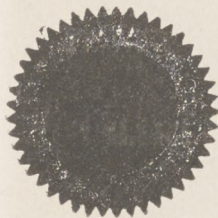
late of the County of Union, who died intestate, was granted by me to

MARY KOZLOSKI who resides at #423 Fern Place, Elizabeth, N.J., - - - -

----- of the -----

who is duly authorized to administer the same agreeably to law.

Witness, my hand and seal of Office, the
Eighteenth day of December
 in the year of our Lord One thousand nine
 hundred and Nineteen.



Charles N. Coddling
 - Surrogate -

Exhibit P. 1

UNION COUNTY SURROGATE'S COURT

Estate of

ADAM KOZLOSKI, Deceased.

Letters of Administration.

10 The following duties are prescribed by the Orphans' Court Act, as Revised, P. L. 1898, Page 715, &c.

INVENTORY.

20 Sec. 58 requires every executor and administrator to file an inventory with the Surrogate within three months from his appointment; if he fails to do so it becomes the duty of the Surrogate to report such neglect to the Orphans' Court, and if the court so direct, to issue citation compelling the filing of such inventory; and in case of continued default the court shall revoke the letters issued.

ACCOUNT.

Secs. 114 and 116 direct the filing of an account by every executor and administrator within one year after appointment.

30 Sec. 117. If any executor or administrator neglects to render an account for the space of two years it becomes the duty of the Surrogate to report such neglect to the Orphans' Court, and, under the direction of the court, to issue citation compelling an accounting; and in case of continued default the court shall remove such executor or administrator from office, and he shall pay the costs out of his private estate and forfeit his commission.

Exhibit P. 2

EXHIBIT P. 2.



TO BE PINNED ON TOP OF CLAIM PAPERS.

THE PRUDENTIAL INSURANCE CO. OF AMERICA.

Incorporated under the laws of the State of New Jersey.
FORREST F. DRYDEN, President

DANGER
WHEN CLAIM IS PAID BY SUPERINTENDENT.

AVOID underpayment—overpayment

District: _____
Amount of Check, \$: _____
Date: _____
Number: _____

SYNOPSIS OF CLAIM DEPARTMENT EXAMINATION.

CLAIM NUMBER

Handwritten: P2/P2 2/19/20
2/19/20

Lapse schedule detached and checked by _____

SPACES MARKED X TO BE FILLED IN BY FIELD ADJUSTER

OLDEST POLICY FIRST
Policy No. 44026671 Date 6/3/18
Policy No. 44971939 Date 11/25/18
X Policy No. _____ Date _____
Policy No. _____ Date _____
Policy No. _____ Date _____

NAME OF INSURED

ADAM KOZLOSKI

Cause of Death _____

X Policy in force on date now Date when last revived _____

Life Register checked by PSI Div. W

Pol. Age	Amount	Prem	Net Amount	Mort. Div'd	Adv. Prem.	TOTAL	Pay at Age	Benefit
X 38	500	42					Pay at Age	Benefit
X 38	500	42					Pay at Age	Benefit
							Pay at Age	Benefit
							Pay at Age	Benefit
							Pay at Age	Benefit
							Deduct Lien	

X Have policies been revived by Lien?

Date of Death: X 1/29/19 Date of Birth: X don't know Date of Last Payment: X 5/48/19
Name of Agent: X W. C. ... Asst. Supt.: X ... Supt.: X ... District: X ...

LETTER WITH CHECK TO

CODE NO.

Remarks: Ref. closed policy
by Comm. ...
...

REPLY WANTED.
PAID CLAIM _____
PENDING CLAIM 1/31

Examined by: _____
Examined by: _____
Approved by: _____

Auditor's Stamp

Claim Paid

If policy endorsed for change of age, endorsed age should be entered

Print Name of District in full

Exhibit P. 2

CLAIMANT'S CERTIFICATE.

1. Name of deceased. <u>ADAM KOZLOSKI</u>		Number of Policy. <u>4086667</u> <u>40871934</u>	
2. Residence at time of death. <u>Bridgman Hospital, P.A.</u>		What was occupation of deceased? <u>Farmer</u>	
3. When did insured die? Year. <u>1919</u>		Month. <u>7</u>	Day. <u>29</u>
5. When was insured born? Year. <u>claimant knows</u>		Month.	Day.
6. Claimant's name. <u>Mary Kozloski</u>		7. Age of claimant. <u>25</u>	8. Occupation of claimant. <u>House work</u>
9. Post-office address. <u>100 Temple Ave, Bayway, Elizabeth</u>			
10. Relationship of claimant to deceased. <u>wife</u>		11. Did claimant present book and no. 7? <u>yes</u>	12. Who has premium? <u>claimant always</u>
13. Who pay funeral expense? <u>claimant</u>			
14. If deceased was married, is widow or widower alive? <u>claimant</u>		15. Did deceased leave any children? If so, state how many and their ages. <u>1 girl 13</u>	
16. Is either or are both of the parents of deceased alive? <u>Mother alive</u>		17. Are any brothers or sisters of deceased living? If so, state how many and their ages. <u>brother none</u>	
18. Was deceased insured under policies in this Company other than those specified above? If so, give number of each policy and district. <u>name</u>		19. If insured in other companies, give names of companies, dates of policies, amounts payable, and names of claimants. <u>yes met \$1,000</u>	

Date 6 day of Aug, 1929 Signature of Claimant Mary Kozloski
 Witness: Philip J. [unclear]
 Second Witness Anthony Krouse

A person under legal age cannot be recognized as claimant. If the claimant is unable to write, and make his or her mark, two witnesses must sign.

Information to be furnished where claimant is other than father or mother, husband or wife, and the amount of insurance is considerably more than the expense incurred by claimant.

- Where the insured has paid his or her own premiums and a brother or sister has been made claimant, and there are other brothers or sisters living, have claimant furnish itemized statement of expense incurred on behalf of deceased. Same should be signed and witnessed.
- Where the insured has paid his or her own premiums and a son or daughter has been made claimant, and there are other sons or daughters living, have claimant furnish itemized statement of expense incurred on behalf of deceased. Same should be signed and witnessed.

INFORMATION TO BE FURNISHED WHERE CLAIMANT IS NOT A RELATIVE OR NOT A NEAR RELATIVE.

- Have claimant furnish itemized statement, sworn to, of all expense incurred on behalf of deceased, including amount of premiums paid; also undertaker's itemized bill, and any beneficiary form or assignment.
- Has any objection been raised by any near relative to our paying claim to claimant named?
- Is claimant paying premiums on any other policies on the lives of non-relatives? If so, give numbers of policies and names of insured.
- Submit letter stating under what circumstances policy and book came into the possession of claimant and any further particulars in regard to claimant not brought out in above questions. Also send letter answering questions 4 and 5, where necessary.

Exhibit P. 2

CERTIFICATE OF IDENTITY.

I hereby certify that for the past... years I have known... and that he has resided at... during the last... and followed the occupation of... for the period of... and that he died on the... day of... 19... at... I also certify that I viewed the remains, and that I last saw deceased alive at... on or about the... day of... 19... at which time he appeared to be... years of age.

I also certify that I am not a relative of the deceased, nor in any way interested in the insurance payable on the above life.

Witness... Signature... Second Witness... Address in full... Date... day of... 19... Occupations... Age... years.

AFFIDAVIT.

State of... County of... Be it remembered that on this... day of... A D 19... personally appeared before me the above-named... and on his oath deposes and says that the certificate of identity by him above made and subscribed is full and true, to the best of his knowledge and belief.

Affidavit not required where the claim is for an amount less than \$500 except by request of the Company

UNDERTAKER'S CERTIFICATE.

This certificate not required when the claim is for an amount less than \$500 except by request of the Company

Form with 12 numbered sections: 1. What is your name? 2. ADDRESS No. Street City or Town State. 3. Name of deceased? 4. Residence? 5. Occupation at time of death? 6. What age was given on burial permit? 7. Race or nationality? 8. Place of death? 9. Date of death? 10. Did you inter the deceased or do you expect to, and if so in what cemetery and on what date? 11. What evidence have you that the body is that of the person named by you as the deceased? 12. Who is responsible for the funeral expenses? Amount of same? Signed...

SEE INSTRUCTIONS ON LAST PAGE

DEATH LAPSE.

Form for THE PRUDENTIAL INSURANCE CO. OF AMERICA. Agency of N. Weeks Under Asst. Supt. District. Lapsed by Entered by. Table with columns: NO OF POLICY, NAME OF INSURED (in full), Age at Entry, Weekly Premium, Amt of Div. Credited at Adjust. of Claim, Actual D. L. P. Shown in Receipt Book, Not to be written in by the Agent, Page in Life Register. Signature: Albert J. [unclear] Date of Death: 1/4/19. Dated this... day of... 19... Signature... This Schedule must in every instance be filled in by the person investigating the claim.

Exhibit P. 2

INSTRUCTIONS.

Agents are not allowed to adjust claims where policies have been in force less than one year, or where the amount of claim exceeds \$500. The spaces on the reverse side of this sheet marked X are to be filled in by the adjuster.

When the papers have been completed, they must be arranged as follows:

- Form 52. Correspondence relating to the claim. Form 54 (medical certificate).

If Coroner's certificate is submitted, his seal should be affixed to same, if he has no seal, please so state.

Fasten together in this order. By observing these instructions the work of the Claim Department will be greatly facilitated.

Read paragraphs 184 to 200 of the Manual of Instructions, and become familiar with our requirements. Form 5927 is to be completed for all claims where there is a policy less than one year in force and where there is a question as to the insurable condition of deceased at date of policy, and to be submitted with proofs of death.

CERTIFICATE OF ADJUSTER.

After all the other forms relative to this claim are completed, and the Superintendent, Assistant Superintendent or Claim Adjuster has viewed the remains, visited the attending physician and had his report confirmed, and has satisfied himself as to the identity of the deceased by a personal examination into the particulars of this claim, the following questions must be answered.

1. Agent... S. M. Smith... Assistant Superintendent... Elizabeth... District...
2. Have you examined Agent's Life Register and found policy to be in force? not in force...
3. Has there been revival by lien or otherwise? If so, when? no...
4. Have you personally viewed the remains of deceased? State when and where. no...
5. Were you well enough acquainted with the insured to identify body? no...
6. Race (white or colored)? white... Country of Birth... Poland...
7. Are you satisfied that the deceased is the same person insured under the attached policy? yes...
8. Do you consider the claim a just one? yes...
9. If a just claim, at what age next birthday when insured do you recommend payment? 2nd age...
10. Have you submitted Form 5927, if policy is less than one year old and health, at date of policy questionable? no...
11. A. Was any Mutualization dividend due and unadjusted at time of death? Give year... B. Was dividend properly credited in premium receipt book?... C. Has the amount of such dividend been properly entered in Death Lapse schedule below and has the D. L. P. from dividend stamp in the premium receipt book been entered on this schedule?...
12. When submitting transcript of death or coroner's certificate have official seal affixed

I hereby certify that I have personally investigated the particulars of the within claim this 6 day of Aug 1919...
J. S. Smith, Adjuster

Exhibit P. 3

EXHIBIT P. 3.

MARGIN RESERVED FOR FINDING

WRITE PLAINLY, WITH UNFADING INK—THIS IS A PERMANENT RECORD. Every item of information should be filled in. Do not leave blank spaces. If a name is written in full, it should be spelled exactly. PHYSICIAN'S SIGNATURE AND CAUSE OF DEATH IN PLAIN TERMS, so that it may be properly classified. Exact statement of OCCUPATION is very important. See instructions on back of certificate.

1 PLACE OF DEATH
 County Burlington State of New Jersey—Bureau of Vital Statistics.
 Townships _____
 Village _____
 City Budgeton (No. 273) (Ward) _____
 Registered No. _____
 (If death occurred in a hospital or institution, give its NAME instead of street and number)

2 FULL NAME OF DECEASED Adam Roglowski

PERSONAL AND STATISTICAL PARTICULARS			MEDICAL CERTIFICATE OF DEATH	
3 SEX <u>Male</u>	4 COLOR OR RACE <u>White</u>	5 SINGLE, MARRIED, WIDOWED, OR DIVORCED <u>Married</u>	16 DATE OF DEATH <u>July 29</u> 191 <u>9</u> (Month) (Day) (Year)	
6 DATE OF BIRTH <u>December 24</u> 1881 (Month) (Day) (Year)			17 I HEREBY CERTIFY, That I attended deceased from <u>July 26</u> , 191 <u>9</u> , to <u>July 29</u> , 191 <u>9</u> , and that death occurred, on the date stated above, at <u>12</u> m.	
7 AGE <u>38</u> yrs. <u>7</u> mos. <u>29</u> ds.			The CAUSE OF DEATH was as follows: <u>Concussion of brain, fracture at base of brain</u>	
8 OCCUPATION (a) Trade, Profession, or particular kind of work <u>Painter</u> (b) General nature of industry, business, or establishment in which employed (or industry)			Contributory (Secondary) <u>Accident</u>	
9 BIRTHPLACE (State or country) <u>Russia-Poland</u>			18 LENGTH OF RESIDENCE (For Hospitals, Institutions, Transients, or Recent Residents) At place of death _____ yrs. _____ mos. _____ ds. In the State _____ yrs. _____ mos. _____ ds.	
10 NAME OF FATHER			19 PLACE OF BURIAL OR REMOVAL <u>St. Carmel Cem. Budgeton Aug 3, 1919</u>	
11 BIRTHPLACE OF FATHER (State or country) <u>Poland</u>			20 UNDERTAKER <u>Dominick Braginski Elizabeth</u>	
12 MAIDEN NAME OF MOTHER			DATE OF BURIAL	
13 BIRTHPLACE OF MOTHER (State or country)			ADDRESS	
14 THE ABOVE IS TRUE TO THE BEST OF MY KNOWLEDGE (Informant) _____ (Address) _____				
15 Filed <u>Aug 2</u> 191 <u>9</u> <u>Charles P. Row</u> REGISTRAR				

NOTE.—Claimants must have this Certificate of Death filled out by the attending physician without expense to the Company



THE PRUDENTIAL INSURANCE CO. OF AMERICA
 Incorporated under the laws of the State of New Jersey
 FOREST F. DAYDEN, President
 HOME OFFICE, NEWARK, NEW JERSEY

ATTENDING PHYSICIAN'S CERTIFICATE OF DEATH

This certificate must be filled out with ink in the handwriting of the physician who attended deceased during the last illness.
 Be careful to give CORRECT AGE at death.

1. Name of deceased in full <u>Adam Roglowski</u>	14. If deceased received medical treatment at a hospital or other institution, please specify. <u>Budgeton Hospital</u>
2. Residence <u>654 Maple Av. Elizabeth</u>	Did deceased have consumption? <u>no</u>
3. Apparent age at death. <u>38</u> Years.	4. Correct age at death. <u>38</u> Years.
5. Race (white or colored) <u>white</u>	6. Occupation. <u>labour</u>
7. Place of death. <u>Budgeton Hospital, Budgeton</u>	16. State the immediate cause of death. <u>kick of horse</u> State the contributing cause of death. <u>Concussion of brain at base hemorrhage, hemorrhagic</u> (Avoid indefinite terms.)
8. Date of death. <u>10 Pm</u> Sex. <u>Male</u> <u>July 29 1919</u>	17. Was death caused directly or indirectly by intemperance? <u>no</u>
9. Date of your first visit or prescription in last illness. <u>July 26, 1919</u>	18. State the duration of illness. From personal knowledge. <u>3 days</u> From history of the case. <u>3 days</u> How was history obtained? <u>Personal</u>
10. Date of your last visit. <u>July 29, 1919</u>	19. Have you furnished a certificate for any other company or do you know of insurance in any other company? <u>Columbian National Life Metropolitan John Hancock</u>
11. Had you previously attended deceased? <u>no</u> If so, when? _____ For what? _____	
12. a Did you view the remains? <u>yes</u> b Did you report the death to the Board of Health? <u>yes</u>	
13. Give the names of any other physicians who have attended deceased. <u>H. F. Glendon, M. F. Sewall</u>	

I hereby certify that the answers above given are full and true.
 Dated, Aug 11 1919 Signature, E. S. Leonard M.D.
 Witness, _____ Address, Budgeton N.J.
 (If Coroner signs have seal affixed. If Coroner has no seal, please so state.)

AFFIDAVIT

State of New Jersey ss.
 County of Burlington
 Personally appeared before me the above named E. S. Leonard, a physician in active practice, and made oath that the foregoing statements by him made are true, and that he has concealed no material fact from the Company.
 Sworn and subscribed this _____ day of August, 1919
Arthur W. Bruce

Date NOV 25
1918

45 971 939



In Consideration of the payment of the weekly premium herein specified, on or before each and every Monday during the continuance of this Policy or until the anniversary date of the Policy immediately preceding the seventieth anniversary of the birth of the Insured,

THE PRUDENTIAL INSURANCE COMPANY OF AMERICA,

Immediately upon receipt of due proof of the death of the Insured during the continuance of this Policy, will pay at its Home Office, Newark, New Jersey, the amount of insurance herein specified, to the executors or administrators of the Insured, unless payment be made under the provisions of the next succeeding paragraph.

FACILITY OF PAYMENT.—It is understood and agreed that the said Company may make any payment or grant any non-foreiture provision provided for in this Policy to any relative by blood or connection by marriage of the Insured, or to any person appearing to said Company to be equitably entitled to the same by reason of having incurred expense on behalf of the Insured, for his or her burial, or, if the Insured be more than fifteen years of age at the date of this Policy, for any other purpose, and the production by the Company of a receipt signed by any or either of said persons or of other sufficient proof of such payment or grant of such provision to any or either of them shall be conclusive evidence that such payment or provision has been made or granted to the person or persons entitled thereto, and that all claims under this Policy have been fully satisfied.

PRELIMINARY PROVISION.—This Policy shall not take effect if the Insured die before the date hereof, or if on such date the Insured be not in sound health, but in either event the premiums paid hereon, if any, shall be returned.

SCHEDULE.

Name of Insured ADAM KOZLOSKI	AGE NEXT BIRTHDAY 38 <small>If incorrect, notify Company</small>	Amount of Insurance \$500-	Weekly Premium 42 cts
If the Insured shall die within six months from the date hereof, the amount of insurance will be reduced one-half, except that if such death shall have been caused by accident the full amount of insurance will be paid.			

GENERAL PROVISIONS.

Payment of Premiums.—All premiums are payable at the Home Office of the Company, but may be paid to an authorized representative of the Company; such payments to be recognized by the Company must be entered at the time of payment in the premium receipt book belonging with this Policy. If for any reason the premium be not called for when due it shall be the duty of the policyholder, before said premium shall be in arrears four weeks, to bring or send said premium to the Home Office of the Company or to one of its district offices.

Period of Grace.—Should the Insured die while the premium on this Policy is in arrears for a period not exceeding four weeks, the Company will pay the amount of insurance provided herein, subject to the conditions of the Policy, but after the expiration of the said period of grace the Company's liability under this Policy shall cease, except as herein provided.

Incontestability.—If the Insured shall die one or more years after the date hereof, and if all due premiums shall have been paid, this Policy shall be incontestable.

Misstatement of Age.—If the age of the Insured be misstated the amount payable under this Policy shall be such as the premium would have purchased at the correct age.

Policy When Void.—This Policy shall be void if there be in force upon the life of the Insured an Industrial policy previously issued by this Company, unless the policy first issued contains an endorsement, signed by the President or the Secretary, authorizing this Policy to be in force at the same time; or if this Policy be assigned; or if the said weekly premium shall not be paid according to the terms hereof.

If for any cause this Policy be or become void, all premiums paid hereon shall be forfeited to the Company except as provided herein.

Disability.—If the Insured while this Policy is in full force and effect and while there is no default in the payment of premium shall lose by severance both hands or both feet or one hand and one foot or lose permanently the sight of both eyes, total and permanent disability shall be deemed to exist and as a special surrender value one-half of the amount of insurance shall be paid immediately upon receipt by the Company of due proof of such loss, and thereafter no further premiums shall be required and the Policy shall be endorsed as fully paid-up for the remaining one-half of the amount of insurance.

Reinstatement.—If this Policy lapse for non-payment of premium, it will be reinstated within one year from the date to which premiums have been duly paid upon payment of all arrears, provided evidence of the insurability of the Insured satisfactory to the Company be furnished, but such reinstatement shall not take effect unless at the date thereof the Insured is living and in sound health.

Modifications, etc.—No condition, provision or privilege of this Policy can be waived or modified in any case except by an endorsement hereon signed by the President, one of the Vice Presidents, the Secretary, one of the Assistant Secretaries, the Actuary, the Associate Actuary or one of the Assistant Actuaries. No modification or change shall be made in this Policy except such as is in accordance with the laws of the State in which the same is issued. No Agent has power in behalf of the Company to make or modify this or any other contract of insurance, to extend the time for paying a premium, to waive any forfeiture, or to bind the Company by making any promise, or by making or receiving any representation or information.

DIVIDEND PROVISION.

Annually during its continuance in force, if all premiums theretofore due have been paid, this Policy will be credited with a dividend from the surplus earnings of the Company as ascertained and apportioned by the Board of Directors. Such dividend shall be applied to the payment of premiums. When all premiums required by the terms of the Policy have been paid, the dividend will be paid in cash. (See "Notice to Policyholder" below.)

NON-FORFEITURE PROVISIONS.

If this Policy lapse for non-payment of premium after premiums have been duly paid for three full years or more, the Insured, without any action upon his or her part, will become entitled to non-participating Extended Insurance for the respective term specified in the following table. The amount of insurance payable if death occur within said term shall be the same amount as that which would have been payable if this Policy had been continued in force.

Or, in lieu thereof, the Insured may surrender the Policy within three months after such lapse and will then be entitled at his or her option either to receive a non-participating Paid-up Life Policy or payment in cash as specified in the following table.

If all premiums required by the terms of the Policy have been paid, surrender for cash may be made at any time after the tenth anniversary of the Policy.

If there be any indebtedness under this Policy, such indebtedness will be deducted from the Cash Surrender Value, or the term of the Extended Insurance or the amount of the Paid-up Life Policy will be reduced to such term or amount as the net single premium value of the respective provision reduced by such indebtedness shall provide according to the mortality table hereinafter specified.

	3 Yrs.	4 Yrs.	5 Yrs.	6 Yrs.	7 Yrs.	8 Yrs.	9 Yrs.	10 Yrs.	11 Yrs.	12 Yrs.	13 Yrs.	14 Yrs.	15 Yrs.	16 Yrs.	17 Yrs.	18 Yrs.	19 Yrs.	20 Yrs.	After 20 Yrs.	
EXTENDED INSURANCE	2	6	13	18	24	30	35	40	45	50	55	60	65	70	75	80	85	90	95	Values will be furnished on request
PAID-UP LIFE POLICY	\$3.80	\$5.90	\$8.40	\$10.10	\$11.70	\$13.70	\$15.70	\$17.70	\$19.70	\$21.60	\$23.50	\$25.30	\$27.20	\$29.00	\$30.80	\$32.50	\$34.20	\$38.30		
CASH SURRENDER VALUE	None	None	None	None	None	None	None	None	\$9.62	\$10.88	\$12.16	\$13.47	\$14.81	\$16.17	\$17.56	\$18.97	\$20.41	\$21.88	\$24.87	

The basis of the non-forfeiture values is the net reserve according to the Standard Industrial Mortality Table with three and one-half per cent. interest per annum. The figures in the above table up to the end of the twentieth year include a surrender charge of not more than two and one-half per cent. of the amount insured. At the end of twenty years and thereafter no surrender charge is made.

In computing values from the foregoing tables, due allowance will be made for each completed quarter of a year's premiums paid over and above the full number of years there indicated.

This Policy contains the entire contract between the parties hereto.

In Witness Whereof, the President and the Secretary of said Company have signed this Policy at its Home Office in the City of Newark, N. J., on the above date.

William J. Hamilton
Secretary

Forrest A. Snyder
President

Notice to Policyholder.—Owing to the low rate of premium at which policies of this nature are issued, the surplus accruing thereunder will probably not be sufficient to enable the Company to apportion any dividend under this Policy before the end of the fifth year.

A-ND 2574-M
O

WHOLE LIFE POLICY. PREMIUMS TERMINATING AT AGE 70. ANNUAL DIVIDENDS.

This Policy, if not satisfactory to the Insured, may be surrendered within two weeks after its date at the Branch Office of the Company, the address of which appears on the premium receipt book accompanying this Policy, and the premiums paid hereon will be returned.

PREMIUM RECEIPT BOOK

The Prudential INSURANCE COMPANY OF AMERICA

HOME OFFICE

NEWARK N. J.

INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY

THE PRUDENTIAL HAS THE STRENGTH OF GIBRALTAR

FOUNDED BY

IN AMERICA

JOHN F. DRYDEN PIONEER OF INDUSTRIAL INSURANCE

In the event of removal, or if an Agent fails to call two weeks in succession, or if there is any neglect on the part of the Agent, please notify

The Prudential Insurance Company of America Branch Office

In writing, give number of policy and name of Agent

PREMIUM DIVIDENDS CREDITED

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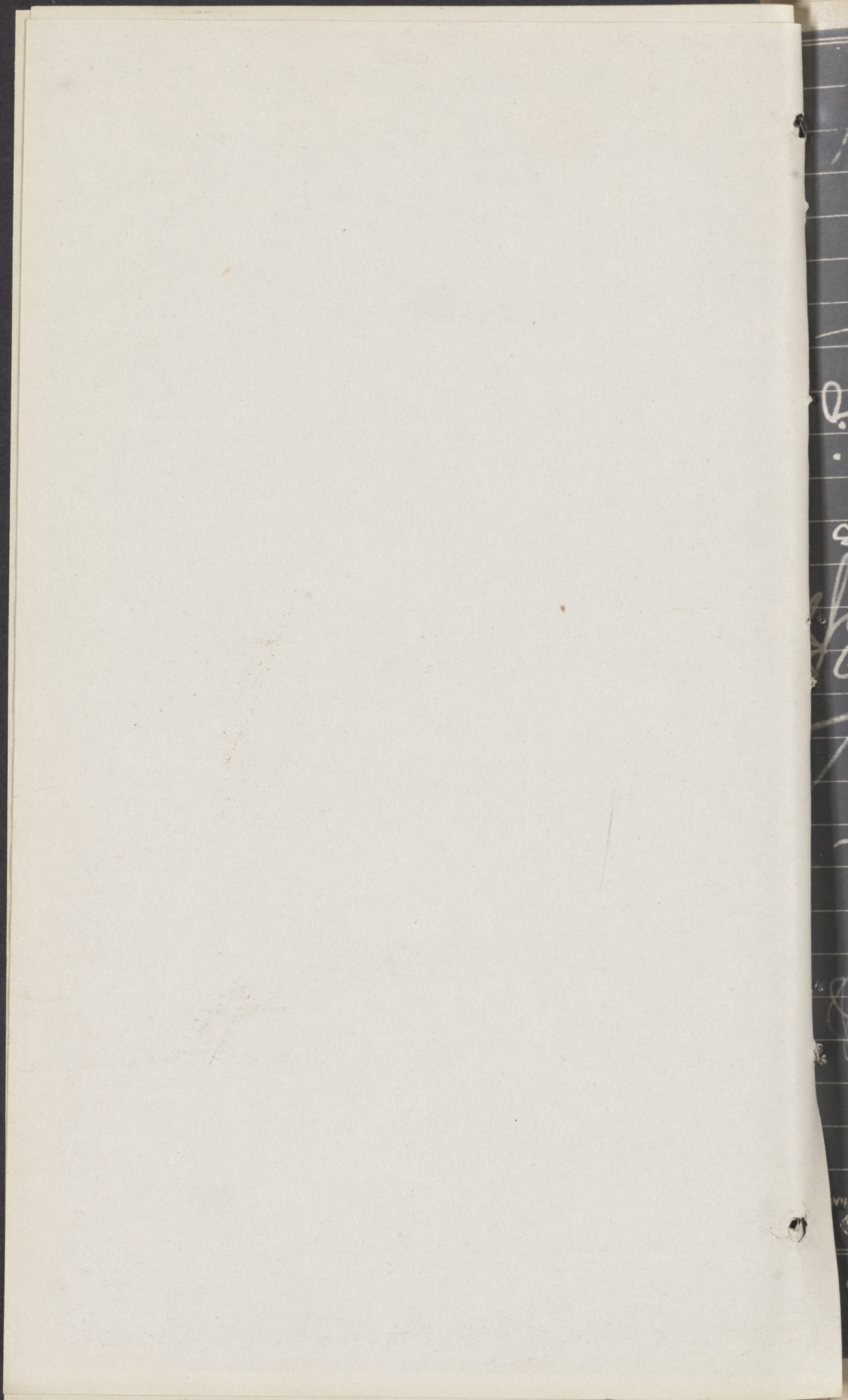
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Exhibit P. 5

EXHIBIT P. 5.

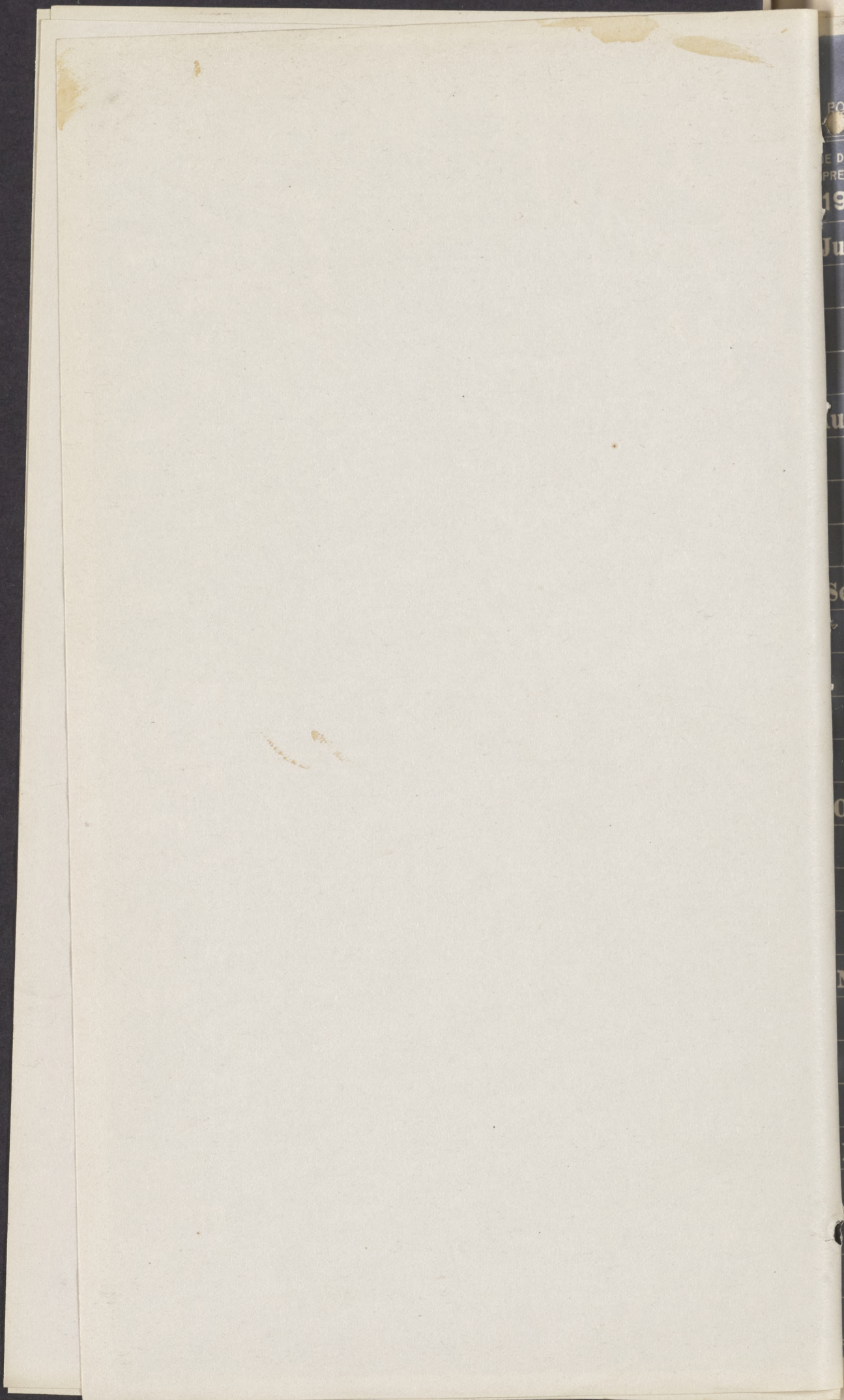
POLICYHOLDER WILL PLEASE SEE THAT THE AMOUNT PAID IS CORRECTLY ENTERED ON THIS (THE PREMIUM RECEIPT) BOOK BY AN AUTHORIZED AGENT OF THE COMPANY

DUE DATE OF PREMIUM 1918	DATE PAID 1918	HOW PAID		SIGNATURE OF AGENT ON FIRST LINE OF PAGE SIGN FULL NAME AFTERWARDS INITIALS
		BY CASH.	BY DIV.	
Jul. 1				
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Oct. 7				
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21				
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Nov. 4				
11				
18				
25	11-28			X } <i>[Signature]</i>
Dec. 2				X } <i>[Signature]</i>
9	1-10			
16				
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DATE OF PREMIUM 1919	DATE PAID	HOW PAID	SIGNATURE OF AGENT
		BY CASH. BY DIV.	ON FIRST LINE OF PAGE SIGN FULL NAME AFTERWARDS INITIALS
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Feb. 3	2-14-19		
10	—		
17	—		
24	—		
Mar. 3	3/8		
10	—		
17	—		
24	—		
31	—		
Apr. 7	4-10		
14	—		
21	—		
28	5-17		
May 5	5-17		
12	5-17		
19	5-17		
26	5-17		
Jun. 2	5-17		
9	5-17		
16	5-17		
23	5-17		
30	5-17		

THE POLICYHOLDER WILL PLEASE SEE THAT THE AMOUNT PAID IS CORRECTLY ENTERED THIS (THE PREMIUM RECEIPT) BOOK BY AN AUTHORIZED AGENT OF THE COMPANY



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Exhibit P. 5

EXHIBIT P. 5.

POLICYHOLDER WILL PLEASE SEE THAT THE AMOUNT PAID IS CORRECTLY ENTERED ON THIS (THE PREMIUM RECEIPT) BOOK BY AN AUTHORIZED AGENT OF THE COMPANY

DATE OF PREMIUM	DATE PAID	HOW PAID		SIGNATURE OF AGENT ON FIRST LINE OF PAGE SIGN FULL NAME AFTERWARDS INITIALS
		BY CASH.	BY DIV.	
1919	1919			
Jul. 7	7/6			
14	7/14			
21	7/21			
28	7/28			
Aug. 4	8/4			
11	8/11			
18	8/18			
25	8/25			
Sep. 1	9/1			
8	9/8			
15	9/15			
22	9/22			
29	9/29			
Oct. 6	10/6			
13	10/13			
20	10/20			
27	10/27			
Nov. 3	11/3			
10	11/10			
17	11/17			
24	11/24			
Dec. 1	12/1			
8	12/8			
15	12/15			
22	12/22			
29	12/29			

[Handwritten signature]

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P 5
2/9/20
[Handwritten signature]

Exhibits P. 6 and 7

EXHIBIT P. 6.



THE PRUDENTIAL INSURANCE CO. OF AMERICA

Incorporated under the laws of the State of New Jersey
HOME OFFICE, NEWARK, N. J.

TEMPORARY RECEIPT FOR INDUSTRIAL PREMIUMS

FORREST F. DEYDEN
President

No. OP. 1

7/29

P 6
2/9/20
1919

Received from Mrs. Kozowski
\$4.20 and 20/100 Dollars

\$ 4.20 Premium on Industrial Policy

This temporary receipt is given upon the condition that under no circumstances will the Company be liable under said policy in case of death or otherwise, unless said policy was in force in accordance with its terms when the above payment was made.

Elwyn District E. Horneau Supt

This form is to be used only by Superintendent, Agency Organizer, Detached Assistant Superintendent or Clerk 150-1-15 IND 4473-REV 1-15

EXHIBIT P. 7.



THE PRUDENTIAL INSURANCE CO. OF AMERICA

Incorporated under the laws of the State of New Jersey
HOME OFFICE, NEWARK, N. J.

TEMPORARY RECEIPT FOR INDUSTRIAL PREMIUMS

FORREST F. DEYDEN
President

No. 153

8/4 1919

P 7
2/9/20
1919

Received from Mrs. Kozlocki
\$4.00 and 20/100 Dollars

\$ 4.00 Premium on Industrial Policy 4597.929

This temporary receipt is given upon the condition that under no circumstances will the Company be liable under said policy in case of death or otherwise, unless said policy was in force in accordance with its terms when the above payment was made.

Elwyn District E. Horneau Supt

This form is to be used only by Superintendent, Agency Organizer, Detached Assistant Superintendent or Clerk 150-1-15 IND 4473-REV 1-15

**IMPORTANT
NOTICE TO
POLICYHOLDER**

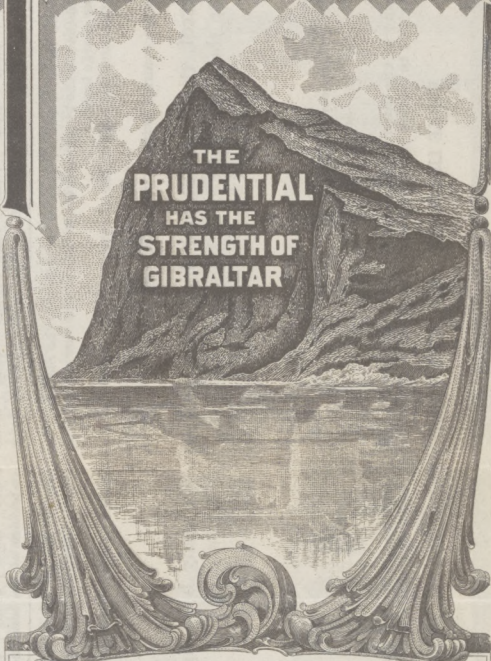
If it becomes impossi-
ble to continue the
payment of premiums,

**PRESERVE THIS
POLICY**

because of the pro-
tection which may be
afforded under its pro-
visions.

**READ THE
NON-FORFEITURE
PROVISIONS IN
YOUR POLICY**

The
Prudential



THE
PRUDENTIAL
HAS THE
STRENGTH OF
GIBRALTAR

**Insurance
Company**
OF AMERICA

FOUNDED BY
JOHN F. DRYDEN
PIONEER OF INDUSTRIAL
INSURANCE IN AMERICA.

INCORPORATED UNDER THE LAWS OF
THE STATE OF NEW JERSEY

PREMIUM RECEIPT BOOK

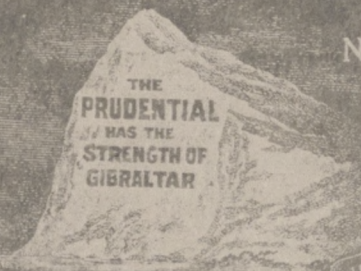
The Prudential INSURANCE COMPANY OF AMERICA

(INCORPORATED UNDER THE LAWS OF THE STATE OF NEW JERSEY)

FORREST F. DRYDEN, PRESIDENT

HOME OFFICE

NEWARK N. J.



FOUNDED BY JOHN F. DRYDEN PIONEER OF INDUSTRIAL INSURANCE IN AMERICA

In the event of removal, or if an Agent fails to call two weeks in succession, or if there is any neglect on the part of the Agent, please notify The Prudential Insurance Company of America Branch Office

PRUDENTIAL INSURANCE CO. CLEVELAND BUILDING 37 BROAD ST. NEWARK N. J. P. O. BOX 1

In writing, give number of policy and name of Agent.

Exhibits P. 10, D. 1 and D. 2

EXHIBIT P. 10.



THE PRUDENTIAL INSURANCE CO. OF AMERICA

Incorporated under the laws of the State of New Jersey
HOME OFFICE, NEWARK, N. J.

TEMPORARY RECEIPT FOR INDUSTRIAL PREMIUMS

FORREST F. DE FOEN
President

No. OP4073 6/17 1919

*to P¹⁰
2/9/20
LWS*

Received from Mrs Kozloski
Three and 36/100 Dollars
\$ 3.36 Premium on Industrial Policy 4506677

This temporary receipt is given upon the condition that under no circumstances will the Company be liable under said policy in case of death or otherwise, unless said policy was in force in accordance with its terms when the above payment was made.

Elm St District E. Hochhaus Sup

This form is to be used only by Superintendent, Agency Organizer, Detached Assistant Superintendent or Clerk 150-1-18 IND 4473-REV 1-16

EXHIBIT D. 1.

RECORD OF PREMIUMS PAID AT OFFICE

No. 4073

District.....Date 6-17, 1919.

Rec'd from Kozloski,
Address 78 Livingston
Agent—Weisbrot

D. L. P.—Rpct Prem. 42
42 3.36

Pol No. 4506677 Last Paid 5/17

Date
Form 450

Remarks..... Returned.....

EXHIBIT D. 2.

RECORD OF PREMIUMS PAID AT OFFICE

No. 1

District..... Date 7/29 1919

Rec'd from Kozloski,
Address—Maple Ave. & Prospect St.
Agent—S. Weisbrot

D. L. P. Prem. 42 4.20
Pol. No. 4597193 Last Paid Rpct

Date
Form 450

Remarks..... Returned.....

EXHIBIT P. 9.

THE POLICYHOLDER WILL PLEASE SEE THAT THE AMOUNT PAID IS CORRECTLY ENTERED ON THIS (THE PREMIUM RECEIPT) BOOK BY AN AUTHORIZED AGENT OF THE COMPANY

DUE DATE OF PREMIUM 1918	DATE PAID 1918	HOW PAID		SIGNATURE OF AGENT ON FIRST LINE OF PAGE SIGN FULL NAME AFTERWARDS INITIALS
		BY CASH.	BY DIV.	
Jan. 7				
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May 6				
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June 3	6-12	42	x	W. H. [Signature]
10	—	42		
17	7-1	42	x	[Signature]
24	—	42	x	[Signature]

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Exhibit P. 9

EXHIBIT P. 9.

THE POLICYHOLDER WILL PLEASE SEE THAT THE AMOUNT PAID IS CORRECTLY ENTERED ON THIS (THE PREMIUM RECEIPT) BOOK BY AN AUTHORIZED AGENT OF THE COMPANY

DUE DATE OF PREMIUM 1918	DATE PAID 1918	HOW PAID		SIGNATURE OF AGENT ON FIRST LINE OF PAGE SIGN FULL NAME AFTERWARDS INITIALS
		BY CASH.	BY DIV.	
Jul. 1	7-1	42		<i>[Signature]</i>
8		42		
15	July 26	42		
22		42		
29		42		<i>[Signature]</i>
Aug. 5		42		
12		42		
19		42		
26		42		
Sep. 2		42		
9	Aug 26	42		
16		42		
23		42		<i>P. 9 [Signature]</i>
30		42		
Oct. 7		42		
14		42		
21		42		<i>[Signature]</i>
28		42		
Nov. 4	9-30	42		
11		42		
18		42		<i>[Signature]</i>
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Dec. 2		42		
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FULL NAME

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Exhibit P. 9

EXHIBIT P. 9.

THE POLICYHOLDER WILL PLEASE SEE THAT THE AMOUNT PAID IS CORRECTLY ENTERED IN THIS (THE PREMIUM RECEIPT) BOOK BY AN AUTHORIZED AGENT OF THE COMPANY

DUE DATE OF PREMIUM 1919	DATE PAID 1919	HOW PAID		SIGNATURE OF AGENT ON FIRST LINE OF PAGE SIGN FULL NAME AFTERWARDS INITIALS
		BY CASH.	BY DIV.	
Jan. 6	12-6	42		
13	—	42		
20	—	42		139
27	—	42		J Schumpff
Feb. 3	—	42		
10	—	42		
17	—	42		
24	—	42		met
Mar. 3	3/8	42		
10	—	42		
17	—	42		
24	—	42		1875
31	—	42		J Schumpff
Apr. 7	4/29	42		
14	—	42		092943
21	—	42		J Schumpff
28	5/17	42		093355
May 5	5/17	42		J Schumpff
12	5/17	42		
19	5/4	42		Office P. 1073
26	11	42		
Jun. 2	11	42		J Schumpff
9	11	42		01-10-10
16	—	42		
23	—	42		
30	—	42		

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Exhibit P. 9

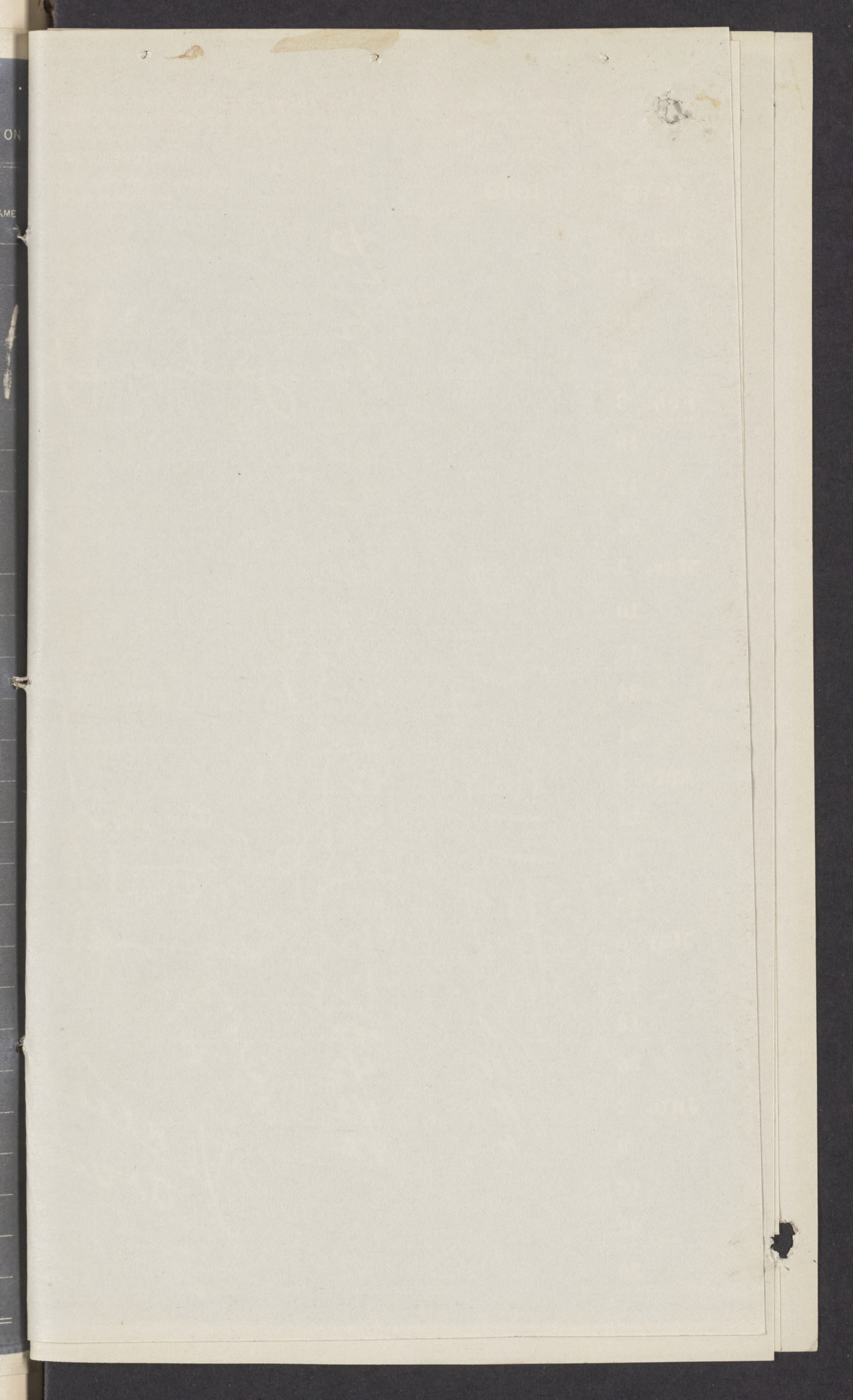
EXHIBIT P. 9.

THE POLICYHOLDER WILL PLEASE SEE THAT THE AMOUNT PAID IS CORRECTLY ENTERED ON THIS (THE PREMIUM RECEIPT) BOOK BY AN AUTHORIZED AGENT OF THE COMPANY

DUE DATE OF PREMIUM 1919	DATE PAID	HOW PAID		SIGNATURE OF AGENT ON FIRST LINE OF PAGE SIGN FULL NAME AFTERWARDS INITIALS
		BY CASH.	BY DIV.	
Jul. 7	6			<i>George J. Vital</i>
14	4			
21	11			
28	11			
Aug. 4	11			
11	11			
18	11			
25	11			
Sep. 1				
8				
15				
22				
29				
Oct. 6				
13				
20				
27				
Nov. 3				
10				
17				
24				
Dec. 1				
8				
15				
22				
29				

ON

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LAPSE REGISTER

AGENT STEINHO SER ASSISTANT ELIZ LOCATED AT W 4 WEEKS FOR WEEK COMMENCING AUG 4 19 COMPARED BY M APPROVED

No. of Policy	NAME OF INSURED	Age at Entry	Policy Premium	Date of Last Payment	Page in Life Book	Amount Credited	Adv. Payable Debited	REMARKS	
									Previous Total
Previous Total 808 TO S WEISBROT									
44055292	KEBO W	9	05	JUN 30 19	105	20			
38227464	A	10	03	:	55	12			
466	V	8	03	:		12			
468	S	3	02	:		12			
467	M	7	03	:		12			
Previous Total 17 TO S WITKEN F742									
4511981	FROOMES R	56	35	AUG 18 19	133		105		
POL. DISC. F987									
45066671	KOZLOWSKI A	98	42	JUN 9 19	228	210X			
45288198	SZARO M	11	10	"	"	50X			
45971939	KOZLOWSKIA A	38	42	"	"	210X			
46409169	MARTINSON H	3	10	JUL 7 19	216	80			
47308307	STACHLEWSKI M	31	25	JUN 23 19	234	125			
45696348	LOZZES G	48	25	JUN 9 19	202	125X			
46666594	MARGA J	3	10	JUN 2 19	268	80X			
595	E	25	20	"	"	100X			
41915385	KINASCEN W	30	15	JUN 23 19	164	75			
386	K	22	10	"	"	50			
43413557	M	2	10	"	"	50			
46310598	K	2	10	"	229	50			
TOTALS									
						10574			



*From page 462
Wanted Call book to
page 30 - Wanted Call
book*

D3

826

This is an OFFICIAL LIST of policies lapsed in your agency for above date. It must be carefully examined and, if correct, inserted in your Lapse Register next in order to the schedule on which the last totals are the same as the "Previous Totals" on this schedule. If incorrect, it should be immediately returned with request for correction. * B - Policies must be recorded in your Life Register and Collateral Book from these Official Lists only. ** PREMIUMS ENTERED IN "50 PREMIUM COLUMN" ONLY, NOT IN "50 SPECIAL SALARY ACCOUNT."

Exhibit D. 3

EXHIBIT D. 3.

This is an OFFICIAL LIST of policies lapsed in your agency for above date. It must be carefully examined and, if correct, inserted in your Lapse Register next in order to the schedule on which the last totals are the "Previous Totals" on this schedule. If incorrect, it should be immediately returned with request for alteration. N. B.—Policies must be canceled on your Life Register and Collection Book from these Official Lists only.
 *PREMIUMS ENTERED IN "B" PREMIUM COLUMN ONLY WILL BE DEDUCTED FROM SPECIAL SALARY ACCOUNT.

Exhibit D. 4
99
EXHIBIT D. 4.

(Read clauses relating to lapses in Agent's Instruction Book)

LAPSED POLICY SCHEDULE **THE PRUDENTIAL INSURANCE COMPANY OF AMERICA** **2 693 587**

FORREST P. DRYDEN, President HOME OFFICE, NEWARK, NEW JERSEY

DATE OF OFFICIAL LAPS: 8/4/19 Date Reported for Lapse: 7/25/19 CANCELED BY: [Signature] APPROVED BY: [Signature] SUPERVISED BY: [Signature]

From Agent (Please Print): Weeks Debit No: 30 Asst. Supt.: Steinhausen District: Elizabeth

Page in Life Register	This column not to be written in by the Agent	No of Policy	Name of Insured (in full)	Residence (Give full Post-office Address)	Age	Weekly Premium	Date of Policy	Unassigned Credit Balance Since year	Date of Last Payment	This column not to be written in by Agent	Cause of Lapse	Any other ins. written	Prospect for Revival
228		45 066 671	Kozlowski Adam	78 Livingston St	38	42	6/3/18		9/9/19	21	Paid		Yes
		45 288 198	Szara Mary	" "	11	10	7/25/18		"	50	Cont		Yes
		45 971 939	Kozlowski Adam	2 fl	38	42	7/25/18		"	21	Cont		Yes

INSPECTION REPORT

I hereby report that I have personally visited the holders of above policies, that the dates of last payment agree with those in the premium receipt books and that I have made every effort to prevent the lapses of the business.

Date of Inspection by Assistant: 7/25/19 19 [Signature] Agent (See Note) [Signature] Asst. Supt.



IMPORTANT NOTE
 If the Agent reporting business for lapse is a member of the Prudential Old Guard or an Independent Agent, his signature will be accepted on the Inspection Report. In all other cases the signature of the Assistant Superintendent will be required.

IND 23—REV 3-12 586-10-19

NEW JERSEY
COURT OF ERRORS AND APPEALS

MARY KOZLOSKI, Administra-
trix of the estate of Adam
Kozloski, deceased,
Plaintiff-Respondent,

vs.

THE PRUDENTIAL INSURANCE
COMPANY, OF AMERICA, a cor-
poration,
Defendant-Appellant.

Action at Law.
On Appeal.

**BRIEF FOR
PLAINTIFF-RESPONDENT.**

The appellant, the defendant below, brings this appeal, for the purpose of reviewing a judgment recovered, after a trial before the Court and Jury, in the Union County Circuit Court, on the 9th day of February, 1920. The Jury awarded a verdict in favor of the plaintiff and against the defendant, upon which verdict a judgment was duly entered on the 10th day of February, 1920, page 78.

Pleadings.

The suit was on two insurance policies issued by the defendant company on the life of Adam Kozloski, and the administratrix being the widow of the insured, brought suit to recover the moneys due to the estate on said policies.

First Count.

The first count of the complaint seeks to recover the amount due on Policy No. 45066671, bearing date June 3rd, 1918, and marked "Exhibit P-8," page 95.

Second Count.

By the second count the plaintiff seeks to recover the amount due on the policy issued on the life of Adam Kozloski on November 25, 1918, and known as policy No. 45971939 and marked "Exhibit P-4," page 92.

Defense.

The defendant justifies the non-payment of the insurance on the ground that the policy of insurance issued on the life of Adam Kozloski were lapsed. No other defense is set up.

Reasons for Reversal.

1. Because the Court refused to grant the motion for non-suit upon the evidence given at the trial.
2. Because the Court refused to grant the defendant's motion for a direction of a verdict.

Evidence to Substantiate a Question of Fact to Be Considered by the Jury on the First Count of the Complaint, Policy Dated July 3, 1918, No. 45066671, "Exhibit P-8."

The plaintiff's testimony appears on pages 18-23. Your Honors will note that the witness testified

through an interpreter (p. 18, ls. 1-3). The plaintiff testified that she was the widow of the deceased, cannot read or write the English language, that she cannot sign her name, that she was illiterate (pg. 8, ls. 10-16).

The policy of insurance "Exhibit P-8" contained the following provisions:

In Consideration of the payment of the weekly premium herein specified, on or before each and every *Monday* during the continuance of this Policy or until the anniversary date of the Policy immediately preceding the seventieth anniversary of the birth of the Insured, THE PRUDENTIAL INSURANCE COMPANY OF AMERICA, immediately upon receipt of due proof of the death of the Insured during the continuance of this Policy, will pay at its Home Office, Newark, New Jersey, the amount of insurance herein specified, to the executors or administrators of the Insured, unless payment be made under the provisions of the next succeeding paragraph.

PERIOD OF GRACE. Should the Insured die while the premium of this Policy is in arrears for a period not exceeding four weeks, the Company will pay the amount of insurance provided herein, subject to the conditions of the Policy, but after the expiration of the said period of grace the Company's liability under this Policy shall cease, except as herein provided.

The plaintiff further testified that the insured died on July 29th, 1919 (pg. 18, ls. 22-26). That he died at Bridgeton, N. J. (pg. 19, ls. 29-30), at ten o'clock at night (ls. 30-33) and that she resided,

at that time, in Elizabeth. That her husband was injured on the 26th day of July, 1919, that she heard about her husband's injury on July 28th, 1919.

The premium receipt book "Exhibit P-9," page 96, was offered in evidence, also "Exhibit P-10" was offered in evidence, which show a receipt bearing date June 17th, 1919, and refers by number to the policy in question, representing a payment of \$3.36, or eight weekly payments of 42 cents each.

Plaintiff testified that the payment of June 17th, 1919 was not entered in her book, but that subsequently on August 6th, 1919, after she had notified the company that her husband had died, the payment was properly entered in her pass book by the Assistant Superintendent of the Company, and the entry made in the Pass Book under the date of August 6th, 1919, refers to "Exhibit P-10" and is identified by No. 4073, being the same number that appears on "Exhibit P-10" and also on the receipt Book "Exhibit P-9."

She further testified that she paid moneys twice during the month of June, 1919.

She further testified that on July 29th, 1919, and in the morning of the day of the death of her husband, she made an additional payment of \$4.20 on the two policies of insurance and the said receipt is evidenced by "Exhibit P-6," page 94, the defendant well knew that no special policy number was referred to in said receipt.

The Proofs of Death, "Exhibit P-2" is found on pages 87-90. Mr. Cochran, the Superintendent of the Prudential Insurance Company, testified on page 15, that the same were prepared by one of the employees of the Company, page 15.

The plaintiff further testified that on the 4th day of August, 1919, she made a further payment of \$4.00 on the two policies, "Exhibit P-7," page 94.

Defendant's counsel further admitted that the erasures made in "Exhibit P-9," being the Pass Book, were made by the agent of the Company.

Defendant's witness, Eugenia Schimpff, testified that she was in the employ of the defendant Company, at the Elizabeth Office and that she received several payments from the plaintiff, and that the payment of June 16th, 1919, was deposited to the account of the defendant company in the regular course of business, and that the moneys were never returned to the plaintiff (pgs. 33, 34, 35, 36 and 37 of the testimony).

On page 42, the witness further testified that she was present when the so-called temporary receipts were destroyed.

Q. Were you present at one time when one of those receipts was destroyed, torn up by someone?

A. I was in the office most probably, yes.

Q. Do you recall tearing one of those temporary receipts yourself? A. No.

Q. Do you recall some one else tearing one of those temporary receipts in your presence? A. Yes, I was in another office at the time it was done.

Q. You know it was done? A. Yes, I know they were destroyed. That is our custom when a receipt is entered.

Q. When was that temporary receipt destroyed that you are referring to? A. Temporary receipt that I am referring to was destroyed at the time Mrs. Kozloski filed her claim papers.

Q. How many were destroyed? A. Three, I think.

Q. Who destroyed them? A. I believe Mr. Vitolo destroyed them when he entered the receipts.

Q. You know that to be a fact that they were destroyed? A. Yes, I know they were torn up.

Q. Did you see them torn up? A. I saw them after they were torn, yes.

EUGENE H. COCHRAN, the Superintendent of the local office, at page 45, testified as follows:

Q. Do you know what disposition was made of the moneys that were received from Mrs. Kozloski on the seventeenth day of June, 1919? A. Yes. That payment was duly used by the agent on whose register book was then in force. The Agent on whose register that business was then in force.

Q. That is, he used a slip? A. He took credit for it in the proper manner.

By the Court:

Q. In the meantime between the seventeenth of June and twenty-fifth of July, what became of the money that this woman paid? A. That was recorded on the agent's collection book as other payments had been.

PHILIP VITOLO, the assistant superintendent of the defendant company testified as follows (pgs. 56-57):

Q. You say you were an assistant superintendent of the company? A. Yes, sir.

Q. And, of course, you knew the business, the routine business relating to policies that are lapsed and that were in full force? A. Yes.

Q. And mere inspection of the book would itself disclose to you whether or not a policy was in full force and effect on a certain day? A. Not very well.

Q. Why not? A. For the simple reason you can't very well tell by the book. At the time the book cannot be found we hand out receipts.

The Court: No. He says a mere inspection of the book.

Q. A mere inspection of the books show to you whether or not the policy was in full force and effect on a certain date? A. Yes, sir.

Q. And at the time when you made the entries which were afterwards erased in these books the mere inspection of the book would have disclosed to you, the pass book, I am speaking about? A. Yes, sir.

Q. Whether or not these policies were in force? A. Yes, sir.

Q. *And the inspection at that time disclosed to you together with the receipts that that policy was in force?* A. *Yes, sir.*

Q. *Is that correct now?* A. *Yes, sir.*

Q. *In other words, the pass book together with the receipt that the woman had, disclosed to you that the policies were in full force and effect, is that correct?* A. *Yes, sir.*

Q. *And therefore you proceeded on that day to write up the book for her in accordance with the receipts?* A. *Yes, sir.*

Q. And that day you had actual knowledge that the man died? A. Yes, sir.

The above testimony clearly demonstrates that the policy in question was in full force and effect.

Second* Count.

The second count of the complaint seeks to recover the amount due on the Policy No. 4597139, bearing date November 25th, 1918, "Exhibit P-4," page 92. That testimony offered in relation to the first count is also applicable to the second count, but as against this policy the further fact appears

that the admitted receipt "Exhibit P-5" (being the Pass Book), page 39, is evidenced by receipt No. 4173. The premiums were paid up to June 9th, 1919, and the testimony further clearly discloses that the plaintiff made payments for which she procured receipts during the month of June, 1919, and which were afterwards destroyed by the assistant superintendent.

The plaintiff on page 20, testified that she paid \$4.20 in July twice (ls. 1-6; 20-22). On page 20 the plaintiff testified as follows:

Q. How many times did you pay money in June?

A. Twice I paid in June, but the third time she means she paid four dollars and twenty cents.

At page 21, the plaintiff further testified:

Q. And then on July twenty-ninth you came to the office of the Company, Broad Street, Elizabeth, and paid some money? A. I came—receipt was torn and when I came on the twenty-ninth to the office I did not have the receipt. Receipt was torn and they made me pay once more the premium.

Inspection of the Pass Book "Exhibit P-5" and "Exhibit P-7" clearly discloses that the pass books were tampered with by the duly authorized agent of the company although receipts were given therefor in due form by the superintendent.

We again beg to impress upon the Court, the fact that the moneys were never returned or offered to be returned to the plaintiff, and that the defendant through its agent and servants assisted the plaintiff in preparing the proof of claim and at all times lead her to believe that the policy was in full force and effect.

LAW.**POINT I.****Forfeitures Not Favored.**

The forfeiture of an insurance policy is not favored in law, and courts are always prompt to seize hold of any circumstances to indicate an election to waive a forfeiture. It is always open for the insured to show a waiver of the condition or a course of conduct on the part of the insured from which it might be justly and reasonably inferred that a forfeiture would not be exacted.

Graham v. Security Mutual Life Ins. Co., 72 N. J. Law, 298.

Where the insurer permits the insured to pay premiums without giving him notice that it has exercised its rights to declare the policy void, and the insured pays the premiums believing the insurance valid, the insurance may be validated thereby.

Mellick v. Metropolitan Inc. Co., 76 Atl. 75.

Estoppel.

“Any course of action on the part of an insurance company which leads a party insured honestly to believe that, by conforming thereto, a forfeiture of his policy will not be incurred, followed by due conformity on his part, will and ought to estop the company from insisting upon the forfeiture though it might be claimed under the express letter of the contract.”

Agricultural Inc. Co. v. Potts, 55 N. J. Law 164.

The retention of the premium and failure to return it constitutes a waiver.

Baker v. N. Y. Life Ins. Co., 77 Fed. 550.

Prentice v. Knickerbocker Life Ins. Co.,
77 N. Y. 483.

Hartford Life & Annuity Co. v. Unsell,
144 U. S. 439.

Hastings v. Brooklyn Life Ins. Co., 138
N. Y. 473.

Insurance Company v. Horton, 96 U. S.
244.

Waiver Always a Question for the Jury.

There is always a reluctance on the part of Courts to take from the Jury, as a matter of law, any facts or circumstances from which a waiver may be inferred, and this is shown in the charge to the Jury in the case of *Hartford Life Insurance Co. v. Unsell*, quoted in Justice Harlan's opinion in 144 U. S. 439.

Agency.

An agent who has authority to take applications for insurance, and power to collect the premium and remit the same to the company, has the power to bind the insurer.

Connecticut Indemnity Assn. v. Grogan,
17 L. R. A. 1146.

McQuillan v. Mutual Fund Life Assn.
56 L. R. A. 237.

State Insurance Co. v. Maackens, 38
N. J. Law. 564.

We respectfully submit that the case as tried was properly submitted to the Jury on questions of fact, and that the Court below properly denied the Motion for Non-Suit and for the Direction of a Verdict, and therefore the judgment should be affirmed with costs.

STAMLER & STAMLER,
Of Counsel with Respondent.

11
The following is a list of the names of the persons who have been appointed to the various positions in the Department of the Interior, and the date of their appointment.

Secretary of the Interior
Department of the Interior

New Jersey Court of Errors and Appeals

MARY KOZLOSKI, Administratrix
 of the estate of ADAM KOZLOSKI,
 Deceased,
Plaintiff-Respondent,
 vs.
 THE PRUDENTIAL INSURANCE
 COMPANY OF AMERICA, a Cor-
 poration,
Defendant-Appellant.

*Action at
 Law.
 On Appeal
 from Union
 County Cir-
 cuit Court.*

BRIEF OF DEFENDANT-APPELLANT.

On June 3, 1918, the Prudential Insurance Company, in consideration of the payment of a weekly premium of forty-two cents, issued its policy of life insurance on the life of Adam Kozloski, for the sum of five hundred dollars.

On November 25, 1918, it issued, in consideration of the payment of a weekly premium of forty-two cents, another policy of life insurance on the life of Adam Kozloski for the sum of five hundred dollars.

On July 26, 1919, Kozloski received a kick from a horse, from which he died on July 29, 1919.

On August 6, 1919, a claim for the payment of the insurance was presented to the company, which it denied on the ground that both policies had lapsed for the non-payment of the weekly premiums as provided by the policies, and were therefore null and void.

Decedent's administratrix brought suit on both policies in the Union County Circuit Court, where

a jury awarded her the sum of one thousand dollars, the total amount of both policies.

At the close of the plaintiff's case, the defendant moved for a non-suit on the ground that the evidence showed both policies had lapsed for the non-payment of the premium, which motion was denied. The defendant then submitted evidence showing that the premium had not been paid, and at the close of the case moved for the direction of a verdict as to each policy, which was also denied.

The Court's attention is called to certain conditions of the contract of insurance, which are common to both policies (Exhibits P. 4 and P. 8, Case, pages 92 and 95, respectively), and which are as follows:

"In consideration of the payment of the weekly *premium* herein specified, on or before each and every *Monday* during the continuance of this policy * * *, the Prudential Insurance Company of America, immediately upon receipt of the proof of death of the insured during the continuance of this policy, will pay * * *."

"PAYMENT OF PREMIUMS. All premiums are payable at the home office of the Company, but may be paid to an authorized representative of the Company; such payments to be recognized by the Company, must be *entered* at the *time of payment* in the *premium receipt book*, belonging with this *policy* * * *."

"PERIOD OF GRACE. Should the insured die while the premium on this policy is in arrears for a period *not exceeding four weeks*, the Company will pay the amount of the insurance provided herein; subject to the conditions of the policy; *but after the expiration of the said period of grace*, the Company's liability under

this policy shall *cease*, except as herein provided."

"POLICY WHEN VOID. This policy shall be *void * * **, if the said *weekly premium* shall not be *paid according to the terms hereof*."

"REINSTATEMENT. If this policy lapse for non-payment of premium, it will be reinstated within one year ** * **, provided *evidence* of the *insurability* of the insured satisfactory to the Company be furnished, but such reinstatement shall not take effect unless at the date thereof, the insured is *living* and in *sound health*."

"MODIFICATION, &C. No condition, provision or privilege of this policy can be *waived* or *modified* in any case, except by an indorsement hereon, signed by the President, one of the Vice-Presidents, the Secretary, one of the Assistant Secretaries, the Actuary, the Associate Actuary, or one of the Assistant Actuaries, ** * **

No agent has power in behalf of the Company to make or modify this or any other contract of insurance, to extend the time for paying a premium, to waive any forfeiture, or to bind the Company by making any promise, or by making or receiving any representation or information."

In addition to the foregoing conditions, the policies contain this further provision: "*This policy contains the entire contract between the parties hereto.*"

GROUNDS OF APPEAL.:

This case is before the Court on the following grounds of appeal:

(1) BECAUSE THE COURT REFUSED TO GRANT THE MOTION FOR A NON-SUIT UPON THE EVIDENCE GIVEN AT THE TRIAL;

(2) BECAUSE THE COURT REFUSED TO GRANT THE DEFENDANT'S MOTION FOR A DIRECTION OF A VERDICT.

I

As to the first ground of appeal, namely: that the Court failed to grant the motion of non-suit, the Court's attention is directed to the fact that these policies were only issued in the months of June and November, 1918, and that the dispute in this case arises out of the non-payment of the weekly premiums called for by the policies. The defendant admits that the premiums were paid up to May 12, 1919, by a payment made on May 17, 1919, which paid for the weeks of April 28, May 5 and May 12. There is no dispute as to this fact. The policies allow the insured a grace period of four weeks, before it becomes void for non-payment of premium. Four weeks from May 12, 1919, brings the period up to the week of June 9, 1919. The week of June 9 expired and no payments were made until afterwards, that is to say, not until June 17, 1919, at which time the policies were lapsed and were null and void by failure to pay the premium in the preceding week, the last week of grace.

The plaintiff's proof shows that the first payment made after May 17, 1919, was made as previously stated on June 17, 1919, after the grace period expired. (Exhibit P. 10, Case, page 97.) To prevent a forfeiture or waiver of the defendant's rights, a

temporary receipt was given by the cashier of the local branch office of the Company at Elizabeth, which contains this provision:

"TEMPORARY RECEIPT FOR INDUSTRIAL PREMIUM. Temporary receipt is given upon the condition, that under no circumstances, will the Company be liable under said policy in case of death or otherwise, unless said policy was in force in accordance with its terms when the above payment was made." (Exhibit P. 10, Case, page 97.)

It will be seen that the policy was not in force at this time, because the premium was not paid during the last week of the grace period, which expired the week of June 9. The plaintiff next proved that on July 29, 1919 (the date of insured's death), she paid the sum of four dollars and twenty cents to the cashier at the local branch office of the Company at Elizabeth, when a temporary receipt, with like condition was given (Exhibit P. 6, Case, page 94), but this payment was made eleven weeks after the week of May 12, and seven weeks after June 9, the last week of the grace period. The plaintiff also offered in evidence a further temporary receipt with like condition (Exhibit P. 7, Case, page 94) showing that on August 4, 1919, several days after the insured's death, she called at the same office of the Company and paid the sum of four dollars. At this time, the Company had not been apprized of the death and no claim for insurance was made until afterwards (Exhibit P. 2, Case, pages 87, 88, 89 and 90, and Exhibit P. 3, page 91), which exhibits go to make up the proof of death, signed by the plaintiff August 6, 1919.

The plaintiff's further documentary evidence offered, consisted of the policies of insurance (Exhibit P. 4 and P. 8, Case, pages 92 and 95, respect-

ively), and the premium receipt books belonging with these policies (Exhibit P. 5, Case, page 93, and Exhibit P. 9, Case, page 96), which show, as already stated, that the last regular entry was made on 5-17 (May 17), 1919, which paid up to May 12, and which, with the grace period carried the policies to the week of June 9, during which grace period no payments were made. This concluded the documentary evidence offered by the plaintiff, but in addition to this, Eugene H. Cochran, Superintendent of the Elizabeth Branch Office, was called by the plaintiff for the purpose of identifying certain papers offered in evidence. The only other witness for the plaintiff was herself, and the only testimony given by her with reference to the *payment of premiums*, which can be considered, all the rest of it having been stricken out on motion, is as follows (Case, page 19, lines 20 to 40) :

“A I paid July 26, \$4.20. I paid twice the same amount.

(The last part of this answer was also stricken out.)

Q When you paid the first time the \$4.20, do you know whether or not your husband was living?

A I did not know if he was dead, because he was not with me. He was in Bridgeton, New Jersey.

Q What time did your husband die?

A He died 10 o'clock at night.

Q When did you pay the money? What time of the morning did you pay the money?

Mr. O'Connor. I think that question is leading.

Q What time during the day did you pay the money?

A Around 10 o'clock in the morning.”

The premium referred to by the witness, seems

to have been paid on July 29 around 10 o'clock in the morning, in as much as it was paid on the day her husband died, and not on July 26, as appears by her testimony. This fact seems to be borne out by the temporary receipt (Exhibit P. 6, page 94).

On page 21, lines 1 to 5, she answered:

“A Twice I paid in June”; but the third time she means she paid \$4.20. (The last part of this answer was also stricken out.)

The foregoing is the only oral evidence given by the plaintiff on direct examination with reference to the payment of premiums.

On cross examination, the only evidence given by the plaintiff, on the question of premium payments is to be found on page 21, lines 35 to 40, where she testified as follows:

“Q And then on July 29, you came to the office of the Company, Broad street, Elizabeth, and paid some money?

A I came—receipt was torn and when I came on the 29th to the office, I did not have the receipt. Receipt was torn and they made me pay once more the premium.”

It will be noticed that she said that she paid twice, whatever that may mean. She does not fix the time to determine whether it was within or without the time required by the policies, neither does she fix the amount or for what purpose she paid the money.

The defendant contends that the foregoing evidence did not establish the plaintiff's case. Its effect was to the contrary. On page 24 of the case, counsel for the plaintiff, in answer to the Court, admitted that the June 17 payment was not made in time, but contended that the temporary receipt was cured and became a permanent receipt, because it was entered in the premium receipt book on

August 6, by an agent of the Company, who had no authority to do so, and no authority is shown by the plaintiff. These entries of August 6 in the premium receipt books (Exhibits P. 5 and P. 9, Case, pages 92 and 95, respectively), were erased by the Company as admitted by counsel for the defendant (Case, page 22, lines 30 to 40; page 23, lines 1 to 10).

Attention is called to the fact that opposite the entry 8-6 (August 6), 1919, in the premium receipt books, the memoranda "Office pay 4073" appears. This memoranda has reference to and identifies Exhibit P. 10, page 97, which bears the same number and shows it to be a temporary receipt for a payment June 17, 1919, entered in the premium receipt book August 6, 1919, by an agent without authority several days after the insured's death. On this state of facts, it was clearly the duty of the Court to grant the defendant's motion for a non-suit. It is plainly shown that the policies had lapsed and that the stipulated premium had not been paid as the contracts of insurance provides.

After the policy became lapsed, there was no revival of it, or application for revival, which the policy provides for in case it becomes lapsed.

The Court was in error in denying the motion for a non-suit.

Metropolitan Life Insurance Company vs. McGrath, 52 N. J. L., 358, &c., and the principle decided in this case was followed by this Court in the case of *Dimick vs. Metropolitan Life Insurance Company*, 69 N. J. L., 395, &c., and cases cited.

II

It is also contended that the Court was in error when it failed to grant the motion for direction of a verdict at the close of the case. On behalf of the defendant, Eugenia Schimpff, the cashier of the

Elizabeth Branch Office, testified that on June 17, 1919, she received three dollars and thirty-six cents from the plaintiff (Case, page 28, lines 10 to 20), when she gave a temporary receipt and made a cash entry of it in her book, as appears by Exhibit D. 1, page 97, which agrees with the plaintiff's, Exhibit P. 10, page 97, and that subsequently, on July 29, the plaintiff made a further payment to her of \$4.20, of which she also made a cash entry in her book, as appears by Exhibit D. 2, page 97, which agrees with the plaintiff's, Exhibit P. 6, page 94; and that subsequently, the plaintiff paid four dollars on August 4 (Case, page 29, line 10), which also agrees with the temporary receipt which she gave to the plaintiff, and which the plaintiff offered in evidence as Exhibit P. 7, page 94.

All such payments made to her by the plaintiff were understood to apply on both policies, as had been the former practice (Case, page 40, lines 20 to 40). This is an undisputed fact. This witness had no authority to credit premiums on policies, her duty ended on taking the money and giving a temporary receipt (Case, page 39, lines 1 to 10). She further testified that a Mr. Vitolo, a new assistant superintendent of the Company, made the erasure of the temporary receipt items in the premium receipt book, the three temporary receipts having been previously entered therein were then destroyed by him (Case, pages 41, 42 and 43).

Eugene H. Cochran, the superintendent of the Elizabeth Branch Office, testified that the papers were brought to him after the proof of death had been completed, when it was found that the policies had been cancelled (Case, page 43, line 30), and as appears by the agent's report to the Company dated 7-25-19 (July 25, 1919, Exhibit D. 4, page 99) and by the Lapse Register, which came to him under date of August 4 (Exhibit D. 3, page 98).

He also testified that the payment of June 17, 1919, the agent used, although it was his duty to have reported the policies for cancellation, on the 14th of June (Case, page 45, lines 30 to 40; Case, page 46, lines 1 to 40). The Company was not aware of this until the agent reported it July 25, as appears by Exhibit D. 4, when the Company cancelled the policies, as appears by Exhibit D. 3, pages 98 and 99, respectively. All papers were returned by the Company to the plaintiff and duplicate receipts were given to her to replace the ones destroyed, in order to put her in the same position she was in at the time she handed such papers to the Company with her claim (Case, page 49, lines 20 to 40). The defendant established by Phillip Vitolo, the assistant superintendent, that he received the temporary receipts (Exhibits P. 10, P. 7. and P. 6), and that it was his duty to look up the life register to see if the policies were in force, but that he did not do so until after he had entered the receipts in the premium receipt book, and found the policies had been canceled, when he explained the matter to the superintendent, who forwarded the papers to the home office with an explanation (Case, pages 54 and 55).

The last entry in the premium receipt books before Vitolo made any entry was 5-17 (May 17), 1919, (Case, page 61, lines 20 to 40). He did not see these books or have them in his possession until August 6, when he first entered all receipts in one book, not knowing that there was another policy, and on finding that there was another policy, made a distribution of the premiums on both policies, of all receipts under date of August 6. In other words, he entered the payments made on June 17, July 29, and August 4, under date of August 6 (Case pages 61, 62 and 63).

This testimony being submitted and undisputed,

the defendant moved, at the close of the case, for the direction of a verdict, on the ground that the policies were lapsed because of the plaintiff's failure to pay the premiums within the stipulated time, and that there had been no waiver of any forfeiture by the defendant. The Court denied this motion as to both policies, stating that the case presented a jury question. The Court stated on this motion:

"The whole question in my mind is whether the conduct of the Company was such as to waive the forfeiture or not. Mr. Stamler, as I understand it, contends that when the 14th of June came, and the policy would have lapsed, that instead of permitting it to lapse, and declare the forfeiture, you waited until the 4th of August, before you forfeited it, and in the meantime your conduct was such as to indicate that you waived the forfeiture. That is the whole question."

The Court took the further position at this stage of the case, that the Company received the money, and that it was transmitted to the home office, that the home office accepted the money and credited it apparently upon the policy, after the time the forfeiture was supposed to have taken place. That the Company being in a position to declare the policies forfeited instead of doing so, accepted the premiums, and no notice was given to the parties that the Company declared a forfeiture, until after the death of the insured. That the agent's action in crediting premium on the policy was binding upon the Company, and that when the payment of June 16 came, the Company accepted it, with all the information before it, and that this was evidence of waiver.

The foregoing is substantially, a correct narrative statement of the Court's expression on the motion. The defendant contends that the Trial

Court was mistaken with reference to the evidence, and that the law, as applicable to the case, is not as expressed by the Court, for the following reasons, namely: because, that when June 14 arrived (the *last* day of the *last* week of the grace period), it was not the company's duty to declare a forfeiture by some special ceremony or action. The contract of insurance provides for it. The Company's records, made up on August 4, showing the policies lapsed, was for its own information, and the information of its various departments. It can hardly be argued that if the Company never perfected its records concerning the condition of the policies, that this would be taken to mean that all lapsed and forfeited policies remain in force until it did do so. Such a view is adding something to the contract which the parties never agreed to, and render the policy conditions meaningless and of no effect, when in fact they are the entire contract between the parties. Further there was no implied or expressed *duty* on the company to give notice to the insured or his representative, that the Company declared the policy lapsed or that it was forfeited. The terms and conditions of the policy are plainly set forth on the face of the policy, and the plaintiff knew what the result would be, if default was made in paying the premiums, as called for by the policies.

As to receiving money, the Company received no money, or rather none of the payments in dispute, except *conditionally*, as the evidence clearly shows, and which remains undisputed as has been already pointed out. It is true that the payment made by the plaintiff on June 17 (*admittedly out of time*) was used by an *agent* as of *time* as appears by his report to the company dated July 25, 1919 (Exhibit D. 4, Case, page 99), wherein the agent reported the date of *last payment* 6-9-19 (June 9, 1919, upon which report the Company's record of lapse

including the policies in question (Exhibit D. 3, Case, page 98), is based, and wherein the date of last payment is the same following the agent's report. Instead of the agent reporting the policy lapsed, as was his duty, at the expiration of the week of June 9, he used the June 17 payment, crediting it on the policies as of June 9, without authority. The plaintiff knew this payment was made out of time, the Company did not, but acted on the theory due to the agent's conduct and his records, that the account was regular, until again more than four weeks elapsed, and no payment being made available the agent, under date of July 25, the date of his report, reported to the Company that the policies were lapsed. Consequently, how could the Company waive the forfeiture without a full knowledge of all the facts, which did not develop until the trial? The Company was led to believe by the agent, that the policies had not lapsed until July 25, due to the non-payment of premiums within the preceding four weeks, whereas in fact, it had elapsed at the end of the week of June 9. While the plaintiff was aware of the true condition, it was concealed from the Company, by the agent who had no authority or power to extend the time of payment, according to the policy, which the plaintiff must have known.

Metropolitan Life Insurance Company vs. McGrath, 52 N. J. L., 358.

And this Court said in the case of *Dimick vs. The Metropolitan Life Insurance Co.*, 69 N. J. L., at page 395, following the principle laid down in the *Metropolitan Life Insurance Co. vs. McGrath, Id.*:

“The Company was certainly at liberty to limit the power and authority of its own agents, and third parties dealing with the agents with express notice of the limitations thus imposed

cannot bind the principle by any act done by the agent in excess of the bonds of this authority."

Citing: *Catoior vs. American Life Insurance Company and Trust Company*, 4 Vroom, 487; *Metropolitan Life Insurance Company vs. McGrath*, 23 Id., 358; *McClave vs. Mutual Reserve Fund Life Association*, 26 Id., 186; *Dwelling House Insurance Company vs. Snyder*, 30 Id., 18.

The Trial Court also seemed to entertain the opinion that certain premiums could be applied on one policy, simply because the receipt referred or mentioned one policy, whereas, the undisputed testimony was, that it was customary to mention one policy in the receipt, although there were several policies, and gave paramount importance to the receipt, notwithstanding the undisputed testimony that the understanding between the parties was that when payment was made, it was made on both policies. This, however, seems to be immaterial, particularly in view of the fact that the payments were not made within time.

It is respectfully submitted for the reasons stated, that the judgment should be reversed.

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