

N. J. Court of Errors and Appeals,

IN THE LAST RESORT, ETC.

HENRY S. WHITE,
Deft. in Error.

ads.

THE MUTUAL BENEFIT LIFE
INSURANCE COMPANY,

Plff. in Error.

In Error.

POINTS FOR DEFENDANT IN ERROR.

The questions involved have been settled in this Court, and that in a cause wherein this plaintiff in error was fully heard. *Stare decisis, &c.*

The Mutual Benefit Life Insurance Company *vs.* Hillyard *et al.* 8 *Vroom*, p. 444.

Affirming same case in Supreme Court. 6 *Vroom*, p. 415.

NEW JERSEY
Court of Errors and Appeals.

THE MUTUAL BENEFIT LIFE IN-
SURANCE COMPANY,

Plaintiffs in error,
v.

HENRY S. WHITE,

Defendant in error.

In Error

to the

Supreme Court.

POINTS.

I.

The plaintiff below in this cause demanded judgment for the full amount of the policy of life insurance sued upon (\$2,000) and interest, less a premium of sixty-eight dollars and interest thereon, and obtained judgment for the sum of three thousand two hundred and forty-seven dollars and sixteen cents and costs, whereas he was entitled only to judgment for the equitable value of said policy, being, according to the evidence, the sum of two hundred and seventy-one dollars and twenty-eight cents, with interest thereon from the close of the war. *New York Life Ins. Co. v. Statham & al.* 3d Otto, 34.

F. H. TEESE,

Attorney for and Counsel with plaintiff in Error.

NEW JERSEY

Court of Errors and Appeals.

THE MUTUAL BENEFIT LIFE IN-
SURANCE COMPANY,

Plaintiffs in error,
and

HENRY S. WHITE,

Defendant in error.

In Error

to the

Supreme Court.

F. H. TEESE, Attorney for Plaintiff in Error.

GILBERT COLLINS, Attorney for Defendant in Error.

16

NEW JERSEY SUPREME COURT.

HENRY S. WHITE,

vs.

THE MUTUAL BENEFIT LIFE IN-
SURANCE COMPANY.

In Case.

On Postea, &c.

GILBERT COLLINS,
Attorney.

As yet of the Term of June, A. D. Eighteen hundred and seventy-six.

Witness, MERCER BEASLEY, ESQUIRE, Chief Justice.

BENJ. F. LEE, Clerk.

HUDSON COUNTY, ss :

The Mutual Benefit Life Insurance Company, a body corporate of New Jersey, being the defendant herein, was summoned to answer unto Henry S. White, the plaintiff herein, of a plea of trespass on the case upon promises, to his damage of Five Thousand Dollars ; and thereupon the said plaintiff, by Gilbert Collins, his Attorney, complains. For that whereas heretofore, to wit : On the twenty-ninth day of June, A. D. eighteen hundred and fifty-three, at Jersey City, in the County of Hudson, and State of New Jersey, one Jane E. Prichard did make and enter into a certain agreement in writing, commonly called a policy of insurance, with the said defendant, and the said defendant did make and enter into the said agreement with the said Jane E. Prichard, which agreement in writing, signed by the President and Secretary of the said defendant, the said plaintiff now brings here into Court, the same bearing date, to wit : the day and year last aforesaid, in and by which agreement it was recited that the said defendant, in consideration of the sum of sixty-eight dollars, to them in hand paid by the said Jane E. Prichard, and of the annual premium of sixty-eight dollars, to be paid on or before twelve o'clock M, on the twenty-ninth day of June in every year, during the continuance of that policy, did assure the life of one John L. Prichard, of Lynchburg, in the County of Campbell, and State of Virginia, in the amount of two thousand dollars, for the term of life ; and that the said defendant did thereby promise and agree to and with the said Jane E. Prichard, and her assigns, well and truly to pay, or cause to be paid, the said sum insured of two thousand dollars to the said Jane E. Prichard, or her assigns,

within ninety days after due notice and proof of death of
 the said John L. Prichard; and in case the said Jane E.
 Prichard should die before the decease of the said John L.
 Prichard, then the amount of that insurance should be
 payable to his children, or to their guardians if under age,
 within ninety days after due notice and proof of the death of
 the said John L. Prichard, deducting therefrom all indebt-
 edness of the party to the said defendants; provided
 always, and it was thereby declared to be the true intent
 and meaning of that policy, and that the same was 10
 accepted by the assured upon the express conditions, that
 in case the said John L. Prichard should die upon the seas,
 or pass beyond the settled limits of the United States,
 without the consent of the defendant previously obtained
 and endorsed upon said policy (excepting into the settled
 limits of the British Provinces of Canada, Nova Scotia, or
 New Brunswick), or should, without such previous consent
 thus endorsed, visit those parts of the United States which
 lie South of the Southern line of North Carolina and 20
 Tennessee, or West of the Mississippi River, except in the
 settled regions of the States of Iowa and Missouri, North
 of the 38th degree of North latitude, between the first day
 of July and the first day of November; or should, without
 such previous consent thus endorsed, enter into any military
 or naval service whatsoever, (the militia not in active
 service excepted,) or in case he should die by his own
 hand, in or in consequence of a duel, or by reason of
 intemperance from the use of intoxicating liquors, or by
 the hands of justice, or in the known violation of any law 30
 of these States, or of the United States, or of the said pro-
 vinces, or of any other country which he might be
 permitted under that policy to visit or reside in, that policy
 should be void, null and of no effect; and that it was also
 understood and agreed to be the true intent and meaning
 thereof, that if the declaration made by the said Jane E.
 Prichard, and bearing date the twenty-ninth day of June,
 A. D. eighteen hundred and fifty-three, and upon the faith

of which that agreement was alleged to be made, should be found in any respect untrue, then, and in such case, that policy should be null and void ; or in case the said Jane E. Prichard should not pay the said annual premium on or before the several days thereinbefore mentioned for the payment thereof, then, and in every such case, the said defendant should not be liable to the payment of the sum insured, or any part thereof, and that policy should cease and determine ; and it was thereby further agreed, that in
 10 every case when that policy should cease, or become or be null or void, all previous payments made thereon, and all profits, should be forfeited to the said defendant.

And, whereas, also the said Jane E. Prichard did pay or cause to be paid to the said defendant the said annual premiums of sixty-eight dollars, on or before twelve o'clock M., on the twenty-ninth day of June in every year up to and until the year eighteen hundred and sixty-two, to wit, at Jersey City aforesaid.

And, whereas, also during the whole of the year one
 20 thousand eight hundred and sixty-two ; and for a long time, to wit, one year next prior to said year, and for a long time, to wit, six months next after said year, the said Jane E. Prichard and John L. Prichard were inhabitants and citizens of the State of Virginia in the United States of America, and the said defendant was an inhabitant and citizen of the State of New Jersey, another of the said United States.

And, whereas, before the twenty-ninth day of June, A.
 30 D. eighteen hundred and sixty-two, upon which day an annual premium would have become due and payable under said policy, to wit, on the first day of August, A. D. eighteen hundred and sixty-one, the President of the United States of America, by virtue of the power and authority in him vested, and according to the statute in such case made and provided, had, by his proclamation bearing date a certain day and year therein mentioned, to wit, the day and year last aforesaid, declared that the inhabitants of

the State of Virginia so as aforesaid, then inhabited by the said Jane E. Prichard and John L. Prichard, and the section or part of said State so then inhabited by them, were in a state of insurrection against the United States aforesaid ;

And whereas the said proclamation did remain in force, and the state of insurrection and condition of hostility therein declared to exist, did continue for a long space of time, to wit, two years after the date thereof, by reason whereof all commercial intercourse by and between the said Jane E. Prichard and John L. Prichard or either of them on the one part, and the said defendant on the other side, ceased and became, and for a long time, to wit, all the time last aforesaid, continued to be unlawful and impossible, and for that and no other reason the said Jane E. Prichard and John L. Prichard were, and each of them was, necessarily prevented and hindered from paying to the said defendant, and the said defendant was necessarily prevented and hindered from receiving the said annual premium last aforesaid on the twenty-ninth day of June, A. D. eighteen hundred and sixty-two, and for so long a time as the said proclamation remained in force and the said condition of hostility continued ;

And, whereas, while the said proclamation remained in force and the said condition of hostility continued, and after the twenty-ninth day of June, A. D. eighteen hundred and sixty-two, and before the twenty-ninth day of June, A. D. eighteen hundred and sixty-three, to wit, on the fifteenth day of May, A. D., eighteen hundred and sixty-three, the said John L. Prichard died, at Lynchburg, in the State of Virginia aforesaid, of which the said defendant forthwith thereafter, to wit, on the day last aforesaid, at Jersey City aforesaid, had due notice and proof ;

And whereas, afterwards, while the said proclamation remained in force and the said condition of hostility continued at Richmond, in the State of Virginia, the said Jane

E. Prichard, on the thirtieth day of May, A. D. eighteen hundred and sixty-three, for valuable consideration by writing under her hand, did assign unto one Benjamin W. Knowles the said policy of insurance, and all sum or sums of money due and to grow due thereon, of which assignment the said defendant then and there had notice ;

And whereas, the said Benjamin W. Knowles, while residing at Westfield, in the county of Hampden and State of Massachusetts, on the first day of September, A. D. 10
 1818, departed this life, having first duly made and published his last will and testament, bearing date the twenty-eighth day of August, A. D. eighteen hundred and seventy, in and by which he did appoint Caroline H. Knowles his Executrix ;

And, whereas, the said last will and testament was on the twenty-fourth day of October, A. D. eighteen hundred and seventy, duly proved in the Probate Court, of the said County of Hampden, the lawful tribunal for that purpose, 20
 and letters testamentary thereon duly issued by said Court to the said Caroline H. Knowles, as such Executrix, on the day and year last aforesaid ;

And, whereas, afterwards, to wit, on the nineteenth day of February, A. D. eighteen hundred and seventy-six, at Westfield, in the County of Hampden, and State of Massachusetts, the said Caroline H. Knowles, Executrix as aforesaid of the last will and testament of the said Benjamin W. Knowles, deceased, for valuable consideration, did, 30
 by writing under her hand, assign, transfer and set over unto the said plaintiff, the said policy of insurance and all sum and sums of money due and to grow due thereon, with full power and authority to collect the same, to his own use, of which assignment the said defendant then and there had notice ;

And whereas, as soon as the said condition of hostility had ceased, to wit, on the first day of November, A. D. eighteen hundred and sixty-three, before the death of the

said Benjamin W. Knowles, he, the said Benjamin W. Knowles, tendered and offered to pay unto the said Defendant the said annual premium, which, but for said Proclamation and condition of hostility, would have become due on the twenty-ninth day of June, A. D. eighteen hundred and sixty-two, and lawful interest thereon, and also there tendered and offered to said defendant and requested of the said defendant, that the said defendant should deduct the amount of said premium and interest from the said sum insured, to wit, at Jersey City aforesaid ; 10
 and the said defendant then and there refused to receive the same, and also refused to deduct the same as aforesaid ; and the said Benjamin W. Knowles during his lifetime, and his executors since his death, and the said plaintiff always were, and each of them always was, and the said plaintiff now is ready and willing to pay the same to the said defendant, and also to allow the said defendant to deduct the same from the said sum insured, and the said defendant has ever since been unwilling and refused, and still is unwilling and refuses to receive the same and deduct 20
 the same as aforesaid ;

And whereas, the said John L. Prichard did not violate any of the terms or conditions aforesaid of the said agreement or policy of insurance, and the said John L. Prichard, Jane E. Prichard, Benjamin W. Knowles, Caroline H. Knowles, Executrix as aforesaid, and the said plaintiff fully performed all the conditions precedent to be performed by them or either of them under said agreement, to wit, at Jersey City, aforesaid, of all which and of all the premises the said defendant had notice, to wit, at Jersey 30
 City, aforesaid ;

And by means of the premises the said defendant on the said nineteenth day of February, A. D. eighteen hundred and seventy-six, at Jersey City, aforesaid, became and was indebted to said Plaintiff in said sum of two thousand dollars, with lawful interest thereon from a date ninety days after the notice and proof of the death of said John

L. Prichard, as aforesaid, and being so indebted then and there undertook and faithfully promised the said plaintiff to pay the said sum of money with interest as aforesaid, when thereunto afterwards requested.

Yet the said defendant, not regarding its said promise, has not as yet, although often requested so to do, paid the said sum of money and interest, as aforesaid, or any part thereof to the said plaintiff, but to do so has hitherto wholly refused and still does refuse, to the damage of
 10 the said plaintiff of five thousand dollars, and therefore he brings his suit, &c.

And the said defendants, by Frederick H. Teese, their Attorney, come and defend the wrong and injury when, &c., and say that they did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against them, and of this they put themselves upon the country, &c.

And for a further plea in this behalf the said defendants, by leave of the Court here for this purpose, first had and
 20 obtained according to the form of the statute in such case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say they did not have due notice and proof of the death of the said John L. Pritchard, as in the declaration alleged; and of this the defendants put themselves upon the country, &c.

And for a further plea in this behalf the said defendants, by like leave of this Court, here for this purpose, first had and obtained, according to the form of the statute in such
 30 case made and provided, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the said Benjamin W. Knowles did not nor did any other person as soon as the said condition of hostility in the declaration mentioned, had ceased, or at any other time since then, tender and offer to pay unto the the defendants the said annual premium, which the said declaration alleges would, but for said

proclamation therein mentioned, and condition of hostility, have become due and payable on the twenty-ninth day of June, eighteen hundred and sixty-two, and lawful interest thereon, or any part of said premium or interest, nor did the said Knowles ever tender or offer to the defendants, or request of them that they should deduct the amount of said premium and interest from the said sum insured, nor did the defendants refuse to receive the same, or refuse any such alleged offer or alleged tender or request, as in the declaration alleged, but said premium remains wholly unpaid and untendered ; 10

And of this the defendants put themselves upon the country, &c.

And for a further plea in this behalf, the said defendants, by like leave of the Court as aforesaid, say that the plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that after the making of the alleged promises in the declaration mentioned, and before the alleged assignment by the said Jane E. Prichard to the said Benjamin W. Knowles, to wit, on the thirtieth day of May, one thousand eight hundred and sixty-three, they paid to the said Jane E. Prichard divers sums of money, amounting, to wit, to all the moneys in the declaration mentioned, in full satisfaction and discharge of all the causes and rights of action in the declaration mentioned, which payment the said Jane E. Prichard did then accept of and from the defendants in such full satisfaction and discharge, as aforesaid, of all which the said Benjamin W. Knowles, then in his lifetime, and the plaintiff also then had due notice ; 20 30

And this the defendants are ready to verify ; wherefore they pray judgment if the plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

And for a further plea in this behalf the said defendants by like leave of the Court as aforesaid, say that the said plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that it was not un-

lawful or impossible for the said Jane E. Prichard or John L. Prichard to have paid the said annual premium due on the twenty-ninth day of June, eighteen hundred and sixty-two, nor were they necessarily prevented or hindered from paying the said premium by the proclamation in said declaration alleged, and of this the defendants put themselves upon the country, &c.

And for a further plea in this behalf, the said defendants, by like leave of the Court, as aforesaid, say that the plaintiff ought not to have or maintain his aforesaid action thereof against them, because they say that the said
 10 Benjamin W. Knowles, on the thirtieth day of May, eighteen hundred and sixty-three, purchased the said policy from the said Jane E. Prichard, for the benefit and sole use of the defendants, and with the moneys of the defendants, then in the hands of him, the said Knowles, and that the alleged assignment to him, the said Knowles, if any such assignment exists, was and is in fraud of the rights of the defendants, and that the said policy is now the property of these defendants, and not of the plaintiff, of all which the
 20 plaintiff, on the day and year last aforesaid, had due notice; and this the defendants are ready to verify; wherefore they pray judgment if the said plaintiff ought to have or maintain his aforesaid action thereof against them, &c.

And for a further plea in this behalf, the said defendants, by like leave of the Court, here for this purpose first had and obtained, according to the form of the statute in such case made and provided, say that the plaintiff, before and at the time of the commencement of this suit, was and still is indebted to the defendants in five thousand dollars, for life insurance premiums due from the plaintiff to
 30 the defendants, and for money by the defendants, before that time lent and advanced to, and paid, laid out and expended for, the plaintiff, at his request; and for money by the plaintiff had and received for the use of the defendants; and for interest for the forbearance by the defendants to the plaintiff, at his request, of

money due and owing from the plaintiff to the defendants; and for money due and owing from the plaintiff to the defendants, upon an account stated between them; which said sum of money so due to the defendants exceeds the damages sustained by the plaintiff, by reason of the alleged non-performance of the supposed promises in the declaration mentioned, and out of which said sum of money so due to the defendants, they, the defendants, are ready and willing, and hereby offer to set off and allow to the plaintiff, so much of the said sum of money so due 10 and owing from the plaintiff to the defendants, against any demands of the plaintiff, to be proved on the trial of this suit, as will be sufficient to satisfy and discharge such demand, according to the form of the statute in such case made and provided;

And this the defendants are ready to verify; wherefore, they pray judgment if the said plaintiff ought to have or maintain his aforesaid action against them, &c.

And the said plaintiff, as to the said pleas by the said defendants, by them first, secondly, thirdly and fifthly 20 above pleaded; and whereof they have put themselves upon the Country, does the like.

And the said plaintiff as to the said plea of the said defendants by them fourthly above pleaded, says that the said plaintiff by reason of anything by the said defendants in that plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against the said defendants, because he says that the said defendants did not at the time in said plea named, or at any time pay to the said Jane E. Pritchard any money in satisfaction and discharge of 30 the causes and rights of action in the said declaration mentioned, or any or either of them, or any part thereof, in manner and form as the said defendants have above in their said plea in that behalf alleged, and this he the said plaintiff prays may be inquired of by the Country, &c.

And the said plaintiff as to the said plea of the said defendants by them sixthly above pleaded, says that the said

plaintiff by reason of anything by the said defendants in that plea alleged ought not to be barred from having and maintaining his aforesaid action against the said defendants, because he says that the said Benjamin W. Knowles did not purchase the said policy from the said Jane E. Pritchard for the benefit and sole use of the said defendants, with moneys of the said defendants then in his hands, and that the said assignment to him the said Knowles was not in fraud of any rights of the said defendants, and that the
 10 said policy is not now the property of the said defendants, as the said defendants have above in their said sixth plea in that behalf alleged, but is the property of the said plaintiff, and this he the said plaintiff prays may be enquired of by the Country, &c.

And the said plaintiff as to the said plea of the said defendants by them lastly above pleaded, says that the said plaintiff by reason of anything by the said defendants in that plea alleged ought not to be barred from having and maintaining his aforesaid action thereof against the said defend-
 20 ants, because he says that he the said plaintiff was not at the time of the commencement of this suit, and is not now indebted to the said defendants in the sum in said plea mentioned, or in any sum in manner and form as the said defendants have above in said last plea in that behalf alleged, and this he the said plaintiff prays may be inquired of by the Country, &c.

Therefore, let a jury thereupon come before the Chief Justice, or some other Justice of the Supreme Court of the State of New Jersey at a Circuit Court, to be holden at
 30 Jersey City, in and for the County of Hudson, on the first Tuesday in December, in the year of Our Lord one thousand eight hundred and seventy-six, by whom, &c., and the same day is given to the parties aforesaid there, &c.

And now at this day, to wit, the twenty-seventh day of February, A. D. eighteen hundred and seventy-seven, before our said Supreme Court, at Trenton, comes the said plaintiff by his attorney aforesaid, and the Justice before

whom, &c., having sent hither his record, had before him, in these words, to wit :

“Afterwards, to wit, at a Circuit Court held at Jersey City, in and for the County of Hudson, before the Honorable Manning M. Knapp, Associate Justice of the Supreme Court of New Jersey, on the first Tuesday in December, A. D. 1876, according to the form of the statute in such case made and provided, come as well the said plaintiff as the said defendant, by their respective attorneys within mentioned, and the said attorneys waive a jury, and consent that the said Justice shall hear, try and determine the truth of the matter and things within contained : 10

And the said Justice as to the first of the issues within joined, finds and determines that the said defendant, The Mutual Benefit Life Insurance Company, did undertake and promise in manner and form as the said plaintiff Henry S. White has above thereof, in his said declaration alleged against it : and the said Justice does assess the damages of the said plaintiff, by reason of the non-performance by the said defendant, of the said promises and undertakings over and above his costs and charges by him about his suit in that behalf expended, at the sum of three thousand two hundred forty-seven dollars and sixteen cents, and for those costs and charges six cents. 20

And the said Justice as to the second of said issues finds and determines that the said defendant did have due notice and proof of the death of the said John L. Pritchard, as in the said declaration alleged :

And the said Justice as to the third of said issues, finds and determines, that the said Benjamin W. Knowles did, as soon as the said condition of hostilities in the said declaration mentioned had ceased, tender and offer to pay unto the said defendant the annual premium which, but for the proclamation in said declaration mentioned, would have become due and payable on June twenty-ninth, A. D. eighteen hundred and sixty-two, and lawful interest thereon, and that the said defendant refused to receive the same: 30

And the said Justice as to the fourth of said issues, finds and determines, that the said defendant did not at any time pay to the said Jane E. Pritchard any of the moneys in the said declaration mentioned, in satisfaction and discharge of any of the causes and rights of action in said declaration mentioned :

And the said Justice as to the fifth of said issues, finds and determines that it was unlawful and impossible for the said Jane E. Pritchard or the said John L. Pritchard to
 10 have paid the said annual premium, due on the twenty-ninth day of June, A. D. eighteen hundred and sixty-two, and that they were necessarily hindered and prevented from paying the said premium by the proclamation in said declaration alleged :

And the said Justice as to the sixth of said issues, finds and determines that the said Benjamin W. Knowles did not purchase the said policy of insurance from the said Jane E. Pritchard for the benefit and sole use of the defend-
 20 ant, and with the moneys of the defendant then in his hands, and that the assignment thereof to him was not in fraud of the rights of the said defendants, and is not now the property of the said defendant, but is the property of the said plaintiff :

And the said Justice as to the last of said issues finds and determines that the said plaintiff was not at the time of the assignment aforesaid and is not now indebted to the said defendant in any sum of money as the said defendant has alleged.

Therefore it is considered that the said plaintiff do re-
 30 cover against the said defendant his said damages by the Justice in form aforesaid found to three thousand two hundred and forty seven dollars and sixteen cents, and also sixty dollars and two cents for his costs and charges aforesaid by the Court now here adjudged to the said plaintiff, and with his assent, which said damages, costs and charges in the whole amount to three thousand three hundred and seven dollars and eighteen cents.

Judgment signed this twenty seventh day of February
A. D. eighteen hundred and seventy seven.

M. BEASLEY,

Ch. Jus.

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

In testimony whereof I have hereto set my hand and the
seal of said Court at Trenton, this sixteenth day of April, 10
A. D. eighteen hundred and seventy-seven.

SEAL.

BENJ. F. LEE,

Clk.

EXHIBIT D. 1.

NEW JERSEY SUPREME COURT.

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|---|---|-----------------|
| HENRY S. WHITE, v. THE MUTUAL BENEFIT LIFE INSURANCE COM- PANY. | } | <i>In Case.</i> |
|---|---|-----------------|

Policy No. 9,758, on the life of John L. Pritchard, issued June 29th, 1853, for the sum of \$2,000 payable at the death of the insured. Annual premium, \$68.00. The last premium was paid in 1861. The policy lapsed by non-payment of premium on the 29th of June, 1862.

I hereby certify that the equitable value of the above policy, calculated in the way prescribed in the opinion of the Supreme Court of the United States in the three cases decided in that Court, in the October Term, 1876—was on the 29th day of June, 1862, (the date of its lapse) the sum of two hundred and seventy-one dollars and twenty-eight cents, (\$271.28).

20 This sum is arrived at by using in the calculation the rates of mortality and interest used in the tables of the company, viz. :—The Carlisle Table of Mortality and four (4) per cent. interest, If any higher rate of interest had been used, the value would have been less than the above

named sum. No deduction has been made from the Reserve for a surrender charge.

BLOOMFIELD J. MILLER,
*Actuary of the Mutual Benefit
 Life Insurance Company.*

Newark, N. J. Dec. 1st, 1876.

[It was agreed upon the trial of the cause, that the defendant might offer in evidence the foregoing certificate (marked exhibit D. 1, on the part of the defendant) of Bloomfield J. Miller, the same as if the said Miller had been sworn 10
 as a witness, as to what the equitable value of said policy was in accordance with the decisions of the Supreme Court of the United States, and the same was admitted in evidence, subject to all exceptions as to the relevancy or competency of the testimony.]

NEW JERSEY SUPREME COURT.

HENRY S. WHITE,

v.

THE MUTUAL BENEFIT
LIFE INSURANCE COM-
PANY.

In Case.

GILBERT COLLINS, Attorney of Plaintiff.

F. H. TEESE, Attorney of Defendants.

10 Be it remembered, that on the twenty-third day of
December, one thousand eight hundred and seventy-six, at
a Supreme Court Circuit, holden at Hudson City, in and
for the County of Hudson, before his Honor, Manning M.
Knapp, Esq., one one of the Justices of the Supreme Court
of Judicature of the State of New Jersey, the issue joined
in the above stated cause, between the said parties (pro ut
the pleadings) came on to be tried by the said Justice, by
the consent of the said parties; and the testimony in the
cause having been concluded, and the parties having rested
the cause, the defendants requested his Honor, the said
20 Justice, to rule and find that the true measure of damages
in this cause is the equitable value of the policy at the
date of its lapse, with interest thereon from the close of
the war.

His Honor, the said Justice, declined to hold or find, as
above requested, but said: "In this case judgment will be
given for the value of the policy, with interest and deduc-
tion of the unpaid premium, and interest upon that. I
decline to give judgment upon the basis of the equitable
value as requested by defendant. The judgment is for

the plaintiff, two thousand dollars, with interest thereon at the rate of six per cent. per annum, from September 12th, 1865, less sixty-eight dollars, and interest thereon at the same rate, from June 29th, 1862." To which ruling of his Honor, the said Justice, the defendant prayed a bill of exception, and his Honor, the said Justice, sealed the exception accordingly.

M. M. KNAPP,

J. S. C.

SEAL.

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A Writ of Error on the said judgment, from the Court of Errors and Appeals, was issued on the second day of March, 1877, served on the same day and made returnable on the third Tuesday of March, 1877.

COURT OF ERRORS AND APPEALS.

THE MUTUAL BENEFIT
LIFE INSURANCE COM-
PANY,

vs.

HENRY S. WHITE.

Assignment of Errors.

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Afterwards, that is to say, on the second Tuesday of March, one thousand eight hundred and seventy-seven, in the Court of Errors and Appeals in the last resort in all causes in the State of New Jersey, come the said the Mutual Benefit Life Insurance Company, by Frederick H. Teese, their attorney, and say, that in the record and proceedings aforesaid, and also in the matters recited and con-

tained in the said bill of exceptions and also in giving the verdict and judgment aforesaid there is manifest error in this, to wit :

That the declaration aforesaid, and the matters therein contained are not sufficient in law for the said Henry S. White to have his said action against the said the Mutual Benefit Life Insurance Company.

10 There is also error in this, to wit, for that the said Justice before whom the said cause was tried, at and upon the aforesaid trial of the said issue so joined between the parties aforesaid, refused to rule that the true measure of damages was the equitable value of the policy in the declaration mentioned at the date of its lapse with interest thereon from the close of the war, but ruled and found that the damages of the said Henry S. White should be assessed at the whole sum of two thousand dollars insured by said policy, with interest from September 12th, 1865, less sixty-eight dollars and the interest thereon from June 29th, 1862, and assessed the said damages accordingly.

20 There is also error in this, to wit: for that judgment was awarded for the full face value of the said policy, with interest from September 12th, 1865, less sixty-eight dollars and interest thereon from June 29th, 1862, whereas judgment ought to have been ordered for the sum of \$271.28, the equitable value of said policy with interest from the close of the war.

30 Therefore, the said the Mutual Benefit Life Insurance Company pray that the judgment aforesaid by reason of the aforesaid errors and of other errors appearing in the record and proceedings aforesaid may be reversed, annulled and altogether held for nothing, and that they may be restored to all things which they have lost by reason of the said judgment, &c.

F. H. TEESE,

Attorney for and of Counsel with Plaintiff in Error.

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