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New Jersey Court of Errors and Appeals

BRIDGET DIMICK, *vs.* THE METROPOLITAN LIFE INSURANCE COMPANY.	*On Contract.* *On Writ of Error.*

BRIEF FOR PLAINTIFF IN ERROR.

This is a review of a judgment entered on a verdict directed for the plaintiff by Mr. Justice Dixon.

The suit is by the widow of John W. Dimick, who died January 24th, 1900. The policy, which was issued December 4th, 1899, is set out in full in the declaration (pp. 4 to 16). It recites "the answers and statements contained in the printed and written application of this policy," as a consideration therefor, and makes such answers and statements warranties, and a part of the contract (p. 4). The policy is (*ibid*) made expressly subject to the conditions set forth on the reverse side thereof. The third condition (p. 5) provides, "If any answer or statement in the application herein referred to is not true * * * this policy shall be void * * *;" and the ninth condition (p. 7, line 1) reads:

> "The contract between the parties hereto is completely set forth in this policy and the application therefor taken together, and none of its terms can be varied or modified, nor any forfeiture waived or premiums in arrears received except by agreement in

writing signed by either the President, Vice-president, Secretary or Actuary, whose authority for this purpose will not be delegated; no other person has or will be given authority."

The application upon which this policy was based was offered in evidence (p. 23, line 25). It is printed on pages 8 to 16, and provides *inter alia* (p. 10, line 32):

> "It is hereby declared, agreed and warranted by the undersigned:
>
> "That the answers and statements contained in the foregoing application and those made to the medical examiner, together with this declaration, shall be the basis and become part of the contract of insurance with the Metropolitan Life Insurance Company; that they are full and true, and are correctly recorded, and that no information or statement not contained in this application, and in the statements made to the medical examiner, received or acquired at any time by any person, shall be binding upon the company, or shall modify or alter the declarations and warranties made therein; that the persons who wrote in the answers and statements were and are our agents for the purpose and not the agents of the company; and that the company is not to be taken to be responsible for its preparation or for anything contained therein or omitted therefrom; that any false, incorrect or untrue answer, any suppression or concealment of facts in any of the answers, any violation of the covenants, conditions or restrictions of the policy, any neglect to pay the premium on or before the date it becomes due, shall render the policy null and void, and forfeit all payments made thereon."

It further provides (p. 15, line 35), just preceding the signature of the insured:

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

This application for convenience may be divided into two parts.

A. The questions and answers as to the life history of the applicant (p. 8, line 30, to p. 11, inclusive)—this part being signed by both the insured and the beneficiary; and

B. The statement made to the medical examiner (pp. 12 to 16), which is signed by the insured alone.

The first part of the application contains the following questions and answers (p. 10, line 11):

> "e. State amount of insurance you now carry on your life, with name of company or association, by whom granted and the year of issue. (Enumerate each.) None."
>
> "f. If insured in this company, in ordinary, industrial or intermediate, give policy numbers. None. Is there any other insurance in force on your life? None."

In the second part of the application, the applicant in reply to the question, "Have you ever had rheumatism?" (p. 12, line 15) replied, "No." and in reply to the question (p. 14, line 7), "Have you ever been an inmate of any asylum or hospital? If so, when and for what?" he replied, "No."

Condition six of the policy (p. 6, line 18), requires proofs of death to be presented to the company as a basis of claim, and further provides that such proofs shall be evidence of the facts therein stated in behalf of the company. The proofs of death were offered in evidence (p. 37, line 30). They are printed on page 64 *et seq.* On page 66, at line 8, that part of the proofs signed by Mrs. Dimick contains the following:

> "Had deceased at any time been an inmate of or under treatment at a hospital or asylum? If yes, state when and where."

To which the following answer is given:

> "Yes, two weeks at Englewood Hospital for treatment runaway team."

It appears from the evidence of Dr. Curie (see p. 68, line 28, and p. 69, line 8), that Mr. Dimick had been in the Englewood Hospital for a fortnight or more three or four years before his death (p. 39, line 11); and the hospital records (p. 40, line 20) show that the date was October 28th, 1893.

On page 66, at line 18, also the part signed by Mrs. Dimick, in reply to the inquiry:

> "Did deceased carry any other insurance on his life? If yes, give name of company, amount, and dates of policies. Yes, P. U. Policy in Prudential, $219.00."

This policy in the Prudential company was produced (p. 25) and offered in evidence. It is found on page 53.

Notwithstanding the fact that the insured states in the application that he has never had rheumatism, the defendant produced and offered in evidence three applications for a pension made by Mr. Dimick in 1895 and 1896, and printed (pp. 56 to 63), all of which were under his oath. An examination of these applications shows that in the first the insured applied for a pension for disability, in which he did not state that he was suffering from rheumatism. (See p. 56, line 10.) This application, made November 30th, 1895, was rejected. The next application, sworn to June 20, 1896, gives (p. 59, line 40) rheumatism as a disability, and upon this a pension was allowed. On the 22nd of October, 1896, Dimick verified another application for an increase of pension, stating rheumatism (p. 62, line 21) as one of his disabilities, entitling him to such increase, and the increase was granted.

These applications for pension were undoubtedly competent evidence on the question of fraud, but are not I concede substantive proof as against the plaintiff that the insured had in fact suffered from rheumatism previous to his being insured. The defendant offered further evi-

dence in connection with the pension papers, which I think would have, if admitted, proved the fact, or at least been evidence of the fact that the insured had rheumatism. This was rejected, and the ruling thereon constitutes one of the grounds for review.

At the close of the case a verdict was directed for the full amount of the policy with interest. The plaintiff, against the defendant's objection, was permitted to show by Freedman, the soliciting agent, who procured the policy in suit, (p. 44, l. 18) that he knew at the time that the application was signed by Mr. and Mrs. Dimick that Dimick was insured in the Prudential. He states, however, that that original policy on Dimick's life had lapsed, and that a paid up policy in the Prudential had been substituted; that he did not consider that a policy, because Mr. Dimick did not pay any premiums thereon. There is no evidence that anybody else connected with the defendant company knew of the Prudential policy. The learned trial judge in directing a verdict thus treats this point:

> "Two men cannot agree that black is white and make it white. The evidence is that the person who wrote this answer and received this application was your agent, and that he knew all about the circumstances, and although this instrument says he shall not be deemed your agent, the fact is that he was your agent, just as was the doctor, and you cannot enjoy the benefit of an agency and repudiate the burdens; the burdens go with the benefits. If you select an agent and pay him to render services for you, you cannot force somebody else dealing with him as your agent to bear the burdens of his mistakes and errors; and it is upon that view that I am inclined to say that you cannot rely upon this answer here, in view of the testimony in this case. Your agent, (for he was your agent to receive this application from this man) knew all about it, and purposely, with that knowledge, and honestly, and on his understanding of the situation, wrote the word "none;" and, notwithstanding the fact that you have said in this in-

strument that he shall not be your agent, yet he is your agent, and no such statement can change his position. It is against public policy.

"Your agent, the person who was receiving for you this information from Mr. Dimick, thought this paid-up policy in the Prudential company, was not such a policy as you were inquiring about; he knew exactly what it was, and he believed it was not such a policy as was inquired of by you, and accordingly he wrote that answer. He was your agent and construed these questions. That seems to me to be the mercantile, equitable and reasonable view of the matter, supported by the decisions of the Court of Appeals of the State of New York, from which we get a great deal of our recent commercial law, and I think that there is really no question to be submitted to the jury."

So also the learned trial judge permitted the defendant to ask Dr. Haring, pp. 41-42, against the defendant's objection, whether he was not aware that Dimick had been in a hospital, or whether he received an answer from Dimick to that inquiry in the application, to which he answered "No," and Dr. Haring's answer was (p. 43, l. 9):

"My impression is that I didn't ask that question, but as I had no knowledge of his ever having been in the hospital, I answered it in the negative. He was a strong athletic man, and my present impression is that I answered that in the negative without asking him the question."

Concerning this, the learned trial judge in directing a verdict, stated:

"The same thing is applicable as to your physician. He says, 'I never asked the man about the hospital; I knew he was injured.' He didn't ask that; he waived that question; your agent waived that question. He told you 'No.' Because your agent makes a false representation to you, I don't see how you are going to hold a stranger on that."

I.

The view of the trial judge, admitting the foregoing evidence as to what the agent, or physician, knew, to overcome the positive statements in the application, and the consequent direction of a verdict, were erroneous.

This very question has been decided time and again, both in the Supreme Court and in this Court, and I respectfully contend that the subject is *res adjudicata* in this State.

In *Catoir* v. *The American Life Co.* (1868), 4 Vr., 487, it was sought to bind an insurance company with the receipt of a belated payment of a premium by an agent, contrary to the express terms of the policy; the claim being made in that case that the agent who was entitled to receive the money had waived its tardiness, and that the company was bound by such waiver. The policy expressly provided that agents were not authorized to make contracts for the company, nor to write upon the policy, except his signature, nor to waive forfeitures. The court held that where the policy contains an express limitation upon the power of agents, they have no legal right to contract with the party as against the company so as to change the terms of the policy, or to dispense with the performance of any part of the consideration, and that the insured was estopped by accepting the policy containing such conditions, from setting up powers in the agent in opposition to the limitations and conditions therein contained.

The leading case is *Dewees* v. *Manhattan Ins. Co.*, 6 Vr., 367. Here Chief Justice Beasley considered the whole subject, and delivered an opinion which has ever since been construed as settling the law in this State. The

policy there provided that in the event of the building which was insured being used for certain specified hazardous purposes, the policy should, for the time being, be suspended, and on its being shown that at the time of the fire this condition had been violated, it was held no defence that it appeared that the agent of the company who procured the policy, was aware of such hazardous use at the time the policy was taken out. The opinion discusses the authorities in several States, and concludes that the written agreement as contained in the policy must be alone examined to ascertain the contract, and that to consider the knowledge or information the agent may have, as any violation of such written terms, would be contrary to legal principles.

The next case is *Franklin Fire Ins. Co.* v. *Martin,* decided in this court in 1878, 11 Vr., 568. Here the policy described the property insured as "occupied as a dwelling and boarding house." It was in fact occupied as a country tavern, where there was a billiard table. The property continued to be thus used until the fire occurred. These uses were classified in the conditions of insurance as extra hazardous. The trial judge received evidence that the agent who procured the insurance at that time inspected the premises, and knew the manner in which they were then used, and left the question to the jury whether the insurance company and the insured had therefore not knowingly used the term "boarding house" to describe the thing that was insured, holding that if the agent, acting on his own knowledge and making his own survey, undertook to describe the building, it was his description of the risk, and if the company accepts it, it agrees that the terms used shall describe the risk as it existed. A full and characteristic discussion of all the authorities is made by Judge Depue in delivering the opinion of this court, in the course of which he refers to the opinion of the Su-

preme Court of the United States in *Insurance Co.* v. *Wilkinson,* 13 Wall., 222, and other authorities, which permitted evidence of this kind to be introduced, and concerning them he says:

> "It is manifest that the theory that such parole evidence, though it may not be competent to change the written contract, may be received for the purpose of raising an estoppel *in pais,* is a mere evasion of the rule excluding parole testimony when offered to alter a written contract. A party suing on a contract in an action at law, must be conclusively presumed to be aware of what the contract contains, and the legal effect of his agreement is that its terms shall be complied with. Extrinsic evidence of the kind under consideration must entirely fail in its object unless its purpose be to show that the contract expressed in the written policy was not in reality the contract as made. * * * Nor is the reasoning of the learned justice who delivered the opinion in *Insurance Co.* v. *Wilkinson, (supra),* that the admission of such testimony is rendered necessary by the manner in which agents are sent over the country by insurance companies and stimulated by them to exertions in effecting insurance—which often leads to a disregard of the true principles of insurance, as well as fair dealing—any more satisfactory. It introduces into the administration of the law the novel doctrine that the rules which regulate the admission of evidence fluctuate with the character of the agencies parties employ in transacting business, and upon that foundation establishes an exceptional rule of evidence to be applied to an entire class of contracts, whether agents ignorant, incompetent, or unscrupulous were employed or not. It leaves the whole subject of contracts of insurance at the mercy of a kind of evidence which is regarded as too untrustworthy and unreliable ever to control contracts in writing. * * * A court of law can do nothing but enforce the contract as the parties have made it. The legal rule that in courts of law a written contract shall be regarded as the sole repository of the intention of the parties, and that its terms cannot be changed by parole testimony, is of the utmost importance in a trial of jury cases, and can never be departed from without the risk of disastrous consequences to the rights of parties."

The opinion quotes with approval, and affirms the opinion in *Dewees* v. *The Ins. Co.* (*supra*), and makes the view there enunciated the rule of this court.

The same doctrine is practically adhered to by the Supreme Court in *Carson* v. *The Jersey City Ins. Co.*, 14 Vr., 300 (1881). See also *Bennett* v. *The St. Paul Fire and Marine Ins. Co.*, 26 Vr., 327 (1893).

Martin v. *The Franklin Fire Ins. Co., supra,* has settled the law in this court and in New Jersey, and has never, as far as I know, been questioned. It, together with *Dewees* v. *The Insurance Co.,* was recently expressly reaffirmed in this Court in *Ellison* v. *Gray,* 10 Dick. 581, (1897).

The Supreme Court of the United States, after some vaccilation upon this subject, have finally unequivocally adopted the view of this court.

In *Ins. Co.* v. *Wilkinson,* 13 Wall. 222 (1871), it appeared that the agent who procured the policy had inserted in the application for the insurance a representation of the age of the mother of the insured at the time of her death, which was untrue, but which the agent himself obtained from a third person and inserted without the assent of the assured, and it was held that such conduct on the part of the agent was the act of the company, and not of the assured, and although the age was misstated, did not invalidate the policy. It is this case that we have seen Judge Depue, in *Franklin Ins. Co.* v. *Martin,* (*supra*), repudiated.

The subject was again considered in *New York Life Ins. Co.* v. *Fletcher,* 117 U. S. 519 (1885). There an agent procuring a policy under instructions from his company, questioned the insured on subjects material to the risk. The assured made answers which, if correctly

transcribed and transmitted to the company, would have probably caused it to decline the risk. The agent, without the knowledge of the applicant, wrote down false answers, which were signed by the applicant without reading, and by the agent transmitted to the company, and the company thereupon assumed the risk. It was conditioned in the policy that the answers were a part of it, and that no statement to the agent thus transmitted should be binding on his principal, and a copy of the answers with these conditions conspicuously printed upon it, accompanied by the policy. Held, that the policy was void. The court undertakes to distinguish *Insurance Co.* v. *Wilkinson, (supra)*, by the fact that in that case no limitation upon the powers of the agent were expressly set out in the application signed by the insured. It says:

> "Here the power of the agent was limited, and notice of such limitation given by being embodied in the application, which the assured was required to make and sign, which, as we have stated, he must be presumed to have read. He is therefore bound by the statements."

Concerning the duty of an applicant for insurance in such cases, Judge Field in this case says:

> "It was his duty to read the application he signed. He knew that upon it the policy would be issued, if issued at all. It would introduce great uncertainty in all business transactions, if a party making written proposals for a contract with representations to induce its execution, should be allowed to show, after it had been obtained, that he did not know the contents of his proposals, and to enforce it notwithstanding their falsity as to matters essential to its obligation and validity. Contracts could not be made or business fairly conducted if such a rule should prevail; and there is no reason why it should be applied merely to contracts of insurance. There is nothing in their nature which distinguishes them in this particular from others."

The whole subject was recently most elaborately reconsidered in *Northern Assurance Co.* v. *Grandview Association,* 183 U. S. 308 (1901), where Judge Shiras discusses all the authorities showing that the English, Canadian, Massachusetts, Vermont, Michigan, Connecticut, New York, New Jersey, Pennsylvania authorities, and most of the decisions of the Circuits Courts of Appeal, unite in the doctrine which he says may be briefly stated to be:

> "That contracts in writing, if in unambiguous terms, must be permitted to speak for themselves, and cannot by the courts, at the instance of one of the parties, be altered or contradicted by parol evidence, unless in case of fraud or mutual mistake of facts; that this principle is applicable to cases of insurance contracts as fully as to contracts on other subjects; that provisions contained in fire insurance policies, that such a policy shall be void and of no effect if other insurance is placed on the property in other companies, without the knowledge and consent of the company, are usual and reasonable; that it is reasonable and competent for the parties to agree that such knowledge and consent shall be manifested in writing, either by endorsement upon the policy or by other writing; that it is competent and reasonable for insurance companies to make it matter of condition in their policies that their agents shall not be deemed to have authority to alter or contradict the express terms of the policies as executed and delivered; that where fire insurance policies contain provisions whereby agents may, by writing endorsed upon the policy or by writing attached thereto, express the company's assent to other insurance, such limited grant of authority is the measure of the agent's power in the matter, and where such limitation is expressed in the policy, executed and accepted, the assured is presumed, as matter of law, to be aware of such limitation; that insurance companies may waive forfeiture caused by non-observance of such conditions; that, where waiver is relied on, the plaintiff must show that the company, with knowledge of the facts that occasioned the forfeiture, dispensed with the observance of the condition; that

> where the waiver relied on is an act of an agent, it must be shown either that the agent had express authority from the company to make the waiver, or that the company subsequently, with knowledge of the facts, ratified the action of the agent."

It is to be noted that this opinion quotes with approval six pages of the opinion in *Dewees* v. *Manhattan Insurance Co.* (*supra*).

To the same effect is *Hubbard* v. *Mutual Reserve Fund Life Association,* 80 Fed. Rep., 681 (1897); also *Maier* v. *Fidelity Mutual Life Association,* before Circuit Justice Harlan and Circuit Judges Taft and Lurton in the Circuit Court of Appeals (1897), 78 Fed. Rep., 566, where all the authorities are quoted.

The Massachusetts courts have been consistently in our favor upon this subject.

Shawmut Co. v. *Stevens,* 9 Allen, 332 (1864); *Gotthard* v. *The Insurance Co.,* 108 Mass. 56 (1871); *Monitor Ins. Co.* v. *Buffum,* 115 Mass., 343 (1874), where the opinion says, in a case of this kind:

> "The defendant having thus accepted the policies, and held them as contracts binding upon the insurance company, must be taken to hold them according to the terms which they express. In the absence of fraud, he is conclusively presumed to assent to those terms. He cannot be permitted to qualify his contract or his relations to the subject matter of it by asserting and proving that he never read the writing and was ignorant of its contents. If he would bind the other party, he must be bound himself."

See also *Batchelder* v. *The Queen Ins. Co.,* 135 Mass., 449 (1883); and *Davis* v. *Aetna Mut. Fire Ins. Co.,* (N. H., 1893), 39 Atl. Rep., 902.

In *Thomas* v. *The Commercial Union Co.,* 37 N. E. Rep., 672, (1894). Morton, J., says:

> "The testimony which was offered by the plaintiffs of what took place at the issuing of the policy

> for the purpose of showing that the property was fully described to the agent, and that the description contained in the policy was his description, was rightfully excluded. If admitted, it would have tended to vary the written contract."

A most interesting and learned opinion is found in *Liverpool etc. Ins. Co.* v. *Richardson Lumber Co.,* 69 Pacif. Rep. 938 (1902) where all the authorities, including *Dewees* v. *The Ins. Co.,* and *Martin* v. *The Franklin Ins. Co.,* are discussed, as well as *Ins. Co.* v. *Building Assn.,* 183 U. S. 308. See also *O'Rourke* v. *John Hancock Mutual Life Ins. Co.,* Sup. Ct. of Rhode Island (1902), 50 Atl. Rep. 834; and *Leonard* v. *The State Mutual Life Ins. Co.,* (R. I.) 51 Atl. Rep. 1049 (March 1902). This opinion says:

> "It is also a settled rule in this state that one who is only authorized to solicit insurance, is not the agent of the company in making the application, and that if he takes part in making the application, he is in that respect the agent of the applicant, and not of the company."

In *Delaware Ins. Co.* v. *Harris,* 64 S. W. Rep. 867, the subject was intelligently considered by the Court of Civil Appeals of Taxes, and it was held that it was the duty of the applicant for insurance to see that the statements which the agent writes in his application are correct, and not having done so, he cannot claim that the conditions are waived, because the agent who took the application knew the facts.

The courts of New York have naturally had many opportunities to consider the subject. In the early case of *Plumb* v. *Cattaraugus Co.,* 18 N. Y., 302, the company was held bound by the representations of the agent in procuring insurance in regard to his power and authority,

although such representations varied from the written description of his powers contained in the policy.

This case was repudiated in the opinion of the Supreme Court by Chief Justice Beasley, in *Dewees* v. *The Manhattan Ins. Co.*, (*supra*), and was also overruled by the New York Court of Appeals in *Rohrbach* v. *The Germania Fire Ins. Co.*, 62 N. Y., 47. In that case it appeared that plaintiff fully stated all the facts to the agent of the company authorized to procure and submit applications and issue policies transmitted to him, and the statement in the application was entered therein by the agent as his conclusion from the facts, and was all he deemed material. By the policy it was agreed that the agent should be deemed the agent of the assured, not of the company under any circumstances. It was held that the knowledge of the agent was immaterial, and did not avoid the effect of the warranty.

The opinion states:

> "It is urged by the plaintiff that the errors and omissions were those of the defendant, but the plaintiff and defendant have in the policy, the contract between them, expressly agreed that Brand should be deemed the agent of the plaintiff and not of the defendant, under any circumstances whatsoever."

The court then comments on the severity of this clause in the policy, and continues:

> "But we must take the contracts of the parties as we find them, and enforce them as they read. By the one before us the plaintiff has so fettered himself as to be unable to retain, as the case now stands, the real essence of his agreement."

The contrary view taken was in *Van Schoick* v. *The Niagara Fire Ins. Co.*, 68 N. Y., 434, upon the theory of the hardship to assured in permitting the companies to adhere to the strict letter of their contracts—a matter which

Chief Justice Depue, referring specifically to this case in *Franklin Fire Ins. Co.* v. *Martin, (supra)*, says that—

> "The remedy is with the Legislature to prescribe what conditions only shall be valid, and to compel the printing of them in the policy in such a manner as to be capable of being read and understood. A court of law can do nothing but enforce the contract as the parties have made it."

Reference can also be made to *Wilbur* v. *The Williamsburg Ins. Co.*, 122 N. Y., 439, and *Allen* v. *The Ins. Co.*, 123 *id.*, 6.

A most recent case in New York is *Sternaman* v. *Metropolitan Life Ins. Co.*, 170 N. Y., 13; 62 N. E. Rep., 763, where an elaborate discussion is had in two opinions, the court being divided. The subject under consideration was a policy containing the identical clause with that in the case at bar, touching the effect of the statements made in the application, both to the medical examiner and otherwise. This application was divided into two parts, one of which was signed by the assured and the beneficiary, and the other by the assured alone, just as in the case at bar. In that case the medical examiner of the company wrote down the answers to the questions, among which were the following:

> "Have you ever had loss of consciousness? No.
> "Any personal injury? No.
> "Name and residence of your usual medical attendant. Dr. Frost, Plymouth Ave.
> "When and for what have his services been required? For la grippe.
> "Have you consulted any other physician? And if so, when and for what? No."

The application closed with a similar statement to that here under consideration to the effect that the assured renewed and confirmed his agreement as to the answers given above to the medical examiner.

Upon the trial the plaintiff offered to show that the assured at the time of the application told the examining physician that he had suffered from malaria; that he had been attended by a physician on several occasions; that he did have sore throat or tonsolitis; that he had once been hurt in a fall from his bicycle, and that on several occasions he had suffered from spells resulting in partial loss of consciousness, etc., etc., but that the examining physician replied that none of these matters were of sufficient importance to warrant their insertion in the application, and he thereupon filled out the application, and it was signed by the applicant. The majority of the court (Parker, *C. J.*, and Gray, *J.*, dissenting) differentiated that part of the application which is made up of statements to the medical examiner, from the portion containing the family history, and other pertinent facts ordinarily made out by the agent, showing that the company required the medical examiner to write down the answers to his part of the application; that they concerned matters largely of medical science, and that the company therefore was bound by whatever its own physician put in the application or refrained from inserting therein. The majority opinion says:

> "There is a difference in the nature of the work of filling out the blank to be signed by the insured, and that of filling out the blank furnished for the use of the medical examiner. The former is the work of the insured, and may be done as well by one person as by another. He may do it himself, or appoint an agent to do it for him. It is quite different, however, with the work of the medical examiner, because that requires professional skill and experience and the insurer permits it to be done only by its own appointee. The insured can neither do that work himself, nor appoint a physician to do it, because the insurer very properly insists upon making the selection itself. The medical examiner was selected, employed, and paid by the company. The insured had

nothing to do with him, except to submit to an examination by him, as the expert of the company, and to answer the questions asked by him in behalf of the company. This he was forced to do in order to procure insurance; for the company required him to undergo a medical examination by an examiner selected and instructed by itself, before it would act upon his application for a policy. He could neither refuse to be examined, nor select the examiner, and he was not responsible if the latter was negligent or unfit for the duty assigned to him. He could not direct or control him, but the company could and did; for it required him to make the examination, fill out part B of the application blank, and report the facts with his opinion. The insured made no contract with the examiner, and was under no obligation to pay him for his services. The company, however, made a contract with him to do certain work for it, and agreed to pay him for the work when done. As between the examiner and the insured, the relation of principal and agent did not exist, while, as between the examiner and the company, that relation did exist by operation of law; yet it is claimed that, as between the insured and the company, the examiner was the agent of the former only, because he had so agreed, not with the examiner, but with the company itself. Under the circumstances, an agreement that the physician was the agent of the insured was like an agreement that the company or its president was his agent."

It was therefore held that the action of the trial court in overruling the offer was erroneous.

It will be observed that this decision, contrary as it is to the law of New Jersey, has no bearing whatever upon the evidence of Freedman. On the contrary the case is an authority to the effect that the position of the trial judge in regard to the position of Freedman, and his private information concerning the policy in the Prudential Company, was erroneous. Attention, however, is directed to the powerful dissenting opinion of Chief Justice Parker, which claims that the prevailing opinion cannot

be reconciled with the earlier cases in the same court, including *Allen* v. *The German American Ins. Co.*, 123 N. Y., p. 6 (*supra*).

A somewhat similar distinction is made between the statements made to the medical examiner and those contained in the balance of the application in *Leonard* v. *The Mutual Life Ins. Co.*, Sup. Ct. of R. I., 51 Atl. Rep. 1049 (*supra*), and the distinction there drawn is that upon matters concerning which the medical examiner would alone possess knowledge, he represents the company, but in answers made by him concerning matters of fact he represents the insured, and the latter is bound by his answers. The particular matter there improperly answered by the medical examiner was as to the existence of former insurance, and the court held that as the question in no way affected the medical features of the case, but was a matter of exact information, the insured was bound by the answer made by the medical examiner. Our own Supreme Court has refused to make any such distinction. *Glutting* v. *Metropolitan Life Ins. Co.*, 21 Vr., 287. *Finn id.* 38 *id.* 17.

After this elaborate review of all the authorities, we think that there can be no doubt that the position of the trial court was erroneous. How was this company to be made responsible for the absurd conclusion of Freedman to the effect that a paid-up policy is not other insurance?

It is interesting to note that the plaintiff herself did consider it other insurance, because, in her proof of loss (p.66, line 19), in answer to the inquiry "Did the deceased carry any other insurance on his life? If yes, give name of company, amount and date of policies," she replied "Yes. P. U. policy in Prudential. $219." An examination of the Prudential contract (p. 53) will show that it is a

regular policy of insurance, based upon an application, and we cannot conclude that the sole object of the questions in regard to other insurance was to learn whether or not the assured was compelled to pay other premiums. Suppose he had a paid-up policy on his life for $100,000. Wouldn't that have been material?

So, too, what right had the trial judge to bind this company by the concealment which the mistake of Dr. Haring permitted the applicant to be guilty of, as to his having been an inmate of the hospital? Assuming the New York doctrine would apply to answers made by Dr. Haring to medical inquiries, the statement in regard to the hospital inmacy were questions of fact and made material by the policy, and that they were so understood by the plaintiff, appears from her answer in the proof of loss on p. 66, line 9, in reply to the question "Had deceased at any time been an inmate of, or under treatment at a hospital or asylum?" To which she replied "Yes, two weeks at Englewood Hospital, for treatment, runaway team."

II.

The judge also erred in refusing to permit Dr. Baldwin to refer to the memorandum to refresh his recollection as to the condition of Dimick's health on the three occasions when he was examined for a pension.

Reference has already been made to the fact that Dimick first applied for a pension, not naming rheumatism as a disability, and his application was rejected. He subsequently applied swearing that he had rheumatism, and the pension was granted, and again applied for an increase, setting up rheumatism as a disability, and an increased pension was awarded.

The defendant produced all the original papers from the pension bureau, including the reports of Dr. Baldwin, the pension medical examiner, and called Dr. Baldwin to prove the fact that at the time he examined Dimick he was suffering with rheumatism. Of course Dr. Baldwin, who has examined over 4,000 applicants for pensions, in seven years, had no independent recollection of the condition of Dimick, and could only testify concerning his condition by refreshing his recollection from the papers.

These papers included a report signed by Dr. Baldwin either on the day or the day after the examination of Dimick, describing his condition, which was sent to Washington, and from which the pension was either refused or granted. The trial judge cross-examined Dr. Baldwin, and his evidence is as follows, p. 33, line 4.

"Q You took notes first, and after that you copied these notes in some paper, and that paper you filed in Washington, and the body of this paper is not in your handwriting; you didn't make it out?

A No, sir; Dr. Crane is our secretary.

Q He didn't make them up in your office?

A He made them up for the most part that day in my office, or the next day at his own office, we concurring in the report.

Q After they were made out, they were brought to you and each one signed it?

A Usually we were all together when the reports were made.

Q Did you wait and see him write these, or did you go and see him write them?

A In the great majority of instances we had the notes which we considered the equivalent.

Q It was merely a matter of his copying the notes?

A It was a particular matter; there were three physicians—(interrupted).

Q One made a note of one thing and another a note of another thing?

A Dr. Crane was the secretary. Dr. Skinner would make notes of one particular case and I of another case; we consulted on the case afterwards.

Then the copy was made from the notes, and then we looked over the paper and each one of us signed it.

Q The examining physician made the notes on the case?

A And two made notes.

Q Of the same case?

A Dr. Crane made notes at times.

Q It was immaterial?

A Immaterial—we all made notes.

Q When the three met on a case?

A Yes, sir.

Q What are those notes that you speak of?

A Those notes refer to the examinee's condition, to measurements of his body, and to other requirements that were ordered by the United States Government.

Q Do they include statements of everything that is on the report of the examining surgeon to the department; where are those original notes?

A I guess they have been in the waste basket years ago—down in the salt meadows.

Q Do they contain everything that was on the paper; is this report a copy of the notes or not?

A It is not a direct copy of the notes.

(P. 35, l. 29.)

Q (*By the Court*). Does this report contain anything with reference to Mr. Dimick's physical condition that was not indicated by your notes in the first instance?

A Yes; in this way, that we were required to examine certain portions of the body and report as to whether they were in sound condition or not, no matter how healthy the man might be. All that we didn't incorporate in the notes because it was too plain. We simply took notes of what we actually did find—the joints, the muscles, the ligaments, the examination of the urine, examination of the lungs and heart and each particular organ, but we didn't put everything in the notes because it would take up any amount of time. We had them off by heart and we simply put in any difference in a direct copy.

Q This is a document drawn partly from your notes and partly from recollection?

A Yes, sir; there are certain stereotyped forms that we have to incorporate in every paper.

The Court. Is there anything here pertinent except rheumatism?

Mr. McCarter. No.

Q The question whether he had rheumatism or not—would that be entered on your original notes?

A Yes; that would be entered on them by all means.

Q And this report would only be, with reference to that matter, a copy of your notes?

A We are very careful about that"

The learned judge refused to permit the doctor to look at these reports because as he expressed it, they were not original notes. We think that he here fell into error.

On this subject of the right to use memoranda other than the original ones, for the purpose of refresh one's recollection, *Greenleaf,* Vol. 1, Sec. 436, says:

> "It does not seem to be necessary that the writing should have been made by the witness himself nor that it should be an original writing, provided that after inspecting it he can speak to the facts from his own recollection."

In *Topham* v. *McGregor,* 1 C. & K., 320.

> "A was proved to have wirtten a certain article in a newspaper, but the manuscript was lost and A had no recollection of the fact of writing it, it was held that the newspaper might be used to refresh his memory, and that he might then be asked whether he had any doubt that the fact was as therein stated."

Mr. Starkie, 10th Ed., p. 179, thus put it,

> "It is not essential that the memorandum should have been contemporary with the fact. It seems to be sufficient if it had been made by the witness, *or by another with his privity,* at a time when the facts were fresh in the recollection of the witness.
>
> "Neither is it necessary that the paper should have been written by the witness himself, provided he recollects having seen it when his memory as to the facts was still fresh, and he remembers that he then knew the statements to be correct."

And on p. 183, he says:

> "In analogy to the ordinary rules of documentary evidence, a copy may be used to refresh the memory on proof that the original has been lost."

So in *4 Phil. on Ev.* (Cowen & Hill's Notes, Part II), p. 733, we find—

> "In general, a witness is not allowed, where he cannot otherwise recollect the fact, to rely on a memorandum not made by himself.
>
> "But the rule is not without its exceptions; for though the paper be made by another, the witness may, by seeing the entry made or examining it at the same time, knowing the facts and now remembering that he knew and adopted the memorandum, make it his own."

And in *8 Enc. of Pleadings & Pr.*, p. 138, it is stated:

> "It is not necessary that the memorandum shall have been made by the witness himself, provided that after inspecting he can testify from his own recollections or remembers having seen it when his memory as to the facts was still fresh, and recollects that he then knew the statements therein to be correct."

In *Horne* v. *Mackenzie,* 6 Clark & Finnelly, 628, a case in the House of Lords, it appears that—

> A, a surveyor, made a survey or report which he furnished to his employers; being afterwards called as a witness, he produced a printed copy of this report, on the margin of which he had, two days before, to assist him in giving his explanations, made a few jottings. The report had been made up from his original notes, of which it was in substance, though not in words, a transcript.
>
> *Held,* that he might look at this printed copy of the report to refresh his memory.

See also *Burton* v. *Plummer,* 2 Ad. & E., 341; *Reg.* v. *Langdon,* 2 Q. B. Div., 296.

The rule is thus put by Mr. Underhill in his work on evidence, at Sec. 338—

"The writing by which the witness refreshes his memory should be contemporaneous with the transactions that are mentioned in it. This is the general rule which is supported by a majority of the cases, though it is sometimes qualified by the statement that the entry need not be *precisely* contemporaneous if it was made before the memory of the person making it had become weakened and unreliable by lapse of time. In many cases copies made some time after the original entry or writing have been permitted to be used if the witness could swear of his own knowledge to their accuracy. But a copy cannot be used by the witness until the absence of the original is accounted for."

See also *2 Phil. on Ev.*, 3 Ed., p. 413.

The distinction between a paper offered as evidence and a paper to be used simply to refresh one's recollection, must be kept in mind.

"It is not necessary that the writing thus used to refresh the memory, should be admissible in evidence." *1 Greenleaf*, Sec. 436.

"It is sufficient if a man can positively swear that he recollected the fact, though he had totally forgotten the circumstance before he came into court, and if upon looking at any document, he can so far refresh his memory as to recollect a circumstance, it is sufficient, and it makes no difference that the memorandum was written by himself; for it is not the memorandum that is the evidence, but the recollection of the witness." *Henry* v. *Lee*, 2 Chit. Rep., 124.

"A witness may refresh his memory by any book or paper, if he can afterwards swear to the fact from his own recollection." *Doe* v. *Perkins*, 3 T. R., 749.

"The rule is no doubt well settled in this State that a witness, for the purpose of refreshing his memory, may use any memorandum made at the time of a transaction in regard to which he is called on to testify, whether made by himself or another, and when his memory has been refreshed, he must testify to facts of his own knowledge, the memorandum itself not being evidence." *Bigelow* v. *Hall*, 91 N. Y., 145-147.

"It is not necessary that the writing should have been made by the witness himself. He may use an entry made by any one if, after inspecting it, he can speak of the facts from his own recollection. It is not the writing, but the recollection of the witness that is the evidence in the case, and it is not important who made the entry, providing it in fact revives or refreshes the memory." *Culver* v. *Scott, &c., Lumber Co.,* 53 Minn., 360.

See also *Morrison* v. *Chapin,* 97 Mass., 72.

In *Huff* v. *Bennett,* 6 N. Y., 337, we find—

"Although the rule is that a witness in general can testify only to such facts as are within his own knowledge and recollection, yet it is well settled that he is permitted to assist his memory by the use of any written instrument, memorandum, or entry in a book.

"It is not necessary that such writing should have been made by the witness himself, or that it should be an *original writing,* provided after inspecting it, he can speak to the facts from his own recollection." Quoting several cases.

In *Commonwealth* v. *Ford,* 130 Mass., 64, it was held that a witness may be allowed for the purpose of refreshing his recollection of what was said at a particular time, to look at a printed copy of his own written report of the proceeding at that time, although the absence of the written report is not accounted for.

In *Stevens Digest of Ev.* (Chase's Ed. 1885), at p. 237, the rule is stated that a witness may refresh his memory by referring to any report made by himself, or by any other person, and read by the witness either at the time of the transaction, or so soon afterwards that the judge considers it likely that the transaction was at that time fresh in his memory.

In *Howard* v. *McDonough,* 77 N. Y., 592, the court laid down the rule as to the use of memoranda, as follows:

"The law as to the use of memoranda by witnesses

while testifying, is quite well settled in this State. A witness may, for the purpose of refreshing his memory, use any memorandum, whether made by himself or another, written or printed, and when his memory has thus been refreshed, he must testify to facts of his own knowledge, the memorandum itself not being evidence."

See also *Bigelow* v. *Hall,* 91 N. Y., 145.

In *Coffin* v. *Vincent, et al.,* 12 Cush., 98, it was held that:

"A witness may use a memorandum to refresh his recollection, although it was not made by himself, if he saw the paper while the facts therein stated were fresh in his recollection, and he can say that he then knew they were correctly stated."

The court, in the course of its opinion, cited and approved *Henry* v. *Lee* (*supra*).

So also, in *Commonwealth* v. *Jeffs,* 132 Mass. 5, the court said:

"A witness may be allowed to refresh his memory by looking at a printed or written paper or memorandum, and if he thereby recalls a fact or circumstance, he may testify to it. It is not the memorandum which is evidence, but the recollection of the witness."

In *Meyers* v. *Weger,* 33 Vr. 432, Judge Adams, speaking for this court, and discussing the general subject of the admission of evidence said:

"The defendant further assigned for error the admission of the plaintiff's books, on the ground that a loan of money cannot be so proved. This is the rule. It does not appear, however, that any books were admitted. One book only, the cash book, was produced. So far as the record shows, it was not received in evidence. * * * * It does not appear that the witness was testifying from the book, except in reading the entry above quoted. He said, in answer to a question from the court, that he was using 'the books', referring apparently to the cash

book merely, to refresh his recollection. This was permissible."

In *Rumsey* v. *N. Y. & N. J. Telephone Co.*, 20 Vr. 322 the question was whether entries in the day book made from memorandum slips, were admissible in evidence. The court held that the entries in the day book were not admissible *as evidence,* but the direct inference from the conclusion of the court's opinion, is that the entries would have been admissible to refresh the witness's recollection. The court said:

> "How far such books were useful as refreshers of the memory of the book-keeper as to the contents of the slips, is not before us, for the books were not used for that purpose."

See also *North Hudson Co. R. R. Co.* v. *May,* 19 Vr. 401, p. 403, where the court said:

> "He might perhaps, have used the written statement made through his dictation in his presence *to refresh his memory,* but the paper itself was not legal evidence."

In an article in 23 Central Law Journal 53, the law on this subject is thus summed up:

> "From this examination of the authorities, it is seen that there are two distinct classes of cases on the question under consideration. One, where the witness by referring to the memorandum has his memory quickened and refreshed thereby, so that he is enabled to swear to an actual recollection. All authorities concur that if the paper produces this effect, it may be used. The oath of the witness is the primary substantive evidence relied upon."

See also *Riordan* v. *Guggerty* (Iowa), 39 N. W. Rep. 107; *Card* v. *Foot* (Conn.), 15 Atl. Rep. 371.

There is no cast iron rule definitely limiting the time within which the memorandum proposed to be used as a refresher, must have been made.

"As to the time when the writing thus used to restore the recollection of facts should have been made, no precise rule seems to have been established. It is most frequently said that the writing must have been made at the time of the fact in question, or recently afterwards." *1 Greenleaf on Evidence,* Sec. 438.

"A witness may refresh his memory by reference to a memorandum prepared at the time of the occurrences therein recited or soon thereafter, while the facts were still fresh in his recollection." 8 *Ency. Pl. & Pr.,* 137.

"The general rule is that a witness for the purpose of refreshing his memory, may use any memorandum made at or about the time of the transaction in regard to which he is called to testify, whether it was made by himself or another, provided he testifies from his own recollection thus refreshed." 8 *Ency. Pl. & Pr.,* 143.

"Where items of an account or claim are numerous, and therefore difficult to be retained in the memory, the court, at its discretion, may permit a witness to refer to memoranda, made a few days after the fire, and sworn to be correct, both as to items and value." *Wise* v. *Phoenix Fire Ins. Co.,* 101 N. Y., 637.

III.

The learned judge further erred in overruling the defendant's offer of the application of Dimick for the Prudential policy.

The policy itself was offered on p. 26, and is printed on p. 53. It was of course material upon the question of other insurance. Examination of the policy will disclose that it frequently refers to the application. The application therefore became part of the *res gestae,* and is entirely relevant in connection with the policy upon which it is based. *Henn* v. *Metropolitan Life Ins. Co.,* 38 Vr., 310-314.

These considerations inevitably lead to the conclusion that the action of the trial judge in directing a verdict for the plaintiff for the full amount of the policy, and leaving the defendant no opportunity to have the jury consider the questions of fraud, let alone the effect of the misstatements, was erroneous, and that a great injustice was thereby done.

For this reason, it is respectfully contended that the judgment should be reversed.

CONOVER ENGLISH,
ROBERT H. McCARTER,
Of Counsel for Defendant.

Newark, N. J., March 2nd, 1903.

NEW JERSEY

Court of Errors and Appeals

In the last resort in all Causes.

BRIDGET DIMMICK,
Plaintiff,
Defendant in Error.

vs.

METROPOLITAN LIFE INS. CO.,
Defendant,
Plaintiff in Error.

STATEMENT OF CASE.

The defendant issued a policy of insurance on the fourth day of December, eighteen hundred and ninety-nine, upon the life of John W. Dimmick, for the sum of one thousand dollars, the said policy to be payable to Bridget, wife of said insured upon his death in accordance with the terms thereof.

The said John W. Dimmick died on the twenty-fourth day of January, and payment of the policy was refused and this suit was brought to recover the same.

The plaintiff declared upon the policy with an allegation of the performances of all conditions precedent. (Case, page 16.)

To this the defendant pleaded, first, the general issue; second, non-performance of certain conditions; namely:

1. Falsity in a certain answer, to wit, "Yes for long service in the Civil War."

2. Falsity in a certain answer to wit, "None," in reply to a question, "Is there any other insurance in force on your life?"

3. Falsity in a certain answer, "None," in reply to a question, "State amount of insurance you now carry on your life, with the name of company or association, by whom granted, and the year of issue, (enumerate each.)

4. Falsity in a certain answer "No," in response to the question, "Have you ever had rheumatism?"

5. Falsity in the answer, "No," in response to the question, "Have you ever been an inmate of an asylum or hospital; if so, when and for what?"

At the close of the whole case the Trial Justice directed a verdict in favor of the plaintiff for the full amount of the policy with interest. This judgment is brought to this Court on writ of error.

POINT I.

There were no disputed facts in the case and the Court was obliged to direct a verdict either for the plaintiff or defendant.

Under these circumstances it was necessary for the Court to direct a virdict.

Am. Dock & Imp. Co. v. Trutees, 12 Stew., 409.
Montclair v. Dana, 107 U. S., 162.

POINT 2.

The defendant made no attempt to prove that the insured had ever really had rheumatism and offered no evidence on that subject, but simply attempted to prove that assertions had been made by the insured on some occasion, years before the issuance of the policy, that he had rheumatism.

The evidence offered on this subject was properly excluded and will be dealt with under another point.

POINT 3.

The first assignment of error alleged that the Court should have non-suited the plaintiff.

The ground upon which the motion for non-suit was based, was that the plaintiff did not offer in evidence, the "proof of loss," (p. 22, line 20, etc.)

The filing of the proof of loss was a condition precedent and the performances of same was admitted by the plea filed and therefore it was unnecessary for the plaintiff to offer the same. (See Declaration and Plea.)

Dimmick vs. Metropolitan Life Ins. Co., 38 Vr., 367.

But whether it was requisite or not is now immaterial as the "proof of loss" was admitted in evidence on the defendant's offer. (P. 37, line 25) and marked "D 6."

No injury was done to defendant and therefore there is no error.

Freeman v. Bartlett, 18 Vr., 33.
Hibernia Insurance Co. v. Meyer, 10 Vr., 483.

POINT 4.

The second assignment of error relates to the refusal by the Court to permit the defendant to put in evidence an application said to have been signed by the insured for a policy of insurance in the Prudential Life Insurance Company.

This offer and exception will be found on p. 26, line 10, etc.

This offer was properly excluded.

The Court permitted the defendant to put in evidence an alleged policy of insurance issued by the said company on the life of John W. Dimmick, but refused to permit them to offer in evidence the application upon which said policy was based. The purpose of the offer of said application was not shown nor stated to the Court, but the copy of the same will be found on p. 55, of the case.

Its pertinency to this inquiry and relevancy to the point in issue is certainly extremely obscure. It is an application signed by John W. Dimmick and is simply for the purpose of procuring what they call a paid up policy on a lapsed policy which the insured had previously carried. It contained no statements which are pertinent to any of the pleas filed by the defendant company, except the plea as to whether or not there was any other insurance in force on the life

of the insured. But the Court admitted in evidence, the very policy which was issued on this application and therefore the application, on which it was issued, was irrelevant. There certainly was no injury done to the defendant by the exclusion of the paper.

Freeman v. Bartlett, *supra*.

POINT 5.

The third assignment of error is a complaint that the Justice refused to permit a witness to use certain papers as memoranda to refresh his memory.

The evidence excluded will be found on page 36. This testimony was properly excluded. The papers were shown to be the papers not made by the witness and do not come within any of the well known rules of evidence and were absolutely inadmissible for any purpose whatever. But if they had been admitted to their full extent they would have shown only that the insured had stated to somebody, at sometime prior to his application for this policy that he had rheumatism. Even if the witness could have testified to this fact of his own knowledge and not simply from some paper made by somebody else the evidence would have been inadmissible.

In the case of Henn vs. Metropolitan Insurance Company, this Court, speaking through Mr. Justice Fort, regarding alleged conversation between the insured and one Dr. Culver, wherein it was attempted to prove that the insured prior to taking out insurance had imformed the doctor that he had suffered from dizziness, in order to prove that this answer to a question in reference thereto, was false, says:

"This testimony was clearly inadmissible. Mr. "Joice stated the rule this way, "As a general rule in "an action on a policy on the life of one for the bene- "fit of another, the declaration of the insured before "or after the insurance are not competent evidence "against the beneficiary unless part of the res gestae" citing.

Joice on Insurance, Vol. 4, Section 3819.

Miller vs. Guardian Life Ins. Co., 1. N. Y. Sup Ct., 488.

"When an insured stated in his application for "policy for the benefit of his wife, that he had had no "disease for seven years prior thereto, declarations of "insured, showing this was untrue were inadmissible.

"Such declarations of the insured party prior to "the insurance are not admissible;" citing:

Harmony vs. Fidelity Ass. 151 Penn. St. 17.

"Such declarations made after the insurance are "equally inadmissible," citing: Eddington vs. N. J. Ins. "Co., 67 N. Y., 185.

"There was no proof of dizziness to go to the jury."

Henn vs. Metropolitan Life Ins. Co., 38 Vr., 310.

It will thus be seen that not only were the papers useless because they do not come within the rule as to memoranda to be used by the witness to refresh his memory where the memoranda were made by the witness at the time of the transaction or immediately afterward and are the original memoranda made; but the testimony itself was incompetent. These papers were merely copies of some original memoranda.

(P. 33, l. 3, etc.; l. 21, etc.; p. 34, l. 1, etc.)

These copies and original were not made by the witness, but by Dr. Crane and another and the witness.

(P. 34 l. 1, etc.; p. 31, line 37, etc.)

Nor were they made in the presence of the witness, so far as he knows.

(P. 33, l. 9, etc.; p. 34, l. 1, etc.)

Nor are they full or direct copies of the original memoranda.

(P. 34, l. 26, etc.; p. 36 l. 3, etc.)

Nor would they have assisted the witness in recollecting any examination or any statements made by the insured.

He states that he has no recollection of any special occurrence at the time these were signed, (32, l. 3, etc.) and has no recollection of Dimmick whatever, (p. 32, l. 5, etc.; p. 32, l. 20, etc.) that he could not remember anything about the examination or any conversation with him (p. 32) and that it would be impossible to recollect what was the trouble with Dimmick, (p. 36, line 31, etc.)

Nor does this witness state that they would help his recollection in any particular and it is quite apparent that they could not.

They were inadmissible on every ground.

POINT 6.

The fourth and fifth assignments of error are without force.

The question permitted and complained of in the fourth assignment of error will be found on page 42, line 5.

The question permitted and complained of in the fifth assignment of error will be found on page 44, line 21.

These questions were objected to by the defendant, but no grounds of objection were stated.

In order that an objection to a question shall be available on error, the grounds of objection must be stated.

Mooney vs. Peck, 20 Vr., 232.

POINT 7.

The Court properly directed a verdict in favor of the plaintiff for the full amount of the policy with interest.

There being no disputed questions of fact, it was necessary for the Court to deal with the case without the intervention of the jury.

Whether the Court was correct or not in its direction, will depend upon the solution of certain propositions, which are presented to this Court for decision.

One proposition is whether or not a company who employs an agent to carry on its business, can by contract stipulate with third parties, that the agent whom it employs, is not its agent.

The Court of Appeals in New York has decided this question adversely to the contention of the defendant, the plaintiff in error. In the case of Sternaman vs. Metropolitan Life Insurance Company, the Court said, "The power to contract is not unlimited, that while as a general rule there is the utmost freedom of action in this regard, some restrictions are placed upon the right by legislation, by public policy and by the nature of things. Parties cannot in the same instrument agree that a thing exists and that it does not exist, or provide that one is the agent

of the other and with reference to the same subject that there is no relation of agency between them. They cannot bind themselves by agreeing that a loan in fact void for usury is not usurious, or that a co-partnership which actually exists between them, does not exist.

They cannot by agreement change the laws of nature or logic or create relations physical, legal, or moral, which cannot be created. In other words they cannot accomplish the impossible by contract."

Sternaman vs. Metropolitan Life Ins. Co., 170 N. Y. Rep., 13.

If this decision of the Court of Appeals of New York is sound then the case at bar is disposed of.

The evidence shows that the answer "no" in reply to the question "is there any other insurance in force on your life," the falsity of which is complained of in the second part of the defendant's special plea, (p. 18) was put in by the agent of the company, with full knowledge of the existence of the alleged policy of insurance of the Prudential Life Ins. Company, and was not the answer made by the insured, but was written in by the agent of the company, upon his notion that the policy was not contemplated in the question." See evidence of Harry Freedman, (P. 44, 45, 46, 47.)

The answer "No," the falsity of which is complained of in the fourth division of the defendant's plea, in reply to the question, "have you ever been an inmate of an asylum or hospital, if so when and for what?" was written in by the medical examiner, an agent of the company, without ever having been asked the insured and was not the answer made by the insured. (See testimony of John Herring, p. 24, line 15, etc.; p. 43, line 8; and p. 24, line 8, etc.

The alleged falsity of the answer "Yes for long service in the Civil War" to the question "have you ever been a pensioner or is an application for a pen-

sion pending or contemplated." (If granted, state in exact language of pension papers,") was not answered by the insured according to the copy of the application as furnished to him by the company, endorsed on the policy (see exhibit P. 1.)

The defendant has not printed a copy of P. 1, but the copy of same, appears in the case as annexed to or made part of the declaration and this question, not answered, appears in the printed case on p. 9, line 19, etc., and I also produce the original policy in Court, showing that this question was not answered.

application

In the ~~proof of loss~~, there was an answer to this question written in by some person for the company at some time as follows: "Yes, for long service in the Civil War." It was contended by the plaintiff at the trial and it is contended now.

1. That inasmuch as the copy of application annexed to the policy was furnished to the insured by the company and represented by it to be a true copy of the application, it is the application referred to in the contract and the company cannot produce an application differing from that, the copy of which they annexed to their policy and declared to the insured to be the copy of the application.

2. That whether or not the answer, as stated, was made by the insured, it is not an answer to the question contained in the application, because the company knew that there was no act of Congress that would authorize the granting of a pension for "long service in the Civil War." That both parties to the contract must be presumed to have known the law, and that it was clear to the defendant that Mr. Dimmich was not stating the cause but the occasion for the pension. Likewise that it was impossible that the defendant could have supposed that the answer was in the exact language of the pension papers. Therefore, they either waived the answer to the ques-

tion, or if a full answer were required, it should have been demanded.

See the opinion of Mr. Justice Collins in the case of

Dimmick vs. Metropolitan Life Ins. Co., 38 Vr., 367.

In the case of an omission to answer, or of an imperfect answer to a direct question by an applicant taking insurance, the issuance of a policy is a waiver of answer or of imperfection therein.

Phoenix Life Ins. Co. vs. Raddin, 120 U. S., 183; Carson vs. Jersey City Ins. Co., 14 Vroom, 300; affirmed in 15 Vroom, 210.

Likewise in regard to the answer "none" in response to the question, "is there any other insurance in force on your life?"

By an examination of Exhibit P1, it will be seen that in the "copy of the application," referred to in this policy, the question appears as follows:

> F. If insured in this Company, in Ordinary, Industrial or Intermediate, give Policy Numbers. None.
> Is there any other Insurance in force on your life?

In this bracket there are unquestionably two separate and distinct questions. The first of which is the subdivision F, and is answered "None." That question refers only to insurance *in this* company, namely the Metropolitan Life Insurance Co.

The second branch of the question is not answered.

But if the answer "None" refers to both branches of the question, then I submit that it is a true answer, because the second branch of the question is obscure

in its meaning and it must be interpreted most strictly against the insurer.

The first branch of the question refers in terms to three kinds of insurance, to wit, Ordinary, Industrial or Intermediate *in this Company*. The second branch of the question refers to any kind of insurance (in this company) other than Ordinary, Industrial or Intermediate; it might be to Straight Life or Endowment or Tontine or several other kinds of insurance that the company writes.

If they are two distinct questions, one referring to any insurance in any other company than the insurer, then the second question has not been answered, and it is no breach of warranty so far as the answer is concerned.

The answer, "None," recorded in reply to the question, "State amount of Insurance you now carry on your life, with the name of company or association, by whom granted and the year of issue, (enumerate each)," is likewise, under a strict interpretation, not untrue.

The defendant offered in evidence p. 53, Exhibit D 2, what the defendant called a "paid up policy." It is an absolute promise to pay to the executor, administrator or assigns of John W. Dimmick, within twenty-four hours after acceptance of satisfactory proof of death, the sum of two hundred and nineteen dollars, in case the said John Dimmick should die before the twenty-second day of February, 1916, at 12 o'clock noon (P. 56, line 20 to 30). Upon this promise or policy, John W. Dimmick was not obliged to pay premiums, or subject to any assessments or charges whatever. It is of the same effect as if the company had given to Mrs. Dimmick a promissory note for the sum of money payable on demand in case

she should present the same as the executrix or administratrix of John W. Dimmick on or before the twenty-second day of February, 1916 at 12 o'clock noon and demand payment therefor. This contract was not insurance.

"Insurance is a contract whereby one, for a consid-
"eration, undertakes to compensate another if he suf-
"fers. This, in its most general form, is the definition
"of the contract."

May on Insurance, Vol. 1, P. 2.

It is, moreover, a conditional contract, for when no risk attaches, no premium is to be paid; or if paid, in the absence of fraud, must be returned to the insured,

Stephenson v. Stone, 3 Burr., 1237.
Tyrie v. Fletcher, Cowp., 666.

"It is also what the French literally term an alea-
tory contract, one in which equivalent consists in the chances of gain or loss, to the respective parties, depending upon an uncertain event, in contra-distinction from commutative contract, in which the thing given or act done or wherein property is regarded as the exact equivalent of the money paid or act done by the other. Each party runs his risk. The insurer will gain the premium, if no loss happens; and will be obliged to make reparation if it does. On the other hand, the insured will in the former case, have paid his premium to no purpose; while in the latter he will be indemnified for his loss by the insurer.

Smith v. Nat. Cr. Ins. Co., 65 Minn., 283.
Jones v. Life Ass., 83 Ken., 75.
People v. Globe Mutual Life Ins. Co., 32 Hun., 147.

The policy offered in evidence by the defendant is not within the definition of insurance as above stated.

Dimmick was not obliged to pay anything, nor did

he pay anything for this policy; he assumed no risk of gain or loss.

It was simply a composition or adjustment of a claim which he had against the company, under what they called a "Lapsed policy of insurance."

It will be observed that the question is not, "do you carry any policy on your life?" but "state amount of insurance you now carry upon your life."

The question is "now carry."

The word "carry" has a definite meaning, as the company recognized when it framed the question.

In Webster's Dictionary, the first definition is "to convey, or transport in any manner from one place to another," "to bear," [from O. Fr. Carier; N. Fr. Charrier, "to cart."]

All of its derivative meanings convey the same thought, namely, "to bear." It does not signify "to enjoy."

As was said by Mr. Justice Collins, in his opinion in this case in the Supreme Court, "As the learned Trial Justice suggested to the jury, 'We carry burdens, not benefits.' No one can say that because Mr. Dimmick has a paid up policy that he was carrying any other insurance."

Dimmick v. Metropolitan Ins. Co., *supra.*

The company also recognized a distinction between "to carry insurance," and the existence of an insurance "in force," because it will be observed that in this question they say, "Insurance which you now carry," while in another question they say, "Is there any other insurance in force upon your life?"

The only reasonable and natural interpretation of this language is an insurance upon which the insured was paying premium. The very purpose of the question is to ascertain how much premium the insured is paying, in order to ascertain whether he would be good for or likely to be able to pay other or further premium.

But if this policy be "insurance," it is insurance in favor of the executors, administrators or assigns of John W. Dimmick, and not an insurance "carried" by John W. Dimmick. If A has the life of B insured for A's benefit, upon which A would pay premium, this would be an insurance carried by A and not by B. A familiar example of this is that of the insurance on the life of the King of England. As I understand it, it is common practice for his subjects to have his life insured, for their own benefit, even without his knowledge.

The answers to all of these questions contained in the "application," were inscribed by the agents of the company, with full knowledge of all the facts regarding the questions and answers, and were not answers given by the insured or by the beneficiary and the company is estopped from denying the truth thereof.

The latest deliverance by the Court of Appeals of New York is the case of Sternaman v. Metropolitan Life Ins. Co., 8 Bedell, p. 19; 170 N. Y. Rep. 953.

In this case, the doctrine of estoppel is asserted and enforced against an insurer on exactly the same policy as the one in question.

Judge ~~Vance~~ Vann says, "But it is insisted, the insured "warranted that the answers were true and that they "were correctly recorded. When the company issued "the policy, however, it knew that the answers as re- "corded were not true; the answers as given were not "correctly recorded and that this occurred through "no fault of the insured. It could not take the money "of the insured while he lived and when he was dead "claim a forfeiture on account of what it knew at the

"time it made the contract of insurance, for that "would be a fraud." Citing:

Van Schoick v. Niagara Fire Ins. Co., 68 N. Y., 434.

O'Brien v. Home Benefit Society, 117 N. Y. 310.

Kenyon v. Knight Templer Ass., 122 N. Y., 247.

"The facts sought to be proved were contained in "the oral statements, but assuming that recorded "statements only were meant, the result would be an "agreement that the company might perpetrate a "fraud upon the insured by issuing a policy and ac- "cepting premiums thereon, knowing all the time that "the contract was void or voidable at its election. "The law does not permit this, for it declares that the "company is estopped from taking advantage of such "a contract because it would be against equity and "opposed to public policy."

The Court then recites the language of the Supreme Court of the United States in the case of Insurance Company, vs. Wilkinson, 13 Wall., 222, with approval, and adopts the rule laid down in that case. In the Wilkinson case the Court says:

"Yet the proposition admits as of little doubt that if "Ball was the agent of the insurance company and "not of the plaintiff, in what he did in filling up the "application, the company must be held to stand just "as he did, if he were the principal. This principle "does not admit oral testimony to vary or contradict "that which is in writing, but it goes upon the idea "that the writing offered in evidence was not the in- "strument of the party whose name is signed to it; "that it was produced under such circumstances by the other side as estops that side from using it or "relying on its contents; not that it may be contra-

"dicted by oral testimony, but that it may be shown "by such testimony that it cannot be lawfully used "against the party whose name is signed to it."

Judge ~~Vance~~ Vann further says: "Sound public policy "prohibits the company from stipulating for im- "munity from the consequences of its own negligence, "or what is the same thing, the negligence of its agent." Citing,

Rathborne vs. R. R. Co., 140 N. Y., 48.

Whether this Court will adopt the rule as laid down by the Court of Appeals of New York or not, should not affect the determination of this case.

New York is the great and chief commercial State of the Union, and it would seem to be not unwise to follow her decisions in interpreting commercial contracts, and the law of N. Y. upon this question is settled and that is the law which should govern this Court in this case.

This contract was made in the City of New York.

The attestation clause is in the following language: "In witness whereof the Metropolitan Life Insurance Co. has by two of its officers signed and delivered this instrument, at its office in the City of New York, on the fourth day of December, 1899."

J. M. CRAIG, Actuary. JNO. R. HEGEMAN, President.

(See p. 1, and p. 5, l. 3, &c.)

The lex loci contractu should prevail.

As to the paper known as "statement," made to the Medical Examiner, we submit that the answers therein contained are not

warranties, because they are not so made warranties, by the contract of insurance.

The contract of insurance is in the following language: "in considerations of the answers and statements contained in the printed and written 'Application' for this policy upon the life of John W. Dimmick, of Englewood, State of New Jersey, hereinafter called the insured, all of which answers and statements are hereby made warranties and are hereby made part of the contract," etc. (p. 4, l. 10, etc.)

The "*application*" is the paper signed by Bridget Dimmick and John W. Dimmick and was signed on the nineteenth day of November, eighteen hundred and ninety-nine. (See Policy of Insurance, Exhibit P 1, p. 11, line 36).

The paper called "statement," made to the Medical Examiner" was a paper signed by John W. Dimick alone on the twenty-third day of November, eighteen hundred and ninety-nine (See Exhibit P 1., also case p. 16, line 1.) These two papers are designated by different names; the statements made were to two different agents of the company; they were made at two different times. I submit that only the "application" is a part of the contract and that the statements to the Medical Examiner form no basis of the agreement.

The language of this instrument must be strictly construed against the insurer, when the insurer is endeavoring to enforce a forfeiture.

As was said by this Court in the case of Henn vs. Metropolitan Life Ins. Co., forfeitures are not favored in the law, and if by any intendment, a ground can be found to defeat them, the Court will apply it. Citing.

Hampton vs. Hartford, 36 Vr., 265.

If the company had intended to make the answers to the medical examiner, warranties and a part of the

contract it should have said, "application and statements made to the medical examiner."

It would seem to be almost a violent construction of language, to hold that the word, "application" which refers to the request by the insured for insurance, and which request is received by the company and filed there, is the same as concerning information which the company desires concerning persons applying for insurance, and could embrace a subsequent proceeding instituted by the insurer to ascertain whether or not it will assume the risk.

The act of making application is an act performed by the person desiring insurance. The act of making a medical examination is an act by the insurer to ascertain whether it will grant insurance. They are two distinct and separate acts and cannot be comprised under a single definition of "*application.*"

The insurance contract likewise fails to provide that the answers in the application are warranted to be correctly recorded.

There is a clause in fine type, contained in the application itself, which makes that provision, but the contract itself provides only that the answers and statements are made warranties.

The statements made to Mr. Freedman, the agent of the company in each case were true so far as any answers were made, and if any of them was improperly recorded by Mr. Freedman, the company's agent, it was not the fault of the insured and was not the answer, the truth of which was guaranteed.

Whether or not the insured had ever in fact had rheumatism; there was absolutely no evidences produced by the defendant to show that he had ever been afflicted with that disease.

There was absolutely no evidence to show any bad faith or fraud or neglect on the part of the insured. For the above reasons the Court properly instructed the jury to find for the plaintiff for the full amount with interest, and the judgment should be affirmed with cost.

JOHN P. STOCKTON,

Attorney of Defendant in Error.

WARREN DIXON,

Of Counsel.

INDEX.

The Baker Printing Co., Law Case Printers, 251 Market Street, Newark, N. J.

New Jersey Court of Errors and Appeals.

BRIDGET DIMICK, *Defendant in Error.* *vs.* THE METROPOLITAN LIFE INSURANCE COMPANY. *Plaintiff in Error.*	*On Contract.*

WRIT OF ERROR.

New Jersey, ss:

The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature, GREETING:

(L. S.) Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint which was in our said Supreme Court of Judicature, before you, between Bridget Dimick, plaintiff, and the Metropolitan Life Insurance Company, defendant, in an action on contract, manifest error hath intervened to the great damage of the said The Metropolitan Life Insurance Company, as it is said; we being willing that the error, if any there be, should be in due manner corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you that if judgment be thereupon given and confirmed, then you distinctly and openly send, under your seal the record and proceedings aforesaid, with all things touching the same.

to our judges of our Court of Errors and Appeals in the last resort in all causes, in Trenton, on the twenty-fifth day of November instant, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be done thereupon for correcting that error, what of right and according to the law and custom of the State of New Jersey ought to be done.

Witness our Chancellor and President Judge of our Court of Errors and Appeals at Trenton, the seventh day of November in the year of our Lord one thousand nine hundred and two.

S. D. DICKINSON,
Clerk.

McCARTER, WILLIAMSON & McCARTER,
Attorneys.

NEW JERSEY SUPREME COURT.

BRIDGET DIMICK,
Defendant in Error.
vs.
THE METROPOLITAN LIFE INSURANCE COMPANY.
Plaintiff in Error.

On Contract.
On Postea.

JOHN P. STOCKTON, Attorney.

As yet of the twentieth day of February, nineteen hundred and one .

Witness, WILLIAM S. GUMMERE, Esquire,
Chief Justice.

WILLIAM RIKER, JR.,
Clerk.

BERGEN COUNTY, *ss.*

The Metropolitan Life Insurance Company, a corporation of the State of New York, the defendant in this suit, was summoned to answer unto Bridget Dimick, the plaintiff herein, in an action upon contract, and thereupon the said plaintiff, by John P. Stockton, her attorney, complains:

For that whereas, heretofore, to wit, on or about the fourth day of December, eighteen hundred and ninety-nine, the said plaintiff entered into a certain contract of insurance upon the life of John W. Dimick, and for the

benefit of Bridget Dimick, the wife of said John W. Dimick, as will appear by certain policy issued to the said John W. Dimick, in evidence of said contract made by said Metropolitan Life Insurance Company, and bearing the date of the fourth day of December, eighteen hundred and ninety-nine, of which contract the following is a true copy:

METROPOLITAN LIFE INSURANCE COMPANY.

(Incorporated by the State of New York.)

In consideration of the answers and statements contained in the printed and written application for this policy upon the life of John W. Dimick, of Englewood, State of New Jersey, hereinafter called the Insured, all of which answers and statements are hereby made warranties and are hereby made a part of this contract, and of the payment of the quarter annual premium of fourteen dollars and fifty-nine cents, on or before the delivery of this policy, and of a like amount on or before the fourth day of December, March, June and September, of each and every year during the continuance of this policy, doth hereby agree, subject to the conditions set forth on the reverse side hereof, each and all of which are hereby made part of this contract, and are accepted by the insured and assured as part thereof as fully as if herein recited, to pay at its Home Office in the City of New York, upon the surrender of this policy at the expiration of twenty years from the date hereof, to John W. Dimick, herein called the insured, the sum of one thousand dollars, and doth further agree, subject to the conditions above mentioned, each and all of which are accepted by the assured as part of this contract as fully as if herein recited, in case the insured shall die prior to the date above mentioned and while this policy is in force, to pay the above mentioned sum to Bridget Dimick, wife of the insured, herein called the assured, if living, otherwise to the legal representatives of this insured, upon the receipt by the company at its Home Office and its approval of the proofs of death of the in-

Number 166899

Amount $1000

Age 53

¼ Annual Premium $14.59

Term 20 Years

sured, made in the manner, to the extent and upon the blanks required by condition sixth, and upon the surrender of this policy.

Ordinary Endowment Policy

In Witness Whereof, the Metropolitan Life Insurance Company has by two of its officers, signed and delivered this instrument, at its office, in the City of New York, on the fourth day of December, 1899.

Non-Participating

J. M. CRAIG, *Actuary.* JOHN R. HEGEMAN, *President.*

Form 239

Form 239.

Examined H. F.

CONDITIONS

Referred to on the Face of This Policy as Part of This Contract.

First.—No obligation is assumed by this company upon this policy, until the first premium has been paid, and the policy duly delivered, nor unless upon the date of delivery the insured is alive and in sound health.

Second.—The company shall be released from all liability under this policy, if the insured shall, within two years from the issue hereof, become engaged in or connected in any manner with the manufacture or sale of ale, wine, beer or liquor, unless written permission from the secretary of the company be first obtained. If the insured within two years from the issue hereof die by his own hand or act, whether sane or insane, the company shall not be liable for a greater sum than the premiums which have been received on this policy.

Third.—If any answer or statement in the application herein referred to is not true, or if any alteration be made in this policy, except by an endorsement signed by the secretary, or actuary, or if any premium or installment of premium be not paid when due, this policy shall be void and all premiums paid shall be forfeited to the company, except as provided below.

Fourth.—The company will admit the age of the insured upon satisfactory proof; failing such proof, if the age

shall have been understated, the amount of insurance or other benefit will not be more than the premium charge will purchase by the company's rates in use at the date hereof for the true age of the insured; and absolute proof of age may be required with proofs of claim thereunder.

Fifth.—Premiums are payable at the home office in the City of New York, but at the pleasure of the company suitable persons may be authorized to receive such payments at other places, but only on the production of the company's receipt signed by the secretary, and countersigned by the person receiving the payments. All premiums are considered payable yearly in advance, but when paid in semi-annual or quarterly installments, that part, if any, which remains unpaid at the maturity of the policy shall be deducted, but this provision does not affect the provisions of the third paragraph respecting forfeiture for non-payment of installment of premiums.

Sixth.—Proofs of death shall be made to the home office in the manner and to the extent required by blanks furnished by the company, and shall contain answers to each question propounded to the claimants, physicians and other persons indicated in the blanks, and shall further contain the record and verdict of the coroner's inquest, if any be held. The proofs of death shall be evidence of the facts therein stated in behalf of, but not against the company.

Seventh.—No suit shall be brought or action commenced against this company after two years from the date of death of the insured, and it is expressly agreed that if such suit or action be commenced after two years the lapse of time shall be conclusive evidence against any claim, the provisions of any and all statutes of limitation to the contrary being hereby expressly waived.

Eighth.—Any assignment of this policy is void unless made upon the form prescribed by the company and unless the same is assented to in writing by the secretary; but in no case does the company guarantee the validity of any assignment, and the company may demand proof of interest in case of claim by an assignee.

Ninth.—The contract between the parties hereto is completely set forth in this policy and the application therefor taken together, and none of its terms can be varied or modified, nor any forfeiture waived or premiums in arrears received except by agreement in writing signed by either the president, vice-president, secretary or actuary, whose authority for this purpose will not be delegated; no other person has or will be given authority.

Tenth.—In any settlement of this policy, all outstanding indebtedness must be paid.

Eleventh.—This policy is not entitled to participate in the profits or divisible surplus of the company.

CONCESSIONS.

First.—After two years this policy shall be non-contestable except for the non-payment of premiums as stipulated, or for fraud.

Second.—After the premiums on this policy have been paid in full for three or more years, and while in force, the company will grant, as the insured and assured may elect, one of the following options, the amount of such option not to exceed the sum stated in the tables below:

(a) A loan bearing five per cent interest payable in advance, upon receiving satisfactory assignment of this policy, as collateral security, provided that premiums have been paid in full for policy year next ensuing the year named in the table as fixing the amount of the loan.

(b) A cash value upon surrender and satisfactory release of this policy, within six months after the time of default in the payment of any premium, provided there be no unpaid loan through the operation of the first option.

(c) A paid-up non-participating policy, payable in the same manner as the original policy, upon surrender and satisfactory release to the company, at its home office, of this policy within six months after the time of default in

payment of any premium, provided there be no unpaid loan hereon through the operation of the first option.

At end of	(a) Loan.	(b) Cash Value.	(c) Paid up Policy.	At end of	(a) Loan.	(b) Cash Value.	(c) Paid-up Policy.
3 yrs.	$84	$51	$150	10 yrs	$342	$302	$500
4 "	106	84	200	11 "	390	342	550
5 "	162	106	250	12 "	441	390	600
6 "	194	162	300	13 "	497	441	650
7 "	228	194	350	14 "	559	497	700
8 "	264	228	400	15 "	626	559	750
9 "	302	264	450	16 "	700	626	800

At end of	(a) Loan.	(b) Cash Value.	(c) Paid-up Policy.
17 yrs.	$782	$700	$850
18	875	782	900
19	1000	875	950
20		Matured.	
25			
30			

Copy of Application referred to in this Policy. Application to the Metropolitan Life Insurance Company. (Incorporated by the State of New York). Form 036G, Ordinary Dept.

1. A. Full name of the person whose life is proposed for insurance. John W. Dimick.

2. Residence. Street and No. 9 Waldo place, town or city, Englewood, State of New Jersey.

3. Insurance applied for. Amount $1,000. Plan of insurance as designated in rate tables. 20 years. Ordinary Endt. Payable, quarterly.

4. a. Place of Birth of person proposed for insurance. Town or city, New York. State, New York.

b. Date of Birth. Year, 1847. Month, March. Day, 14th.

c. Age nearest birthday, 53.

Occupations (to be stated specifically—if more than one, state all. Avoid indefinite terms such as clerk, mechanic, machinist, bookkeeper, merchant, etc.)

5. a. Present occupation? Carpenter.

b. Nature of business? Carpenter on building.

c. Place of business? (State where and by whom employed) Englewood, N. J. Norwich Bld. Co.

d. Have you any other occupation? (If so specify.) None.

e. Former occupation (within the last ten years?) No other than carpenter.

f. Have you ever been a pensioner, or is an application for a pension pending or contemplated? (If granted, state cause in exact language of pension papers.)

g. Are you now either directly or indirectly concerned in either the manufacture or sale of any kind of alcoholic beverages? No.

h. Have you ever been so engaged? No.

i. Are you directly or indirectly in the service of this company or in the service of, or related by blood or marriage to any employee of this company?

j. Do you contemplate any change in occupation? (If so, give particulars.) No.

k. Do you contemplate any change in residence? (If so, why and where to)? No.

l. Married? (Widower or widow)? Married.

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

b. State name of company, order or association which has declined to issue a policy on your life or postponed you. None.

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

d. Is any application or negotiation for other insurance on your life now pending or contemplated? (If so, give particulars.) No.

e. State amount of insurance you now carry on your life, with name of company or association, by whom granted and the year of issue. (Enumerate each.) None.

f. If insured in this company, in ordinary, industrial or intermediate, give policy numbers. None. Is there any other insurance in force on your life?

None

7. a. Name of person to whom, if living, policy is to be paid in case of death of insured.

Bridget Dimick, age 45.

b. Relationship. Wife.

c. Occupation. Housewife.

Post office address of proposed beneficiary, Englewood, N. J.

D. If an endowment, to whom is it to be paid at the end of the specified term? To myself.

It is hereby declared, agreed and warranted by the undersigned:

That the answers and statements contained in the foregoing application and those made to the Medical Examiner, together with this declaration, shall be the basis and become part of the contract of insurance with the Metropolitan Life Insurance Company; that they are full and true, and are correctly recorded, and that no information or statement not contained in this application, and in the statements made to the Medical Examiner, received

or acquised at any time by any person, shall be binding upon the company, or shall modify or alter the declarations and warranties made therein; that the persons who wrote in the answers and statements were and are our agents for the purpose and not the agents of the company; and that the company is not to be taken to be responsible for its preparation or for any thing contained therein or omitted therefrom; that any false, incorrect or untrue answer, any suppression or concealment or facts in any of the answers, any violation of the covenants, conditions or restrictions of the policy, any neglect to pay the premium on or before the date it becomes due, shall render the policy null and voil, and forfeit all payments made thereon.

That the policy hereby applied for, if issued, shall not be in force until the actual payment of the premium to and its acceptance by the company during the lifetime and good health of the person on whose life insurance is applied for. Notice that each and every premium is due at the dates named in the policy is given and accepted by its delivery, and any further notice required by any statute is waived.

It is expressly agreed that the provisions of the policy for the issuance of paid-up insurance are accepted in substitution for and in waiver of any law of any State relating to the lapse or forfeiture of policies of life insurance.

The provisions of Section 834 of the Code of Civil Procedure of the State of New York, and of similar provisions in the laws of other States, and hereby waived; and it is expressly consented and stipulated, that in any suit on the policy herein applied for, any physician who has attended or may hereafter attend, the insured, may disclose any information acquired by him in anywise affecting the declarations and warranties herein made.

Signature of beneficiary, Bridget Dimick.

Dated at Englewood, N. J., this 19th day of November, 1899.

Signature of life proposed, John W. Dimick.

Witness to Signatures, ————.

STATEMENT MADE TO THE MEDICAL EXAMINER.

b. By John W. Dimick, in connection with application on reverse of this sheet. (Insert full name of applicant.)

To be fully completed by the examiner before the applicant affixes his signature.

The medical examiner will impress upon the applicant the importance of full and truthful answers to every interrogatory.

1. Have you ever had (Answer yes or no to each. Do not use "ditto" marks.) (Each item must be made the subject of special inquiry.)

Rheumatism? No.
Erysipelas? No.
Syphilis? No.
Gout? No.
Dropsy? No.
Scrofula? No.
Consumption? No.
Sunstroke? No.
Delirium Tremens? No.
Cancer or any tumor? No.
Spitting of blood? No.
Habitual headache? No.
Dizziness or vertigo? No.
Loss of consciousness? No.
Disease of the heart? No.
Jaundice? No.
Apoplexy? No.
Paralysis? No.
Insanity? No.
Epilepsy? No.
Fits? No.
Neuralgia? No.
Palpitation? No.
Abscess? No.
Aneumerism? No.
Bronchitis? No.

Pleurisy? No.
Pneumonia? No.
Asthma? No.
Dyspepsia? No.
Fistula? No.
Colic? No.
Enlarged veins? No.
Habitual cough? No.
Shortness of breath? No.
Chronic Diarrhoea? No.
Affection of liver? No.
Gravel or Calculus? No.
Affection of spleen? No.
Piles? No.
Affection of hearing, speech or eyesight? No.
Swelling of the feet, hands or eyelids? No.
Difficult, excessive or scanty urination? No.
Any disease or disorder of the genital or urinary organs? No.
Any discharge from the ear? No.
Any personal injury? Yes.
Spinal disease? No.
Yellow fever? No.

FEMALES.

Females—Generally.

Uterine disease of displacement?
Menstrual derangement?
Change of life? If "yes," how long since?

Females—Child Bearing.

Miscarriage?
Serious troubles in labor?
Number of children born?
When last confined (year)?
Are you now pregnant?

---

2. a. Are you ruptured? No.
   b. If so, do you agree to wear a well-fitting truss?

3. Give full particulars of any illness you may have had since childhood, and name of medical attendant or attendants. No sickness.

4. When were you last confined to the house by illness? Not since childhood.

5. Have you ever been an inmate of any asylum or hospital? If so, when and for what? No.

6. a. Name and residence of your usual medical attendant. Have none.

b. When and for what have his services been required?

7. Have you consulted any other physician? If so, when and for what? No.

8. Have you ever used alcoholic stimulants, opium or other narcotics, wine or malt liquors, or tobacco, to any excess? If so, when and for how long? Give particulars.

9. To what daily or other extent do you use tobacco? (Definite and specific replies required.) Moderately.

Opium or other narcotic? None.
Alcoholic stimulants? None.
Wine or malt liquors? None.

10. a. Have you ever undergone examination for life insurance upon which you did not receive a policy of the exact kind and amount applied for?

b. If yes, give particulars. No.

11. a. Has either of your parents or any of your brothers, sisters, grandparents, uncles or aunts now, or ever had, consumption, cancer, gout, scrofula, diabetes, rheumatism, epilepsy, insanity, or other hereditary disease? No.

b. If so, give full particulars of each case.

12. Answers in full detail to the following queries must be obtained: In giving cause of death, avoid all indefinite terms as general debility, don't know, change of life, heart failure, fever, dropsy, exposure or accident.

If the word childbirth or confinement is used, state how long after the delivery death occurred, and whether there were any symptoms of disease of the lungs.

(Ditto marks and dashes are not answers.)

Living.	Age of Each.	Condition of Health of Each.
Paternal grandfather,	Applicant knows	
Paternal grandmother,	very little of grand-	
Maternal grandfather,	parents, thinks they	
Maternal grandmother,	were robust and long	
Father,	lived, hereditary his-	
Mother,	tory is very good.	

How many brothers living? Two. Ages 50 and 35.

How many sisters living? One, age 60.

Dead.	Age at Death.	Cause of Death of Each.
Paternal grandfather,		
Paternal grandmother,		
Maternal grandfather,		
Maternal grandmother,		
Father,	97	No known sickness.
Mother,	78	Erysipelas.

Length of sickness. Previous health.

Mother short time. Good.

How many brothers dead?

How many sisters dead? One. Age 30. Cause of death, unknown.

Length of sickness. Previous health.

Short time. Good.

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

Dated at Englewood, this 23rd day of Nov., 1899.
Witness, S. T. Starring, M. D.
Signature of the person whose life is proposed for insurance.

JOHN W. DIMICK.

And which policy or instrument the plaintiff brings here into court.

And the plaintiff in fact says that all the covenants and conditions in said contract to be performed by the said John W. Dimick and by this plaintiff Bridget Dimick, have been duly kept and performed by them and each of them.

And the said plaintiff further in fact says, that after the making of the said contract of insurance and the issuance of said policy in evidence thereof, on or about the twenty-fourth day of January, nineteen hundred, the said John W. Dimick departed this life, and a full, complete and satisfactory evidence of the death of the said John W. Dimick was duly made and submitted in accordance with said contract, and in accordance and cimpliance with the forms in use and adopted by the said defendant, which were submitted to the said defendant by this plaintiff, and were therefore requested by the said plaintiff to pay to her the sum of one thousand dollars, so by it assumed as aforesaid, by the terms and provisions of the said policy, which sum of one thousand dollars it, the said defendant, therefore promised to pay to the said plaintiff according to the form and effect of its said promise and undertaking so made as aforesaid, yet it, the said defendant, has neglected and failed so to do.

For that whereas, the said defendant heretofore, to wit, on the twenty-fourth day of January, nineteen hundred, at Englewood, in said County of Bergen, was indebted to the plaintiff in two thousand dollars, for goods sold and delivered by the plaintiff to the defendant at their request; and in the like sum for work done and materials furnished by the plaintiff for the defendant at their request; and in the like sum for money lent by the plaintiff to the defendant at their request; and in the like sum for money paid

by the plaintiff for the use of the defendant at their request; and in the like sum for money received by the defendant for the use of the plaintiff; and in the like sum for interest for the forbearance by the plaintiff at the defendant's request of money due and owing from the defendant to the plaintiff; and in the like sum for money due from the defendant to the plaintiff on an account stated between them; and being so indebted, the defendant, in consideration thereof, then and there promised the plaintiff to pay to them the said several sums of money on request.

Yet the said defendant hath disregarded its said several promises and hath not paid the said several sums of money nor any of them, or any part thereof, although often requested so to do, but to do hath hitherto wholly refused and still doth refuse, to the damage of the said plaintiff two thousand dollars, and therefore she brings her suit.

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

And the said defendant, by McCarter, Williamson & McCarter, its attorney, for a further plea in this behalf, by leave of the court first had and obtained, according to the form of the statute in such case made and provided comes and defends the wrong and injury, when, etc., and says that the said plaintiff ought not to have or maintain her aforesaid action thereof against the said defendant, because it says that it is not true as averred in said declaration, that all the covenants and conditions in said contract of insurance to be performed by the said John W. Dimick and by the plaintiff Bridget Dimick, have been duly performed and kept by them, and each of them, and this defendant specifies the conditions precedent, the performance of which it intends to contest, as follows, that is to say:

First. The falsity to the answer "yes, for long service in the civil war," made by the said insured in the application for the policy in suit, signed by the plaintiff and the insured in reply to the question, "Have you ever been a pensioner, or is an application for a pension pending or contemplated? (If granted state cause in exact language of pension papers.)"

Second—The false answer "None" made by the insured to the further question in said application signed by him, "State amount of insurance you now carry on your life, with the name of company or Association, by whom granted, and the year of issue, (enumerate each);" and also the false answer "None" in reply to the question, "Is there any other insurance in force on your life?"

Third—Also the false answer "No," made by the insured in reply to an inquiry of the medical examiner of the defendant "Have you ever had rheumatism?"

Fourth—And also the false answer "No," made by the said insured in reply to an inquiry of the medical examiner, "Have you ever been an inmate of an asylum or hospital? If so, when and for what?" And the defendant says that the said application and the statements made by the insured to the medical examiner, were, by the terms of the said policy warranties, and the falsity of any answers thereto vitiated the said policy, and that the said defendant proposes to contest the performance by the insured of the foregoing conditions precedent to the execution of the said contract, of insurance, because the said insured had been, and was at the time of the signing of said application, and the making of said answer, a pensioner of the United States Government for disabilities; and also because the said insured at the time last aforesaid did carry insurance upon his life, in the Prudential Insurance Company of America, and there was, at the time of the signing of said application, a policy of insurance, in force upon the life of the said insured with the Prudential Insurance Company of America, for two hundred and nineteen dollars, being policy No. 10,258,642; and also because the said insured had had rheumatism previously to the time when he signed the statement made to the medical exami-

ner, of said defendant, and also because the said insured had been an inmate of a hospital, to wit, the hospital at Englewood, in Bergen County, in the State of New Jersey, for a long space of time, for two weeks, at the time that he made said false answer to the said medical examiner, and of this the defendant puts itself upon the country, &c., and the plaintiff doth the like.

Therefore, let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Hackensack, in and for the County of Bergen, on the second Tuesday of September, in the year of our Lord, one thousand nine hundred and two, by whom, etc., and the same day is given to the parties aforesaid there, etc.

And now at this day, to wit, the fifth day of November, nineteen hundred and two, before our said Supreme Court at Trenton comes the said plaintiff by her attorney aforesaid, and the Justice before whom, etc., having first sent hither his record had before him in these words, to wit:

Afterwards, to wit, at a Circuit Court holden at Hackensack, in and for the County of Bergen, before Jonathan Dixon, Esquire, one of the Justices of the Supreme Court, at the September term, nineteen hundred and two, according to the form of the statute in such case made and provided comes as well the said plaintiff, Bridget Dimick, as the said defendant, Metropolitan Life Insurance Company, by their respective attorneys within mentioned, and the jurors of the jury between the parties aforesaid, in the plea aforesaid, being also summoned come, who to speak the truth of the matters and things within contained, being chosen, tried and sworn, upon their oath say, by direction of the said Justice, that the said defendant did undertake and promise in manner and form as the said plaintiff has in her said declaration alleged against it, and they assess the damages of the said Bridget Dimick, by reason of the non-performance of the said promises and undertakings, over and above here costs of suit by her expended, at the sum of eleven hundred and fifty dollars, and for those costs and charges the sum of six cents.

Therefore, it is considered that the said plaintiff do re-

cover against the said defendant her said damages by the jury in form aforesaid found to be the sum of eleven hundred and fifty dollars, and also

for her costs and charges aforesaid, by the court now here adjudged to the said plaintiff, and with her assent, which said damages, costs and charges in the whole amount to

Judgment signed the fifth day of November, nineteen hundred and two.

WILLIAM S. GUMMERE,
C. J.

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

In testimony whereof, I have set my hand and the seal of said Court at Trenton, this second day of February, A. D., nineteen hundred and three.

(L. S.)

WILLIAM RIKER, JR.,
Clerk.

NEW JERSEY SUPREME COURT.

BERGEN COUNTY.

BRIDGET DIMICK, *vs.* THE METROPOLITAN LIFE INSURANCE COMPANY.	*On Contract.*

Transcript of stenographer's notes taken on the trial of the above stated cause, at Hackensack, on the tenth day of September, A. D. 1902, before his Honor, Jonathan Dixon, and a jury.

APPEARANCES.

For the plaintiff, Messrs. Warren Dixon and John P. Stockton.

For the defendant, Robert H. McCarter, Esq., of McCarter, Williamson & McCarter.

JOSEPH A. VOGHT, a witness produced on the part of the plaintiff, being duly sworn according to law, on his oath testifies as follows:

Direct examination by Mr. Dixon.

Q Where do you reside?
A Englewood, N. J.
Q What is your business?
A Undertaker.
Q Did you know John W. Dimick in his lifetime at Englewood, N. J.?
A I did; yes, sir.

Q Did you bury him?
A I did.
Q When did he die?
A The twenty-fourth day of January, I think.
Q Where was he buried?
A He was buried in Englewood, Mt. Carmel Cemetery.
Q He was the husband of Mrs. Dimick?
A Yes.

No cross examination.

Plaintiff rests.

Policy offered in evidence. P. 1.

DEFENDANT'S CASE.

Mr. McCarter. I should suppose that the proof of loss should be submitted by the plaintiff, and for failure to offer the proof of loss I move for a non-suit.

The Court. What are the pleadings?

Mr. Dixon. The general issue and a special plea.

The Court. There is nothing in a special plea with regard to failure to prove the loss.

The declaration seems to be sufficient in the absence of the allegation of any sufficient failure.

Motion to non-suit is overruled.

Counsel for the defence thereupon prays for an exception to the refusal of the court to non-suit the plaintiff, which is allowed and the same is sealed accordingly.

JONATHAN DIXON, (L. S.)
Justice Supreme Court.

JOHN J. HARING, a witness produced on the part of the defendant, being duly sworn according to law, on his oath testifies as follows:

Direct examination by Mr. McCarter.

Q Doctor, I believe you are as we all know a practicing physician in this county?

A Yes, sir.

Q How long have you carried on your profession as physician in this county?

A Fifty years.

Q Where do you practice?

A Tenafly.

Q Did you know John W. Dimick?

A I did.

Q I show you what purports to be an application to the Metropolitan Insurance Company in the name of "John W. Dimick and asking to have the signature 'J. J. Haring,'" as attesting witness to that portion of the application is in your own handwriting?

A Yes, sir.

Q Did you see Mr. Dimick sign that paper?

A I did.

Paper offered in evidence.

Mr. Dixon. Under the ruling of the Supreme Court, it is held that this is a contract issued by the company (indicating policy). The application is sent to the company and this is submitted to the plaintiff as a copy.

The Court. I will admit the paper offered. Paper purporting to be application admitted in evidence and marked D. 1.

Counsel for the plaintiff thereupon prays an exception to the admission of the application in evidence and the same is sealed accordingly.

Q Do you recollect having examined Mr. Dimick for the policy in the Prudential Insurance Company?

A Yes, sir.

Q Was that before or after?
A Before.

Cross examination by Mr. Dixon.

Q You examined him for the company at the request of the company?
A Yes, sir.

Counsel. That is all.

WILLIAM J. KING, a witness produced on the part of the defendant, being duly sworn according to law, on his oath testifies as follows:

Direct examination by Mr. McCarter.

Q What position, if any, do you hold in the Metropolitan Insurance Company?
A At the present time I am superintendent; I was assistant superintendent at the time of that application.
Q Did you know John W. Dimick in his lifetime?
A I did.
Q I show the same paper that was shown to Dr. Haring and refer you to the signatures of "John W. Dimick," and "Bridget Dimick," and I ask you if you saw these signatures made?
A I did.
Q By Mrs. Dimick and also John W. Dimick?
A Yes, sir.
Q Bridget Dimick is the plaintiff in this suit?
A Yes, sir.
Q John W. Dimick is the decedent in this case?
A Yes.
Q Where was that done?
A At Mr. Dimick's house.

Counsel. That is all.
No cross examination.

FREDERICK W. WINANS, a witness produced on the part of the defense, being duly sworn according to law, on his oath testifies as follows:

Direct examination by Mr. McCarter.

Q What is your business?
A Life insurance.
Q What company?
A Prudential.
Q At Newark?
A Yes, sir.

Q In the application for the policy of insurance in suit, in reply to the question, "Is there no other insurance in force on your life, and if so, state the name of the company or association?", in reply to both these inquiries the applicant stated "None;" and these inquiries were answered in that way in the month of November, 1899. Will you state whether or not at that time Mr. John W. Dimick had any policy of insurance in your company?

Objected to on the ground that the question states to the witness a supposed fact which is not a fact.

Q In November, 1899, was or was not Mr. Dimick insured in the Prudential Insurance Company of America?

Objected to on the ground that the question calls for a conclusion and also that it is immaterial, irrelevant, and incompetent.

Question allowed.

A He was.
Q Was the policy subsequently paid?
A It was.

Mr. Dixon. I am objecting to all this testimony; it is immaterial.

Q Have you the policy with you?
A I have.
Q Will you produce it?
A Yes, sir. (Witness produces policy.)

Q Is this the policy of insurance referred to by you?
A Yes.

Said policy is offered in evidence. Objected to as immaterial, irrelevant and not proof.

Policy is admitted in evidence and marked D. 2.

Counsel for the plaintiff prays an exception to the ruling of the court, admitting said policy in evidence, which is allowed and the same is sealed accordingly.

Q Have you the application for that policy here?
A I have.
Q Will you produce it?
A (Witness does so.)

Paper is offered in evidence.

Objected to as irrelevant, immaterial and incompetent.

The Court. I am disposed to exclude it, it is not evidence against this plaintiff. Offer of paper overruled.

Counsel for the defendant prays an exception to the ruling of the court and the same is sealed accordingly.

JONATHAN DIXON, (L. S.)
Justice Supreme Court.

Counsel. That is all.

No cross examination.

GEORGE T. HAZLIM, a witness produced on the part of the defendant, being duly sworn according to law, on his oath, testifies as follows:

Direct examination by Mr. McCarter.

Q Where do you live?
A Washington, D. C.
Q What is your business?
A I am an examiner in the law division of the United States Pension Bureau.
Q Have you been subpoenaed to produce any papers on file in your office touching the application made for a pension by John W. Dimick?
A Yes, sir.
Q Have you these papers here?
A I have.
Q Will you produce any papers on file in your office touching the application for a pension made by John W. Dimick?
A Yes, sir.

Objected to as incompetent, irrelevant and immaterial.

Mr. McCarter. This offer is to show that John W. Dimick applied for a pension to United States Government in the year 1896, and was refused.

The Court. I am inclined to think on the question of fraud it is competent and on the question of warranty it is mere hearsay. You deny the making of the contract and your position that you can defeat the contract in this way—that it was made on fraudulent representation.

Mr. Dixon. I am objecting to the whole line of examination of this subject on the same ground that I have stated.

The Court. You must object to the questions as they are put.

Q Do you find amongst the papers which you produced in response to the subpoena the declaration purporting to be signed by John W. Dimick, for a pension under the act of June 27, 1890?

Objected to on the ground that it is immaterial and irrelevant.

Question allowed.

Counsel for the plaintiff prays an exception to the ruling of the court, which is allowed, and the same is sealed accordingly.

A I did.
Q Have you it in your possession?
A I have.
Q Where are these taken from?
A From the files of the United States Pension Bureau Washington, D. C.
Q What is the date of the first declaration filed?
A December, 1895.
Q Does that purport to be signed by John W. Dimick?
A Yes, sir.
Q What was done with that application?
A That application was rejected.
Q Do you find a later application?
A Yes, sir.
Q What is that dated?
A That was dated June 25, 1896.
Q Does that purport to be signed by John W. Dimick?

Objected to.

Question allowed.

Counsel for the plaintiff prays an exception to the ruling of the court, which is allowed, and the same is sealed accordingly.

A Yes, sir.
Q What became of that application?
A He was pensioned on that application.

Counsel for the plaintiff objects to the answer on the ground that it is the conclusion of the witness and not legal testimony.

Counsel for the defendant offers in evidence application purporting to be signed by John W. Dimicl for a pension, in which the cause of rheumatism is not stated as a disability, and which appears to be rejected; also the application last made in which the cause rheumatism is stated as the cause of disability, upon which it appears that the pension was granted; also another application for an increase, dated October 31, 1896, filed a short time afterwards, in which he gives rheumatism as such a disability, which appears to have been granted.

The Court. They are not competent because it does not yet appear that they were made by John W. Dimick.

The papers are marked for identification, D-3, D-4, D-5.

Cross examination by Mr. Dixon.

Q These papers that you produce here—the applications that you speak of, were they witnessed by anybody?

A Yes, sir.

Q By whom do they appear to be witnessed?

A The first application, dated December 6, 1895, was witnessed by Monroe Mattison and Z. Mautimer Vineberg.

Q Do you know these persons?

A No, sir.

Q Do you know where they live?

A Only the address given here—Englewood, Bergen County, N. J.

Q By whom are the others witnessed?

A The application of June 20, 1896, is witnessed by E. A. Trowbridge and M. Mattison.

Q Of where?

A Englewood, N. J.

Q The other?

A The application for increase of October 30, 1896 is witnessed by Henry C. Jackson and B. Gorham.

Q Of where?

A Their residences are given as Englewood, N. J.

Q (*By Mr. McCarter.*) Have you the reports of the examining surgeons with you?

A They are within the papers that you have.

Objected to on the ground that the reports are not evidence.

AARON K. BALDWIN, a witness produced on the part of the defendant, being duly sworn according to law, on his oath, testifies as follows:

Direct examination by Mr. McCarter.

Q Are you a practicing physician of the City of Newark?

A I am.

Q How long have you carried on your profession?

A Thirty-one years.

Q Are you one of the examining surgeons of the Pension Department?

A I was.

Q Were you such in the year 1896?

A Yes.

Q I suppose you examined a great many applicants for pensions, doctor?

A I examined over four thousand in seven years.

Q I show you what is said by the gentleman from Washington to be examining surgeon's report, and I ask you if you are the A. K. Baldwin, whose signature purports to be at the end of that statement?

A Yes, sir.

Q Will you look at that paper and refresh your recollection as to the facts therein stated?

Objected to.

Q (*By the Court.*) Who made that paper?

A M. S. Crane, our secretary.

The Court. I don't see how the witness can use it.

Mr. McCarter. I submit that it is a paper signed by the witness. It is a paper containing the result of

an examination which this doctor and other physicians claim to have made on Mr. Dimick. It appears to be signed by him.

Q (*By Mr. McCarter.*) What is the paper which I show you?

Q (*By the Court.*) What do you know about that paper; did you ever see it before to your knowledge?

A Yes, sir.

Q When?

A At the time it was made out—the date here; I can simply say that.

Q Is it signed by you?

A Yes, sir.

Q Are you prepared to say that you saw it at the time it was made out?

A I am prepared to say so.

Q How?

A From the writing and everything else; from my recollection by looking at the paper itself—the description of the case.

Q Was that at the time when this examination took place?

A Either at the time or the next day.

Mr. Dixon. The witness has not stated that he has any recollection of this transaction; he has not stated that he cannot remember it. This paper cannot be testimony against the plaintiff here. It must be the evidence of this witness, and he must testify. If he can testify without that paper, we are entitled to that testimony.

The Court. You may examine him with regard to his knowledge of the paper.

Q (*By Mr. Dixon.*) How much of that paper is in your handwriting?

A The signature alone.

Q How many of these do you think you signed during the time that you were employed by the government?

A I should think in the neighborhood of four thousand or over.

Q Do you have any recollection of any special occurrence at the time that this was signed?

A No, sir.

Q Do you remember Mr. Dimick at all?

A No, sir.

Q Have you any recollection of what he looked like?

A No, sir.

Q A general examination was made?

A Yes, sir.

Q Where was it made?

A At my office.

Q Why do you remember that?

A Because the examinations were all made there at that time.

Q That is, if he was examined, he was examined in your office?

A Yes, sir.

Q Further than that you would not remember anything about it?

A It would be impossible, there are so many cases.

Q You cannot remember anything about any conversation with him?

A No, sir.

Q Or what was done?

A No, sir.

Q You don't remember whether this was made on the day of the examination or afterwards?

A I know they were made either on the same day or the day after.

Q That was the custom?

A That was the custom.

Q You don't recollect anything about this paper, except that it was the custom to have it written either the same day or the next day?

A Yes, sir.

Q That was not done in the presence of the party examined?

A Yes, sir.

Q I thought you said it might be the next day?

A We took the notes then. This was one of the copies and the other copy was in the large book.

Q You took notes first, and after that you copied these notes in some paper, and that paper you filed in Washington, and the body of this paper is not in your handwriting; you didn't make it out?

A No, sir; Dr. Crane is our secretary.

Q He didn't make them up in your office?

A He made them up for the most part that day in my office, or the next day at his own office, we concurring in the report.

Q After they were made out, they were brought to you and each one signed it?

A Usually we were all together when the reports were made.

Q Did you wait and see him write these, or did you go and see him write them?

A In the great majority of instances we had the notes which we considered the equivalent.

Q It was merely a matter of his copying the notes?

A It was a particular matter; there were three physicians—(interrupted.)

Q One made a note of one thing and another a note of another thing?

A Dr. Crane was the secretary. Dr. Skinner would make notes of one particular case and I of another case; we consulted on the case afterwards. Then the copy was made from the notes, and then we looked over the paper and each one of us signed it.

Q The examining physician made the notes on the case?

A And two made notes.

Q Of the same case?

A Dr. Crane made notes at times.

Q It was immaterial?

A Immaterial—we all made notes.

Q When the three met on a case?

A Yes, sir.

Q They were usually copied by Dr. Crane at his office or at your office?

A Yes, sir.

Q And afterwards signed?

A Yes.

Q And that is all you know about this paper?

A That is all by seeing the writing at the present time.

Q (*By Mr. McCarter.*) Will you kindly look at the paper and refresh your recollection by reading it?

Objected to on the ground that the witness has not shown that it is a memorandum made by him.

The Court. It is a copy of the original memorandum.

Q What are those notes that you speak of?

A Those notes refer to the examinee's condition, to measurements of his body, and to other requirements that were ordered by the United States Government.

Q Do they include statements of everything that is on the report of the examining surgeon to the department; where are those original notes?

A I guess they have been in the waste basket years ago—down in the salt meadows.

Q Do they contain everything that was on the paper; is this report a copy of the notes or not?

A It is not a direct copy of the notes.

Q How did the United States get this paper?

Objected to on the ground that this witness cannot answer such a question.

The Court. I have understood the witness to indicate what the nature of the notes is. These notes, if offered for the inspection of the witness, would be competent as a memorandum to refresh his recollection. This is not that document. This is a copy subsequently made. It does not seem to have the characteristics of such a memorandum as might be legally submitted to a witness in order to refresh his recollection.

Q What full memorandum does ever exist of the condition of the person examined as found by the examing board, other than the memorandum of which the paper before you in the original?

Objected to as being incompetent and immaterial.

The Court. The rule, as I understand it, is that it must be a memorandum made by him at the time of the occurrence; and that a copy of that memorandum, or an abstract of it, is not competent to be used for such a purpose. This, I take it, is a report furnished to the United States government drawn from notes, which were made at the time of the transaction. Those notes would be competent to submit to the doctor, but this instrument is not competent for such a purpose.

Mr. McCarter. I offer to show by the witness that the paper in question is the only extant paper other than the duplicate in the book, concerning the examination of Mr. Dimick's physical condition; that it contains many other statements and facts than what the few notes that have been referred to contain; that the memorandum in question is a memorandum made either on the day and at the time of the examination or on the next day, and correctly states the result of the examination of Mr. Dimick by this witness.

Q (*By the Court.*) Does this report contain anything with reference to Mr. Dimick's physical condition that was not indicated by your notes in the first instance?

A Yes; in this way, that we were required to examine certain portions of the body and report as to whether they were in sound condition or not, no matter how healthy the man might be. All that we didn't incorporate in the notes because it was too plain. We simply took notes of what we actually did find—the joints, the muscles, the ligaments, the examination of the urine, examination of the lungs and heart and each particular organ; but we didn't put everything in the notes because it would take up

any amount of time. We had them off by heart and we simply put in any difference in a direct copy.

Q This is a document drawn partly from your notes and partly from recollection?

A Yes, sir; there are certain stereotyped forms that we have to incorporate in every paper.

The Court. Is there anything here pertinent except rheumatism?

Mr. McCarter. No.

Q The question whether he had rheumatism of not—would that be entered on your original notes?

A Yes; that would be entered on them by all means.

Q And this report would only be, with reference to that matter, a copy of your notes?

A We are very careful about that.

The Court. That is the only inquiry, and as to that this does not seem to be the memorandum, and therefore it does not seem to be a proper document to submit to the witness to refresh his recollection. It is a copy of that memorandum or an abstract from it. I shall exclude this paper so far as it relates to this cause.

Counsel for the defendant prays an exception to the ruling of the court, which is allowed, and the same is sealed accordingly.

JONATHAN DIXON, (L. S.)
Justice Supreme Court.

Q Do you recollect what was the trouble with Mr. Dimick?

A No, sir; it would be impossible.

Mr. McCarter. We present a memorandum made either at the same time or within a day or two afterwards, which, to all intents and purposes, and for the object and effect of the examination, is the official paper made at the time—signed by the physicians who made the examination—the original being lost, and

that being made at the outside within twenty-four hours of the time of the examination, while the original facts were within the minds of the parties. I submit that the original being destroyed, in the course of business, this is such a memorandum that the witness may refer to.

The Court. I don't think it is.
Mr. McCarter. That is all.
No cross examination.

BRIDGET DIMICK, the plaintiff, called as a witness on the part of the defendant, being duly sworn according to law, on her oath testifies as follows:

Direct examination by Mr. McCarter.

Q You are the plaintiff in this suit?
A Yes, sir.
Q I show you the paper called the "Proof of Loss," and ask you if that is your signature?
A Yes, sir; it looks like it.
Q You signed a paper after your husband's death?
A Yes, sir.

Proof of loss offered in evidence.
Objected to.
Admitted in evidence and marked D-6.
Counsel for the plaintiff prays an exception to the ruling of the court, which is allowed, and the same is sealed accordingly.

Q Did your husband have a pension?

Objected to.
Question allowed.
Counsel for the plaintiff prays an exception to the ruling of the court, which is allowed, and the same is sealed accordingly.

A Yes, sir.

Q Can you tell us whether you are the Bridget Dimick who signed the application for this policy?

A I don't understand you.

Q How long had your husband been collecting his pension money; do you remember?

A I could not say.

The Court. Is there going to be any question as to whether the person who applied for the pension is the person insured under that policy?

Mr. Dixon. We have no question of it.

Counsel. That is all.

No cross examination.

DANIEL A. CURIE, a witness produced on the part of the defendant, being duly sworn according to law, on his oath testifies as follows:

Direct examination by Mr. McCarter.

Q You reside where, doctor?

A Englewood.

Q You carry on your profession as physician there?

A Yes, sir.

Q Did you know John W. Dimick?

A I did.

Q Were you, during his lifetime, on the hospital board at Englewood?

A Yes, I was.

Q Do you know whether or not he was an inmate of that hospital?

Objected to on the ground that the question calls for a legal conclusion.

The Court. What is the legal conclusion?

Mr. Dixon. In making an iquiry, using the word "inmate."

The Court. I allow it.

A He was.

Q When was that?

A I knew the last time I was here on this case. I think it was in 1898 or 1899 probably. I gave the proper date at the last trial, but what it is now I could not tell you, but I can come within a year of it. I know about the time of the year when it occurred.

Q Did you attend him in his last illness?

A I did.

Q How long before that was it that he was in the hospital?

A It was a good while—three or four years.

Q How long was he in the hospital?

A He was there about two weeks.

Q What was the trouble with him?

A He had been run over by a lumber wagon.

Objected to.

Question allowed.

Counsel for the plaintiff prays an exception to the ruling of the court, which is allowed and the same is sealed accordingly.

Q What effect did that have on him?

Objected to.

Question allowed.

Counsel for the plaintiff prays an exception to the ruling of the court, which is allowed and the same is sealed accordingly.

A The wheel passed over his body.

Q (*By the Court.*) Did it break any bones?

A No.

Q (*By Mr. McCarter.*) Did it bruise him?

A Yes; it passed over his chest.

Q Was he unconscious while he was there?

A Yes; all the time.

Counsel. That is all.

No cross examination.

JUSTINIA ERMENTRAUT, a witness produced on the part of the defendant, being duly sworn according to law, on his oath testifies as follows:

Direct examination by Mr. McCarter.

Q You are a physician?

A I am.

Q What position, if any, do you hold in the hospital at Englewood?

A Resident physician.

Q Have you, in response to subpoena, produced the official report of the inmates of that hospital?

A I have.

Q Do you hold it in your hand?

A I do.

Q Will you look at it and see whether in the year 1893, or at any other time anterior or subsequent thereto, John W. Dimick was an inmate of that hospital?

A I have a record of John W. Dimick—admitted October 28, 1893; discharged November 11, 1893.

Q Were you connected with the hospital at that time?

A I was not.

Q What is that book?

A The official record during that time.

Cross examination by Mr. Dixon.

Q That is all you know about John W. Dimick—what you find in that record?

A That is all I know.

Counsel. That is all.

Mr. McCarter. I offer in evidence application for pension—the papers which have been marked for identification.

Objected to as immaterial and irrelevant and as not being evidence against this plaintiff.

The Court. I will receive them on the question of fraud. That is the only way they can come into the case.

Counsel for the plaintiff prays an exception to the ruling of the court, which is allowed, and the same is sealed accordingly.

Defendant rests.

REBUTTAL.

JOHN J. HARING, a witness already sworn, called on the part of the plaintiff, testifies as follows:

Direct examination by Mr. Dixon.

Q (Showing witness paper.) I believe this is the medical report that you made; did you sign it?

A I signed it.

Q Did you make the examination of Mr. Dimick?

A Yes, sir.

Q At the time that you signed that and sent it to the company, you knew that Dimick had been in the hospital, didn't you?

A Not of my personal knowledge.

Q You had heard it, hadn't you?

Objected to.

Q Didn't you testify at the former trial that you knew about his being in the hospital?

Objected to.

Question overruled.

Q You did know that he had been in the hospital, didn't you?

Objected to on the ground that witness is the plaintiff's witness.

Q (*By the Court.*) Did you believe that he had been in the hospital?

A I had no personal knowledge; no, sir.

Q (*By Mr. Dixon.*) Did you believe that he had not been in the hospital?

A I had no absolute knowledge of his having been in the hospital.

Q Did you ask him whether he had been in the hospital?

A I have no recollection of asking him that question.

Q Why didn't you ask him the question?

Objected to.

Question allowed.

Counsel for the defendant prays an exception to the ruling of the court, which is allowed, and the same is sealed accordingly.

JONATHAN DIXON, (L. S.)
Justice Supreme Court.

A I had no reason to suppose that he had been in the hospital. There are about one hundred and fifty questions to be asked there. My impression now is that I failed to ask him that question.

Cross examination by Mr. McCarter.

Q I show you your medical examination and report and statement to the medical examiner, which has already been offered in evidence, and I ask you to look at it; how many examinations have you made, do you suppose, of persons applying for different life insurance policies?

Objected to as immaterial and not cross examination.

A Why, a couple of thousand.

Q Do you have a personal recollection of every examination without referring to the memorandum made at the time?

The Court. Have you a personal recollection of this examination?

A Yes.

Q Will you look at the paper that is signed by you and see whether or not, by referring to the paper, any

reference was made by you to the question of his having been in the hospital; I refer you particularly to question 5 in the statement made to the medical examiner—"Have you ever been an inmate of an asylum or hospital? If so, when and for what?" What is the fact in regard to having put that inquiry to Mr. Dimick and having received an answer which you wrote upon that paper?

A I believe the answer is in the negative. My impression is that I didn't ask that question, but as I had no knowledge of his ever having been in the hospital, I answered it in the negative. He was a strong, athletic man, and my present impression is that I answered that in the negative without asking him the question. I would like to have said that I knew of the accident, and I made a record of that. The record is here.

Q (*By the Court.*) How did you know of that accident?

A By hearsay.

Q Is the record that you have there the result of that hearsay, or is it the result of what he told you at that examination?

A Why it is the result of hearsay and what he told me also; I had a conversation with him on that subject.

Q It was at the time of the examination a subject of conversation between you and him?

A It was.

Counsel. That is all.

HARRY FREEDMAN, a witness produced on the part of the plaintiff, being duly sworn according to law, on his oath testifies as follows:

Direct examination by Mr. Dixon.

Q What is your business?

A Life insurance.

Q In December, 1899, were you getting insurance for the Metropolitan Life Insurance Company?

A Yes, sir.

Q Did you know John W. Dimick?

A I did.

Q Were you the person who procured this policy of insurance on his life?

A Yes.

Q Were you the person by whom the application was made out; did you take the first application that went to the company?

A Yes.

Q Did you at the time know that there was a policy of insurance issued from the Prudential Life Insurance Company on the life of either Bridget or John W. Dimick?

Objected to.

Question allowed.

Counsel for the defendant prays an exception to the ruling of the court, which is allowed, and the same is sealed accordingly.

JONATHAN DIXON, (L. S.)
Justice Supreme Court.

A I did.

Q What did you have to do with that, if anything, prior to the issuing of this policy from the Metropolitan?

A I have insured Mr. Dimick in the Prudential.

Q You knew that that policy had expired?

A I knew that it had been cancelled and a paid-up policy had been issued?

Q You knew that at the time this first application was signed?

A Yes.

Q Who paid you for procuring this policy in the Metropolitan?

A My superior, Mr. King.

Q Who was he?

A He is here.

Q What connection had he with the Metropolitan?

A Assistant Superintendent.

Q He paid you for procuring this policy?

A Yes, sir.

Q *(By the Court.)* What authority had you from the company?

A I was an agent.

Q Had you a written authority?

A A written authority.

Q Have you it here?

A I haven't it with me.

Q How long had you it before you got this policy?

A I believe I started in May and this policy was written in December.

Q And you had been engaged in getting policies before that time?

A Yes.

Cross examination by Mr. McCarter.

Q Where is your authority that you speak of?

A I have it at the Metropolitan office in Passaic, N. J.

Q Did you disclose to the officials of the company the fect that Mr. Dimick had a policy in the Prudential Company, as you now say he had?

A He didn't have any. It was lapsed.

Q It was lapsed?

A Sure.

Q I don't understand you.

A At the time he wriote the application in the Metropolitan, Dimick didn't have a policy in the Prudential, for the reason that the original policy had lapsed.

Q That was your understanding?

A That was my understanding; I knew it.

Q (*By Mr. Dixon.*) That was the fact?

A That was the fact.

Q This policy that is dated 1897 and offered in evidence; you knew of that?

A Yes; that is right.

Q What is it?

A A paid-up policy on which no premium is paid by the insured.

Q You knew of the existence of that at the time you took his application in the Metropolitan?

A Yes, sir.

Q You considered that that was not a policy?

A I didn't consider it was a policy.

Q (*By Mr. McCarter.*) Why didn't you consider that that was a policy?

A Because Mr. Dimick didn't pay any premiums on that policy.

Q Had you seen that policy?

A I had not seen it, but Mrs. Dimick told me that she had received $219—(interrupted.)

Q Had you seen that policy prior to the time that you wrote the policy in question for Mr. Dimick?

A I have not seen it.

Q Had you heard of it then?

A I had.

Q Who told you about it?

A Mrs. Dimick told me about it.

Q When?

A At the time when the application was written for the insurance in the Metropolitan Life Insurance Company.

Q The same time?

A That very day.

Q Before or after Mr. Dimick signed the application?

A Before Mr. Dimick signed the application.

Q And you supposed that because that was a paid-up policy, therefore it was not a policy?

A I did.

Q Did Mr. Dimick tell you that, too?

A Mrs. Dimick alone.

Q (*By Mr. Dixon.*) You told her that it was not a policy?

A I told her that there was not enough protection in that policy, and that she ought to have more.

Counsel. That is all.

Plaintiff rests.

CASE CLOSED.

Counsel for the plaintiff moves that the court direct verdict for the plaintiff for one thousand dollars and interest, on the ground that there is no evidence to show the breach of any warranty. One breach alleged is that he said that a pension had been granted him for "long service in the civil war." The court before charged upon that, and the Supreme Court, in reviewing this case, commented upon it. The Supreme Court held that there was no such pension awarded for any such purpose by law; that both the plaintiff and defendant knew that, and that, therefore, that was not an answer to the question; and if the company desired any further answer to that question, further inquiry should have been made; and that that was not a breach.

The next breach was as to the answers to the two questions: "State what insurance you now carry on your life with name of company or association by whom granted and the year of issue." The answer is "None." I submit that as a proposition of law there was none being carried on his life at that time.

"Is there any other insurance in force on your life?" That is not answered at all in this copy which is annexed to the policy, and the Supreme Court seems to think that the company is bound by that.

As to the medical examination—had he ever been an inmate of a hospital?—it is proved that that question was never asked him,—that that answer was put in there without having been asked him.

There is no evidence here that he ever had rheumatism. In fact, the defendant now confesses that it cannot give such testimony.

Mr. McCarter.—The situation as I understand it resolves itself into this: The application signed by Mr. Dimick contained the clauses that I have already directed attention to—these two questions: "State amount of insurance you now carry on your life with the name of company or association by whom granted, and the year of issue." Answer to that question: "None."

Question: "If insured in this company, in ordinary, industrial or intermediate, give policy numbers. Is there any other insurance in force on your life?" The answer to the latter part of this question is "None." This is in the application made by the deceased to the company, and I submit that as a proposition of law, the claimant is bound by it.

The Court.—The company furnished to Mr. Dimick, with the policy issued, what purported to be a copy of his application, in which, in answer to that question, nothing at all appears. There certainly would be equity in asserting that the company would be estopped from saying that the applicant answered the question otherwise than as appears in the copy of the application annexed to the policy. When the company has certified to him: "This is the kind of representation you have made to us," there certainly would be a great deal of equity in holding that the company is estopped from saying that there was a different application.

I agree with Mr. McCarter that the word "None" should be regarded as the answer to the question: "Is there any other policy in force," but my difficulty is this: Two men cannot agree that black is white and make it white. The evidence is that the person who wrote this answer and received this application was your agent, and that he knew all about the circumstances, and although this instrument says he shall not be deemed your agent, the fact is that he was your agent, just as was the doctor, and you cannot enjoy the benefits of an agency and repudiate

the burdens; the burdens go with the benefits. If you select an agent and pay him to render services for you, you cannot force somebody else dealing with him as your agent to bear the burdens of his mistakes and errors; and it is upon that view that I am inclined to say that you cannot rely upon this answer here, in view of the testimony in this case. Your agent (for he was your agent to receive this application from this man) knew all about it, and purposely, with that knowledge, and honestly, and on his understanding of the situation, wrote the word "None"; and, notwithstanding the fact that you have said in this instrument that he shall not be your agent, yet he is your agent and no such statement can change his position. It is against public policy.

Your agent—the person who was receiving for you this information from Mr. Dimick—thought this paid-up policy in the Prudential Company was not such a policy as you were inquiring about; he knew exactly what it was, and he believed it was not such a policy as was inquired of by you, and accordingly he wrote that answer. He was your agent and construed these questions. That seems to me to be the mercantile, equitable and reasonable view of the matter, supported by the decisions of the Court of Appeals of the State of New York, from which we get a great deal of our recent commercial law, and I think that there is really no question to be submitted to the jury.

The same thing is applicable as to your physician. He says: "I never asked the man about the hospital; I knew he was injured." He didn't ask that; he waived that question; your agent waived that question. He told you: "No." Because your agent makes a false representation to you, I don't see how you are going to hold a stranger on that.

I am strongly inclined to support the view that the question of principal and agent is one of fact, and that it is against public policy for a man to employ an agent and then say he is not his agent.

I really think, as the case now stands, that there is no question for the jury to pass upon, and I will therefore di-

rect a verdict for the plaintiff for the amount of the policy and interest.

Counsel for the defendant thereupon prayed an exception to the Court's direction of a verdict for the plaintiff; which is allowed and the same is sealed accordingly.

JONATHAN DIXON, (L. S.)
Justice Supreme Court.

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New Jersey Court of Errors and Appeals.

BRIDGET DIMICK,
Defendant in Error.
vs.
THE METROPOLITAN LIFE INSURANCE COMPANY.
Plaintiff in Error.

ASSIGNMENT OF ERRORS.

Afterwards, that is to say, on the fourth Tuesday of November, nineteen hundred and two, in the Court of Errors and Appeals in the last resort in all causes, comes the said Metropolitan Life Insurance Company, by McCarter, Williamson & McCarter, its attorneys, and says, that in the record and proceedings aforesaid, and also in the matters recited and contained in the bill of exceptions, and also in giving the verdict and judgment aforesaid, there is manifest error in this, to wit:

First. For that the said justice before whom said cause was brought at and upon the aforesaid trial of the issue joined between the parties, refused to non-suit the plaintiff, although requested so to do by the defendant.

Second. There is also error in this, to wit: For that the said justice before whom, etc., rejected competent evidence duly offered by the defendant, and more particularly refused to allow the defendant to put in evidence the application of the said John W. Dimick for the policy of insurance, upon which the policy in the Prudential Life

Insurance Company upon the life of John W. Dimick was based.

Third. There is also error in this, to wit: For that the said justice before whom, etc., refused to permit Aaron K. Baldwin, a witness produced on the part of the defendant, to refer to a memorandum in his possession, and being the examining surgeon's report upon the application of John W. Dimick for a pension from the United States Government, for the purpose of thereby refreshing his recollection.

Fourth. There is also error in this, to wit: For that the said justice before whom, etc., at and upon the aforesaid trial, permitted against the objection of the defendant, the witness John J. Haring, to be asked by the plaintiff the following question: "Why didn't you ask him the question?"

Fifth. There is also error in this, to wit: For that the said justice before whom, etc., against the objection of the said defendant, permitted the said plaintiff to ask the witness, Harry Freedman, the question: "Did you at the time know that there was a policy of insurance issued from the Prudential Life Insurance Company on the life of either Bridget or John W. Dimick?"

Sixth. There is also error in this, to wit: For that the said justice before whom, etc., at the close of the case directed a verdict for the plaintiff for the amount of the policy and interest,

Therefore, the said Metropolitan Life Insurance Company prays that the judgment aforesaid by reason of the aforesaid errors, and of others errors appearing in the record and proceedings aforesaid, be reversed, annulled, and held for nothing, and that the said Metropolitan Life Insurance Company may be restored to all things it has lost on occasion of the said judgment, and that the said Bridget Dimick may rejoin to the said errors, &c.

McCARTER, WILLIAMSON & McCARTER,
Attorneys for, and of Counsel with Plaintiff in Error.

EXHIBITS.

EXHIBIT D. 1.

Admitted.

(Application for insurance printed ante pp. 4-16).

EXHIBIT D. 2.

Admitted.

(Policy in Prudential Insurance Company of America, dated February 22, 1897, on life of John W. Dimick).

Incorporated as a Stock Company by the State of New Jersey.

The Prudential Insurance Company of America.

Home office: Newark, N. J.

Number 10258642.

Paid-up term policy.

In consideration of the application for this policy, and of the surrender of the former policy, No. 4700055, on the life of John W. Dimick, herein designated as the insured, hereby promises to pay, at its Home Office in the City of Newark, New Jersey, unto the executors, administrators or assigns of the insured, unless settlement shall be made under the provisions of article second hereinafter contained, the sum of two hundred and nineteen dollars, within twenty-four hours after acceptance at its said office of satisfactory proof of the death of the insured during the continuance of this policy, which expires and becomes of non-effect and void on the 22d day of February, 1916, at twelve o'clock noon.

This Policy is issued and accepted subject to the following restrictions, conditions and agreements:

FIRST. That part of the application for the above mentioned former policy relating to the age of the insured is made a part of this contract. In case the age shall have been understated in said application, the term for which this policy is issued, and the amount insured, shall be corrected to the term and amount that would have been granted if the age of the insured had been accurately stated.

SECOND. The company may pay the sum of money insured hereby, to any relative by blood, or connection by marriage of the insured, or to any other person appearing to said company to be equitably entitled to the same by reason of having incurred expense in any way on behalf of the insured for his or her burial, or 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 to any or either of them shall be conclusive evidence that such sum has been paid to the person or persons entitled thereto, and that all claims under this policy have been fully satisfied.

THIRD. The insured may, without notice to the company, engage in any occupation except in military or naval service of any kind in time of actual war.

FOURTH. No suit on this policy shall be maintainable against the company unless brought within six months after the date of death of the insured.

FIFTH. If full proof of death is given to the company within three months next after the death of the insured, and if the foregoing condition as to occupation shall have been complied with, this policy shall be incontestable, except that the sum insured may be adjusted for a misstate ment of age.

In Witness Whereof, the President and Vice-President of said company have signed these present at its Home Office in the City of Newark, New Jersey, this 22d day of Feby. 1897.

JOHN F. DRYDEN,
President.

LESLIE D. WARD,
Vice-President.

Industrial Branch.—Paid-up Term. Form 3-25-96.
Ed. 5-98.
Age attained, 52.
Amount, $219.
Paid-up term, 19 years, days.
Examined, N. M.

APPLICATION FOR FOREGOING POLICY.

(Rejected.)

Office No. Form 658—Rev. 6-9-98 105-3-15-99.
Agent, J. Collins. Paid up policy No. 10258642
Signature of Asst. Sup't, H. B. Bennett.
District, Passaic. Life Reg. Folio

Application to The Prudential Insurance Company of America for a Paid-up Policy.

Questions to the Applicant.

1. What is your full name? John W. Dimick.

2. Date of birth, Mch 14, 1845.

3. What is your present address? 9 Waldo, Englewood, N. J.

4. Number of policy to be surrendered, 4700055.

5. Date of last payment in premium receipt book, Feby 15, 1897.

6. What kind of Paid-up policy do you apply for? Paid-up Life Policy. Or Paid-up Term Policy for expectation of life, (if original policy was issued between Jan. 1, '92 and July 1, '95). Or Paid-up Term Policy for a term of weeks (this is allowed only in the case of Special Industrial policies issued prior to 1892). Or Paid-up Endowment (if original policy was Endowment.) Full expectation of life.

The policy referred to in answer 4. having become lapsed and forfeited to The Prudential Insurance Company of America, I hereby apply for an Industrial Paid-up Policy as provided by the rules of said company, in consideration of which I hereby surrender the original policy referred to in above answer 4.

JOHN W. DIMICK.

Witness, H. B. Bennet.

Dated at Englewood this 3 day of Apl, 1897.

Original policy must in every case accompany application.

FOR HOME OFFICE USE ONLY.

7. Am't of Original Policy
8. Weekly Premium 9. Age at issue
10. Date of issue 11. Date of lapse
12. Kind of original policy 13. Endorsements
14. Premiums paid for years.
15. Revived with lien
16. Paid-up value per $100 17. Reserve per $100
18. Amount of Paid-up Policies—Ex. of Life
Life Yr. End.
19. Terms—Ex. of Life years days
Endowment years If Special Adult weeks
20. Date of Paid-up Policy 21. Date of Expiry
22. Age attained 23. Single Premium
24. Reserve—Orig. Policy
25. Cal. made by 26. Lien
27. Checked by 28. Net Reserve

EXHIBIT D. 3.

DECLARATION FOR DISABILITY PENSION.

(Act of June 27, 1890.)

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

On this 30th day of November, A. D. one thousand eight hundred and ninety-five, personally appeared before me, an officer duly authorized to administer oaths within and for the County and State aforesaid, John W. Dimick, aged 58 years, a resident of Englewood, County of Bergen, and State of New Jersey, who being duly sworn according to law, declares that he is the identical John W. Dimick who was ENROLLED on the 27th day of August, 1861, in Company "A" of the 89th Regiment of N. Y. Vols. & transferred commanded by to the V. R. C and was honorably discharged at after serving over 90 Days on the War of 1861 & 5. day of , 18 , that his personal description is as follows—Age years; height feet inches; complexion , hair ; eyes

That he is more or less dependent on his labor for his support, and he is physically disabled for manual labor by disabilities which are not due to any vicious or immoral habits.

He is receiving a pension of $ per month.

He has a claim for invalid pension now pending, No.

He is permanently disabled by Lameness of back, from effects of shell at Antietam, and from broken ribs received in recent accident—neither of which is due to vicious habits.

That he has not been employed in the military or naval service otherwise than as stated above either before enlistment in, or after discharge from the above service. Here state what the service was whether prior or subsequent to that stated above, and dates at which it began and ended.

That he is now disabled from obtaining his subsistence by manual labor; and he therefore makes this declaration for the purpose of being placed on the invalid pension roll of the United States under Act of June 27, 1890.

He hereby appoints with full power of substitution and revocation,

A. M. LEGG & CO.

of Washington, D. C., his true and lawful Attorneys to prosecute his claim. That his postoffice address is Englewood, County of Bergen, State of New Jersey.

JOHN DIMICK,

Attest MONROE MATTISON. *Signature of Claimant.*

Z. MAUTIMER VINEBERG.

Two witnesses sign here.

(SEAL.) Attest.

CHARLES W. VALENTINE,
Notary Public for N. J.

Att'y filed.

Also personally appeared Monroe Mattison, residing at Englewood, N. J., and Z. Mautimer Vineberg, residing at Englewood, persons whom I certify to be respectable and entitled to credit, and who being by me duly sworn, says

they were present and saw John W. Dimick, the claimant, sign his name (or make his mark) to the foregoing declaration; that they have every reason to believe from the appearance of the claimant and their acquaintance with him that he is the identical person he represents himself to be; and that they have no interest in the prosecution of this claim.

MONROE MATTISON,
Z. MAUTIMER VINEBURG,

Two witnesses sign here.

Sworn to and Subscribed before me, this 30th day of November, A. D. 1895, and I hereby certify that the contents of the foregoing affidavit were fully made known and explained to the affiant, including the words in line erased, and in line the words added; that the affiant to me well known, and respectable and worthy of full credit, and that I have no interest, direct or indirect, in the prosecution of this claim.

(SEAL) CHARLES W. VALENTINE,
Official Signature.
Notary Public for N. J.
Official Character.

Endorsement.

CLAIM FOR DISABILITY PENSION.

(Act of June 27, 1890).

John W. Dimick
Co. "A", Reg't "89th N. Y. Vols.
Discharged

Pension
C.
DEC.
U. 6 S.
1895
Office.

RECORD DIV.
DEC 10 1895
RECEIVED.

LAW DIVISION,
B. DEC. 9 1895 P.
RECEIVED.
Offices of
A. M. LEGG & CO.,
Solicitors of
PATENTS AND CLAIMS,
515 Third Street, N. W.,
Washington, D. C.

EXHIBIT D. 4.

DECLARATION FOR DISABILITY PENSION.

(Act of June 27, 1890.)

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

On this 20th day of June, A. D., one thousand eight hundred and ninety-six, personally appeared before me, an officer duly authorized to administer oaths within and for the County and State aforesaid John W. Dimick aged 58 years, a resident of Englewood, County of Bergen, and State of New Jersey, who being duly sworn according to law, declares that he is the identical John W. [Dimmick] Dimick who was ENROLLED on the 5th day of Sept. 1861, in Company A of the 89 Regiment of N. Y. Vols. commanded by Col. Fairchild, and was honorably discharged at Washington D. C. on the day of , 1865, that his personal description is as follows—Age 58 years; height 5 feet 10½ inches; complexion Light; hair Grey; eyes Grey That he is more or less dependent on his labor for his support, and he is physically disabled for manual labor by disabilities which are not due to any vicious or immoral habits.

He is receiving a pension of $ per month.

He has a claim for invalid pension now pending, No.

He is permanently disabled by lameness of back, weak eyes, & Rheumatism the first caused by shell explosion at

Antietam, & by being running over by a wagon, in 1894 which broke several ribs.

That he has not been employed in the military or naval service otherwise than as stated above except that he joined the V. R. C.

Here state what the service was whether prior or subsequent to that stated above, and dates at at which it began and ended.

That he is now disabled from obtaining his subsistence by manual labor; and he therefore makes this declaration for the purpose of being placed on the invalid pension roll of the United States under Act of June 27, 1890.

He hereby appoints with full power of substitution and revocation,

A. M. LEGG & CO.,

of Washington, D. C., his true and lawful Attorneys to prosecute his claim. That his post-office address is Englewood City, County of Bergen, State of New Jersey.

JOHN W. DIMICK

Attest E. A. TROWBRIDGE, Signature of Claimant.
M. MATTISON

Two witnesses sign here.

Also personally appeared M. Mattison, residing at Englewood, N. J. and E. A. Trowbridge, residing at Englewood, N. J., persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, says they were present and saw John W. Dimick, the claimant, sign his name (or make his mark) to the foregoing declaration; that they have every reason to believe from the appearance of the claimant and their acquaintance with him that he is the identical person he represents himself to be; and that they have no interest in the prosecution of this claim.

E. A. TROWBRIDGE
M MATTISON

Two witnesses sign here.

Sworn to and subscribed before me, this 20 day of June, A. D. 1896, and I hereby certify that the contents of the foregoing affidavit were fully made known and explained to the affiant, including the words Dimmick in line Six erased, and in line the words Dimick added; that the affiant is to me well known, and he respectable and worthy of full credit, and that I have no interest, direct or indirect, in the prosecution of this claim.

(L. S.)

RUFUS A. GORHAM
Official Signature.
Notary Public.
Official Character.
New Jersey

(SEAL)

Endorsement.

CLAIM FOR DISABILITY PENSION.

(Act of June 27, 1890.)

Co. "A" 89, Reg't N. Y. Vols.
Enlisted Aug. 27, 1861.
Discharged 1865.

Pension.
C.
JUN
U 25 S
1896
Office.

RECORD DIV.
JUN 26 1896
RECEIVED.

LAW DIVISION,
B. JUN 26 1896 P.
RECEIVED.

Offices of
A. M. LEGG & CO.,
Solicitors of
PATENTS AND CLAIMS,
515 Third Street, N. W.
Washington, D. C.

EXHIBIT D. 5.

APPLICATION FOR INCREASE OF PENSION.

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

On this day of , A. D. one thousand eight hundred and ninety-six personally appeared before me, an officer duly authorized to administer oaths within and for the County and State aforesaid, John W. Dimick, aged 58 years, who being duly sworn according to law, declares that he is a pensioner of the United States duly enrolled at the rate of Six Dollars per month under Pension Certificate No. 917053 by reason of disability resulting from lameness of back, effects of shell and broken ribs. "Partial inability to earn a support by manual labor," [Here state the disabilities for which you are pensioned exactly as mentioned in your Pension Certificate] failing eyesight and Rheumatism—incurred in the service of the United States while serving as a Private in Company A of the 89 Regiment of N. Y. Volunteers.

That he believes himself entitled to an increase of pension for disability above stated and hereby makes application therefor because of his rate being too low and not commensurate with his degree of disability.

Also claims as a new disability.

He hereby appoints with full power of substitution and revocation—

A. M. LEGG & CO., of WASHINGTON, D. C.,

his true and lawful Attorneys to prosecute his claim. That his postoffice address is No. 9 Waldo Place, Englewood, County of Bergen, State of New Jersey.

JOHN W. DIMICK,
Signature of Claimant.

HENRY C. JACKSON.
EDSON B. GORHAM.

Two persons who can write sign here.

Also personally appeared Henry C. Jackson residing at Englewood, N. J. and Edson B. Gorham, residing at Englewood, N. J., persons whom I certify to be respectable and entitled to credit, and who, being by me duly sworn, say they were present and saw John W. Dimick, the claimant, sign his name (or make his mark) to the foregoing declaration; that they have every reason to believe, from the appearance of claimant, and their acquaintance with him, that he is the identical person he represents himself to be; and that they have no interest in the prosecution of this claim.

HENRY C. JACKSON,
EDSON B. GORHAM

Two witnesses sign here.

Sworn to and Subscribed before me, this 22d day of October, A. D. 1896, and I hereby certify that the contents of the above declaration, etc., were fully made known and explained to applicant and witnesses before swearing, including the words erased, and the words added; and that I have no interest, direct or indirect, in the prosecution of this claim.

RUFUS A. GORHAM
(L. S.) Signature.
Notary Public
(SEAL) Official Character.
New Jersey.

Certificate No. 917053

Endorsement.

APPLICATION FOR INCREASE OF PENSION.

Claim of
John W. Dimick
Co. A 89 Reg. N. Y. Vols.

Pension
Oct
U. 30 S.
1896
Office.

Received.
Nov 3 1896
Record Div

Law Division,
B. Oct 31 1896 P.
Received.

Filed by
A. M. LEGG & CO.,
Solicitors of
Patents and Claims,
Washington, D. C.

EXHIBIT D. 6.

Form 034B.
The space below is to be filled in at the home office only.
Claim number
Name of deceased, Jno. W. Dimick.
Policy number, 166,899A.
Amount of insurance, $1,000.
Proofs received February 3, 1900.
Proofs approved Claims paid

PROOFS OF DEATH submitted to the Metropolitan Life Insurance Company of New York.

Attention! Before forwarding proofs, see that all blanks are filled and every question answered, and that the instructions on this page are strictly carried out, thus avoiding delay, and insuring prompt examination of the claim.

Proofs of death submitted to the Metropolitan Life Insurance Company by claimant.

I. Claimant's Statement.

To be made by the person claiming the insurance.

Read instructions.

Number of policy, 166,899 A.

Amount of insurance, $1,000.

Date of issue, fourth day of December, 1899.

1. Name of insured, John W. Dimick.

Residence, No. 9 Waldo Place, Englewood, N. J.

Where has deceased resided since policy was issued? No. 9 Waldo Place, Englewood.

2. A. Occupation of deceased at death, carpenter.

B. Occupation since policy was issued, carpenter.

C. Was deceased ever connected with the manufacture or sale of ale, beer or liquor? If yes, when and where? No.

3. A. Place of birth of deceased, New York State.

B. Date of birth: Year, 1847; month, March; day, 14.

4. A. Place of death of deceased, No. 9 Waldo Place, Englewood, N. J.

B. Date of death: Year, 1900; month, January; day, 24th.

5. A. When did deceased first complain of not being in good health? December 22, 1899.

B. When did deceased first consult a physician? December 24, 1899.

C. For how long a time was deceased confined to the house or prevented from attending to usual occupation? From December 24 up to Jan. 24, 1899.

D. When was deceased first prevented from attending to usual occupation? Dec. 24, 1899.

6. A. Of what complaint did deceased die? (Give full particulars.) Spinal disease.

B. What was the duration of last illness? One mth.

C. Did he die by suicide or by his own act? No.

7. Names of all physicians who attended deceased during last illness and dates of their attendance. Name, Dr.

Daniel Curry, Residence, Palisade avenue, Englewood, N. J. Dates of attendance, Dec. 24, 1899, till death.

8. A. Has deceased ever met with any accident, or undergone any surgical operation? If yes, state particulars. Dec. 24, 1899, fell down stairs. Knocked down by runaway about 5 years ago, 1st November, 1894.

B. Had deceased at any time been an inmate of or under treatment at a hospital or asylum? If yes, state when and where. Yes, two weeks at Englewood Hospital for treatment runaway team.

9. What sickness previous to the last one did deceased have, and when? Accident. Runaway team, November 1st, 1894.

B. Give names and addresses of physicians who attended deceased or prescribed for any sickness or ailment, previous to the last sickness. Dr. Daniel Curry, Englewood, N. J.

10. A. Did deceased carry any other insurance on his life? If yes, give name of company, amount, and dates of policies. Yes, P. U. Policy in Prudential, $219.00.

B. Had any application for insurance ever been made to any company, society or association on which a policy was not granted? No.

11. A. Were deceased's habits of life correct, sober and temperate? Yes.

B. Had they always been so? Yes.

12. Did any of deceased's parents, grandparents, brothers or sisters, uncles or aunts, die of, or were they ever afflicted with, consumption, heart disease, insanity, or other hereditary disease? If yes, specify, giving names and dates of each. None to claimant's knowledge.

13. Name of deceased's father, Daniel Dimick. Age at death, 97. Cause of death, not known.

Name of deceased's mother, Rebecca Dimick. Age at death, 78. Cause of death, erysipelas.

14. How long have you known deceased? Twenty-six years.

B. What was your relationship to deceased? Wife of deceased.

C. Your age. 45.

D. In what capacity or by what title do you claim the insurance? (See instructions.) Bridget Dimick.

E. If policy was ever assigned, give date and purpose of assignment.

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

BRIDGET DIMICK,
Residence, No. 9 Waldo Place, Englewood, N. J.

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

Before me, a Notary Public in and for the above county and State, this 30th day of January ,1900, appeared Bridget Dimick, known to (SEAL) me, and made oath that the answers by her given to the foregoing questions are true and full to the best of her knowledge and belief.

CHARLES W. VALENTINE,
Notary Public.

Notary or Justice of Peace must attach Certificate of Authority (from County Clerk or Court of Record) to administer oath.

Claimant must furnish a certified copy of the record of death as shown by the books of the Health Department, Registrar, County Clerk or other officer having charge of such records.

Proofs of death submitted to the Metropolitan Life Insurance Company by claimant.

II. Attending Physician's Statement.

As the company preserves a record of its mortality experience, the report of the attending physician will be of great service if precise and full answers are given to the following questions; it will also facilitate prompt examination of the claim.

Before signing, kindly read over your answers, to see whether they are as exhaustive as you can make them.

Note.—If you have any facts which you prefer not to enter upon this certificate, please make them the subject of special correspondence with the Home Office, New York.

1. Full name of deceased? John W. Dimick.
2. Residence? No. 9 Waldo Pl, Englewood, N. J.
3. Occupation? Carpenter.
4. White or colored? White.
5. Age at death? 53.
6. Apparent age at death. 53.
7. Date of death? Year, 1900. Month, January. Day, 24th.
8. Cause of death? I. Chief or primary. Acciden Dec. 24th, 1899. II. Contributing or secondary. Spinal.
9. For what disease or diseases have you at any time attended deceased prior to last illness, and what was their duration? About five years ago run over by a team and truck. Confined to hospital for two weeks.
10. How long had deceased been ill when you were called to attend? One week.
11. Did deceased ever suffer from Phthisis Pulmonalis, or any other form of Consumption or Pulmonary disease? If so, please specify? No.
12. Was deceased afflicted with any infirmity, deformity or chronic disease? If so, please specify. No.
13. Was death the result of deceased's own hand or act? No.
14. Have you filled, or agreed to fill, out a certificate for this case for this or any other company? If so, please specify. No.

15. Did any member of the deceased's family die of consumption? If so, please give relationship and date of death. No.

16. Was deceased ever treated by a physicin, or at a hospital or other institution prior to or during your attendance? If so, please specify. Englewood hospital.

17. Are there any other particulars relating to the sickness or habits of deceased with which you think the company should be made acquainted? If so, please specify. No.

18. To what extent, if any, did deceased use intoxicants? No.

19. Was death caused, directly or indirectly, by the use of intoxicating drink, opium, or other drug? No.

20. Was there any cause, remote or proximate, for the death in the habits, occupation, residence or family history of deceased? No.

I hereby certify that I attended the deceased from Dec. 16th, 1899, to Jan. 24th, 1900, that I signed the certificate on file at the office of the Board of Health or Register of Vital Statistics, and that the answers as above recorded are complete and true to the best of my knowledge and belief.

DANIEL A. CURRIE, M. D.,
Palisade Ave., Englewood, N. J.

STATE OF NEW JERSEY,
COUNTY OF BERGEN.

Before me, a Notary Public in and for the above County and State, this 30th day of January, 1900, appeared Daniel A. Currie, M. D., (SEAL.) known to me as a physician in regular standing. and made oath that the answers by him given to the foregoing questions are true and full to the best of his knowledge and belief.

CHARLES W. VALENTINE,
Notary Public.

Notary or Justice of Peace must attach certificate (from County Clerk or Court of Record) of authority to administer oath.

Proofs of death submitted to the Metropolitan Life Insurance Company by claimant.

III. Statement of the Minister or other Person who officiated at the Interment of Deceased.

1. Name of deceased, John W. Dimick.
Residence, No. 9 Waldo Place, Englewood.
Did you officiate at the interment? Yes.

2. Date of interment, January 27, 1900.
Place of interment, Mount Carmel Cemetery, Highwood, N. J.

3. Were you personally acquainted with deceased during lifetime, and do you know beyond a doubt that the body interred was the body of the person described in the accompanying claimant's statement? Yes, have known him fifteen years during lifetime.

D. T. O'MALLEY,
50 Waldo Pl., Englewood.

State of New Jersey,
County of Bergen.

Before me, a Notary Public in and for the above County and State, this 30th day of January, 1900, appeared D. T. O'Malley, known to (seal.) me, and made oath that the answers by him given to the foregoing questions are true and full to the best of his knowledge and belief.

CHARLES W. VALENTINE,
Notary Public.

IV. Undertaker's Statement.

1. Name of deceased, John W. Dimick.
Residence, Waldo Place, Englewood, N. J.
Age as inscribed on coffin, 53 years.

2. When and where did you inter the body? January 27, 1900, Mount Carmel Cemetery, Highwood, N. J.

3. Do you know beyond a doubt that the body interred was the body of the person described in the accompanying claimant's statement? Yes.

3a. On what do you base your knowledge of the identity of the body interred with that described in the foregoing statements? Personal acquaintance for 15 years.

4. Deceased's height, 5 feet 9 inches. Weight, 170. Color of hair, dark brown. Color of eyes, hazel. Complexion, dark.

JOSEPH A. VOGHT,
12 West Palisade Ave., Englewood, N. J.

STATE OF NEW JERSEY,
COUNTY OF BERGEN.

Before me, a Notary Public in and for the above County and State, this 30th day of January, 1900, appeared Joseph A. Voght, known (SEAL.) to me, and made oath that the answers by him given to the foregoing questions are true and full to the best of his knowledge and belief.

CHARLES W. VALENTINE,
Notary Public.

V. AGENT'S STATEMENT.

*Agent will interview last employer or business associate before completing statement.

1. Name of deceased, John W. Dimick.
Residence, 9 Waldo Place, Englewood, N. J.
Occupation at death, carpenter.
Occupation for last ten years, carpenter.

2. When was last premium paid? Dec. 7, 1899.

3. Were you personally acquainted with the deceased? No.

4. Have you personally seen the remains of deceased, and do you know of your own knowledge that they are

those of the person described in the policy of insurance on which the claim is based? I have not. Asst. King viewed the body and knew him personally.

5. When did deceased last attend to his usual work? Dec. 24, 1899.

5b. From whom did you ascertain this date? Stating name and address of your informant. From claimant and Father O'Malley.

6. If you have not seen the remains by what other evidence have you satisfied yourself of the identity of the deceased with the person insured as aforesaid? Asst. King's and Father O'Malley's statement.

7. Please read statements by claimant, position, minister and undertaker and state whether you believe them to be true? Yes.

If you have any facts which you prefer not to enter upon this certificate, please make them the subject of special correspondence with the Home office.

G. A. KNOTHE,
160 Monroe St., Passaic, N. J.

STATE OF NEW JERSEY,
COUNTY OF BERGEN.

Before me, a Notary Public in and for the above County and State, this 30th day of January, 1900, appeared G. A. Knothe, known to me, and made oath that the answers by him given to the foregoing questions are true and full to the best of his knowledge and belief.

(SEAL.)

CHARLES W. VALENTINE,
Notary Public.

Notary or Justice of Peace must attach certificate of authority (from County Clerk or Court of Record) to administer oath. If more than one Notary or Justice of Peace administer oath, Certificate of Authority for each must be furnished.

Claimant must furnish a certified copy of the record of death as shown by the books of the Health Department,

Registrar, County Clerk or other officer having charge of such records.

INSTRUCTIONS FOR PREPARING PROOFS OF DEATH.

The intervention of any third person for the collection of the claim, or the payment of commission to any person for pretended services in regard thereto, it entirely unnecessary.

Each of the five statements composing these proofs must be sworn to before a Notary Public or Justice of the Peace. The Certificate of the County Clerk must be obtained, that the person administering the oath is duly authorized for that purpose; or they may be sworn to before the Clerk of a Court of Record, whose seal must be attached.

When a policy is payable to the legal representatives of the insured, claimant's statement must be made by his or her executor or administrator, with proof of authority to act attached;

When payable to a named beneficiary of full age, the claimant's statement must be made by such beneficiary;

When payable to a named beneficiary not of full age, the claimant's statement must be made by his or her guardian, with letters of appointment attached;

When assigned, the claimant's statement must be made by the assignee, with the original assignment, or a properly authenticated copy thereof attached;

When payable to the children of a person, or to any other class of persons whose names are not separately mentioned in the policy, proof must be furnished of how many children there are, or of how many the class consists, and the names and ages of the persons.

When a policy, payable by its terms to one beneficiary, if surviving, has, by the death of such beneficiary, become payable to another, proof of the death of such first beneficiary must be furnished by a certificate of death from the public authorities.

When a Coroner's inquest was held, a certified copy of the testimony and verdict must accompany these proofs.

When the death occurs out of the United States, proofs must be verified before the American Minister or Consul, and bear his official certification.

Before forwarding proofs, please see that all blanks are filled and every question answered and that the above instructions are strictly carried out, thus avoiding delay and insuring prompt examination of the claim.

CERTIFICATE OF CLAIM COMMITTEE.

New York, 189

We have duly examined the Proofs of Claim under Policy No. and, finding the same Recommend

Committee on Claims.

CERTIFICATE OF THE COMPANY'S OFFICERS.

This is to certify that we have examined the Proofs of Claim under Policy No. with such additional facts as have been elicited, and, finding the same recommend rejection.

President.
Secretary.