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Notice of Appeal.

Filed April 21, 1929.

New Jersey Supreme Court.

10

BERGEN COUNTY.

MARY BUSHKO, Administratrix of
the Estate of Anthony Tula,
deceased, and MARY BUSHKO,
Administratrix of the Estate
of Annie Tula, deceased,

Plaintiff,

vs.

FIRST UHRO SLAVONIAN GREEK
CATHOLIC SICK AND DEATH
BENEFIT SOCIETY OF ST. MI-
CHAEL THE ARCHANGEL,
Defendant.

Action at Law.

20

Notice
of Appeal.

To Messrs. FEDER & RINZLER,
Attorneys of Plaintiff.

30

Take Notice that the defendant appeals to the
Court of Errors and Appeals from the whole of
judgment entered in this cause.

HENRY H. RUST,
ANDREW FOULDS, JR.,
Attorneys of Defendant.

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Grounds of Appeal.

NEW JERSEY COURT OF ERRORS AND APPEALS.

10	MARY BUSHKO, Administratrix of the Estate of Anthony Tula, deceased, and MARY BUSHKO, Administratrix of the Estate of Annie Tula, deceased, <div style="text-align: center;">Plaintiff-Appellee,</div> <div style="text-align: center;">vs.</div>	} Grounds of Appeal.
20	FIRST UHRO SLAVONIAN GREEK CATHOLIC SICK AND DEATH BENEFIT SOCIETY OF ST. MI- CHAEL THE ARCHANGEL, <div style="text-align: center;">Defendant-Appellant.</div>	

The above-named defendant-appellant assigns the following grounds of appeal from the judgment of the New Jersey Supreme Court in the above case.

1. The trial judge erroneously denied the application of the defendant for a non-suit at the close of the plaintiff's case.
- 30 2. The trial Court erroneously denied the application of the defendant to dismiss the first count of the complaint at the close of the plaintiff's case.
3. The Trial Court erroneously denied the application of the defendant to dismiss the third count of the complaint at the close of the plaintiff's case.
- 40 4. The Trial Court erroneously ruled on the motion of defendant to dismiss the third count of the complaint: "I will permit an amendment by

Grounds of Appeal.

adding a count showing her (plaintiff) as the guardian of the children."

5. The Trial Court erroneously permitted an amendment of the complaint joining as plaintiff Mary Bushko as guardian of Annie Tula, Alex Tula, Ella Tula and Rose Tula over the objection of the defendant. 10

6. The Trial Court erroneously granted the application of the plaintiff to appoint Mary Bushko next friend.

7. The Trial Court erroneously overruled the objection of defendant that the counts are improperly joined.

8. The Trial Court erroneously ruled "in view of the fact that she (Mary Bushko) has letters of administration of the estate, I am inclined to hold that she is a discreet person, and the Court would be justified in appointing her as next friend." 20

9. The Trial Court erroneously denied the application of the defendant for a continuance on the ground of surprise upon the amendment of the complaint on the trial.

10. The Trial Court erroneously admitted in evidence over the objection and exception of the defendant, the records of the office of the Surrogate of the County of Bergen, "In the matter of the guardianship of Annie Tula, Alex Tula, Ella Tula and Rose Tula," being plaintiff's Exhibit P-8. 30

11. The Trial Court erroneously denied the motion of the defendant for a non-suit at the close of the entire case. 40

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Grounds of Appeal.

12. The Trial Court erroneously charged the jury as follows:

“This is an action by Mary Busko on behalf of the children of Anthony Tula and Annie Tula.”

10 13. The Trial Court erroneously charged the jury that the failure of Anthony Tula to pay dues justified expulsion from the defendant society, provided the necessary steps were taken by the organization.

14. The Court erroneously charged the jury that the contract in suit was analogous to an insurance policy.

20 15. The Court erroneously charged the jury that the defense in this case is that there has been a failure to pay premiums.

16. The Trial Court erroneously charged the jury that “it is no defense that the plaintiff did not show proof of death.”

17. The Trial Court erroneously charged the jury “Now one of the questions that you will decide is, what has the organization done with reference to expelling this man.”

30 18. The Trial Court erroneously charged the jury “If you conclude that the defendant failed in doing what it should have done to expel him (Anthony Tula) then, of course, you come to the question of the sick benefits.”

40 19. The Trial Court erroneously charged the jury “so you see, by the terms of these by-laws, the defendant society undertook to do something before expulsion became effective. Now one of the questions that you will decide is, what has the or-

Grounds of Appeal.

ganization done with reference to expelling this man."

20. The Trial Court erroneously charged the jury that "If you conclude that the plaintiff was entitled to the sick benefits, then I charge you, as a matter of law, that there was no justification for a suspension for the non-payment of dues under the death benefit certificate, but they should have offset those charges by deducting them from the sick benefit fund." 10

21. The Trial Judge erroneously ruled and stated in the postea:

"At the trial, on motion of the attorneys of the plaintiff, the pleadings were amended by designating Mary Bushko, guardian of Rose, Helen, Anna and Alex Tula, as the plaintiff in the third count of the complaint instead of the plaintiff as originally stated in said count of the complaint." 20

22. The Trial Judge erroneously computed and included in the postea interest on the amount of the verdict of the jury.

23. The verdict of the jury on the first count was contrary to the evidence, and there was no evidence to sustain the verdict. 30

24. The verdict of the jury on the second count was contrary to the evidence and there was no evidence to sustain the verdict.

25. The verdict of the jury on the third count was contrary to the evidence and there was no evidence to sustain the verdict.

HENRY H. RUST,
ANDREW FOULDS, JR., 40
Attorneys for Defendant-Appellan'.

Summons.*Bergen County, ss.;*

The State of New Jersey to:
 First Uhro Slovenian Greek-Cath-
 olic Sick and Death Benefit Soci-
 ety of St. Michael, the Archangel.

(L.S.)

10

Greeting: You Hereby are Sum-
 moned to answer the annexed com-
 plaint of Mary Bushko, Adminis-
 tratrix of the Estate of Anthony
 Tula, Deceased, and Mary Bushko,

Administratrix of the Estate of Annie Tula, de-
 ceased, in an action-at-law, in the New Jersey Su-
 preme Court.

20

And Take Notice that unless you file your an-
 swer to the said complaint with the Clerk of the
 Supreme Court, at Trenton, within Twenty Days
 after the service upon you of this writ and the an-
 nexed complaint, the plaintiff may proceed in said
 suit and judgment may be entered against you.

Witness, WILLIAM S. GUMMERE, Esquire, Chief
 Justice of our Supreme Court, at Trenton, this
 day of March, in the year of our Lord, One
 Thousand Nine Hundred and Twenty-eight.

EDWARD J. KELLEHER,

Clerk.

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FEDER & RINZLER,
 Attorneys.

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Complaint.

NEW JERSEY SUPREME COURT.

BERGEN COUNTY.

<p>MARY BUSHKO, Administratrix of the Estate of Anthony Tula, deceased, and MARY BUSHKO, Administratrix of the Estate of Annie Tula, deceased, Plaintiff,</p>	}	Action at Law	10
vs.			
<p>FIRST UHRO SLAVONIAN GREEK CATHOLIC SICK AND DEATH BENEFIT SOCIETY OF ST. MI- CHAEL THE ARCHANGEL, Defendant.</p>	}	Complaint.	20

Plaintiff, residing in the Borough of Lodi, County of Bergen and State of New Jersey, says that:

FIRST COUNT.

Plaintiff, Mary Bushko, Administratrix of the Estate of Annie Tula, deceased, says that:

1. On or about December 7th, 1913, Anthony Tula, became a lawful member of the defendant association. 30
2. The constitution and by-laws of the said defendant association, contained a provision, that upon the death of a member, the association shall pay to the wife of such member, the sum of Eight Hundred (\$800.00) Dollars, as a death benefit.
3. Said Anthony Tula duly and properly des- 40

Complaint.

ignated and constituted, his wife, Annie Tula, as his beneficiary to whom the aforesaid death benefit should be paid, in the manner regulated by the Constitution and by-laws of the said association.

- 10 4. On or about February 22nd, 1927, the said Anthony Tula died.
5. At the time of his death, said Anthony Tula was a member of said association, in good standing.

6. Said Anthony Tula had complied with all of the clauses and provisions of the Constitution and by-laws of the said defendant association.

- 20 7. By reason of the foregoing premises, Annie Tula, wife of said Anthony Tula, became entitled to the aforesaid death benefit, demanded payment of the same, but the defendant has failed, refused and neglected to pay said death benefit or any part thereof.

8. On or about October 13th, 1927, Annie Tula died intestate.

- 30 9. On or about March 1st, 1928, plaintiff was granted the administration of the goods, chattels and estate of the said Annie Tula, by the Surrogate of the County of Bergen.

Plaintiff demands damages on the First Count, in the sum of Eight Hundred (\$800.00) Dollars, besides lawful interest and costs of suit.

SECOND COUNT.

Plaintiff, Mary Bushko, Administratrix of the estate of Anthony Tula, deceased, says that:

- 40 1. On or about December 7th, 1913, Anthony

Complaint.

Tula, became a lawful member of the defendant association.

2. The constitution and by-laws of the said defendant association, contained a provision that in the event that a member shall become sick or injured, that he is to be entitled to injury benefit at the rate of Five (\$5.00) Dollars per week for thirteen (13) weeks and a further benefit of Two Dollars and Fifty (\$2.50) Cents a week for twenty-six (26) weeks. 10

3. In and about the month of March, 1925, the said Anthony Tula became sick and totally disabled and continued to be so sick and totally disabled until he died on February 22nd, 1927.

4. Throughout the aforesaid period, the said Anthony Tula, was a member in good standing of the defendant association. 20

5. By reason of the premises aforesaid, the said Anthony Tula became entitled to the sick benefit at the aforesaid rate and for the aforesaid period aggregating a total sick benefit of One Hundred and Thirty (\$130.00) Dollars, and duly demanded payment of the same, but the said defendant association, failed and refused and neglected to pay the said sick benefit or any part thereof. 30

6. Said Anthony Tula, died intestate on February 22nd, 1927, and his wife, Annie Tula died on October 13th, 1927.

7. Said Anthony Tula complied with all of the clauses and provisions of the constitution and by-laws of the said defendant association.

8. On or about March 1st, 1928, plaintiff was 40

Complaint.

granted the administration of the goods, chattels and estate of the said Anthony Tula and also of the Estate of said Annie Tula, by the Surrogate of the County of Bergen.

10 Plaintiff demands damages on the Second Count, in the sum of One Hundred Thirty (\$130.00) Dollars, besides lawful interest and costs of suit.

THIRD COUNT.

Plaintiff, Mary Busko, administratrix of the Estate of Annie Tula, deceased, says that:

1. On or about December 7th, 1913, Annie Tula became a lawful member of the defendant association.

20 2. The constitution and by-laws of the said defendant association contained a provision that upon the death of a member, the association shall pay to the husband of such member, the sum of Six Hundred (\$600.00) Dollars, as a death benefit.

30 3. Said Annie Tula, duly and properly designated and constituted, her husband, Anthony Tula, as his beneficiary to whom the aforesaid death benefit should be paid, in the manner regulated by the Constitution and by-laws of the said association.

4. On or about October 13th, 1927, Annie Tula died.

5. At the time of her death, said Annie Tula was a member of said association, in good standing.

40 6. Said Annie Tula had complied with all of the clauses and provisions of the constitution and by-laws of the said defendant association.

Complaint.

7. By reason of the aforesaid premises and Anthony Tula, husband of Annie Tula, having predeceased said Annie Tula, the estate of said Annie Tula became entitled to the aforesaid death benefit and demanded payment of the same, but the defendant has failed, refused and neglected to pay said death benefit or any part thereof.

10

8. On or about February 22nd, 1927, the said Anthony Tula died.

9. On or about March 1st, 1928, plaintiff was granted the administration of the goods, chattels and estate of the said Annie Tula and Anthony Tula, by the Surrogate of the County of Bergen.

Plaintiff demands damages on the Third Count, in the sum of Six Hundred (\$600.00) Dollars, besides lawful interest and costs of suit.

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Plaintiff demands damages on all three counts in the sum of Fifteen Hundred Thirty (\$1530.00) Dollars, together with lawful interest and costs of suit.

FEDER & RINZLER,
Attorneys of Plaintiff.

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40

Answer.

NEW JERSEY SUPREME COURT.

BERGEN COUNTY.

19	MARY BUSHKO, Administratrix of the Estate of Anthony Tula, deceased, and MARY BUSHKO, Administratrix of the Estate of Annie Tula, deceased, Plaintiff,	}	Action at Law.
	vs.		Answer
20	FIRST UHRO SLAVONIAN GREEK CATHOLIC SICK AND DEATH BENEFIT SOCIETY OF ST. MI- CHAEL THE ARCHANGEL, Defendant.		

Defendant, a corporation of the State of New Jersey, having its principal office in the City of Passaic, in the County of Passaic and State of New Jersey, says that:

FIRST DEFENSE TO FIRST COUNT:

- | | |
|----|---|
| 30 | 1. It admits paragraph 1. |
| | 2. It denies paragraph 2. |
| | 3. It denies paragraph 3 except that it admits that the death benefit payable on the death of a member in good standing is payable to the widow of such member. |
| 40 | 4. It has no knowledge or information sufficient to form a belief as to Paragraph 4 and therefore denies the same. |

Answer.

5. It denies paragraph 5.
6. It denies paragraph 6.
7. It denies paragraph 7.
8. It has no knowledge or information sufficient to form a belief as to Paragraph 8 and therefore denies the same. 10
9. It has no knowledge or information sufficient to form a belief as to Paragraph 9 and therefore denies the same.

SECOND DEFENSE TO FIRST COUNT:

1. The liability of the defendant to pay the sum mentioned in the First Count or any sum whatever and the right of the plaintiff, her intestate and of the members of the defendant association and of the widows and beneficiaries of members to receive any benefits or moneys are and were at all of the times mentioned in the complaint conditioned upon and limited by the terms, conditions and provisions of the constitution, by-laws, rules and regulations of the defendant. 20

2. Said Anthony Tula, Annie Tula, his wife and the plaintiff failed, neglected and refused to comply with the terms, conditions and provisions aforesaid and by reason thereof, the plaintiff cannot maintain this action and the defendant is not liable for the payment of the said sum or any part thereof. 30

THIRD DEFENSE TO FIRST COUNT:

1. It is provided in the by-laws of the defendant and the contract or agreement between the de- 40

Answer.

defendant and the said Anthony Tula and Annie Tula that in each and every instance the death benefit provided for therein shall be paid only after the receipt of documental evidence of death.

2. No documental evidence of the death of said Anthony Tula was presented to defendant.

10

FOURTH DEFENSE TO FIRST COUNT:

1. It is and was at all of said times provided in and by the constitution, by-laws, rules and regulations of the defendant forming a part of the contract of the defendant and its members and the said Anthony Tula, among other things, that a member who has not paid his dues for a full three months, shall not receive the sick or death benefit provided for in the said by-laws and is no longer a member; that a member of the defendant who shall have violated any part or portion of the said by-laws loses his full right to the benefits given by the said by-laws; that every member of the society must have his dues properly paid up each month; the amount to be paid by members for dues was duly and lawfully fixed by the agreement between the defendant and the said Anthony Tula and the members of the defendant.

20

30

2. Said Anthony Tula failed, refused and neglected to comply with and perform the said terms and conditions to entitle him or the said Annie Tula his wife or the said plaintiff to receive the said death benefit mentioned in the complaint or any part thereof in that he neglected to pay his said dues for a period of more than three months, he violated the said by-laws and did not have his dues paid up each month and in other respects vio-

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Answer.

lated the terms, conditions and provisions of the said by-laws, constitution, rules and regulations of the said defendant.

FIFTH DEFENSE TO FIRST COUNT:

1. The said Anthony Tula was pursuant to the rules and regulations of the defendant duly expelled from the defendant and from membership therein on or about December 7, 1925. 10

SIXTH DEFENSE TO FIRST COUNT:

1. The said Anthony Tula was not a member of the said defendant association in good standing at the time of his death.

FIRST DEFENSE TO SECOND COUNT: 20

1. Paragraph 1 of the Second Count is admitted.

2. Paragraph 2 is denied except that it is admitted that the constitution and by-laws of the defendant contained a provision for the payment of benefits to members in good standing upon complying with the rules and regulations and by-laws of the defendant. 30

3. It has no knowledge or information sufficient to form a belief as to Paragraph 3 and therefore denies the same.

4. It denies paragraph 4.

5. It denies paragraph 5.

6. It has no knowledge or information sufficient to form a belief as to Paragraph 6 and therefore denies the same. 40

Answer.

7. It denies paragraph 7.

8. It has no knowledge or information sufficient to form a belief as to paragraph 8 and therefore denies the same.

SECOND DEFENSE TO SECOND COUNT:

10

1. The liability of the defendant to pay the sum mentioned in the Second Count or any sum whatever and the right of the said Anthony Tula, Annie Tula and the plaintiff, to receive any benefits or moneys are and were at all of the times mentioned in the complaint, conditioned upon and limited by the terms, conditions and provisions of the constitution, by-laws, rules and regulations of the defendant.

20

2. Said Anthony Tula, Annie Tula and the plaintiff failed, neglected and refused to comply with the terms, conditions and provisions aforesaid and by reason thereof the plaintiff cannot maintain this action and the defendant is not liable for the payment of the said sum or any part thereof.

THIRD DEFENSE TO SECOND COUNT:

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1. It is and was provided in and by the by-laws of the defendant forming a part of the contract and agreement between the said Anthony Tula and the defendant that a member is entitled to sick benefit from such day as he shall report himself sick to the defendant society.

40

2. The right of a member to sick benefits does not commence until a report of his incapacity is received by or sent to the defendant society.

Answer.

3. No report of the alleged illness or incapacity of the said Anthony Tula was sent to nor received by the defendant.

FOURTH DEFENSE TO SECOND COUNT:

1. The alleged illness or incapacity of the said Anthony Tula was not within the class or nature of illnesses or incapacity to entitle the said Anthony Tula to sick benefit therefor. 10

FIFTH DEFENSE TO SECOND COUNT:

1. It is and was at all of said times provided in and by the constitution, by-laws, rules and regulations of the defendant and forming a part of the contract and agreement between the defendant and its members including the said Anthony Tula, among other things, that a member who has not paid his dues for a full three months shall not receive the sick or death benefit provided for in the said by-laws and is no longer a member; that a member who shall have violated any part or portion of the said by-laws loses his full right to the benefits given by the said by-laws; that every member of the society must have his dues properly paid up each month; the amount to be paid by members for dues was duly and lawfully fixed by the agreement between the defendant and the said Anthony Tula and the members of the defendant. 20
30

2. The said Anthony Tula failed, refused and neglected to comply with and perform the said terms and conditions to entitle him or the said Annie Tula or the said plaintiff to receive the moneys mentioned in the Second Count or any part thereof or any sick benefit in that he neglect- 40

Answer.

ed to pay said dues for a period of more than three months, he violated the said by-laws and did not have his dues paid up each month and in other respects violated the terms, conditions and provisions of the said constitution, rules and regulations of the said defendant.

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SIXTH DEFENSE TO SECOND COUNT:

1. The said Anthony Tula was pursuant to the by-laws, rules and regulations of the defendant duly expelled from the defendant and from membership therein on or about December 7, 1925.

SEVENTH DEFENSE TO SECOND COUNT:

20 1. The said Anthony Tula was not a member of the said defendant association in good standing at the time of the alleged illness and incapacity alleged in the Second Count.

EIGHTH DEFENSE TO SECOND COUNT:

30 1. It was a part of the contract and agreement between the said Anthony Tula and the defendant that the president of the defendant should have the full right and power to refuse sick benefit payments to members until such member shall prove his actual sickness through the society's doctor, meaning the doctor designated and appointed by the defendant, that his sickness is real and not feigned.

2. The said Anthony Tula failed and neglected and refused to prove his actual illness and sickness through the doctor designated and appointed by the defendant.

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Answer.

NINTH DEFENSE TO SECOND COUNT:

1. It was a part of the contract and agreement between the said Anthony Tula and the defendant that a member of the defendant society who shall become ill or injured, must immediately report his illness to the president or the sick committee and further that a member who becomes ill must have a doctor visit him at least two times in each week during his illness, and that should he not have a doctor visit him two times in each week, he shall not receive any sick benefit from the defendant. 10

2. The said Anthony Tula did not report his illness to the president nor to the sick committee and did not have a doctor visit him at least two times in each week during the period of his alleged illness as alleged in paragraph 3 of the Second Count. 20

FIRST DEFENSE TO THIRD COUNT:

1. Paragraph 1 is denied.
2. Paragraph 2 is denied.
3. Paragraph 3 is denied.
4. It has no knowledge or information sufficient to form a belief as to Paragraph 4 and therefore denies the same. 30
5. It denies paragraph 5.
6. It denies paragraph 6.
7. It denies paragraph 7 except that it admits that it has not paid said sum.
8. It has no knowledge or information sufficient 40

Answer.

ent to form a belief as to Paragraph 8 and therefore denies the same.

9. It has no knowledge or information sufficient to form a belief as to paragraph 9 and therefore denies the same.

10 **SECOND DEFENSE TO THIRD COUNT:**

1. The liability of the said defendant to pay the sum mentioned in the Third Count or any part thereof or any sum whatever and the rights of the plaintiff, her intestate and of the members of the defendant association, their husbands and beneficiaries to receive any benefits or moneys are and were at all of the times mentioned in the Third Count of the complaint, conditioned upon and
20 limited by the terms, conditions and provisions of the constitution, by-laws, rules and regulations of the defendant.

2. Said Annie Tula, Anthony Tula, her husband and the plaintiff failed, neglected and refused to comply with the terms, conditions and provisions aforesaid and by reason thereof the plaintiff cannot maintain this action and the defendant is not
30 liable for the payment of the said sum or any part thereof.

THIRD DEFENSE TO THIRD COUNT:

1. The Third Defense to the First Count is repeated.

FOURTH DEFENSE TO THIRD COUNT:

1. It is and was at all times provided in the by-laws of the defendant and the contract and
40 agreement between the defendant and said Annie

Answer.

Tula and Anthony Tula and its members that in each and every instance the death benefit provided for therein shall be paid only upon and after the receipt of documental evidence of death.

2. No documental evidence of the death of the said Annie Tula has been presented to defendant.

10

FIFTH DEFENSE TO THIRD COUNT:

1. It is and was at all of the times mentioned in the Third Count provided by the constitution, by-laws, rules and regulations of the defendant and forming a part of the contract and agreement between the defendant and its members, among other things, that a member who has not paid his or her dues for a full three months shall not receive the sick or death benefit provided for in the said by-laws and is no longer a member; that a member of the defendant who shall have violated any part or portion of the said by-laws loses her full right to the benefits given by the said by-laws; that every member of the society must have his or her full dues properly paid up each month and the amount of the dues to be paid was duly and lawfully provided and fixed by agreement between the society defendant and the said Annie Tula and the members of the defendant.

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2. Said Annie Tula failed, refused and neglected to comply with and perform the said terms and conditions and defaulted in the payment of dues and in other respects violated the terms and conditions of the said agreement and the said constitution, by-laws, rules and regulations of the defendant.

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Answer.

SIXTH DEFENSE TO THE THIRD COUNT:

1. The said Annie Tula was not a member of the defendant in good standing at the time of her death.

SEVENTH DEFENSE TO THIRD COUNT:

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1. It was and is provided in the said by-laws of the defendant, forming a part of the contract and agreement between the defendant and the said Annie Tula and Anthony Tula, her husband, that when a member loses his membership in the said defendant society for any reason of which he is the cause, then and in that event his wife also loses membership in the society and loses all rights to benefits provided in the by-laws.

20

2. Anthony Tula, the husband of the said Annie Tula lost his membership in the defendant society and was expelled therefrom by reason of his non-payment of dues, of which he was the cause within the meaning of the said by-law, on or about December 7, 1925 and thereby the said Annie Tula lost and forfeited all right to said benefit and moneys and her membership in the defendant and it is further provided in and by the said by-laws that a widow whose husband died while a member of the defendant and no others may retain their membership in the defendant after the death of the husband.

30

SEVENTH DEFENSE TO THIRD COUNT:

1. By the by-laws of the defendant the death benefit of a widow who remains a member of the

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Answer.

society after the death of her husband is payable to the children and not to the administrator.

And Defendant gives notice that the alleged causes of action herein are improperly joined and that an application will be made to the Court on the trial of this action to strike out the said causes of action so improperly joined herein and for other relief. 10

HENRY H. RUST and
ANDREW FOULDS, JR.,
Attorneys for Defendant.

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Reply.

NEW JERSEY SUPREME COURT.

BERGEN COUNTY.

10	MARY BUSHKO, Administratrix of the Estate of Anthony Tula, deceased, and MARY BUSHKO, Administratrix of the Estate of Annie Tula, deceased, <div style="text-align: right;">Plaintiff,</div>	}	Action at Law.
	vs.		Reply.
20	FIRST UHRO SLAVONIAN GREEK CATHOLIC SICK AND DEATH BENEFIT SOCIETY OF ST. MI- CHAEL THE ARCHANGEL, <div style="text-align: right;">Defendant.</div>		

Plaintiff, replying to the answer filed by the defendant in the above entitled matter, says that:

AS TO SECOND DEFENSE TO FIRST COUNT.

1. Each and every allegation of paragraphs one and two is denied.
- 30 2. Defendant waived all of the terms, conditions and provisions of the constitution, by-laws, rules and regulations of the defendant.
3. Said Anthony Tula and Annie Tula, his wife, and plaintiff complied with the said terms, conditions and provisions.

AS TO THIRD DEFENSE TO FIRST COUNT.

- 40 1. Each and every allegation of paragraphs one and two is denied.

Reply.

2. Defendant waived all of the terms, conditions and provisions of the constitution, by-laws, rules and regulations of the defendant.

3. Said Anthony Tula and Annie Tula, his wife, and plaintiff complied with the said terms, conditions and provisions.

4. Documental evidence of the death of Anthony Tula was presented to the defendant. 10

AS TO FOURTH DEFENSE TO FIRST COUNT.

1. Each and every allegation of paragraphs one and two is denied.

2. Defendant waived all of the terms, conditions and provisions of the constitution, by-laws, rules and regulations of the defendant. 20

3. Said Anthony Tula complied with the said terms, conditions and provisions.

4. All dues were properly paid up as and when they became due.

5. Defendant waived prompt and punctual payment of the dues.

AS TO FIFTH DEFENSE TO FIRST COUNT. 30

1. Each and every allegation of paragraph one is denied.

2. Defendant had no jurisdiction to expel Anthony Tula from the defendant and from membership therein.

3. No charges were made against the said Anthony Tula, or served upon him. No notices of trial or hearing were given the said Anthony Tula. 40

Reply.

No trial or hearing was had. The said Anthony Tula was not accorded an opportunity to be present or present his defense to any charge or charges. Said Anthony Tula was not confronted by any witness or witnesses. No witness or witnesses or evidence was produced against the said Anthony Tula.

10 By reason of all of the aforesaid, said defendant had no right, power, authority or jurisdiction to expel the said Anthony Tula.

4. The said Anthony Tula was not expelled from the defendant or from membership therein.

5. The expulsion was illegal and wrongful for the reasons aforesaid, and because he had complied with all the terms, covenants, conditions and provisions of the constitution, by-laws, rules and regulations of the said defendant.

20

AS TO SIXTH DEFENSE TO FIRST COUNT.

1. Each and every allegation of paragraph one is denied.

2. The said Anthony Tula was a member of the defendant association in good standing at the time of his death.

30 AS TO SECOND DEFENSE TO SECOND
COUNT.

1. Each and every allegation of paragraphs one and two is denied.

2. Defendant waived all of the terms, conditions and provisions of the constitution, by-laws, rules and regulations of the defendant.

40 3. Said Anthony Tula and Annie Tula, his

Reply.

wife, and plaintiff complied with the said terms, conditions and provisions.

AS TO THIRD DEFENSE TO SECOND COUNT.

1. Each and every allegation of paragraphs one, two and three, is denied.

2. Defendant waived all of the terms, conditions and provisions of the constitution, by-laws, rules and regulations of the defendant. 10

3. Said Anthony Tula and Annie Tula, his wife, and plaintiff complied with the said terms, conditions and provisions.

4. Said Anthony Tula did report himself sick to the defendant association. Said Anthony Tula was reported sick to the defendant society. 20

5. The report of the illness and incapacity of the said Anthony Tula was sent to and received by the defendant society.

AS TO FOURTH DEFENSE TO SECOND
COUNT.

1. Each and every allegation of paragraph one is denied.

2. Said illness and incapacity of the said Anthony Tula was in the class and nature of the illness and incapacity entitling him to sick benefit therefor. 30

AS TO FIFTH DEFENSE TO SECOND COUNT.

1. Each and every allegation of paragraphs one and two is denied.

Reply.

2. Defendant waived all of the terms, conditions and provisions of the constitution, by-laws, rules and regulations of the defendant.

3. Said Anthony Tula and Annie Tula, his wife, and plaintiff complied with the said terms, conditions and provisions.

13

4. All dues were properly paid up as and when they became due.

5. Defendant waived prompt and punctual payment of the dues.

AS TO SIXTH DEFENSE TO SECOND COUNT.

1. Each and every allegation of paragraph one is denied.

20

2. Defendant had no jurisdiction to expel Anthony Tula from the defendant and from membership therein.

30

3. No charges were made against the said Anthony Tula, or served upon him. No notices of trial or hearing were given the said Anthony Tula. No trial or hearing was had. The said Anthony Tula was not accorded an opportunity to be present or present his defense to any charge or charges. Said Anthony Tula was not confronted by any witness or witnesses. No witness or witnesses or evidence was produced against the said Anthony Tula.

By reason of all of the foregoing, said defendant had no right, power, authority or jurisdiction to expel the said Anthony Tula.

40

4. The said Anthony Tula was not expelled from the defendant or from membership therein.

Reply.

5. The expulsion was illegal and wrongful for the reasons aforesaid, and because he had complied with all the terms, covenants, conditions and provisions of the constitution, by-laws, rules and regulations of the said defendant.

AS TO SEVENTH DEFENSE TO SECOND
COUNT. 10

1. Each and every allegation of paragraph one is denied.

2. The said Anthony Tula was a member of the defendant association in good standing at the time of his death.

AS TO EIGHTH DEFENSE TO SECOND
COUNT. 20

1. Each and every allegation of paragraphs one and two is denied.

2. Said member did prove his actual illness through the society's doctor, and likewise proved that his sickness was real and not feigned.

3. Such proof was waived.

AS TO NINTH DEFENSE TO SECOND COUNT. 30

1. Each and every allegation of paragraphs one and two is denied.

2. Defendant waived all of the terms, conditions and provisions of the constitution, by-laws, rules and regulations of the defendant.

3. Said Anthony Tula and Annie Tula, his wife, and plaintiff complied with the said terms, conditions and provisions. 40

Reply.

4. The said Anthony Tula did report his illness to the president of the defendant and to the sick committee thereof, and had a doctor visit him at least two times in each week during the period of his alleged illness.

10 AS TO SECOND DEFENSE TO THIRD COUNT.

1. Each and every allegation of paragraphs one and two is denied.

2. Defendant waived all of the terms, conditions and provisions of the constitution, by-laws, rules and regulations of the defendant.

20 3. Said Anthony Tula and Annie Tula, his wife, and plaintiff complied with the said terms, conditions and provisions.

AS TO THIRD DEFENSE TO THIRD COUNT.

1. The answers to the third defense to the first count are hereby repeated.

AS TO FOURTH DEFENSE TO THIRD COUNT.

1. Each and every allegation of paragraphs one and two is denied.

31 2. Defendant waived all of the terms, conditions and provisions of the constitution, by-laws, rules and regulations of the defendant.

3. Said Anthony Tula and Annie Tula, his wife, and plaintiff complied with the said terms, conditions and provisions.

4. Documental evidence of the death of Annie Tula was presented to the defendant.

Reply.

AS TO FIFTH DEFENSE TO THIRD COUNT.

1. Each and every allegation of paragraphs one and two is denied.

2. Defendant waived all of the terms, conditions and provisions of the constitution, by-laws, rules and regulations of the defendant.

10

3. Said Anthony Tula and Annie Tula, his wife, and plaintiff complied with the said terms, conditions and provisions.

4. The dues of Annie Tula were paid when due.

5. Defendant waived prompt and punctual payment of such dues.

20

AS TO SIXTH DEFENSE TO THIRD COUNT.

1. Each and every allegation of paragraph one is denied.

2. The said Annie Tula was a member of the defendant association in good standing at the time of her death.

AS TO SEVENTH DEFENSE TO THIRD
COUNT.

30

1. Each and every allegation of paragraphs one and two is denied.

2. The dues were paid up as and when they became due.

3. Said Anthony Tula was not expelled from the defendant society and did not lose his membership therein, and said defendant had no right, authority, power or jurisdiction to expel him.

40

Reply.

4. The by-laws provide that where a widow remains a member of the society after the death of her husband, then after her death, her death benefit will be paid to the children of the member and his wife, if they are twenty-one years of age or over, if however they are less than twenty-one
10 years of age, the said death benefit will be paid to their duly appointed guardian.

5. The said Annie Tula remained a member of the society after the death of her husband, who was a member of the society, and at her death her children were and still are infants under the age of twenty-one years, and the plaintiff was there-
upon duly appointed the guardian of the said children, and the death benefit is therefore accord-
20 ingly payable to the said guardian.

FEDER & RINZLER,
Attorneys of Plaintiff.

Amended Postea.

(Filed Mar. 1, 1929.)

NEW JERSEY SUPREME COURT.**BERGEN COUNTY.**

10	MARY BUSHKO, Administratrix of the Estate of Anthony Tula, deceased, and MARY BUSHKO, Administratrix of the Estate of Annie Tula, deceased, Plaintiff,	}	Action at Law.
	vs.		Amended Postea.
20	FIRST UHRO SLAVONIAN GREEK CATHOLIC SICK AND DEATH BENEFIT SOCIETY OF ST. MI- CHAEL THE ARCHANGEL, Defendant.		

This case was tried at the Bergen Circuit of the New Jersey Supreme Court at Hackensack on February 27, 1929, before Judge Edwin C. Caffrey, with a jury.

30 At the trial, on motion of the attorneys of the plaintiff, the pleadings were amended by designating Mary Bushko, guardian of Rose, Helen, Anna and Alex Tula, as the plaintiff in the third count of the complaint instead of the plaintiff as originally stated in said count of the complaint.

The jury returned a verdict in favor of the plaintiff and against the defendant on all counts as follows:

40 On the First Count, a verdict in favor of the plaintiff, Mary Bushko, Administratrix of the Estate of Annie Tula, Deceased, for Eight Hund-

Amended Postea.

red (\$800.00) Dollars, plus interest thereon from February 21st, 1927 to February 27th, 1929, which is computed at Ninety-six Dollars and Eighty (\$96.80) Cents, making a total of Eight Hundred Ninety-six Dollars and Eighty (\$896.80) Cents;

On the Second Count, a verdict in favor of the plaintiff, Mary Bushko, Administratrix of the Estate of Anthony Tula, Deceased, for One Hundred Thirty (\$130.00) Dollars, less Twelve Dollars and Eighty-five (\$12.85) Cents (which is the amount of the dues claimed by the defendant), namely, One Hundred Seventeen Dollars and Fifteen (\$117.15) Cents, plus interest thereon from October, 1925 to February 27th, 1929, which is computed at Twenty-four Dollars and Two (\$24.02) Cents, making a total of One Hundred Forty-one Dollars and Seventeen (\$141.17) Cents;

On the third Count a verdict in favor of plaintiff, Mary Bushko, Guardian of Rose, Helen, Anna and Alex Tulsa minors for Six Hundred (\$600.00) Dollars, plus interest thereon from October 13th, 1927 to February 27th, 1929, which is computed at Forty-nine Dollars and Eighty (\$49.80) Cents, making a total of Six Hundred Forty-nine Dollars and Eighty (\$649.80) Cents.

The three verdicts aggregating One Thousand Six Hundred Eighty-seven Dollars and Seventy-seven (\$1,687.77) Cents.

EDWIN C. CAFFREY,
Judge.

Amended Postea.

NEW JERSEY SUPREME COURT.

Bushko, Admr. vs. First Uhro Slavonian Greek Catholic Society

Copy of Supreme Court Judgment and Notice of Appeal filed April 27

- 10 Notice of Appeal filed April 22, 1929.
 Judgment record, filed April 9, 1928.
 Answer filed, April 11, 1928.
 Replication filed, April 28, 1928.
 Rejoinder filed, May 2, 1928.

JUDGMENT.

20 This case was tried at the Bergen Circuit of the New Jersey Supreme Court at Hackensack on February 27, 1929, before Judge Edwin C. Caffrey with a jury.

At the trial on motion of attorneys of the plaintiff, the pleadings were amended by designating Mary Bushko, guardian of Rose, Helen, Anna and Alex Tula, as the plaintiff in the third count of the Complaint instead of the plaintiff as originally stated in said count of the complaint.

30 The jury returned a verdict in favor of the plaintiff and against the defendant on all counts, as follows:

On the first count a verdict in favor of the plaintiff Mary Bushko, Administratrix of the estate of Annie Tula, deceased for Eight Hundred Dollars (\$800), plus interest thereon from February 21, 1927 to February 27, 1929, which is computed at ninety-six dollars and eighty cents (\$96.80) making a total of Eight hundred and ninety-six dollars and eighty cents (\$96.80)

40 On the second count a verdict in favor of the plaintiff, Mary Bushko, administratrix of the

Amended Postea.

estate of Anthony Tula, deceased, for one hundred and thirty dollars (\$130), less twelve dollars and eighty-five cents (\$12.85) (which is the amount of dues claimed by the defendant) namely, One Hundred and Seventeen dollars and fifteen cents (\$117.15), plus interest thereon from October 25, 1925 to February 27, 1929, which is computed at twenty-four dollars and two cents (\$24.02) making a total of one hundred and forty-one dollars and Seventeen cents (\$141.17). 10

On the third count, a verdict in favor of the plaintiff Mary Bushko, guardian of Rose, Helen, Anna, and Alex Tula, minors, for Six Hundred dollars (\$600), plus interest thereon from October 13, 1927 to February 27th, 1929, which is computed at forty-nine dollars and eighty cents (\$49.80), making a total of six hundred and forty-nine dollars and eighty cents (\$649.80) 20

The three verdicts aggregating one thousand six hundred and Eighty seven dollars and seventy-seven cents (\$1687)

Whereupon it is adjudged that the plaintiff Mary Bushko, Admr. of the Estate of Annie Tula, deceased do recover of the said defendant First Uhro Slavonian Greek-Catholic Sick and Death Benefit Society of St. Michael the Archangel the sum of Eight Hundred and Ninety-six dollars and eighty cents on the first count, and that the plaintiff Mary Bushko Administratrix of the estate of Anthony Tula, deceased do recover of the defendant First Uhro Slavonian Greek-Catholic Sick and Death Benefit Society of St. Michael the Archangel the sum of one hundred and forty-one dollars and seventeen cents, on the second count, and that the plaintiff Mary Bushko, guardian of Rose, 30 40

Amended Postea.

Helen, Anna and Alex Tula, minors, do recover of the said defendant First Uhro Slavonian Greek-Catholic Sick and Death Benefit Society of St. Michael the Archangel the sum of six hundred and forty-nine dollars and eighty cents, on the third count, making a total of one thousand six hundred and eighty seven dollars and Seventy-seven Cents, damages, together with her costs which have been taxed at the sum of Seventy-six dollars and forty-one cents, making in the whole the sum of One Thousand Seven hundred and sixty-four dollars and eighteen cents.

Judgment signed and entered March 1, 1929.

20

30

40

Testimony.

NEW JERSEY SUPREME COURT.

BERGEN COUNTY.

<hr/> MARY BUSHKO, Administratrix of the Estate of Anthony Tula, deceased, and MARY BUSHKO, Administratrix of the Estate of Annie Tula, deceased, <div style="text-align: right;">Plaintiff,</div>	}	10
vs.		
FIRST UHRO SLAVONIAN GREEK CATHOLIC SICK AND DEATH BENEFIT SOCIETY OF ST. MI- CHAEL THE ARCHANGEL, <div style="text-align: right;">Defendant.</div> <hr/>	}	20

Action at Law.

Hackensack, N. J., February 27, 1929.

Before—HON. EDWIN C. CAFFREY, Judge,
and a Jury.

APPEARANCES:

For the Plaintiff: Messrs. FEDER & RINZ-
LER; by JACK RINZLER, ESQ.

For the Defendant: HENRY H. RUST, ESQ., 30
and ANDREW FOULDS, JR., ESQ.

A Jury was accepted and sworn.

Mr. Rinzler opened the case to the Jury.
Mr. Foulds opened the case to the Jury.

Mary Bushko—Direct.

MARY BUSHKO, the plaintiff, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Rinzler:

- 10 Q. Where do you live, Mrs. Bushko? A. Lodi.
 Q. What address? A. 19 Chestnut Street.
 Q. Are you married? A. Yes.
 Q. Your husband is John Bushko, the man who just walked in? A. Yes.
 Q. Were you related to Anthony Tula and his wife Annie Tula? A. Yes.
 Q. How? A. Her mother and my mother's father was sister and brother.
 Q. Anthony Tula and Annie Tula were man and wife, were they not? A. Yes.
 20 Q. Have they any children? A. Got four.
 Q. How many are alive? A. What? Alive?
 Q. You say the Tulas had four children? A. Yes.
 Q. Are they all living? A. Yes, all living.
 Q. How old are they? A. One is fifteen; and one is ten; and one is eight; and one is five.
 Q. Now, by the way, both Mr. Tula and Mrs. Tula have since died, have they not? A. Yes.

30

Mr. Rinzler: I offer in evidence authenticated certificates, authenticated according to law, verifying the death of each of those persons named Anthony and Annie Tula.

Mr. Foulds: No objection.

(Certificates marked Exhibits P-1 and P-2.)

40

- Q. Were you on good terms? By that I mean

Mary Bushko—Direct.

very friendly with the Tulas while they were alive?

A. Yes.

Q. Did you and they visit each other quite frequently? A. Yes.

Q. You knew, did you not, that Mr. and Mrs. Tula were members of this aid society? A. Yes.

Mr. Foulds: He paid his last dues for March, 1925. He was dropped in December, 1925. 10

Q. Now, in 1925 what happened to Anthony Tula and also to his wife, Annie? A. They were both of them sick in bed.

Q. Were they much sick or were they able to go around and take care of their duties? A. They can't go. She was paralyzed, and he had swollen feet, and big boils on the feet. 20

Q. How long was Mrs. Tula paralyzed? A. Most ten years. From second baby.

Q. Was she so paralyzed that she could not do anything? A. She can't do nothing.

Q. And that was so for ten years? A. Yes.

Q. What was the trouble with Mr. Tula? What happened to him? A. He have swollen feet and boils on. 30

Q. Had a bad heart, had he not? A. Yes.

Q. When did he first go to bed in 1925 because of his sickness? A. He went to bed February, some day; I don't know.

Q. In 1925? A. In 1925.

Q. And beginning with February or March, 1925, once Mr. Tula was confined to bed, I mean sick in bed, or confined to bed because of sickness, until the time that he died, was he able to get out of bed? A. No. 40

Mary Bushko—Direct.

Q. From the time that he first took sick until the time that he died did he have a doctor attend him? A. He always have a doctor, every day, most.

Q. Right up to the time that he died? A. Yes.

10 Q. And from the time—Well, I will start with February or March, 1925 until the time that Mrs. Tula died,—did she have a doctor attend her? A. Yes.

Q. And how often? A. Every day.

Q. Right up to the time she died? A. Yes.

Q. And both of them were helpless in bed; is that correct? A. Yes.

Q. And right up to the time they died that was so? A. Yes.

20 Mr. Rinzler: I at this time wish to offer in evidence a certificate which, by previous arrangement with counsel, it was stipulated I could offer in evidence in lieu of the original records from the Hudson County Hospital.

(Certificate marked Exhibit P-3.)

(Mr. Rinzler reads Exhibits P-1, P-2, P-3 to the Jury.)

30 Mr. Rinzler: I offer in evidence this dues book with a certificate issued by the defendant society, certifying the membership of the parties in the defendant society.

(Book with certificate marked Exhibit P-4.)

(Mr. Rinzler reads from Exhibit P-4 to the Jury.)

40 Mr. Foulds: This is a certificate signed by the financial secretary and president of the Society, certifying that Anthony Tula

Mary Bushko—Direct.

is a member of the Society, dated December 7, 1913. And also that he is married, and also the wife's membership.

The Court: What date?

Mr. Rinzler: December 7, 1913.

(Mr. Rinzler reads from Exhibit P-4 to the Jury.)

10

Mr. Rinzler: This book, Exhibit P-4, also shows that dues were paid and assessments were paid for both these deceased persons, Anthony Tula and Annie Tula, from the beginning of their membership to and including the month of March, 1925?

Mr. Foulds: Correct.

Mr. Rinzler: Now I offer in evidence, if your Honor please, a book entitled "Constitution and By-laws" of the defendant society, naming it.

20

(Book marked Exhibit P-5.)

Q. Now, Mrs. Bushko, when these two cousins, Mr. and Mrs. Tula, were so totally disabled and confined to bed, sick, as you say, could not do anything, did you report it to the Society? A. Yes.

Q. When was the first time? A. March 15th.

Q. Did you write a letter reporting the fact? A. 30
After that. The first time I was in the house.

Q. First you went and reported it to the secretary? A. Yes.

Mr. Foulds: I object to it. Do not lead. They are leading questions.

The Court: Well, he is repeating the answer.

Q. Who was the secretary at that time? A. 40
Mr. Sadloch.

Mary Bushko—Direct.

Q. Or was he the president? A. Yes. President.

Q. Who was Mr. Molsen at that time? A. Mr. Molsen, he was only a best friend in that Society, to Tula, to Tony Tula. He used to pay his Society.

10 Q. You reported their sickness to the Society?
A. Yes.

Q. When was the first time, do you say? A. March 15th, 1925.

Q. When did you write the first letter to the Society reporting the sickness of these people?

Mr. Foulds: I object; immaterial. He is asking for the contents of a written paper.

20 Mr. Rinzler: I call upon you to produce it. I served a notice to produce.

Mr. Foulds: We have not received it. And I submit there is no proof of the sending and mailing of the letter, and address, and so forth.

The Court: She said she sent it. She said she sent a letter. Now we come to what she did in support of it.

30 Mr. Foulds: Yes, but I objected to her testimony of the contents of the letter.

The Court: I do not think we have come to that.

Mr. Foulds: I thought the question called for that.

Q. The end of March, 1925? A. Yes.

Q. Did you send it by mail or deliver it? A. By mail.

40 Q. You mean United States Post Office? A. Yes.

Mary Bushko—Direct.

The Court: What did you do? Tell us what you did.

Q. Tell us what you did. A. What I did, I write in about Mr.—

By the Court:

Q. No, no. What did you put on the envelope? 110
A. On the envelope, stamp, two cents.

By Mr. Rinzler:

Q. To whom did you address it? A. To Mr. Sadloch, on Chestnut Street, Garfield.

Q. And he was an officer of the Society? A. Yes.

Q. Was your name addressed on the envelope too? A. Yes, on the other side.

Q. Did the envelope or the letter ever come back to you? A. No. 20

Q. Did you mail it in a mail box, regular mail box? A. Yes.

Q. What did you report in that letter?

Mr. Foulds: I object to that upon the ground that the proper foundation has not been laid. She addressed the letter to a Mr. Sadloch in Chestnut Street, Garfield. I submit that is not proof. 30

The Court: The Society must operate through its officers, and the testimony is that Mr. Sadloch is the president.

Mr. Foulds: That man named Sadloch was president at one time. Now I submit this does not show that it went to his address or that it was addressed to anybody but Sadloch.

Mary Bushko—Direct.

Q. Do you know Sadloch's first name? A. I think John.

Q. When you wrote that letter to his address did you have the street number on? A. Yes.

Q. How did you know where he was living? A. I was there in the house, but—

10 Q. Wait a minute. So you were there? A. I was there.

Q. And you knew he lived there? A. Yes.

Q. What did you write in that letter?

The Court: Who was this Mr. Sadloch?

The Witness: He is the—he is like a judge in the Society. He is the headest man.

20 The Court: The "headest" man in the Society.

Q. An officer? A. Yes.

Q. What did you write in that letter about these two people, Mr. and Mrs. Tula? A. I wrote both of them sick, somebody supposed to go and visit from the Society.

Q. And you were at the Tula's almost every day, were you not? A. Yes.

30 Q. Did anybody come and visit them? A. Nobody; just doctors.

Q. Did the Society doctor come and visit them? A. The doctors came every day.

Q. Did the Society doctor come and visit them? A. Nobody.

Q. When you went to the Society yourself to report that these people were sick what happened then? A. He said, "It is all right."

40 Q. What? Just tell us what they said. A. He

Mary Bushko—Direct.

said he is going to pay sick benefit; they are going to help him.

The Court: Who is that you are talking about now?

Q. Who told you that in the meeting there? A. I was only in the meeting when he die. 10

Q. When you went to the Society the first time to tell them these people were sick, who was talking to you? A. I was telling Mr. Sadloch.

Q. What did he say? A. He said he is going to take care of it.

Q. They did not take care of it? A. No.

Q. When he died, Mr. Tula, did you go to the Society to report that he died? A. I went to Mr. Sadloch. I told him he is finish; he is dying. 20

Q. How soon after the man died? A. He was dying Friday, and I reported it Saturday. 20

Q. The next day? A. Yes.

Q. When you reported that to Mr. Sadloch, what did he say? A. He said I should come to the meeting; the meeting will be on Sunday.

Q. The next day? A. Yes, the next day.

Q. So he died Friday, you went to see Mr. Sadloch Saturday? A. Yes.

Q. And he told you the meeting was the next day, Sunday? A. Yes. 30

Q. Did you go to the meeting? A. Yes.

Q. What happened there? A. He said he don't know him no more.

Q. Who said it? A. The whole—Mr. Sadloch and everybody who was there.

Q. Did you ask for the benefit? A. Yes.

Q. The death benefit? A. Yes.

Q. What did they say? A. He said they don't 40

Mary Bushko—Direct.

owe him any more. I was crying even over there.

Q. Did they say he was going to pay or was not going to pay, or what? A. No. They said they don't want to know him no more.

Q. Will not pay it? A. No.

10 Q. Did you also report the death of Mrs. Tula to the Society? A. No.

Q. Who went there to tell him that, do you know? A. I didn't report Mrs. Tula because they throw me out when I reported Mr. Tula; they throw me out of the hall.

Q. They threw you out. In other words, when you went to the Society hall to report the death of Mr. Tula, and to demand the benefit, they also threw you out? A. Yes.

20 The Court: Now do I understand that this now concerns the report of the death of Mrs. Tula?

Mr. Rinzler: Mr. Tula.

The Court: No, she testified that she went on Saturday; he died on Friday; and she was requested to come on Sunday. Now you have been talking about reporting Mrs. Tula.

30 Mr. Rinzler: Oh, yes. She said she did not report Mrs. Tula's death because of the other incident she described.

Cross-examination by Mr. Foulds:

Q. When did you first see Mr. Sadloch? A. March 15th, 1925.

Q. And where did you see him? A. I seen him in the house.

40 Q. In his house? A. Yes.

Mary Bushko—Cross.

Q. Was anybody else there? A. There was children there.

Q. Anybody else? A. No.

Q. How long were you there? A. How long I was there? About ten or fifteen minutes.

Q. What time of the day was it? A. What day it was?

The Court: What time of the day?

The Witness: Afternoon.

10

Q. You were there for about ten minutes? A. Yes.

Q. And what made you think that Mr. Sadloch was an officer of the Society at that time? A. Mr. Tula told me he is the headest one.

Q. Mr. Tula told you? A. Yes; I should report it to him.

20

Q. That is the only information you had on that? A. Yes.

Q. When did you see Mr. Sadloch next? A. Next—I saw him next when he died.

Q. Then from March, 1925 until February, 1927 you did not see him at all? A. I send the letter, though.

Q. When did you send the letter? A. When I sent the letter? Most every two weeks.

Q. You sent letters every two weeks? A. Yes.

30

Q. Did you keep copies of the letters? A. No, I didn't have no letters back.

Q. How did you come to write every two weeks to him? A. Because I went to visiting my cousins, and he was crying, and laying in bed, sick. He say he don't have no note from the Society, see, and I write the letter. I didn't have no time to go myself.

Q. Where did you visit your cousin in March, 40

Mary Bushko—Cross.

1925? A. March 15th I visiting the first time, and I find both of them were in bed.

Q. Where were they then? Your cousins, Mr. and Mrs. Tula, where were they? A. They were in Harrison.

Q. How long did they stay in Harrison? A. They stayed most twelve years.

Q. After that, after March, how long did they stay in Harrison? A. They were staying mostly eight or nine months.

Q. After March, 1925? A. Yes.

Q. They were there for eight or nine months? A. There was about eight or nine months.

Q. Then what happened? A. They were both sick, and after, go to hospital.

Q. What hospital? A. Secaucus.

Q. Did you visit them there? A. Yes, sir.

Q. How often? A. Every Sunday we went there.

Q. Once a week? A. Yes, to the hospital.

Q. How long did you keep up that visit? A. Up till they died.

Q. Did they stay there in the hospital all that time? A. Yes.

Q. Do you not know they left the hospital during that time? A. What they left the hospital?

Q. Do you not know the fact is that Mr. Tula was discharged from the hospital in January, 1927?

A. I don't know.

Q. You do not know whether they were there or not? A. I know I was in the hospital, though.

Q. You do not know how long he was there? A. I know they were more than most a year.

Q. Do you remember Mrs. Tula was discharged from the hospital? A. I don't know.

Mary Bushko—Redirect.

Q. You do not know. Did you keep writing every two weeks all that time, too? A. Yes.

Q. Whether you saw her or not? A. I saw them people every week in the hospital.

Redirect-examination by Mr. Rinzler:

Q. In Hudson County there, Secaucus, I mean, they have the poorhouse and hospital all together, have they not? A. Yes. 10

Q. A building for the poorhouse and a building for the hospital? A. No. They got extra little building.

Q. Departments? A. Yes, departments.

Q. And the Tulas would be once in a while in the hospital and another time in the poorhouse, and went back and forth that way? A. Yes, Mrs. Tula, yes. 20

Mr. Rinzler: I wish to offer in evidence the letters of administration issued to the plaintiff, appointing her administratrix of the goods and chattels, rights and credits of Annie Tula, by one certificate, and by another, of Anthony Tula.

(Papers marked Exhibits P-6 and P-7.)

Q. How many times a week did you go to Secaucus to see them? A. Every Sunday afternoon. 30

Q. They were in bed all the time? A. Yes, sir.

Q. Did you see doctors take care of them? A. She was on four wheels all the time, and some time in bed.

Q. And he? A. And he was all the time in bed.

Q. Could not do anything? A. Couldn't move. 40

John Bushko—Direct.

JOHN BUSHKO, called as a witness on behalf of the plaintiff, being duly sworn, testifies as follows:

Direct-examination by Mr. Rinzler:

- 10 Q. The lady that was just on the stand is your wife? A. Yes.
- Q. Did you know Anthony Tula and his wife, Annie? A. Yes.
- Q. Do you remember when they got sick? A. Yes.
- Q. The two together; right? A. Yes.
- Q. When? A. They got sick, I think, in 1925.
- Q. When they got sick did they stay in bed or walk around? A. No; they go to the hospital. He stay home about three weeks.
- 20 Q. Did they go to bed, stay in bed? A. All in bed.
- Q. Both of them? A. Yes.
- Q. Speak loudly, please. Did they have a doctor every day? A. Have a doctor who was in the hospital.
- Q. And were they in bed every day until they died? A. Every day in bed.
- Q. Until they died? A. Until they die.
- 30 Q. Speak loudly, please. When Mr. Tula and the wife got sick what did you do? A. I found out they get sick, and I go to see him in the hospital. They told me that I would have to go to the Society. In the meantime, I go and I told John Molsen.
- Q. Who is Molsen? A. Mr. John Molsen. He is the sick man of the Society.
- Q. He was the Sick Committee man? A. Yes. And everything was paid to him. They sent the
- 40 money to him all the time.

John Bushko—Direct.

Q. The dues used to be sent to him? A. Yes.

Q. To pay for the Society? A. To pay for the Society.

Q. Did you tell them Tula and his wife were sick? A. Yes, I tell them.

Q. When Tula died did you go to the Society?
A. Yes, I was to the Society.

10

Q. What did you do there? A. I was reporting his dying; supposed to be buried him.

Q. What did they say to you? A. They said they got nothing to do with him; they throw him out of the Society.

Q. Did you go there, to the Society, to report the fact that Mrs. Tula died, too? A. Yes. I reported Mrs. Tula.

Q. What did they say about that? A. They said, "We got nothing to do with them. We throwed them out of the Society."

20

Q. Did you ask for the benefit for Tula and his wife? A. I asked for the benefit. He said, "They got nothing;" they throwed them out.

Mr. Foulds: No cross-examination.

Mr. Rinzler: We rest.

Mr. Foulds: I move for a nonsuit, if your Honor please, on the ground that the plaintiff has shown that no benefit is to be paid if the member is three months in arrears. They show that they were three months in arrears. They have offered no explanation, and they have not shown the performance of the contract.

30

The by-laws provide that a member shall

40

Motion for Non-Suit.

not be carried for more than three months. An extension of three months may be granted but that is the only provision for an extension.

10 It provides that when a member loses his membership, the wife loses hers also, Should any member fall into misfortune so that he cannot pay his dues at the proper time, he should request the society at its meeting for leave to allow the dues to be unpaid for a period of not more than three months. The right to benefits is clearly dependent upon his keeping himself in good standing. Section 110 read.

Argument of counsel.
preter.)

20 Mr. Foulds: I move to dismiss the first count, which is the death benefit for Anthony Tula, on the ground that he was in arrears for more than three months at the time of his death.

Recess.

30 After Recess.

The Court: I am inclined to deny the motion. I will deny the motion.

Mr. Foulds: Your Honor will permit me to make a like motion with reference to the third count, which is the death of Annie Tula, on the same ground? Your Honor will give me an exception in both?

40 The Court: Yes. Now the death of

Motion for Non-Suit.

Annie, what is your ground there, that there was a non-compliance with the—

Mr. Foulds: That Annie Tula lost her membership at the time they lost the membership of the husband. She died in October, 1927. And under the by-laws of the Society she was not entitled to any benefit. 10

The Court: Of course that is based upon the non-compliance—your contention of non-compliance by the husband, under the act.

Mr. Foulds: Yes.

The Court: I will deny your motion.

Mr. Foulds: Exception.

And I further move to dismiss the third count upon the ground that the by-laws provide that the benefit is payable to the children or, in the event that they are under age, to their guardian. The suit is brought by the administratrix of Annie Tula, and the administratrix cannot maintain the action. 20

MARY BUSHKO, recalled, testifies as follows:

Direct-examination by Mr. Rinzler:

Q. Mrs. Bushko, were you appointed the guardian of the children of Tula and his wife? 30

Mr. Foulds: I object to that.

A. Yes.

The Court: I sustain the objection.

Q. Where are your guardianship papers? A. Home.

The Court: I will permit an amendment 40

Mary Bushko—Recalled—Direct.

by adding a count showing her as the guardian of the children.

Mr. Foulds: I respectfully except, if your Honor please, and I plead surprise, and ask that the case be continued.

10 The Court: As I see it, it does not affect the substantial merit. It simply goes to the control of the fund. In order to protect the children, in the event of recovery, of course the Court would control that fund. There has been no failure on the part of the plaintiff under Section 153, because that contingency has not arisen. And on your motion, in order to bring the children properly into court, I am inclined to grant your motion for the appointment of a next friend.

20 Mr. Rinzler: I would ask that the witness, Mrs. Bushko, be appointed, your Honor.

The Court: That can be done.

Mr. Foulds: If your Honor please, I submit that the actions are now improperly joined. There is no authority for joining or uniting these two actions in one suit.

30 The Court: Well, you did not raise that. Mr. Foulds: Well, it just happened now.

The Court: The suit was instituted by the administratrix of the estate and, as I see it, it will not change the defense any. In other words, your defense as to the merits will be identically the same, or would be the same, if, in the first instance, she sued as guardian of the children or next friend. In other words, your defense would be identically the same.

40

Mary Bushko—Recalled—Direct.

Mr. Foulds: It might, but I should have an opportunity to examine her right to maintain this action, and it is a surprise to me; and I apply for a—

The Court: Well, at least it would only mean delay. As a matter of fact, the Court is the one to be satisfied as to whether or not she is a discreet person. In view of the fact that she has letters of administration of the estate, I am inclined to hold that she is a discreet person, and the Court would be justified in appointing her as next friend. 10

Mr. Foulds: Your Honor will allow me an exception.

The Court: Yes.

Mr. Foulds: Does your Honor deny my application? 20

The Court: Yes.

Mr. Foulds: I ask for an exception on that.

The Court: There would be no substantial change in the defense. The merits you have raised as against anybody are identically the same as those you are raising against the present plaintiff, in the capacity of administratrix of the estates of both Annie and Anthony, the two of them? 30

Mr. Foulds: There may be a number of questions as to these children, and we have not been notified of any such claim. This is an entirely new claim. While it does depend on these by-laws, the right of this plaintiff now to maintain this new cause of action is an entire surprise to us and we have no opportunity to investigate it. 40

The Court: Her right to maintain this

John Sadloch—Direct.

action now is no different, so far as the merits are concerned, than would it be if she were suing in the first place as guardian or next friend of the children. In other words, as I see it, of necessity, your defense would be identically the same.

10 Mr. Foulds: I think not, if your Honor please. I think not, necessarily, at all. I ask an exception.

The Court: All right.

DEFENDANT'S CASE.

20 JOHN SADLOCH, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct-examination by Mr. Foulds:

Q. Mr. Sadloch, were you the president of this defendant Society on March 1st, 1925? A. No, sir.

Q. Were you president during March, 1925? A. No, sir.

30 Q. Were you president during April, 1925? A. No, sir.

Q. Or May, 1925? A. I was president, elected in 1926.

Q. You were elected president in 1926? A. Last Sunday in April.

Q. Prior to that time do you remember seeing this witness, Bushko? Did she call on you? A. I did.

40 Q. When did she see you? A. When Tony Tula was dead.

John Sadloch—Direct.

Q. That was in February, 1927? A. Yes.

Q. Had she seen you before that time? A. No, sir.

Q. Did you receive any letter from Mary Bushko? A. No, sir.

Q. In March, 1925 or thereafter? A. No, sir; I never did.

10

Q. The first time you saw her was after Tony was dead? A. Yes, sir.

Q. Where did she see you? A. Right in my home.

Q. Did she call in the afternoon? A. It was about evening.

Q. That was the only time she called at your home? A. Yes, sir.

Q. You never received any letter from her? A. No, sir.

20

By the Court:

Q. When Anthony died; is that the first time? A. The first time, yes, sir, when he died, she was notifying me about his death.

Cross-examination by Mr. Rinzler:

Q. What officer are you now, president? A. President, yes.

30

Q. And you became president of the Society in April, 1926? A. Yes, sir.

Q. Just before you were president you were vice president? A. No. I was nothing; just standing member.

Q. Standing member of what? A. In the same Society.

Q. On a Sick Committee? A. No committee.

Q. What were you? A. No committee at all; just standing member.

40

John Sadloch—Cross.

Q. What officer was Molsen in 1925? A. Well, I can't tell you exactly because—

Q. Have you not your books here? A. Yes.

Q. Do you not know what office Mr. Molsen held in that year? A. No, I don't.

10 Q. Who has the books? A. The secretary, I suppose.

Q. Is he here? A. Yes.

Q. You mean the present secretary? A. Yes.

Q. When Mrs. Bushko came to you she reported to you that Mr. Tula died? A. Yes.

Q. Then you reported it to the Society? A. I did.

Q. And you also reported to the Society the death of Mrs. Tula? A. No, I didn't.

20 Q. When did the Society learn of Mrs. Tula's death? A. I don't know.

Q. Do not even know now she died, do you? A. Of course we know through the people.

Q. Through what people? A. Through the friend.

Q. When did you find out? A. Of course when the story go around that the people died.

Q. When did you find out for the first time Mrs. Tula died? A. I was out on the street.

30 Q. When? A. I can't tell you exactly when.

Q. When you heard about it did you report it to the Society? A. Never reported it to the Society.

Q. Did you, yourself? A. Not Mrs. Tula, no; nobody.

Q. Although you are an officer? A. I was officer, but nobody reported it.

40 Q. But yet you did not report it? A. Nobody reported it to me.

John Sadloch—Cross.

Q. When you learned of it you did not report it to the Society even though you were an officer; is that correct? A. Of course that is correct. I didn't take no action in it.

Q. And when she told you, Mrs. Bushko, that Mr. Tula died, what did you do? A. Well, I told her what our by-laws call for.

10

Q. What did you tell her? A. Member expelled from the Society, she is not entitled to get the benefit.

Q. You did tell her that? A. Of course.

MICHAEL FEDUSH, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

20

Direct-examination by Mr. Foulds:

Q. What office do you hold in this Society? A. Secretary.

Q. How long have you been secretary? A. Seven years.

Q. Have you the books of the Society here? A. Yes, sir.

Q. Where are they? A. Outside. I just sent a man over there to get them.

30

Q. Anthony Tula paid his last dues on March 1st, 1925? A. Yes, sir.

Q. He has not paid any dues since then? A. No.

The Court: What date is that?

Mr. Foulds: March 1st, 1925.

Q. Is this his application for membership (handing paper to witness)? A. Yes, sir.

40

Michael Fedush—Direct.

Mr. Foulds: I offer this in evidence.

Mr. Rinzler: No objection.

(Paper marked Exhibit D-1.)

(Mr. Foulds reads Exhibit D-1 to the Jury.)

10 Q. After March 1st, 1925 did Anthony Tula become three months in arrears?

Q. Did you send him a notice under the by-laws? A. Yes, sir.

Q. Is this the notice and the envelope in which it was sent? A. Yes, sir.

Mr. Foulds: I offer the notice and envelope in evidence.

(Argument.)

20 The Court: I will admit the letter, but I will charge the jury as to that.

(Letter marked Exhibit D-2; envelope marked Exhibit D-3.)

Q. What address did you have on your books as the address of Anthony Tula? A. 107, I think, Cleveland Avenue, Harrison, New Jersey.

Q. That is the address on this envelope? A. Yes.

30 Q. Did you send another notice to him after that? A. November 15th, 1925.

Q. That was mailed to 107? A. Same address.

Q. That was the address appearing on the books of the defendant? A. Yes, sir.

Q. That date upon which the meeting would be held to consider his expulsion was what date in that letter? A. I think the date is on that.

40 Q. But in the second one. A. 15th of November.

Michael Fedush—Direct.

Q. And the meeting was held on December—He was expelled on December 6, 1925? A. Yes, sir.

Q. That was the date you gave in that notice?

A. December 6th we had a meeting, 1925. That is the date we expelled him.

Q. On December 6th, 1925 did Anthony Tula appear at your meeting or did anyone appear for him? A. No, sir. 10

Q. Have you the minutes of that meeting? A. Yes, sir.

Q. Will you produce them? Turn to page 274. In what language are those minutes written? A. Slavish language.

Q. It is entry No. 7 on page 274? A. Yes, sir.

Q. Minutes of December 6th, 1925? A. Page 274.

Q. That is the entry, No. 7? A. It says over here (indicating), "Expelled from Society," Slavish. 20

Q. Can you translate from Slavish to English? A. Yes, I can.

Q. Will you read that translation, Anthony Tula and others? A. Anthony Tula and Andrew Propeck were notified by registered letter.

Q. What meeting is that you are reading? A. That was the 6th day of December, 1925. 30

Q. What does it say happened? A. Well, because he did not pay his dues.

Q. What happened that day? What does it say happened? A. Just notified him.

Q. Was he expelled? A. No. We just notified him that date with registered letter.

Q. I know, but read the entry. Can you translate it?

Mr. Rinzler: Let me see where you are reading from? 40

Michael Fedush—Direct.

(Witness indicates.)

Mr. Rinzler: Read it so the ladies and gentlemen can hear you.

A Jurywoman: How do we know whether he is interpreting it or not?

10 The Witness: You do not believe me if I read it.

A Jurywoman: What proof have we that he is interpreting it correctly?

Mr. Foulds: That is the minute book of the defendant Society.

A Jurywoman: We can't verify it. He might translate it wrong.

(John Hudak was called upon to act as interpreter.)

20 Mr. John Hudak: The only objection is that I am a member of the Society. I do not know if that will have any bearing on it.

Mr. Rinzler: Not as far as I am concerned.

The Court: Swear the interpreter.

(John Hudak was duly sworn as interpreter.)

30 The Interpreter: This means expelled from the Society Andrew Propeck, Anthony Tula. They have received a registered letter, and we have received no answer. That is all there is.

Mr. Foulds: I ask that that be marked.

Mr. Rinzler: Of course that is a self-serving statement, that they received it. That would also be regulated by your Honor's charge. Your Honor could control that.

40 The Court: Just evidence of the continuity of the chain.

Michael Fedush—Cross.

Q. Did you receive any notice of the sickness of Anthony Tula or Annie Tula? A. No, sir.

Cross-examination by Mr. Rinzler:

Q. How long are you secretary? A. Seven years.

Q. And you are secretary now, too? A. Yes, sir. 10

Q. If you got any notice you would not admit it here, would you? A. What is that?

Q. If you did get a notice you would not come here and tell the Court and Jury that you did, would you? A. Surely, I will.

Q. You would get fired. Wouldn't you get fired if you came up here and told us the fact, that you got a notice from these people? A. If got a notice I give it to the members. I produce that letter and read it, but I did not get any. 20

Q. Did you see Mrs. Bushko before? A. I saw her on the streets, but not in the Society.

Q. What did she say to you? A. Nothing.

Q. What street did you meet her on? A. Yes, sir. I met her on the street, that is all. She didn't say nothing.

Q. Have you here the records of the meeting of March, 1925? A. Minutes. 30

Q. Of the meetings? A. Yes.

Q. The minutes of the meeting of March, 1925? A. March 1st, 1925.

Q. Are they here? A. Yes.

Q. Showing who was at the meeting? A. Not every member, but—

Q. It does not show? A. It has to show.

Q. Do the minutes of the meeting of March, 40

Michael Fedush—Cross.

1925 show what people attended the meeting? A. Sure. It has to show here.

Q. Why did you say not of all the members? A. (No answer).

Q. Why did you say that? A. I didn't get you. I do not understand you.

10 Q. Are all of the names of all of the members who were at a meeting in March, 1925, mentioned in the minutes of the meeting for that time? A. We do not put all the names in the minutes. We put just one meeting.

By the Court:

Q. Were you ever a member of the Sick Committee? A. No, not me. We got two.

20 Q. Were you ever a member? A. No, not me.

Q. How is the Sick Committee made up? A. For a year.

Q. From year to year? A. Yes.

Q. I am not asking you are you a member of the Sick Committee now; but were you ever a member of the Sick Committee? A. No.

Q. Do you understand me? A. Sure.

Q. Who are members of the Sick Committee now? A. John Sargent and George Fredeli.

30 Q. Who were members of the Sick Committee two years ago? A. Same parties.

Q. And before that? A. Same parties. They are on the job about four or five years, I think.

By Mr. Rinzler:

Q. Show me here. A. They do not go out. They are only in the city.

Q. You show me the records or books of the Society naming the members of the Sick Committee

Michael Fedush—Cross.

for the year 1925, in March of that year. A.
(Witness examines book.)

Q. You are looking at 1924 now. A. 1924, yes.

Q. What does that say? A. Sick Committee.
Probably you can translate that.

Mr. Foulds: I ask that the interpreter
translate it. 10

(The official interpreter was used from
this point.)

Mr. Rinzler: What month is that, please?

The Interpreter: June. 21st day of
June, 1925.

Q. The question is, indicate by the records what
they show, if anything, with respect to who the
members of the Sick Committee of the Society
were, in March, 1925. A. (Witness turns pages in
book.) 20

Q. You are going now to July and August, 1925.

Mr. Foulds: The election was held on the
last meeting in April, was it not?

The Witness: I think so; 1925.

Mr. Foulds: The last meeting in April or
the first meeting in May.

The Interpreter: 5th day of April, 1925. 30

Mr. Foulds: If you want the officers for
March, 1925, you would look at April, 1925.

The Witness: Yes, that is the thing; elec-
tion night, I think.

Mr. Rinzler: You are looking at April,
1925. Look at April, 1924.

Mr. Foulds: Look under May, 1924.

Mr. Rinzler: The lawyer wants you to
look at May, 1924. 40

Michael Fedush—Cross.

The Witness: May, 1924. (Witness turns pages of book.) It does not show the names, but it has to be.

10 Q. It does not show the names, but it ought to be; is that right? A. It has to be on election, you know. I have to look for it.

Q. You just said, referring to the book from which you and the interpreter have been reading, "It does not show here, but it has to be"; is that what you said? A. It says over here.

The Court: Just answer the question.

Q. Did you say, "It does not show here, but it has got to be"; is that right? A. It has got to be there.

20 Q. But it is not there? A. The election, but I have to look for it.

Q. Is it there in the book for the month of May, 1924? Is it there? Yes or no. A. It is there.

Mr. Rinzler: Will you interpret that, Mr. Interpreter?

The Interpreter: "The Sick Committee gave for the sick members."

30 Q. I ask you again to refer to this record and minute book of the Society for the month of May, 1924, and state whether that book shows who the members of the Sick Committee were in that month. A. What month is that?

Q. May, 1924. There it is right there. A. We got to look for election, when the election was.

Q. The lawyer said April; then he said May. That is why I asked you to look at May.

40 Mr. Foulds: I think the election is held in April, and probably the entry of the ap-

Michael Fedush—Cross.

pointment of the committees was on the next meeting. This man can probably find it for you better than he can.

Q. Is it there? Wait a minute. Is it there, Mr. Witness? Just answer this question, please. Do you find it there for the month of April? A. It is in there, but I can't find it any more. 10

Q. Can you find it there? A. If you give me more chance I will find it.

Mr. Rinzler: That is all.

Mr. Foulds: That is all.

The Witness: It has got to be there, but I don't know the page.

20

JOHN MICKLUS, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct-examination by Mr. Foulds:

Q. In March, 1925, were you president of this defendant Society? A. Yes, sir.

Q. How long did you remain president? A. I was for four years. 30

Q. Four years before that? A. Yes.

Q. And down to the election of John Sadloch, 1926, was any report made to you of the sickness of Anthony Tula? A. No, sir.

Q. From March, 1925 down to the time that you went out of office? A. No.

Cross-examination by Mr. Rinzler:

Q. Let us see. The dues were being paid and were paid by Mr. and Mrs. Tula up to and includ- 40

John Micklus—Direct.

ing March, 1925; is that correct? A. March, 1925?

Q. Yes. A. Well, the secretary is keeping records of that.

Q. You were the president; is not that so? A. Well, I never bothered with the books. The secretary takes care of that part.

Q. When they were paying dues they were living in Harrison, were they not? A. Yes.

Q. Then when they got sick they went to Laurel Hills, Secaucus, did they not? A. I don't know when he got sick, because I never heard anything of those people.

Q. Just tell the Court and Jury, then, how it happened that when the Society, of which you were then president, sent a notice by registered mail, to Mr. Anthony Tula or Anthony Tula, which registered mail is in evidence, the mail was addressed by the Society to Mr. Tula at 106 Cleveland Avenue, Harrison, and then has written on it, "Laurel Hills, Secaucus, N. J."? A. Well, that is the address he have it in the book that time. He must have it.

30 JOHN HUDAK, called as a witness on behalf of the defendant, being duly sworn, testifies as follows:

Direct-examination by Mr. Foulds:

Q. I show you a minute book of the defendant Society produced by the secretary. Will you point to the entry of the appointment of the Sick Committee for the period of March, 1925? A. This entry is made on page 216, paragraph 18.

40

John Hudack—Direct.

Q. As of the meeting of what date? A. As of the meeting of April 20th, 1924.

Q. What does it read, translated in English?

Mr. Rinzler: Read it in the language it is written in.

(Witness reads in foreign language.)

(Witness reads as follows in English:)

10

The Witness: "Up for election as members of the Sick Committee, Brother George Fredeli and Brother John Sargent. All members satisfied and unanimously reelected them for the coming year."

Mr. Foulds: I offer that to show who the Sick Committee was at that time.

Cross-examination by Mr. Rinzler:

20

Q. Will you refer to the minutes of the meeting of March, 1925? A. March or April?

Q. March, 1925. A. There are two entries. Which one do you want?

Q. Both. Do either of the entries in the minutes in this book, of the meetings of the Society for the month of March, 1925, show who attended or was present at the meeting? A. Well, I am only up as a witness. I can't say.

30

The Court: Look at the book.

Q. That is what I mean, whether the books show it. Yes or no. A. From my own knowledge—

Q. No, no.

The Witness: The book does not show who attends the meetings.

Q. Does it show who was present or who attend-

40

John Hudack—Cross.

John Hudack—Redirect.

ed at the meeting for the month of April, 1925?

A. No; none of the entries show that.

10 Q. Do any of the entries in the books and records and minutes of the Society show who was present and who attended or came to the meeting or any of the meetings of the Society at any time; yes or no? A. No. They will not show who attended.

Redirect-examination by Mr. Foulds:

20 Q. I show you the form of notice, D-2, a copy of which, with the date changed, is said to have been sent to Tula in November. Will you read that notice? Translate it. A. (Witness reads in foreign language and then in English)

“Passaic, N. J., October 1st, 1925.

Dear Brother Tula:

30 You are hereby notified by the above society to appear at a meeting to be held October 4, 1925, in the hall of Peter Glita, 128 Third Street, to straighten out your dues to the above society. If you fail to do this you will be expelled from the society and will not be entitled to any benefits.”

Then it gives a list of what his dues were up to that time.

Mr. Rinzler: Give it.

The Witness: (Continuing) “Monthly dues for April, May, June, July and August and September, \$3.00; death benefits, \$8.40; administration fees, 60 cents; sick benefits,

John Hudack—Redirect.

60 cents; registered letter, 25 cents; total,
\$12.85.

(Signed) Michael Fredeli,
Secretary."

Mr. Rinzler: Mr. Foulds, you say that
was sent in November, do you, 1925?

Mr. Foulds: The letter was sent in Octo- 10
ber, but the testimony is that a like notice
with the date changed to December 2nd was
sent on November 15th.

Mr. Rinzler: Where is that notice?

Mr. Foulds: That has probably been re-
ceived; never been returned to us.

Mr. Rinzler: You have not it?

Mr. Foulds: No.

Defendant Rests. 20

PLAINTIFF'S REBUTTAL.

Mr. Rinzler: Now, if your Honor please,
I offer in evidence the original records of the
office of the Surrogate of the County of Ber-
gen, in the following matter:

"In the matter of the guardianship of 30
Annie Tula, Alex Tula, Ella Tula and Rose
Tula."

First I offer the guardianship papers, in-
cluding the order appointing Mary Bushko
as guardian, first, of the plaintiff Rose Tula,
under date of January 10, 1928, and a sep-
arate order appointing her guardian of
Annie Tula, Alex Tula and Ella Tula,
minors, under the age of fourteen years, 40

John Bushko—Rebuttal—Direct.

Rose Tula being a minor over the age of fourteen years; and as to those three the order appointing her as guardian of those three children is dated January 14, 1928. In each case I offer the guardian's bond as well, and the whole file.

10 I do not suppose these should be marked because they are original court records.

Mr. Foulds: I object on the ground that it is not pleaded, and that this is a matter of surprise.

The Court: I will permit the amendment, as suggested before, where it joins the party as guardian of the children.

Mr. Foulds: Exception.

20 (Papers considered as marked Exhibit P-8.)

Mr. Foulds: Of course this amendment puts us in the position of being here without any denial of any allegation of the complaint.

JOHN BUSHKO, recalled for the plaintiff, in rebuttal, testifies as follows:

30 *Direct-examination by Mr. Rinzler:*

Q. Do you know Mike Fedush? A. Yes, I know him.

Q. Did you ever talk to him about Tula? A. Yes. I was talking to him on 1st Street, No. 28.

Q. No. 28 1st Street? A. Yes.

Q. What year? A. 1925.

40 Q. What did you say to him? A. He said, "All right." He says, "All right," he let it know Society.

John Bushko—Rebuttal—Cross.

Q. Let what know to the Society? A. That Tony Tula is sick.

Q. Did you report to him he is sick? A. Yes.

Q. And he said he was going to inform the Society; is that right? A. Yes.

Cross-examination by Mr. Foulds:

10

Q. Whom did you see? A. Mike Fedush.

Q. Which one is that? A. The one that have the book over here.

Q. What do you say? A. The one that had the book over here.

Q. The one that had the book? A. Yes. He is the secretary.

Q. When did you see him? A. I see him 1925.

Q. How do you know it was 1925? A. I know that because I was with him. I was speaking with him.

20

Q. How do you know it was 1925? A. I know that because I was at that time over there. Tony Tula got sick.

Q. How do you know it was 1926? A. Because Tony Tula got sick that time.

Q. How do you know it was 1925 that Tony Tula got sick? A. I know that.

30

Q. How do you know that? A. Because I see him.

Q. What else happened in 1925? A. Nothing happened; just he was sick.

Q. How do you know it was not 1924? A. I know that.

Q. What were you doing at that time; what was your work? A. My work? I worked in the mill.

Q. What mill? A. Henry Ford.

40

John Bushko—Rebuttal—Cross.

Q. Where? A. Kearny.

Q. In Kearny? A. Yes.

Q. What were you doing up in Passaic? A. I was over there to see him.

Q. What time of the day did you come over? A. I was on Sunday over there.

10 Q. Sunday? A. On Sunday, yes.

Q. Do you know what Sunday it was? A. I can't remember what day it was. It was—I know what month. It was in March.

Q. Did you come alone? A. Yes.

Q. Did you come to Passaic alone? A. I come with my wife over there.

Q. And your wife went with you? A. My wife went with me.

20 Q. She did not tell us anything about that. She said she saw Sadloch. A. I don't know what she said. I said that I tell him like that.

Q. You went to see Fedush and she went to see Sadloch; is that it? A. And I see John Molsen too, because John Molsen paid the Society. He sent the money to John Molsen.

30 Mr. Rinzler: Wait a minute. I object. He said he also told Molsen because Molsen was the man to whom Tula gave the dues to be transmitted.

The Court: He is identifying the man. He is not repeating anything that he said.

Q. When did you first think about this talk with Fedush; at noon today? A. I was talking about seven o'clock at night.

Q. Somebody told you today, at noon, that you went to see Fedush? A. Because Fedush was

John Bushko—Rebuttal—Redirect.

working in that place, the saloon. I can't get him no place. I find in the saloon.

Q. Somebody told you today, at noon, you went to see Fedush?

Q. Now you talked with somebody about this case at noon today, did you not? A. I did.

Q. Whom did you talk to about this case at noon today? A. Who I talking? Mr. Fedush. 10

Q. Today? A. Today?

Q. Yes. Whom did you talk with about this case today? A. Who was talk with me? I got a telephone.

Mr. Rinzler: He means I telephoned him to come here.

Q. This morning you did not tell us anything about this. Why did you think of it this afternoon and did not think of it this morning? A. I know about this case Monday. I was Monday over there. 20

Redirect-examination by Mr. Rinzler:

Q. One o'clock, when everybody went out from court today, when court adjourned, where did you go? A. Where did I go? 30

Q. Yes. A. I go home.

Q. Today, one o'clock? A. Today, one o'clock, I was just outside.

Q. You did not go with me, did you? A. No.

Q. You did not see me until two o'clock when everybody come back to court? A. Yes, that is all.

Mr. Rinzler: We rest.

Motion to Dismiss.

Mr. Foulds: If your Honor please, I repeat the motion that I made at the close of the prima facie case of the plaintiff, to dismiss, on the grounds then stated, and I repeat the same grounds.

The Court: The motion will be denied.

10

Mr. Foulds: Your Honor will allow me an exception.

Case Closed.

Mr. Foulds summed up the case to the Jury.

Mr. Rinzler summed up the case to the Jury.

20

The Court charged the Jury as follows:

CHARGE TO JURY.

Ladies and Gentlemen of the Jury: This is an action by Mary Bushko on behalf of the children of Anthony and Annie Tula. The suit is based upon a contract made by Anthony Tula and the Society which has been referred to as the First
 30 Uhro Slovanian Greek-Catholic Sick & Death Benefit Society of St. Michael The Archangel.

Now the rights and liabilities of the parties in this case, or rather the deceased, are fixed by the terms of this contract. In other words, the law has said that the agreement made between the parties is the one that controls, and it is not our duty to make a new contract. Our duty begins with hearing testimony, with a view to determine
 40 whether or not the terms of the policy have been

Charge to the Jury.

met or whether there has been a breach, and whether the terms have been met which would justify a recovery, or whether or not there has been a breach by which the defendant organization is freed from paying the obligation which the plaintiff, in her representative capacity, claims is due her.

10

The by-laws, the application, and the constitution are in evidence, and of course you will take those to the juryroom. The suit is based upon the theory of recovery for a death benefit and, in addition to that, money is asked for sick benefits.

Now, under the terms of the contract a member in good standing is entitled to be paid \$5 a week for thirteen weeks, and \$2.50 for twenty-six weeks. Anthony Tula became sick in March, 1925, from the evidence. He died, I take it, in 1927. Under the terms of the policy or the contract, Anthony Tula was charged with paying his dues, and his failure to pay the dues justified expulsion from that Society, provided the necessary steps were taken by the organization. Mrs. Tula, his wife, was entitled to receive the \$800 under the policy, if all conditions were met; and, by virtue of her being the wife of Anthony Tula, upon her death, her beneficiaries were entitled to \$600.

20

30

So you have before you now a claim for \$130 for sick benefits which are claimed to have been due to Anthony Tula in his lifetime, \$800 under a death benefit certificate which the plaintiff claims was due his wife upon his death, and there is a claim of \$600 by virtue of the death of Annie, his wife.

As I said before, there are three elements or three propositions, all totaling \$1530.

40

Charge to the Jury.

Now, as we have said before, the contract is the instrument which determines the right of the plaintiff and the liability of the defendant organization. Under the policy Anthony Tula was charged with performing all conditions which he had agreed to, except in so far as there has been
10 a waiver, or except in so far as there has been a limitation which called for the defendant to do something to make effective a breach of any of the terms which it now charges him to have committed. So we will say that the plaintiff is duty bound to show a performance of conditions precedent.

There is in this policy also a certain requisite upon death. In this case it is admitted that there has been no formal proof of death. However, under
20 the pleadings in this case that the defense raised, the Court of Appeals of this State has held that when a company denies liability under a life insurance policy, and I will treat this as analogous to a life insurance policy, on the ground that there has been a forfeiture, because the failure to pay premiums is a waiver of a condition as to furnishing proof of death—The defense in this case is that there has been a failure to pay premiums and,
30 therefore, following the rule laid down by our highest court, it is no defense, so far as they are concerned, that the plaintiff did not show proof of death.

Now it is admitted, too, that the last payment of dues, I believe, was in March, 1925,—or 1926, was that?

Mr. Rinzler: 1925.

The Court: 1925; and that he was dropped from
40 the rolls in December, 1926. Of course, keep in

Charge to the Jury.

mind that the right of the wife's beneficiaries to recover under her policy is contingent upon the membership of the husband. Of course, if the husband were not in good standing, then there would be no right under the claim of the beneficiaries who are now seeking to recover the amount under the wife's policy or wife's death certificate.

10

In the by-laws and the constitution there is a provision (I think it is Section 111):

"Any member who has not paid his dues for a full three months, shall not receive the sick or death benefit provided for in the by-laws and is no longer a member."

So by reference to the by-laws and constitution we have to read the by-laws as being part of this. Now the application with reference to that says:

20

"In case of any disaster happens to me I will not claim my benefit if I be in arrears three months. If I be notified by registered letter, sent by the secretary, and if I do not then settle my accounts I shall be expelled from the society. If I settle my accounts after being notified by the secretary of the society I shall pay the fee of twenty-five cents for the trouble caused the society by me."

So you see, by the terms of these by-laws, the defendant Society undertook to do something before expulsion became effective. Now one of the questions that you will decide is, what has the organization done with reference to expelling this man?

30

There has been offered in evidence a letter and, according to the translation, it calls upon Anthony Tula to straighten out his affairs, (I think that is the word used) and also to pay certain expenses incident to the carrying of him from a given date. There is testimony, too, that a letter was sent

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Charge to the Jury.

which is similar to the one that has been offered in evidence, and that was sent prior to the one which was offered in evidence. The one which was offered in evidence was not delivered, because that is evidenced by the fact that there was a return.

10 Under the terms of the by-laws it is provided that a registered letter be sent and, in another part of the records in the case I think there is a statement that the plaintiff intestate shall give his correct address.

Under the law, proof of mailing a letter properly, where the postage is paid, raises a presumption of delivery. Yet if the facts warrant you in disbelieving that, of course you may overcome that presumption, or rather the presumption may be overcome.

20 The letter which has been offered in evidence has a stamp on it, "Receipt requested," and by the terms of that, of course, the defendant went beyond merely mailing it to the address, although the by-laws say, "If I be notified by registered letter."

Now if you conclude from the evidence that the defendant did notify this man that he was obligated to the organization, and that he should pay, in keeping with the terms of his agreement, and then he failed to do it, then, of course, you might say that there has been a breach of his obligation under the terms of the contract made by him and the organization. Yet there is another consideration with respect to that. Although the insured was sick he was not relieved from paying dues, and if you conclude that he was in arrears, or the defendant organization was justified in expelling him at the time that they did, as I said before, there is

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Charge to the Jury.

no right or recovery on the part of this plaintiff. On the other hand, if you conclude that the defendant failed in doing what it should have done to expel him, then, of course, you come to the question of the sick benefits.

There are certain conditions required on the part of a member of the Society with regard to his claim under that. There is a provision in the constitution (I think it is Section 124) : 10

“A member of the society who shall become ill or become injured, must immediately report his illness to the President or the Sick Committee, whose duty it is within twenty-four hours to visit such sick member and to satisfy themselves of his illness.”

“A member is entitled to the sick benefit from such day as he shall report himself sick to the society.” 20

“A member who becomes ill must have a doctor visit him at least two times in each week during his illness, and should he not have a doctor visit him two times in each week, he shall not receive any sick benefit from the society.”

Now the plaintiff contends in this case that there was notification as to the illness in March. I think the testimony names the persons whom she talked to. I think she said she talked to one man whom she referred to, in her language, as the “headest” man, which later was said to be the president. 30

So far as the defendant is concerned, there is an absolute denial. There is a denial by that man that he was the president. There is also a denial on the part of persons who were charged with notice by reason of the alleged information given by 40

Charge to the Jury.

10 this woman. These men have denied that they received notice. One man testified, I think, in a general way, he heard he was sick. I think one witness testified he heard it on the street. So you see, the plaintiff's right to recover sick benefits depends entirely upon whether or not he has done the things required in the by-laws. If he has not done it, then, of course, the organization is not charged with paying him the benefits.

20 If you conclude that that is the fact on that phase of it, of course there is no justification for entering a verdict in favor of the plaintiff for the \$130. On the other hand, if you conclude that he had done all things that he was charged with, by reason of his obligation and his acceptance of the by-laws and the constitution, and the defendant organization did not pay him, then that raises another question with respect to the application of the money due to him under his sick benefit, to the arrears with regard to the death benefit.

I am adopting this rule with respect to that:

30 Where an association is indebted to a member for benefits to which he has become entitled, his dues and assessments may be set off against the same, so that their non-payment will not warrant his suspension.

40 So you see, if you conclude that the decedent was entitled to the sick benefits, and he did not receive them, for the first thirteen weeks, he was entitled to \$5 a week, and the balance of the time for which he was entitled to receive sick benefit, amounted to \$130. And I think the evidence in the case is that the amount due, upon which there was a suspension, is something over \$12. If you conclude that the plaintiff was entitled to the sick

Charge to the Jury.

benefits, then I charge you, as a matter of law, that there was no justification for a suspension for the non-payment of dues under the death benefit certificate, but they should have offset those charges by deducting them from the sick benefit fund. But if you conclude that he was not entitled to sick benefits by reason of his failure to meet all conditions imposed upon him, by reason of his membership, then, of course, you are not to consider the sick benefits with relation to offsetting the claim for the dues under the death certificate. 10

As I said before, this case must stand or fall upon the agreement between the parties. If the plaintiff failed to live up to the terms of his obligation, and by reason of the breach he was expelled, there is no right of recovery in this case. On the other hand, if you say that he has done all things necessary, if you say it is by reason of the defendant organization's act that this suspension has come about, and not by reason of his own violation, then, of course, he is entitled to recover, or at least the estate is entitled to recover according to the sum as established by the evidence. 20

This case is to be decided solely upon the law laid down by the Court, taken in conjunction with the facts that are found by you. I do not want you to take the Court's version of the facts. If I have misstated any of the evidence I want you to disregard it. Of course I have not covered all of the testimony. This case must be decided upon your own recollection of the testimony and not upon the Court's recollection or reference to it. The case is not to be decided upon sympathy. These parties have made this agreement. As I said be- 30 40

Charge to the Jury.

fore, that is what is going to determine the rights and liabilities of the parties; and sympathy should play no part in the consideration of this case by you. You are charged by your oaths as jurors to decide the case upon the law and facts. That is the basis, and the only just basis, for your consideration of this case.

10

(The Jury retired.)

Mr. Foulds: I respectfully except to that portion of your Honor's charge in which you said that this was an action by Mary Bushko in behalf of the children of Annie and Anthony Tula, in substance or effect.

20

I respectfully except to that portion of your Honor's charge in which you said, in substance or effect, that it is no defense that plaintiff did not show proof of death.

30

I respectfully except to that portion of your Honor's charge in which you said, in connection with Section 111, and after reading it, that by the terms of the by-laws the defendant Society undertook to do something before plaintiff was deprived of the right to recover; there must be some affirmative act done by the Society.

The Court: I think I said expulsion.

Mr. Foulds: Something of that kind.

I respectfully except to that portion of your Honor's charge in which you said that, "I think one witness of the defendant testified that he had heard on the street that Tula was sick."

I respectfully except to that portion of your

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Charge to the Jury.

Honor's charge in which you charged, in substance and effect, "If you find that Anthony Tula did what he was required to do, the plaintiff is entitled to recover."

And also to that portion of your Honor's charge in which you charged the jury that, "If you conclude that Tula was entitled to sick benefits and did not receive them, then they may be offset against the dues for the death benefit," in substance and effect.

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Plaintiff's Exhibit P-1.

Certificate of death of Anthony Tula.

Plaintiff's Exhibit P-2.

10 Certificate of death of Annie Tula.

Plaintiff's Exhibit P-3.

HUDSON COUNTY HOSPITAL
SECAUCUS, N. J.
UNITED STATES OF AMERICA.

20 State of New Jersey, {
County of Hudson, {ss.:

30 Be it known, That on the day of the date hereof, before me, the subscriber, a Notary Public for the State of New Jersey, residing in the City of Jersey and County of Hudson, personally appeared a physician duly licensed to practice medicine (Dr. Wm. J. Monaghan), also Medical Superintendent at the Hudson County Hospital situate in the Town of Secaucus County of Hudson and State of New Jersey, who being duly sworn according to law, did depose and say, that on Sep't 4th 1925 there was admitted to this hospital one Anna Tula, age 38 years, address #107 - Cleveland Avenue, Harrison New Jersey, Occupation Housewife, Birth place Austria, Color White, Religion Catholic. Rec'd from Home, on committment of John A. McKeon Overseer of Poor of Harrison, N. J. Mothers maiden name: Annie Pulcano, Birth place Austria, Fathers name; Michael Skoska, Birth

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Plaintiff's Exhibit P-3.

place Austria. Diagnosis: Arthritis deformans, Rheumatism. Was discharged to Hudson County Alms House, Secaucus, N. J. as improved on November 23rd 1925.

Deponent saith that the said Anna Tula was re-admitted to this hospital on May 7th, 1926, Diagnosis - Arthritis deformans, Rheumatism, and discharged as improved on January 21st 1927, To the Hudson County Alms House, Secaucus, N. J. 10

Deponent further saith, that the fore said Anna Tula was again admitted to the Hospital from the Hudson County Alms House, on October 9th 1927, Diagnosis, General Exhaustion, Bronchial pneumonia "R" upper and middle lobe. Arthritis deformans from which she died in this hospital on October 13th 1927. On August 19th 1925, one Anthony Tula was admitted to this hospital husband of the fore said Anna Tula, same address, Age 38 years Occupation Laborer, Birth place Poland, Color White, Religion Catholic. Committed from home By John McKeon, Overseer of Poor Harrison, N. J. Mothers maiden name Bertha Wolchok, Birth place Poland, Fathers name Stephen Tula, Diagnosis: Mitral regurgitation with dilatation "R" heart valve. Was discharged as improved to the Hudson County Alms House, Secaucus N. J. on July 23rd, 1926. The said Anthony Tula was again admitted to this hospital on November 30th, 1926, Diagnosis: Mitral regurgitation with dilatation "R" heart valve., from which he died in this hospital on Febr. 21st 1927. 20 30

Deponent further saith in the case of fore said Anna Tula, she was a patient under his care from Sep't 4th, 1925, to October 13th, 1927 in the case of her husband Anthony Tula., he was also under 40

Plaintiff's Exhibit P-3.

his care from August 19th 1925, until February 21st 1927. The above named patients have remained on Laurel Hill., although when slight improvements were made in there respected cases and at times removed to the Hudson County Alms House., they were still sick unable to work and visited by the physician every day in the sick ward located at Hudson County Alms House., Secaucus, N. J. Deponent is Medical Director of Hudson County Alms House, as well as Medical Sup't. at Hudson County Hospital.

Sworn to and before me at Secaucus N. J. this 23rd day of February 1929.

DR. WM. J. MONAGHAN,
Medical Superintendent.

20 Thomas P. McGovern,
Notary Public of N. J.
My commission expires Mar 1st 1930.

Plaintiff's Exhibit P-4.

The name of this Society
First Uh. Slavonic Gr. Catholic Sick and Death
Benevolent Church Society under the
30 prorectorater of
ARCHANGEL ST. MICHAEL.

Organized May 2nd, 1890. Passaic, N. J., U. S. A.

Address St. Michael Arch. Gr. Cath. Society,
Post Box 25.
Passaic, N. J.

411 Society meets twice a month first and third

Plaintiff's Exhibit P-4.

Sunday, in the School Hall of St. Michael's Greek Catholic Church on Bergen & First Streets, in the City of Passaic, New Jersey.

(Certificate in Polish Language).

I enter this Society and desire to become an earnest member of the said Society and will obey the By-Laws and amendments of the Society. If I give a false statement in the Application List the Society has permission to expel me at its first meeting, I promise to pay the dues of the Society every month regularly and I will always give the Secretary my correct address. In case of any disaster happens to me I will not claim my benefit if I be three months arrears. If I be notified by a registered letter send by the Secretary of the Society and if I do not then settle my accounts I shall be expelled from the Society. If I settle my accounts after being notified by the Secretary of the Society I shall pay the fine 25 ct. for the trouble caused to the Society by me.

I agree to go to confession once a year at Easter, I also agree to give to the officers of the lodge signed by the priest a card that I have been to confession within thirty days after the Easter holidays; I also agree to attend services to be held in the name of the patron of St. Michaels society I will obey above.

I herewith give my age, residence, date of birth and religion according to my knowledge. For this I give my signature name.

TONY TULA.

Here follows receipts for dues from December, 1913 to March, 1925, inclusive.

Plaintiff's Exhibit P-5.

BY-LAWS

of the First Uhro Slavonian Greek-Catholic Society of St. Michael the Archangel corrected and accepted at a convention held at Passaic, New Jersey on the thirtieth day of May, nineteen hundred and fourteen.

10

NAME OF SOCIETY.

This society shall be called "First Uhro Slavonian Greek-Catholic Sick and Death Benefit Society of St. Michael the Archangel." Organized May 2nd, 1890 in Passaic, N. J., in the United States of America.

20

1. The object of this society is to adhere strictly to its by-laws at its regular meetings, and from time to time, pass such resolutions and rules for the good of the future of the society, and all such rules and regulations shall be entered in the minutes of the society so that in case of necessity the same can be found and used. If the society should adopt any rule or regulation which does not appear in its by-laws, such rule or regulation shall be valid until such time as it shall be altered and this can only be done at its yearly convention.

* * * * *

30

4. The objects of this society are to pay unto its members, at the proper time, such sick and death benefits as shall be provided for in these by-laws.

5. Members of this society may be such males speaking the Slavonian language, and if either Greek or Roman Catholic faith.

6. This society also has female members, but only wives of male members of the society, and

40

Plaintiff's Exhibit P-5.

who shall be entitled to such death benefits as set forth in these by-laws for female member

* * * * *

11. (a). This soicety shall have its own doctor whose duty it shall be to examine every candidate for membership and examine also his wife.

(b) If the doctor should receive an official notice to examine a member who reports himself sick, the doctor should see and examine him and give his written report of his examination, stating whether or not he finds such member ill or in his judgment, well, and whether he recommends him to the society for the payment of sick benefit or not.

10

(c) The doctor shall examine a member who becomes crippled and such crippled condition must be sustained by the society's doctor, if the member requests aid or benefit according to these by-laws.

20

* * * * *

18. It is the duty of the president every month to examine the proper due book in order to ascertain whether or not any members are behind in their dues, and if the president should ascertain that the financial secretary retains any member in membership, who is more than three months in arrears with his dues, and such fact is not known to the society, the president must report the same to the first meeting thereafter, and the financial secretary shall immediately pay the fine provided for in these by-laws, for being lack in his duties, but if the president should not so report the financial secretary, then he, the president, shall also be fined the same as the financial secretary.

30

* * * * *

22. The president has the full right and power

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Plaintiff's Exhibit P-5.

to refuse payment of the sick benefit to any such members as mentioned in Paragraph 21, until such member shall prove his actual sickness through the society's doctor, that his sickness is real and not feigned.

* * * * *

- 10 33. It is the duty of the Recording Secretary to particularly note everything that is brought before any meeting, so that all the business shall be accurately kept and not one single word must be omitted about anything that was done or performed at the meeting, whether or not the same was accepted or voted down.

* * * * *

- 20 54. The Financial Secretary is not responsible for any dues which are not sent to the society, and should a member send his dues to his relatives or acquaintances, such member has no right to request a receipt from the society.

* * * * *

- 30 60. It is the duty of the Financial Secretary to notify every member of the society who shall be three months in arrears with his dues, and he shall send such notice immediately after the third Sunday in the month. Such notice shall be sent by him by registered mail and his failure to do so, shall make him subject to a fine of \$2.00 in accordance with the provisions of these by-laws.

* * * * *

- 40 63. The Treasurer should obtain all moneys for this society through the Financial Secretary he has no right to accept any dues from any of the members without the knowledge of the Secretary. The Treasurer should enter every sum received by him in his daily books and this daily account must

Plaintiff's Exhibit P-5.

tally with the books of the Financial Secretary and Inspector.

* * * * *

66. The Treasurer has the right to pay the sick benefits and other expenditures when he shall have received an order from the Financial Secretary, signed by him and the President.

10

67. Should the Treasurer pay out any sum without an order as above mentioned, he does so upon his own personal responsibility.

* * * * *

79. It is the duty of the Sick Committee to visit each member who shall have reported himself sick to the President, at least two times each week in order to satisfy themselves of the sickness with which such member is suffering, and report the same at their first opportunity at the meeting.

20

Inasmuch the Sick Committee consists of two members, it is not possible that both should visit such sick member together, but one should visit him one day, and the other should visit such sick member another day.

80. Should a member remain sick more than one week, they should report to the society at every meeting whether such member is getting better or worse.

30

81. The Sick Committee should see a member who reported himself sick, in order to ascertain if his sickness is such for which the society should pay him a sick benefit. Should the Sick Committee ascertain that any member reported sick does any work, whether such work is in his regular business or any work around his dwelling in which he lives, they should immediately notify the Society and file a protest against the payment of any

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Plaintiff's Exhibit P-5.

sick benefit to such member. If such sick member is not satisfied with such protest, it is then the duty of the President to send unto such member the society's doctor in order that he should ascertain whether such member is really sick, and if the Doctor should report that the member is not so
 10 ill as to prevent him from following his usual occupation, the sick benefit shall then be refused to such member.

82. It is the duty of the Doctor to report in as full a manner as possible to the society, in writing, concerning what he has found or ascertained concerning a member and whether or not he recommends such member for the sick benefit. When the President shall have received the Doctor's report in writing, he should follow the recommendation
 20 of the Doctor. And if the President should not do so and a sick benefit should be paid to the member, in such case the President is personally responsible for the amount paid to such member, and it shall be his duty to reimburse such amount into the society's treasury, and it is the President's duty also to request such member to whom such sick benefit has been paid, to return the same and if he should refuse to do so, the President should file
 30 a complaint with the society and then the society shall decide what should be done with such member who shall have improperly received this sick benefit. Should necessity require, a jury may be called for this purpose consisting of seven members, who, together with the President and Financial Secretary shall take this matter under consideration and decide what fine shall be placed upon such member, and such member who shall have requested such sick benefit, may be also expelled
 40 from membership if he should not submit to the

Plaintiff's Exhibit P-5.

decision of this jury. Upon the consideration of such a matter, the person accused should also be present.

* * * * *

107. Should such a member fail to appoint a guardian, and leave the death benefit to his children who should at that time be minors less than 21 years of age, in such case the society shall pay such death benefit to the children at such time as they shall reach their majority, to wit, the age of 21 years. This death benefit may also be paid if the children's relatives shall have a guardian appointed for them, and if such guardian shall be properly and lawfully appointed, then it shall be his duty to furnish the society with the necessary documents, showing his appointment, and when the society shall have received all such necessary documents. It shall then pay this death benefit to such guardian. A member shall not be entitled to any death benefit for the death of his wife who has deserted him, such wife who shall desert a member, cannot be a member of this society, but will be expelled from membership when the same shall have been properly proven to the society. When a member loses his membership in this society for any reason of which he is the cause, then his wife also loses membership in this society, and she loses all rights to any benefits provided for in these by-laws. Only widows, whose husbands died while members of the society, may retain their membership in this society after the decease of their respective husbands.

* * * * *

110. Every member of the society must have his dues properly paid up each month and no mem-

Plaintiff's Exhibit P-5.

ber has any right given him by the society, to remain in arrears for a greater period than that mentioned in these by-laws. Should any member fall into misfortune so that he cannot pay his dues at the proper time, he should request the society at its meeting, for leave to allow the dues to be unpaid for a period of not more than three months.

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111. A member who has not paid his dues for a full three months, shall not receive the sick or death benefit provided for in these by-laws and is no longer a member.

112. Should an expelled member again desire to become a member of this society, he must pay all unpaid dues as will be found in the books of the society, and he must not be over 40 years of age, neither can his wife be more than 40 years of age.

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* * * * *

115. (a) Monthly dues for members now are, for sick benefits 50c.

(b) Monthly dues to entitle him to death benefits 60c.

(c) Monthly dues for the wife of a member for death benefit 40c.

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(d) Widow of a deceased member she pays 50c monthly dues to entitle her to the death benefit. There are no other dues or funds provided for this purpose until such time as the society may deem necessary to assess its members for any other dues.

All officers of the society to whom a salary is paid, must be paid from the collection of the dues above set forth.

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(e) The payment of the dues as above set forth, can only be altered at the convention and then only, when all the members have had notice of the in-

Plaintiff's Exhibit P-5.

tention to do so, and when the proposition to change has received a majority vote.

116. The sick benefit is for the benefit of such a member of the society, who is a member of the society at least six months and is in good standing and has all his dues properly paid up each month. Should a member become ill or become injured at his work, he shall receive from the society a sick benefit of \$5.00 for each week, that is for a full seven days, and should he be ill for a period less than seven days, he is not entitled to any sick benefit; should he however be ill longer than seven days, he shall receive the sick benefit for the time that he has been ill pro rata to the date of his convalescence. 10

117. Should a member become and remain ill for a longer term, he shall receive a sick benefit of \$5.00 per week for thirteen weeks following and the total sick benefit cannot be greater than ninety-seven dollars and fifty cts. (\$97.50) in the first ten years membership of any member of this society, and a member who has already received the above mentioned benefit, is not entitled to receive any further benefits until after the expiration of the ten years aforesaid, he is however again entitled to a sick benefit of \$2.50 per week for thirteen weeks for each five years of membership in the society. 20 30

118. A member who has received no sick or injury benefit in the first ten years of his membership in the society, shall receive the sum of \$5.00 per week for thirteen weeks following, the total however not greater than one hundred and thirty dollars, (\$130.00) in the first fifteen years of his membership in the society, a member who has re- 40

Plaintiff's Exhibit P-5.

ceived this benefit is not entitled to any benefits until after the expiration of the said fifteen years, when he is again entitled to sick benefits of \$2.50 per week for thirteen weeks in each five years thereafter.

- 10 119. A member who has received no sick or injury benefit in the first fifteen years of his membership in the society, shall receive the sum of \$5.00 per week for twenty-six weeks and a further benefit of \$2.50 for thirteen weeks following, the total however not greater than one hundred sixty-two dollars and fifty cents (\$162.50) in the first twenty years of his membership in the society, a member who has received this benefit is not entitled to any benefits, until after the expiration of the said twenty years, when he is again entitled
- 20 to sick benefits of \$2.50 per week for thirteen weeks in each five years thereafter.

* * * * *

124. A member of the society who shall become ill or become injured, must immediately report his illness to the President or the Sick Committee, whose duty it is within twenty-four hours to visit such sick member and to satisfy themselves of his illness.

- 30 125. A member is entitled to the sick benefit from such day as he shall report himself sick to the society.

126. A member who becomes ill must have a Doctor visit him at least 2 times in each week during his illness, and should he not have a doctor visit him two times in each week, he shall not receive any sick benefit from the society.

- 40 127. A member who resides outside of the City of Passaic and who should become ill, must report

Plaintiff's Exhibit P-5.

his illness to the society in writing, each time he should become ill, and should he fail or neglect to do so, he shall not receive the sick benefit from the society.

128. When a member reports himself sick the date of his sickness shall be computed from the postage cancel mark upon the letter in which the notice was sent to the society. 10

129. Such a member must have a Doctor in attendance at least two times in each week during his illness and when he should become well, he must immediately notify the society of the fact and enclose a Doctor's certificate in proof thereof, that the sickness has been cured with which he has suffered, such a certificate of the Doctor must be attested by a Notary Public bearing his seal to certify that the Doctor, who had attended such member, was a practical diplomatic Doctor. 20

* * * * *

149. Upon the decease of a member of this society, the death benefit shall be paid only after the death of such member, to his lawful wife, if he has been married.

* * * * *

152. Should the wife of a member die, the sick benefit provided for in these by-laws, in case of her death, will be paid to her husband. 30

153. After the decease of a member where the wife has received the designated death benefit, and she remains a member of this society, then after her death, her death benefit will be paid to the children of the member and his wife, if they are twenty one years of age or over, if however they are less than twenty one years of age, this death benefit will be paid to their duly appointed guardian. 40

* * * * *

Plaintiff's Exhibit P-5.

158. Upon the death of a member of the society after his decease, the society will pay a sum of six hundred (\$600) dollars.

159. When a female member of the society dies, after her decease, the society shall pay a sum of four hundred (\$400) dollars.

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* * * * *

162. Should a member who is traveling outside of the City of Passaic, but in the United States, die, it is the duty of his widow to furnish the society with a death Certificate from the priest who conducted the funeral of the deceased to which certificate must be affixed the seal of the church. She must also furnish proof from the undertaker who conducted the funeral of the deceased, which proof must be sworn to by the undertaker before a Notary Public and its seal must be affixed thereto.

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163. In the case of a female member of the society, it is then the duty of the member, her husband, to carry out the provisions of the preceding paragraph and furnish the documents above mentioned, and until he shall do so, he shall not receive the death benefit herein mentioned.

* * * * *

30) 169 $\frac{1}{2}$. In each and every instance the death benefit provided for in these by-laws shall be paid by the society within sixty days after the receipt of the documental evidence of the death of a member.

* * * * *

41. 171. A member who shall change his place of residence, whether in Passaic, or elsewhere, should immediately report the same at the meeting or in writing to the Recording Secretary and a member who does not report any change of his residence to the Recording Secretary, shall be fined 25c.

Plaintiff's Exhibit P-5.

172. Members who do not reside in Passaic or in the vicinity of Passaic, should pay their dues three months in advance, and when sending their dues, each member should enclose a two cent stamp for the purpose of receiving a reply from the Secretary.

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Plaintiff's Exhibit P-6.

Letters of administration granted to plaintiff on the Estate of Anthony Tula, deceased, by the Surrogate of Bergen County.

Plaintiff's Exhibit P-7.

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Letters of administration granted to plaintiff on the Estate of Annie Tula, deceased, by the Surrogate of Bergen County.

Plaintiff's Exhibit P-8.

Original file from the Bergen County Surrogate's Office in the matter of the appointment of Mary Bushko, plaintiff, as guardian of Anna Tula, Alexander Tula, Ella Tula and Rose Tula, infants, January 14, 1928.

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New Jersey Court of Errors and Appeals

MARY BUSHKO, Administratrix of
the Estate of Anthony Tula,
deceased, and MARY BUSHKO,
Administratrix of the Estate
of Annie Tula, deceased,

Plaintiff-Appellee,

vs.

FIRST UHRO SLAVONIAN GREEK
CATHOLIC SICK AND DEATH
BENEFIT SOCIETY OF ST. MI-
CHAEL THE ARCHANGEL,
Defendant-Appellant.

On Appeal
from the
Supreme
Court.

BRIEF FOR DEFENDANT-APPELLANT.

Statement of the Case.

This is an appeal from a judgment for \$1,687.77 damages and \$87.77 costs, entered in the Supreme Court on March 1, 1929, in favor of the plaintiff-appellee and against the defendant-appellant, on the verdict of a jury at the Bergen Circuit.

The action was brought to recover the amount of sick and death benefits alleged to be due and payable by the terms of the constitution and by-laws of the defendant society.

The complaint contains three counts, one by Mary Bushko, as administratrix of Annie Tula, widow of Anthony Tula, to recover \$800.00 and widow of Anthony Tula, to recover the benefit payable on his death; one by Mary Bushko, as administratrix of Anthony Tula, deceased, to recover a

sick benefit; and the third count is by Mary Bushko, as administratrix of Annie Tula, deceased, to recover the death benefit payable on the death of Annie Tula,

The defenses raised by the answer are that the right to benefits was forfeited by default in payment of dues as provided by the by-laws, and the deceased members were not in good standing at the time of the illness, incapacity and deaths alleged in the complaint, that the provisions of the constitution and by-laws were not complied with and, as to the third count, that the benefit on the death of Annie Tula, if any, is payable to the children and not to the administratrix (pp. 12-23).

On the trial, the Court, over the objection and exception of the defendant (p. 55, l. 20; p. 57, l. 20) permitted the plaintiff to bring in as a party plaintiff Mary Bushko, as guardian of the children.

The jury rendered a verdict in favor of the plaintiff on all counts, for a sum in excess of the amount payable in any event, with interest, and defendant appeals.

The Proofs.

The defendant society was organized on May 2, 1890 (p. 92, l. 10). There is included in its objects, the payment of sick and death benefits (p. 92, l. 30). Its membership is limited to men speaking the Slavonian language, of Greek or Roman Catholic faith, and the wives of such members (p. 92, l. 30).

The material parts of the by-laws are printed at pages 92-103.

The by-laws provide that a member is entitled to benefits, only if in good standing and "all his dues properly paid up each month" (p. 99, l. 5, par. 116). Upon a sufficient showing, the society

may allow three months grace (p. 97, l. 40) but, in no case may this period of grace be extended beyond three months, at the expiration of which time his membership terminates (p. 98, l. 10, par. 111). When a member loses his membership, the membership of the wife ceases (p. 97, l. 30). Non-resident members are required to pay their dues three months in advance (p. 103, l. 1).

The monthly dues, for sick benefits, are fifty cents; for death benefits, sixty cents, in the case of males. There is no sick benefit for females. The monthly dues for wives of members are forty cents during the life of the husband, and fifty cents after the death of the husband (p. 98, l. 20).

The death benefit for males is \$600.00 and for females \$400.00 (p. 102, l. 1).

The amount of the sick benefit depends on the length of membership. Plaintiff claims that Anthony Tula came under the provisions of par. 118 (p. 99, l. 30) which provides for \$5.00 per week for thirteen weeks and \$2.50 per week for twenty-six weeks thereafter, making a total of \$130.00.

The sick benefit period does not commence until a notice of sickness is given to the society (p. 100, l. 30) and members residing outside of Passaic are required to give written notice (p. 100, l. 40).

Anthony Tula became a member of the defendant society in December, 1913, and paid his dues until March, 1925 (p. 91, l. 40). He was a resident of Harrison (p. 50, l. 10) and, therefore, was required to pay his dues three months in advance (p. 103, l. 1) and to give written notice of illness (p. 100, l. 40).

He is said to have become ill with swollen feet and boils in February, 1925 (p. 41, l. 20), or March (p. 50, l. 1). He was removed to the Hospital at Secaucus on August 19, 1925 (p. 89, l. 20) and

died there on February 21, 1927 (p. 89, l. 30). His wife died at the same place on October 13, 1927 (p. 89, l. 40).

Mary Bushko testified that she had reported the illness of Anthony Tula to Mr. Sadloch (p. 43, l. 40) who she said was the secretary (p. 43, l. 40) and then corrected herself and said that he was the president (p. 44, l. 1).

Sadloch was not, however, an officer of the society at that time and did not become an officer until April, 1926 more than a year thereafter (p. 59, l. 30).

The witness, Mary Bushko, also testified that she had written to Sadloch and mailed the letters to him "on Chestnut Street, Garfield" (p. 45, l. 15) and was permitted to testify, over objection, as to the contents (p. 45, l. 30) although counsel pointed out to the Court that even though Sadloch was president, it was not shown that this letter was properly addressed (p. 45, l. 30). The witness did not go to the society meeting and make a report until after Tula died (p. 47, l. 10), and the records of the society do not show the receipt of notice (p. 65, l. 20).

The witness, John Bushko, testified that he reported the illness of Tula to John Molsen (p. 52, l. 30) who he described as the Sick Committee man, and when recalled, testified that he had reported to Mike Fedush (p. 75, l. 10)

Neither John Molsen nor Mike Fedush, were members of the sick committee (p. 66, l. 30).

The Questions Involved.

At the close of plaintiff's case, defendant moved for a non-suit on the ground that the plaintiff had not shown a compliance with the by-laws of the

society, the motion was denied and exception allowed.

Defendant moved to dismiss the third count on the ground that the benefit, if any, was payable to the children and not to the administratrix. The court denied the motion, permitted the guardian to be made a party on the trial and refused a continuance on the ground of surprise, to which defendant excepted.

Defendant further alleges as ground of appeal, the charge of the court that expulsion from the society was necessary to deprive plaintiff of the right to recover, as is hereinafter more particularly pointed out.

Defendant further alleges, as ground of appeal, the refusal of a non-suit at the close of the case, and that the verdict was excessive, in any event.

The questions involved include the construction of the by-laws of the defendant society, as to whether non-payment of dues deprived a member of the right to benefits, whether the notice of illness complied with the provisions of the by-laws and whether there was proof of incapacity to entitle a member to benefits.

The Grounds of Appeal.

Defendant relies upon the following grounds of appeal:

1. The trial judge erroneously denied the application of the defendant for a non-suit at the close of the plaintiff's case. (p. 2, l. 25).

5. The Trial Court erroneously permitted an amendment of the complaint joining as plaintiff Mary Bushko as guardian of Annie Tula, Alex Tula, Ella Tula and Rose Tula over the objection of the defendant (p. 3, l. 10).

9. The Trial Court erroneously denied the application of the defendant for a continuance on the ground of surprise upon the amendment of the complaint on the trial (p. 3, l. 25).

11. The Trial Court erroneously denied the motion of the defendant for a non-suit at the close of the entire case (p. 3, l. 40).

13. The Trial Court erroneously charged the jury that the failure of Anthony Tula to pay dues justified expulsion from the defendant society, provided the necessary steps were taken by the organization (p. 4, l. 10).

17. The Trial Court erroneously charged the jury "Now one of the questions that you will decide is, what has the organization done with reference to expelling this man." (p. 4, l. 25).

18. The Trial Court erroneously charged the jury "If you conclude that the defendant failed in doing what it should have done to expel him (Anthony Tula) then, of course, you come to the question of the sick benefits." (p. 4, l. 30).

19. The Trial Court erroneously charged the jury "so you see, by the terms of these by-laws, the defendant society undertook to do something before expulsion became effective. Now one of the questions that you will decide is, what has the organization done with reference to expelling this man." (p. 4, l. 35).

The 23rd, 24th and 25th Grounds of Appeal raise the question that the verdict is not supported by the evidence and is excessive.

POINT 1.**There was no proof that the illness of Anthony Tula fell within the provisions of the by-laws.**

The by-laws (par. 81, p. 96, l. 10) provide that a member shall not receive the sick benefit when he "is not so ill as to prevent him from following his usual occupation."

It is required that a doctor visit the member at least twice a week during his illness (p. 100, l. 35) and that the Sick Committee also make visits twice weekly (p. 94, l. 15).

The Sick Committee is required to make weekly reports to the society as to the condition of each sick member (p. 95, l. 25, par. 80) and, in case such member is found to be doing any work, they are to so report (p. 95, l. 35, par. 81).

The only testimony as to the illness of Anthony Tula was that of Mary Bushko, the plaintiff, and John Bushko, her husband.

It was testified that Mrs. Tula had been an invalid for ten years (p. 41, l. 20) but it is not claimed that any sick benefit was payable to her, as she was not in the class entitled to sick benefits.

It was testified, by Mrs. Bushko, that in March, 1925, Anthony Tula "had swollen feet and big boils on his feet" (p. 41, l. 20), and that he had a "bad heart" (p. 41, l. 30), that he went to bed in February, 1925 and was confined to his bed until he died (p. 41, l. 40) and that she was at their home almost every day and that the doctors visited them every day (p. 46, l. 30).

The doctors were not called as witnesses and the witness merely stated her conclusions. She ad-

mitted on cross-examination that she had first visited the Tulas on March 15, 1925 (p. 50, l. 1) and that she had visited them on Sundays (p. 50, l. 20).

Mary Bushko testified that Tula remained at home in Harrison for eight or nine months after March 15, 1925 (p. 50, l. 15). John Bushko testified that they remained home for about three weeks (p. 52, l. 20) and that they did not have a doctor until they went to the Hospital (p. 52, l. 25). The doctor at the Hospital testified that Anthony Tula was admitted to the Hospital on August 19, 1925 (p. 89, l. 20) and that Anna Tula was admitted on September 4, 1925 (p. 88, l. 30).

No doctor was called to testify to any visit to Tula prior to his admission to the Hospital on August 19, 1925 and no attempt was made to give the name of any doctor who may have attended Tula before his admission to the Hospital.

It is submitted that there is no proof that the illness of Anthony Tula, prior to August 19, 1925, fell within the provisions of the by-laws entitling him to sick benefits.

POINT 2.

There was no proof of compliance with the provision of the by-laws which requires that a member who is sick must have a doctor visit him twice a week.

Par. 126 of the by-laws provides (p. 100, l. 35) :

“A member who becomes ill must have a doctor visit him at least two times a week during his illness, and should he not have a doctor visit him two times each week, he

shall not receive any sick benefit from the society."

As above stated, Mary Bushko testified that Tula "always have a doctor, every day, most" (p. 42, l. 5). The name of the doctor was not given and no doctor was called other than the doctor who attended him in the Hospital after August 19, 1925 (p. 89, l. 20).

POINT 3.

The illness of Anthony Tula was not reported to the defendant society.

The right of a member to sick benefits does not accrue until his illness is reported to the society or its president or sick committee.

The by-laws provide:

124. A member of the society who shall become ill or become injured, must immediately report his illness to the President or the Sick Committee, whose duty it is within twenty-four hours to visit such sick member and to satisfy themselves of his illness (p. 100, l. 20)

125. A member is entitled to the sick benefit from such day as he shall report himself sick to the society (p. 100, l. 30)

John Sadloch; to whom the plaintiff, Mary Bushko, testified she had reported the illness on March 15, 1925 (p. 44, l. 10) and to whom she wrote thereafter (p. 45, l. 10) was not, at that time an officer of the society and did not become an officer until the following year (p. 58, l. 30).

The members of the Sick Committee were John

Sargent and George Fredeli (p. 66, l. 30) and no report of the illness is shown to have been given to either of them. After John Bushko had been thoroughly examined on the *prima facie* case (pp. 52-53) and had testified to giving notice to John Molson only (p. 52, l. 30), he learned, on defendant's case, that Mike Fedush was secretary (p. 61, l. 20) and was then called in rebuttal and testified that he had met Mike Fedush on the street in March, 1925, and talked to him about Tula (p. 74, l. 30). The circumstances under which this new proof was obtained creates grave suspicion as to its truth and it is submitted that this casual conversation with Fedush does not, in any event, constitute the notice required to be given.

John Molson, the only other member of the society to whom notice is said to have been given, was not an officer or member of the Sick Committee (p. 66, l. 30). He is said to have received Tula's dues (p. 53, l. 1) but the by-laws contain an express caution against such payments through "relatives or acquaintances" (p. 94, l. 20).

The only proof of notice, therefore, is that John Sadloch, John Molson and Mike Fedush were notified orally that Tula was sick.

Neither of these men held any official position in the society and neither of them brought the notice to the society and the society did not receive notice (p. 65, l. 20).

John Micklus was president of the society in March, 1925, and until the election of Sadloch, in 1926, but received no notice of the alleged illness (p. 69, l. 30).

Anthony Tula resided at Harrison (p. 50, l. 10). The by-laws provide (p. 100, l. 40):

"127. A member who resides outside of the City of Passaic and who should become

ill, must report his illness to the society in writing, each time he should become ill, and should he fail or neglect to do so, he shall not receive the sick benefit from the society."

It is not shown that any written notice of the alleged illness was ever sent to or received by the society. Mary Bushko testified, over objection, that she wrote to John Sadloch (p. 46, l. 20), but Sadloch was not an officer (p. 59, l. 30)

POINT 4.

The Court erroneously denied the application of the defendant for a non-suit at the close of plaintiff's case. (First Ground of Appeal, p. 2, l. 25).

There was no medical testimony as to the illness of Tula between the date of the alleged commencement of the illness, in February, 1925, and his admission to the Hospital on August 19, 1925, as above more particularly pointed out; there was no proof of any notice of the alleged illness to any officer of the society authorized to receive notice, and there was no proof of any written notice as required by the by-laws (par. 127, p. 100, l. 40).

Plaintiff wholly failed to prove facts sufficient to establish the right to sick benefits.

No dues were paid subsequent to March, 1925, and the only theory upon which plaintiff might sustain the right to recover the death benefits, is that the indebtedness to the society for sick benefits alleged to be due, should be off-set against the dues. As the right to recover sick benefits falls, the right to recover death benefits also falls.

POINT 5.

The Court erroneously denied the application of the defendant for a continuance on the ground of surprise, on the amendment of the complaint on the trial. (9th Ground of Appeal, p. 3, l. 25).

At the close of plaintiff's case, the defendant moved to dismiss the third count on the ground that the death benefit on the life of Annie Tula, if any, was payable to the children or their guardian and not to the administratrix (p. 55, l. 20). This defense was raised by the answer (p. 22, l. 35) and is based upon the provision of par. 153 of the by-laws (p. 101, l. 30).

On the application of plaintiff and over the objection and exception of the defendant, the court allowed the amendment (pp. 56-57).

Counsel for the defendant thereupon moved for a continuance on the ground of surprise (p. 56, l. 5) and the application was denied and exception allowed (p. 58, l. 10).

It is submitted that the defendant was erroneously deprived of the right to investigate the new matter and to ascertain the facts as to these alleged children. There was no proof of the names of the alleged children but the court received the guardianship papers in evidence, over the objection of defendant, (p. 73, l. 30) and the postea recites that a verdict was rendered in favor of the guardian of these children (p. 35, l. 20).

Defendant was not notified of any proposed application to amend the complaint although plaintiff, in the reply admitted the provision of the by-laws (p. 32, l. 1).

Defendant is therefore faced with the possibility of some claim being made in the future by another alleged child.

POINT 6.

The Court erroneously charged the jury that an affirmative act on the part of the defendant was necessary to deprive a member of the right to benefits.

The court charged the jury, after reading to them section 111 of the by-laws and an extract from the application for membership (p. 81, l. 30) :

“So you see, by the terms of these by-laws, the defendant society undertook to do something before expulsion became effective. Now one of the questions that you will decide is, what has the society done with reference to expelling this man?”

The defendant duly excepted to this portion of the charge (p. 86, l. 25) and makes it the 17th, 18th and 19th Grounds of Appeal (p. 4, l. 25-40).

This same principle was repeatedly impressed upon the jury.

The Court said in the charge that “failure to pay dues justified expulsion from the society provided the necessary steps were taken by the organization” (p. 79, l. 20).

The court further charged :

“Now if you conclude from the evidence that the defendant did notify this man that he was obligated to the organization, and that he should pay, in keeping with the terms of his agreement, and then he failed

to do it, then, of course, you might say that there had been a breach of his obligation under the terms of the contract made by him and the organization" (p. 82, l. 25).

And further:

"If you conclude that the defendant failed in doing what it should have done to expel him, then, of course, you come to the question of the sick benefits" (p. 83, l. 1).

And further:

"If the plaintiff (meaning Anthony Tula) failed to live up to the terms of his obligation, and by reason of the breach he was expelled, there is no right of recovery in this case (p. 20, l. 15).

The Court thus made it as emphatic as possible that there must be an affirmative act of expulsion on the part of the defendant in order to deprive the plaintiff of the right to recover. And when exception was taken thereto, the court again repeated that he had said "expulsion" (p. 86, l. 30).

The provisions of the by-laws clearly provide that failure to pay dues deprives a member of the right to benefits, without any expulsion or other affirmative act on the part of the defendant.

The only ground for expulsion of a member, as stated in the by-laws, is the refusal to pay a fine or to repay benefits wrongfully obtained (par. 82, p. 96, l. 40).

In his application for membership, Tula said:

"I enter this Society and desire to become an earnest member of the said Society and will obey the by-laws and amendments of the Society. * * * I promise to pay the dues of the Society every month regularly and I will always give the Secretary my correct

address. In case of any disaster happens to me I will not claim my benefit if I be three months in arrears. If I be notified by a registered letter send by the Secretary of the Society and if I do not then settle my accounts I shall be expelled from the Society. If I settle my accounts after being notified by the Secretary of the Society I shall pay the fine of 25ct. for the trouble caused to the Society by me" (p. 91, l. 10).

The by-laws expressly provide that the prepayment of dues shall be one of the conditions precedent to the right to benefits.

"110. Every member of the society must have his dues properly paid up each month and no member has any right given him by the society, to remain in arrears for a greater period than that mentioned in these by-laws. Should any member fall into misfortune so that he cannot pay his dues at the proper time, he should request the society at its meeting, for leave to allow the dues to be unpaid for a period of not more than three months" (p. 97, l. 40).

"111. A member who has not paid his dues for a full three months, shall not receive the sick or death benefit provided for in these by-laws and is no longer a member" (p. 98, l. 10).

"116. The sick benefit is for the benefit of such a member of the society, who is a member of the society at least six months and is in good standing and has all his dues properly paid up each month" (p. 99, l. 5).

It is clear from the above extracts from the by-laws that no affirmative action or expulsion of the member is required.

As was said by the Court of Appeals of the State

of New York, in *Evans v. Supreme Council*, 233 N. Y., 497, at page 502:

“The society did not suspend him, nor did it in any manner interfere with his rights and privileges. He suspended himself. One of the by-laws provided that: ‘Any member failing to pay any regular assessment before the time prescribed for such payment in the Laws of the Order, or to pay any extra assessment within the time limited or prescribed therefor in the notice thereof, shall stand suspended from the Order and all benefits therefrom.’ Non-payment of the monthly assessments *ipso facto* operated as a suspension. (*Anderson v. Supreme Council O. of C. F.*, 135 N. Y. 107). No affirmative action on the part of the society was required. The by-laws were self-executing. (*Roehner v. Knickerbocker Life Ins. Co.*, 63 N. Y. 160; *Freckmann v. Supreme Council R. A.*, 96 Wis. 133; *Bost v. Supreme Council R. A.*, 87 Minn. 417; *Marshall v. Grand Lodge*, 133 Cal. 686; *Hunter v. National Union*, 197 Ill. 478).

The jury was led to understand from the repeated statements by the Court, in the charge, as above quoted, that expulsion by the society was necessary to put the member in default.

The error may well have controlled the decision and was harmful.

Industrial Sales Eng. Co. v. Agism, 147 Atl. Rep. 45, 46.

POINT 7.

The verdict of the jury was in any event contrary to the evidence and there is no evidence to support the verdict.

This point is raised by the 23rd and 25th Grounds of Appeal.

The death benefit fixed by the by-laws for the death of a male member is \$600.00 (par. 158, p. 102, l. 1) :

158. Upon the death of a member of the society after his decease, the society will pay a sum of six hundred (\$600) dollars.

The death benefit fixed by the by-laws for the death of a female member is \$400.00 (par. 159, p. 102, l. 5) :

159. When a female member of the society dies, after her decease, the society shall pay a sum of four hundred (\$400) dollars.

Plaintiff demanded \$800.00 on the first count, for the death benefit on the life of Anthony Tula, (p. 8, l. 30) and \$600.00 on the third count, for the death benefit on the life of the widow, Annie Tula (p. 11, l. 20).

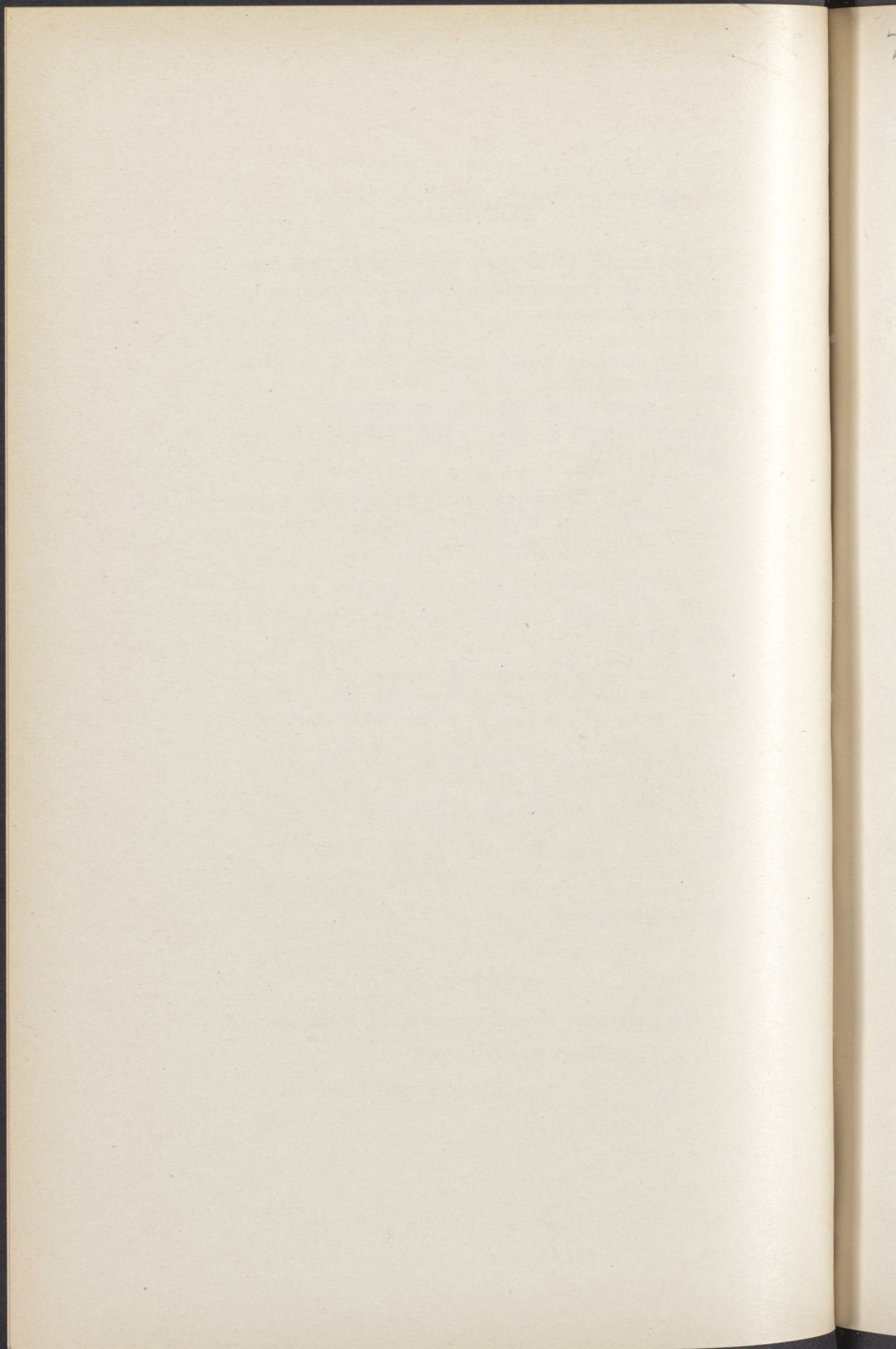
The jury erroneously returned a verdict for the amount demanded (p. 35).

POINT 8.

The judgment should be reversed, with costs.

Respectfully submitted,

ANDREW FOULDS, JR.,
of Counsel.



New Jersey Court of Errors and Appeals

MARY BUSHKO, Administratrix of
the Estate of Anthony Tula,
deceased, and MARY BUSHKO,
Guardian of ROSE, HELEN, AN-
NA, and ALEX TULA, Minors,
Plaintiff-Appellee,
vs.

FIRST UHRO SLAVONIAN GREEK
CATHOLIC SICK AND DEATH
BENEFIT SOCIETY OF ST. MI-
CHAEL THE ARCHANGEL,
Defendant-Appellant.

On
Defendant's
Appeal from
Supreme
Court.

BRIEF FOR PLAINTIFF-APPELLEE.

Statement of the Case.

Defendant appeals from judgments entered in the Supreme Court on verdicts of a jury returned in the Bergen Circuit before Judge Caffrey.

Attention is called that, the plaintiff is not properly styled in the second capacity in which she sues, either at the head of *Appellant's* brief, or in the state of case, for, as the record shows, the complaint was amended at the trial by designating Mary Bushko, Guardian of Rose, Helen, Anna and Alex Tula, as the the plaintiff in the third count of the complaint instead of as originally styled in the complaint. (See Amended Postea, case, pp. 34-35; case, p. 55, bottom, case, pp. 56-57; case, p. 58, ll. 1-10; case, p. 73, ll. 25-40; case, p. 74, ll. 1-20).

The complaint contains three counts. The first is by Mary Bushko, administratrix of the Estate

of Annie Tula, widow of Anthony Tula, deceased, to recover Eight Hundred Dollars (and interest) as the death benefit which was payable on his death; the second count by Mary Bushko, as Administratrix of the Estate of Anthony Tula, deceased, to recover the sum of \$130.00, (and interest) for sick benefits which were payable to Anthony Tula during his illness, at the rate of \$5.00 per week for thirteen weeks, and at the rate of \$2.50 per week for the next twenty-six weeks; the third count, (*as amended*) by Mary Bushko, as Guardian of Rose, Helen, Anna and Alex Tula, to recover the sum of \$600.00 (and interest) as the death benefit, payable on the death of Annie Tula, deceased. The defense was that the Tulas had fallen into arrears in the payment of dues and that on that account they were not in good standing, and that therefore, the society was not liable for the payment of sick or death benefits.

This claim is unfounded. The record shows that both Tula and his wife became critically ill while they were in good standing and their dues were paid up and that they at once became totally disabled and continued to be so until death and were attended by a doctor daily from the beginning of their illness.

In these circumstances, the law provides, as we shall argue more fully later, that the Society was required to off-set the monthly dues of these members against the sick benefits which accrued weekly, and which by far exceeded the amount of the dues, so as to avert an arrearage or forfeiture of membership.

And, if because of the claimed arrearage in the payment of dues, the Society sought to expel the Tulas from membership, it failed to carry out that object, because it did not take such affirmative action as it was required to pursue by the provisions

of the membership certificate and the by-laws regulating the expulsion or suspension of members.

The questions of fact that arose upon these points were resolved by the jury in favor of the plaintiff, and, consequently, the defendant is debarred upon this appeal from questioning the weight of the evidence on those issues. Yet counsel for the defendant, throughout his brief, argues as if the case was brought for review in the Supreme Court on a rule to show cause rather than upon appeal to this Court.

It is not true, as claimed by counsel in his brief, that the trial court permitted the plaintiff to bring in as a party plaintiff, Mary Bushko, as guardian of the children of Annie Tula. The amendment of the third count of the complaint merely changed the capacity in which the plaintiff sued. Mary Bushko was the plaintiff in the third count of the complaint as *originally* framed, but sued as *administratrix* of the Estate of Annie Tula, deceased, of whom her four children were the sole next of kin, whereas, in the *amended* form of the third count of the complaint, Mary Busko sued as *guardian* of the children.

The jury returned a verdict in favor of the plaintiff on all counts, with interest.

POINT I.

There was evidence that the illness of Anthony Tula fell within the provision of the By-laws.

The by-laws (paragraph 81) (Case, p. 96, ll. 1-10) provide in substance, that a member shall not receive the sick benefit when "he is not so ill as to prevent him from following his usual occupation," and paragraph 126, (Case, p. 100, ll. 1-35) provides, "a member who becomes ill must have a Doctor visit him twice a week during his illness—". Counsel in their brief say that at p. 94, ll. 1-15, it is provided in the by-laws that a sick committee is required to visit the sick twice a week. We have examined with care that portion of the record above referred to and do not find such provision, but even if there were such a by-law, the effect thereof is merely to place a duty upon the Society to send its members composing the Sick Committee, to visit the sick, but such by-law cannot affect the right of a sick member to receive sick benefit.

We shall now demonstrate that Anthony Tula was so ill as to prevent him from following his "usual occupation," and "was visited by a doctor twice a week" (every day, in fact). The evidence tending to show the illness of Anthony Tula consists of the testimony given by Mary Bushko the plaintiff, and John Bushko, her husband, and the certificate of the death of Anthony Tula, and the certificate of Dr. William J. Monaghan, medical superintendent at the Hudson County Hospital in Secaucus, and medical director of the Hudson County Alms House, which was received in evidence by consent. The *weight* of this evidence is not, and cannot be, the subject of review by this court. It is sufficient if there is *any* evidence of

the required fact; but the evidence is plenary. Schopper v. Kretszschmer, et al., 88 N. J. L. 386; and D. & Oil Co. v. Foltzer, 7 A. R., 440 (both by the Ct. of Er. and App.).

According to the testimony of Mrs. Mary Bushko, in February or March, 1926, while Anthony Tula was a member in good standing and his dues paid up, he became critically ill, from which illness he at once became and continued to be totally disabled until he died on February 21st, 1927. Tula had swollen feet with big boils and a weak heart; he was paralyzed. *He was constantly in bed from the beginning of his illness until he died and was attended and treated by a doctor daily.* (Case, p. 41, ll. 1-40; case, p. 42, ll. 1-20). In this, Mrs. Bushko is corroborated by her husband (Case, p. 52, ll. 1-40). The certificate of the death of Anthony Tula (Exhibit P-2; case, p. 40, ll. 30-40; case, p. 88) shows that he died on February 21st, 1927, in the Hudson County Hospital at Secaucus, and that the cause of his death was "Mitral regurgitation with dilatation "R" heart valve." From the sworn certificate (Exhibit P-3, case, p. 88) of Dr. Monaghan, already referred to, it appears that he was committed to the Hudson County Hospital, by the Overseer of the Poor of the Town of Harrison, on August 19th, 1925. Diagnosis: Mitral regurgitation with dilatation "R" heart valve. That on July 23rd, 1926, he was removed to the Hudson County Alms House, where he remained until November 30th, 1926, when he was re-committed to the hospital. Diagnosis is same as before. The patient died at the hospital on February 21st, 1927, from the condition already noted. The Doctor also states in his affidavit that Anthony Tula was under his care from August 19th, 1925, until February 21st, 1927, (the date of the decedent's death); that when slight improvement

was made in his case, that he was at once removed to the Hudson County Alms House. *He was still sick and unable to work and was visited by a physician every day in the ward located at the alms house.*

The record shows, therefore, that when Anthony Tula first became ill (in February, 1925) he was a member in good standing; that his illness at once totally disabled him and that he continued to be disabled until he died; that from the beginning of his illness until his death he was helpless and constantly in bed and in daily care of the physician, both before he went to the hospital and after.

It is claimed by the defendant that there is no proof of any notice to the Society relative to the illness of Mr. Tula *after* August 19th, 1925, when he went to the hospital. Counsel makes this naked statement in his brief without further argument. Counsel does not point out how it is material that notice should have been given to the Society *after* Tula went to the hospital. The Society received notice of Tula's illness both from Mr. and Mrs. Bushko; they received both oral and written notice on several occasions. The by-laws regulating notice of illness were fully complied with. (Case, p. 43, ll. 25-40; case, p. 44; case, p. 46; case, p. 47, ll. 1-18; case, p. 49, ll. 28-40; case, p. 51 top). Moreover, the evidence shows that Mrs. Bushko who is a cousin of Mr. Tula reported to the Society meetings every two weeks, regarding Tulas' condition, as she says, "Because I went to visiting my cousins, and he was crying, and laying in bed, sick. He say he don't have no note from the Society, see, and I write the letter. I didn't have no time to go myself;" (Case, p. 49, ll. 20-40; case, p. 50 top), so that the Society received notice of illness even after he went to the hospital.

POINT II.

There was proof of compliance with the provision of the By-laws which requires that a member who is sick must have a doctor visit him twice a week.

We have stated at considerable length under Point I, the evidence which amply demonstrates that Anthony Tula was visited and treated by a Doctor every day during his illness. This satisfies the requirements of the by-laws which provide that a Doctor must be in attendance at least twice a week.

POINT III.

The illness of Anthony Tula was reported to the society.

The evidence shows that the illness of Anthony Tula was immediately reported to the President and to the Sick Committee and also to the Society itself at its meetings. In March, 1925, Mrs. Bushko wrote a letter to the *Society* addressed to the Secretary who she described "like being a Judge in the Society. He is the headest man," and in that letter she reported to the Society the illness of the Tulas, after first reporting their condition verbally. (Case p. 43, ll. 25-40; case p. 44; case p. 46). In that letter, Mrs. Bushko also requested the Society to delegate somebody to pay these sick members a sick call. She says that although she visited the Tulas every day, the Society did not send anyone to make a sick call—not even its

Doctor; only his attending Doctor, she says, called on the Tulas every day. (Case p. 46, ll. 20-40.) She also attended a meeting of the Society and there reported Mr. Tula's illness, and was informed "It is all right, the Society would pay the sick benefit—they would help;" and that the Society would take care of the matter, but that the Society did not do so. (Case p. 46, bottom, case p. 47, ll. 1-18.) She says that, "Because I went to visiting my cousins, and he was crying, and laying in bed, sick. He say he don't have no note from the Society, see, and I write the letter. I didn't have no time to go myself." That she kept writing to the Society every two weeks about Mr. Tula's condition. (Case p. 49; ll. 28-40; case p. 51, top.)

John Bushko testified that he reported Tula's illness to Mr. John Molson who was a member of the Sick Committee and the person to whom the members paid their dues. (Mr. Bushko no doubt referred to John Micklus whom the defendant concedes was the President of the Society. (Case p. 69; case p. 76, ll. 20-40; case p. 52, ll. 39-40; case p. 53, ll. 1-10.) He also reported Mr. Tula's illness to Mike or Michael Fedush who the defendant concedes was the Secretary of the Society. Mr. Fedush assured Mr. Bushko that he would report Tula's sickness to the Society. (Case p. 74, ll. 30-40; case p. 75, ll. 1-20.)

It is clear, therefore, according to the evidence that notice of Tula's sickness was given to the President, the Secretary, a member of the Sick Committee, and to the Society itself, by letter, as well as orally at its meeting.

We have examined the answer filed in the cause and find in it no suggestion that notice of sickness should be, but was not given, to the President of

the Society or a member of the Sick Committee. The third defense to the second count, which seems to be the only one in which requirement of notice is set up, is merely to the effect that the by-laws provide that a member is entitled to sick benefit from such day as he shall report himself sick to the defendant society.

There is much evidence showing that the sickness of Mr. Tula was reported to the defendant Society on several occasions, the first notice having been given in March, 1925. Mrs. Bushko also sent a letter to the Society on March 15th, 1925. Counsel in his brief says that Mrs. Bushko did not go to the Society until Tula's death. This is not so.

“Q. When you went to the Society yourself to report that these people were sick what happened then? A. He said, ‘It is all right.’

Q. What? Just tell us what they said. A. He said he is going to pay sick benefit; they are going to help him.

The Court: Who is that you are talking about now?

Q. Who told you that in the meeting there?

A. I was only in the meeting when he die.

Q. When you went to the Society the first time to tell them these people were sick, who was talking to you? A. I was telling Mr. Sadloch.

Q. What did he say? A. He said he is going to take care of it.

Q. They did not take care of it? A. No.

Q. When he died, Mr. Tula, did you go to the Society to report that he died? A. I went to Mr. Sadloch. I told him he is finish; he is dying.

Q. How soon after the man died? A. He was dying Friday and I reported it Saturday.

Q. The next day? A. Yes.

Q. When you reported that to Mr. Sad-

loch, what did he say? A. He said I should come to the meeting; the meeting will be on Sunday.

Q. The next day? A. Yes, the next day.

Q. So he died, Friday, you went to see Mr. Sadloch Saturday? A. Yes.

Q. And he told you the meeting was the next day Sunday? A. Yes.

Q. Did you go to the meeting? A. Yes." (Case p. 46, ll. 35-40; p. 47, ll. 1-32).

Then the witness goes on to say that she attended the meeting and asked for the death benefit but the Society refused to pay and ejected her from the meeting. (Case p. 46, ll. 35-40; case p. 47, ll. 1-40; case p. 48, ll. 1-20.) This testimony shows that Mrs. Bushko made two visits to the Society. The first while the Tulas were ill. Later when Mr. Tula died, she went to see Mr. Sadloch and reported the death to him and was informed by Mr. Sadloch that she should report Tula's death at the next meeting of the Society on the following Sunday and that she did so but was ejected from the meeting room.

It is clear, therefore, that notice of Tula's illness was given orally and in writing; the notice was given to the Society, to its President, the Secretary, and to a member of the Sick Committee.

POINT IV.

The trial court did not err in refusing to nonsuit at the close of the Plaintiff's case.

We have already shown that Tula was attended by a doctor daily from the commencement of his illness in March, 1925, until he died and that notice of his illness was given to the Society and to the President, the Secretary and a member of the

Sick Committee. We consider it unnecessary to repeat the evidence on that score here. We have also pointed out that the dues were paid up from December, 1913, to March, 1925, inclusive, when Tula became ill so that the Tulas were in good standing at the time that they became ill. *It is conceded that the amount of the weekly sick benefits to which Tula was entitled exceeded the amount of his monthly dues.* The *monthly* dues to entitle a member to death benefits is Sixty Cents; the *monthly* dues to entitle the wife of a member to death benefit is Forty Cents. (Case p. 98, Exhibit P-5.) The sick benefit is Five Dollars *a week* for thirteen weeks and Two Dollars and Fifty Cents per week, for the next twenty-six weeks. (Case p. 99-100.)

In his brief, counsel for the defendant says: "The only theory upon which plaintiff might sustain the right to recover the death benefits, is that the indebtedness to the Society for sick benefits alleged to be due, should be offset against the dues." Counsel for the defendant does not deny the duty of the Society to make such off-set. His point therefore fails. The law is clear that the duty to offset exists.

"Ordinarily, where the association is indebted to a member for benefits to which he has become entitled his dues and assessments may be set off against the same so that their nonpayment will not warrant his suspension." *19 R. C. L. Section 48, p. 1241.*

And in *7 C. J. at page 1100*, the author says:

"Beneficial or Fraternal Societies may and commonly do, make the failure of a member to pay legal dues, fines and assessments in due season a ground of suspension or expulsion. Where however, a member is

entitled under the laws of the society, to have an assessment paid out of the benefit already due him, the society cannot suspend him for nonpayment of an assessment when the amount of the benefit due him is sufficient to cover the same." (Citing *Horgan vs. Metropolitan Mutual Aid Association*, 202 Mass. 524, 88 N. E. 890.)

In *Rodgers vs. Union Benevolent Society No. 2* (Ky.) 55 L. R. A. p. 605, the syllabus reads:

"A member of a mutual benefit society cannot be adjudged in default for nonpayment of dues, where the amount of accrued sick benefits to which he is entitled exceeds the unpaid dues."

Moreover, it seems that because of the grievous sickness of Mr. Tula, he was excused from the payment of dues.

In *Henrietta Hillyard, et al. vs. The Mutual Benefit Life Insurance Company*, 35 N. J. Law, p. 415 (Affirmed in 37 N. J. Law, p. 444), at page 419, this court held: "The doctrine was much considered and discussed in the modern case of *Hall vs. Wight, El., B., & El. 746*, (96 E. C. L. R.,) which was an action for breach of promise of marriage, and in the several opinions read in the case, it seems to be expressly stated or impliedly assumed, that if the performance of the promise had become impossible by the act of God, as by a visitation of grievous sickness, it would have been an excuse for non-performance."

In *45 C. J. p. 110, Section 96* (c) the author says: "Application of payments and credits. It is a general rule that where the society has in its possession sufficient funds of the member to pay dues and assessments at the time they accrue, it must apply the funds in payment thereof, and

hence cannot declare a forfeiture for failure of the member to pay them." (Citing many cases).

And in the foot notes at page 111, we find: "Thus under a by-law providing for payment of benefits in case of sickness "to every member in good standing on the books", a member cannot be deprived of such benefits because in arrears for dues, where the amount of the dues in arrears is less than the previously accrued benefits." (Citing *Brody vs. Coschman's Benevolnet Assoc.* 14 N. Y. S. 272.

In *Cyclopedia of Insurance Law (By Couch) Volume 3, published in 1929, p. 1979, Section 616, it is said*: "As a general rule, if an insurer is indebted to an insured, and has, or should have, in its hands sufficient funds belonging to and due him to pay an assessment or premium when due, it cannot forfeit his policy or certificate for nonpayment; rather, it should appropriate such funds to prevent a forfeiture, no matter from what source such funds were derived. This rule has been applied to money due the insured for services rendered; funds held by the insurer and payable to the insured because of property loss, benefits, accrued and payable under a health or accident, or an industrial policy even though the insured has not ordered that such an application be made;— (many other instances are here enumerated). Citing many cases of many states including Mass., N. Y., Pa., Maryland.

In the notes of page 1980, we find: "A forfeiture for non-payment of dues cannot be set up as against a member where there is due him a disability in an amount greater than the amount of such dues." *Holyland vs. Protected Home Circle*, 71 Pa. Supreme Court 66, and in the footnotes, at P. 1981: "A benefit society having sick benefits in its hands which are due a member should, unless directed otherwise, apply the same in payment of

premiums for death benefits, and a forfeiture cannot be declared for premiums which might have been so paid, especially where the officer in charge of such funds had agreed to apply them." *Sporer vs. German R. C. K. of St. George*, 70 Pa. Supreme Court 612.

POINT V.

The Court did not err in allowing the amendment. There was no motion for continuance and no surprise.

At the close of the plaintiff's case defendant moved for a dismissal of the third count of the complaint on the ground that the death benefit on the life of Annie Tula was payable to the children or their guardian and not to the administratrix.

In the third count as originally framed, the plaintiff sued as administratrix. The plaintiff, when the motion for a dismissal was made, moved to amend the third count by designating her as the guardian of Annie Tula's children, after offering testimony which showed that the plaintiff is the appointed guardian of those children. The amendment was allowed.

The amendment did not change the nature of the cause of action, or the merits of the case, but as the trial court pointed out, merely related to the control of the fund. As the court said:

"There would be no substantial change in the defense. The merits you have raised as against anybody are identically the same as those you are raising against the present plaintiff, in the capacity of administratrix of the estates of both Annie and Anthony, the two of them. Her right to maintain this action now is no different, so far as the

merits are concerned, than would it be if she were suing in the first place as guardian or next friend of the children. In other words as I see it, of necessity your defense would be identically the same." (Case p. 57, ll. 22-40; p. 58, ll. 1-15; Case p. 55, ll. 18-40; p. 56-58).

The defense then proceeded with his defense and participated in the trial throughout the remainder of the case.

At that stage of the trial the letters of guardianship were not yet produced.

Later in the case, plaintiff produced the original record and file in the office of the Surrogate of Bergen County, by which it was shown that the plaintiff Mary Bushko was duly appointed guardian of the four children of Annie Tula, naming them, all of them being minors. The petition for, and the order appointing her as guardian, the bond which she furnished, and the entire record, file and proceeding in the matter of the guardianship was admitted in evidence. (Case, pp. 73-74; and p. 103, Ex. P-8).

Counsel did not move for a continuance.

That the trial court did not err in allowing the amendment regarding the designation of the plaintiff is demonstrated by the decisions of this state.

Wilson vs. Dairymen's League Co-op. Ass'n, Inc., 6 A. R., 1423 (Err. and App.).

Kievitt vs. Cannato, 7 M., 271.

Those actions were brought under the death act. In the first case cited, plaintiff was allowed to amend the complaint by designating herself as administratrix *ad prosequendum*, altho at the time

that she was appointed administratrix *ad prosequendum* the time limited for bringing such an action had expired, and altho she sued originally as general administratrix only. In the second case, plaintiff brought an action as administratrix *ad prosequendum*, when the action should have been brought as executrix under the statute, and it was held in each case that the trial judge properly permitted an amendment changing the form of the action.

The point made by defendant has no merit.

POINT VI.

There was no error in the charge.

Defendant argues that the trial judge erred in his charge dealing with the claim that the Society expelled Mr. Tula from membership.

We say, first, that there was no error in the charge, and second, that if there was error in the charge it was not harmful.

First. There was no error.

(a) Whether a by-law is self-executing or requires some affirmative action on the part of the society depends in each case upon the particular language used.

In the present case affirmative action was required. When Mr. Tula became a member of the Society, there was issued to him by the Society a membership and dues book in which there was also contained an entry certified entitled *Rules and By-laws* which Mr. Tula signed (Ex. P-4, pp. 90-91).

The printed record only contains the member's entry certificate. For some unexplained reason, the entire book in which the membership certificate was contained is not made part of the state of case.

The member's entry certificate was printed both in Slavish and in English. At the trial, the Slavish draft was not translated. The draft in English was used. It is very crudely drawn. A reading of it will show that it is a poor specimen of translation in English, and that the translator had little knowledge about punctuation, grammar or spelling. In the entry certificate the word notified is spelled notefied, altho in the state of case the word is correctly spelled. *Send* is used for sent, etc.

The trial judge correctly construed the following language of the entry certificate: "In case of any disaster happens to me I will not claim my benefit if I be three months arrears. If I be notified by a registered letter *send* by the Secretary of the Society and if I do not then settle my accounts I shall be expelled from the Society", to mean that if a member is three months in arrears, he will be expelled from the Society, provided he is first notified by the Secretary of the Society, by registered letter to satisfy all arrearages, but fails to become paid up. In other words, it seems clear, that in the quoted portion of the entry certificate, the first two sentences were really intended to be and properly should be one sentence in order to carry out the chain of thought.

(b). Be that as it may, however, regardless whether this court should construe the above language to mean that the Society was *required* to take some affirmative action, the conceded fact is that it *undertook* some affirmative action, but did not carry it out.

The Society sent a registered letter, not notifying that he was expelled for a claimed arrearage, but that "*he will be expelled from the Society and will not be entitled to any benefits,*" if he failed to pay up his dues. (Case, p. 72, ll. 20-30). On the

envelope in which the letter was enclosed, the Society stamped the words, "Receipt requested". (Case, p. 62, ll. 10-25). Altho the by-laws did not provide more than the sending of notice by registered mail, in stamping "Receipt requested," upon the envelope, the Society "went beyond merely mailing it to the address," as the trial court points out.

No receipt was obtained, and the notice and the envelope were returned to the Society. (Case, p. 62, ll. 10-25). Yet the Society, without notice by registered letter to the member, and without any notice, expelled the member altho it undertook to give him notice by registered mail, but failed because the mail was returned on account of the order "Receipt requested" which was stamped upon it.

The effect of such action on the part of the Society was considered by the late Judge Newman (Circuit) in an unreported case—Abraham Wapnick vs. Bankers and Shippers Insurance Company of New York, decided February 17th, 1926. The opinion in that case points out these facts:

The plaintiff sued to recover the value of his interest in an automobile which was stolen and is covered by a policy against theft issued by the defendant company. The defense was that liability of the company on said policy had been cancelled prior to the date of the theft. The policy contained the following provisions:

"This policy shall be cancelled at any time at the request of the Assured, in which case the Company shall, upon demand and surrender of this policy, refund the excess of paid premium above the customary short rate premium for the expired term. This policy may be cancelled at any time by the Company by giving the Assured a five (5) days' written notice of cancellation with or

without tender of the excess of paid premium above the pro rata premium for the expired term, which excess if not tendered shall be refunded on demand. Notice of cancellation shall state that said excess premium (if not tendered) will be refunded on demand. Notice of cancellation mailed to the address of the Assured stated in this policy shall be a sufficient notice."

On May 9th, 1924, the company caused to be placed in the mails, at New York, a notice whereby it informed the assured that in accordance with the terms and conditions of the policy, covering his automobile, all liability on the part of the company will cease five days after receipt of this registered letter. This notice was placed in the registered mail, the envelope addressed as follows:

"Mr. A. M. Wapnick,
63 Harrison Ave.,
Garfield, N. J."

The envelope also contained the following:

"If not delivered in 5 days
return to
L. K. Franklin,
P. O. Box 116,
New York City.
Return Receipt Demanded."

The letter was returned to the defendant. Later, a similar notice was placed in the mails at New York, registered mail, addressed to the assured at another street in Passaic. The envelope contained a similar notice. It was returned to the defendant with a notation that it was unresponsive. Judge Newman held:

"Now, in mailing the notice by registered mail, with the endorsement thereon, 'Return Receipt Demanded', the company in effect said to the Post Office Department, 'Take

this letter to the plaintiff at the address indicated thereon, but do not leave it at such address unless someone authorized by the addressee to do so shall sign a receipt for it, acknowledging the receipt thereof, nor deliver it even to him personally unless he shall do likewise.' ”

“There is no evidence that such an opportunity was ever afforded the plaintiff, or anyone else, at the address designated on the envelope. As to the notice of May 21, 1924, the only one upon which there is any evidence as to its attempted delivery, the evidence shows it was returned to the sender, ‘No response, 5/22/24 C-60; No response, 5/23/24, Left notice to call.’ ”

“There is no evidence to show that the notice ever came to the attention of the insured, and it needs no argument to demonstrate that the insured should not be bound by a notice, delivery of which was withheld by the letter carrier at the request of the sender, nor could it impose upon the insured the duty of going to the Post Office and signing a receipt for the letter, assuming that he had received the notice to call.”

A similar situation arose in *Kamille vs. Home Fire & Marine Ins. Co. of Calif.*, decided by the New York Supreme Court, Trial Term, Part 3, New York County on June 18th, 1925, where the court under similar circumstances arrived at the same decision. In that case the court held:

“It would appear to me that but for the printed notice, viz, ‘personal receipt of addressee required’, printed on the face of the envelope addressed to the plaintiff defendant would be entitled to judgment. It does indeed seem, however, that the notice of cancellation did not permit or authorize the mailing of an envelope to the plaintiff bearing the written notice in question. Such written notice simply meant that if the ad-

dressee was not in at the time the postman called the envelope containing the notice of cancellation could not be left at plaintiff's address. In this particular case it is apparent that there exists no presumption of actual receipt of the notice of cancellation by reason of the mailing of the letter in the manner above described. If the letter had been left at plaintiff's address the same might have been forwarded to him wherever he might reside. In other words, the written notice in question appearing on the envelope provided for a delivery of the letter only in case the addressee was found to personally receipt for the same. I am of the opinion, therefore, that the notice of cancellation was not mailed in the manner required by the cancellation clause of the policy. For these reasons a verdict is directed in favor of the plaintiff for the amount claimed and interest."

Second, the court's charge to the jury was *not* harmful even if erroneous.

If, as we have already argued in this brief, the Society was obliged to set-off Mr. Tula's *monthly* dues against the weekly sick benefits to which he was entitled, (the sick benefit by far exceeded the amount of the dues), then Mr. Tula was not in arrears—there was no default in the payment of dues, and in such case the Society could not legally expel him from membership, and if it did so, the expulsion was wrongful, illegal and without any jurisdiction. In such case the expulsion is no expulsion.

In *Supreme Lodge of Knights of Pythias of the World vs. Eskholme, et al.* 59 N. J. Law, 255, this court held, that the judgment of the benefit lodge concerning property rights will be rendered invalid if jurisdiction does not appear by evidence of compliance with the modes of procedure relating to notice to parties and in other particulars,

and that irregularities of procedure in the course of the inquiry in such a case, which are contrary to the general principles of law, may invalidate the conclusions reached.

Certainly, it necessarily follows that if Mr. Tula was not in arrears and he was in good standing, as the evidence shows he was, then he could not legally be expelled, and the rule is that the effect of a void or wrongful expulsion is to absolve the member from further paying dues or assessments.

19 Ruling Case Law 1275, citing *O'Neil vs. Supreme Council American Legion of Honor*, 70 N. J. Law 410, and other cases.

POINT VII.

The verdict of the jury was not contrary to the evidence.

Firstly, whether the verdict is contrary to the evidence is a point that can only be urged on a rule to show cause why a new trial should not be granted and not on appeal, (*Churchill vs. Stephens*, 91 N. J. Law, 195, Err. & App.); secondly, this point is ill-founded.

In their brief, counsel for defendant refers to the old by-laws whereby the death benefits for a male member was Six Hundred Dollars and for a female member Four Hundred Dollars, and contends that the verdicts should have been limited to \$600.00 and \$400.00 respectively, instead of \$800.00 and \$600.00. Counsel for the defendant, however ignores the fact that the whole case was tried upon the theory that the death benefits payable on the death of these members was \$800.00 and \$600.00 respectively, apparently because of the fact that

the by-laws had been accordingly changed. At no stage of the trial was a point made to the effect that the benefits were only \$600.00 and \$400.00. On the contrary, as already noted, the case was tried upon the theory that the death benefits were \$800.00 and \$600.00 and the trial judge charged the jury to that effect and counsel for the defendant sat by apparently conceding the facts to be as stated in the court's charge, made no comment thereon, and took no exception to the charge. The trial judge instructed the jury as follows:

"Mrs. Tula, his wife, was entitled to receive the \$800 under the policy, if all conditions were met; and, by virtue of her being the wife of Anthony Tula, upon her death, her beneficiaries were entitled to \$600.00.

So you have before you now a claim for \$130.00 for sick benefits which are claimed to have been due to Anthony Tula in his lifetime, \$800.00 under a death benefit certificate which the plaintiff claims was due his wife upon his death, and there is a claim of \$600.00 by virtue of the death of Annie, his wife.

As I said before, there are three elements or three propositions, all totalling \$1530." (Case p. 79, ll. 25-40.)

"A case will be reviewed on the theory on which it is tried below."

Schulz vs. New York S. & R. Co., 87 N. J. Law, p. 659 (Court of Errors and Appeals).

No exception was taken to these instructions which the Court gave the jury embodying those sums and therefore the trial judge was justified in assuming the fact to be that the death benefits were \$800 and \$600 respectively as alleged in the complaint and as charged to the jury. Certainly, if the benefits were only \$600.00 and \$400.00 counsel

certainly would have, and should have, excepted to the court's charge and called the court's attention to the fact that the amounts were not \$800 and \$600 as stated in the court's charge but \$600 and \$400. This was not done, no doubt because the facts were as stated in the court's charge. And in the answer which the defendant filed, in the second defense to the first count, and in the second defense to the second count, (Case p. 13, case p. 16) the defendant impliedly concedes that the death benefits are in the sums printed in the complaint.

Moreover, a party cannot on appeal challenge the amount of a verdict. If a verdict is excessive, that point can only be urged on rule to show cause for a new trial.

Smith vs. Brunswick Laundry Co., 93 N. J. Law, 436, and Bahrey vs. Poniatshin, 95 N. J. Law, 128 (by Err. and App.)

Conclusion.

We respectfully submit therefore, that no point raised by the defendant in its brief is well founded, and that none of the grounds of appeal show any error.

Certainly, there is no error in the case resulting in harm or injury to the defendant or which requires a reversal, and therefore, the judgment of the Supreme Court which was entered on the verdict of the jury should be affirmed.

Respectfully submitted,

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