

INDEX.

	PAGE.
Summons	1
Complaint	2
Amended Answer	5
Reply	15
Rejoinder	18
Motion for Non-suit	20
Motion for direction of verdict.....	85
Charge to Jury	93
Postea	116
Order for Judgment.....	117
Notice of Appeal	118
Grounds of Appeal.....	119

TESTIMONY FOR PLAINTIFF

Sarah M. Hope, direct examination	19
--	----

TESTIMONY FOR DEFENDANT

William H. Daly, direct examination	51
Sarah M. Hope, direct examination	74, 76
Samuel H. Burr, direct examination	76

PLAINTIFF'S REBUTTAL

Sarah M. Hope, direct examination	80
cross "	81
Anna C. Golden, direct examination	83
cross "	84

DEPOSITIONS

	PAGE.
L. E. Sisler	21
Katherine Anderson,	
direct examination	53
cross "	59
re-direct "	62
Anna Kennedy,	
direct examination	65
cross "	72
re-direct "	74

EXHIBITS

	Offered.	Printed.
Exhibit P. 1.	19	101
Exhibit D. 1.	51	104
Exhibit D. 2.	75	104

EXHIBITS ATTACHED TO DEPOSITION OF L. E. SISLER

Exhibit A.	105
Exhibit B.	105
Exhibit C.	106
Exhibit D.	106
Exhibit E.	107
Exhibit F.	109

Summons.

Summons.

Issued July 10, 1916.

THE STATE OF NEW JERSEY,
to The Maccabees, a corporation.

10

You are summoned to answer the
[L. s.] annexed complaint of Sarah M. Hope
in an action at law in the Supreme
Court. And take notice that unless
you file your answer to said complaint with the
Clerk of the Supreme Court, at Trenton, within
twenty days after service upon you of this writ
and the annexed complaint, the plaintiff may
proceed in the suit and judgment may be en-
tered against you.

20

WITNESS, William S. Gummere, Chief Justice
of the Supreme Court, at Trenton, this tenth
day of July, nineteen hundred and sixteen.

WILLIAM C. GEBHARDT,
Clerk.

HEYMAN & HEYMAN,
Attorneys.

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Complaint.

Complaint.

New Jersey Supreme Court.

HUDSON COUNTY.

10

SARAH M. HOPE,

Plaintiff,

vs.

THE MACCABEES, a corporation,

Defendant.

Complaint.

20

The plaintiff, Sarah M. Hope, residing at No. 201 Clerk Street, Jersey City, Hudson County, New Jersey, complains:

34

1. The defendant is a corporation of the State of Michigan, duly authorized by the State of New Jersey to do business in this state as a fraternal beneficiary association.

2. That on February 22, 1916, the defendant, in consideration of the payment of the dues and monthly rates therein mentioned, issued a Life Benefit, Permanent and Total Disability Certificate to William J. Golden, a copy of which is hereto annexed, and made part hereof.

3. By the terms of the said certificate the defendant agreed to pay the plaintiff, Sarah M. Hope, upon the death of the insured William J. Golden, the sum of \$2,000.00, less the amount paid by the defendant to William J. Golden during his lifetime.

40

4. The defendant paid to William J. Golden during his lifetime on account of the money due under the said certificate \$150.00.

Complaint.

5. William J. Golden died on March 22, 1916.

6. William J. Golden and the plaintiff performed all the terms and conditions of the said certificate on their part to be performed.

7. By the terms of the said certificate there is now due and owing from the defendant to the plaintiff \$1,850.00. 10

Judgment will be demanded for \$1,850.00 with interest from March 22, 1916.

HEYMAN & HEYMAN,
Attorneys for Plaintiff.
15 Exchange Place, Jersey City, N. J.

The MACCABEES.

No. 5418	Age 29	20
State of N. Y.	Monthly Rate \$1.40	

LIFE BENEFIT
PERMANENT AND TOTAL DISABILITY
CERTIFICATE.

In Lieu of Life Benefit Certificate No. 41351
for \$2000.00

THIS CERTIFIES, That Sir Knight WILLIAM J. GOLDEN, a member of New York City Tent No. 31 located at New York having become 30
totally and permanently disabled, and having surrendered his Life Benefit Certificate No. 41351, he is, in accordance with and under the provisions of the Laws governing the Association, entitled to receive Two Thousand Dollars, less the amount paid from time to time on Disability Claim No. 5418 as a benefit to SARAH M. HOPE, his Sister, upon satisfactory proof of the death of the member and the surrender of this Certificate, provided he shall have in 40

Complaint.

every particular complied with all the rules and regulations of the Association, but he shall continue the payment of all dues and Monthly Rates as they become due and furnish the required proof of permanent and total disability each year satisfactory to the Supreme Medical Advis

10

Examiner.

(Seal) In Testimony Whereof, The Association has caused the Supreme Commander and the Supreme Record Keeper to attest and affix hereto the Seal of The Maccabees this 18th day of February, 1916.

L. E. SISLER, Sup. R. K.—S. P.
MARKEY, Sup. Com.

20

(Seal) Countersigned, Sealed and delivered by the Sir Knight Commander and the Sir Knight Record Keeper of New York City, Tent No. 31, of The Maccabees, this 22d day of February, A. D. 1916.

————— Sir. Kt. Commander.

JOSEPH KOCH, Sir Kt.,
Record Keeper.

30

40

*Amended Answer.***Amended Answer.**

Filed February 14, 1917.

Defendant, a corporation organized and existing under and by virtue of the laws of the State of Michigan, duly authorized by the State of New Jersey to do business within said state as a fraternal beneficiary association, having its principal office in said state with the State Department of Banking & Insurance at Trenton, New Jersey, says that: 10

First Defense

1. It admits the allegations contained in paragraphs 1, 2, 3, 4 and 5 of the complaint.

2. It denies that William J. Golden and the plaintiff have performed all of the terms and conditions of the certificate mentioned in the complaint on their part to be performed. 20

3. It denies that there is now due and owing from the defendant corporation the damages claimed in the complaint, or any damages whatever.

Second Defense

4. It says that said William J. Golden made his original application for beneficial membership in the defendant corporation on the 28th day of February, 1897; that in and by said application the said William J. Golden declared: 30

“That any untrue or fraudulent answers, any suppression of facts, in regard to my health, age, occupation, personal habits or neglect to pay any assessment..... shall vitiate my benefit certificate and forfeit all payments made thereon.

Amended Answer.

10 I also agree that should I now be engaged in or shall I hereafter engage in any occupation, trade or calling prohibited by the laws of the Supreme Tent, that from and after the date of my so engaging in such prohibited occupation, trade or calling, my right, as well as that of my beneficiary, to participate in the benefit funds of the order shall cease and become null and void, and that I shall stand suspended as a member without any notice from the subordinate or Supreme Tent, and any payment of dues or assessments by me or receipt thereof by any officer or member of the subordinate Tent to which I belong or to the Supreme Tent shall not be binding on the order.

20 This application and the laws of the Supreme Tent now in force or that may hereafter be adopted are made a part of the contract between myself and the Supreme Tent and I for myself and my beneficiary agree to conform and be governed thereby."

30 5. It further says that one of the laws in force and effect at the time said William J. Golden made his said application, notice and knowledge of which the said William J. Golden had at the time of making said application, reads as follows:

40 "No benefit shall be paid on account of the death or disability of a member who has given untrue answers in his application for membership; provided, however, that a member who, in his application for membership, understated his age, in good faith, and without any intention to deceive, shall not thereby forfeit his certificate, if he was under the age limit at the time of

Amended Answer.

his admission. If he was above the limit of age at the time of his admission, his membership shall be void from the beginning.”

It further says that in and by said application said William J. Golden falsely, fraudulently and with intent to deceive the defendant corporation, represented the date of his birth to have been the 22d day of February, 1868, when, as a matter of fact, the said William J. Golden knew that the actual date of his birth was on or about the 22d day of February, 1864, and that his age at the time of making said application was four years greater than he represented it to be. That by reason thereof no recovery can be had by the plaintiff against the defendant corporation.

Third Defense

6. It repeats the allegations of paragraph 4 of the second defense.

7. It says that in and by the said application the said William J. Golden in answer to the following question: “Are you now or have you ever been engaged in the manufacture or sale of intoxicating liquors? If so, when and in what way?” answered “No;” that said answer was untrue and fraudulent and constituted a suppression of facts in regard to the said William J. Golden’s occupation.

Fourth Defense

8. It repeats the allegations of paragraph 4 of the second defense.

9. It says that in and by said application said William J. Golden falsely, fraudulently and with intent to deceive the said defendant

Amended Answer.

corporation represented his occupation to be that of a salesman of tobacco, whereas he was in fact engaged in the manufacture or sale of intoxicating liquors.

Fifth Defense

10 10. It repeats the allegations of paragraph 4 of the second defense.

11. It says that one of the laws in force and effect at the time said William J. Golden made his said application, notice and knowledge of which the said William J. Golden had at the time of making said application, reads as follows:

20 “No person shall be admitted as a life benefit member of this Order who is engaged in any of the following occupations: Blasting, coal mining, submarine operations, manufacturing highly inflammable or explosive materials, nor who is an aeronaut or lineman in the employ of electric companies, either in the construction of repairing of lines over which the electric current passes, or who is engaged in any other occupation deemed extra hazardous by the Supreme Medical Examiner, and no person shall be eligible for membership in the Order who is engaged either as principal, agent or servant in the manufacture or sale of spiritous, malt or vinous liquors as a beverage, and should any beneficial member of the Order engage in any of the above named prohibited occupations after his admission, his benefit certificate shall become null and void from and after the date of his so engaging in such prohibited occupations and he shall stand suspended from all rights to

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Amended Answer.

participate in the benefit funds of the Order, and no action of the Tent or the Supreme Tent shall be a condition precedent to such suspension and the Record Keeper when any such suspension takes place shall not receive further assessments from such suspended member. He shall enter such suspension on his records and report the same to the Supreme Record Keeper, as he would report any other suspension, giving date and cause thereof, and in case any assessment shall be received from a member who has thus engaged in a prohibited occupation after his admission, the receipt thereof shall not continue the benefit certificate of such member in force, nor shall it be a waiver of his engaging in such prohibited occupation.”

It further says that at the time of making said application said William J. Golden was employed by the owner of a number of saloons in the capacity of a collector of the moneys taken in by the saloons belonging to his said employer, and was frequently engaged in the capacity of bar-tender and manager of one of the saloons belonging to said employer, in violation of the laws of the defendant corporation then in force and contrary to the false and fraudulent statements contained in the application that he was a salesman of tobacco, and was not then and never had been engaged in the manufacture or sale of intoxicating liquors.

It further says that the said William J. Golden continued and was thereafter employed by the same and other employers in the business of manufacturing or selling spiritous, malt or vinous liquors as a beverage, and continued in

Amended Answer.

said business so long as he was able to work and until he was incapacitated for labor a few months previous to his death; and that by reason thereof no recovery can be had by the plaintiff against the defendant corporation.

Sixth Defense

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12. It repeats the allegations of paragraph 4 of the second defense.

13. It says that one of the laws in force and effect at the time said William J. Golden made his said application, notice and knowledge of which the said William J. Golden had at the time of making said application, reads as follows:

20

“Persons addicted to the intemperate use of intoxicating liquors or to the use of drugs or narcotics are not eligible to membership in the Association. If any member shall become intemperate in the use of intoxicating liquors or addicted to the use of drugs or narcotics, he shall thereby forfeit all rights as a member of this Association and his certificate shall become absolutely null and void, without action on the part of his tent or of the Association, or of any of the officers thereof; and the payment by him of any monthly rates, additional assessments, dues or fines, or the acceptance thereof by the officers of his tent or of the Association, shall not waive such forfeiture.”

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It further says that in violation of said laws and contrary to the false and fraudulent statements contained in his said application, the said William J. Golden at the time of making said application, was accustomed to drink wine, spirits

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Amended Answer.

and malt liquors daily and habitually, and that thereafter and prior to his death and prior to the time when he collected on account of said certificate the sum of one hundred and fifty dollars (\$150) he had become addicted to the intemperate use of intoxicating liquors, thereby forfeiting all rights as a beneficial member of the defendant corporation; and that by reason thereof no recovery can be had by the plaintiff against the defendant corporation. 10

Seventh Defense

14. It repeats the allegations of paragraph 4 of the second defense.

15. It says that one of the laws in force and effect at the time the said William J. Golden made his said application, notice and knowledge of which the said William J. Golden had at the time of making said application, and one of the laws as revised and amended July 18th to 22d inclusive, 1911, and in force on and after September 22, 1911, and by which the said William J. Golden agreed to be bound, reads as follows: 20

“Every member of the Association and every person deriving benefits or other legal rights from such member shall be bound by the laws in force at the time such member was admitted to the Association and by all amendments thereto which may thereafter be made, and all certificates issued by the Association shall be subject to such modifications as to terms, conditions of payment, and contingencies in which the same are payable as the laws of the Association may from time to time provide.” 30

16. It says that one of the laws in force and effect at the time the said William J. Golden 40

Amended Answer.

made his said application, notice and knowledge of which the said William J. Golden had at the time of making said application, and one of the laws as amended July 18th to 22d inclusive, 1911, and in force on and after September 22, 1911, and by which the said William J. Golden agreed to be bound, reads as follows:

“The following persons shall not be admitted to the Association. * * * Saloon keepers, bar-tenders, liquor salesmen and collectors for liquor houses and breweries, bottlers; all persons employed in and about saloons and bars in hotels and restaurants.”

Eighth Defense

17. It repeats the allegations of paragraph 4 of the second defense.

18. It repeats the allegations of paragraph 15 of the seventh defense.

19. It says that one of the laws in force and effect at the time the said William J. Golden made his said application, notice and knowledge of which the said William J. Golden had at the time of making said application, and one of the laws as amended July 18th to 22d, inclusive, 1911, and in force on and after September 22, 1911, and by which the said William J. Golden agreed to be bound, reads as follows:

“Persons addicted to the intemperate use of intoxicating liquors or to the use of drugs or narcotics are not eligible to membership in the Association. If any member shall become intemperate in the use of intoxicating liquors or addicted to the use of drugs or narcotics he shall thereby forfeit all rights as a member of this Association and his certificate shall become ab-

Amended Answer.

solutely null and void, without action on the part of his tent or of the Association, or of any of the officers thereof; and the payment by him of any monthly rates, additional assessments, dues or fines, or the acceptance thereof by the officers of his tent or of the Association, shall not waive such forfeiture." 10

20. It says that one of the laws in force and effect at the time the said William J. Golden made his said application, notice and knowledge of which the said William J. Golden had at the time of making said application, and one of the laws as amended July 18th to 22d, inclusive, 1911, and in force on and after September 22, 1911, and by which the said William J. Golden agreed to be bound, reads as follows: 20

"No benefit shall be paid on account of the death or disability of any member who is addicted to the intemperate use of intoxicating liquors, or who dies or becomes disabled from the intemperate use of intoxicating liquors."

It further says that at and prior to the time of his death the said William J. Golden was addicted to the intemperate use of intoxicating liquors. 30

LINDABURY, DEPUE & FAULKS.
Attorneys for Defendant.

Amended Answer.

Consent is hereby given to the filing of the within Amended Answer in place of the Answer heretofore filed herein.

Dated November 21, 1916.

10

HEYMAN & HEYMAN,
Attorneys of Plaintiff.

Filed in open court February 14, 1917.

WM. H. SPEER,
Judge.

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30

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*Reply to Second Amended Answer.***Reply to Second Amended Answer.**

Filed February 14, 1917.

REPLY TO SECOND DEFENSE.

1. The plaintiff denies the allegations contained in the second defense.

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2. She states that the application and the laws referred to in said defense are not part of the contract mentioned in the complaint.

3. She avers that the allegations contained in the said defense do not constitute a defense to the cause of action alleged in the complaint, and she reserves the right to take advantage thereof at the trial of this cause.

4. She states that if William J. Golden understated his age, he did not do so falsely, fraudulently and with intent to deceive the defendant, but innocently and in good faith.

20

REPLY TO THIRD DEFENSE.

5. She denies the allegations contained in the third defense.

6. She avers that the application and the laws referred to in said defense are not part of the contract mentioned in the complaint.

7. She avers that the allegations contained in the said defense do not constitute a defense to the cause of action alleged in the complaint, and she reserves the right to take advantage thereof at the trial of this cause.

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8. The plaintiff states that if, at any time, William J. Golden was engaged in an occupation prohibited by the contract, such engagement was with the knowledge and consent of the defendant, and that the defendant accepted payments under the contract from William J.

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Reply to Second Amended Answer.

Golden and from the plaintiff with such knowledge, and that the defendant waived any rights it might have under the contract with respect to such prohibited employment.

REPLY TO FOURTH DEFENSE.

10 9. She denies the allegations contained in the fourth defense.

10. She avers that the application and the laws referred to in said defense are not part of the contract mentioned in the complaint.

11. She avers that the allegations contained in the said defense do not constitute a defense to the cause of action alleged in the complaint, and she reserves the right to take advantage thereof at the trial of this cause.

20 12. The plaintiff states that if, at any time, William J. Golden was engaged in an occupation prohibited by the contract, such engagement was with the knowledge and consent of the defendant, and that the defendant accepted payments under the contract from William J. Golden and from the plaintiff with such knowledge, and that the defendant waived any rights it might have under the contract with respect to such prohibited employment.

30 REPLY TO FIFTH DEFENSE.

13. She denies the allegations contained in the fifth defense.

14. She avers that the application and the laws referred to in said defense are not part of the contract mentioned in the complaint.

40 15. She avers that the allegations contained in the said defense do not constitute a defense to the cause of action alleged in the complaint, and she reserves the right to take advantage thereof at the trial of this cause.

Reply to Second Amended Answer.

16. The plaintiff states that if, at any time, William J. Golden was engaged in an occupation prohibited by the contract, such engagement was with the knowledge and consent of the defendant, and that the defendant accepted payments under the contract from William J. Golden and from the plaintiff with such knowledge, and that the defendant waived any rights it might have under the contract with respect to such prohibited employment. 10

REPLY TO SIXTH DEFENSE.

17. She denies the allegations contained in the sixth defense.

18. She avers that the application and the laws referred to in said defense are not part of the contract mentioned in the complaint. 20

19. She avers that the allegations contained in the said defense do not constitute a defense to the cause of action alleged in the complaint, and she reserves the right to take advantage thereof at the trial of this cause.

REPLY TO SEVENTH DEFENSE.

20. She denies the allegations contained in the seventh defense.

21. She avers that the application and the laws referred to in said defense are not part of the contract mentioned in the complaint. 30

22. She avers that the allegations contained in the said defense do not constitute a defense to the cause of action alleged in the complaint, and she reserves the right to take advantage thereof at the trial of this cause.

REPLY TO EIGHTH DEFENSE.

23. She denies the allegations contained in the eighth defense. 40

Rejoinder.

24. She avers that the application and the laws referred to in said defense are not part of the contract mentioned in the complaint.

25. She avers that the allegations contained in the said defense do not constitute a defense to the cause of action alleged in the complaint,
 10 and she reserves the right to take advantage thereof at the trial of this cause.

HEYMAN & HEYMAN,
Attorneys for Plaintiff.

We consent to filing of above reply as of time. November 21, 1916.

LINDABURY, DEPUE & FAULKES,
Attorneys of Defendant.

20 Filed in open court, February 14, 1917.

WM. H. SPEER,
Judge.

Mailed Clerk, March 2, 1917.

Rejoinder.

Filed February 14, 1917.

30 Defendant denies all of the averments of the reply heretofore filed by the plaintiff in the above stated cause.

LINDABURY, DEPUE & FAULKES,
Attorneys for Defendant.

Consent is hereby given to the filing of the within Rejoinder as in due time.

HEYMAN & HEYMAN,
Attorneys of Plaintiff.

40 Filed in open court, February 14, 1917.

Sarah M. Hope, direct.

NEW JERSEY SUPREME COURT.

SARAH M. HOPE,

vs.

THE MACCABEES, a corporation.

10

Tried February 13, 1917, before Speer, *J.*,
and a jury.

Heyman and Heyman for the plaintiff.

Lindabury, Depue & Faulks (Mr. Bishop)
for the defendant.

Mr. Heyman. I offer in evidence the
policy. (Policy marked in evidence P-1,
and read to the jury.)

20

SARAH M. HOPE, sworn.

Direct examination by Mr. Heyman.

Q You are the plaintiff? A Yes, sir.

Q Did you pay the dues to the Maccabees
that were due before your hu—

Mr. Bishop. I object to that. We have
admitted they were paid.

Q Have you received \$1,850 from the de-
fendant? A No, sir.

30

Mr. Heyman. Cross examine.

The Court. You do not have to prove
that. Payment is a defense.

NO CROSS EXAMINATION.

PLAINTIFF RESTS.

40

Motion for Non-suit.

Mr. Bishop. I move for a non-suit upon the ground that there is no evidence that this man has complied with the conditions of his membership or has kept the conditions of his policy or has complied with the laws of the organization.

10

While it is true that under the practice act special violations, or special breaches of condition must be pleaded in order to apprise the plaintiff of the particular breaches upon which the defendant intends to rely, that does not relieve the plaintiff from proof of compliance with the policy.

20

The Court. I haven't any doubt about what the rule in that case is. I deny your motion and you may have the objection entered on the record. I think those questions are matters of defense that if you wish to avail yourself of you should set up in your answer and establish by your proof.

(Exception noted for defendant.)

Mr. Bishop. There are certain depositions here, taken in the State of New York and in Michigan.

30

The Court. They may be opened now.

Mr. Bishop. The evidence on behalf of the defendant has been taken out of the state, partly in the state of Michigan and partly in the state of New York. It has been returned in the form of depositions, which I will read to you:

Deposition of L. S. Sisler.

Deposition of L. E. SISLER, a witness produced, sworn and examined the 28th day of November, 1916, at 1021 Woodward avenue, in the City of Detroit, County of Wayne and State of Michigan, under and by virtue of the attached commission executed out of the New Jersey Supreme Court in an action therein depending between Sarah M. Hope, plaintiff, and The Maccabees, a corporation, defendant. 10

STATE OF MICHIGAN, }
 COUNTY OF WAYNE. } ss.

L. E. SISLER, of Detroit, in the County of Wayne and State of Michigan, a witness produced on the part of the defendant, being duly sworn according to law and the following interrogatories being severally proposed to him on his oath, deposes and says: 20

First Interrogatory: Are you an officer of The Maccabees, a corporation, the defendant in the above stated cause? If so, what office do you hold?

Answer to First Interrogatory: I am the Supreme Record Keeper and Supreme Finance Keeper of The Maccabees, a corporation, the defendant in the above stated cause. 30

Second Interrogatory: As such officer, have you the custody of the records of The Maccabees, a corporation, including the rules and regulations of said order?

Answer to Second Interrogatory: As such officer (Record Keeper) of The Maccabees I have the custody of the records of The Maccabees, including the rules and regulations of said order. 40

Deposition of L. S. Sisler.

Third Interrogatory: Do you know the duties of the several general and local officers of The Maccabees?

Answer to Third Interrogatory: I do.

10 *Fourth Interrogatory:* Do you know the provisions of the laws of The Maccabees which were in force on the 28th of February, 1897?

Answer to Fourth Interrogatory: I do.

Fifth Interrogatory: Do you know the provisions of the several amendments to the laws of The Maccabees referred to in the fourth interrogatory, which were made from time to time up to and including the 22d day of March, 1916?

Answer to Fifth Interrogatory: I do.

20 *Sixth Interrogatory:* State the provisions of the laws of The Maccabees which were in force on February 28, 1897, as to the binding effect upon members of the laws then in force and of the amendments thereafter made thereto and the assent of members to such amendments thereafter made.

30 *Mr. Heyman.* I object to that question on the ground that it is immaterial and irrelevant. Our contract was made in 1910 and laws that were in force in this organization in 1897 have nothing to do with the contract.

The Court. I think that the insurance being based upon the original application will carry with it the laws that were in force at that time. I will so rule, and you may have your objection entered on the record.

Deposition of L. S. Sisler.

Mr. Heyman. That will apply to all of the questions?

The Court. Yes, as to the whole line of evidence that has to do with that particular objection.

Answer to Sixth Interrogatory: The laws of The Maccabees in force on February 28, 1897, contained no provisions as to the binding effect upon members of the laws then in force and of the amendments thereafter made thereto and the assent of members to such amendments thereafter made, and such provisions were inserted by amendment as stated in the answer to the seventh interrogatory, but when this member joined the Association it was provided in the application for membership that he signed, in the obligation he took at the altar for admission and in the certificate that was issued to him that he should be bound by the laws then in force or that might thereafter be enacted, and in 1904 this provision was also enacted in the laws of the Association, section 280 of the laws of 1904, and the changes that took place since are found in the laws of 1907, section 272; 1910, section 272; 1911, section 272, 1915, section 272, copies of which are hereto attached and marked Exhibits "A," "B," "C," "D," and "E."

Seventh Interrogatory: State whether the provisions of the laws of The Maccabees referred to in the answer to the sixth interrogatory were amended between February 28, 1897, and March 22, 1916, and, if so, quote such amendments.

Answer to Seventh Interrogatory: The laws of The Maccabees in force on February 28, 1897, contained no provisions as to the binding effect upon members of the laws then in force

Deposition of L. S. Sisler.

and of the amendments thereafter made thereto and the assent of members to such amendments thereafter made, but, as stated in the answer to the sixth interrogatory, when this member joined the Association it was provided in the application for membership that he signed, in
 10 the obligation he took at the altar for admission and in the certificate that was issued to him that he should be bound by the laws then in force or that might thereafter be enacted, and in 1904 this provision was also enacted in the laws of the Association, section 280 of the laws of 1904, in effect July 27, 1904, which section reads as follows:

20 "Section 280. Laws in force and as amended shall govern all members. Every member of the Association and every person deriving benefits or other legal rights from such member shall be bound by the laws in force at the time such member was admitted to the Association and by all amendments thereto which may thereafter be made, and all certificates issued by the Association shall be subject to such modifications as to terms, conditions of payment, and contingencies in which the same
 30 are payable as the laws of the Association may from time to time provide."

Any changes that have taken place since are found in the laws of 1907, section 272; 1910, section 272; 1911, section 272; 1915, section 272, copies of which laws have heretofore been appended and marked as Exhibits A, B, C, D and E, to which reference is hereto made.

40 *Eighth Interrogatory:* State the provisions of the laws of The Maccabees which were in force

Deposition of L. S. Sisler.

on February 28, 1897, relating to prohibited occupations?

Answer to Eighth Interrogatory: The laws which were in force on February 28, 1897, relating to prohibited occupations are found in the Revised Laws of the Knights of the Macca-
bees of the World, adopted May 18, 1895, in
force after June 18, 1895, section 142, which
is as follows: 10

“Sec. 142. * * * No person shall be eligible for membership in the order who is engaged either as a principal, agent or servant in the manufacture or sale of spirituous, malt or vinous liquors as a beverage, and should any beneficial member of the Order engage in any of the above named prohibited occupations after his admission, his benefit certificate shall become null and void from and after the date of his so engaging in such prohibited occupation, and he shall stand suspended from all rights to participate in the benefit of the Order, and no action of the Tent or of the Supreme Tent shall be a condition precedent to such suspension, and the Record Keeper when any such suspension takes place shall not receive further assessments from such suspended member. He shall enter such suspension on his record and report the same to the Supreme Record Keeper as he would report any other suspension, giving date and cause thereof, and in case any assessment shall be received from a member who has thus engaged in a prohibited occupation after his admission the receipt thereof shall not continue the benefit certificate of such member in force nor shall it be a 20-
30
40

Deposition of L. S. Sisler.

waiver of his engaging in such prohibited occupation.”

10 *Ninth Interrogatory:* State whether the provisions of the laws of The Maccabees referred to in the answer to the eighth interrogatory were amended between February 28, 1897 and March 22, 1916, and, if so, quote such amendments.

Answer to Ninth Interrogatory: The provisions of the laws of The Maccabees, relating to prohibited occupations, referred to in the answer to the eighth interrogatory, were amended as follows:

20 Revised Laws of the Knights of the Maccabees of the World, as amended July, 1897, in force after August 29, 1897, Section 142: * * * “No person shall be eligible for membership in the Order who is engaged either as principal, agent or servant in the manufacture or sale of spirituous, malt or vinous liquors as a beverage, and should any beneficial member of the Order engage in any of the above named prohibited occupations after his admission his benefit certificate shall become null and void from and after the date of his so engaging in such prohibited occupation and he shall stand suspended from all right to participate in the benefit fund of the Order and no action of the Tent or of the Supreme Tent shall be a condition precedent to such suspension and the Record Keeper when any such suspension takes place shall not receive further assessments from such suspended member. He shall enter such suspension on his records and report the same

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Deposition of L. S. Sisler.

to the Supreme Record Keeper as he would report any other suspension, giving date and cause thereof, and in case any assessments shall be received from a member who has thus engaged in a prohibited occupation after his admission, the receipt thereof shall not continue the benefit certificate of such member in force nor shall it be a waiver of his engaging in such prohibited occupation." 10

Revised Laws of the Knights of the Maccabees of the World, as amended July, 1899, in force after August 22, 1899, Section 142:
 * * * "No person shall be eligible for membership in the Order who is engaged either as principal, agent or servant in the manufacture or sale of spirituous, malt or vinous liquors as a beverage, and should any beneficial member of the Order engage in any of the above named prohibited occupations, after his admission, his benefit certificate shall become null and void from and after the date of his so engaging in such prohibited occupation and he shall stand suspended from all right to participate in the benefit fund of the Order and no action of the Tent or of the Supreme Tent shall be a condition precedent to such suspension and the Record Keeper when any such suspension takes place shall not receive further assessments from such suspended member. He shall enter such suspension on his records and report the same to the Supreme Record Keeper as he would report any other suspension giving date and cause thereof, and in case any assessment shall be received from a member who has thus en- 20
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Deposition of L. S. Sisler.

gaged in a prohibited occupation after his admission, receipt thereof shall not continue the benefit certificate of such member in force, nor shall it be a waiver of his engaging in such prohibited occupation."

10 Revised Laws of the Knights of the Maccabees of the World, as amended July, 1901, in force Aug. 20, 1901, Section 412: * * * "No person shall be admitted as life benefit member of this Association whose occupation is that of * * * persons engaged either as principal, agent or servant in the manufacture or sale of spirituous, malt or vinous liquors as a beverage."

20 Laws of the Knights of the Maccabees of the World, revised and amended July, 1904, in force after July 26, 1904, Section 281: "*Prohibited Occupations*: The following persons shall not be admitted to the Association: * * * Persons engaged as principal, agent, or servant in the manufacture or sale of spirituous, vinous or malt liquors as a beverage. Persons engaged in or about breweries or distilleries."

30 Laws of The Knights of the Maccabees of the World, revised and amended July, 1907, in force on and after September 1st, 1907, Section 273. "*Prohibited Occupations*: The following persons shall not be admitted to the Association: * * * Saloon keepers, bartenders, liquor salesmen and collectors for liquor houses and breweries, bottlers, all persons employed in and about saloons and bars in hotels and restaurants, all persons employed in and about breweries, except the office force and general superintendents.

Deposition of L. S. Sisler.

Keepers of hotels with bars may be accepted at the discretion of the Medical Board."

Tenth Interrogatory: State the provisions of the laws of The Maccabees which were in force on February 28, 1897, relating to the use of intoxicating liquors, drugs and narcotics.

Answer to the Tenth Interrogatory: The provisions of the laws of The Maccabees which were in force on February 28, 1897, relating to the use of intoxicating liquors, drugs and narcotics, are as follows:

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Revised Laws of The Knights of the Maccabees of the World, adopted May 18, 1895, in force after June 18, 1895, Section 207: "A member * * * who shall become addicted to the intemperate use of intoxicating liquors, shall upon conviction thereof be fined, reprimanded, suspended or expelled, as the Tent having jurisdiction thereof may determine."

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Eleventh Interrogatory: State whether the provisions of the laws of The Maccabees referred to in the answer to the tenth interrogatory were amended between February 28, 1897, and March 22, 1916, and, if so, quote such amendments.

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Answer to Eleventh Interrogatory: The provisions of the laws of The Maccabees referred to in the answer to the tenth interrogatory were amended between February 28, 1897, and March 22, 1916, as follows:

Revised Laws of the Knights of the Maccabees of the World, amended July, 1897, in force after August 29, 1897, Section 207: "A member who shall become addicted to the intemperate use of intoxicating li-

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Deposition of L. S. Sisler.

quors, shall upon conviction thereof be fined, reprimanded, suspended or expelled, as the Tent having jurisdiction thereof may determine."

10 Revised Laws of The Knights of the Maccabees of the World, amended July, 1899, in force after August 22, 1899, Section 207: "A member * * * who shall become addicted to the intemperate use of intoxicating liquors, * * * shall, upon conviction thereof be fined, reprimanded, suspended or expelled, as the Tent having jurisdiction thereof may determine."

20 Revised Laws of the Knights of the Maccabees of the World, amended July, 1901, in force August 20, 1901, Section 98: "The power of the Board of Trustees to suspend as herein provided shall extend to members who, after admission, become addicted to the intemperate use of intoxicating liquors, or who shall become addicted to the use of narcotics or form habits which may injure the health or endanger the life of such members, or who shall attempt to commit suicide."

30 Laws of the Knights of the Maccabees of the World, revised and amended July, 1904, in force after July 26, 1904, Section 283: "Intoxicating liquors, drugs and narcotics: Persons addicted to the intemperate use of intoxicating liquors, or to the use of drugs or narcotics, are not eligible to membership in the Association. If any member shall become intemperate in the use of intoxicating liquors or addicted to the use of drugs or narcotics, he shall thereby forfeit all rights as a member of this Association,

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Deposition of L. S. Sisler.

and his certificate shall become absolutely null and void, without action on the part of his Tent or of the Association, or of any of the officers thereof; and the payment by him of any monthly rates, additional assessments, dues, or fines, or the acceptance thereof by the officers of his Tent, or of the Association, shall not waive such forfeiture." 10

Laws of the Knights of the Maccabees of the World, revised and amended July, 1907, in force on and after September 1st, 1907, Section 275: "Intoxicating Liquors, Drugs and Narcotics.—Persons addicted to the intemperate use of intoxicating liquors or to the use of drugs or narcotics are not eligible to membership in the Association. If any member shall become intemperate in the use of intoxicating liquors or addicted to the use of drugs or narcotics, he shall thereby forfeit all rights as a member of this Association, and his certificate shall become absolutely null and void, without action on the part of his Tent, or of the Association, or of any of the officers thereof; and the payment by him of any monthly rates, additional assessments, dues, or fines, or the acceptance thereof by the officers of his Tent or of the Association, shall not waive such forfeiture." 20 30

Laws of The Knights of the Maccabees of the World, revised and amended April 18, 1910, Section 275: "Intoxicating Liquors, Drugs and Narcotics.—Persons addicted to the intemperate use of intoxicating liquors or to the use of drugs or narcotics are not eligible to membership in the Association. If 40

Deposition of L. S. Sisler.

10 any member shall become intemperate in the use of intoxicating liquors, or addicted to the use of drugs or narcotics, he shall thereby forfeit all rights as a member of this Association, and his certificate shall become absolutely null and void, without action on the part of his Tent or of the Association, or of any of the officers thereof; and the payment by him of any monthly rates, additional assessments, dues, or fines, or the acceptance thereof by the officers of his Tent or of the Association, shall not waive such forfeiture."

20 Laws of The Knights of the Maccabees of the World, revised and amended July 18-22 (inc.), 1911, in force on and after September 22, 1911, Section 275: "Intoxicating Liquors, Drugs and Narcotics.—Persons addicted to the intemperate use of intoxicating liquors or to the use of drugs or narcotics are not eligible to membership in the Association. If any member shall become intemperate in the use of intoxicating liquors or addicted to the use of drugs or narcotics, he shall thereby forfeit all rights as a member of this Association, and his certificate shall become absolutely null and void, without action on the part of his Tent or of the Association, or of any of the officers thereof; and the payment by him of any monthly rates, additional assessments, dues, or fines, or the acceptance thereof by the officers of his Tent or of the Association, shall not waive such forfeiture."

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40 Laws of The Maccabees, re-enacted, revised and amended May 18 to 21, 1915, in effect July 21, 1915, Section 275: "Intoxicat-

Deposition of L. S. Sisler.

ing Liquors, Drugs and Narcotics.—Persons addicted to the intemperate use of intoxicating liquors or to the use of drugs or narcotics are not eligible to membership in the Association. If any member shall become intemperate in the use of intoxicating liquors or addicted to the use of drugs or narcotics, he shall thereby forfeit all rights as a member of this Association and his certificate shall become absolutely null and void, without action on the part of his Tent or of the Association, or of any of the officers thereof; and the payment by him of any monthly rate, additional assessments, dues, or fines, or the acceptance thereof by the officers of his Tent or of the Association, shall not waive such forfeiture.”

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Twelfth Interrogatory: State the provisions of the laws of The Maccabees, which were in force on February 28, 1897, relating to the effect of untrue answers in application for membership.

Answer to Twelfth Interrogatory: The provisions of the laws of The Maccabees which were in force on February 28, 1897, relating to the effect of untrue answers in application for membership, are as follows:

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Revised Laws of the Knights of the Maccabees of the World, adopted May 18, 1895, in force after June 18, 1895, Section 58: “The Board of Trustees shall have power to suspend a beneficial member from all benefits of the Order, whenever a complaint is made by the Commander, Record Keeper, or Finance Keeper, of a subordinate Tent, or by a Deputy Supreme, or Deputy Great Commander that such member has obtained

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Deposition of L. S. Sisler.

his membership by false representations as to his age, physical condition, habits or occupation at the time of his admission, or who may after admission become addicted to the intemperate use of intoxicating liquors, or who shall become addicted to the use of opium or narcotics or form habits which may injure the health or endanger the life of such member. Such suspension shall be binding on the member without a formal trial until the member has by evidence satisfied the Board of Trustees that such complaint has no foundation, which he must do within thirty days from the date of notice mailed him by the Supreme Record Keeper of the filing of such complaint. The findings and decisions of the Board of Trustees in all such cases shall be final. The Board of Trustees may reinstate a member so suspended, if at any time thereafter it may appear to the Board that the cause for such suspension has been removed."

Thirteenth Interrogatory: State whether the provisions of the laws of The Maccabees referred to in the answer to the twelfth interrogatory were amended between February 28, 1897, and March 22, 1916, and, if so, quote such amendments.

Answer to Thirteenth Interrogatory: The provisions of the laws of The Maccabees referred to in the answer to the twelfth interrogatory were amended between February 28, 1897, and March 22, 1916, as follows:

Laws of The Knights of the Maccabees of the World, revised and amended July, 1904, in force after July 26, 1904, Section 397: "Effect of Untrue Answers in Application

Deposition of L. S. Sisler.

for Membership.—No benefit shall be paid on account of the death or disability of any member who has given untrue answers in his application for membership; provided, however, that a member who, in his application for membership, understated his age, in good faith and without any intention to deceive, shall not thereby forfeit his certificate, if he was under fifty-one years of age at the time of his admission. If he was more than fifty-one years of age at the time of his admission, his membership shall be void from the beginning.” 10

Laws of The Knights of the Maccabees of the World, revised and amended July, 1907, in force, on and after September 1, 1907, Section 380: “Effect of Untrue Answers in Application for Membership.—No benefit shall be paid on account of the death or disability of a member who has given untrue answers in his application for membership, provided, however, that a member, who, in his application for membership, understated his age, in good faith and without any intention to deceive, shall not thereby forfeit his certificate, if he was under the age limit at the time of his admission. If he was above the limit of age at the time of his admission his membership shall be void from the beginning.” 20 30

Laws of The Knights of the Maccabees of the World, revised and amended April 18, 1910, Section 380: “Effect of Untrue Answers in Application for Membership.—No benefit shall be paid on account of the death or disability of a member who has given untrue answers in his application for membership; provided, however, that a member who, 40

Deposition of L. S. Sisler.

10 in his application for membership, understated his age, in good faith, and without any intention to deceive, shall not thereby forfeit his certificate, if he was under the age limit at the time of his admission. If he was above the limit of age at the time of his admission his membership shall be void from the beginning."

20 Laws of The Knights of the Maccabees of the World, revised and amended July 18-22 (inc.), 1911, in force on and after Sept. 22, 1911, Section 380: "Effect of Untrue Answers in Application for Membership.—No benefit shall be paid on account of the death or disability of a member who has given untrue answers in his application for membership; provided, however, that a member who, in his application for membership, understated his age in good faith and without any intention to deceive, shall not thereby forfeit his certificate, if he was under the age limit at the time of his admission. If he was above the limit of age at the time of his admission his membership shall be void from the beginning."

30 Laws of The Maccabees, re-enacted, revised and amended May 18 to 21, 1915, in effect July 21, 1915, Section 380: "Effect of Untrue Answers in Application for Membership.—No benefit shall be paid on account of the death or disability of a member who has given untrue answers in his application for membership; provided, however, that a member who, in his application for membership, understated his age, in good faith and without any intention to deceive, shall not thereby forfeit his certificate, if he was under the age limit at the

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Deposition of L. S. Sisler.

time of his admission. If he was above the limit of age at the time of his admission his membership shall be void from the beginning."

Fourteenth Interrogatory: State the provisions of the laws of The Maccabees which were in force on February 28, 1897, as to the effect of intemperate use of intoxicating liquors? 10

Answer to Fourteenth Interrogatory: The provisions of the laws of The Maccabees which were in force on February 28, 1897, as to the effect of intemperate use of intoxicating liquors are as follows:

Revised Laws of The Knights of the Maccabees of the World, adopted May 18, 1895, in force after June 18, 1895, Section 58: 20
 "The Board of Trustees shall have power to suspend a beneficial member from all benefits of the Order, whenever a complaint is made by the Commander, Record Keeper or Finance Keeper of a subordinate Tent, or by a Deputy Supreme or Deputy Great Commander that such member has obtained his membership by false representations as to his age, physical condition, habits or occupation at the time of his admission, or who may after admission become addicted to the intemperate use of intoxicating liquors, or who shall become addicted to the use of opium or narcotics or form habits which may injure the health or endanger the life of such member. Such suspension shall be binding on the member without a formal trial until the member has by evidence satisfied the Board of Trustees that such complaint has no foundation, which he must do within thirty days from the date of notice 30 40

Deposition of L. S. Sisler.

10 mailed him by the Supreme Record Keeper of the filing of such complaint. The findings and decisions of the Board of Trustees in all such cases shall be final. The Board of Trustees may reinstate a member so suspended, if at any time thereafter it may appear to the Board that the cause for such suspension has been removed.”

Fifteenth Interrogatory: State whether the provisions of the laws of The Maccabees referred to in the answer to the fourteenth interrogatory were amended between February 28, 1897, and March 22, 1916, and, if so, quote such amendments.

20 *Answer to Fifteenth Interrogatory:* The provisions of the laws of The Maccabees referred to in the answer to the fourteenth interrogatory were amended between February 28, 1897, and March 22, 1916, as follows:

30 Laws of the Knights of the Maccabees of the World, revised and amended July, 1904, in force after July 26, 1904, Section 283: “Intoxicating Liquors, Drugs and Narcotics.—Persons addicted to the intemperate use of intoxicating liquors or to the use of drugs or narcotics are not eligible to membership in the Association. If any member shall become intemperate in the use of intoxicating liquors or addicted to the use of drugs or narcotics, he shall thereby forfeit all rights as a member of this Association, and his certificate shall become absolutely null and void, and without action on the part of his Tent or of the Association or of any of the officers thereof; and the payment by him of any monthly rates, additional assessments, dues, or fines, or the acceptance

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Deposition of L. S. Sisler.

thereof by the officers of his Tent or of the Association, shall not waive such forfeiture."

Laws of The Knights of the Maccabees of the World, revised and amended July, 1907, in force on and after September 1, 1907, Section 275: "Intoxicating Liquors, Drugs and Narcotics.—Persons addicted to the intemperate use of intoxicating liquors, or to the use of drugs or narcotics, are not eligible to membership in the Association. If any member shall become intemperate in the use of intoxicating liquors or addicted to the use of drugs or narcotics, he shall thereby forfeit all rights as a member of this Association, and his certificate shall become absolutely null and void, without action on the part of his Tent or of the Association, or of the officers thereof; and the payment by him of any monthly rates, additional assessments, dues, or fines, or the acceptance thereof by the officers of his Tent or of the Association, shall not waive such forfeiture." 10 20

Laws of The Knights of the Maccabees of the World, revised and amended April 18, 1910, Section 275: "Intoxicating Liquors, Drugs and Narcotics.—Persons addicted to the intemperate use of intoxicating liquors, or to the use of drugs or narcotics, are not eligible to membership in the Association. If any member shall become intemperate in the use of intoxicating liquors or addicted to the use of drugs or narcotics, he shall thereby forfeit all rights as a member of this Association, and his certificate shall become absolutely null and void, without action on the part of his Tent or of the Association, 30 40

Deposition of L. S. Sisler.

or of any of the officers thereof; and the payment by him of any monthly rates, additional assessments, dues, or fines, or the acceptance thereof by the officers of his Tent or of the Association, shall not waive such forfeiture.'

10 Laws of The Knights of the Maccabees of
the World, revised and amended July 18-22
(inc.), 1911, in force on and after September
22, 1911, Section 275: "Intoxicating Liq-
uors, Drugs and Narcotics.—Persons ad-
dicted to the intemperate use of intoxicating
liquors or to the use of drugs or narcotics
are not eligible to membership in the Asso-
ciation. If any member shall become intem-
perate in the use of intoxicating liquors or
20 addicted to the use of drugs or narcotics, he
shall thereby forfeit all rights as a member
of this Association, and his certificate shall
become absolutely null and void, without
action on the part of his Tent or of the As-
sociation, or of any of the officers thereof;
and the payment by him of any monthly
rates, additional assessments, dues, or fines,
or the acceptance thereof by the officers of
his Tent or of the Association, shall not
30 waive such forfeiture."

 Laws of The Maccabees, re-enacted, re-
vised and amended May 18-21, 1915, in ef-
fect July 21, 1915, Section 275: "Intoxi-
cating Liquors, Drugs and Narcotics.—Per-
sons addicted to the intemperate use of in-
toxicating liquors or to the use of drugs or
narcotics are not eligible to membership in
the Association. If any member shall be-
come intemperate in the use of intoxicating
liquors or addicted to the use of drugs or
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Deposition of L. S. Sisler.

narcotics, he shall thereby forfeit all rights as a member of this Association, and his certificate shall become absolutely null and void, without action on the part of his Tent or of the Association, or of any of the officers thereof; and the payment by him of any monthly rates, additional assessments, dues, or fines, or the acceptance thereof by the officers of his Tent or of the Association shall not waive such forfeiture." 10

Sixteenth Interrogatory: What officer or officers of The Maccabees was authorized and required to collect, receive, retain or transmit assessments, dues, fines or other moneys from members from February 28, 1897, to March 22, 1916?

Answer to Sixteenth Interrogatory: Record Keeper. 20

Seventeenth Interrogatory: State the provisions of the laws of The Maccabees which were in force on February 28, 1897, as to the waiver of forfeiture by receipt of moneys?

Answer to Seventeenth Interrogatory: The provisions of the laws of The Maccabees which were in force on February 28, 1897, as to the waiver of forfeiture by receipt of moneys are as follows: 30

Revised Laws of The Knights of the Maccabees of the World, adopted May 18, 1895, in force after June 18, 1895, Section 142: "No person shall be admitted as a life benefit member of this Order who is engaged in any of the following occupations: Blasting, coal mining, submarine operations, manufacturing highly inflammable or explosive materials, nor who is an aeronaut or lineman in the employ of electric companies, either 40

Deposition of L. S. Sisler.

10 in the construction or repairing of lines over
 which the electric current passes, or who is
 engaged in any other occupation deemed ex-
 tra hazardous by the Supreme Medical Ex-
 20 aminer, and no person shall be eligible for
 membership in the Order who is engaged
 either as principal, agent or servant, in the
 manufacture or sale of spirituous, malt or
 vinous liquors as a beverage, and should any
 beneficial member of the Order engage in
 any of the above-named prohibited occupa-
 tions after his admission, the benefit certi-
 ficate shall become null and void from and
 after the date of his so engaging in such
 prohibited occupation, and he shall stand
 30 suspended from all rights to participate in
 the benefit funds of the Order, and no ac-
 tion of the Tent or of the Supreme Tent
 shall be a condition precedent to such sus-
 pension, and the Record Keeper when any
 such suspension takes place shall not receive
 further assessments from such suspended
 member. He shall enter such suspension on
 his records and report the same to the Su-
 preme Record Keeper, as he would report
 any other suspension, giving date and cause
 thereof, and in case any assessment shall be
 received from a member who has thus en-
 gaged in a prohibited occupation after his
 admission the receipt thereof shall not con-
 tinue the benefit certificate of such member
 in force nor shall it be a waiver of his en-
 gaging in such prohibited occupation."

40 *Eighteenth Interrogatory:* State whether the
 provisions of the laws of The Maccabees re-
 ferred to in the answer to the seventeenth inter-
 rogatory were amended between February 28,

Deposition of L. S. Sisler.

1897, and March 22, 1916, and, if so, quote such amendments?

Answer to Eighteenth Interrogatory: The provisions of the laws of The Maccabees referred to in the answer to the seventeenth interrogatory were amended between February 28, 1897, and March 22, 1916, as follows:

Revised Laws of The Knights of the Maccabees of the World, amended July, 1897, in force after August 29, 1897, Section 142:

* * * "No person shall be eligible for membership in the Order who is engaged either as principal, agent or servant in the manufacture or sale of spirituous, malt or vinous liquors as a beverage, and should any beneficial member of the Order engage in any of the above named prohibited occupations after his admission, his Benefit Certificate shall become null and void from and after the date of his so engaging in such prohibited occupation, and he shall stand suspended from all rights to participate in the benefit funds of the Order, and no action of his Tent or of the Supreme Tent shall be a condition precedent to such suspension, and the Record Keeper, when any such suspension takes place, shall not receive further assessments from such suspended member. He shall enter such suspension on his records and report the same to the Supreme Record Keeper as he would report any other suspension, giving date and cause thereof, and in case any assessments shall be received from a member who has thus engaged in a prohibited occupation after his admission, the receipt thereof shall not continue the benefit certificate of such member in

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Deposition of L. S. Sisler.

force, nor shall it be a waiver of his engaging in such prohibited occupation.”

Revised Laws of The Knights of the Maccabees of the World, amended July, 1899, in force, after August 22, 1899, Section 142:
 * * * “No person shall be eligible for
 10 membership in the Order who is engaged either as principal, agent or servant in the manufacture or sale of spirituous, malt or vinous liquors as a beverage, and should any beneficial member of the Order engage in any of the above-named prohibited occupations after his admission his benefit certificate shall become null and void from and after the date of his so engaging in such prohibited occupation, and he shall stand suspended from all rights to participate in the benefit funds of the Order, and no action of his Tent or of the Supreme Tent shall be a condition precedent to such suspension, and the Record Keeper, when any such suspension takes place, shall not receive further assessments from such suspended member. He shall enter such suspension on his records and report the same to the Supreme Record Keeper as he would report any other suspension, giving date and cause thereof, and in case any assessment shall be received from a member who has thus engaged in a prohibited occupation after his admission, the receipt thereof shall not continue the benefit certificate of such member in force, nor shall it be a waiver of his engaging in such prohibited occupation.”

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Revised Laws of The Knights of the Maccabees of the World, amended July, 1901, in force August 20, 1901, Section 415: “It shall be the duty of the Tent Record Keeper
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Deposition of L. S. Sisler.

to enter such suspension on the records of the Tent and report the same to the Supreme Record Keeper as he would report any other suspension, giving date and cause thereof; provided that should any monthly rate be received from a member who has thus engaged in a prohibited occupation after his admission the receipt thereof by the Record Keeper shall not continue the benefit certificate of such member, nor shall it be a waiver of his engaging in such prohibited occupation." 10

Laws of The Knights of the Maccabees of the World, revised and amended July, 1904, in force after July 26, 1904, Section 254: "Record Keeper Cannot Waive Forfeiture by Illegal Receipt of Money. — The receipt, retention, or transmission to the Supreme Record Keeper by the Record Keeper of a Tent of any moneys contrary to these laws shall not have the effect of waiving the forfeiture of the certificate and all rights and privileges of the member in the Association." 20

Laws of The Knights of the Maccabees of the World, revised and amended July, 1907, in force on and after September 1, 1907, Section 246: "Record Keeper Cannot Waive Forfeiture by Illegal Receipt of Money.—The receipt, retention, or transmission to the Supreme Record Keeper by the Record Keeper of a Tent of any money contrary to these laws shall not have the effect of waiving the forfeiture of the certificate and all rights and privileges of the member in the Association." 30

Laws of The Knights of the Maccabees of the World, revised and amended April 18, 40

Deposition of L. S. Sisler.

1910, Section 246: "Record Keeper Cannot Waive Forfeiture by Illegal Receipt of Money.—The receipt, retention, or transmission to the Supreme Record Keeper by the Record Keeper of a Tent of any money contrary to these laws shall not have the effect of waiving the forfeiture of the certificate and all rights and privileges of the member in the Association."

Laws of The Knights of the Maccabees of the World, revised and amended July 18-22 (inc.), 1911, in force on and after Sept. 22, 1911, Section 246: "Record Keeper Cannot Waive Forfeiture by Illegal Receipt of Money.—The receipt, retention, or transmission to the Supreme Record Keeper by the Record Keeper of a Tent of any money contrary to these laws shall not have the effect of waiving the forfeiture of the certificate and all rights and privileges of the member in the Association."

Laws of The Maccabees re-enacted, revised and amended May 18-21, 1915, in effect July 21, 1915, Section 246: "Record Keeper Cannot Waive Forfeiture by Receipt of Money.—The receipt, retention, or transmission to the Supreme Record Keeper by the Record Keeper of a Tent of any money contrary to these laws shall not have the effect of waiving the forfeiture of the certificate and all rights and privileges of the member in the Association."

Nineteenth Interrogatory: Have you the original application for membership in The Maccabees made by William J. Golden, at the time he became a member thereof, and upon which the several membership certificates, benefit cer-

Deposition of L. S. Sisler.

tificates, insurance certificates or policies were issued to the said William J. Golden? If so, state the number of said application, its date and the signature by which it was signed and present it to the Commissioner to be marked by him for identification.

Answer to Nineteenth Interrogatory: I have 10
the original application for membership in The
Maccabees made by William J. Golden at the
time he became a member thereof and upon
which the several membership certificates, bene-
fit certificates, insurance certificates or policies
were issued to the said William J. Golden. Said
application bears date February 28, 1897. It is
signed "William John Golden." The applica-
tions are never numbered. A copy of said ap-
plication is hereunto annexed, marked Schedule 20
A, the original I have presented to the Commis-
sioner before whom these depositions are taken
to be marked by him as an exhibit in the cause.

L. E. SISLER.

Examination taken, reduced to writ-
ing, sworn and subscribed, this 14th
day of December, 1916.

CECIL G. MCCOLLOM,

Commissioner,

Notary Public of Michigan.

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My commission expires April 19, 1920.

Certificate of Notary Public.

NEW JERSEY SUPREME COURT.

HUDSON COUNTY.

SARAH M. HOPE,

Plaintiff,

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vs.

THE MACCABEES, a corporation,

*Defendant.*STATE OF MICHIGAN, }
COUNTY OF WAYNE. } *ss.*

20 I, Cecil G. McCollom, a notary public, in and for said county, do hereby certify that the deposition of Louis E. Sisler was taken before me, and was read to and subscribed by him in my presence, at the time and place and in the action mentioned in the caption, the said witness having been first sworn by me that the evidence that he should give in the action should be the truth, the whole truth and nothing but the truth; and his statements reduced to writing by me in his presence, the defendant alone being present at the examination.

30 WITNESS my hand and seal this 14th day of December, 1916.

CECIL G. MCCOLLOM,

Notary Public, Wayne County, Michigan.

My commission expires April 19, 1920.

40 *Mr. Bishop.* I offer in evidence this deposition and the exhibits returned with it, and the original application of William John Golden, which was marked by the Commis-

Argument of Counsel.

sioner "Exhibit F." The application is dated February 28, 1897, signed William John Golden.

Mr. Heyman. I object to the admission of all of these pamphlets giving the laws of The Maccabees, except the last one giving the laws as they were in force at the time of the death of the decedent William J. Golden, and I object to the admission of the application on the ground that it is not a part of our contract, not referred to in our policy, has nothing to do with it. 10

The Court. The mere fact that an application is not referred to in the policy does not indicate it is not a part of the transaction. Very often applications are not referred to in the policy but the misrepresentations contained in the applications void the policies nevertheless on the general principles of law with respect to the doctrine of contracts obtained by fraud; so I think I will admit them. I think this is all one transaction and I shall hold it as the theory of this case, and you may have your objection to that ruling entered on the record. 20

Mr. Heyman. All right.

Mr. Bishop. I do not think it is necessary to mark it any further, is it? 30

(Mr. Bishop reads excerpts from the application to the jury.)

Mr. Bishop. If the Court please, Mr. Golden appears to have been baptized in Kingston, New York. At the time the depositions were taken we had present a baptism record of the church, showing the baptism of Mr. Golden a number of years ago. Mr. Heyman consents that what I hold here is a true 40

Argument of Counsel.

copy certified by the church, but objects to the admission of it under any circumstances. That is, his objection to this copy is the same objection only that he would make to the book if it were produced. He does not object to the form of the offer, but I understand he does object to the substance.

10

The Court. What is the ground you urge against the admission of the baptismal record if it is properly authenticated? I understand there is a case in our State, Supreme Assembly *v.* McDonald, which holds that the baptismal records from churches are admissible.

Mr. Heyman. Are you sure that is our John Golden?

20

Mr. Bishop. No; I am not sure.

Mr. Heyman. I told Mr. Bishop I would not make objection to the use of that certificate of the pastor or rector in place of the book, only I reserve the objections I have as to the merits of the offer, not as to its form. I do object on the ground that there is no proof as yet that the man mentioned in that book is the deceased.

30

The Court. Isn't it a general proposition in the law that *prima facie* identity of name purports identity of person? I think that is the general presumption of law.

Mr. Heyman. I do not think that would apply in a case where we are dealing with a man who is far removed from any locality thus far mentioned in the case.

Mr. Bishop. By his own statement he was born up there. His application shows that.

40

Mr. Heyman. This is from a book in Kingston.

William H. Daly, direct.

Mr. Bishop. It appears he was born in Roundout, he says.

The Court. If he was born in Roundout he was born in a part of Kingston, because Roundout is the lower part of Kingston.

Mr. Heyman. Roundout, I understand, is a city of itself. 10

The Court. So it is, but it is down the hill just before you reach Kingston. Roundout is at the foot of the hill as you go up the West Shore to Kingston. The Court will judicially notice the location of the cities of the country without proof being offered of it.

Mr. Heyman. Well, I have no objection.
(Paper marked in evidence D. 1.) 20

WILLIAM H. DALY, sworn.

Direct examination by Mr. Bishop.

Q Mr. Daly, what is your occupation? A I am connected with the claim department of the Metropolitan Life Insurance Company.

Q Do you know whether the Metropolitan Life Insurance Company insured the life of William J. Golden? A Yes, sir.

Q Did it insure him? A Yes. 30

Q Has the claim on account of his death been paid? A Yes.

Q To whom was the payment made?

Mr. Heyman. I object as immaterial.

The Court. What is the relevancy of that?

Mr. Bishop. This man in his application to the Metropolitan simply signed himself William Golden. I want to identify him as the same man. 40

William H. Daly, direct.

The Court. I will permit that. I do not see what other relevancy it could have.

A It was paid to Catherine Anderson and to Sarah Golden.

10 Q Do you know by whom the proof of death was submitted? A By Catherine Anderson.

Q Have you the proof of death there? A Yes. (Witness hands paper to counsel.)

Q Have you with you the application upon which his policy was issued? A Yes, sir; that is it.

Q This document that I show you? A Yes, sir.

20 *Mr. Bishop.* Mr. Heyman, this is in a very dilapidated condition and I have here photographic copies of it. Are you willing to have those go in in place of this original?

Mr. Heyman. Have the original marked and use the photographic copy.

Mr. Bishop. I offer the original in evidence.

Mr. Heyman. I object. It is not properly proved. I do not know whether it was signed by him or not.

30 *The Court.* It does not appear yet that the party who made the application is the same individual.

Mr. Bishop. I will have it marked for identification then and prove it later.

The Court. Have it marked for identification.

(Marked D. 2 for identification.)

40 *Mr. Bishop.* I have here the depositions of Katherine Anderson and Anna Kennedy, which were taken in New York by consent in

Katherine Anderson, direct.

the presence of Mr. Heyman and myself.
(Reads):

“It is stipulated and agreed by and between the attorneys for the respective parties, that the testimony of the witnesses may be taken stenographically by the Master and afterwards reduced to typewriting, the signatures of the witnesses to their said testimony being waived.” 10

KATHERINE ANDERSON, sworn for defendant.

Direct examination by Mr. Bishop.

Q Mrs. Anderson, where do you live? A 128 Berkeley Place, Brooklyn, New York. 20

Q You are here this morning in response to a subpoena that was served on you; is that true?

A That is true.

Q Are you acquainted with Sarah M. Hope?

A Yes.

Q How long have you known her? A Twenty-six—twenty-seven years.

Q Did you know in his lifetime Mr. William John Golden? A Yes.

Q Do you know whether he was related to Mrs. Hope? A He was her brother. 30

Q How long had you known Mr. Golden?

A Twenty-seven years.

Q When did you first make his acquaintance?

A Twenty-seven or twenty-eight years ago I first met him.

Q Do you know where he lived at that time?

A No; I do not.

Q Do you know whether it was in New York or New Jersey? A New York. 40

Katherine Anderson, direct.

Q New York City? A Yes, I know he lived in New York.

Q He married your daughter, did he not?

A He married my daughter.

Q When? A 1890, January 14th.

10 Q Do you know what his business was at that time?

Mr. Heyman. I object to that question on the ground that upon cross examination it appeared that the answers of this witness as to the occupation of the deceased were all on hearsay; she never saw him engaged in the occupation. It appears on the cross examination.

The Court. If that is the admitted fact I suppose it ought to be stricken out.

20 (Counsel for defendant consents to the striking out of the testimony of this witness as to his employment with the exception of 60 West street.)

Mr. Bishop. I do not want to read these questions and answers that were stricken out. After certain questions and answers were stricken out the witness was asked:

30 Q Do you know what he did after he left that employment? A He went into the saloon business.

Q In a place of his own? A Yes.

Q Of which he was a proprietor? A Yes.

Q How do you know that? A Because I paid for it; I part paid for the place.

Mr. Heyman. That refers to 1890 and 1891, doesn't it, Mr. Bishop?

Mr. Bishop. Yes; the latter part of 1891.

40 *Mr. Heyman.* I object to that as it is seven years before this application was

Katherine Anderson, direct.

made in 1897. It has nothing to do with this case—1890 and 1891.

Mr. Bishop. She shows and other witnesses show a continuous employment down from this date.

Mr. Heyman. We are dealing with this question. 10

The Court. I think I will rule that question out, Mr. Bishop, if it has to do with a period so long anterior as that, because I see no relevancy to it.

Mr. Bishop. The only relevancy is to follow his employment through until we get to a date which is after his application—which we finally did.

The Court. Why should you follow it through? If you have it at a time that is important why should you prove it at a time that is not? 20

Mr. Bishop. Because we have to have some basis to calculate on. Mrs. Anderson's testimony is not clear as to dates, but she states the one date she is certain about was when she paid for this saloon. Then she says three years after that he went somewhere else and—

The Court. If it is upon that theory, merely to fix the date but not as evidence of the fact that he was in business at that time, I will admit it. 30

Mr. Bishop. Yes; merely for that purpose.

Q Where was that located? A 60 West street, New York City.

Q Do you know how long he remained there?

A To the best of my knowledge, around four years. 40

Katherine Anderson, direct.

Q Did he at any time make his home with you after he married? A Never—oh, one moment, he lived in my house in Bay Ridge for two years.

Q When was that? A That was eight or nine years—between eight and nine years ago; 10 he lived for two years in my house in Bay Ridge, but not with me. They had their own apartments.

Q They had their own apartments in your house? A Yes, in my house.

Q How long did he remain in business on West street? A Around four years.

Q Where did he go after he left there, do you know? A Well, I think he went to work for a man named Murphy and Landers, and 20 which of the two men, I do not know, but he went to work for either of them.

Q How long did he stay with them, do you know? A That I don't know.

Q Can you give it approximately, whether it was two or three months or two or three years?

A I cannot say that; I cannot say how long he was with either of those men.

Q Do you know where he went after that?

A I think he went up to 66th street and Third 30 avenue.

Q What was the nature of his work there?

Q What sort of an establishment? A A hotel and saloon—a hotel and cafe.

Q Do you know approximately when he left there? A I think he was there about two years.

Q And he was on West street about four years? A Yes.

Q And he went to West street the year after 40 he married? A Yes.

Katherine Anderson, direct.

Q And he married in 1890? A In 1890.

Q So that he was up on 66th street— A 66th street and Third avenue.

Q —to 1896—1896 or 1897? A Yes, I should judge that was the time; to the best of my belief, that is the time.

Q And he was there about two years; do you know where he went from there? A I think he went to work for a man named Paddell. 10

Q What kind of a place did Mr. Paddell have? A A rooming house and saloon.

Q Where was that located? A Corner of Bleecker street and Monetta lane or Monetta street.

Q In New York City? A Yes.

Q Do you know what his position was there?

Mr. Heyman. I object. 20

Q How long did he stay there? A Really, I didn't keep account of how long he stayed at places.

Q Do you know whether it was a year or two years? A I think it was about a year and a half—I think.

Q And he was manager of this saloon and rooming house down there? A Yes.

Q Do you know whether he was ever employed by a man named McCauley? A Yes. 30

Q Where? A Canal street and Lafayette place or South Fifth avenue. Canal and Lafayette place, that is it.

Q What kind of a place was that?

Mr. Heyman. Same objection.

Mr. Bishop. It does not appear that that was hearsay.

The Court. I will permit him to prove what kind of a place it was if he was em- 40

Katherine Anderson, direct.

ployed there. It is of no possible strength against you unless it is shown what he did there; but the fact of his employment there is a relevant fact in the case and I will permit it to be shown.

10 Q To the best of your recollection, he was with Mr. Paddell for a year and a half? A I think that was the time.

Q Do you know where he went after he left Mr. McCauley? A He was sick for six months in my house—about six months, and then I think he got a position at the bridge as cashier; that is right.

20 Q After he left McCauley, he was in your house sick for six months; then after that he got a position as cashier where? A Where the Brooklyn Bridge—a place named Andy Horn's—where the Municipal building stands now.

Q What sort of a place was that, a saloon, Andy Horn's? A Yes, a saloon and restaurant, I guess it was.

Q How long did he stay there, do you know? A I think over a year.

Q He was there over a year? A Yes.

30 Q During the time that you know Mr. Golden— A One minute, he went back to McCauley's after he got well, for a little while, and then McCauley failed and then he got this other position.

Q Do you know where any of these men that Mr. Golden worked for are to be found now? A No, I don't know of any one, only Mr. Burr, that is all.

40 Q Mrs. Anderson, during the time that you knew Mr. Golden, did you ever see him intoxicated? A Yes.

Katherine Anderson, cross.

Q How recently? A When he went on this last spree, I saw him then and he wasn't entirely over the effects of it; that was in November.

Q What year? A It will be two years next month.

Q That was November, 1914, then? A Yes.

Q Where did you see him? A In the Broadway Central. 10

Q That is a hotel here in New York? A Yes.

Q What condition was he in then? A He was very nervous and had the shakes after a spree; he couldn't stand and some doctor in the hotel, I think, was attending him.

Q Had you seen him intoxicated before that? A Yes.

Q How recently before then? A About a year before that. 20

Q That is, within a year from the time you last saw him in the Broadway Central Hotel you had seen him intoxicated? A Yes.

Q And on any other occasions before that? A No, because I didn't see him; he would be on—

Mr. Heyman. That is objected to.

Mr. Bishop. She said she didn't see him on any other occasion. "Because I didn't see him"— 30

Mr. Heyman. The balance is objected to.

Q You had seen him intoxicated, however, within a year from the time when you saw him in the Broadway Central Hotel? A Yes.

Q About a year before? A Yes.

Cross examination by Mr. Heyman.

Q What was the name of the man that had a saloon at Rector and Greenwich street? A Michael Shannon. 40

Katherine Anderson, cross.

Q Were you ever in his saloon? A No.

Q Were you ever in his saloon at 60 West street that Mr. Golden ran himself? A Yes.

Q Were you ever in the saloon of Murphy and Landers? A No.

10 Q The property at 66th street and Third avenue was a hotel? A Yes, that was a rooming house.

Q Do you know the name of the man that owned it? A No.

Q Were you ever in it? A I was upstairs, never in the saloon part of it. My daughter lived upstairs and I went up to see her there.

Q How many story building is that, do you remember? A No.

20 Q How many times did you visit your daughter there, approximately? A Maybe once a month.

Q Was Golden upstairs when you were there? A Yes, sometimes; not always.

Q Paddell's place was also a hotel, was it? A A rooming house.

Q Were you ever in that? A Yes.

Q Upstairs? A In my daughter's apartment.

30 Q That is upstairs? A Yes, sir.

Q Were you ever in McCauley's saloon? A No.

Q Were you ever in Andy Horn's saloon? A No.

Q Where was Golden living in November, 1914, if you know, Mrs. Anderson? A Broadway Central.

40 Q You went there to visit your daughter? A No, my daughter was dead; my daughter is dead.

Katherine Anderson, cross.

Q When you saw Golden there you say he was nervous? A Yes, I wanted to call the ambulance up for him to take him to the hospital.

Q You say that he was nervous?

Mr. Heyman. Now the next question, your Honor, was a conclusion on the part of the witness and I objected to it on the ground she was not qualified to state. Have you any objection to it being stricken out? 10

Mr. Bishop. I would like the Court to pass upon it—"I asked the doctor to stay with him all night."

Mr. Heyman. I ask to have that stricken out; also the statement that he had the D. T's.

The Court. I will strike that out, Mr. Bishop. 20

Mr. Bishop. I pray an exception to that. She owned a half interest in the saloon.

The Court. But that does not prove she ran the saloon or had ever seen anyone in a condition of that sort or knew anything about it. To just say that a person has something like that without giving any qualification for it at all I think is to express an opinion she is not qualified to express. 30

Q When you refer to having seen him intoxicated at the Broadway Central, you speak of one day that you visited there? A Yes.

Q During the time of that visit did you see him drink anything? A Yes, one drink.

Q Where was that? A He called it from the bar; he called on the telephone in the Broadway Central.

Q Were you in his room? A Yes.

Q You heard him call for a drink? A Yes. 40

Katherine Anderson, re-direct.

Q And do you remember what it was? A Whiskey.

Q Do you remember that distinctly? A Yes, distinctly.

Q Where was it that you saw him drunk a year before November, 1914? A In the Broadway Central.

Q Was your daughter alive then? A No.

Q You went to visit Golden? A Yes.

Q Where did you see him? A In his room.

Q And did you hear him telephone for a drink then? A No, not the first time.

Q I am talking about the year 1913 now. A No.

Q You knew that Golden was a member of a lodge, of The Maccabees? A Yes.

Q Did you tell Mrs. Hope that unless she shared the proceeds of the benefit certificate that she was to receive from The Maccabees on the death of her brother—that unless she shared the proceeds with you, you would try your best to see that The Maccabees didn't pay her? A No, sir; I did not.

Q Did you say anything like that to her? A No, sir.

Q Did you ask her for a share of the money? A Yes, I did.

Q What did you say to her when she refused to give it to you? A Just shrugged my shoulders.

Re-direct examination by Mr. Bishop.

Q You spoke of visiting your daughter at this rooming house or hotel in which Mr. Golden was employed; I think one of them was McCauley's? A Yes.

Q One of them was Landers'? A No.

Katherine Anderson, re-direct.

Q At which of the places where there are rooming houses or hotels running in connection with the place he was employed? A The one on Monetta Lane and Bleecker street; 66th street was the first, and Third avenue.

Q You went to visit your daughter there?

A Yes.

10

Q And did you see Mr. Golden there when you were there? A Yes.

Q Where did you see him? A He came upstairs to see me.

Q Did they have to send down for him? A Yes, my daughter did.

Q When you were there you say they sent for him? A Downstairs.

Q Was there a liquor saloon downstairs? A Yes.

20

Q You know that you saw it as you went in? A Oh, yes.

Q That was true of both the place on 66th street and the place at Monetta Lane and Bleecker street? A Yes.

Q How about Mr. Burr's place on South Fifth avenue? A Yes, that was a saloon.

Q You have seen that? A Yes.

Q That is Mr. Burr's place on South Fifth avenue, now known as West Broadway? A Yes.

30

Q He was employed at a place there, at this place of Mr. Burr's? A Yes.

Q Were there any rooms or apartments in connection with that place? A That I don't know.

Q You never visited them there? A Oh, yes, when my daughter lived there I did.

Q They lived over the place where he was employed? A Yes.

Q You visited them there? A Yes.

40

Katherine Anderson, re-direct.

Q What kind of a place was that; what sort of business was conducted there? A As far as I knew, it was a saloon and eating place.

Q You have seen the place, of course? A Yes.

10 Q You have been there? A Yes, I was in the saloon in that place.

Q You were? A Yes.

Q Did you see him in there? A Yes.

Q What was he doing in there? A He was tending bar at one time, and another time he was outside.

Q Did you ever see him going in and out of any saloons—any of these places where he was employed? A No, he generally was in the place; I was the visitor and I went out.

20 Q I show you a letter here and ask you if you recognize that handwriting? A This looks like Sarah Golden's writing—Sarah Slattery's writing; it is the same writing as I have got here in my letters.

Q By what name is the letters you have in your hand signed? A Sarah Golden Slattery Hope.

Q Mrs. Hope, you say, was Mr. Golden's sister? A Yes.

30 Q Was she married before she married Mr. Hope, to someone else? A Yes.

Q To whom, do you know? A A man named Slattery.

Q When he died she married Mr. Hope? A I only heard she married Mr. Hope; I don't know anything about that; I never saw him.

Q You understood that she is— A His wife.

Q She calls herself Mrs. Hope? A Yes.

40 Q And that letter is signed by her? A Yes.

Anna Kennedy, direct.

Q Just give the date of that letter. A 10-28-1915.

Mr. Bishop. I ask to have that letter marked for identification.

(Letter headed 201 Clerk Street, Jersey City, 10-28-15, addressed Mr. Joseph Koch and signed Sarah Golden Slattery Hope marked Exhibit D. 1 for identification.) 10

Q I show you another letter dated May 2nd, 1915, and ask you to state to whom it is addressed. A This letter is addressed to myself.

Q By whom is it signed? A Sarah Slattery—S. M. Slattery.

Q Is that in the same handwriting as this letter which is signed Sarah Golden Slattery Hope and marked Exhibit D. 1 for identification? 20

A I am no judge that way; it looks like it; it certainly is; the letters are the same.

Q Are they both headed from the same address? A Yes.

Mr. Bishop. I ask to have this letter dated 5-2-15, written from 201 Clerk street, Jersey City, addressed to Mrs. Anderson and signed S. M. Slattery, marked for identification.

(Mr. Bishop reads the testimony of Anna Kennedy, as follows): 30

ANNA KENNEDY sworn for defendant.

Direct examination by Mr. Bishop.

Q Mrs. Kennedy, where do you live? A 128 Berkeley Place, Brooklyn.

Q With Mrs. Anderson? A Yes.

Q How long have you lived with her? A I lived with her for the last thirty-seven years. 40

Anna Kennedy, direct.

Q Were you acquainted with her daughter?

A Yes.

Q And her husband, Mr. Golden? A Yes.

Q Did you know Mr. Golden before his marriage? A Only about a year.

10 Q You knew him for about a year before his marriage? A Yes.

Q He was married in 1890, I understand. A January 14, 1890.

Q So you met him some time before? Some time early in 1889? A Yes.

Q Have you known him continuously since that time? A Yes.

Q Did you see him during all that time from time to time? A Yes.

20 Q Were you related to his wife? A Her aunt.

Q And during her lifetime you kept in touch with her and her husband? A Yes.

Q And went to see them from time to time? A Yes.

Q Where did you go to see them? A Everywhere she lived.

Q Did you ever go to 66th street and Third avenue? A Yes.

30 Q What sort of an establishment was that there? A It was a saloon, I guess, and restaurant attached, because he was always in that business; they were connected—restaurant and saloon.

Q Do you know where he was employed at the time of his marriage? A Yes.

Q Where? A Corner of Rector and Greenwich.

40 Q What sort of a place was he employed in? A Just a saloon.

Anna Kennedy, direct.

Q Do you know in what capacity he was employed there? A Bartender.

Q Did you ever see him go in or out of that place? A Yes.

Q Do you know how long he continued there?
A A year before his marriage, and then about six or eight months afterward, I should judge. 10

Q Where did he go when he left that place?
A The same employer; he put him in a store in Brooklyn for a short time. I think he was there only a month or two.

Q Then where to? A To 60 West street, his own place.

Q What sort of a place was that? A Saloon.

Q Did it have any restaurant or hotel connected with it? A No. 20

Q Simply a place for the sale of liquor? A Yes.

Q Did you ever see that place? A Yes.

Q Were you ever in it? A Not in the saloon; I stood and looked in, but I was upstairs in his home.

Q He lived over it? A Over it.

Q You have been upstairs in his home? A Yes. 30

Q Have you ever seen him going in or out of that place? A Yes.

Q How often did you see him go in or out of it? A I didn't live down there or right near it, only one time I was there I saw him.

Q You have seen him in the place? A Yes.

Q You say you looked in? A Yes.

Q How long did he remain at 60 West street?
A I think between three and four years, to the best of my knowledge. 40

Anna Kennedy, direct.

Q That takes it down to 1894 or 1895, because he was married in 1890? A Yes.

Q Then it was a year before he went to West street? A Pretty near a year.

10 Q That would make it about 1890 or 1891 that he went in business there? A Yes, about that time, around the last months of 1890 or the beginning of 1891.

Q And he was there for three or four years? A Yes.

Q What year does that bring it down to? A I should think it would bring it down to 1893 or 1894—1894 I should judge.

Q Then where did he go in 1894, when he left West street?

20 *Mr. Heyman.* All this, of course, is before the issuing of the policy in 1897. The same objection, and your Honor will restrict the effect of this testimony just to fix the date?

The Court. Just to fix the date from which she computes to show whether she is accurate or inaccurate, that is all.

30 A He went out of business and lost that place; he went to work, I believe, as near as I can recall, for a man named Murphy on State street.

Q New York or Brooklyn? A New York.

Q What did he do for Mr. Murphy? A Bar tend.

Q Did you ever see the place where he worked? A No, that place I didn't go in; I knew the saloon was there, but he didn't live there.

40 Q Where did he go from there, if you know? A To a place on South street, a man named Landers.

Anna Kennedy, direct.

Q Was that a saloon? A A saloon.

Q No restaurant? A So far as I know; I never was there.

Q Have you ever seen that place? A I saw the saloon, but I never was in there.

Q Did you ever see him go into it or come out of it? A No. 10

Q Where did he go from there? A 66th street and Third avenue.

Q About how long was it before he went up to 66th street after he left his own place? A I don't think that was over a year or two; I don't think it could be.

Q About a year? A I think he was only a short while in this place.

Q Then he went up to 66th street and Third avenue? A Yes. 20

Q Did he live there? A Yes.

Q He lived at the same place in which he was employed? A Yes.

Q What sort of a place was that? A It was a saloon and cafe or restaurant. I think they had furnished rooms upstairs.

Q You know they had a saloon on the first floor? A Oh, yes, the saloon was there.

Q You have seen that? A Yes.

Q And you have been upstairs to his apartment? A Yes. 30

Q Did you ever see him there? A I saw him in the saloon from the street.

Q Did you ever see him go in it or come out of it? A No, that I cannot say; it was some time ago, I cannot remember that exactly.

Q What was he doing when you saw him in there? A Behind the bar.

Q How long did he stay at 66th street and Third avenue? A I don't think he stayed 40

Anna Kennedy, direct.

there very long, because he came down to Monetta street; I don't think he was there over a year; he may have been or may not; that I cannot say positively.

Q To the best of your recollection, about a year? A About that, I think.

10 Q So that after he left West street in 1894 he spent about a year working for Murphy and Landers? A Yes.

Q And then he went up to 66th street? A Yes.

Q That would make it about 1895 that he went to 66th street? A 1895, I guess so.

Q Then he stayed there for a year? A Yes.

20 Q When would that bring it down to that he left 66th street and came down to Monetta? A About 1896.

Q What sort of a place did he have in Monetta Lane and Bleecker street? A That was a rooming house and saloon.

Q Have you ever been there? A Yes.

RECESS.

Q You visited them there? A Yes.

30 Q You saw this saloon there? A Yes.

Q Did you ever see him in the saloon? A I saw him inside there.

Q Did you ever see him go into it? A Yes; I have seen him go into it.

Q Did you ever see him come out? A Yes, up the back way, up to his apartment, but not out on the street.

Q You have seen him in there? A Yes.

40 Q How did you see him? A I think he was in front of the bar that day when I saw him.

Anna Kennedy, direct.

Q Where were you? A On the sidewalk, going to his house; I could see in. You can see in.

Q How long was he there? A I think about a year or so; I cannot say that for sure.

Q What is the best of your recollection of it?
A About a year or so, maybe more. 10

Q When would that bring it down to? A I think he was there—he was there around in 1897, that I know; wait a minute, there was another place he was in on that street—the place I never was, I don't know; it was after that, though; they didn't always live in that place, because they lived in Morton street at one time; they went to live there afterward. When he first went to the place on Bleecker and Monetta street they didn't live there right away; they went there after; they lived in Morton street. 20

Q Then afterwards they lived at the same place where his work was? A Yes.

Q During all this time you were acquainted with him and visited him and his wife from time to time? A Yes.

Q And you continued to keep in touch with him afterward? A Oh, yes.

Q How often did you see him? A Where? 30

Q After they left this place in Bleecker street? A I saw him probably once a month; maybe once a week.

Q Did you ever see him intoxicated? A Oh, yes.

Q When was the last time you saw him? A The last time, that was—that is a good while since I saw him intoxicated, because I didn't go near him; the last time I saw him intoxicated was in about 1904; that is the last time I saw him really intoxicated. I have seen him with the 40

Anna Kennedy, cross.

sign of liquor on, but really intoxicated was about that time.

Q Where was that? A In Brooklyn, and he was suffering from the effects of drink, a spree.

Q Where in Brooklyn? A In Carroll street, where they lived.

10 Q At his home? A Yes.

Q You went there to visit him at that time? A Yes.

Q Did you ever see him drink anything? A Oh, yes.

Q What did you see him drink? A I saw him drink whiskey, and I saw him drink beer.

Q How recently did you see him drink either of these things? A I cannot say that.

20 Q In the last five years? A No, not within the last five years.

Q Within the last ten? A Yes.

Cross examination by Mr. Heyman (read by Mr. Heyman).

Q What relation are you to Mrs. Anderson?

A A sister.

30 Q When you went to visit your niece while she was living at 66th street and Third avenue, what did you do, walk up to the door and open the door and look in the saloon? A The door was open, I guess; may be I could see in over the door.

Q You don't remember— A I don't remember that; I may have looked in and said How do you do, John, and gone upstairs.

Q But you do not remember the occasion? A Knowing that I saw him, I just don't know how I saw him, but I know I saw him in there.

40 Q You have no distinct recollection of actually looking at him and talking to him? A I

Anna Kennedy, cross.

positively have a distinct recollection of looking at him.

Q When was that, do you remember? A While they lived there, corner of 66th street that you spoke of.

Q And do you remember whether it was through the door or one of the windows that you saw him? A Through the door, most likely. 10

Q Was it a door with a glass panel in it or was it a door entirely of wood, or what was the construction of the door, as nearly as you can remember? A I believe they all have glass doors; you cannot see through the wood.

Q Do you remember whether the glass was transparent? A Positively.

Q Whether there were any shades behind it to obstruct the view? A That I don't know; I never paid so much attention as all that to it. 20

Q Have you any recollection of the occasion when you saw him in the saloon at Monetta street? A Yes.

Q Did you look through the door or through the window? A Through the door; I think the day that I saw him—the twice that I saw him there, the door was a swinging door.

Q You peeked over the door? A You didn't have to peek over; I could look right in; I could see his head over the door. 30

Q So that the top of the door was not as high as your eyes? A Perhaps I toptoes; I don't remember that.

Mr. Bishop. The re-direct examination is all subject to your objection.

If the Court please, this witness testifies that Mr. Golden told her his age. Now while that is in one sense hearsay, it is an 40

Sarah M. Hope, direct.

admission I suppose made by a deceased person. I think it is admissible.

Mr. Heyman. I object on the ground that it is hearsay.

The Court. I do not think it is hearsay, and I will admit it.

10 *Mr. Heyman.* That was not re-direct and was not proper to be asked at that time, and I object on that ground.

The Court. The objection is placed on the ground that it is hearsay. You cannot put it on different grounds now. I do not think it is hearsay; it is an admission.

Mr. Heyman. I ask that my objection be noted.

20 *Re-direct examination* by Mr. Bishop.

Q Do you know how old Mr. Golden was when you met him? A I do know that he was twenty-six.

Q How do you know how old he was? A What he told us.

Q That is the only knowledge you have of his age? A That is all, what he told us when he married.

30 SARAH M. HOPE recalled.

Direct examination by Mr. Bishop.

Q I show you letter bearing the heading 201 Clerk street, Jersey City, 10-28-15, addressed to Mr. Joseph Koch, and signed Sarah Golden Slatery Hope. I ask you if that letter is in your handwriting. A It is.

Q Did you write that letter? A Yes, sir.

40 Q Do you live now at 201 Clerk street? A Yes.

Sarah M. Hope, direct.

Mr. Bishop. That is defendant's Exhibit D. 1 for identification.

Q I show you another letter dated 201 Clerk street, Jersey City, 5-2-15, addressed to Mrs. Anderson, and I ask you if that is in your handwriting? A Yes, sir.

Q And you wrote that on the date stated? A Yes. 10

Mr. Bishop. I ask to have both of these marked in evidence.

Mr. Heyman. I object to the admission of both of them. They are absolutely immaterial and irrelevant to this issue.

Mr. Bishop. One of them I have no objection to being excluded. This one, however (shows it to the Court)—the last paragraph. 20

The Court. Why isn't the last paragraph an admission by one of the parties in interest with respect to the conduct of the deceased in a particular material to the issue?

Mr. Heyman. I did not notice that.

The Court. That letter I will admit for that purpose. The other is out by consent. (D. 2 marked in evidence.) 30

Q You were a sister of Mr. Golden? A Yes.

Q Before your marriage you were known as Sarah Golden? A Yes.

Q Was he older or younger than you? A Older.

Q Do you know where he was born? A I heard my mother say he was born in Roundout, New York. 40

Samuel H. Burr, direct.

Q What was your mother's name? A Sarah Golden.

Q What was your father's name? A Peter Golden.

10 Q What was your mother's name before she was married, do you know? A Sarah Dougherty.

SARAH HOPE recalled.

By Mr. Bishop.

Q Are you familiar with your brother's handwriting? A I have his handwriting here in 1897.

Q Is that in your opinion his signature (indicating)? A No, sir.

20 Q Is that (indicating)? A Not as I know it in '98. I have it here.

The Court. You will have no difficulty. You can surely call some teller at a bank in the immediate neighborhood here, or some one who is acquainted with handwriting, and ask him whether those two, in his opinion, were written by the same party, after you have qualified him. You are not shut out in your evidence.

30

SAMUEL H. BURR sworn.

Direct examination by Mr. Bishop.

Q Mr. Burr, did you know William J. Golden in his lifetime? A Yes.

Q How long did you know him? A About thirty years.

40 Q Where was he employed when you first became acquainted with him? A At a place called Lander's on South and Morris street.

Samuel H. Burr, direct.

Q What did he do there? A Why, I think he was a bartender, as far as I know; he was a man, a fine fellow; I know that.

Q A friend of yours? A Who?

Q Golden. A A friend. I would like to have another one like him. A man that never told a lie as far as I know. They're pretty hard to pick up. 10

Q He was employed when you first became acquainted with him for Landers as a barkeeper, was he not? A I think he was.

Q Do you know what year that was? A Why, that was in the early nineties.

Q How long did he continue in that employment? A I could not tell you.

Q What is the best of your recollection? A I could not tell you how long he was there; I suppose he was there about a year or two; I could not tell you exactly the data you want, but I can generalize on it. 20

Q Were you acquainted with him while he was in a place of his own? A No.

Q You are in the liquor business, are you not? A What is that?

Q I say you are in the liquor business? A Well, some people would say so; some people say I am a capitalist; some people say I am a mine owner, and some people say I am a lumberman. I don't know exactly what I am. 30

Q You own and operate a number of saloons in the city of New York, do you not? A No; I do not.

Q Did you at one time? A I kept my word one time with a man, which brought me in a position that I had to buy his interest out and I had to operate a number of saloons, and I did not know anything about the saloon business. 40

Samuel H. Burr, direct.

Q But you did at one time own and operate a number of saloons? A I just said that was the way that I got in the saloon business.

Q Then you were in the saloon business? A Absolutely.

10 Q How long? A Oh, for a number of years, till I could sell them out.

Q When did you sever your connection with the last one? A Oh, about two years ago or so.

Q About two years ago? A Yes.

Q Did you employ Golden? A I certainly did.

20 Q In connection with these saloons? A I employed Mr. Golden to take care of the collections of money from the cash registers and to collect the rents of the buildings. He was a special man that I had to take care of that interest—a man I could depend on.

Q How long did he continue in that employment? A Why, up till within about two years of his death.

Q Up to within about two years of his death, that is up to about four years ago? A Yes.

30 Q No; he died a year ago. A Well, I think he died—he continued up till about November of 1914, I think.

Q Up to November of 1914? A I think that is about right; I do not know positively.

Q Did you ever employ him after that? A No; he was not fit to be employed by anybody because he was absolutely incapacitated to work; he had locomotor ataxia, couldn't hardly walk.

Q He did not exercise any employment after that, did he? A Pardon me?

40 Q He did not exercise any employment? A He could not work at all.

Samuel H. Burr, direct.

Q From the time he left you up to the time he died? A No.

Q Did you ever see Mr. Golden intoxicated? A Yes.

Q How many times? A Once, when with Mrs. Anderson.

Q On what occasion was that? A Well, I 10
do not know whether it was a birthday or a holiday or what it was, but I remember—

Q What date was it? A I could not remember what date it was, man dear.

Q Where was it; do you remember that? A Yes, I do. You have the records of that right there in the statement made under oath.

Q I am asking you. A I know you are. That was in West Broadway and Bleecker street, if I remember right, in a restaurant. 20

The Court. South Fifth avenue hotel?

A No; it is a magnificent place there; it cost about \$30,000; it is a restaurant and cafe on the northeast corner. The South Fifth avenue hotel is on the southwest corner; that is a lodging house.

Q It was not on the occasion Mrs. Anderson testified to in the Broadway Central hotel? A What is that? 30

Q You did not see him on the occasion Mrs. Anderson refers to while he was in the Broadway Central hotel, did you? A I never saw him in the Broadway Central hotel.

DEFENDANT RESTS.

Sarah M. Hope, direct.

REBUTTAL

SARAH M. HOPE recalled.

Direct examination by Mr. Heyman.

10 Q During the year and a half before your brother's death where did he live? A With me.

Q Where? A 201 Clerk street.

Q During that time was he employed anywhere? A Not for a single minute.

Q In 1897 where did you live? A Brooklyn, New York.

Q When did you move to Jersey City? A In June, 1898.

20 Q In 1898 where did your brother live? A Why, he lived in—I think to the best of my recollection he lived on the corner—

Mr. Bishop. I don't want anything this witness thinks. I object to this.

The Court. She has got to think to talk. I suppose she is entitled to give her best recollection of it. That is all anybody can do. I will permit it.

Mr. Bishop. All right.

30 A At Monetta Lane and Bleecker street.

Q In 1897 what was your brother's employment? A Tobacco salesman.

Mr. Bishop. I move to have that stricken out on the ground there is no qualification of the witness shown. She has not shown any knowledge of his employment.

40 *The Court.* It does not require any qualification except the qualification of knowledge. She may have been with him when he was selling tobacco. She may have known in any number of ways.

Sarah M. Hope, cross.

Cross examination by Mr. Bishop.

Q Is your knowledge of your brother's employment based upon what he told you? A Yes, and what I saw.

Q Do you know that he had any other employment? A I do not, except that he was— 10

Mr. Bishop. I move to strike that out as hearsay.

The Court. It does not appear to be entirely hearsay.

Q What did you see? A I saw the samples of tobacco he carried around with him.

Q Did you ever see him sell any? A I did not see him selling any, but he brought them over to my husband and in my presence told him that was his line of business at the present time. 20

The Court. That is all you know of it?

A That is all I know of it.

The Court. I will strike it out. I will permit it to stand that he did bring home samples of tobacco, but beyond that there is nothing except what he told her husband.

By Mr. Heyman.

Q In this letter D. 2 which you wrote to Mrs. Anderson, where you said: When I saw him at the hotel and told him I would give him a home until he recovered a little from his spree, does that spree refer to the occasion that Mrs. Anderson spoke of at the Broadway Central hotel? A No, sir. 30

Q What spree is this that you mention? You say you saw him at the hotel. What hotel was that? A Broadway Central. 40

Sarah M. Hope, cross.

Q And that is the time that Mrs. Anderson was there? A I haven't any recollection; he did not mention to us that she was there.

Q What year was that, do you know? A That was in 1914.

10 Q Did you ever see your brother drunk outside of this one occasion that you mention as a spree? A I did not see him drunk then.

Q Why did you use the word spree? A I did not see him drunk; he was nervous.

By the Court.

Q What do you mean by a spree? Do you call a man who is nervous on a spree? A Why, no; I don't.

Q What do you mean by a spree? A He had not been working.

20 Q Do you think a man is on a spree because he is out of work? A Well, I don't know.

Q What is a spree? You know what a spree is, don't you? A A heavy drunk; but he was not.

Q What do you mean by calling it a spree in your letter? A Why, unless it was the after effects of it. I did not see him at any time in my life drunk, that I could say positively that he was drunk; never in my life.

30 Q Did you ever see him recovering from the effects of a drunk or a spree outside of this one occasion that you mention in your letter? A Never. Never.

By Mr. Heyman.

Q During the time that you lived in Jersey City how frequently did you see your brother? A Well, I had four small children and I could not go very often; I should say about once every

40 two or three months.

Anna C. Golden, direct.

Q Did you ever see him tend bar? A Never in my life.

Q Did you ever see him do any work in a saloon in any way? A Never.

Q I show you a paper and ask you if the name Katherine Anderson is Mrs. Anderson's handwriting? A Well, that I could not say, because I never saw her handwriting. 10

ANNA C. GOLDEN, sworn.

Direct examination by Mr. Heyman.

Q You are a sister of Mrs. Hope? A Yes, sir.

Q In 1897 do you know what your brother, William J. Golden's, employment was? A Yes, I heard him say that he was in the cigar business. 20

Mr. Bishop. I move to have that stricken out as hearsay.

The Court. It will be stricken out.

Q Don't tell us what you heard him say; tell us what you saw, if you saw anything. A I have been at my mother's house when he came there with cigars and he said that was his line of business; he had them in his grip. 30

The Court. That is stricken out.

A What I saw I saw. He opened the grip.

The Court. Don't tell what you heard him say; only what you saw.

Q How often did you see him with this grip and the cigars? A About once a week. He called on my mother.

Q Did you ever see your brother drunk? A No, sir. 40

Anna C. Golden, cross.

Q Did you ever see your brother drink at all? A I have had lunch with him. I have seen him drink a glass of milk, sometimes vichy, sometimes a glass of beer.

10 Q Do you know whether your brother was employed or not for a year and a half before his death? A No; he was not.

Q Where did you live for that last year and a half? A With my sister, 201 Clerk street.

Q Mrs. Hope, do you mean? A Yes, sir.

Q From 1897 down to the time that he stopped working did you ever see your brother tend bar or work in a saloon? A No, sir.

Q Do you know what he did do after he gave up the cigar salesmanship?

20 *Mr. Bishop.* I would like that question to be answered yes or no.

The Court. Just answer yes or no.

A Real estate for Mr. Burr.

Q Do you know?

The Court. That is stricken out. Don't you understand language?

A Yes, I do.

Q What was it that he did?

30 *Mr. Bishop.* I would like to cross examine on her knowledge.

The Court. You may.

Cross examination by Mr. Bishop.

Q Upon what is your knowledge as to your brother's employment based? A On what I I have seen him do.

40 Q What you have seen him do? A And what he told me, what business he was in; I have seen proofs of it.

Motion for direction of verdict.

Q What did you see him do? A When he came to see my mother he used to have these cigars in his grip, and state that was his business.

Q That is not work you saw him do. I want to know what employment you saw him exercise, what work you saw him do. A Mother has often invited him up to lunch, and he managed this restaurant for Mr. Burr and we had lunch there and his apartments were upstairs. 10

Q But you did not see him doing any work? A No.

Q Never saw him do any work, did you? A No; I do not know that I did.

Q And the only knowledge you have as to what work he did is based upon his statements to you, is it not? A Yes, that is all. 20

TESTIMONY CLOSED.

Mr. Bishop. I wish to move for a direction of a verdict in favor of the defendant in this case. It appears from Mr. Golden's application that he agreed not to engage in any occupation which at the time thereof was prohibited by the laws of the order which he joined or which thereafter might be prohibited by those laws, and agreed that in the event of his so engaging his benefit certificates should become null and void. He also stated in his application that the application and the laws of the supreme tent of the order should form part of the contract and that he and his beneficiary should be bound by them. One of those laws was that he should not at any time become addicted to the intemperate use of intoxicants. The others were that he should not be employed as a liquor salesman, as a collector for a liquor dealer or a saloonkeeper in a place 30 40

Motion for direction of verdict.

where liquor was sold. The evidence shows without any contradiction that he was so employed for a long period of time and up to within about a year and a half of his death. There is no contradiction of that at all. The evidence further shows that on three or four occasions at
 10 least he was intoxicated. Mrs. Anderson saw him intoxicated, Mrs. Kennedy saw him intoxicated. Mr. Burr saw him intoxicated, and the plaintiff writes that she will keep him until he recovers from a spree, and defines a spree as a prolonged drunk.

The Court. Not that spree.

Mr. Bishop. Not that spree, but a spree. She says that is what she means by the use of the word spree.

20 *The Court.* She said that is what the word spree means, but that she did not mean it by that word. That is the way she gave her testimony.

Mr. Bishop. Well, I understood that she said that was what the word meant.

The Court. That is what she said she understood the word to mean generally, but she did not mean it here; that she never in her life had seen him drunk.

30 *Mr. Bishop.* I know she said she never had seen him drunk.

The Court. If she never had seen him drunk she would not be apt to see him recovering from a drunken spree.

Mr. Bishop. Well, she had apparently knowledge enough to state that he had been on one. However, she satisfied herself of the fact I do not know, but she did say it. Aside from that it appears from the testimony of the other witnesses that he was on some occasions intoxicated.
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Motion for direction of verdict.

The Court. Suppose it appeared that the man was on some few occasions intoxicated, do you think that that as a matter of law must be declared by the court to be an intemperate use of intoxicants?

Mr. Bishop. I should think so.

The Court. Probably you have some authority on that point. Suppose a man had been drunk twice in his life, do you think that man would be addicted to the intemperate use of intoxicants?

10

Mr. Bishop. I think that intoxication is always intemperance—due to the intemperate use of intoxicants.

The Court. Well, I don't think if a man runs along a period of several years straight and falls suddenly off the wagon and gets drunk twice that that avoids his policy of insurance. At least I am not going to hold that until some court of authority says so. I do not believe that that is the law.

20

Mr. Bishop. That disposes of that point. There remains, however, the prohibited occupation, as to which there is no contradiction, and the defense suggested by counsel in his opening to that—

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The Court. What is the exact language of that rule or law with respect to being employed by a liquor dealer?

Mr. Bishop. Bartenders, liquor salesmen and collectors for liquor houses and breweries, bottlers, all persons employed in and about saloons and bars in hotels and restaurants, all persons employed in and about breweries, except the office force and general superintendents.

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Motion for direction of verdict.

The Court. Well, do you think it appears so absolutely clear that I must hold that he comes within any one of those?

10 *Mr. Bishop.* I think he is a person employed as a collector for a liquor dealer. Mr. Burr testified he was in the saloon business for a long time. He employed this man to collect the rents and receipts from the cash registers of these saloons.

The Court. Not in the saloon, I do not think he said. He said the receipts from the cash registers of the saloons.

Mr. Bishop. Of these saloons.

The Court. Yes. Now he may never have been employed in or around or near a saloon or he may never have gone in one.

20 *Mr. Bishop.* But that, I think, brings him within the designation of collectors for liquor houses.

30 *The Court.* I think a collector for a liquor house is pretty generally understood by people to mean a man who goes around to saloons and makes collections of moneys due for beer sold or liquor sold; in fact, so commonly is that recognized as being the meaning of it that when-
 ever a man says he is a collector for a liquor
 40 house you know precisely what he means. The word "collector" there probably is used in the sense and subdued by the kind of thing that the parties had in their mind; a man who goes to a saloon for the purpose of collecting money there, where it is generally understood that he is supposed to make rather a good fellow of himself while he is there so as to retain the custom that his employer has; and that is in large measure what I have been led to believe—although I do

Motion for direction of verdict.

not say it as a matter of fact—but that is what I have been led to believe the collector is ordinarily supposed to do.

Mr. Bishop. The language here is different in several places. One of the designations is “anyone who is engaged, either as principal, agent or servant, in the handling or sale of spiritous, malt or vinous liquors as a beverage.” 10
Now this man collected the receipts from places where those liquors were sold.

The Court. He surely does not come within any of those.

Mr. Bishop. I think so.

The Court. I do not think so. You see, everything in this policy is to be taken most strongly against the concern which put it out under the generally accepted rules of construction. 20

Mr. Bishop. This man was employed in and about a saloon on Monetta lane which Mr. Burr said he owned, a saloon on Bleecker street and South Fifth avenue which he said he owned. He lived there; he had to be sent for when these people went to visit him, and I think that evidence all shows that he was employed in connection with the liquor traffic, in an employ which was prohibited by the laws of this organization. Now there is not any suggestion in the evidence at all that the organization ever knew it or had in fact ever accepted any money from him with knowledge of it, and he is chargeable under the cases with knowledge of the laws of the corporation of which he became a member; and I therefore feel that under the evidence in the case the defendant is entitled to a direction. 30

I would further call your Honor’s attention to the fact that Mr. Golden in his application states his age at his last birthday as twenty-nine years. 40

Motion for direction of verdict.

That was in 1897, but in 1890 when Mrs. Kennedy first met him—she said she met him in 1889 or 1890—at that time he stated his age as 26; yet he calls himself 29 in his application. Now the date of his birth stated in his application is the 22nd of February, 1868. It appears
 10 however from the evidence that he was baptized on the 21st of November, 1864. On that ground also I think that is a material breach of his stipulation that the statements in his application are true.

The Court. Well, I suppose that the situation presented by that phase of your argument is this, that *prima facie* the age stated by him in his application is his age, and if you are to prevail against his representative because that
 20 is not his age the burden of establishing that is not his age rests upon you, and therefore the issue of what his age is is an issue that I must submit to the jury with the *prima facie* truth of his statement, because fraud is never presumed, it must be proved, and you cannot even succeed except upon the establishment of fraud in that representation—bad faith in the statement.

Mr. Bishop. There is no contradiction of the evidence of the baptismal certificate.

30 *The Court.* He did not make the baptismal certificate and his parents did not represent it in the baptismal certificate. There is no evidence that the party represented that to be his age. That is a baptismal certificate made by the priest.

Mr. Bishop. That is evidential not because it states any date upon which he was born but because it shows the date on which he was baptized.

40 *The Court.* What has that to do with it?

Motion for direction of verdict.

Mr. Bishop. He was baptized; that is not based upon statements made by his parents to the priest or anyone else; that is the certificate of the priest who baptized him, and he was baptized four years before he said he was born.

The Court. I understand that.

Mr. Bishop. There is no contradiction on that at all. It seems to me as a matter of law that must be taken to be a fact. 10

The Court. Well, sometimes the records are not absolutely correct on the subject. It is not the record of a court; it is the mere record of a parish register, and they, to say the least of them, are very rarely admissible, and it is only upon proof of the requirements that they shall be kept and how they shall be kept and by whom, concerning which there is nothing in this case. 20
If Mr. Heyman had put his objection to the admissibility of that register or that excerpt from the register upon the ground that you had not proved it and laid a proper foundation for it I should have sustained it, because you woefully failed to show the elements that are necessary to admit such an instrument in evidence. In our own Court of Errors and Appeals the rule is stated this way. Quoting from cases, it says:

“Church registers are not admissible in evidence except by statutory provision unless the law of the country or state in which they are kept recognizes them as documents of an authentic and public nature. In the case of *Hunt v. The Order of Chosen Friends*, 64 Michigan 671, the Supreme Court stated a somewhat different rule and held that a copy from the register of a Catholic church showing the baptism of a deceased party and reciting the names of the parents and other description and a statement 30 40

Motion for direction of verdict.

of the age of the person baptized, supported by evidence, and proof that such a record was required by the rules of the church, which record is thirty years old, is admissible as evidence of the age. Applying either of the above tests of admissibility, the incompetency of the deposition in question becomes apparent, for it fails to show by what law or authority the registry was kept or by whom kept; neither does it state to what religious denomination the church belonged," and so on.

10 *Mr. Bishop.* That is all covered by the deposition which with Mr. Heyman's consent went in.

The Court (after argument by Mr. Heyman). I think, Mr. Bishop, I am going to let this case go to the jury and let them decide it, and if I am wrong it is easily corrected.

20 *Mr. Bishop.* I pray an exception.

The Court. Yes; you may have an exception entered on the record.

(Counsel sum up.)

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*Charge to Jury.***Court's Charge to the Jury.**

Gentlemen of the Jury:

This suit is brought by Sarah M. Hope, plaintiff, against The Order of The Maccabees, and is brought on a policy of fraternal benefit insurance, and the object of the suit is to recover \$1,850 which is the balance of \$2,000 which the plaintiff says the benefit order agreed to pay to her brother by this policy at the rate of \$50 a month during his lifetime, and the balance due, if any, after he should die, to be paid to his representative. Now the plaintiff made out her claim by producing her certificate of insurance, the policy, and proving that to have been executed and that the payments on it were only \$150, leaving a balance of \$1,850 to be paid; and that then put it up to the defendant to show some reason why that \$1,850 should not be paid. The defendant was obliged to establish by the burden of proof, or what is known as the greater weight of the evidence, that some obstacle existed which prevented it legally from making such payment or which permitted it legally to refuse such payment; and the defendant said that there were three reasons why this money should not be paid to the representative of the deceased. The first one was that he had misrepresented to the company, in order to procure his policy of insurance, his age at the time he made his application, and secondly they said that he had engaged in an occupation which was prohibited by the policy of insurance, and thirdly they said that he had been addicted to the use of intoxicating liquors and had indulged in their intemperate use. Now, any one of those defenses, if it were made out by the greater

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Charge to Jury.

weight of the evidence, would avoid this policy and would be a complete and absolute defense to the defendant against the payment. At the conclusion of the case the counsel for the defendant asked me, sitting as the court, the judge, to direct a verdict in favor of the defendant, and

10 I decided that I would not do so. I want to indicate to you gentlemen that that decision and the discussion that took place between the counsel and me while that decision was being made is not in any way to have any influence upon your minds in determining the real question, because the question that was then being argued between counsel and me is an entirely different question from the ones which must be decided by you. That was simply settling what must be

20 done by me as a matter of law and saving that I was going to leave the matter of fact to you, who, under our system of jurisprudence, are the sole judges of fact and those by whom the fact alone must be determined. So that that decision is just as if it were not, so far as you are concerned, and you are to take the case on the facts as they have been developed from the witness stand and in the written testimony and exhibits that have been produced here and say whether

30 plaintiff or defendant, is entitled to this verdict

Now, first of all, gentlemen, I have been requested by both sides to make certain charges to you as bodving forth the rules of law which will govern you in determining this controversy, and I am going to charge those requests, and when I think it necessary use a word of comment about them, if I think it will clarify the situation, and in that way bring to your minds precisely what each party contends and what

40 each party is entitled to have you use as the de-

Charge to Jury.

termining principles of the law which will govern you in the settlement of this case.

The defendant has requested me to charge that:

“The provisions of Mr. Golden’s application for membership in defendant and of the laws of the defendant in force when Golden became a member thereof, and of all amendments, supplements or alterations thereto, are a part of the contract between Mr. Golden and the defendant, and are binding upon the plaintiff who brings suit to recover the amount alleged to be due upon this policy.” 10

I charge you that the whole situation, commencing with the application, was one transaction and that these things to which I have directed your attention, the application for the insurance and all the amendments and supplements or alterations to the contract, whether by way of by-laws or otherwise, as they have been produced here, are binding in this case, and the plaintiff must be held subject to them in her assertion of her right. 20

Secondly, I am requested to charge by the defendant, and do charge, that:

“If Mr. Golden was at the time of his application for membership in the defendant or at any time thereafter engaged in any employment prohibited by the laws of the defendant, his benefit certificate was forfeited and became null and void and the plaintiff cannot recover thereon.” 30

And in connection with that I charge you also the request of the plaintiff, that:

“Merely occasionally engaging in a prohibited occupation does not constitute such an engage- 40

Charge to Jury.

ment therein as is prohibited by the contract. In order to constitute a defense, it must be proved that the prohibited occupation was a usual work or employment of the deceased."

I am requested by the defendant to charge you, and do charge you, that:

- 10 "If Mr. Golden at the time of his application for membership in the defendant or at any time thereafter was employed or engaged in the manufacture or sale of malt, spiritous, vinous or brewed liquors or other intoxicating beverages, this constituted a breach on his part of the contract between himself and the defendant; his benefit certificate or policy of insurance was forfeited and became null and void and the plaintiff is not entitled to recover thereon."

- 20 I am requested by the defendant to charge you, and do charge you, that:

- "If, after July 26, 1904, William John Golden was employed or engaged, either as principal, agent or servant, in the manufacture or sale of spiritous, vinous or malt liquors as a beverage, this constituted a breach upon his part of his contract with the defendant; any benefit certificates or policies of insurance were forfeited and became null and void and the plaintiff cannot recover thereon."
- 30

I am requested by the defendant to charge, and do charge, that:

- "If, after September 1st, 1907, William John Golden was employed or engaged as a saloon-keeper, bartender, liquor salesman or collector for a liquor house, brewery or bottler, or was employed in or about a saloon or a bar in a hotel or restaurant, or in or about a brewery, this constituted a breach upon his part of his contract with the defendant; his benefit certifi-
- 40

Charge to Jury.

cates or policies of insurance were forfeited and became null and void and the plaintiff is not entitled to recover thereon."

I am requested by the defendant to charge, and do charge, that:

"If after September 22, 1911, William John Golden was employed or engaged as a saloon-keeper, bartender, liquor salesman or collector for a liquor house, brewery or bottler, or was employed or engaged in or about a saloon or a bar in a hotel or restaurant, or in or about a brewery, this constituted a breach on his part of his contract with the defendant; his benefit certificates or policies of insurance were forfeited and became null and void and the plaintiff cannot recover thereon."

I am further requested by the defendant to charge, and do charge, that:

"If William John Golden was at the time of his application for membership in defendant, or at any time thereafter became and was addicted to the intemperate use of intoxicating liquors, this constituted a breach on his part of his contract with the defendant; his benefit certificates or policies of insurance were forfeited and became and were null and void and the plaintiff cannot recover thereon."

I am requested by the defendant to charge, and do charge, that:

"The receipt or retention by any of the officers of defendant of any moneys from William John Golden with knowledge of a breach upon his part of the contract with defendant or a forfeiture of his rights thereunder did not constitute a waiver of such breach or forfeiture."

I charge you that the question of waiver is out of this case and will not exercise any deter-

Charge to Jury.

minative influence upon it at all and must be so considered by you.

I charge you furthermore, as requested by defendant, that:

10 "If William John Golden knowingly made untrue statements in his application for membership in defendant as to his age or occupation this rendered all benefit certificates or policies of insurance issued to him null and void and plaintiff cannot recover thereon."

And I charge you, as requested by the plaintiff in that particular, that:

20 "Mere difference in stating age from what it actually was is not a defense. Defendant must prove, in addition, that the misstatement was made knowingly and fraudulently," or, to state it more accurately, it must be an inference from the facts proven in the case that if Mr. Golden misrepresented his age such misrepresentation on his part was fraudulently made.

And I charge you, as requested by the defendant, that:

30 "William John Golden and the plaintiff, his beneficiary, are bound by and charged with knowledge of all the laws of the defendant that in any way have any bearing upon his contract with the defendant company or upon his relations with that company or her relations with that company."

Now these are the requests, gentlemen, that I have been asked to charge and they embody every principle of the law that it is necessary for you to know in order to enable you to arrive at a correct solution of this case.

40 Now I have one word more to say and then I am through. The charge made by the defendant

Charge to Jury.

that Mr. Golden misrepresented his age and thereby procured the original policy of insurance is not a technical defense. It is not a defense that can be whistled away as if some company were trying to get the better of some beneficiary. I direct your attention to that for the reason that I want to have you consider the case with great care and great deliberation. The function that an application for a policy of insurance has in obtaining that policy of insurance is so that the company may know whether it desires first of all to accept such a risk, and, secondly, so that it may adjust the payment of the premium to that risk, and if a man misrepresents his age and does so knowingly he indubitably commits a fraud, the effect of which is to do a gross harm to that insurance company or that benevolent organization and to thereby injure every other person who has a policy of insurance with it, because if he should pay a greater premium and pays a less he subtracts just so much from the general fund that is available for insurance purposes to all the other insured members. And so with respect to the other alleged matters of conduct on his part. If a man engages in an occupation which brings him into perilously close connection with a situation which may be very endamaging to his health because of the temptation it affords to indulge in intoxicants, or if a man indulges in intoxicants when the rules of the organization and his contract with the organization are prohibitive upon that subject, that is no technical defense. He thereby tends by such practices to shorten his life, or at least exposes himself to a situation where the shortening of his life may be a consequence, and if he does so he thereby subtracts just so much from

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Charge to Jury.

the funds of that organization as would have gone in by the payment of the additional premiums if such life had not been so far foreshortened. I direct your attention to those things so that you may understand the real issue between these parties, and not in any way to have you
10 think that I entertain an opinion one way or the other upon this subject, because the issue is the one you are to settle; but I tell you what I have said now so that you may realize the nature of the contest between these parties, the gravity of the interests involved and the extent of the consequences which will flow from a general loosening of the bonds of the relationship that exists between insurer and insured.

Now you will take the case under these rules
20 and decide it, gentlemen.

Mr. Bishop. I would like an exception to the granting of the plaintiff's first and second requests to charge.

The Court. You mean the second and third. I did not charge the first.

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Exhibit P. 1.

EXHIBITS.

EXHIBIT P. 1.

\$2000.00

LIFE BENEFIT AND
DISABILITY CERTIFICATE

No. 5418

10

In Lieu of Life Benefit Certificate
No. 41351.

Issued by
THE MACCABEES
DETROIT, MICH.

To Sir Knight
WILLIAM J. GOLDEN
of NEW YORK CITY Tent

20

No. 31 Located in
NEW YORK
STATE OF NEW YORK

Payable to
SARAH M. HOPE
Relationship: SISTER

1st to 4th Instalments

1st Payment	\$50.00	Made July	21, 1915	
2nd	" 50.00	" Oct.	14, 1915	30
3rd	" 50.00	" Feby.	16, 1916	

K. O. T. M. of

Quarterly payments are
figured from the date of
the first allowance of the
claim which was July 13th,
1915, thus bringing the
next quarter due

October 13th

40

Exhibit P. 1.

the third due January 13th
and the last due April 13th.

Kindly have your certificates at this office on these dates, and avoid delay in payment.

10

L. E. SISLER.

Issued in place of cancelled certificate.

Astra Castra—Numen Lumen

Order Re-organized 1883

THE MACCABEES

No. 5418

Age 29

20

State of N. Y.

Monthly Rate \$1.40

LIFE BENEFIT

PERMANENT AND TOTAL DISABILITY
CERTIFICATE

In Lieu of Life Benefit Certificate No. 41351 for
\$2000.00

30 THIS CERTIFIES, That Sir Knight WILLIAM J. GOLDEN, a member of New York City Tent, No. 31 Located at New York having become totally and permanently disabled, and having surrendered his Life Benefit Certificate No. 41351, he is, in accordance with and under the provisions of the laws governing the Association, entitled to receive Two Thousand Dollars, less the amount paid from time to time on Disability Claim No. 5418, as a benefit to SARAH M. HOPE, his sister, upon satisfactory proof of the death of the member and the surrender of
40 this Certificate, provided he shall have in every

Exhibit P. 1.

particular complied with all the rules and regulations of the Association, but he shall continue the payment of all dues and Monthly Rates as they become due and furnish the required proof of permanent and total disability each year satisfactory to the Supreme Medical Examiner.

IN TESTIMONY WHEREOF, The Association has caused the Supreme Commander and the Supreme Record Keeper to attest and affix hereto the Seal of The Maccabees this 18th day of February, 1916. 10

L. E. SISLER, Sup. R. K.
F. F. MARKEY, Sup. Com.

[SEAL OF
THE ORDER]

COUNTERSIGNED, Sealed and delivered by the Sir Knight Commander and the Sir Knight Record Keeper of New York City Tent, No. 31, of The Maccabees, this 22nd day of February, A. D. 1916. 20

[OFFICIAL SEAL
OF THE
COUNTY LODGE]

.....
Sir Kt. Commander. 30

JOSEPH KOEHL

.....
Sir. Kt. Record Keeper.

Exhibits D. 1, D. 2.

EXHIBIT D. 1.

St. Mary's Rectory
Kingston (Rondart) N. Y.
Oct. 7-1916

I certify by my signature as rector and by the
10 affixed seal of St. Mary's Church to the accuracy
of the birth and baptism of William John Golden
as it appears in the Baptismal Register of
St. Mary's Church Kingston (Rondart) N. Y.
as follows: viz.

1864

Date of Baptism

Feb. 21st William John Golden (born of)
Peter Golden & Sarah Dougherty on Feb. 21st
20 1864.

Sponsors: William Golden and Sarah Dale.

Officiant (Rev.) S. Maekin

Attest

JOHN J. HUKEY V. F.

[SEAL] Rector.

EXHIBIT D. 2.

30

201 Clerk St.
5-2-15

My dear Mrs. Anderson:

I am not going to keep John any longer he
leaves here this week. I have had him four
months and a half and I think thats long enough
some provision must be made for him until he
gets the work he expects but I won't keep him
any longer than Saturday.

Now that Kathryn is married I must take a
40 boarder and I can't do that with him sleeping in

Exhibits attached to deposition of L. E. Sisler.

the kitchen. When I saw him at the Hotel Anna & I told him I would give him a home till he recovered a little from his spree and I have done so. I just thought I would write and let you know.

Sincerely,

S. M. SLATTERY. 10

**Exhibits Attached to Deposition of
L. E. Sisler.**

EXHIBIT A. Laws of The Knights of the Maccabees of the World, Revised and Amended July 1904. In Force after July 26, 1904.

Sec. 280. LAWS IN FORCE AND AS AMENDED SHALL GOVERN ALL MEMBERS. Every member of the Association and every person deriving benefits or other legal rights from such member shall be bound by the laws in force at the time such member was admitted to the Association and by all amendments thereto which may thereafter be made, and all certificates issued by the Association shall be subject to such modifications as to terms, conditions of payment, and contingencies in which the same are payable as the laws of the Association may from time to time provide. 20

EXHIBIT B. Laws of The Knights of the Maccabees of the World, Revised and Amended July 1907. In force on and after September 1, 1907.

Sec. 272. LAWS IN FORCE AND AS AMENDED SHALL GOVERN ALL MEMBERS. Every member of the Association and every person deriving benefits or other legal rights from such member shall be bound by the laws in force at the time such member was ad- 30 40

Exhibits attached to deposition of L. E. Sisler.

mitted to the Association and by all amendments thereto which may thereafter be made, and all certificates issued by the Association shall be subject to such modifications as to terms, conditions of payment, and contingencies in which the same are payable as the laws of the Association may from time to time provide.

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EXHIBIT C. Laws of The Knights of the Maccabees of the World, Revised and Amended April 18, 1910.

Sec. 272. LAWS IN FORCE AND AS AMENDED SHALL GOVERN ALL MEMBERS. Every member of the Association and every person deriving benefits or other legal rights from such member shall be bound by the laws in force at the time such member was admitted to the Association and by all amendments thereto which may thereafter be made, and all certificates issued by the Association shall be subject to such modifications as to terms, conditions of payment, and contingencies in which the same are payable as the laws of the Association may from time to time provide.

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EXHIBIT D. Laws of The Knights of the Maccabees of the World, Revised and Amended July 18-22 (inc.) 1911. In force on and after September 22, 1911.

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Sec. 272. LAWS IN FORCE AND AS AMENDED SHALL GOVERN ALL MEMBERS. Every member of the Association and every person deriving benefits or other legal rights from such member shall be bound by the laws in force at the time such member was admitted to the Association and by all amendments thereto which may thereafter be made, and all certificates issued by the Association shall be

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Exhibits attached to deposition of L. E. Sisler.

subject to such modifications as to terms, conditions of payment, and contingencies in which the same are payable as the laws of the Association may from time to time provide.

EXHIBIT E. Laws of The Maccabees, re-enacted revised and amended May 18 to 21, 1915. In effect July 21, 1915. 10

Sec. 272. LAWS IN FORCE AND AS AMENDED SHALL GOVERN ALL MEMBERS. Every member of the Association and every person deriving benefits or other legal rights from such member shall be bound by the laws in force at the time such member was admitted to the Association and by all amendments thereto which may thereafter be made, and all certificates issued by the Association shall be subject to such modifications as to terms, conditions of payment, and contingencies in which the same are payable as the laws of the Association may from time to time provide. 20

Extracts from Exhibits D and E, attached to Deposition of L. E. Sisler:

Sec. 269. Rights of a Life Benefit Member. A life benefit member shall be entitled to all the rights and privileges of the Association, and upon his death while in good standing the beneficiary or beneficiaries named in his life benefit certificate shall be entitled to the rights evidenced by the application for membership, the medical examination, the life benefit certificate, the laws of the Association in force at the time of the member's death, and the Articles of Association, which taken together constitute the contract between the member and the Association; and provided further, that the Supreme 30

Exhibits attached to deposition of L. E. Sisler.

Commander, and in Great Camp jurisdictions the Great Commander may grant dispensations to admit to social membership persons between the ages of 16 and 18 years.

CHAPTER III.

- 10 Prohibited Occupations; Limitations on Life
Benefit Certificates.
Prohibited Occupations.

Sec. 273. Prohibited Occupations. The following persons shall not be admitted to the Association:

* * * * *

- 20 Saloon keepers, bartenders, liquor salesmen, and collectors for liquor houses and breweries, bottlers; all persons employed in and about saloons and bars in hotels and restaurants; all persons employed in and about breweries, except the office force and general superintendents. Keepers of hotels with bars may be accepted at the discretion of the Supreme Medical Examiner.

- 30 Sec. 391. Engaging in Prohibited Occupation. No benefit shall be paid on account of the death or disability of a member while engaging in any prohibited occupation.

Exhibits attached to deposition of L. E. Sisler.

EXHIBIT F.

SUPREME TENT, KNIGHTS OF THE
MACCABEES OF THE WORLD.

Assessment System.

APPLICATION FOR MEMBERSHIP.

Astra Castra For \$1000.00 Numen Lumen

10

Supreme Medical Examiner's Fee, 25 Cents.
Certificate Fee, \$1.00.

To be filled in by the Applicant or a Deputy
Supreme Commander when organizing a Tent,
or by the Medical Examiner or Member of the
Order from the answers of the Applicant.

Name of Applicant—(Write the name plainly,
correctly and in full. Do not write initials.)—
William John Golden. Postoffice, New York
City. Street and number, 36 Morten St. County
of N. Y. State, N. Y. Born on the 22 day of
Feb., 1868. Born at Roundout, State or Prov-
ince of New York. Age last birthday, 29 yrs.
Height, feet 5; inches, 7½; weight, 160. If over
or under weight, is it a personal or family char-
acteristic?..... Occupation, salesman
tobacco. Present employment, 141 W. Broad-
way. State occupation fully. Laborer or Clerk
will not answer. State kind of laborer or kind
of business.

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Are you an aeronaut or in any manner en-
gaged in any of the following prohibited occu-
pations: Blasting, Coal Mining, Manufacturing
highly Inflammable or Explosive Materials, Sub-
marine Operations, Constructing or Repairing
Lines for Electric Light Companies?.....
Are you now or have you ever been engaged in
the manufacture or sale of intoxicating liquors?
If so when and in what way? No.

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Exhibits attached to deposition of L. E. Sisler.

I hereby make application for Beneficial Membership in New York City Tent, No. 31, of the Knights of the Maccabees of the World, located in New York City, State or Province of New York, and hereby direct, that in case of my acceptance for such membership, my benefit certificate for \$1,000.00 be made payable to Margareth Golden. (Benefits can only be made payable to wife, children, parents, brothers, sisters, uncles, aunts, nephews, nieces, or dependents.) Bearing relationship to me of wife.

- 10
1. Are you in good health at the present time? Yes.
 2. Are you married? Yes.
 3. How long since you have been attended by a physician? Not since a child.
 - 20 4. For what? Children's disease.
 5. Have you fully recovered from the same? Yes.
 6. Have you at present, or have you ever had since childhood any of the following disorders or diseases? No.

Answer yes or no opposite each.

- 30 Apoplexy, no. Asthma, no. Bronchitis, no. Catarrh (chronic), no. Cancer, no. Chronic Diarrhoea, no. Colic (Bilious, Renal, or Hepatic), no. Constipation (Habitual), no. Cough (Habitual), no. Consumption, no. Delirium Tremens, no. Difficulty in breathing, no. Disease of Brain, no. Disease of Heart, no. Disease of Genital or Urinary Organs, no. Disease of Liver, no. Disease of Throat, no. Disease of Lungs, no. Disease of Stomach or Bowels, no. Discharge from the Ear, no. Dropsy, no. Dysentery (chronic), no. Dyspepsia, no. Enlarged Glands, no. Eruptions or any
- 40 Skin Disease, no. Fistula in Ano, no. Fits or

Exhibits attached to deposition of L. E. Sisler.

Convulsions, no. Gall Stones, no. Gout, no. Gravel, no. Headache (severe or frequent), no. Impaired Sight or Hearing, no. Irregularity of Heart's Action, no. Insanity, no. Jaundice, no. Loss of Consciousness, no. Neuralgia, no. Pain in Chest, no. Palpitation, no. Paralysis, no. Piles, no. Pleurisy, no. Pneumonia, no. Rheumatism, no (State whether Articular or Muscular, Acute or Chronic. Small Pox, no. Spinal Disease, no. Spitting or Coughing of Blood, no. St. Vitus Dance, no. Sunstroke, no. Swelling of Hands, Feet, or Eyelids, no. Syphilis, no. Tumors of any kind, no. Ulcers or Open Sores, no. Vertigo, no. Varicose Veins, no. La Grippe, no. 10

State below the date, duration and severity of each disease or disorder answered affirmatively. 20

Waiver.

7. Have you been successfully vaccinated? (If not, sign waiver), Yes. Not having been successfully vaccinated, I agree to waive all benefits under a Benefit Certificate, which may be issued to me, in case of 'my death or total and permanent disability resulting from Small Pox. (Applicant to sign full name.)

97-2-28

68-2-22

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 29-0-6

8. If you have had any of the above diseases have you fully recovered, and how long since your recovery?

9. Are you deaf, dumb, blind, or in any way crippled or deformed? No.

10. Do you drink wine, spirits or malt liquors daily or habitually? No. If so, state what 40

Exhibits attached to deposition of L. E. Sisler.

you drink, and daily average amount? (Do not use the word moderate.)

11. Have you ever been addicted to the excessive or intemperate use of these liquors, if so, when? No. Have you ever taken the Gold Cure, if so, when? No.

10 12. Do you use morphine, opium, chloral or other narcotics in any form? No. Tobacco? Smoke cigars. Yes.

13. If intoxicated within the last year how many times? No.

14. Are you ruptured? No. Single or double?..... Is it reducible?..... If ruptured, do you wear a well-fitting truss, and will you continue to do so while hernia exists?.....

20 15. Have you had Acute or Inflammatory Rheumatism? No.

16. If so, how many attacks?..... What years?..... Duration of each?..... Was it accompanied by cough?..... Or shortness of breath?..... Or palpitation of the heart?

17. Have you ever had any severe illness or injury, not above mentioned? No.

18. If any, state the disease or injury and how long since full recovery.....

30 19. Have you within the past three years used any patent or proprietary medicine? No. If so, what, and for what complaints?.....

20. Have you ever applied for or received a pension? No. If so, give cause and amount per month.....

21. Have you any other pensionable disability? No.

40 22. Is there anything to your knowledge or belief in your physical condition, family or personal history or habits tending to shorten your life which is not distinctly set forth above? No.

Exhibits attached to deposition of L. E. Sisler.

23. Have you ever applied for membership in the Knights of the Maccabees, or in any life insurance company or association, and been rejected? No. If so, when and by what company or association?.....

24. Have you carefully reviewed the answers to the above questions, and do you declare and agree that they are written as stated by you? Yes.

I HEREBY DECLARE, That the above are fair and true answers to the foregoing questions, and I hereby agree that these statements, together with those hereinafter made to the examining physician in this application, and the Laws of the Supreme Tent of the Knights of the Maccabees of the World, now in force or that may hereafter be adopted, shall form the basis of this Contract for beneficial membership; that any untrue or fraudulent answers, any suppression of facts in regard to my health, age, occupation, personal habits, or neglect to pay any assessment which shall be made by the Supreme Tent, within the time provided by the Laws thereof, or neglect to pay the dues fixed by the said Laws, in the manner and at the time provided by said Laws, or the By-Laws of the Tent to which I may belong, shall vitiate my Benefit Certificate and forfeit all payments made thereon. I also agree that should I now be engaged in or should I hereafter engage in any occupation, trade or calling prohibited by the Laws of the Supreme Tent, that from and after the date of my so engaging in such prohibited occupation, trade or calling, my right, as well as that of my beneficiary, to participate in the benefit funds of the Order, shall cease and become null and void and that I shall stand suspended as a member with-

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Exhibits attached to deposition of L. E. Sisler.

out any notice from the Subordinate or Supreme Tent, and any payment of dues or assessments by me or receipt thereof by any officer or member of the Subordinate Tent to which I belong, or to the Supreme Tent, shall not be binding on the Order. I also agree that should I commit

10 suicide within one year from the date of my admission into the Order, whether sane or insane at the time, that this contract shall be null and void and of no binding force upon said Supreme Tent; and this application shall not be binding on the Supreme Tent until approved by the Supreme Medical Examiner, and I am initiated into the Order, nor shall I be entitled to participate in the benefit funds of the Supreme Tent until I have paid my advance assessment.

20 Should I be an applicant for Charter Membership, or should I be admitted to said Tent before a medical examination is made in my case, and the Supreme Medical Examiner rejects this application, then I will accept a Social Membership Certificate, as provided in the Laws of the Order, or if the Supreme Medical Examiner accepts this application conditionally, then I will accept a certificate on the conditions made by him. This application and the Laws of the Supreme Tent now in force or that may hereafter

30 be adopted, are made a part of the contract between myself and the Supreme Tent, and I for myself and my beneficiary or beneficiaries agree to conform to and be governed thereby.

Dated at New York City, State or Province of New York, this 28th day of Feb., 1897.

WILLIAM JOHN GOLDEN. (L. s.)

(Signature of applicant must be in full and in his own proper handwriting, otherwise this contract will be void.)

Exhibits attached to deposition of L. E. Sisler.

I declare that I saw the Applicant attach his signature to this application, and that the Applicant reviewed with me the above answers to questions, and claims to understand the same.

Witness, L. S. Sobel, Tent Physician.

Answer every question in the above application fully and plainly.

10

Forward this application with the Supreme Medical Examiner's Fee of 25 cents, to Dr. R. E. Moss, Supreme Medical Examiner, Port Huron, Mich.

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*Postea.***Postea.**

NEW JERSEY SUPREME COURT.

HUDSON CIRCUIT.

10 SARAH M. HOPE,

Plaintiff,

vs.

THE MACCABEES, a corporation,

*Defendant.**Postea.*

This case was tried before Judge William H. Speer, with a jury, at the Hudson Circuit on February 14th, 1917.

20 The Jury rendered a general verdict against the defendant and in favor of the plaintiff, for Eighteen hundred and fifty (\$1850.00) dollars, with interest from March 22nd, 1916, amounting to Ninety-eight and sixty-six one-hundredths (\$98.66) dollars, making a total of Nineteen hundred and forty-eight and sixty-six one-hundredths (\$1948.66) dollars.

WILLIAM H. SPEER,

30

Judge.

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*Judgment.***Judgment.**

Entered February 17, 1917.

NEW JERSEY SUPREME COURT.

HUDSON CIRCUIT.

SARAH M. HOPE,

Plaintiff,

vs.

THE MACCABEES, a corporation,
*Defendant.**Action at
Law.**On Postea.*

10

It is ordered that judgment be and hereby is entered in favor of the plaintiff and against the defendant for the sum of \$1948.66, besides costs to be taxed.

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Entered February 17th, 1917, on motion of Heyman & Heyman, Attorneys for the Plaintiff.

Damages \$1948.66

Costs \$49.84.

WILLIAM C. GEBHARDT,

Clerk.

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*Notice of Appeal.***Notice of Appeal.**

Filed March 3, 1917.

NEW JERSEY SUPREME COURT.

HUDSON CIRCUIT.

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SARAH M. HOPE,

Plaintiff-Respondent,

vs.

THE MACCABEES, a corporation,
*Defendant-Appellant.**Action at
Law.**Notice of
Appeal.*To Messrs. Heyman & Heyman,
Attorneys of plaintiff-respondent.

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PLEASE TAKE NOTICE that the defendant in the above stated cause hereby appeals from the judgment heretofore entered therein on the 17th day of February, 1917, and from every part thereof, to the New Jersey Court of Errors and Appeals in the last resort in all causes.

Dated February 26, 1917.

Yours respectfully,

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LINDABURY, DEPUE & FAULKS,
Attorneys for Defendant-Appellant.

Service of the within Notice is hereby acknowledged this 26th day of February, 1917.

HEYMAN & HEYMAN,
Attorneys of Plaintiff-Respondent.

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*Grounds of Appeal.***Grounds of Appeal.**

Filed.

NEW JERSEY SUPREME COURT.

SARAH M. HOPE,
Plaintiff-Respondent.

vs.

THE MACCABEES, a corporation,
Defendant-Appellant.

*Action at
Law.*

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*Grounds of
Appeal.*

To Messrs. Heyman & Heyman,
Attorneys of plaintiff-respondent.

PLEASE TAKE NOTICE that the following
are the grounds upon which the defendant-appel-
lant, The Maccabees, a corporation, appeals from
the judgment heretofore entered in the above
case on the 17th of February, 1917. and from
every part thereof.

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1. Said judgment was contrary to the law.
2. Said judgment is contrary to the weight
of evidence.
3. Said judgment is in favor of the plaintiff,
whereas it should have been in favor of the
defendant.
4. At the close of the plaintiff's case the
trial court erroneously refused to grant a motion
duly made by the defendant for a non-suit, to
which refusal the defendant duly took exception.
5. At the request of the plaintiff the court
erroneously struck out the following testimony

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Grounds of Appeal.

of the witness Katherine Anderson, referring to William J. Golden:

Q You say that he was nervous? A He had the D. T's. I asked the doctor to stay with him all night.

10 to which ruling the defendant duly took exception.

6. At the close of the plaintiff's case the trial court erroneously refused to direct a verdict in favor of the defendant and against the plaintiff, although thereunto duly requested by the defendant; and to such refusal the defendant duly took exception.

7. At the request of the plaintiff the trial court erroneously charged the jury that:

20 "Merely occasionally engaging in a prohibited occupation does not constitute such an engagement therein as is prohibited by the contract. In order to constitute a defense, it must be proved that the prohibited occupation was a usual work or employment of the deceased."

to which ruling defendant duly took exception.

8. At the request of the plaintiff the trial court erroneously charged the jury that:

30 "Mere difference in stating age from what it actually was is not a defense. Defendant must prove in addition that the misstatement was made knowingly and fraudulently, or to state it more accurately, it must be an inference from the facts proven in the case that if Mr. Golden misrepresented his age such misrepresentation on his part was fraudulently made."

40 to which ruling defendant duly took exception.

Grounds of Appeal.

9. Because the said judgment is in other respects illegal and contrary to law.

Dated March 3, 1917.

Yours respectfully,

LINDABURY, DEPUE & FAULKS,
Attorneys for Defendant-Appellant. 10

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New Jersey Court of Errors and Appeals

SARAH M. HOPE, <i>Plaintiff-Respondent,</i> <i>vs.</i> THE MACCABEES, a corporation, <i>Defendant-Appellant.</i>	}	<i>Action at Law.</i> <i>On Appeal from New Jersey Su- preme Court.</i>
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Brief for Defendant-Appellant.

1.

Statement of the Case.

On February 28, 1897, William J. Golden applied for membership in the appellant (Exhibit F., p. 109) which is a fraternal beneficiary association. He was accepted and a life benefit certificate for \$2,000 was issued to him (case, p. 3, ll. 25-26). Thereafter on February 22, 1916, he surrendered his life benefit certificate No. 41351 and in lieu thereof a Life Benefit Permanent and Total Disability Certificate was issued to him in which the respondent, Sarah M. Hope, was named as beneficiary (p. 3, ll. 20-40; p. 4, ll. 1-30; p. 5, ll. 17-18). Appellant paid to Golden during his lifetime on account of the last mentioned certificate \$150. Golden died March 22, 1916. Respondent brought her suit to recover \$1,850, being the balance claimed on account of the last mentioned certificate. Appellant contested the claim upon the ground that Golden had made false statements in his application; that he had been engaged in the liquor business and that he had become intemperate in the use of intoxicating liquors contrary to the provisions of the laws of the appellant, by reason of

which his benefit certificate had become null and void.

The questions involved are whether Golden falsely stated his age and occupation in his application for membership; whether Golden was engaged in the liquor business contrary to the laws of the appellant; whether Golden had become intemperate in the use of intoxicating liquors contrary to the laws of the appellant, and whether by reason thereof his benefit certificate had become void. The questions are raised upon an appeal from the New Jersey Supreme Court, by an exception to the trial court's refusal to grant appellant's motion for the direction of a verdict in its favor and upon exceptions to certain of the trial court's charges to the jury.

2.

Grounds of Appeal.

The grounds of appeal relied upon are that at the close of the respondent's case the trial court erroneously refused to direct a verdict in favor of the appellant and against the respondent (p. 92, ll. 18-24); and that at the request of the respondent the trial court erroneously charged the jury first, "that merely occasionally engaging in a prohibited occupation does not constitute such an engagement therein as is prohibited by the contract. In order to constitute a defense, it must be proved that the prohibited occupation was a usual work or employment of the deceased" (p. 95, ll. 39-40; p. 96, ll. 1-4); and second, "that mere difference in stating age from what it actually was is not a defense. Defendant must prove in addition that the misstatement was made knowingly and fraudulently, or to state it more accurately, it must be an inference from the facts proven in the case that

if Mr. Golden misrepresented his age, such misrepresentation on his part was fraudulently made" (p. 98, ll. 15-24).

3.

Brief of the Argument.

I. WILLIAM J. GOLDEN IN HIS APPLICATION FOR MEMBERSHIP IN THE APPELLANT FALSELY STATED HIS AGE, THE DATE OF HIS BIRTH, AND HIS OCCUPATION, AND THE CERTIFICATE UPON WHICH RESPONDENT'S CLAIM IS BASED IS THEREFORE NULL AND VOID.

It is alleged and admitted that appellant is a fraternal beneficiary association (p. 2, ll. 2-26; p. 5, ll. 17-18). The contract of such an association with a beneficiary member is made up of the application for such membership, the certificate issued, and the charter, constitution and by-laws of the order, and in its construction and effect does not differ essentially from an ordinary policy of insurance. *Holland v. Supreme Council of the Order of Chosen Friends*, 54 N. J. L., 490; *Grand Lodge A. O. U. W. of N. J. v. Gandey*, 63 N. J. Eq., 692, 696; *Golden Star Fraternity v. Martin*, 59 N. J. L., 207; *Neenan v. National Council, etc.*, 188, Ill. App. 490, 493; *Pride v. Switchmen's Union of North America*, 178 Ill. App. 434; *Harvick v. Modern Woodmen of America*, 158 Ill. App. 570; *Daffron v. Modern Woodmen of America*, 176 S. W. 498; *Newman v. Supreme Council Knights of Pythias*, 70 Southern, 241.

Golden's application for membership in appellant contained the following provision:

"I hereby declare that the above are fair and true answers to the foregoing questions, and I hereby agree that these statements,

together with those hereinafter made to the examining physician in this application, and the Laws of the Supreme Tent of the Knights of the Maccabees of the World, now in force or that may hereafter be adopted, shall form the basis of this contract for beneficial membership; that any untrue or fraudulent answers, any suppression of facts in regard to my health, age, occupation * * * shall vitiate my Benefit Certificate and forfeit all payments made thereon. * * * This application and the Laws of the Supreme Tent now in force or that may hereafter be adopted, are made a part of the contract between myself and the Supreme Tent, and I for myself and my beneficiary or beneficiaries agree to conform to and be governed thereby" (pp. 113, 114).

Statements and answers to questions made in an application for membership in a fraternal benefit association are a part of the contract of beneficial membership, and are warranties, the untruth of which precludes such applicant or his beneficiaries from taking any rights under the certificate of membership. As the Court said in *Daffron v. Modern Woodmen of America*, 176 S. W. 498, at page 502:

"The contract entered into between a fraternal benefit society and its applicants consists of the application, certificate, and by-laws. *Loyd v. M. W. A.* 113 Mo. App. 19, 87 S. W. 530; *Pearson v. Knight Templars & Masons Indemnity Co.* 114 Mo. App. 283, 89 S. W. 588; 1 Bacon on Ben. Soc. and Life Ins. (3d Ed.) Sec. 161; *Brittenham v. W. O. W.* 180 Mo. App. loc. cit. 534, 167 S. W. 587.

The law construes statements and answers made by an applicant in this character of insurance as warranties, and, if the statements made are untrue, neither the applicant nor his beneficiaries have any rights under the certificate. *Aloe v. Mutual Reserve Life Ass'n.* 147 Mo. loc. cit. 575, 49 S. W. 553;

Claver v. W. O. W. 152 Mo. App. loc. cit. 164, 133 S. W. 153; Pacific Mut. L. Ins. Co. v. Glaser, 245 Mo. loc. cit. 387, 150 S. W. 549, 45 L. R. A. (N. S.) 222. These cases announce the general rule."

To the same effect is *Aloe v. Mutual Reserve Fund Association*, 49 S. W. 553. In *Pacific Mutual Life Insurance Co. v. Glaser*, 150 S. W. 549, the Court held that where questions and answers in an application are made a part of the contract of insurance they are warranties. The Court saying at page 551:

" * * * a well-recognized distinction exists between a representation and a warranty in a contract of insurance. A representation is not a part of the contract, 'but only an inducement to make it,' and will not invalidate the insurance unless false in a matter material to the risk. A warranty is a part of the contract, and must be strictly true, whether material to the risk or not. *Aloe v. Ins. Ass'n.* 147 Mo. 561; 49 S. W. 553; *McDermott v. Modern Woodmen*, 97 Mo. App. 636, 71 S. W. 833; 3 Cooley's Briefs on Law of Ins. pp. 1935, 1954.

In *Phoenix Insurance Company v. Benton*, 87 Ind. 132, the Court said at page 136:

"Where the application is made a part of the policy its statements are warranties. *Mutual Benefit Life Ins. Co. v. Miller*, 39 Ind. 475; *Mutual Benefit Life Ins. Co. v. Cannon*, 48 Ind. 264; *Eddy Street Iron Foundry v. Hampden, etc. Co.*; 1 Cliff. 300, *Pierce v. Empire Ins. Co.* 62 Barb. 636; *Commonwealth Ins. Co. v. Monninger*, 18 Ind. 352. And in such cases both the application and the policy are to be construed together as one contract. *Edwards v. Farmers' Ins. Co.*, 74 Ill. 84; *Byers v. Farmers' Ins. Co.*, 35 Ohio St., 606."

The statement of the application as to Golden's age is as follows:

"Name of Applicant * * * William John Golden * * * Born on the 22 day of Feb., 1868. Born at Roundout, State or Province of New York. Age last birthday, 29 yrs. * * * Occupation, salesman, tobacco" (p. 10, ll. 18, 20, 22-24, 27).

The certificate of Golden's baptism, a certified copy of which was admitted in evidence as "Exhibit D. 1" with the consent of counsel for respondent is as follows:

"St. Mary's Rectory
Kingston (Rondart) N. Y.
Oct. 7, 1916.

I certify by my signature as rector and by the affixed seal of St. Mary's Church to the accuracy of the birth and baptism of William John Golden as it appears in the Baptismal Register of St. Mary's Church Kingston (Rondart) N. Y. as follows: viz: 1864

Date of Baptism

Feb. 21st William John Golden (born of) Peter Golden & Sarah Dougherty on Feb. 21st 1864.

Sponsors: William Golden and Sarah Dale.

Officiant: (Rev.) S. Mackin.

Attest:

JOHN J. HUKEY, V. F.

Rector." (Exhibit D. 1, p. 104.)

The respondent, Golden's sister, testified that he was born in Roundout, New York; that his mother's name was Sarah Golden; that her maiden name was Sarah Dougherty and his father's name was Peter Golden (p. 75, ll. 38-40; p. 76, ll. 1-10). The baptismal certificate, therefore, is *prima facie* evidence of the age of Golden. The case of *Hartshorn v. Metropolitan Life*

Ins. Co., 67 N. Y. Supp. 13, is directly in point. There the Court said at page 14:

“Upon the trial defendant proved, by the record of baptism kept by the rector of Trinity Church in Saugerties, Ulster County, N. Y., pursuant to the canons of the Protestant Episcopal Church in the United States, that one Hannah Margaret Duboise was there baptized on the 5th day of February, 1837. It was further shown by the testimony of decedent’s sister that the assured’s maiden name was Hannah Margaret Duboise; that they were both born in Saugerties, Ulster County, N. Y., and that their parents’ names corresponded identically with those given in the record of baptism. This record of baptism and testimony constituted *prima facie* evidence of the identity of decedent with the person thus baptized and that she was living on the 5th day of February, 1837, which would make her at least 60 years of age at the time she applied for this insurance. *Jacobi v. Order of Germania*, 73 Hun. 602; 26 N. Y. Supp. 318; *Jackson v. King*, 5 Cow. 237; *Jackson v. Cody*, 9 Cow. 140; *Jackson v. Goes*, 13 Johns. 518; *Hatcher v. Rocheleau*, 18 N. Y. 86; *Stebbins v. Duncan*, 108 U. S. 32; 2 Sup. Ct. 313, 27 L. Ed. 641; *Douglas v. Dakin*, 46 Cal. 49; *Brown v. Metz*, 33 Ill. 339; *Blackburn v. Crawfords*, 3 Wall. 189, 18 L. Ed. 186; *Derby v. Salem*, 30 Vt. 722; *Kabok v. Insurance Co.* 4 N. Y. Supp. 718.”

This court held in *Supreme Assembly v. McDonald*, 59 N. J. L. 248, that a church register of baptisms, even when kept under circumstances which render it admissible as evidence, is proof only of the fact of baptism, and not of the age of the person, *unless the age is at the same time duly recorded in the register*. The date of Golden’s birth was duly recorded in the register as appears by Exhibit D. 1 and is the same as the date of baptism. Even if this were not so, however, under the ruling in *Supreme Assembly v.*

McDonald, the entry in the parish register would be evidence that Golden was baptized on February 21, 1864. This evidence is not in anywise contradicted. Golden must therefore have been alive on that day and his statement in his application that he was born on February 22, 1868, and was 29 years old at the date of the application was false. He was alive four years earlier and his age at the date of the application was 33 or more.

The admissibility of the baptismal certificate is not in question in this case; the only question is as to its effect. The trial court in discussing this point on the application for the direction of a verdict stated that appellant had failed to prove that the parish record was required by the laws of the Church, etc. It is obvious that this proof was unnecessary where the record was admitted by consent.

In addition to falsely stating his age in his application for membership, Golden also falsely stated his occupation to be that of a salesman of tobacco. Golden's mother-in-law, Mrs. Anderson, testified that in 1891 Golden went into the saloon business in a place of his own (p. 54, ll. 29-35). He remained there four years (p. 55, ll. 38-40), or until 1895. From there he went to work for Murphy and Landers and after that he went to work in a hotel and saloon at 66th Street and 3rd Avenue (p. 56, ll. 17-37) where he remained about two years. This brought him down to 1896 or 1897. After leaving the place at 66th Street and 3rd Avenue, he went to work for a man named Mr. Paddell who kept a rooming house and saloon at the corner of Bleecker Street and Monetta Lane, where he stayed about one year and a half (p. 57, ll. 1-27). Mrs. Kennedy, his wife's aunt, testified that at the time of Golden's

marriage, which was in 1890 (p. 66, ll. 12-13) he was employed in a saloon at the corner of Rector and Greenwich Streets, as a bartender (p. 66, ll. 35-40; p. 67, ll. 1-2). About six months after his marriage he worked in Brooklyn for a short time and then went into business in a saloon of his own at 60 West Street (p. 67, ll. 11-22). He remained there for three or four years (p. 67, ll. 38-40) bringing him down to about 1894 (p. 68, ll. 2-3). About 1894 he lost his own place and went to work for a man named Murphy on State Street, New York, as a barkeeper (p. 68, ll. 26-33) and from there he went to work in a saloon on South Street owned by a man named Landers (p. 68, ll. 38-40; p. 69, ll. 1-5). About a year after leaving his own place he went up to a place on 66th Street and 3rd Avenue where he worked in a saloon and cafe, the establishment containing furnished rooms in the upper floors. Witness when visiting the place saw him at work behind the bar (p. 68, ll. 19-38). After leaving West Street in 1894, he spent about a year working for Murphy and Landers and another year working at 66th Street. This brought him down to 1896 when he came down to work in a rooming house and saloon at Monetta Lane and Bleecker Street. He remained there for a year or more or until 1897 (p. 71, ll. 9-12). Mr. Burr testified that he had known Golden for about 30 years and that when he first became acquainted with him, Golden was a bartender in a place called Landers on South and Morris Streets (p. 76, ll. 33-40; p. 77, ll. 1-5).

There is no testimony in the case that Golden ever exercised any other employment than that of a bartender, except while he worked for Mr. Burr. This was not until some time after 1897. During this period his employment was that of a special man to manage the saloon interests which

Mr. Burr owned (p. 78, ll. 16-22). A manager of a chain of saloons is undeniably engaged as agent in the sale of liquors. The testimony of Mrs. Hope to the effect that her brother was a tobacco salesman (p. 80, ll. 30-31) was properly stricken out by the Court (p. 81, ll. 25-29). The testimony of Anna Golden, as to her brother's occupation was also stricken out (p. 83, ll. 17-31; p. 84, ll. 20-27).

The evidence shows conclusively that at the time of application for membership, Golden's statement that his employment was that of a salesman of tobacco was untrue and on the contrary he was employed in a saloon as a bartender or in some other capacity. Not only was his statement in his application untrue but it was actually fraudulent. The laws of the appellant at the time Golden became a member thereof provided as follows: "No person shall be eligible for membership in the order who is engaged either as a principal, agent or servant in the manufacture or sale of spirituous, malt or vinous liquors as a beverage" (p. 25, ll. 13-17). These laws were a part of Golden's contract with appellant (p. 114, ll. 29-34) and cases above cited. In addition to this Golden, by his application, agreed as follows: "I also agree that should I now be engaged in or should I hereafter engage in any occupation, trade or calling prohibited by the Laws of the Supreme Tent, that from and after the date of my so engaging in such prohibited occupation, trade or calling, my right, as well as that of my beneficiary, to participate in the benefit funds of the order, shall cease and become null and void." (P. 113, ll. 31-39.)

In *Holland v. Chosen Friends*, 54 N. J. L. 490, the plaintiff, like the plaintiff in this case, sued

upon a benefit certificate made by a fraternal benefit association. As in the present case, the Court held that the contract consisted of the application for membership, certificate issued and the charter, constitution and by-laws of the order. By the laws of the order persons engaging in certain occupations were excluded from beneficial membership. The deceased in his application for relief funds represented that his occupation was that of a printer, and his business was pressman, and in his statement to the medical examiner he represented that he was not engaged in the sale or manufacture of wine, beer or distilled liquors. In fact his occupation was at the time of making application, and for several years before had been that of a bartender. It was held that the contract for the order was avoided by the false and fraudulent misrepresentations by which it was obtained. The Court held recovery would be barred whether the statements were considered as warranties or simply as representations.

As Golden in the application for membership upon which the benefit certificate sued upon as well as other benefit certificates previously issued to him and upon which all of his contracts with the appellant were based (p. 47, ll. 10-23; Exhibit F, p. 109) falsely and fraudulently mis-stated both his age and his occupation, his benefit certificate was null and void and respondent was not entitled to recover thereon.

II. GOLDEN'S BENEFIT CERTIFICATES ARE NULL AND VOID BECAUSE AFTER BECOMING A MEMBER OF APPELLANT IN 1897 HE CONTINUOUSLY ENGAGED IN PROHIBITED OCCUPATIONS UP TO THE YEAR 1914.

As previously pointed out the laws of the appellants were part of the Golden contract with him. The laws in force at the time he became a member provided that "No person shall be eligible for membership in the order who is engaged either a principal, agent or servant in the manufacture or sale of spirituous, malt or vinous liquors as a beverage, and should any beneficial member of the order engage in any of the above named prohibited occupations after his admission, his benefit certificate shall become null and void from and after the date of his so engaging in such prohibited occupation, and he shall stand suspended from all rights to participate in the benefit of the order, and no action of the Tent or of the Supreme Tent shall be a condition precedent to such suspension." (P. 25, ll. 12-28.) This provision continued in force until September 1, 1907, when the clause relating to prohibited occupations was amended as follows: "The following persons shall not be admitted to the Association * * * Saloonkeepers, bartenders, liquor salesmen and collectors for liquor houses and breweries, bottlers, all persons employed in and about saloons and bars in hotels and restaurants." (P. 28, ll. 34-37.) This provision continued in effect until after Golden's death, and by his application for membership, Golden agreed that should he at any time engage in a prohibited occupation, his benefit certificate should become null and void.

As shown above, Golden was engaged in prohibited occupation at the time he became a member of the order of appellant and there is no evidence in the case that he ever engaged in any other. In addition to the testimony of Mrs. Anderson and Mrs. Kennedy, which showed clearly that Golden was employed as a bartender or in some other capacity in establishments whose sole and principal business was the sale of malt, spirituous or brewed liquors, the testimony of Mr. Burr must be considered. Mr. Burr was a warm friend of Golden's (p. 77, ll. 5-11) and his hostility to appellant is apparent. Mr. Burr testified, however, that he was in the saloon business for a number of years and operated a number of saloons. He employed Mr. Golden in connection with them to take care of the collection of money from the cash registers, and to collect rents of buildings. He described Golden as a special man employed to take care of the saloon interests as Mr. Burr did not know anything about the saloon business himself. Golden continued in that employment until within about two years of his death in November, 1914. Thereafter Golden was not employed in any occupation at all (p. 77, ll. 35-40; p. 78, ll. 1-30). None of this evidence as to Golden's occupation is contradicted.

Prior to the time he entered Mr. Burr's employ all the evidence relative to Golden's occupation shows that he was employed as a barkeeper or manager of saloons or establishments of which a saloon or cafe were the principal part either in his capacity of bartender or manager he was engaged as agent in the sale of liquors (p. 26, ll. 20-25; p. 27, ll. 16-20; p. 28, ll. 12-18; ll. 21-27; ll. 31-39). After entering Mr. Burr's employ he came within the provision of all of the sections of appellant's laws above referred to. Certainly he was engaged as agent in the sale of liquors. He

also came within the designation of a person employed in or about saloons. He also falls within the designation of collectors of liquor houses. The entire evidence in the case shows that Golden, not only misrepresented his occupation when he became a member of appellant but that as long as he exercised any employment at all, it was an employment prohibited by the appellant's laws.

At the hearing counsel for the respondent attempted to argue that the words "collectors for liquor houses" could not apply to Golden. It is difficult to see how this can be true in view of Mr. Burr's testimony that one of his duties was to take care of collection of money from cash registers of Mr. Burr's saloons (p. 78, ll. 16-20). Respondent's counsel argued that the words "liquor houses" applied only to wholesale liquor establishments and that the term "collectors for liquor houses" could only apply to those persons employed by wholesale dealers to make periodical collections of the bills due from the retailers. It is submitted that such a construction is entirely in error. One of the definitions of the word "house" as defined by Webster's New International Dictionary is "a place of business—hence a firm or commercial establishment." Bouvier's Law Dictionary gives as one of the definitions "an institution," "a commercial firm." The same definition is found in 21 Cyc. 1113, and in *Birch v. De Rivera*, 6 N. Y. Sup. 206. Certainly a chain of liquor saloons owned and operated under a single management is a commercial establishment. The fact that it was owned and operated by an individual instead of either a corporation or partnership does not change its character.

As to whether Golden's occupation fell within the prohibition of the laws of the appellant, the case of *Graves v. Knights of the Maccabees of the World*, 92 N. E. 792, should be considered. The by-laws there under consideration as in this case, provided that the benefit certificate of any person who should be engaged as principal agent, or servant in the sale of liquor as a beverage, should become void. The Court held that a member who with his son opened a saloon as co-partners the license therefore being issued in their joint names, and the member being pecuniarily interested therein, though he performed no labor in or about the saloon and took no active part in the business.

“The appellant evidently determined that there were risks incident to the liquor business which it did not care to incur under its certificates. It may have regarded them as moral or physical. While the latter especially would seem to be the greater in the case of one actually handling and passing out liquors, no one can say that they were absent in the case of one who was the owner and in legal control and possession of them and who had the opportunity, although he did not customarily choose to exercise it, to come in contact with them. Therefore, in the first place as it seems to us there is no authority for assuming that the actual intent of the appellant must have been to direct its prohibition simply against those who happened for the time being to be in active physical contact with the manufacture or sale of liquors, and in the second place, the language used does not seem to us to express such intent. Without stopping to analyze too much at length the various definitions adopted by the lexicographers, the word ‘engaged’ used by the by-law may be regarded as the equivalent of the words ‘carry on,’ and the word ‘occupation’ as meaning ‘business,’ so that we shall have a prohibition

against carrying on the business of manufacturing or selling liquors. And when we have the clause thus formulated it seems to us that any layman reasonably versed in the use and meaning of our language would undoubtedly conclude that a man was so carrying on such business when it appeared that he was one of two partners who owned and operated it under licenses taken out by him personally, that presumably he furnished his share of the capital and was entitled to his share of the property and profits and to an equal voice in the control and conduct of the business, and that such conclusion would not be stayed simply because the assumed individual dwelling at the place of business elected for a longer or shorter period, and for one reason or another not to take that active part in the ordinary routine of business which both opportunity and legal right placed within his power. * * * To our mind the intent to give the by-law a broader meaning than the one thus urged, and to cover different phases of interest or participation including the present one, is emphasized by specifically making the prohibition apply to anyone who is 'engaged' either as 'principal, agent or servant.' A 'servant' or 'agent' would not be apt to have any proprietary interest and therefore, his connection would be established by the physical performance of various acts in the conduct of the business. Conversely, the word 'principal' with its associations naturally suggests one whose relation is that of proprietor and who, as commonly in the case of a principal, might elect to intrust the active conduct of the business to the agents and servants already referred to. * * *"

In the case at bar, Mr. Burr was engaged in the sale of liquor as a principal and Golden was engaged in it as his agent.

In *State v. Camden Lodge A. O. U. W.*, 73 N. J. L., 500, it was held that where an application

for a benefit in a fraternal association contained an agreement by the appellant that compliance on his part "with all the laws, regulations and requirements which are or may be hereafter enacted by said order is the express condition upon which I am to be entitled to participate in the beneficiary fund and have and enjoy all the other benefits and privileges of said order," a law of the order subsequently adopted that "any member of the order who shall, after August 1st, 1898, enter the business of selling by retail intoxicating liquors as a beverage shall be expelled from the order," and making provision for suspension from rights in the beneficiary fund and rendering the certificate null and void, is valid and binding upon one who has obtained a benefit certificate under such an application.

III. GOLDEN'S BENEFIT CERTIFICATE BECAME VOID BY REASON OF HIS INTEMPERATE USE OF INTOXICATING LIQUORS.

By his application Golden agreed as follows: "This application and the laws of the Supreme Tent now in force or that may hereafter be adopted, are made a part of the contract between myself and the Supreme Tent, and I, for myself and my beneficiary or beneficiaries agree to conform to and be governed thereby." And in 1904, an amendment was inserted in the by-laws to the effect that every member of the Association and every person deriving benefits and other legal rights from the association should be bound by the laws in force at the time such member was admitted to the association and by all amendments thereto which might be thereafter made and this provision continued in force until after Golden's death. (Exhibits A, B, C, D,

and E attached to deposition of L. E. Sisler, pages 105, 106, 107.)

The laws of the appellant at the time Golden became a member thereof provided for the expulsion or suspension of any member who should become intemperate in the use of intoxicating liquors. In July, 1904, the laws were amended so as to provide that "if any member shall become intemperate in the use of intoxicating liquors or addicted to the use of drugs or narcotics, he shall thereby forfeit all rights as a member of this association and his certificate shall become absolutely null and void, without action on the part of his Tent or of the association, or of any of the officers thereof; and the payment by him of any monthly rates, additional assessments, dues or fines, or the acceptance thereof by the officers of his Tent, or of the association, shall not waive such forfeiture" (p. 30, ll. 36-40; p. 31, ll. 1-12), and these provisions continued in force until after Golden's death (pp. 31-33).

An amendment prohibiting members from engaging in occupations not prohibited at the time they joined has been held to be reasonable and binding. *Gilmore v. Knights of Columbus*, 58 Atl. 223. In *Grand Lodge A. O. U. W. of Connecticut v. Burns*, 80 Atl. 157, a member of the mutual benefit society, having expressly agreed to be bound not only by the laws in force when he became a member but also by those thereafter enacted, was held to be bound by a subsequently enacted by-law providing for forfeiture of benefits in case a member engaged in the retail liquor business; such by-law being reasonable, as tending to enhance the dignity and influence of the order, as well as to diminish the risk of mortality. See also *Norton v. Catholic Order of Foresters*, 114 N. W. 893. In *Supreme Lodge of*

Fraternal Union of America v. Light, 195 Fed. 903, it was held that a member of fraternal benefit organizations accepting membership subject to such by-laws and rules as the Supreme Lodge might thereafter adopt, was bound by any reasonable legislation and where its constitution prohibited its members from engaging in the occupation of saloon keeper, bartender or manufacturer of intoxicating liquors, a subsequent amendment providing that any member who should enter upon the manufacture or sale of malt, spirituous or vinous liquors to be used as a beverage, in the capacity of proprietor, stockholder, agent or employee, should forfeit all rights of a member either social or beneficial, was reasonable and binding. In this case at bar not only were the amendments entirely reasonable, but they did not materially alter the regulations to which Golden was subject. They do not therefore fall within the ruling in *O'Neill v. Supreme Council American Legion of Honor*, 70 N. J. L. 410, and the cases which follow it.

That Golden was frequently intoxicated is established by the testimony of Mrs. Anderson who saw him in that condition in the Broadway Central Hotel in New York in November, 1914 (p. 58, ll. 38-40; p. 59, ll. 1-24, 34-38). She had also seen him intoxicated about a year before that time. Mrs. Kennedy testified that she saw him intoxicated in 1904 (p. 71, ll. 34-40) and had also seen him suffering from the effects of drink (p. 72, ll. 3-4). Mr. Burr had also seen him intoxicated (p. 79, ll. 3-6). Respondent had also known him to be intoxicated for she wrote to Mrs. Anderson that she would not keep Golden any longer as she had only stated that she would give him a home until he had recovered a little from his spree (Exhibit D. 2, pp. 104, 105). Upon

examination by the Court she stated by the word "spree" she meant a heavy drunk (p. 82, ll. 22, 24).

From the foregoing testimony it is evident that prior to his death Golden had become intemperate in the use of intoxicating liquors. Not only Mrs. Anderson, Mrs. Kennedy and Mr. Burr testified to having seen him intoxicated, but respondent herself wrote of having seen him recovering from a "spree," and she defined a "spree" as a "heavy drunk." Respondent was a directly interested witness, and upon the stand she attempted to avoid the effect of her letter by saying that she had not actually seen him drunk. It is evident, however that his condition was such that she was satisfied at the time she wrote the letter that she had seen him suffering from the after-effects of a prolonged period of intoxication.

It is submitted that such conduct on the part of Golden was intemperate in every sense of the word and that his benefit certificate, therefore, under the provisions of appellant's laws above referred to, by which he had expressly agreed to be bound became null and void.

IV. THERE WAS NO WAIVER ON THE PART OF APPELLANT OF GOLDEN'S FRAUD OR THE MISSTATEMENTS IN HIS APPLICATION OR OF HIS BREACHES OF THE APPELLANT'S LAWS.

There is no evidence that at any time prior to Golden's death appellant knew that he had falsely stated either his age or his occupation in his application for membership. There is no evidence that appellant or any of its officers knew that Golden had ever engaged in a prohibited occupation, nor is there any evidence that appel-

lant or any of its officers had any knowledge of Golden's intemperance. There is not even evidence of anything which would have sufficed to have put appellant upon inquiry as to these matters. It is elementary that without such knowledge there can be no waiver on appellant's part. *Van Woert v. Modern Woodmen of America*, 151 N. W. 224. *Security Ins. Co. v. Laird*, 62 Southern 182. *Brown v. Great Camp of Knights of Modern Maccabees*, 132 N. W. 562. *Deming Inv. Co. v. Shawnee Fire Ins. Co.*, 83 Pacific 918. *Loeffler v. Modern Woodmen of America*, 75 N. W. 1012. *Ostman v. Supreme Lodge*, 85 N. J. L. 86. *Harvich v. Modern Woodmen of America*, 158 Ill. App. 570. *Schmidt v. Supreme Tent of Knights of Maccabees of the World*, 73 N. W. 22. *Hartmann v. National Council of Knights and Ladies of Security*, 175 S. W. 212, 215, 216.

Moreover, under the laws of the appellant, by which Golden had agreed to be bound, it is provided that "in case any assessment shall be received from a member who has thus engaged in a prohibited occupation after his admission the receipt thereof shall not continue the benefit certificate of such member in force nor shall it be a waiver of his engaging in such prohibited occupation" (p. 42, ll. 30-36; p. 43, ll. 36-40; p. 44, ll. 1-2, 31-37; p. 45, ll. 8-15, 19-26, 31-38; p. 46, ll. 1-12, 15-24, 27-35). Such provisions have uniformly been held binding upon the member.

The benefit certificate itself provides that respondent shall only be entitled to benefits provided Golden "shall have in every particular complied with all the rules and regulations of the association" (p. 3, l. 40; p. 4, ll. 1-2). Such compliance under the rule in *Haynes v. Masonic Ben. Ass'n*, 136 S. W. 187, is a condition precedent to liability on the benefit certificate. Appel-

lant never waived this condition and as Golden had misrepresented both his age and his occupation in his application for membership and had as long as he was able to engage in any occupation engaged in one that was prohibited, he had not complied with the laws of the organization and there is therefore no liability upon the benefit certificate.

V. THE TRIAL COURT'S CHARGE SET FORTH IN THE EIGHTH GROUND OF APPEAL WAS ERRONEOUS.

At the respondent's request the Trial Court charged as follows: "Mere difference in stating age from what it actually was is not a defense. Defendant must prove in addition that the misstatement was made knowingly and fraudulently, or to state it more accurately, it must be an inference from the facts proven in the case that if Mr. Golden misrepresented his age such misrepresentation on his part was fraudulently made" (p. 98, ll. 15-23). It is difficult to see how Mr. Golden could have misrepresented his age without doing so fraudulently. He knew how old he was for when Mrs. Kennedy met him he told her that he was 26 years of age (p. 74, ll. 20-30). This was in 1889, and agrees with his age at that time as established by the baptismal certificate. The fraudulent intent in misrepresenting his age becomes obvious in view of the fact that the dues which he would be required to pay depended upon his age. It was not necessary, however, to prove that the statement was fraudulent or that Golden knew it to be false. As already pointed out, the statements being made a part of the contract are warranties, and being false would invalidate the entire contract whether made with knowledge or fraudulent intent or not.

The use of "or" in the stipulation contained in the application that "untrue or fraudulent" answers should void the contract is disjunctive and does not have the effect of requiring the appellant to prove both untruth and fraud. The case of *Aetna Life Insurance Co. v. France*, 91 U. S. 510, considers this exact phraseology. In that case the answers and declarations contained in the application for insurance were declared by the insured to be true and were made part and parcel of the policy and the basis of the contract, and the agreement was entered into on the faith of it, and it was stipulated that if they should be found in any respect "untrue or fraudulent" the policy should be null and void. The Court held that the company was not liable, if the statements made by the insured were not true, and that the agreement of the parties that the statements were absolutely true and that their falsity in any respect should void the policy, removes the question of the materiality from the consideration of the court or jury.

In *Dominick v. Metropolitan Life Ins. Co.*, 69 N. J. L. 384, this Court held that where a policy of life insurance makes the answers and statements contained in the application warranties, and constitutes them a part of the contract, an untrue statement concerning a matter of fact, that is, or ought to be, within the personal knowledge of the applicant, constitutes a breach of the warranty and renders the policy void.

Of course, a man's age is a matter which is or ought to be within his personal knowledge.

In *McCann v. Ladies of the Maccabees*, 182 Ill. App. 319, the Court held that a substantial breach of warranty as to the age of the applicant would defeat the certificate.

See also *Glutting v. Metropolitan Life Insurance Co.*, 50 N. J. L. 287. *Finn v Metropolitan Life Insurance Company*, 67 N. J. L. 17. *Deming Inv. Co. v. Shawnee Fire Ins. Co.*, 83 Pac. 918.

In *Krause v. Modern Woodmen of America*, 110 N. W. 452, a benefit certificate and the application therefore stated that the certificate was based on the application, and that, if a statement therein was not true, the certificate should be void. The Court held that a statement in the application of the age of the applicant was a warranty, and if false, rendered the certificate void unless obviated by statute.

VI. THE TRIAL COURT'S CHARGE SET FORTH IN THE SEVENTH GROUND OF APPEAL WAS ERRONEOUS.

The Trial Court at the request of the plaintiff charged that "merely occasionally engaging in a prohibited occupation does not constitute such an engagement therein as is prohibited by the contract. In order to constitute a defense, it must be proved that the prohibited occupation was a usual work or employment of the deceased" (p. 95, ll. 39-40; p. 96, ll. 1-4). It is submitted that this charge is both erroneous and prejudicial. Golden's application expressly provided that his benefit certificate should become null and void if he should engage in a prohibited occupation and the laws of the appellant to which he agreed to become subject are to the same effect (pp. 25-28). It is submitted that engaging at all in a prohibited occupation was a breach on Golden's part of his contract with appellant and would prevent the respondent from recovering.

The fact that the occupations prohibited may not have constituted Golden's sole and entire employment makes no difference as the Court said in *Creech v. State*, 158 S. W. 277:

"The Court charged '(4) You are further instructed that the terms "occupation" and "business" as used in this statute, do not mean that the selling of intoxicating liquors must be the principal business or occupation of the party, nor that he should give his whole, or a greater part, of his time to it, but if one follows the business or occupation of selling intoxicating liquors whenever an opportunity presents itself, under the meaning of the statute, it would be his business or occupation.' This charge is in conformity with the many decisions by this court. *Fitch v. State*, 58 Tex. Cr. R. 366, 127 S. W., 1040; *Clark v. State*, 61 Tex. Cr. R. 602, 136 S. W. 260. See also *Dickson v. State*, 146 S. W. 918; *Whitehead v. State*, 147 S. W. 584; *Hernandez v. State*, 141 S. W. 268; *Atkinson v. State*, 149 S. W. 115. The court correctly refused appellant's requested charge, which was: 'Gentlemen of the jury, you are further instructed that by the terms occupation and business as used herein is meant vocation, calling, trade; the business which one principally engages in to procure a living or obtain wealth.'"

Even if it were the fact that Golden only broke his contract occasionally that would be no reply to the defense that he broke it. It is not the law that one can disregard his contract obligations on frequent occasions and when confronted with the penalties prescribed for such conduct avoid its consequences by saying that he only did so occasionally. As a matter of fact the evidence in this case shows that it is not true that Golden only occasionally engaged

in the prohibited occupation of dealing in liquors but that it was his sole or principal occupation as long as he was able to do anything at all.

FOR THE REASONS ABOVE STATED
THE JUDGMENT IN THE NEW JERSEY
SUPREME COURT SHOULD BE REVERSED.

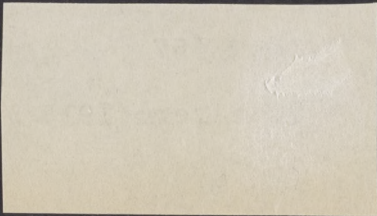
Respectfully submitted,

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CASE #57

June Term 1917



New Jersey Court of Errors and Appeals

SARAH M. HOPE,
Plaintiff-Respondent,

vs.

THE MACCABEES, a corporation,
Defendant-Appellant.

BRIEF FOR PLAINTIFF-RESPONDENT.

In February, 1897, WILLIAM J. GOLDEN became a member of the Maccabees, the defendant, a fraternal benefit association, which thereupon issued to him a life benefit certificate wherein it agreed to pay upon his death \$2,000.00 to the beneficiary therein named. In February, 1916, after nineteen years membership, Golden, having become totally and permanently disabled, entered into an agreement with the defendant whereby he surrendered to it his life insurance policy and received from it in place thereof a disability policy wherein the defendant agreed to pay him \$2,000.00 in installments during his lifetime; and to pay any balance remaining unpaid at the time of his death to the plaintiff, who was named as beneficiary. The defendant paid Golden \$150.00, leaving due at the time of his death \$1,850.00, for which this suit was brought, resulting in a verdict for the plaintiff, from which the defendant appeals.

The defendant contested the claim upon the ground that Golden had forfeited all rights under the policy because he had fraudulently mis-stated his age at the time of his admission; and that he

had engaged in the liquor business and had been addicted to the intemperate use of intoxicating liquors, both of which were prohibited by the by-laws of the defendant.

Point I.

MERE MIS-STATEMENT OF AGE IS NOT SUFFICIENT TO FORFEIT THE POLICY; IT MUST BE ACCOMPANIED BY BAD FAITH AND INTENT TO DECEIVE, AND THESE ARE QUESTIONS FOR THE JURY.

The appellant urges that an erroneous statement of age by Golden in his application for membership, whether fraudulently or innocently made, forfeits the policy, claiming that such a statement is a warranty the breach of which prevents recovery. This, however, is incorrect; the law is well settled that in the absence of an express provision in the policy, statements in the application are not warranties, and their untruth will affect the validity of the policy only if made falsely and with the intent to deceive.

(19 Cyc.-P. 681)

“The parties may, by their affirmative contract, declare that a representation shall be deemed material and thus eliminate the question of materiality and good faith, so that such representation shall become a warranty * * * but unless thus incorporated into the policy by specific reference, the statements of the application or other statements, preliminary or collateral to the making of the contract, are not warranties * * *” (Cases cited.)

In the case at bar there is no express provision in the contract making statements in the applica-

tion warranties, so that under the principle above quoted, it was necessary for the defendant to prove not only the untruth of the statement but that it was made falsely and with intent to deceive the company.

In addition to this general rule of law we have in this case the fact which the appellant completely ignores, that although the by-laws of the association, upon which the defendant relies, provide that no benefit shall be paid on account of the death of a member who has given untrue answers in his application, they also further provide,

“provided, however, that a member who, in his application for membership *understated his age in good faith and without any intention to deceive*, shall not thereby forfeit his certificate if he was under the age limit at the time of his admission.” (P. 35 11.4-14; 11.25-30; p. 36 11.1-4; 11.19-25; 11.34-40.)

By the very terms of the contract between the parties, therefore, it was expressly agreed that the defendant could escape liability under the policy on the ground of the mis-statement of age by the applicant only if such mis-statement was made in bad faith and with intent to deceive. Taking the evidence on this point in the light most favorable to the defendant, it proved only that Golden was four years older than he claimed at the time of his admission to membership. It offered no other proof on this point whatsoever. There was no evidence upon which the Court could take upon itself to say as a matter of law that Golden intended to deceive the appellant. Furthermore, the question of fraud and intention to deceive is always a question for the jury to decide and therefore since the motion for the direction of a verdict for the defendant was based solely on the fact that the age stated was in-

correct, without any proof of intention to deceive, the Court's refusal thereof was proper.

Point II.

GOLDEN WAS NOT ENGAGED IN A PROHIBITED OCCUPATION AT THE TIME OF HIS ADMISSION, NOR DID HE SO ENGAGE THEREAFTER. THE QUESTION WHETHER HE ENGAGED IN A PROHIBITED OCCUPATION WAS ONE OF FACT FOR THE JURY.

The appellant contended at the trial that Golden was engaged in the manufacture or sale of spirituous liquors at the time of his application, and that he subsequently became a collector for a brewery or a liquor house contrary to the by-laws of the association, and asked for a direction of the verdict on those grounds.

On this point the defendant produced three witnesses. The first was Mrs. Anderson, who had been Golden's mother-in-law. She testified as to Golden's occupation prior to 1897, the date of the policy, which the Court admitted merely to help the witness fix certain dates, but not as evidence of Golden's employment. (P. 55 11.30-35.)

A careful reading of her testimony shows that it is confined to a period prior to 1897. In fact, she is so indefinite in her statements of time that it is doubtful if she touched a point as late as 1897, and even as to the dates and places which she did mention, she does not say that Golden was then and there engaged in the sale and manufacture of liquor.

Mrs. Anderson met Golden when he married her daughter in 1890.

In 1891 he went into the liquor business on West Street, where he remained "around four years." (p. 55 11.36-40);

Then she thought he went to work for Murphy and Landers; for how long she did not know and could not say whether it was three months or three years. (p. 56 11.26-27);

Then he worked at Sixty-sixth Street and Third Avenue, which was a hotel and cafe, for about two years. (p. 56 1.36); which brought

The witness down to about 1896 or 1897. (p. 57 1.9).

Then he went to work for Paddell, who kept a rooming house, for about a year and a half. (p. 57 1.25);

Then he went to work for McCauley, and then to Andy Horn, who kept a saloon and restaurant, for over a year. (p. 58 1.19);

On cross examination she stated she was never in any of these saloons (p. 60); whenever she found Golden at any of the above addresses it was in that part of the premises used as a hotel, and nowhere in her testimony is there anything which indicates in any way whatsoever what his work, occupation or duties were at these various places.

The second witness was Anna Kennedy, a sister of Mrs. Anderson, who testified that

Golden was at West Street in business for himself three or four years, down to 1894 or 1895. (p. 68 1.1); but further

Says that he was so engaged in that place from about 1890 to 1893. (p. 68 1.14) et seq.

Then he worked for Murphy, but she never went in and saw him work. (p. 68 1.35);

Then he worked for Landers, but she never went in and saw him work there. (p. 69 1.1-10);

Then he went to work at Sixty-sixth Street and Third Avenue, where he worked only a short while. (p. 69 1-17) also (p. 70);

So that he went to Sixty-sixth Street about 1895 and worked there about a year to 1896, and then went to Monetta Lane. (p. 70 11.10-25);

In Monetta Lane she saw him standing in front of the bar. (p. 70 11.39-40.)

The third witness of the defendant was Samuel Burr, who was Golden's last employer, and for whom Golden worked up to a few years before his death. Burr owned a number of hotels and saloons in New York City, and also a great deal of real estate, and employed Golden to take care of the collection of his rents, and also to collect moneys from his cash registers. In fact, Golden was a special man whom Burr employed to take care of his finances. (p. 78 11.16-22.)

The plaintiff testified that Golden was a tobacco salesman in 1897, and that he frequently called at her home and brought with him his sample case of tobacco and cigars. (p. 80 1.31; p. 81 11.16-30.) She was corroborated by her sister, Anna Golden, who also testified that Golden was a tobacco salesman in 1897, and came to her home with his sample case of merchandise. (p. 83 11.34-40.) Both the plaintiff and her sister testified that the deceased had not worked for a year and a half prior to his death. (p. 80 11.1-15.)

At the time that Golden became a member of the defendant the by-laws provided that no person should be eligible who was engaged in the *manufacture* or *sale* of spirituous liquors. (p. 25 11.13-17.) It was only in 1907 that they were amended so as to exclude

“saloon keepers, bar tenders, liquor salesmen and collectors for liquor houses and breweries, bottlers, all persons employed in and about saloons and bars in hotels and restaurants, all persons employed in and about breweries, except the office force and general superintendents. Keepers of hotels and bars may be accepted at the discretion of the Medical Board.”
(p. 28 1.30-40.)

It was upon such testimony that the defendant asked for the direction of a verdict on the ground that in 1897 Golden was engaged in the sale of spirituous liquors and on the ground that in 1907 he was a collector for a brewery or liquor house. Such a motion, of course, presumes that the trial court could draw only one conclusion of fact from the evidence. But it is apparent from a reading of the testimony that the court could not do this. The testimony of Mrs. Anderson and her sister, Miss Kennedy, was extremely biased. Miss Kennedy was trying to help her sister, Mrs. Anderson, and Mrs. Anderson was trying to defeat the recovery by the plaintiff because the plaintiff had refused to give Mrs. Anderson a portion of the insurance money.
(p. 62 11.29-33.)

All of the testimony of both Mrs. Anderson and Miss Kennedy was very indefinite. The witnesses confessed that in some instances they could make no guess as to the duration of Golden's employment in a certain place, and as to those places of which they did attempt to speak they were indefinite in their statement of time, and absolutely silent as to Golden's employment at the place in question. The witnesses themselves did not agree. Mrs. Anderson said that Golden was at Sixty-sixth Street two years, and Miss Kennedy said he was there only one year. Counsel for the defendant brings the employment in saloons down to a point in 1897 only by taking the later of two years or the larger of two

numbers in cases where the witnesses testified "1890 or 1891," or where they testified "three or four years." If the smaller number or the earlier year is taken as a basis of calculation, it brings Golden's employment from the testimony of Kennedy and Anderson down only to 1895 or 1896, which was a year before the application was made. Moreover, all of the testimony of these two witnesses is that in the places they last mentioned there were hotels, and they saw Golden only in the hotel part of the building, except Miss Kennedy, who says (p. 70 1.40) she saw him in front of the bar, which is the place for customers and not employees. Mr. Burr testified that he knew Golden about thirty years, and first met him at Landers, which brings Golden's employment at that place back to 1887.

In addition to the fact that the evidence of the defendant's own witnesses was indefinite and conflicting as to dates, we have the fact that they are silent as to Golden's employment, and that it might well be that he was engaged in these places as a hotel clerk or bookkeeper or in a great many other capacities than that of the sale of liquor.

As to the contention of the defendant that Golden was employed as a collector for a liquor house or brewery while in Burr's employment, the trial court very aptly said at (p. 88) that the term "collector for a liquor house or brewery" is well known to mean one who makes collection of debts due to a brewery or wholesale liquor house for merchandise sold to a retailer, and that it does not mean a cashier who collects receipts in his employer's business. There is nothing in the testimony which shows that Golden ever entered a saloon in order to get the money from the cash register. It may have been brought to him in the hotel or rooming house, and he may have collected it incidentally to the

collection of the rent of the buildings of which he had charge.

Surely the evidence was not in such a state that the trial court could decide upon the question of fact itself as to what Golden's occupation was, and as to whether it violated the contract. Because of the contradictory nature of the defendant's own evidence, and the fact that it was silent as to Golden's actual occupation and duties, and in view of the contradiction thereof by the plaintiffs witnesses, the question was one of fact for the jury which the trial court properly refused to decide.

Point III.

IT WAS ONLY AN ENGAGING IN A PROHIBITED OCCUPATION AT THE TIME OF GOLDEN'S DEATH WHICH COULD AVOID THE POLICY.

The testimony was uncontradicted that Golden had engaged in no occupation for a year and a half prior to his death. The contention of the appellant is that it is immaterial when and for how long Golden engaged in a prohibited occupation, and that his so engaging for any length of time and during any period of his membership would void his policy, no matter how long thereafter he might remain a member without being so engaged.

There is no such provision in the policy or in the by-laws of the association, and to interpolate such a provision into the contract would be unfair. To forfeit the rights under a policy of insurance after a man has been a member for twenty years, simply because during the first year for a very short time he engaged in a prohibited occupation, would be so unjust as to be confiscatory. The by-laws of a fraternal benefit association must always be reasonable, and the reasonable rule applicable to

this situation has been laid down by the courts to be that where the contract prohibits a member from engaging in an occupation, no recovery may be had *when death occurs while so engaged.*

(25 Cyc. p. 823) :

“Certain occupations are sometimes excluded so that death resulting while engaged in such occupation is not a loss within the terms of the policy.”

But we are not left to a judicial interpretation of this feature of the policy. The parties themselves have expressed their understanding with reference thereto. The by-laws of the association provide:

Section 391 (p. 108 11.26-30) :

“*Engaging in prohibited occupation.* No benefit shall be paid on account of the death or disability of a member *while engaging in any prohibited occupation.*”

This provision the appellant has entirely ignored in its argument. It was not inserted in the contract for nothing. Its object was to relieve the defendant from liability from payment *where the death occurred while the member was engaged in a prohibited occupation.* So that even if the defendant had proved that Golden had at some time engaged in a prohibited occupation, that in itself would not be sufficient to defeat recovery.

Point IV.

THE TRIAL COURT WAS CORRECT IN CHARGING THAT TO CONSTITUTE A DEFENSE IT MUST BE PROVED THE PROHIBITED OCCUPATION WAS THE USUAL WORK OF THE DECEASED.

To this portion of the charge the appellant took an exception which it now urges for a ground of reversal. If the appellant is correct, then if Golden had acted as a bar tender for one day during the twenty and one-half years that he was a member of the association, his beneficiary could not recover on the policy. This cannot be the meaning of the clause in question. And the correctness of the Court's charge on this point, viz: that the occupation complained of by the defendant must be the usual occupation of the deceased, is established by the case of

Stone vs. United States Casualty Co. (34 N. J. L., p. 371).

In that case a contract of insurance was issued against bodily injury, and provided that the insurer should give immediate notice to the company of any change of employment from that named in the policy, and failure thereof should render the policy void. The insured was described in the policy as a school teacher, and undertook the building of a dwelling house; and while inspecting the work he fell and was killed. The company insisted that he had changed his occupation and had become builder, which was a business attended with greater risk than that of school teacher, and for that reason it was not liable on the policy. The court however said:

“There seems to be no substance whatever in this objection. The Court would have been fully warranted in saying there was no evidence whatever from which the assumption by the assured of any new business could be inferred. But the point was left to the jury with the explanation that the expression ‘changing occupation’ meant an engaging in another employment as a usual business. It seemed to re-

quire no argument to show that this exposition was correct."

The portion of the charge in question could in no way injure the defendant because the defendant did not prove that Golden at any time was actually engaged in a prohibited occupation. Even if the policy had provided that the engaging in a prohibited occupation for one day would void the policy, there was nothing in the case upon which the Court as a question of law could say that it would take the question from the jury and decide itself that Golden had actually so engaged for one day. The only question which the defendant could raise as to Golden's occupation was whether he, while collecting money from cash registers and from real estate in his employment by Burr was in any way engaged in a prohibited occupation; and on this point the charge in question could have no bearing, and could not prejudice the defendant. Therefore even if erroneous it would not be reversible error; but we contend it was correct.

Point V.

THERE WAS NO PROOF OF THE INTEMPERATE USE OF INTOXICATING LIQUORS.

Mrs. Anderson testified that she saw Golden drunk once in 1914. (p. 59 1.35.)

Miss Kennedy testified she saw him drunk once in 1904 (p. 71 1.35), which was twelve years before his death.

Mr. Burr testified he saw him drunk once with Mrs. Anderson. (p. 79 1.9.) On this testimony the defendant asked the Court to direct the verdict on the ground that it was proved Golden was addicted to the intemperate use of intoxicating liquors. It needs no argument to show that evidence of a man's intoxication three times in thirty

years is not sufficient for a trial court to say as a matter of law that the man was addicted to the intemperate use of intoxicating liquors.

Point VI.

THE QUESTIONS AS TO BREACH OF WARRANTY AND AS TO OCCUPATION OF THE DECEASED, ARE QUESTIONS FOR THE JURY.

Hampton vs. Hartford Ins. Co. (65 N. J. L., p. 265).

Henn vs. Metropolitan Ins. Co. (67 N. J. L., p. 310).

In *Hampton vs. Hartford Ins. Co.* the Court of Appeals at page 266 says:

“The attempt of the defense is to defeat the recovery in this case by the fact that a forfeiture has occurred under the conditions of the policy from the leaving of the premises vacant or unoccupied, exceeding the ten days allowed by the policy.”

“Forfeitures of this class are not favored by the law. * * *”

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

At page 268, the Court says:

“The chief reliance for reversal in this case is in the refusal of the trial Judge to take the case from the jury, and in his submitting the question of fact to the jury whether the church

was at the time of the fire, and for ten days before, vacant and unoccupied within the terms of the policy."

"We think the trial Judge was right on both positions. There was evidence from which the jury in the case could find that the church property, considering its uses, was not vacant or unoccupied within the terms used in the policy as they should be applied to a church building. * * *"

The Court then quotes the case of *Whitney vs. Black River Insurance Co.* (72 N. Y., p. 117), and says:

"That case is authority for the position taken by the trial Judge in this case, namely: that whether under the evidence there was occupancy or non-occupancy was a question for the jury. We think the refusal to non-suit and refusal to direct a verdict for the defendant were right."

In *Henn vs. Metropolitan Insurance Company* (67 N. J. L., p. 310), the Court of Appeals says, at page 311:

"Where there is a conflict in the evidence or lack of conclusive and unquestioned proof of the falsity of a warranty, the question is one for the jury. There must exist no rational theory upon which the jury might find the non-falsity of the answer of the insured before the Court can direct a verdict for the defendant. If there be a rational doubt of the falsity of the statement, the case is for the jury. * * * The present Chief Justice in voicing the opinion of this Court in the case just cited (*Lippincott vs. Royal Arcanum*, 35 Vr., p. 309), declared that it is only when the unimpeached testimony of the case is conclusive upon the

point and a verdict for the plaintiff cannot be supported without disregarding it that it is the duty of the trial Court to control the jury in its action, and direct a verdict for the defendant.”

Point VII.

SUMMARY.

The defendant utterly failed to prove that Golden was engaged in a prohibited occupation or that he had falsely mis-stated his age with intent to deceive the defendant, or that he was addicted to the intemperate use of intoxicating liquors. The questions of employment and fraudulent intention and the use of liquor were all questions for the jury. The portions of the charge excepted to by the defendant were correct and the judgment should be affirmed.

Respectfully submitted,

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