New Jersey Court of Errors and Appeals.

ANNA L. FISH,
Defendant in Error,
v.
METROPOLITAN LIFE INSURANCE COMPANY,
Plaintiff in Error.

Brief of Willard P. Voorhees,

Of Counsel with the Plaintiff in Error.

This writ of error brings under review a judgment entered in the Supreme Court. The issue was tried by the Circuit Judge in Camden County before, a jury which rendered a verdict for $1,175.81, damages (p. 12).

The action was brought upon a policy of life insurance issued upon the life of Walter C. Fish, by Anna L. Fish, his wife, as beneficiary. The policy and application are found on pages 40 and 43, respectively. The application is dated on the 15th of April, 1902. The policy is dated April 19, 1902. Walter Cullen Fish, the husband of the plaintiff and the one whose life was assured under this policy, died July, 6, 1902. The amount of the judgment represented the policy, $1,000, and interest thereon from July 14, 1902, the date when the proofs of death were received.

The declaration alleged general performance of conditions precedent to which special pleas were filed denying the performance, and also setting forth breaches of warranties contained in the policy and the application for it.

Errors have been assigned and will be considered as follows:

I.

THE TRIAL COURT ERRED IN REFUSING TO NON-SUIT THE PLAINTIFF.

This assignment is found on page 38, and the motion will be found on pages 20, 21 and 22. The grounds of this motion will appear as follows:

The policy (p. 40) was issued upon the following consideration: "In consideration of the answers and statements contained in the application for this policy, a copy of which is hereto annexed *as a part of this contract* * * * * all of which answers and statements are hereby made *warranties.*" The policy also provided that it was "subject to the conditions set forth on the third page hereof, each and all of which are hereby made part of this contract," and the second condition so set forth is as follows (p. 41):

"Second. If any statement in the application herein referred to is not true * * * * * this policy shall be void."

The application, signed by the assured (p. 46), sets forth: "And I further declare,*warrant* and agree that the statements and answers are strictly correct and wholly true, and that they shall form the basis and become part of the contract of insurance, if one be issued, and that if they are not thus strictly correct and wholly true the policy shall be null and void."

In the appication it was stated that the applicant had never had certain complaints or diseases, among which was rheumatism (p. 45).

The fourth plea (p. 6, line 30) sets forth this warranty and alleges that it was false in that the plaintiff had had rheumatism, to which the plaintiff join issue (see Replication, p. 9, line 35) by denying that Fish had at the time of making the contract any of said diseases. Again the application sets forth (p. 46): "The following is the name of the physician who *last attended me* and the date of the attendance and name of the complaint for which he attended me: Typhoid fever, January, 1893, Dr. Braymer," and also "I have not

been under the care of any physician within two years, unless as stated in previous line."

The defendant alleged breach of this warranty in its plea (p. 7), and on page 10 the Replication of the plaintiff denies that Fish had been under the care of a physician within two years next preceding the application, other than Dr. Braymer.

Again the application sets forth (p. 46): "I have no other insurance on my life except in the following named companies, and for the following amounts, and by the word "companies" I mean any company, association, society or order granting life insurance." At the head of this application, at page 45, line 30, it is stated as follows: "Wherever nothing is written in the following paragraphs it is agreed that the warranty is true without exception."

The breach of this warranty is set forth in the defendant's plea (p. 8, line 33), to which the plaintiff joined issue (p. 10, line 26), denying that the statement made in reference to other insurance in any other company was false, but declares that in all matters and things relating to the contract of insurance the statements were true.

The plaintiff at the trial offered in evidence the policy and the original application (p. 14, line 8). The proofs of death were also offered by the plaintiff (p. 20, line 18).

These proofs were signed by the plaintiff (p. 20, line 25), and were furnished by her (p. 18, line 23). These proofs of death consisted of four sheets of paper, and were the statements made by Drs. Sharp, Jarrett, Fish and the plaintiff . They will be found on page 49, Exhibit P 3. Dr. Sharp's certificate shows that he had attended Mr. Fish on February 23, 1902, March 19, 1902, and April, 1902, which were all before and immediately prior to the application for insurance. His attendance was for nausea, vomiting with headache and fever (p. 53).

Dr. Jarrett's certificate, forming part of the proofs of death, stated that he was in attendance upon Mr.

Fish from October 2, 1901, to October 5, 1901, for acute rheumatism.

Mrs. Fish's certificate in the proofs of death contained the statement that her husband was insured in the A. O. U. W. for $2,000, the Heptasophs $1,000, and the Brotherhood for $500, and that the deceased was aware of this insurance; that he made the applications for them, and paid the premiums (p. 51).

Under these proofs the Court was asked to non-suit the plaintiff. The proofs of death which were part of the plaintiff's case, showed conclusively that the plaintiff had suffered from some of the diseases mentioned in the application, that he had been attended by Drs. Sharp and Jarrett, and by one of them just before the date of the application.

In *Metropolitan Life Insurance Company v. McTague*, 20 *Vr.* 587, such facts are held to constitute proof of the falsity of the warranty, and so too with reference to the other insurance existing upon his life.

These are not matters upon which the insurer should know that the insured could not have the knowledge to answer fully, as was the case in *Henn v. Metropolitan Life Insurance Company*, 38 *Vr.* 310.

But these were both matters upon which the insured could fully answer, and if false would avoid the policy. *Finn v. Metropolitan Life Insurance Company*, 41 *Vr.* 255. *Dimick v. Metropolitan Life Insurance Company*, 40 *Vr.* 384.

In the last case which was in this court it was held that an answer that the plaintiff had never made any proposal or application for insurance to any company upon which a policy had not been issued, was a question which related to a matter upon which the insured could fully answer, and to a fact within the knowledge of the insured, and being a warranty and false avoided the policy.

It is therefore submitted that the motion to non-suit should have prevailed.

II.

THE TRIAL COURT ERRED BY ADMITTING ILLEGAL EVIDENCE.

The subject of this assignment of error (p. 38, line 15) will be found on page 33, line 20.

The plaintiff was asked, *under objection:*

"*Q.* In answer to the question of the agent for the insurance company as to what policies of insurance upon his life he had or to what societies he belonged, what was his answer?

"*A.* He told them the different ones.

"*Q.* You must say what he said, as near as you can.

"*A.* Do you want me to tell the different orders?

"*Q.* Yes, what he said.

"*A.* He said the Ancient Order, the Fidelity Lodge of the Ancient Order of Heptasophs and the Witherspoon Circle of the Brotherhood."

The question was not within the issues in the case. See Plea, page 8, line 23, and plaintiff's replication, page 10, line 28. The issue as presented by the pleadings was that defendant alleged the statements in the application to be false and the plaintiff denied their falsity. Hence the purpose of this testimony was not in substantiation of this issue. The testimony under objection admitted the falsity of the statements as written, while denying that the assured ever made them as written—quite another matter. The evidence was also objectionable as not being in rebuttal. The statement of the assured had been offered in evidence by the *plaintiff herself.* She could not avoid its force upon rebuttal by saying it was a paper fraudulent and not the statement of the assured. If the subject of attack at all, it should have been made upon the plaintiff's principal case. The plaintiff on rebuttal could not contradict her own principal case.

The testimony, therefore, was illegal, and its admission was error.

III.

THE REFUSAL OF THE COURT TO DIRECT THE JURY TO FIND A VERDICT FOR THE DEFENDANT WAS ERROR.

The fourth and fifth assignments comprise this objection, and they are founded upon the refusal of the motion to direct (page 34), and also upon the refusal of the trial court to charge the jury as requested by the defendant that under the evidence the plaintiff could not recover (p. 37, line 5).

The motion to direct a verdict for the defendant was made upon the same grounds as the motion for a nonsuit, and also upon the additional grounds that the evidence adduced by the defendant of the attendance upon the assured of Drs. Jarrett and Sharp, who were mentioned in the proofs of death, and also of the attendance of Dr. William Shaeffer (not mentioned in the proofs of death), was not only uncontradicted but was admitted by the plaintiff, and also that the evidence showed that the life of the deceased at the time of his application for his policy was insured in three companies or orders, viz: A. O. U. W., $2,000, Heptasophs, $1,000; Brotherhood, $500.

The three doctors above named were sworn and their testimony appears in the printed case, viz: Dr. Jarrett (p. 22), Dr. Ezra B. Sharp (p. 26), Dr. William Shaeffer (p. 24).

Dr. Jarrett states that he attended Walter C. Fish for illness in 1901, September 25, 26, 27, 28, 30, and October 2, 3, 4 and 5, and also identified the proofs of death signed by him, which formed a part of plaintiffs exhibit P3 (p. 49).

Dr. Sharp states that he attended the decedent professionally in 1902, February 23 and March 19, at his home, and on April 17 prescribed for him. These were all a very short time before the date of the application. He also identified his certificate forming part of the proofs of death (p. 28, line 14).

Dr. William Shaeffer also testified (p. 24, line 25) that he had attended Mr. Fish professionally between

1886 and 1896, and that in 1896 he attended him. This was to show the falsity of the warranty made in the application (p. 46), viz: "The following is the name of the physician who last attended me, the date of the attendance, and the name of the complaint for which he attended me: Typhoid fever, January, 1893. Dr. Braymer."

Mrs. Fish admitted the attendance of Dr. Jarrett (p. 30, line 31), and she no where denied the professional care and treatment of the other physicians, yet the Court in the charge told the jury it was for them to decide whether the uncontroverted testimony was true (p. 36).

Interrogatories served upon the plaintiff and answered by her were offered and read (p. 30) wherein the plaintiff stated that on April 15, 1902, the date of decedent's application, he was insured in the N. Y. Life Insurance Company, $1,000, issued December 17, 1905; Fidelity Lodge A. O. U. W., $2,000, issued February 18, 1896; Conclave of Heptasophs $1,000, issued February 18, 1897; Witherspoon Brotherhood, $500, issued April 21, 1898; that payments had ceased in N. Y. Life Insurance Company after one year. Mrs. Fish, the plaintiff, was called as a witness on behalf of the defendant, and stated (p. 29) that she collected the insurance money on her husband's life for the A. O. U. W., $2,000, the Brotherhood $500, and the Heptasophs $1,000.

This testimony was that of the plaintiff herself, and was in no way contradicted. It was absolute proof of the falsity of the warranty in that behalf in the application (p. 46, line 21, paragraph 12).

Under these conditions there was no question to go to the jury, and the Court ought to have given binding instructions. Any number of verdicts founded upon this testimony would be set aside. *Baldwin v. Shannon*, 14 *Vr.* 596.

Crue vs. Caldwell, 23 *Vr.* 215.
Haines vs. Merrill Trust Co. 27 *Vr.* 312.
Lippincott vs. Royal Arcanum, 35 *Vr.* 309.

There can be no doubt that these statements contained in the application were warranties. The *application* so denominated them (p. 45, line 25, and page 46, line 10); They were annexed to the policy and expressly referred to therein as *"a part of the contract"* (p. 40, line 10), statements are hereby made warranties.' p. 40, line 13), so that they appeared as warranties upon the face of the instrument itself. *DeWees vs. Insurance Co.* 5 *Vr.* 244.

They are warranties within the rule enunciated by this court in *American Life Insurance Co. vs. Day,* 10 *Vr.* 89.

These were "not *mere representations*" depending upon their materiality, to vitiate the contract as was the case in *Vivar vs. Knights,* 23 *Vr.* 455, and in *McVey vs. United Workmen,* 24 *Vr.* 17, nor was there any ambiguity of language in *Anders vs. Knights,* 22 *Vr.* 176.

This very form of policy had been construed both by the Supreme Court in *Finn vs. Metropolitan Life Insurance Co.* 38 *Vr.* 17, and by this Court in same case in error, 41 Vr. 255, and they were held to be warranties. Also in *Metropolitan Life Insurance Co. vs. McTague,* 20 *Vr.* 587, and again by this Court in *Dimick vs. Metropolitan Life Insurance Co.* 40 *Vr.* 384, 392, in a very learned, exhaustive and instructive opinion by Mr. Justice Pitney.

Nor do the warranties in question relate to matters upon which the insurer should know that the insured could not have the knowledge to fully answer as was the case in *Henn. vs. Metropolitan Life Insurance Co.* 38 *Vr.* 310, where there was inadequate proof of the diseases therein mentioned, although in that case it was conceded that the reasoning in *Lippincott vs. Royal Arcanum* 35 *Vr.* 309, was correct in holding that "the warranty of a physical fact in answer to such a question as 'Have you ever undergone any surgical operation?' if answered 'No,' is absolute, and if uncontradicted on the proof that the insured prior to that statement had been operated on for appendicitis * * * * then a direction of a verdict would be imperative."

The warranties in the present case were first as to the

attendance of physicians upon the insured, which is a physical fact which must have been known to the insured, and it may be remarked, attendance immediately prior to the application and in all probability for the very disease of which the insured died, and so quite material (see testimony of Dr. Sharp, p. 28, line 10, et seq.), and secondly, a warrnty as to other insurance, upon his life, likewise a fact which must have been known to the insured.

And so this case is within the rule enunciated by this Court in *Finn vs. Metropolitan Life Insurance Co.* 41 *Vr.* 355, where it is stated that a warranty that no proposal for insurance upon the life of the insured had ever been rejected, and the proof was that there had been a refusal to insure to the knowledge of the defendant "related to a matter upon which the insured could fully answer and was a warranty of a fact within the knowledge of the insured and being false, avoids the policy."

It is, therefore respectfully submitted that the judgment should be reversed.

WILLARD P. VOORHEES,
Of Counsel with Plaintiff in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ANNA L. FISH,

Defendant in Error,

vs.

METROPOLITAN LIFE INSURANCE COMPANY, 10

Plaintiff in Error.

BRIEF FOR DEFENDANT IN ERROR.

A.

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The first assignment of errors is that the declaration is not sufficient. No demurrer was filed to it, nor was objection made at the trial, no motion for non-suit on the ground that the allegata and probata did not agree. No opportunity to amend was given by reason of any motion made on any of these grounds. It is now too late to make objection. The court will not hear errors not assigned below. Van Alstyne vs. Franklin Council, 58 Atl. R., 818. Further any defect as to the sufficiency of the declaration is cured by the verdict.

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Though there is a defect, imperfection, or omission in the pleadings, yet if the issue joined is such as necessarily required at the trial proof of the fact is so defectively or

imperfectly stated or omitted and without which it is not to be presumed that the jury would have rendered the verdict found, such defect, imperfection, or omission is cured by the verdict.

22 Ency. Pl. & Pr. 939 and cases cited.

The general principle of law is that where a matter is so essentially necessary to be proved to establish the plaintiff's right to recovery, that the jury could not be presumed to have found a verdict for him unless it had
10 been proved at the trial, there the omission to state the matter in express terms in the declaration is cured by the verdict, if the general terms of the declaration are otherwise sufficient to comprehend it. Judge Story's rule. As a matter of fact the declaration is sufficient to maintain the action.

22 Ency. Pl. & Pr. 942.

B

The Second assignment of errors is the real question in the case, and brings up alleged breaches of warranties.

The breaches of warranties pleaded (the declaration alleges performance of conditions precedent. See printed book page 4, lines 15 to 20) are: That the insured was not in full health. Second plea. There is no exception relating to this plea, or the proof thereof. This fact in issue was found in favor of the plaintiff by the jury, and is not open for further discussion.

2. That the insured had disease of the urinary organs and rheumatism. Fourth plea, page 6, line 32. This fact in issue was also found in favor of the plaintiff.

3. That the insured had been before said application, seriously ill with disease of the heart, disease of the kidneys, disease of the urinary organs and rheumatism. Page 8, line 23.

All of these breaches of warranties come within the rule that "If the question asked relates to a matter upon which the insurer should know that the insured could not have the knowledge to fully answer, the waranty will not be held to be more than a warranty in the fair sense of the quotation, namely, to the belief of the insured." Henn vs. Met. L. I. Co., 51 Atl. 690 Ct. Errors & Appeals. 67 N.J.L. 346. Justice Fort in this case, citing the U. S. Supreme Court, in a case in which these same questions were asked in the application, quoted the words of Justice Harlan, following: "If those who organize and control life insurance companies wish to exact from the applicant, as a con-

dition precedent to a valid contract, a guaranty against the existence of diseases, of the presence of which in his system he has and can have no knowledge, and which even skilled physicians are often unable to detect, the terms of the contract to that effect must be so clear as to exclude any other conclusion."

See also Jeffrey vs. United Order, &c., 53 Alt., 1102 (Me.).

There was no proof in the case that the insured had
10 any knowledge of any of these diseases, and the facts were properly left to the jury for their finding. They have found all these issues in favor of the plaintiff.

The next breach of warranty pleaded is that the insured "had been under the care of a physician within two years then next preceding the date of said application." Page 7, line 12. This warranty is found on page 46, and is question 6. The warranty about being "attended" by a physician is not pleaded, and is not therefore in issue. We are confined to the words "under the care of a phy-
20 sician."

It is a common principle of law that the "forfeitures are not favored in the law, and if, by any intentment, a ground can be found to defeat them, the court will apply it. Hampton vs. Insurance Co., 65 N. J. Law 265, 47 Atl. 433, 52 L. R. A. 344."

"Where there is * * * 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
30 answers 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."

Henn vs. Metropolitan L .I. Co. 51 Atl. 689. (Ct. of Errors).
67 N.J.L. 346.

It is also a well-settled principle that the law will interpret contracts most strongly against the person making them.

Therefore we must take up the interpretation of these words in this light.

The words are: "under the care of." Being called upon by a physician for a trivial matter, such as a cold, once, or even several times, does not constitute "under the care of." A person may be under the care of a physician, and yet not even be attended by him. A person is under the care of a physician, when he conducts his daily life according to the direction of the physician, when he does or does not do what the physician tells him; when a person regularly and systematically takes the medicines prescribed by a physician and during which time he is under the supervision of a physician.

The attention of a physician for minor matters, when the patient as soon as he leaves the presence of a physician, takes his own conduct under his own guidance, is not "under the care of a physician" contemplated by the application, according to the intentment of the law, nor in popular contemplation and understanding.

"Proof that the insured had occasionally consulted a physician for minor matters will not make false a statement by the insured that he had no "usual" medical attendance.

"To a question which asked: 'State family physician, and each one who has given the party medical attendance?' the answer was 'Have none.' It appeared that a physician had attended the applicant for inflammation of the eyes, and again for another complaint. Held, whether suppression of the name of physician was fraudulent was for the jury."

Henn vs. Met. L. I. Co. 51 Atl. 689. (Ct. Errors). 67 N.J.L. 346.

The court in the case at bar left to the jury the question of the falsity of the representations. See charge of the court, paper book, page 35, line 18. The jury decided in favor of the plaintiff. For this reason this assignment of error is without merit.

The last breach of warranty pleaded, is that the insurer, "had, before the date of said application other insurance upon his life not disclosed in said application." See plea, page 9, line 13.

10 The application, an alleged copy of which is attached to the policy, is the same as papers "B" and "C" in exhibit P 2 on page 45, line 10 et seq. Paper "A" on page 44 is not part of the application attached to the policy.

The statement in the application under which this breach arises, is number 12 on page 46, and reads: "12. I have no other insurance on my life, except in the following named companies and for the following amounts. And by the word "company" I mean any company, association, society or order granting life insurance."

20 As an essential fact connected with the discussion as to the effect of this statement, we must look at paper "A" on page 44, question and answer 15, which reads "15. Is said life now insured in any other company or society, or association? If so, give names and amounts. Workmen, Heptasophs."

Paper "A" was transmitted to the Home Office in New York, and was produced by the defendant upon notice. It is not part of the application signed by the insured, nor attached to the policy, as part of the contract. It is an 30 exparte paper made out by the defendant's agent. Parol evidence as to the real answers made to the agent writing them down is permissible.

The application (paper "C") page 45, provides that

the company shall be bound by other written information presented at the Home Office. Page 46, lines 30-40. Paper "A" was produced by the Home Office on notice.

The issuing of the policy of insurance and the acceptance of the premium by the defendant company after notice of facts not contained in the aplication and warranties which would avoid the policy, is a waiver of the right of forfeiture, and estops the defendants from avoiding the policy.

The defendant company has waived the effect of the alleged false warranty, and a fuller disclosure, for the reason that contrary information was lodged with it in writing before the policy issued and the acceptance of the premium.

To deliver a policy with full knowledge of facts upon which its validity may be disputed, and then to insist upon these facts as grounds of avoidance, is to attempt a fraud. This the courts will neither aid nor presume; and when the alternative is to find this, or to find that, in accordance with honesty and fair dealing, there was an intent to waive the known ground of avoidance, they will choose the latter.

Henn. vs. Met. L. Ins. Co., 52 Atl. 490-492 (Com)
Mahoney vs. National &c., L. R. 6 C. P. 252.

Any course of dealing with a knowledge of facts constituting a breach of condition or warranty, recognizing the policy as still good, or issuing it as a good policy after knowledge from which the insured might believe he was protected, will amount to a waiver of such breach and estop the defendant from setting it up.

Such an issue is tantamount to an assertion that the policy is valid at the time of delivery, and is a waiver of the known ground of invalidity.

New Jersey Rubber Co. vs. Commercial Union, &c., 46 Atl. 777; 64 N. J. L., 580.
Commercial Ins. Co. vs. Ives 56 Ill. 402.
Morrison vs. Universal &c. 8 L. R. (ex) 40.
Geib vs. Enterprise &c .1 Dill C. Ct. 443 ,449.
Lorillard F. I. Co. vs. McCulloch 21 Ohio 176.
Richmond vs. Niagara F. I. Co. 79 N. Y. 230.
Van Schoick vs. Niagara F. I. Co. 68 N. Y. 434.
Bennett vs. North British &c. 81 N. Y. 273.
Shaw vs. Scottish Prov. I. Co. 1 Fed. Rep. 761.
Germania F. I. Co. vs. Mc Kee 94 Wis. 322.
10 Georgia H. I. Co. vs. Kinnier 28 Grat. (Va.) 88.
Anderson vs. Manchester &c. 59 Minn. 218, 63 N. W. 241.
Stone vs. Hawkeye I. Co. 68 Iow a737, 28 N.W. 47.
Fireman's Fund I. Co. vs. Norwodo, 69 Fed. R., 71; 16 C. C. A., 136; 32 U. S. App., 490.
Baltimore L. I. Co. vs. Howard 52 Atl. 397.
Spalding vs. H .L. Ins. Co. 52 Atl. 858 are authorities cited.

A case on all fours with the case at bar is Wood vs. American F. I. Co. 149 N. Y. 382. The court in this case said:

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"That the general agents of an insurance company may waive a stipulation and provision contained in a policy with respect to the conditions upon which it shall have inception and go into operation as a contract between the parties, by delivering it with knowledge of all the facts and receiving the premium, has long been settled. It is so obviously just that a party to a written contract should be precluded from de-
30 feating it by asserting conditions and stipulations contained in it which would prevent its inception, and which he knew at the time he delivered it and accepted the benefits were contraven-

ed by the actual facts, that any statement of the reasons upon which the rule rests is no longer necessary. * * * To take the benefit of a contract with full knowledge of all the facts and attempt afterwards to defeat it, when called upon to perform, by asserting conditions relating to those facts would be to claim that no contract was made and thus operate as a fraud upon the other party."

Insurance companies must have the recognized right to restrict the power of their agents by inserting clauses in the application and policy restricting the powers of their agents and their liability thereunder, unless by so doing their contracts would become tainted with fraud, and in such cases we will presume that a waiver was intended rather than fraud.

Quigley vs. St. Paul T. I. Co., 60 Minn., 275; 62 N. W., 287.
Koenig vs. United L. I. A., 38 N. Y.; Supp. 506.
Dailey vs. Preferred Masonic Mut., &c., 102 Mich., 289; 57 N. W., 184.

The New York courts hold that if an insurer issues a policy with full knowledge of the facts which would render it void in its inception, if its provisions were insisted upon, it is presumed that it is by mistake omitted to express the fact in the policy, or waived the provisions, or held itself estopped from setting it up, as a contrary inference would impute to it a fraudulent intent to deliver and receive payment for an invalid instrument.

Gray vs. Germania F. I. Co., 155 N. Y., 180.
Robbins vs. Springfield F., &c., 149 N. Y., 477.

The States of Massachusetts, Rhode Island and New Jersey stand alone in their ruling that parol evidence

cannot be introduced to show the truth of statements made to the company's agent. New York and other States follow the rule in a modified form where the company limits the powers of the agent.

But even the courts of Rhode Island recognize the correctness of the rule that issuance of a policy with knowledge of facts which would invalidate it is a waiver.

The Supreme Court in O'Rourke vs. John Hancock Mut. L. I. Co., 50 Atl., 834-834, R. I .,said: "The purpose of warranties in a policy is not to set a trap for applicants. * * * When, therefore, a company is in actual possession of knowledge of a fact ,and by turning to its own record can assure itself better than by an imperfect memory of an applicant, it is a perversion of the purpose of a warranty to allow it to avoid a contract. It is evident injustice for one party to allow another to enter into a contract which the former knows, or is bound to know, is invalid. As stated in Reed vs .Insurance Co., 17 R. I., 785; 24 Atl., 833; 18 L. R .A., 496, it is taking advantage of one's wrong."

C

The third assignment of errors relates to the admission of illegal and incompetent evidence.

The first exception is found on page 31, line 15.

The question excepted to is: "Q. Do you remember the reason for Dr. Jarrett's visits?" and was addressed to the plaintiff. This question was pertinent to show that the insured was in good health, by showing that the purpose of Dr. Jarrett's visit was for some minor and unimportant ailment.

The next exception is on page 33, line 29. The question objected to is: "Q. Do not answer this question until the court passes upon it." In answer to the question of the agent for the insurance company as to what policies of insurance upon his life he had or to what societies he belonged, what was his answer?

This question, which was allowed, related to paper "A," of Exhibit P 2, on page 44. This paper is the report made by the agent, and is not part of the contract, and, therefore, not a warranty. Not being a part of the contract, parol evidence is admissible concerning it. But whatever view the court may take of it, if the admission or parol testimony was an error, it turns out to be a harmless error, for the reason that the case is decided by the documentary evidence produced by the defendant on notice, showing a waiver of the falsity of the warranty relied upon as a defense.

The first part of the second, the fourth and fifth assignments of errors, relate to the refusal of motion to non-suit,

refusal to direct verdict, and refusal to charge. These assignments are all disposed of in the previous general discussions.

It is respectfully submitted that the judgment should be affirmed.

HENRY HOLLINSHED, Jr.,
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THOMAS B. HALL,
10 Of Counsel.

refusal to direct a verdict, and refusal to charge. These asignments are really all disposed of in the previous general discussions. As to the

MOTION FOR NON-SUIT. This motion was refused and exception taken, p. 20. The ground of the motion was because of the falsity of the statement that insured "had not been under the care of any other physician within two years then last past, except as stated in the line previous." And also "that he was in sound health." The evidence upon which this motion was founded, was the statements of certain physicians forming part of the proofs of death, which proofs of death were introduced in evidence.

The motion was not well taken, because, first, whether the statements in the proofs of death made out a case of care of a physician, was a question for the jury. Secondly, because the ex parte statements of these physicians is not sufficient to found a judgment upon.

Bentz vs. Northwestern Aid Soc. (Minn.) 41 N. W. 1037.

MOTION TO DIRECT A VERDICT. The grounds of this motion are: (a) because the exparte proofs of death show that the insured had been attended by physicians. This has already been discussed; (b) because of the alleged breach of waranty concerning being "attended" by a physician. As stated, this breach of warranty is not pleaded, and cannot be urged in face of allegation of performance of conditions precedent. Further, it might be said with good reason, that the attention of a physician was equivalent to being under the care of a physician, and if so, that the question was properly left to the jury; (c) because the insured had been "under the care of" a

physician within two years. This was properly left to the jury for reasons already stated.

As to grounds (b) and (c). These relate to the visits of the physicians, and it is claimed by the plaintiff in error to constitute:

BREACH OF WARRANTIES. Dr. Jarrett testified that he made eight visits in the course of two months. p. 22, line 30.

On cross-examination, he said it was for rheumatism. p. 23, line 17. But he did not testify that he, (Jarrett) told the insured what his ailment was. There is no evidence that the insured had any knowledge that he had rheumatism. On the contrary there is evidence that he didn't know, see p. 31, line 24, et seq. Here it is testified that the insured told the doctor he "had a pain in his shoulder." It doesn't follow that because a man has a pain in his shoulder that he must know he has rheumatism nor even that it is rheumatism at all.

In any event, this testimony was properly snbmitted to the jury for its determination as to whether or not it constituted being under the care of a physician. Their finding in favor of the plaintiff is conclusive.

DR. SHAFER'S testimony does not specify why he visited the insured, and therefor the jury were justified in finding that his attentions did not constitute "care." Further, the entire testimony of Dr. Shafer, p. 24 et seq., is not relevant to the issue, for the reason that the issue in this particular is, Had the insured been "under the care of" a physician within two years of the application? The application is dated April 15th, 1902. The entire testimony of Dr. Shafer relates to a time more than two years prior to the application, p. 24, line 30.

DR. SHARP'S testimony relates to two visits only, one in February and the other in March, 1902, a month apart, p. 26, line 27. Two visits a month apart cannot be called "under the care of" a physician, and the question was properly left to the jury for their determination.

Summing up the entire medical testimony, we find ten visits of a physician in the course of two years. On p 28, lines 7, 8 and 9, Dr. Sharp says "Yet in all my visits they were for some intermittent trouble of a day or so
10 standing."

It further appears, p. 32, line 11, that the insured during all of this time was attending to his business. He was ill when he died less than one hour, p. 32, line 24., and had not been ill at all prior to that time, p. 32, line 31.

EXCEPTIONS TO CHARGE. p. 37. The refusal to charge first request, is covered by the prior liscussion.

The second exception is: "Also to the charge of the Court wherein the Court confined the medical
20 tion." The charge in this particular is correct. The issue raised by the pleadings is confined strictly to the question of whether or not the insured had been "under the care of a physician within two years." See plea p. 7, lines 12, 13 and 24 and 25. The pleadings do not raise the issue as to attendance by physicians at any other time.

It is respectfully submitted that there is no error, and that the judgment should be affirmed.

HENRY HOLLINSHED, JR.,
Attorney.

30

THOMAS B. HALL,
Of Counsel.

New Jersey Court of Errors and Appeals.

ANNA L. FISH, *Defendant in Error,* v. METROPOLITAN LIFE INSURANCE COMPANY, *Plaintiff in Error.*	Number 39. November Term, 1905.

Since the argument of the above case I have received a communication dated December 5, 1905, from Thomas B. Hall, of counsel with the defendant in error, enclosing a copy of a communication which he states he has sent to the Court, regarding an error in my brief.

The alleged error is found on page 7 of my brief. It is merely typographical and at the end of the 17th line. The date therein stated is December 17, *1905*. It should be *1895*. The rest is correct as taken from the testimony. See in connection with the subject matter of other insurance Mrs. Fish's testimony, page 29; agent's report, page 44, line 24, question 15 and 15a; page 46, line 21; page 51, top of page.

Since the counsel for the defendant in error has seen fit to address a communication to the Court I may be permitted to make the following suggestions.

It was sought on the argument to distinguish between the expressions "under the care of a physician" and "the attendance of a physician."

Care primarily implies an anxiety or solicitude of a person toward another, and as coupled with a physician means anxiety or solicitude that a patient recover, refers to the mental state of the *physician* and not of the

patient, and does not by any means imply *control* over the patient. It is subjective rather than objective, with the physician. Hence it is quite synonymous with attendance upon. This meaning is given to it by reference to the 5th and 6th paragraphs found on page 46. The 5th refers to *attendance* and the 6th refers to *care,* but in such a way as makes it synonymous with attendance by reference to the "previous line." Attendance and care are not set in opposition to each other but are so placed as to make them synonymous.

Ordinarily the contract of a physician with his patient is entered into by the request for attendance, the answer of the physician by his visit and, in the absence of a refusal to act, the contract for treatment is complete and impliedly the physician is thereby bound to exercise due care.

The idea of control of the patient as suggested in the brief of opposing counsel; namely, when the patient "conducts his daily life according to the direction of a physician" is not included in the expression. Watchfulness on the part of a physician without the slightest order from him to the patient or resulting effect upon the patient would constitute the care or oversight of the physician.

An instructive definition of *care* will be found in the Century Dictionary.

WILLARD P. VOORHEES,
Of Counsel with Plaintiff in Error.

INDEX.

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NEW JERSEY

Court of Errors and Appeals

ANNA L. FISH,
Defendant in Error,
vs.
METROPOLITAN LIFE INSURANCE COMPANY,
Plaintiff in Error.

WRIT OF ERROR.

(*Filed May 13, 1905.*)

NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, *ss:*

The State of New Jersey to the Justices of our Supreme Court of Judicature of the State of New Jersey, Greeting:

[L. S.]

Because in the record and proceedings and also in the giving of judgment in a certain plaint which was in our said Supreme Court before you, between Anna L. Fish, plaintiff, and the Metropolitan Life Insurance Company, defendants, in an action of contract, manifest error hath intervened, to the great prejudice of the said Metropolitan Life Insurance Company, as by their complaint we are informed; we being willing that the said error, if

10

any there be, should in due manner be corrected and full and speedy justice done to the parties aforesaid, in this behalf, do command you that if judgment be thereupon given, then you do distinctly and openly send, under your seal, the record and proceedings aforesaid, with all things touching and concerning the same, to our Court of Errors and Appeals in the last resort, to be holden at Trenton, on the sixteenth day of May, nineteen hundred and five, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon what of right and according to law ought to be done.

Witness, William J. Magie, Esquire, our Chancellor and Presiding Judge of our Court of Errors and Appeals, at Trenton aforesaid, the fourth day of May, nineteen hundred and five.

S. D. Dickinson,
Clerk.

Willard P. Voorhees,
Attorney.

New Jersey Supreme Court.

Anna L. Fish *vs.* Metropolitan Life Insurance Company.	On Contract. On Postea.

Henry Hollinshed, Jr., attorney.

As yet of the tenth day of March, A. D. nineteen hundred and three.

Witness, William S. Gummere, Esquire, Chief Justice; William Riker, Jr., Clerk.

Camden County, *ss.*

Metropolitan Life Insurance Company, a corporation under and by virtue of the laws of the State of New York, and registered in the State of New Jersey, was summoned to answer unto Anna L. Fish,

of the city and county of Camden and State of New Jersey, in an action of contract, and thereupon the said plaintiff, by Henry Hollinshed, Jr., her attorney, complains for that whereas heretofore, to wit, on the twenty-fourth day of February, at Camden, in the county of Camden and State of New Jersey aforesaid, by a certain instrument or policy of insurance then and there made (one part of the said policy of insurance the said plaintiff now brings here into court, the date whereof is the nineteenth day of April, A. D. nineteen hundred and 10 two), it was witnessed that the said Metropolitan Life Insurance Company, in consideration of the sum of forty dollars and two cents, lawful money of the United States of America, paid into their treasury by the said plaintiff, the receipt whereof was thereby acknowledged, did for themselves, their successors and assigns, agree to pay to the said plaintiff or her legal representatives, the sum of one thousand dollars after good and sufficient proof shall be made upon oath or otherwise to the satisfaction of the said Metropolitan Life Insurance Company, of the 20 death of Walter Cullen Fish (the insured named in the said policy of insurance), then warranted in good health, and did not exceed the age of forty years at his nearest birthday, in case the said Walter Cullen Fish should die, provided the said Walter Cullen Fish should continue to pay yearly the sum of forty dollars and two cents ($40.02) on or before the nineteenth day of April in every year during the life of the said Walter Cullen Fish.

And the said plaintiff, in fact, saith that at the time 30 of making the said instrument or policy, and from thence until the time of the death of the said Walter Cullen Fish, the said plaintiff, the wife of the said Walter Cullen Fish, was interested in the life of the said Walter Cullen Fish, to wit, to the amount of all the moneys by him or her ever assured or caused to be assured therein, to wit, at Camden, etc., aforesaid and as appears by said policy, which by reference thereto may more fully and at large appear.

And the said plaintiff further saith that at the time of making the said instrument or policy of assurance the said Walter Cullen Fish was in full health, and did not exceed the age of forty years at his nearest birthday, and that afterwards and within the space of one year next after making the said instrument or policy of insurance, to wit, on the sixth day of July, in the year of our Lord nineteen hundred and two, at Pleasantville, in the county of Atlantic and State of New Jersey, the
10 said Walter Cullen Fish died. All of which said premises the said Metropolitan Life Insurance Company afterwards, to wit, at Camden, etc., had notice, and, although good and sufficient proof was then and there made to the said Metropolitan Life Insurance Company of the death of the said Walter Cullen Fish, and the plaintiff hath always, from the time of making of the said instrument or policy of insurance, performed and fulfilled all things on her part and behalf to be performed and fulfilled according to the tenor and true
20 intent and meaning thereof, the said plaintiff, in fact, saith that the said corporation, the said Metropolitan Life Insurance Company (although requested so to do) did not nor would, when such proof was made as aforesaid of the death of the said Walter Cullen Fish, or at any time thereafter, pay to the said plaintiff the said sum of one thousand dollars, or any part thereof, but hath hitherto wholly refused and neglected so to do, and therein hath failed and made default, contrary to the form and effect of said instrument or policy of in-
30 surance, and of the said covenant by them in that behalf made as aforesaid, to wit, at Camden, etc., and, therefore, she brings her suit.

Take notice that the plaintiff demands the sum of one thousand dollars, together with interest from the first day of August, A. D. 1902, and also the costs of this suit.

And the said defendant, by Willard P. Voorhees, its attorney, comes and defends the wrong and injury, when, &c., and says that it did not undertake and promise in manner and form as the said plaintiff hath above

thereof complained against it, and of this the said defendant puts itself upon the country.

And for a further plea in this behalf as to the declaration the said defendant, by leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that the said Walter Cullen Fish, upon the date and at the time of making of the said contract in said declaration mentioned was not in full health, of which the said plaintiff had notice, and of this the said defendant puts itself upon the country.

And for a further plea in this behalf as to the said declaration the said defendant, by like leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it because it says that in and by the provisions of the said policy in said declaration mentioned it was provided that the payment in said declaration mentioned should be made upon receipt of proofs of the death of the insured made in the manner, to the extent and upon the blanks required in said policy, and further that the said proofs of death thereunder should be made upon the blanks to be furnished by the said defendant and should contain answers to each question propounded to the claimant, physicians and other persons, and should also contain the record, evidence and the verdict of the coroner's inquest, if any were held.

And the said defendant avers that neither the said plaintiff, nor anybody in her behalf, did furnish the said defendant with proofs of death upon the blanks furnished by said company and containing answers to each question propounded to the claimant, physicians and other persons, and containing the record, evidence and verdict of the coroner's inquest, if any, wherefor it prays judgment if the said plaintiff ought to have or maintain

her aforesaid action thereof against it, the said defendant.

And for that for a further plea in this behalf as to the said declaration the said defendant, by like leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action against it because it says that in and by the answers and statements contained in the printed and written application mentioned in and referred to by said instrument or policy in said declaration mentioned it was expressed and declared, among other things, that the said Walter Cullen Fish had never had any of the following complaints or diseases, to wit: apoplexy, asthma, bronchitis, cancer or other tumor, consumption, disease of brain, disease of heart, disease of kidneys, disease of liver, disease of lungs, disease of urinary organs, dropsy, fistula, fits or convulsions, general debility, habitual cough, hemorrhage, insanity, jaundice, paralysis, pleurisy, pneumonia, rheumatism, scrofula, spinal disease, spitting or raising of blood, ulcer or open sores, varicose veins, all of which answers and statements were by the terms of said application and of said instrument or policy made warranties, and were therein and thereby made part of said contract.

And the said defendant avers that the said answers and statements so contained in the said printed and written application were false and not true in that the said Walter Cullen Fish had had before and at the date of said application disease of the heart, disease of the kidneys, disease of the urinary organs and rheumatism, by reason whereof the said instrument or policy, according to its expressed conditions, was and is null and void, to wit, at the county of Camden aforesaid, and this the said defendant is ready to verify.

Wherefore it prays judgment if the said plaintiff ought to have or maintain her aforesaid action thereof against it, the said defendant.

And for a further plea in this behalf as to the said declaration the said defendant, by like leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it because it says that in and by the answers and statements contained in the printed and written application mentioned in and referred to by the said instrument or policy in said declaration mentioned it was expressed and declared, among other things, that the said Walter Cullen Fish had not been under the care of any physician within two years then next preceding except as stated in the line previous thereto, and that in the line previous thereto it was stated that Doctor Braymer, in January, 1893, had attended said Walter Cullen Fish for typhoid fever, all of which answers and statements were by the terms of said application and of said instrument or policy made warranties, and were therein and thereby made part of said contract.

And the said defendant avers that the said answers and statements so contained in said printed and written application were false and not true in that the said Walter Cullen Fish had been under the care of a physician or physicians within two years then next preceding the date of said application other than the said Doctor Braymer, as therein stated, by reason whereof the said instrument or policy, according to its expressed conditions, was and is null and void, to wit, at the county of Camden, aforesaid, and this the said defendant is ready to verify.

Wherefore, it prays judgment if the said plaintiff ought to have or maintain her aforesaid action thereof against the said defendant.

And for a further plea in this behalf as to the said declaration, the said defendant, by like leave of the Court here for this purpose first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have

or maintain her aforesaid action thereof against it, because it says that in and by the answers and statements contained in the printed and written application mentioned in and referred to by said instrument or policy in said declaration mentioned, it was expressed and declared, among other things, that the said Walter Cullen Fish had, prior to said application, never met with any serious personal injury, nor ever been seriously ill, and for the complaints named and no other, when he was
10 attended by the following-named physicians and no other, and did not except any diseases or state the names of any physicians, and further in and by said written application did warrant and agree that wherever nothing was written in the paragraphs in said application it was agreed that the warranty should be true without exception, all of which answers and statements were, by the terms of said application and of said instrument or policy, made warranties, and were therein and thereby made part of said contract.

20 And the said defendant avers that the answers and statements so contained in said printed and written application were false and not true in that the said defendant had been, before said application, seriously ill with disease of the heart, disease of the kidneys, disease of the urinary organs and rheumatism, by reason whereof the said instrument or policy, according to its expressed conditions, was and is null and void, to wit, at the county of Camden, aforesaid, and this the said defendant is ready to verify.

30 Wherefore, it prays judgment if the said plaintiff ought to have or maintain her aforesaid action thereof against the said defendant.

And for a further plea in this behalf as to the said declaration, the said defendant, by like leave of the Court here for this purpose first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that it was expressed and declared, among

other things, in and by said application and policy that said Walter Cullen Fish, at the time of said application, had no other insurance upon his life in any company, and by the word "company" was meant any company, association, society or order granting life insurance, all of which answers and statements were, by the terms of said application and said instrument or policy, made warranties and were therein and thereby made part of said contract.

And the defendant avers that the answers and statements so contained in the said printed and written application were false and not true, in that the said Walter Cullen Fish had, before the date of said application, other insurance upon his life not disclosed in said application, by reason whereof the said instrument or policy, according to its expressed conditions was and is null and void, to wit, at the county of Camden aforesaid, and this the said defendant is ready to verify.

Wherefore, it prays judgment if the said plaintiff ought to have or maintain her aforesaid action thereof against the said defendant.

And the said plaintiff, by Henry Hollinshed, Jr., her attorney, saith, as to the first and second pleas of the defendant, by it above pleaded, whereof it has put itself upon the country doth the like.

And the said plaintiff, as to the third plea of the said defendant by it above pleaded, denies that she failed to make proofs of death of the insured upon the blanks furnished by the defendant company, but avers that she made such proofs upon the papers furnished by the agent of the defendant company, and that she furnished to the said agent all the records of the said physicians, there being no coroner's inquest, and of this she puts herself upon the country.

And the said plaintiff, as to the fourth plea of the said defendant by it above pleaded, denies that the said Walter Cullen Fish had, at the time of making the said contract of, had any of the diseases therein named, to

wit, apoplexy, asthma, bronchitis, cancer or other tumor, consumption, disease of the brain, disease of the heart, disease of the kidneys, disease of the liver, disease of the lungs, disease of the urinary organs, dropsy, fistula, fits or convulsions, general debility, habitual cough, hemorrhage, insanity, jaundice, paralysis, pleurisy, pneumonia, rheumatism, scrofula, spinal disease, spitting or raising of blood, ulcer or open sores, or varicose veins, and of this the said plaintiff puts herself upon the country.

10 And the said plaintiff, as to the fifth plea of the said defendant by it above pleaded, denies that the said Walter Cullen Fish had been under the care of a physician or physicians within two years next preceding the said application, other than the said Doctor Braymer as therein stated, and of this the said plaintiff puts himself upon the country.

And the said plaintiff, as to the sixth plea of the said defendant by it above pleaded, denies that the answers and statements contained in the written and printed ap-
20 plication as made by the said Walter Cullen Fish were false and not true, or that the said Walter Cullen Fish had been, before the said application, seriously ill with disease of the heart, disease of the kidneys, disease of the urinary organs and rheumatism, but declares all the said statements made by him to be true, and of this the said plaintiff puts herself upon the country.

And the said plaintiff, as to the seventh plea of the said defendant by it above pleaded, denies that any statements made by the said Walter Cullen Fish, in refer-
30 ence to any other insurance in any other company were false, but declares that in all matters and things relating to the said contract of insurance the statements of the said Walter Cullen Fish were true, and of this the said plaintiff puts herself upon the country.

Therefore, let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Camden in and for the county of Camden, on the first Tuesday of April, in the year of our Lord, one thou-

sand nine hundred and five, by whom, etc., and the same day is given to the parties aforesaid there, etc.

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

Afterwards, to wit, on the fourth day of April, in the year of our Lord nineteen hundred and five, at a Circuit Court holden at Camden, in the county of Camden, before the Honorable Charles G. Garrison, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, according to the statute in such cases made and provided, by consent of the parties, the issue aforesaid was sent by the said Justice of the Supreme Court to be tried to the Circuit Court of the county wherein the venue is laid, to wit, the Circuit Court to be holden in Camden, in and for the county of Camden, and afterwards, to wit, on the seventeenth day of April, in the year of our Lord nineteen hundred and five, at a Circuit Court holden at Camden, in and for the county of Camden, being the county wherein the venue in the aforesaid issue is laid, before the Honorable Allen B. Endicott, Circuit Judge, according to the statute in such case made and provided, came as well the within Anna L. Fish and Metropolitan Life Insurance Company, by their respective attorneys within mentioned, and the jurors of the jury whereof mention is within made being also summoned to come, who, to speak the truth of the matters within contained, being chosen, tried and sworn, and others of them who alleged that they were scrupulous of taking an oath, being duly affirmed, say, upon their oath and affirmation, that the said Metropolitan Life Insurance Company did undertake and promise in manner and form as the said Anna L. Fish hath within complained against it; and they assess the damages of the said Anna L. Fish, on occasion of the not

performing the promises and undertakings within mentioned over and above her costs and charges by her about her suit in this behalf expended, to eleven hundred and seventy-five dollars and eighty-one cents.

Therefore, it is considered that the said plaintiff do recover against the said defendant her said damages by the jury in form aforesaid found to be the sum of eleven hundred and seventy-five dollars and eighty-one cents, and, also, for her
10 costs and charges aforesaid, by the Court now here adjudged to the said plaintiff, and with her assent, which said damages, costs and charges in the whole amount to

Judgment signed the fourth day of May, A. D. nineteen hundred and five.

WM. S. GUMMERE, *C. J.*

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

20 In testimony whereof I have set my hand and the seal of said Court at Trenton, this tenth
[L. S.] day of May, A. D. nineteen hundred and five.

WM. RIKER, JR.,
Clerk.

NEW JERSEY SUPREME COURT.
CAMDEN COUNTY CIRCUIT.

ANNA L. FISH,
vs.
METROPOLITAN LIFE INSURANCE COMPANY. } On Contract.

No. 47. April Term, 1905.

Appearances—For the plaintiff, Henry Hollinshead, Jr., Esq., and Thomas B. Hall, Esq.; for the defendant, W. P. Voorhees, Esq. 10

Before ENDICOTT, J., and a jury.

BILLS OF EXCEPTIONS.

(*Filed June 9, 1905.*)

THE CASE FOR THE PLAINTIFF.

Anna L. Fish, sworn.

By Mr. Hall:

Q. Mrs. Fish, are you the plaintiff in this case?

A. I am.

Q. Are you the widow of Walter C. Fish?

A. I am. 20

Q. Was your husband insured in the Metropolitan Life Insurance Company?

A. Yes, sir.

Q. I show you a policy dated—numbered 2,625,545 C, in the Metropolitan Life Insurance Company, and ask you if that is the life insurance policy upon your husband's life, issued by the Metropolitan Life Insurance Company?

A. It is.

Q. Where did you get this policy? 30

A. It was brought to the house.

Mr. Voorhees—I won't put you to the trouble of proving the policy.

Mr. Hall—Well, do you admit in evidence the policy with the original application?

Mr. Voorhees—Yes; I have no objection to that.

(The original policy and original application are admitted without formal proof.)

10 *Q*. Mrs. Fish, were you present when the application was made by Mr. Fish for this insurance policy?

A. I was.

Q. Do you remember the agent for the Insurance Company asking Mr. Fish to what companies or societies he belonged to?

Mr. Voorhees—I object; I don't see that that is competent.

(Question withdrawn.)

Q. Were you married to Mr. Fish at the time this 20 insurance was placed?

A. I was.

Q. When did Mr. Fish die?

A. On the sixth of July.

Mr. Hall—Is his death admitted, Mr. Voorhees?

Mr. Voorhees—I presume the date is admitted; yes.

The Court—July of last year?

The Witness—No; July 6, 1902.

30 Mr. Hall—It is admitted that the Walter C. Fish named in the policy of insurance died on the sixth day of July, 1902.

Mr. Voorhees—Yes.

Q. Did the company send to you blanks upon which to furnish proofs of death?

A. They did.

Q. What did you do with those blanks?

A. Well, the doctor filled them out.

Q. What doctor?

A. Doctor Fish.

Q. Doctor Fish. Did he represent you or the insurance company?

A. He represented me, I suppose.

Q. Were those proofs of death given to the defendant company?

A. They were sent there.

Mr. Voorhees—What they were, of course, the papers are the best evidence.

Mr. Hall—I am not asking as to what they were. 10

Q. Did you see them in the hands of Mr. Jones, the district agent of the defendant company?

A. I did.

Q. At the office of the defendant company?

A. I did.

Q. By way of explanation, this Doctor Fish that you speak of, who furnished the proofs of death, is he related to you or your husband in any way?

A. No, sir. 20

Q. Where does he live?

A. Pleasantville.

Q. How was it that he furnished the proofs of death?

Mr. Voorhees—Well, what did he furnish? The proofs of death are the best evidence. What he did furnish are the papers and the best evidence. I don't want to admit the proofs of death were furnished from the fact that I don't know what you have. I don't know what you may call proofs of death, and I, therefore, object to this line. 30

Mr. Hall—There is no evidence as to what they are.

Q. Were the proofs of death that you speak of papers furnished by the defendant company for that purpose?

Objected to.

The Court—She said the company furnished blanks.

Mr. Hall—What is the difference between papers and blanks?

The Court—I don't know. I suppose the testimony has been rather objectionable. You have a witness testifying without producing the documents upon which that testimony is based.

Q. Well, Mrs. Fish, where did you last see those papers?

Objected to.

10 *Q.* The blanks that were furnished you, upon which you were to furnish the proofs of death?

A. Do you mean the first papers?

Q. Yes.

A. In the office at Third and Federal.

Q. Whose office?

A. The Metropolitan office.

Q. Did you see Mr. Jones, their agent, at that office?

A. I did.

Q. What is the character of his agency?

20 Objected to. Objection sustained.

Q. Do you know the character of the agency that Mr. Jones held out to the public as an agent of the company?

Mr. Voorhees—I object to that; I do not see what that has to do with this question.

The Court—I think she may show what Jones did.

Q. Who had charge of the office of the company in Camden?

30 *A.* Mr. Jones.

Mr. Voorhees—You have ordered me to produce the proofs of death here.

Mr. Hall—Yes.

Mr. Voorhees—Well, they are here if you want them.

Q. What did Mr. Jones say to you about the payment or non-payment of the insurance upon that policy?

Mr. Voorhees—I object. The contract is in

writing, and that agent cannot bind the company.

The Court—At what time was this; after the death?

Q. Yes; and when did that statement take place with relation to the death or life of your husband?

The Court—Well, I think you had better disclose to the Court at side bar what you want to prove. What was the declaration of Jones you propose to show? 10

Mr. Hall—The declaration of Jones that I propose to show is that he told Mrs. Fish that he would not and the compnay would not pay this policy.

Mr. Voorhees—That is certainly very objectionable evidence.

Mr. Hall—I propose to follow that statement up with another witness whom Jones told, the agent of the plaintiff in this case, her attorney, 20 that Jones told the attorney they wouldn't pay this policy, and stated to the attorney the reasons why they wouldn't pay it.

The Court—Does the policy say how the terms may be changed or they shall not be changed?

Mr. Hall—Say they shall not be changed without the consent of the treasurer or president.

Mr. Voorhees—Yes, it is in the policy. We say no proofs were rendered, and they raised the issue that there were proofs rendered. That 30 is the issue I am here to meet. There is no waiver. It has all been raised on the record.

Mr. Hall—We can amend that.

Mr. Voorhees—You cannot amend it to try this case, because I have no witnesses here.

Mr. Hall—We will go on with that examination, and let the question rest for the present.

Q. Proofs of death produced by the defendant upon notice, consisting of four sheets of yellow paper, being

a statement made by E. B. Sharp, M. D., Harry Jarrett, M. D., Clyde M. Fish, M. D., and the plaintiff, Anna L. Fish, are shown the witness, and she is asked to look at them and state if she ever saw those papers before?

A. I did.

Q. What is the answer?

A. I did.

Q. Did you see those papers filled up?

A. Well, I saw what Doctor Fish or Doctor Sharp
10 filled; he was at my home when he did it.

Q. Did you see the paper when it was filled up or after it was filled up by Doctor Fish?

A. No.

Q. Did you see the paper that was filled up by Doctor Jarrett?

A. No.

Q. Did you fill up or cause to be filled up all the blank papers sent to you by the company upon which you furnished proofs of death?

20 *A.* I did.

Q. Are those the papers?

A. I suppose they are. Why, certainly, that has got my signature to it.

Q. Mrs. Fish, did you furnish these proofs of death to the company?

A. I did.

Q. After furnishing these proofs of death to the company did you see Mr. Jones, the agent of the defendant company, in Camden?

30 *A.* I did.

Q. What did he say to you about paying or not paying the policy?

Objected to; objection sustained.

Exception noted for the plaintiff.

Mr. Hall—I offer to prove that the plaintiff saw Mr. Jones, the agent of the company in Camden, at the company's office, and in an interview there had with him he said to the plaintiff that

the company would not pay the sum due on the policy; I also offer to prove by the attorney of the plaintiff that he had a conversation with Mr. Jones, the agent of the company in Camden, both of these conversations taking place after the death of the insured, and that Mr. Jones told the attorney of Mrs. Fish that the company would not pay the policy, because he had fraudulently procured it.

Mr. Voorhees—Counsel does not state when these conversations took place. 10

Mr. Hall—I say both of these conversations took place after the death of the insured.

Mr. Voorhees—Well, about when?

Mr. Hall—Well, about when? Tell me, Mrs. Fish, for my information?

The Witness—About three days after the burial Mr. Jones sent for me.

Q. How many days after the death?

A. He died on the sixth, he was buried on the ninth, and, I think, this was on the Monday following. 20

Q. About a week afterwards?

A. No, it wasn't a week—a little less than a week—that he sent for me to come to the office.

Q. And when did your conversation take place?

Mr. Voorhees—I certainly object to that. I do not see what in the world it has to do with the case, in the first place, and, in the second place, if it had anything to do with the case in substance it would not be competent to have Jones, or any other agent, make statements to bind the company. He must first show that the agent had the authority to bind the company. 30

The Court—The offer is refused.

Exception noted for the plaintiff.

Q. Has the company paid the one thousand dollars due upon this policy?

A. No, sir.

Mr. Hall—If the Court please, I move to amend the pleadings in this case so as to show a waiver of the performance of any of the conditions imposed upon the plaintiff under the terms of the policy, based upon the evidence in my former offer to prove a refusal to pay the policy on the ground that it was fraudulently procured. That is all of the offer.

The Court—I will allow the amendment to be made, but, of course, the case must go off for this term. A plea of replication must be filed, and counsel must have time to reply.

Mr. Hall—I will withdraw that motion, if the Court is going to continue the case for the term.

Motion withdrawn.

The policy is offered in evidence and marked *P 1*, the application is marked *Exhibit P 2* and the proofs of death *Exhibit P 3*.

Mr. Voorhees—Counsel for the defendant states that these were produced in answer to a demand, and I put the demand in to make the record complete.

Said paper marked *Exhibit D 1*.

Cross-examination by Mr. Voorhees.

Q. You signed these proofs, did you not?

A. I did.

Plaintiff rests.

Mr. Voorhees—If your Honor please, I move for a non-suit in this case. It appears, under the issues raised by the application, that it was warranted that Mr. Walter Cullen Fish had been attended in January, 1903, by Dr. Braymer for typhoid fever, and that he had not been under the care of any other physician within two years then last past, except as stated in the line previous, and that he was then in sound health. Now, by the plaintiff's own showing we find

that Dr. E. B. Sharp had attended the decedent on the 23d of February, 1902; on the 19th of March, 1902; on the 17th of April, 1902, which, by the way, was two days before the policy was dated—

The Court—What do you hold in your hand?

Mr. Voorhees—I hold in my hand the proofs of death which were furnished by this plaintiff. It also appears that on October 3d, 4th and 5th, 1901, the decedent was attended by Dr. Harry Jarrett. Now, the form of this policy has been passed upon many times by our own Courts. Every one of these statements and answers is by express terms of the policy made a warranty, and, therefore, if it is not true, it avoids the policy. The proof is ample, it seems to me, to warrant the motion being granted. One of the latest cases that we have in the State is a case in the Court of Errors, Finn *v.* The Metropolitan, reported in 41st Vroom, page 255, "A warranty by an insured in his application for insurance that 'no proposal or application to insure my life has ever been made to any company or agent upon which a policy has not been issued of the amount applied for,' is the warranty of a fact relating to a matter upon which the insured could fully answer, and, if false, avoids the policy." The case of Dimick *v.* the same company, 40th Vroom, page 384, sets out the general principle, and there is also a case that I have here which is directly on this point, viz., "that he was not attended by any other physician," which is a matter that he could not say he did not know, and in this case it shows the answer was not true, and, therefore, she cannot recover.

I make the formal motion to nonsuit.

The Court (after argument)—We will take our recess now.

Recess until 1:30 o'clock P. M.

Trial of the cause resumed at 1:30 o'clock P. M. in the presence of counsel for the respective parties.

The Court—The motin to nonsuit is denied. I do not think the statements of these physicians, though under oath, being ex parte and no opportunity to cross-examine, should be accepted as giving sufficient probative force to found judgmnt upon.

Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

10 ALLEN B. ENDICOTT,
Circuit Court Judge.

THE CASE FOR THE DEFENDANT.

Dr. Harry Jarret, sworn.

By Mr. Voorhees:

Q. Doctor, you live in Camden?

A. I do.

Q. You are a practicing physician here?

A. I am.

20 *Q.* How long have you been engaged in your profession?

A. Eighteen years.

Q. Did you know Walter C. Fish?

A. I did.

Q. In his lifetime?

A. During his lifetime, yes.

Q. Have you attended him for illness?

A. I did.

Q. And have you the time when?

30 *A.* I have. 1901, September 25th, 26th, 28th, 30th, 1901, October 2d, 3d, 4th and 5th, making eight visits all together.

The Court—What is the date of the policy or of those answers to applications? What is the date of the application?

Mr. Voorhees—April 15th, 1902.

Q. I show you a paper, and ask you if that is your signature?

A. It is, yes.

Q. That was made by you?

A. By me.

Q. After you had filled out that paper do you know what you did with it?

A. Well, I presume that I must have—

Q. Who did you hand it to?

A. That I do not recall; I am sorry my memory does not serve me properly, but I handed it to a responsible party, purporting to be, I judge.

The second page of *Exhibit P 3* was shown witness. 10

Cross-examination, by Mr. Hall:

Q. Doctor, when you visited Mr. Fish to attend him professionally where did you see him?

A. At his home, 935 Broadway.

Q. What was he doing in his home?

A. He was lying on the couch, suffering from articular rheumatism, arthritic rheumatism.

Q. Did you see him during any of this period that you visited him attending to his business? 20

A .I did not, no.

Q. Doctor, when you began your prescriptions for Mr. Fish, didn't it occur in this way: that you casually went into Mr. Fish's place of business, and he remarked to you that he had rheumatism, and you said, "I will give you something for that"?

A. No.

Mr. Voorhees—I object to that question. The objection is that it is not cross-examination, and it is not relevant to the issue. The point is, who attended him, whether he was attended by a physician; it does not make any difference how that attendance arose, but was this the physician who attended him, and, if so, are those dates correct. 30

The Court—Undoubtedly that is true, but he has already said no. In view of that, do you press your objection?

Mr. Voorhees—I did not hear that or I would not have taken up the time of the Court.

Q. Doctor, at the end of your fourth visit, as stated here in your proofs of death, was Mr. Fish cured of his rheumatism?

Objected to.

The Court—I suppose it is immaterial whether he was cured or not at that time; he is examined simply as to eight visits.

10 Mr. Hall—Fourth.

The Court—Eight in all.

Mr. Hall—He gives four here in the proofs of death.

The Court—He testifies to four in September and four in October.

Dr. William Shaeffer sworn.

By Mr. Voorhees.

Q. You live in Camden, doctor?

A. Yes, sir.

20 *Q.* And are you a practicing physician?

A. Yes, sir.

Q. How long have you been practicing your profession here?

A. Twenty-two years.

Q. Did you know Walter C. Fish in his lifetime?

A. Yes, sir.

Q. Have you attended him professionally?

A. Yes, sir.

Q. Have you the time when you so attended him?

30 *A.* Why, at irregular intervals between 1886 and 1896.

Q. Where did you attend him in 1896?

Objected to.

The Court—1902 is the date of the application, I understand.

Mr. Voorhees—The application is made in 1902 and the allegation is that he hadn't been attended within two years; now, there appears:

"The following is the name of the physician who last attended me, the date of attendance and the name of the complaint for which he attended me: Typhoid fever, in January, 1893, Dr. Braymer."

The Court—The question is allowed.

A. On Broadway, above Walnut; I don't remember the exact number.

Q. Is it his residence?

A. His residence; yes.

Q. How long a period was that attendance? 10

A. One visit.

Q. At the time of that visit did you have any conversation with Mr. Fish?

A. I don't recall it; no sir.

Q. I didn't ask you what it was, but whether you did talk to him and he to you?

A. Why, it would be perfectly natural that I should, but I don't remember what the conversation was.

Cross-examination by Mr. Hall.

Q. How long? 20

A. One visit.

Q. Doctor, are you sure about attending him in 1896?

A. Why, pretty certain; yes, sir.

Q. Have you got your books of record here?

A. I haven't them here; no.

Q. Well, did you attend him in connection with any other doctor at that time?

A. No, sir.

Q. Are you quite certain that it wasn't his illness in 1893 in which he had typhoid fever? 30

A. Why, I am quite sure; yes sir.

A. You didn't attend him then for typhoid fever?

A. No, sir.

Q. Didn't you ever visit him for typhoid fever?

A. Why, possibly I did; I don't remember, but I didn't attend him during his sickness.

Q. Didn't you make him one visit for typhoid fever and then Dr. Braymer took charge of the case?

A. I don't recall.

By Mr. Voorhees:

Q. How do you fix your date of 1896?

Mr. Hall—I object; I don't think he can go into that now.

The Court—It is allowed.

A. Why, by book-record charge.

10 *Q.* Did you consult it?

A. I did; yes, sir.

Dr. Ezra B. Sharp, sworn.

By Mr. Voorhees:

Q. You are a practicing physician, Dr. Sharp, living in the city of Camden?

A. Yes, sir.

Q. And how long a time have you been practicing your profession?

A. Since 1888.

20 *Q.* Did you know Walter C. Fish in his lifetime?

A. Yes, sir.

Q. Have you attended him professionally?

A. Yes, sir.

Q. Can you give me the dates?

A. February 23d.

The Court—Give us the year first.

The Witness—1902, February 23d, February 19th; on April 17th his wife came to my office for a prescription for him, and, if I am correct, May 13th I saw him at his home.

30 *Q.* You said February 19th; are you sure about that?

A. March 19th, I should say; yes.

Q. And, doctor, where did you attend him on the occasion of the visit of February 23d?

A. At his home.

Q. Did you talk to him at that time?

A. Yes, sir; I talked to him as a matter of course; I went there to see him.

Q. And did he talk to you and address you?

A. Yes, sir.

Q. On March 19th where was that attendance?

A. At his home.

Q. And did he speak to you at that time?

A. Yes, sir.

Q. Did you see him on April 17th?

A. I did not see him April 17th. 10

Q. Mrs. Fish came to you?

A. Mrs. Fish came to the office; I happen to have a memorandum of that in my book.

Q. And you gave him some prescription at that time?

A. Yes, sir.

Q. May 13th, did you see him?

A. At his home.

Q. You had conversation with him then?

A. I had.

Q. Now, from your knowledge, professional knowl- 20 edge, of Mr. Fish, coupled with the prescription which you gave him on the 17th of April, can you say whether he was in good health on the 19th of April or on the 15th of April?

Mr. Hall—I object to that question. It is not material whether he was or was not in good health.

The Court—I will allow the question.

Exception noted for the plaintiff.

A. The question, please. 30

(Question repeated.)

A. May I ask a question, Judge?

The Court—Yes, if you do not understand.

The Witness—As to what my personal ideas might be concerning the case, and what my visit to that case might be for are two different things, and as to what my idea might be before examination of the case and what it might be afterwards, after an examination, are two different things.

I did not examine Walter Fish, and I am not in a position to say other than what I found him on that day. On the date of April 17th his wife was at the office to see me for some medicine for him; on March 19th I was at his home to see him. While, I haven't any doubt of it, as to the nature of his illness, yet in all my visits there were for some intermittent trouble of a day so standing.

10 *Q.* You know nothing of what he died of?

A. Only as given to me in the certificate by Dr. Fish at Pleasantville.

Q. And what did you learn?

A. I learned that he died of uræmia, if I remember correctly. I think I made out a proof of death, filled in a blank, I think, to that effect.

Q. That is the proof of your signature, is it not (showing witness first page of *Exhibit P* 3)?

A. That is my signature. (After reading) That is 20 as I remember it; he had some nausea and vomiting, but I didn't remember it without seeing it.

Q. Would that be an indication or does that frequently or not precede uræmia, such a symptom?

A. Nausea and vomiting, yes.

Cross-examination, by Mr. Hall:

Q. Doctor, does that necessarily involve uræmia?

A. No, sir.

Q. It might be caused by a variety of other conditions?

30 *A.* Any number of things.

Q. Do you remember, doctor, whether it was or was not headache that you visited him for?

A. Well, I couldn't positively say, but as I remember he had headache that I saw him for and prescribed for at times.

Q. It was some temporary and ordinary indisposition?

A. Well, he would be at work to-day, and to-morrow I would stop to see him, and the next day he would be to work again, something of that kind; that explains it, doesn't it?

Q. Are his house and place of business together?

A. No; well, yes; they connect; I might answer that yes; there is an office, or a depository, I should say, of the flowers, and that is separated by a door, a door leading from one to the other greenhouse.

Q. The separation, then, of the two places is by a door? 10

A. Simply a wall between and a door opening.

Anna L. Fish, recalled.

By Mr. Voorhees:

Q. You said this morning that you were the wife of the late Walter Fish, and you are the beneficiary in this policy, are you not?

A. Yes, sir.

Q. Did you collect any insurance money on the life of Walter Fish? 20

A. I did.

Q. Did you collect from the A. O. U. W.?

A. Yes, sir.

Q. And from the Brotherhood? Was there a Brotherhood insurance?

A. Yes.

Q. Did you collect that money?

A. Yes, sir.

Q. What was the amount of that? 30

A. The Ancient Order was $2,000, the Heptasophs $1,000 and Brotherhood $500.

Q. That was on your husband's life?

A. It was.

Mr. Voorhees—I now offer, if your Honor please, interrogatories exhibited to the plaintiff and her answers thereto served upon me.

Said interrogatories marked *Exhibit D 2* and answers marked *Exhibit D 3.*

Mr. Voorhees—Omitting the formal caption, the first interrogatory is: "Did you make proofs of death of Walter Cullen Fish to the defendant, in writing, under the policy issued in the above-stated case? Yes. Second: Was Walter Cullen Fish, on or about the 15th of April, 1902, ever insured in any other company or society? Yes. Third: If he was so insured, state the names of each of the companies or societies and the amount of insurance in each. New York Life Insurance Company, $1,000; Fidelity Lodge, A. O. U. W., $2,000; Conclave of Heptosophs, $1,000; Witherspoon Circle, Brotherhood of the Union, $500. Fourth: State the date of the issuance of the insurance to the said Walter C. Fish by each of said companies. New York Life Insurance Company, December 17th, 1895; Fidelity Lodge, A. O. U. W., April, 1896; Conclave Heptasophs, February 18th, 1897; Witherspoon Circle, B. of U., No. 1, April 21st, 1898. Fifth: Was the said Walter C. Fish's life ever insured in the New York Life Insurance Company? Yes. Sixth: If so, when was said insurance issued? December 17th, 1895. Seventh: If the said insurance was cancelled before the death of the said Walter C. Fish give the date when it was cancelled. Have no notice whether cancelled; ceased payments upon it after one year." Sworn to by Anna L. Fish.

Defendant rests.

Plaintiff's rebuttal.

Anna L. Fish, recalled.

By Mr. Hall:

Q. Mrs. Fish, do you remember Dr. Jarrett's visiting Mr. Fish in 1901, the latter part of September, or in October?

A. I don't remember the date; I know that he was there.

Q. About that time he did come?

A. Yes, sir.

Q. On or about when?

A. September or October.

Q. What year?

A. Why, 1901, wasn't it? It was before we moved where we are. Have you got the date? I don't know.

Q. The doctor has testified it was 1901?

A. Well, I think that is right.

Q. Do you remember the reason for Dr. Jarrett's visits? 10

A. Yes.

Objected to.

The Court—Well, I will take the testimony.

Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

Q. What was ailing Mr. Fish to need Dr. Jarrett's services? 20

A. He had rheumatism in his shoulder.

Q. How did the doctor come to visit Mr. Fish?

A. He came because—he came in the store every day or so, and he was waiting on customers at the time and told him that he had a pain in his shoulder and he prescribed for him.

Objected to.

The Court—I doubt whether it is competent. The last answer may be stricken out to the last question. 30

Q. How long had you lived with Mr. Fish? When were you married?

A. I was married in—it has been twenty years this October coming.

Q. Lived with him all the time?

A. I have.

Q. Every day?

A. Every day.

Q. Were you present when Dr. Jarrett and Mr. Fish had the conversation?

A. I was.

Q. What did Mr. Fish say was the matter with him?

Mr. Voorhees—I object; it seems to me that this is not competent.

The Court—It is not rebuttal; the objection is sustained.

10 Exception noted for the plaintiff.

Q. Mrs. Fish, was Mr. Fish, during the times of Dr. Jarrett's visits in September and October, 1901, attending to his business?

A. He was each day, part of the day.

Q. What did Dr. Jarrett say to Mr. Fish was the matter with him?

Objected to. Objection sustained.

Exception noted for the plaintiff.

Q. Mrs. Fish, at the time Mr. Fish made his application
20 tion for insurance was he apparently in good, sound health?

Objected to, objection sustained.

Exception noted for the plaintiff.

Q. How long was Mr. Fish ill during his last illness?

A. Well, he wasn't conscious but two minutes that he was ill, not two minutes.

Q. Well, when was he first taken in his last illness?

A. He woke up at half-past six, and right away he became unconscious, and he died twenty minutes past
30 seven.

Q. Had he been ill at any time prior to that?

A. Not at all.

Q. Mrs. Fish, were you present when the application for insurance was made?

A. I was.

Q. Who was the agent for the company?

Objected to.

The Court—It is allowed, as to who was agent; I will allow that.

A. Mr. Thompson.

Q. Did you hear the agent of the company ask Mr. Fish if he was a member of any insurance companies or had a policy of insurance in any insurance companies or was a member of societies?

A. I did.

Mr. Voorhees—I object to that; that is not one of the issues. I pleaded, and the pleas set forth, that this policy was not good because they did not disclose all those who were insurers, to which they replied that they did. 10

The Court—Isn't this trying to vary a written contract by parole testimony?

Mr. Hall—I do not think that makes any difference.

The Court—Well, that may stand, the answer yes or no.

Q. Do not answer this question until the Court passes upon it: In answer to the question of the agent for the insurance company as to what policies of insurance upon his life he had or to what societies he belonged, what was his answer? 20

Mr. Voorhees—I suppose that is objectionable.

I suppose it is objectionable as not being rebuttal, and I do not see how it can come into this case.

The Court—The question is allowed.

Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly. 30

ALLEN B. ENDICOTT,
Circuit Court Judge.

A. He told them the different ones.

Q. You must say what he said, as near as you can?

A. Do you want me to tell the different orders?

Q. Yes, what he said?

A. He said the Ancient Order, the Fidelity Lodge of

the Ancient Order of Heptasophs and the Witherspoon Circle of the Brotherhood.

No cross-examination.

Plaintiff rests.

Both sides rest.

Mr. Voorhees—At this time I make a motion to your Honor to direct a verdict for the defendant on the grounds, among others, which we urged before your Honor this morning in the motion for a non-suit, and on the additional ground that it stands here uncontradicted, that this decedent had been attended by other physicians than those mentioned in the application, by a different sort of testimony than that which was disclosed to your Honor this morning. In addition to the proofs of death which were made, we have had the physicians here, who testified, and those proofs are not only uncontradicted, but they are confirmed by the plaintiff; she confirmed them on the stand, and said that Dr. Jarrett did attend this man. That avoids two, that is contrary to two of the questions or the warranties that were set forth in this application, viz., he says that the date when the last physician attended him was in 1893, for typhoid fever, and he also says that no physician other than that has attended him within two years next preceding the date of the application. Now, there are at least three other physicians, and one in close proximity, and for symptoms which usually, as I take it, and as Dr. Sharp testified, precede a demise by Brights or uræmia, uræmic poisoning, which was the cause of this gentleman's death. The question of materiality, as I understand it, cannot enter into this case, but if it should come in we have it that the day after he had made his application he took a prescription from this very physician for that very premonitory symptom. Why, if anything can be material, that must be material, but I take it that that is out of the case, under the proofs and under the instrument which is here in suit.

Now, in addition to that, there is the other warranty in regard to the other insurance on the life of the defendant, and I, therefore, ask your Honor to direct a verdict on the ground that no verdict would stand if rendered for the plaintiff, under this proof.

The Court—The motion is refused.

Whereupon the defendant, by its counsel, prays a bill of exceptions, which is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge. 10

CHARGE OF THE COURT.

ENDICOTT, *J.*

Gentlemen the suit here is upon a policy of life insurance, as you have learned. The defence made is that there has been a forfeiture of the policy, or the contract, because of false representations made by the insured at the time he applied for and secured this policy, and to you is submitted that question of fact: Did the insured falsely represent the facts when he said in his application that the physician who last attended him was Dr. 20 Braymer, and that the date was January, 1893? You will remember that this application is dated April 15th, 1902, and the statement is that his last medical attendance was in 1893. Did he make a false statement to the company when he declared that he had been under the care of no physician within two years prior to that application? Now, he said he had not been under the care of any physician for two years next before the signing of that application; that is, April, 1902. Dr. Jarrett says that he was under his care in September and Octo- 30 ber, 1901, a period of less than two years prior to this time. He says he made four visits in September, 1901, four visits to him in October, 1901. Dr. Sharp says that in 1902, a short time prior to making these statements, he called upon and visited him on the 23d day of

February, 1902; March 19th and May 13th; also that on the 17th the wife of the insured called at his office to consult him about her husband's condition. Now, you are to take the testimony which is before you and decide whether the insured did have this medical care within two years before the time he signed that paper, or whether he did not. If he was under the care of the physicians during the period they say he was, within two years of the signing of that application, your verdict
10 must be for the defendant, because these representations of his are, by the terms of the contract, made warranties, and the contract provides that if the answers to those questions are false the contract shall be void. So that the principal question submitted to you is whether he had this medical attendance within two years prior to the signing of the application, April, 1902; whether his last medical attendance was in 1893, or whether he had received such attendance since. If you find he was under this medical care within two years prior to April
20 19th, 1902, your verdict must be for the defendant; if you find he had medical attention since 1893 your verdict must be for the defendant; if you find he did not have such attention then your verdict should be for the plaintiff for the amount of the policy, one thousand dollars.

Mr. Hall—If the verdict is for the plaintiff we are entitled to interest.

The Court—What do you say about interest, Mr. Voorhees?

30 Mr. Voorhees—The date of the receipt of the proofs would be the date. I am perfectly willing to admit it as of the 14th of July.

The Court—If, then, you should find in favor of the plaintiff for one thousand dollars you should add interest to that amount from the 14th of July, 1902. You may take with you the exhibits and you may retire.

The request of the counsel for the plaintiff is refused, and the request of the counsel for the defendant is refused.

DEFENDANT'S EXCEPTIONS.

The defendant, by its counsel, prays a bill of exceptions to the charge of the Court in each of the following particulars, to wit:

1. To the Court's refusal to charge defendant's request as submitted, which request reads as follows: "The defendant requests the Court to charge the jury that under the evidence the plaintiff cannot recover." And a bill of exceptions is allowed and sealed accordingly.

ALLEN B. ENDICOTT, 10
Circuit Court Judge.

2. Also to the charge of the Court wherein the Court confined the medical attendance to a period of two years prior to the application. And a bill of exceptions is allowed and sealed accordingly.

ALLEN B. ENDICOTT,
Circuit Court Judge.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ANNA L. FISH, 20
Defendant in Error,
vs.
METROPOLITAN LIFE INSURANCE COMPANY,
Plaintiff in Error.

ASSIGNMENT OF ERRORS.

And the said Metropolitan Life Insurance Company, by Willard P. Voorhees, its attorney, comes and says that in the record and proceedings, and also in the 30 matters contained in the bills of exceptions and in the

giving of judgment in said cause in the Supreme Court of New Jersey, there is manifest error in this:

First, that the declaration aforesaid and the matters therein contained are not sufficient in law for the said defendant in error to have her said action against the said plaintiff in error.

Second, that the Judge holding the Circuit Court and before whom the said trial was had at the close of the plaintiff's case upon motion duly made in that behalf
10 by the defendant's attorney, refused to nonsuit the said plaintiff on the ground that it then appeared that the policy of insurance sued on had become void and null because of the breach of certain warranties made by the assured. (*Pro ut* the bill of exceptions.)

Third, that the Judge of the Circuit Court, before whom the cause was tried upon the trial thereof, allowed against the objection of the defendant then and there duly taken certain illegal and incompetent testimony to be given in evidence on behalf of the said plaintiff.
20 (*Pro ut* the bill of exceptions.)

Fourth, that the Circuit Court Judge holding the Circuit Court upon the said trial after the close of said case, upon motion duly made in that behalf by the attorney of said defendant, refused to direct the jury to find a verdict for said defendant. (*Pro ut* the bill of exceptions.)

Fifth, that the said Circuit Court Judge, upon the trial of the said cause, when duly requested by the attorney of the defendant for that purpose, refused to
30 charge the jury that under the evidence the plaintiff was not entitled to recover. (*Pro ut* the bill of exceptions.)

Wherefore, the said Metropolitan Life Insurance Company prays that the said judgment, by reason of the said errors and of other errors in the record and proceedings aforesaid appearing, may be reversed, annulled and for nothing holden, and that the said Metro-

politan Life Insurance Company may be restored to all things that it hath lost on occasion of said judgment.

Dated June 7, 1905.

WILLARD P. VOORHEES,
Attorney for the Plaintiff in Error.

Due and legal service hereby acknowledged.

HENRY HOLLINSHEAD, JR.,
Attorney.

JOINDER IN ERROR.

Filed June 9, 1905. 10

And now comes the defendant in error, by Henry Hollinshed, Jr., her attorney, into court and says that there is no error in either the record and proceedings, in the matters contained in the bill of exceptions nor in the giving of judgment aforesaid, and she prays that the Court here may proceed to examine as well the record and proceedings aforesaid as the matters aforesaid, assigned for error, and that the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, &c.

HENRY HOLLINSHEAD, JR., 20
Attorney for Defendant in Error.
THOMAS B. HALL,
Of Counsel with Defendant in Error.

PLAINTIFF'S EXHIBIT 1.

UNITED STATES OF AMERICA.

Nos. 262554-5 C
Age
40

METROPOLITAN LIFE INSURANCE COMPANY.

Incorporated by the State of New York. Home Office, New York City.

IN CONSIDERATION of the Answers and Statments contained in the application for this Policy, a copy of which is hereto annexed as a part of this contract, upon the life of Walter Cullen Fish, of Camden, State of New Jersey, hereinafter called the insured, all of which answers and statements are hereby made warranties, and of the payment of the annual premium of Forty Dollars and two Cents, on or before the delivery of this Policy, and of a like amount on or before the nineteenth day of April, of each and every year during the life of the insured, DOTH HEREBY AGREE, subject to the conditions set forth on the third page hereof, each and all of which are hereby made part of this contract, and are accepted by the insured and assured as part hereof as fully as if herein recited, to pay at its Home Office, in the City of New York, the sum of One thousand dollars to Anna L. Fish, wife of the insured, herein called the assured, if living, otherwise to the legal representatives of the insured, upon the receipt by the Company at its Home Office and its approval of the proofs of death of the insured, made in the manner, to the extent and upon the blanks required by Condition Sixth, and upon the surrender of this Policy, deducting therefrom the premium, if any, for the balance of the policy year.

No obligation is assumed by the Company until the first premium has been paid, nor prior to this date, nor

unless upon this date the insured is alive and in sound health.

IN WITNESS WHEREOF, *the Metropolitan Life Insurance* Company has, by its President and Secretary, signed and delivered this instrument, at its Office, in the City of New York, on the nineteenth day of April, 1902.

JNO. R. HEGEMAN,
President.

Form C 216 A Life. 10

CONDITIONS

Referred to on First Page as part of This Contract.

FIRST.—If the insured within one year from the issue hereof die by his own hand or act, whether sane or insane, the Company shall not be liable for a greater sum than the Premiums which have been received on this Policy.

SECOND.—If any statement in the application herein referred to is not true, or if any premium or installment of premium be not paid when due, this Policy shall be 20 void, and all premiums paid shall be forfeited to the Company, except as provided in Paragraph First of "Benefits and Privileges."

THIRD.—Absolute proof of age may be required with proofs of claim hereunder, and the amount payable shall be the Insurance that the actual premium paid would have purchased at the true age of the insured.

FOURTH.—Premiums are payable at the Home Office in the City of New York, but at the pleasure of the Company suitable persons may be authorized to receive 30 such payments at other places, but only on the production of the Company's receipt signed by the Presi-

dent or Secretary, and countersigned by the person receiving the payments.

FIFTH.—Any assignment of this Policy is void unless assented to in writing by the Secretary; but in no case does the Company guarantee the validity of any assignment.

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

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

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

Here follows copy of application for this policy; same as *Exhibit P 2*.

(Endorsement.)

Nos. 262554-5 C.
Metropolitan Life Insurance Company.
New York.
(Intermediate Branch.)
Life Policy.
Insurance on the
Life of
Walter Cullen Fish
Camden, N. J. 10
Amount
$1,000.
Annual Premium, $40.02.
Date of Policy
April 19, 1902.

Agent J. Jones

EXHIBIT P 2.

METROPOLITAN LIFE INSURANCE COMPANY

(Incorporated by the State of New York.)

Pol. Form No. 262554 20

A TO BE FILLED OUT AND SIGNED BY THE COMPANY'S AGENT.
B TO BE SIGNED BY THE LIFE PROPOSED.
C TO BE FILLED OUT BY THE MEDICAL EXAMINER AND SIGNED BY THE APPLICANT.

(This Space to Be Filled Out at Home Office and Not by Agent)

No. 262555. Date of policy—Apr. 19, 1902.

C Plan—W. L. District—Camden

Age—40 Amount—$1000 Premium—40.02 Payable—20.01 Annually.

Name of Agent—C. H. Thompson At Camden Under Assist. Supt. F. E. Robert 30

A To Be Filled Out and Signed by the Agent.

AGENT'S REPORT ON PROPOSED RISK

1. Full Name of Life Proposed for Insurance—Walter C. Fish
2. Amount of Insurance—$1000.
2a. Plan of Insurance—Whole life.
3. Residence—No. 843 Street—Broadway City—Camden
Which floor of house? Front or rear? State.
3a. Post Office Address—Camden
4. Race—White
10 5. Married
6. Sex—Male
7. Date of Birth—Feb. 21, 1862
8. Age Nearest Birthday—40 years.
9. Where Born. (Name town, State and country.)—Bethel, N. Y.
10. Occupation—Florist Place of Business—845 Broadway
11. How Are Premiums to Be Paid—$40.02 annually.
12. By Whom Will the Premiums on This Insurance Be Paid? Name—Applicant Relationship to Life Proposed—Self
13. Is Said Life Now Insured in This Company? If so, give numbers of all Policies. No
20 13a. Any Other Policy in Force?
14. Is the Insurance Applied for to Be an Increase to the Insurance in Force? No
14a. If not, What Policies Are to Be Discontinued?
15. Is Said Life Now Insured in Any Other Company or Society, or Association? If so, give names and amounts. Workmen Heptasophs
15a. Any Other? No.
16. Has Said Life Ever Been Insured in This Company? No
16a. If so, Give Policy Number.
30 17. Has said life ever applied to any Company, Order or Association for life insurance, and been declined, or postponed, or without receiving the exact kind and amount of insurance applied for? (*If yes, give particulars.*) No
18. Name, Etc., of Beneficiary, Subject to Provisions of Policy Applied for as to Payment. Name—Anna L. Fish Occupation—Housekeeper Relationship—Wife Age—37 years. Residence—No. 843 Broadway Street. City—Camden State—N. J.
19. Did you see the person to be insured at the time this report
40 was written? Yes
20. Was each question put to the person and answered as recorded? Yes
21. Does the person appear to be a good risk in every respect, and do you recommend that a Policy be issued? Yes
22. Was the standard signature in Part B made in your presence by the life proposed? Yes
23. Is the person any relative of yours or of any employe of this Company? No
24. Does the person appear older than age stated? No

25. Has the person to your knowledge ever made an application to this Company on which a Policy was not issued? If so, give date. No

26. What amount of advance payment have you collected on the proposed application? $1.00

Dated April 14 1902 C. H. THOMPSON, *Agent.*

★ APPLICATION TO THE

METROPOLITAN LIFE INSURANCE COMPANY

(Incorporated by the State of New York.)

(DATE) April 14, 1902 10

B I intend to make application to The Metropolitan Life Insurance Company upon the following blank form, and do hereby sign my name in the presence of the Company's agent who will make report to the Company upon the proposed risk, so that my signature to the application may be identified.

WALTER CULLEN FISH
Signature of Proposed Applicant.

CHAS. H. THOMPSON
Signature of Witnessing Agent.

1. I hereby apply to The Metropolitan Life Insurance Com- 20
C pany, through its Intermediate Branch, for an insurance on my life in the sum of $1000 which, subject to the provisions of the policy as to payment, shall be payable to Anna L. Fish Anna L. Fish my wife (Enter Relationship.)

To induce the said Company to issue said Policy, and as consideration therefor, I warrant and agree, on behalf of myself and of any other person who shall have or claim interest in any Policy issued under this application, as follows:

Wherever nothing is written in the following paragraphs it is agreed that the warranty is true without exception. 30

1A. My age nearest birthday is 40 years.

2. My occupation is Florist and I have no other occupation, except

3. I have never had any of the following complaints or diseases: Apoplexy, Asthma, Bronchitis, Cancer or other tumor, Consumption, Disease of Brain, Disease of Heart, Disease of Kidneys, Disease of Liver, Disease of Lungs, Disease of Urinary Organs, Dropsy, Fistula, Fits or Convulsions, General Debility, Habitual Cough, Hemorrhage, Insanity, Jaundice, Paralysis, Pleurisy, Pneumonia, Rheumatism, Scrofula, Spinal Disease, Spitting or Raising Blood, Ulcer or Open Sores, Varicose 40
Veins, except

4. I am now in sound health. I am not blind, deaf or dumb, nor have I any physical or mental defect or infirmity of any kind, except

5. The following is the name of the physician who last attended me, the date of the attendance, and the name of the complaint for which he attended me: Typhoid fever, Jan. 1893. Dr. Braymer

6. I have not been under the care of any physician within two years, unless as stated in previous line, except

7. I have never been under treatment in any dispensary, hospital or asylum, nor been an inmate of any almshouse or other institution, except

10 8. I am not in any way connected with the manufacture or sale of ale, wine or liquor. No

9. I have never been a pensioner, and no application for a pension to me is pending or contemplated, except as follows:

10. I have never met with any serious personal injury, nor ever been seriously ill, except as stated below, and for the complaints named and no other, when I was attended by the following named physicians, and no other:

11. No one of my parents, grandparents, brothers or sisters ever had consumption, or any pulmonary or scrofulous disease,
20 except

12. I have no other insurance on my life, except in the following named companies and for the following amounts. And by the word "Company" I mean any company, association, society or order granting life insurance.

13. No proposal or application to insure my life has ever been made to any company or agent upon which a policy has not been issued of the amount applied for, except as follows. And by the word "company" I mean as defined in the previous statements.

30 I agree that this application has been made, prepared and written by myself or my own proper agent and that inasmuch as only the Officers at the Home Office of the Company in the City of New York have authority to determine whether or not a policy shall issue upon any application, and as they act on the written statements, answers, warranties and agreements herein made, no statements, promises or information made or given by or to the person soliciting or taking this application for a policy, or by or to any other person, shall be binding on the Company, or in any manner affect its rights, unless such statements, promises or information
40 be reduced to writing and presented to the Officers of the Company at the Home Office.

And I further declare, warrant and agree that the statements and answers are strictly correct and wholly true, that they shall form the basis and become part of the contract of insurance if one be issued, and that if they are not thus strictly correct and wholly true the policy shall be null and void

I further agree that in any distribution of surplus or apportionment of dividends on any policy issued upon this application, the principles and methods which may be adopted by the Company for

such distribution or apportionment, and its award of the amount belonging to such policy, shall be and are hereby ratified, confirmed and accepted.

I hereby waive the provisions of Section 834 of the Code of Civil Procedure of the State of New York, and of similar provisions in the laws of other States. And I expressly agree and stipulate that in any suit on the policy herein applied for any physician who has attended or may hereafter attend me may disclose any information acquired by him in any wise affecting the declarations and warranties herein made. 10

I further agree that the Company shall incur no liability under this application until it has been received, approved and the policy issued and delivered and the premium has actually been paid to and accepted by the Company during my lifetime and while I am in good health.

Notice that each and every premium is due at the dates named in the policy is given and accepted by its delivery, and I waive any further notice required by any statute.

Signature of Life Proposed. WALTER CULLEN FISH

Every answer must be true, or the Policy will be Void. 20

Dated at Camden 4/15 1902

After seeing the above application signed by the Life proposed, Part D on page 3 is to be completed and signed by the Physician.

NOTE TO THE EXAMINER.—If any exceptions are to be noted it is important that full particulars be entered. Especial care should be taken in this respect in statements 5, 6, 12 and 13.

REPORT OF EXAMINING PHYSICIAN.

(No Part of the Declaration of the Applicant.) 30

D 1. Apparent age—40 years.

2. Height and Weight—5 Ft. 6 In. 158 Lbs.

3. Figure—Good

4. Are you convinced of the identity of the person examined with the Life proposed? Yes

5. *Family History.* Father? Age—68 Condition of Health, if Living—Good Father? Age— Cause of Death, if Dead— Mother? Age—65 Condition of Health, if Living—Good Mother? Age— Cause of Death, if Dead— Brothers Living? Age— Condition of Health, if Living— Brothers 40 dead? Age—35 Cause of Death, if Dead—Cannot tell Infant Sisters Living? Age—38 Condition of Health, if Living—Good Sisters Dead? Age—3 Cause of Death, if Dead—Convulsions.

6. Are you the attending Physician of applicant or his family? No

7. Having carefully read the statements made in the application, is there anything of importance to be noted or any suspicion that the relationship of the proposed beneficiary is not correctly stated? None

8. Have you made a physical examination of the lungs and heart? Yes

9 A. Is the respiratory murmer clear and distinct over both lungs? B. Is the character of the respiration full, easy and regular? Give rate. C. Are there any indications of disease of the organs of respiration? A. Yes B. Yes Respirations per minute? 16 C. No

10. A. Is the character of the heart's action uniform, free and steady? B. Are its sound and rhythm regular and normal? C. Are there any indications of disease of this organ, or of the blood vessels? A. Yes B. Yes C. No

11. A. State the rate and other qualities of the pulse. B. Does it intermit, or become irregular or unsteady at this examination? A. 72 strong full. B. No

12. Is the person ruptured? No

12A. If so, is well-fitting truss worn?

13. To what daily extent does the life use alcoholic stimulants? None

14. Is there any evidence or history of disease of the liver, stomach, intestines, or genito-urinary tract? No

15. Are you aware of intemperance, or any other circumstance connected with the Life proposed, not herein recorded, which the Company ought to know? No

16. Anything objectionable in the manner of living or general surroundings of Life proposed? No

17. Compared with the average of lives of the same age and sex, do the chances of life seem to you first-class, or fair only, or doubtful or bad? (*If other than first-class, state what makes you accord only the lower rating.*) First class

18. A. If a female, when last pregnant? B. Any miscarriages or difficulty in labor? C. Are uterine functions now regular? If extinct, give length of time this condition has existed. A. B. C.

I have this 15 day of April 1902, PERSONALLY seen and EXAMINED the Life proposed for Insurance; I saw the signature made on Part C to the application on the preceding page, and am of the opinion that said Life is in good health and that said Life's constitution is† sound; and I therefore recommend said Life to be§ accepted at‡ 1st class rates.*

F. L. HORNING
Examining Physician's Signature.

*State whether good, indifferent or bad. †State whether sound or impaired. §Fill in "accepted," "postponed," or "rejected." ‡Fill in first or second.

1ST CLASS should be unexceptionable lives. 2D CLASS—Lives in which the unfavorable circumstances are very slight.

NOTE TO THE EXAMINER.—If you have not sufficient space in the form to record answers, or if you think the Company should be given any information not elicited by the questions, this space may be used to amplify the answers or record the additional information.

This applicant is somewhat deaf. Has no other trouble to indicate the cause.

F. L. HORNING. 10

E To Be Filled Out and Signed by the Agent in Case the Proposed Applicant is a Woman.

1. Is the proposed applicant, directly or indirectly, in, or connected with, the manufacture or sale of wine, beer, ale, or liquors?

1b. Does she reside in a house where such trade is carried on?

2. Has she any one dependent upon her for support? If so, who?

3. Does she propose to pay the premium on the policy applied for out of her own means? If not, by whom are the premiums to be paid?

4. State number of children living, if any, and age of each. 20

5. State number of children dead, if any, age at, and cause of death.

6. State husband's Occupation and Age. Place of business. Residence.

7. A. Is the husband insured in her favor? If so, in what Company or Companies, Associations or Societies, and for what amount? B. If not insured in her favor, state reason why not.

8. From what source does she derive her means of support?

9. If a single woman, A. Occupation and age of Father? B. Occupation and age of Mother?

I certify that all the information recorded by me above is exactly in accordance with the statement of the proposed applicant. 30

.....

Signature of Agent.

EXHIBIT P 3.

1. CLAIMANT'S STATEMENT. To Be Made by the Person Claiming the Insurance.

Policies—No. 262554-5C No. ....C No ....C Date—Year, 1902 Month, April Day, 19 .... Full Name of Deceased—Walter Cullen Fish Residence —843 Broadway Amount Claimed—$1000. $.... $.... Total, $.... ☞Use ink only. Every question must be fully answered or the proofs will be returned. 40

1. (a) Birthplace of deceased? Town—Bethel County—Camden State or Country—New Jersey (b) Date of Birth—Year, 1862 Month, Feb Day, 21
2. Place of death of deceased? Street and No.—Pleasantville Town or City—.... County—Atlantic Co State—New Jersey
3. Date of Death? Year—1902 Month—July 6 Day—Sunday
4. Cause of Death? (Give full particulars.) Uremia about ¾ of hour duration.
5. Occupation of deceased? (If more than one, specify in detail.) Florist
6. Was deceased at any time connected, directly or indirectly, with the ale, wine or liquor business? If so, when? No
7. Name and address of deceased's last employer? Name—Self Occupation—Business connected with own home. Florist Street .... City—.... State—....
8. When did deceased quit work, and why? Day or so at a time during last illness.
9. Upon what date did deceased first consult a physician for last sickness? June 11, 1902
10. Give names and addresses of all Physicians who attended or were consulted by deceased during last sickness—Dr. Sharp, 504 Broadway, Camden. Dr. Fish, Pleasantville, N. J. Dr. North, Pleasantville, N. J.
11. For how long was deceased confined to house and prevented from attending to business by last sickness? 2 days
12. What was the duration of deceased's last sickness? Years—.... Months—.... Days—24 ("total")
13. Had deceased ever been an inmate of or received treatment at any Hospital, Dispensary or other Institution? If so, give full particulars. No
14. What sickness previous to the last one has deceased ever had? Give full particulars of each sickness, with dates and duration of each. Typhoid fever about 10 yrs ago about 5 weeks
15. Give names and addresses of all Physicians who attended deceased at any time prior to last sickness. Dr. Braymer now deceased
16. (a) Did deceased ever meet with any accident or undergo any surgical operation? If so, give dates and full particulars. No (b) Were deceased's habits of life correct, sober and temperate? Yes (c) Had they always been so? Yes
17. (a) Has this Company ever paid a claim on any member of deceased's family? If so, give particulars. Son Albert Fish Died Jan. 25, 1898. (b) Had any application for insurance ever been made to any Company, Society or Association on which a policy was not granted? He was rejected in the Royal Arcanum about 3 weeks ago, without explanation. Carried ins, in N. Y. Life Ins. Dropped on account of expense.
18. Are there any other Policies on deceased in this Company? If so, give numbers and amounts. No

19. Was deceased ever insured in any other Company or Society? If so, state names of Companies or Societies and amount of Insurance in each. A. O. U. W., 2000; Heptasophs 1000; Brotherhood 600. See 17
20. Was deceased aware of this insurance? Yes
21. (a) Who made application for this insurance? State name and relationship. Himself
21. (b) By whom have the premiums been paid? Himself
22. Was deceased in receipt of a Pension? If so, state date granted and where. No
23. Was deceased blind, deaf, dumb, or afflicted with any mental disease or physical infirmity or deformity? If so, give full particulars and state how long such had existed. Slight deafness; about 10 yrs.
24. (a) Was deceased married? Yes (b) If married, is widow or widower alive? Yes

Claimants are required to produce, at their own expense, such medical testimony as to cause of death and duration of sickness, as shall be satisfactory to the Company.

25. Are deceased's father and mother living? Yes If Dead, give the following particulars: Father—Age at death, ... Full name, ... Cause of death, ... Place of death, ... Date of death. Mother—Age at death, ... Full name, ... Cause of death, ... Place of death, ... Date of death, ...
26. Give names in full and ages of deceased's brothers and sisters living. Name—Sallie H. Fisher Age—47 (about). Name—.... Age—.... Name—.... Age—....
27. Give the following particulars of deceased's brothers and sisters who are dead? Name in full—Samuel Fish Age at death—35 Cause of death—I don't know Place of death—603 N. 5th St., Camden. Date of death—Dec. 1890.
28. Give names in full and ages of deceased's children now living. W. Everett Fish, 14 yrs.; Ethel M. Fish, 8 yrs.
29. Has father, mother, brother, or sister ever had Consumption or any Pulmonary, Scrofulous, or Constitutional Disease or Insanity? If so, give names, relationship, causes of death and dates of death. No
30. Are you now or have you ever been in the employ of this Company? If so where and in what capacity? No
31. Are you in any way related to anyone in the employ of this Company? If so, to whom, where located, and what is the relationship? No
32. (a) By what right or relationship do you claim the proceeds of the Insurance? Widow (b) If policy was ever assigned, give date and purpose of assignment. No

The undersigned hereby certifies that the foregoing answers apply to the life heretofore insured under the above-numbered Policy; that all premiums under said Policy have been duly paid; that the

undersigned has a good and valid interest to the amount assured in the life of said deceased; and that whatever other and further proofs may be required by the METROPOLITAN LIFE INSURANCE COMPANY, will be furnished by the undersigned upon demand by said Company.

ANNA L. FISH Age 37
843 Broadway Residence.

STATE OF NEW JERSEY
COUNTY OF CAMDEN

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

[SEAL.] *Before me, a Notary Public in and for the above County and State, this 11 day of July appeared Anna L. Fish known to me, and made oath that she personally signed the above statement and that the answers by her given to the foregoing questions are true and full to the best of her knowledge and belief.*

JAMES F. BAKER,
Notary Public.

20 DECLARATION MADE BY CLAIMANT.

To the Metropolitan Life Insurance Company.

I desire to file the following statement by attending physician with and as part of the Proofs of Death submitted by me to your Company on account of Policy No. 262554-5 C Name of Insured, Walter Cullen Fish.

Dated at Camden this 11 day of July 1902

ANNA L. FISH, *Claimant.*

Witness—JAMES F. BAKER

ATTENDING PHYSICIAN'S STATEMENTS.

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

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

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

40 1. Full name of Deceased? Walter Cullen Fish
2. Residence? No. 843 Broadway Street. City or Town—Camden State—N. J.
3. Occupation? Florist
4. White or colored? White

5. Age at death? 40
6. Apparent age at death? 40
7. Date of death? Year—1902 Month—July Day—6th
8. Cause of death? I. Chief or Primary—Nephritis II. Contributing or Secondary—Uremia
9. How long had Deceased been ill when you were called to attend? A few hours
10. For what disease or diseases have you at any time attended Deceased PRIOR to last illness, and what was their duration? Dates of Attendance—Day, 23 Month, Feb Year, 1902 Day, 19 Month, March Year, 1902 Day, 17 Month, April Year, 1902 Day, 13 Month, May Year, 1902 Day, 11 Month, June Year, 1902, date of first prescription in last illness. Diseases—Nausea and vomiting with headache and fever As above stated. Nepritis. Duration of Diseases—About 24 hours About 24 hours About 24 hours About 24 hours
11. Did Deceased ever suffer from Phthisis Pulmonalis, or any other form of Consumption or Pulmonary disease? If so, please specify. No
12. Was Deceased afflicted with any infirmity, deformity, or chronic disease? If so, please specify. Slight deafness
13. Did any member of Deceased's family die of Consumption? If so, please give relationship and date of death. No
14. Was Deceased ever treated by any other physician or at any hospital or other institution prior to, during, or subsequent to your attendance? If so, please specify. Dr. Braymer some years ago.
15. Was death the result of Deceased's own hand or act? No
16. Have you previously filled out a Certificate for this or any other Company of this death? If so, please specify. Yes, this Co.
17. Are there any other particulars relating to the sickness or habits of Deceased with which you think the Company should be made acquainted? If so, please specify. See attached note.
18. To what extent, if any, did Deceased use intoxicants? None
19. Was death caused, directly or indirectly, by the use of intoxicating drink, opium, or other drug? No
20. Was an inquest or Post Mortem examination held? No

I Hereby Certify that I attended the Deceased from June 11th, 1902, to July 3rd, 1902, and that the answers as above recorded are complete and true to the best of my knowledge and belief.

Signature of Physician—E. B. Sharp, M. D.
Residence: No. and Street—504 Broadway,
City or Town—Camden
State—N. J.

State of New Jersey
County of Camden

Before me, a Notary Public in and for the above County and State, this 11 day of July 1902 appeared E. B. Sharp, known to me

as a physician in regular standing, and made oath that he personally signed the above statement and the answers by him given to the foregoing questions are true and full to the best of his knowledge and belief.

JAMES F. BAKER,
Notary Public.

DECLARATION MADE BY CLAIMANT.

To the Metropolitan Life Insurance Company.

I desire to file the following statement by attending physician
10 with and as part of the Proofs of Death submitted by me to your Company on account of Policy No. 262554-5 C Name of Insured, Walter Cullen Fish.

Dated at Pleasantville, Atlantic county, this 14th day of July 1902

ANNA L. FISH, *Claimant.*

Witness—JAMES F. BAKER

ATTENDING PHYSICIAN'S STATEMENTS.

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

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

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

1. Full name of Deceased? Walter C. Fish
2. Residence? No. Broadway and Spruce Street. City or Town—Camden State—N. J.
3. Occupation? Florist
30 4. White or colored? White
5. Age at death? 40 years
6. Apparent age at death? 40 years
7. Date of death? Year—1902 Month—July Day—6
8. Cause of death? I. Chief or Primary—Uraemic Poisoning II. Contributing or Secondary—....
9. How long had Deceased been ill when you were called to attend? Did not know patient until thirty minutes before death.
10. For what disease or diseases have you at any time attended Deceased PRIOR to last illness, and what was their duration?
40 Dates of Attendance—Day, 6 Month, July Year, 1902 Diseases—.... Duration of Diseases—....

11. Did Deceased ever suffer from Phthisis Pulmonalis, or any other form of Consumption or Pulmonary disease? If so, please specify. Not to my knowledge
12. Was Deceased afflicted with any infirmity, deformity, or chronic disease? If so, please specify. Did not know patient until thirty minutes before death.
13. Did any member of Deceased's family die of Consumption? If so, please give relationship and date of death. Not to my knowledge.
14. Was Deceased ever treated by any other physician or at any hospital or other institution prior to, during, or subsequent to your attendance? If so, please specify. Dr. Sharp, Camden, N. J. 10
15. Was death the result of Deceased's own hand or act? No
16. Have you previously filled out a Certificate for this or any other Company of this death? If so, please specify. No
17. Are there any other particulars relating to the sickness or habits of Deceased with which you think the Company should be made acquainted? If so, please specify. No
18. To what extent, if any, did Deceased use intoxicants? Not any 20
19. Was death caused, directly or indirectly, by the use of intoxicating drink, opium, or other drug? No
20. Was an inquest or Post Mortem examination held? No

I Hereby Certify that I attended the Deceased from July 6, 1902, same date, 190 , that I signed the Certificate on file at the office of the Board of Health or Register of Vital Statistics, and that the answers as above recorded are complete and true to the best of my knowledge and belief.

Signature of Physician—CLYDE M. FISH,
Residence: No. and Street..... 30
City or Town—Pleasantville
State—N. J.

STATE OF NEW JERSEY
COUNTY OF ATLANTIC

Before me, a Notary Public in and for the above County and State, this 14 day of July, 1902, appeared Clyde M. Fish, known to me as a physician in regular standing, and made oath that he personally signed the above statement and the answers by him given to the foregoing questions are true and full to the best of his knowledge and belief. 40

[SEAL.]

HENRY LAKE,
Notary Public.

1. Full name of Deceased? Walter C. Fish
2. Residence? No. 843 Broadway Street. City or Town—Camden State—N. J.
3. Occupation? Florist

5. Age at death?

10. For what disease or diseases have you at any time attended Deceased PRIOR to last illness, and what was their duration? Dates of Attendance—Day, 2 Month, Oct Year, 1901 Day, 3, Month, Oct Year, 1901 Day, 4 Month, Oct Year, 1901 Day, 5 Month, Oct Year, 1901 Diseases—Acute Articular Rheumatism. Duration of Diseases—One week.

11. Did Deceased ever suffer from Phthisis Pulmonalis, or any other form of Consumption or Pulmonary disease? If so, please specify. No

10

I Hereby Certify that I attended the Deceased from ....., to .....190 , that I signed the Certificate on file at the office of the Board of Health or Register of Vital Statistics, and that the answers as above recorded are complete and true to the best of my knowledge and belief.

Signature of Physician—HARRY JARRETT

Residence: No. and Street—925 Broadway

City or Town—Camden

State—N. J.