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NOTICE OF APPEAL.

Filed October 15, 1930.

New Jersey Supreme Court

MARY A. HESLIN,

Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE
COMPANY, a corporation,

Defendant.

*Action
at Law.*

Notice.

10

To Messrs. Lintott, Kahrs & Young, attorneys of
the plaintiff:

TAKE NOTICE, that the defendant appeals from
the whole of the judgment entered in this cause
on the second day of October, 1930, to the Court
of Errors and Appeals.

20

Yours respectfully,

McCARTER & ENGLISH,
Attorneys of Defendant.

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GROUNDS OF APPEAL.

Filed November 10, 1930.

New Jersey Court of Errors and Appeals

10

MARY A. HESLIN,
Plaintiff-Respondent,
 vs.
 METROPOLITAN LIFE INSURANCE
 COMPANY, a corporation,
Defendant-Appellant.

*Action
 at Law.
 On Appeal
 from
 Supreme
 Court.
 Grounds
 of Appeal.*

20

The defendant alleges the following grounds for the reversal of the judgment appealed from:

1. Because the trial judge, over objection of the defendant's counsel, permitted the plaintiff's counsel to ask the following question to the witness Francis J. McCauley:

30

"If you were told that Mr. Heslin died of carcinoma of the larynx, would you say it was caused by the skin cancer that you treated?"

2. Because the trial judge, over objection of the defendant's counsel, permitted the plaintiff's counsel to ask the following question to the witness Francis J. McCauley:

"How important is a skin cancer to a man? Is it likely to cause death?"

3. Because the trial judge, over objection of the defendant's counsel, permitted the plaintiff's

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Grounds of Appeal.

counsel to ask the following question to the witness Charles W. Scranton:

“Was there any relation between the carcinoma of the skin described by Dr. McCauley and the condition which you found there?”

4. Because the learned trial judge denied the motion of the counsel for the defendant to direct a verdict in favor of the defendant. 10

5. Because the learned trial judge in his charge to the jury said: “From the evidence you have heard it is for you to decide as to whether this representation was a material one, and whether it was made with the intention to deceive.”

6. Because the learned trial judge in his charge to the jury said: “Therefore I say it is for you to determine whether or not these statements were made with the intention of deceiving, and whether or not such statements as were false were material.” 20

McCARTER & ENGLISH,
Attorneys of Defendant-Appellant.

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40

Complaint.

JUDGMENT RECORD.

NEW JERSEY SUPREME COURT.

10	MARY A. HESLIN, <div style="text-align: right; padding-right: 20px;"><i>Plaintiff,</i></div> <div style="text-align: center; padding: 0 10px;"><i>vs.</i></div> METROPOLITAN LIFE INSURANCE COMPANY, a corporation, <div style="text-align: right; padding-right: 20px;"><i>Defendant.</i></div>	}	<i>Judgment Record.</i> <i>Action at Law.</i> <i>On Postea.</i>
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Lintott, Kahrs & Young, attorneys:

Metropolitan Life Insurance Company, a corporation, the defendant in this cause was summoned to answer unto Mary A. Heslin the plaintiff therein in an action at law upon the following complaint:

(Summons issued December 17, 1928.)

Complaint.

Mary A. Heslin, plaintiff in above-entitled cause, residing at 89 Briggs Place in the Town of West Orange, County of Essex and State of New Jersey, says that,

1. On May 1, 1926, the defendant was and still is a corporation duly incorporated with the power of insuring against death.

2. On May 1, 1926, at the request of one John J. Heslin, the husband of plaintiff in this action, and in consideration of the payment to the defendant by said John J. Heslin of the premium of \$45.35, and his promise to pay a like sum annually until twenty (20) full years'

Complaint.

premiums shall have been paid, or until the prior death of the insured, the defendant made and issued a policy of insurance in writing, a true copy of which is attached hereto and made a part hereof, thereby insuring the life of said John J. Heslin in the sum of One Thousand (\$1,000) Dollars, and naming the plaintiff, Mary A. Heslin, his beneficiary. 10

3. Said John J. Heslin complied with all the conditions of said policy.

4. That the said John J. Heslin died on or about the seventh day of March 1927.

5. The plaintiff made due proof of the death of said John J. Heslin to the defendant in accordance with the requirements of said policy and otherwise performed all conditions of said policy on her part, and has demanded payment of the defendant. 20

6. The defendant has wholly refused to pay the sum due on said policy.

Plaintiff demands damages in the sum of One Thousand (\$1,000) Dollars with interest and costs of suit.

LINTOTT, KAHRS & YOUNG, 30
Attorneys for Plaintiff.

(Insurance Policy etc., attached)
(to Original Complaint.)

(Filed Dec. 22, 1928.)

Answer.

Answer.

Defendant, a corporation duly authorized to transact business in the State of New Jersey, answering the complaint heretofore filed in this cause, says that:

10

FIRST DEFENSE.

1. It admits paragraph 1 of the complaint.

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2. Answering the second paragraph of the complaint, it admits that a policy of insurance, dated May 1, 1926, was issued on the life of John J. Heslin, and that Mary A. Heslin was named as beneficiary. It requires the production of the original policy as to the terms and conditions thereof and, except as herein admitted, denies said paragraph.

3. It denies paragraph 3 of the complaint.

4. It has no knowledge sufficient to form a belief as to the matters stated in paragraph 4 of the complaint.

5. It denies paragraphs 5 and 6 of the complaint, except that it admits that it has not paid plaintiff's alleged claim.

30

SECOND DEFENSE.

Said policy of insurance was obtained by the insured, John J. Heslin, through fraud.

THIRD DEFENSE.

Said policy of insurance was obtained by the insured, John J. Heslin, through misrepresentation.

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Answer.

FOURTH DEFENSE.

1. The said policy of insurance was issued in consideration of an application, copy of which application was attached to and made a part of said policy.

2. In said application, the said John J. Heslin 10
made statements and agreed as follows:

“It is understood and agreed: 1. That the foregoing statements and answers are correct and wholly true, and, together with the answers to questions on Part B hereof, they shall form the basis of the contract of insurance, if one be issued.

2. That no agent, medical examiner or any other person, except the Officers of the Company, have power on behalf of the Com- 20
pany: (a) to make, modify or discharge any contract of insurance, (b) to bind the Company by making any promises respecting any benefits under any policy issued hereunder.

3. That no statement made to or by, and no knowledge on the part of, any agent, medical examiner or any other person as to any facts pertaining to the applicant, shall be considered as having been made to or 30
brought to the knowledge of the Company unless stated in either Part A or B of this application.”

3. In said application, John J. Heslin, the insured, made statements or answers to the medical examiner of the defendant in answer to a series of questions and then following said state-

Answer.

ments and answers to said questions, said insured further stated:

10 "I HEREBY CERTIFY that I have read the answers to the questions in Part A hereof and to the questions in Part B hereof, before signing, and that they have been correctly written, as given by me, and that they are full, true and complete, and that there are no exceptions to any such answers other than as stated herein."

4. In said application said insured was asked and answered as follows:

- 20 "7. (a) When last sick? 1908.
 (b) Nature of last sickness? Fracture of R. Clavicle and right ankle.
 (6) How long sick? 6 weeks."

Whereas, in the year 1925 and in the year 1926, prior to and at the time of said application, said John J. Heslin had been and was sick, the nature of said sickness being carcinoma.

FIFTH DEFENSE.

30 1. Defendant repeats paragraphs 1, 2 and 3 of its fourth defense.

2. In said application said insured was asked and answered as follows:

"9. Any physical or mental defect or infirmity? If yes, give particulars. No."

Whereas, at the time of signing said application, said John J. Heslin had a physical defect or infirmity, namely, carcinoma.

Answer.

SIXTH DEFENSE.

1. Defendant repeats paragraphs 1, 2 and 3 of its fourth defense.

2. In said application, said insured was asked and answered as follows:

“11. Have you had any surgical operation, serious illness or accident? If yes, give date, duration and name of ailment. 10

Yes, See 7.”

The reference to 7 in said answer is the section 7 of Part B of said application, which reads:

“7. (a) When last sick? 1908.

(b) Nature of last sickness. Fracture of R. Clavicle and right ankle.

(c) How long sick? 6 weeks.” 20

Whereas, said John J. Heslin had had a serious illness, namely, carcinoma, and had had a surgical operation for same.

SEVENTH DEFENSE.

1. Defendant repeats paragraphs 1, 2 and 3 of its fourth defense.

2. In said application said insured was asked and answered as follows: 30

“17. Have you ever had any of the following complaints or diseases * * * cancer or other tumor * * *. If yes, give particulars, dates and duration.

No.”

Whereas, prior thereto, said John J. Heslin had had cancer or other tumor.

Answer.

EIGHTH DEFENSE.

1. Defendant repeats paragraphs 1, 2 and 3 of its fourth defense.

2. In said application said insured was asked and answered as follows:

10 "18. Have you been attended by a physician during the last five years? If yes, give name of complaints, dates, how long sick and names of physicians.

 No."

Whereas, during said period said John J. Heslin had been attended by physicians.

NINTH DEFENSE.

20 1. Defendant repeats paragraphs 1, 2 and 3 of its fourth defense.

2. In said application said insured was asked and answered as follows:

 "19. Have you had any treatment within the last five years at any dispensary, hospital or sanitarium? If yes, give date, duration, name of ailment and name of institution.

30 St. Mary's Hosp. Orange. See #7."

Number 7 referred to in said answer is section 7 of Part B. of said application, which reads:

 "7. (a) When last sick? 1908.

 (b) Nature of last sickness? Fracture of R. Clavicle and right ankle.

 (c) How long sick? 6 weeks."

40 Whereas, during said period said John J. Heslin had received treatments at a dispensary,

Reply.

hospital or sanitarium other than mentioned by him.

McCARTER & ENGLISH,
Attorneys of Defendant.

(Filed Jan. 9, 1929.)

10

Reply.

REPLY TO FIRST DEFENSE.

Plaintiff agrees to produce original policy at time of trial.

REPLY TO SECOND DEFENSE.

Plaintiff denies that said policy of insurance was obtained through fraud.

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REPLY TO THIRD DEFENSE.

Plaintiff denies that said policy of insurance was obtained through misrepresentation.

REPLY TO FOURTH DEFENSE.

Plaintiff denies the allegations in fourth defense as to illness of said John J. Heslin.

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REPLY TO FIFTH DEFENSE.

Plaintiff denies allegations in fifth defense as to physical defect or infirmity of said John J. Heslin.

REPLY TO SIXTH DEFENSE.

Plaintiff denies allegations in sixth defense as to serious illness of said John J. Heslin.

40

Judgment.

REPLY TO SEVENTH DEFENSE.

Plaintiff denies allegations in seventh defense that said John J. Heslin had had cancer or other tumor.

10 REPLY TO EIGHTH DEFENSE.

Plaintiff denies allegations in eighth defense that statements in policies referred to were misrepresentations.

REPLY TO NINTH DEFENSE.

Plaintiff denies allegations in ninth defense as to said John J. Heslin having had treatments as therein stated.

20 Plaintiff hereby gives notice that she reserves the right, at or before the trial of said cause, to move to strike out and set aside the defendant's answer on the grounds that it is frivolous, the defendant being barred by the running of the incontestability clause in said policy.

LINTOTT, KAHR & YOUNG,
Attorneys of Plaintiff.

(Filed Feb. 28, 1929.)

30

This case was tried before Judge William A. Smith with a jury at the Essex Circuit, Tuesday, September thirtieth, nineteen hundred and thirty.

The jury rendered a general verdict against the defendant and in favor of the plaintiff for the sum of One Thousand (\$1,000.00) Dollars, plus interest amounting to Two Hundred Fifteen (\$215.00) Dollars, making a total of One Thousand Two Hundred Fifteen (\$1,215.00) Dollars.

40

Judgment.

Whereupon it is adjudged that the plaintiff
 Mary A. Heslin do recover of the said defendant
 Metropolitan Life Insurance Company, a corpora-
 tion the sum of One thousand two hundred and
 fifteen dollars damages together with her costs
 which have been taxed at the sum of
 \$1,215.00 seventy-two dollars and fourteen cents 10
 72.14 making in the whole the sum of One
 ———— thousand two hundred eighty-seven
 \$1,287.14 dollars and fourteen cents.

Judgment signed and entered October 2, 1930.

I, FRED L. BLOODGOOD, 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 20
 remains of record in my office.

IN TESTIMONY WHEREOF I have set
 my hand and the seal of said Court
 (SEAL) at Trenton, this third day of Decem-
 ber, A. D. nineteen hundred and thirty.

FRED L. BLOODGOOD,
 Clerk.

30

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TESTIMONY.

NEW JERSEY SUPREME COURT.

ESSEX CIRCUIT.

Tuesday, September 30, 1930.

10

 MARY A. HESLIN,

vs.

 METROPOLITAN LIFE INSURANCE
 COMPANY OF NEW YORK.

} *Action
at Law.*

Before Hon. William A. Smith, J., and a jury.

 20 For plaintiff appear Lintott, Kahrs & Young
 (by J. Harry Henegan).
For defendant appear McCarter & English (by
George W. C. McCarter).

(A jury is called and sworn.)

Mr. Henegan opens for plaintiff.

Mr. McCarter opens for defendant.

Mr. Henegan: I offer the policy in evidence.

 30 (The same is received in evidence and marked
 Exhibit P. 1.)
Mr. Henegan: I offer in evidence the applica-
tion for the policy.(The same is received in evidence and marked
Exhibit P. 2.)Mr. Henegan: I offer the proof of death in
evidence.(The same is received in evidence and marked
Exhibit P. 3.)

40

Mary A. Heslin, direct.

MARY A. HESLIN, plaintiff, sworn in her own behalf.

Direct examination by Mr. Henegan.

Q Where do you live, Mrs. Heslin? A 89
Riggs Place, West Orange. 10

Q You are the widow of John D. Heslin? A
Yes.

Q When did he die? A March 7th.

Q What year? A 1927 I think it was.

Q Do you know what the cause of death was?
A It's not the cause; he never was sick.

By the Court.

Q What was the cause of his death, if you
know? A I don't know. 20

By Mr. Henegan.

Q How long had he been ill? A He has
never been ill.

By the Court.

Q How long had he been ill with the sickness
from which he died? A I guess it was about
three months. 30

By Mr. Henegan.

Q What was the illness? A They claim it
was a cancer of the throat.

Q What was done for him for that? A At
first they said it was his face—he had a mole
on his face and when he would shave he would
cut it with the razor.

Q When was that, do you know? A I don't
know; I can't say. 40

Mary A. Heslin, direct.

Q Who treated him in his last illness? A Dr. Sherman.

Q Was there an operation? A No, he took treatments.

10 Q Who gave him the treatments? A I don't know.

Q How long was he confined to his bed prior to his last illness? A One week.

Q Had he ever been ill in bed before that time? A Never.

Q Where was he employed? A Essex County Country Club.

Q In what capacity? A He was head waiter there.

20 Q When did he quit his employment? A I should say—he was out of there about three months or something.

Q Do you remember when he took out this insurance policy? A It was in May.

Q Do you remember the occasion? A No, I don't.

Q Do you know who wrote the insurance policy? Who was the agent? A I know but I couldn't say his name.

30 Q Is he here? A No, he is not here.

Q Did he have any other insurance? A No, only he was twenty years in the Metropolitan. He paid a policy when he took this other one. He was twenty years in it when the agent asked him to take out this other policy.

Q When did that paid-up policy expire?

Objected to as immaterial.

Objection sustained.

Mary A. Heslin, cross.

Cross examination by Mr. McCarter.

Q Mrs. Heslin, you say your husband lived in West Orange at the time of his death? A Yes.

Q He had some growth of some kind on his face previous to his death, didn't he? A No. 10

Q A wart or something? A No, it wasn't a growth; it was a mole.

Q On his face? A Yes, but he didn't die from the mole.

Q Just answer my question. Which side of his face was it on? A The left side.

Q It bothered him in shaving? A Yes.

Q He did something about it? A Not that I know of. 20

Q Didn't it go away? A When it went away it didn't bother him. It was on his face always; it never went away.

Q And it was there to the day of his death? A Yes.

Q You say he cut the mole when he shaved? A No, like scratched it in shaving.

Q You said something in answer to your counsel's question about the mole and shaving. A That wasn't the only thing. When he shaved he just scraped it; that was all. It was a mole, but it wasn't sore or anything from it. 30

Q He didn't ever tell you he had gone down to Newark and had treatments or a small operation for that thing you call a mole? A No.

Q When did he have this mole? A He had it since he was born, I guess.

Q When did it become most conspicuous or most noticeable? A Never at all.

Max H. Weinmann, direct.

By the Court.

Q Did it get any less noticeable? A No, it was always just the same.

PLAINTIFF RESTS.

10

MAX H. WEINMANN, sworn in behalf of defendant.

Direct examination by Mr. McCarter.

Q Doctor, you are a practicing physician?
A Yes, sir.

Q Whereabouts? A Orange.

20 Q How long have you been practicing in Orange? A Sixteen years.

Q I show you Exhibit P. 2 and ask you if that is your signature at the bottom. A It is.

Q I ask you whether or not that is also your signature (indicating). A It is.

Q Is that the signature of John D. Heslin (indicating) the surety in this case? A Yes, sir.

30 Q Did he sign it in your presence? A He did.

Q Was this page on which his signature appears filled out in your presence? A Yes, sir.

Q Did you faithfully record the answers given by him to questions asked by you? A Yes, sir.

Q Did you ask him all the questions on this page? A Yes, sir.

Q And he made the answers recorded by you? A Yes, sir.

40 Q Keep this before you and I will ask you specifically with respect to a number of ques-

Max H. Weinmann, direct.

tions (handing paper to witness). I direct your attention to question No. 7. Did you ask him when he was last sick? A Yes, sir.

Q What was his answer? A 1908.

Q Did you ask him what was the nature of his last sickness? A Fracture of the right clavicle and right ankle. 10

Q I direct your attention to question No. 9. Did you ask him whether he had any physical or mental defect or infirmity? A Yes, sir.

Q What was his answer? A No.

Q I direct your attention to question No. 11. Did you ask him: "Have you had any surgical operation, serious illness or accident? If yes, give date, duration and name of ailment"? A Yes.

Q What was his answer? A Fracture of the right clavicle and right ankle, 1908. 20

Q How did you record that answer? A "See 7."

Q I direct your attention to question No. 17. Did you ask him that question? A Yes, sir.

Q Containing a long list of diseases? A Yes, sir.

Q Which included "cancer or other tumor"? A Yes, sir.

Q What was his answer? A No. 30

Q I direct your attention to question No. 18. Did you ask him: "Have you been attended by a physician during the last five years? If yes, give name of complaints, dates, how long sick and name of physicians"? A Yes, sir.

Q What was his answer? A No.

Q I direct your attention to question No. 19. Did you ask him: "Have you had any treatment within the last five years at any dispensary, hospital or sanatorium? If yes, give date, 40

Frances J. McCauley, direct.

duration, name of ailment and name of institution"? A Yes.

Q What was his answer? A St. Mary's Hospital, Orange, 1908.

Q And you referred to question No. 7? A Yes, sir.

10

Cross examination by Mr. Henegan.

Q Did you make a physical examination of this man? A Yes, sir.

Q Did you make a report of that? A That's the report (indicating).

Q Did you find any evidences present of a carcinoma? A No, sir.

Q Did you examine his throat? A Yes, sir.

20

FRANCIS J. McCAULEY, sworn in behalf of defendant.

Direct examination by Mr. McCarter.

Q Dr. McCauley, you are a practicing physician? A Yes, sir.

30 Q How long have you been practicing? A Fourteen years.

Q Whereabouts are you practicing? A Newark.

Q Were you practicing in Newark in 1925? A Yes, sir.

Q Whereabouts were you practicing? A 47 New street at that time.

Q Is that Dr. Wallhauser's office, also? A Yes, sir; we are associated.

40 Q Do you remember Mr. Heslin, the surety in this case, coming to you? A Yes, sir.

Frances J. McCauley, cross.

Q What was the matter with him? A He had a small skin cancer of the right cheek, I believe.

Q When was that? A May I refer to his card?

Q Please do. A It was November 9, 1925; small epithelioma on right cheek about the size of a pea. 10

Q What does epithelioma mean? A Skin cancer.

Q Did you give him any treatment for it? A Yes, sir; later we used a little acid and following that we gave two applications of radium.

Q Was the acid to remove the growth? A Yes, sir.

Q Did it remove it? A Yes, sir. 20

Q Where did the operation, if we may call it that, take place? A At 47 New street at our office.

Q You say that was in November, 1925? A Yes, sir.

Q How many times was he there altogether? A Dr. Andrew Wallhauser—that is Dr. Wallhauser, Jr.—saw him on November 9th and 13th and 16th. I didn't see him the first time.

Q Do you recall by whom he was referred to you? A Dr. Sherman of West Orange. 30

Cross examination by Mr. Henegan.

Q What is a skin cancer? A It is an abnormal growth of cells derived from the skin cells.

Q Has it any relation to cancer of the throat and other parts of the body? A You mean referring to this type? 40

Frances J. McCauley, cross.

Q Yes. A There are two types. This so-called basal epithelioma is practically unknown to go to any other part of the body.

Q If you were told that Mr. Heslin died of carcinoma of the larynx, would you say it was caused by the skin cancer that you treated?

10

Objected to.

Objection overruled.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A No, sir; that would not have any connection whatever.

20

Q Have you ever known of a skin cancer to affect other parts of the body and cause cancer growth? A Not of this basal cell type. I know of cases that were very large and had eaten away part of the skin. There were few cases of that type.

Q Was Mr. Heslin's case cured the last time you saw him? A Yes, sir.

Q Did you tell him so? A I couldn't recall.

Q Does your card show that he was discharged? A No, it does not, but we always check up on a patient.

30

Q It shows no visits after November 16th? A It is not on the card, but I recall that he was in.

Q How long afterward? A I imagine he was in twice in five or six months.

Q Do you know whether you told him that that was a skin cancer? A No, sir; I do not.

Q How important is a skin cancer to a man? Is it likely to cause death?

Objected to as immaterial.

40

Objection overruled.

Frances J. McCauley, cross.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A This particular type, taken early, there is no danger to it; the only danger is letting it go and not having it treated. After a number of years it may grow deeper and spread around. 10

Q Had he let this particular case go? A No, sir.

Q At the time that Mr. Heslin came to you did he tell you that he had a skin cancer or did you diagnose it? A We diagnosed it. The thing resembled probably a small wart.

Q You don't recall whether you told him that he had it? A In a majority of cases we do not tell them it is cancer because they do not resemble cancer. There is no use of alarming the patient. If a patient does not go through with the treatment we tell him what it is. 20

Q Did you examine him as to his general health? A No, sir.

Mr. McCarter: I offer in evidence certified copies of the Clerk's Office to this Court of the pleadings and rule for discontinuance in a prior action between the parties, the purpose being to show that the defense was raised by the pleadings in this prior action before the expiration of the incontestable period. 30

Mr. Henegan: I object to that on the ground that it is immaterial. We feel that the proof is that the policy is not properly contestable.

The Court: What is the contestable period? 40

Charles W. Scranton, direct.

Mr. Henegan: Two years.

Mr. McCarter: Within the two years this prior action was commenced; within two years we filed an answer setting up the defense. They then discontinued the action.

10 The Court: I thought the incontestable period ran from the date of the issuance.

Mr. McCarter: The first answer was within that period.

The Court: I will allow it in evidence.

Plaintiff's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

(The same is received in evidence and marked Exhibit D. 1.)

20

DEFENDANT RESTS.

CHARLES W. SCRANTON, sworn in behalf of plaintiff in rebuttal.

Direct examination by Mr. Henegan.

30 Q Dr. Scranton, you are a practicing physician? A Yes, sir.

Q Where is your office? A 59 Washington street, East Orange.

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

Q Did you perform an operation on John D. Heslin? A Yes, sir.

Q For what? A To remove a gland from his neck for diagnosis.

40 Q When was that? A I don't remember the exact date; it was the latter part of October, 1926.

Charles W. Scranton, direct.

Q What did the diagnosis show? A It showed metastatic cancer. Metastatic means that it came from somewhere else.

Q What was the condition of the gland? A It was enlarged; such as might come from any throat infection. People get them frequently. It was just an enlarged gland and felt like a small walnut. 10

Q You have heard the testimony of Dr. McCauley in this case as to carcinoma of the skin?

A Yes, sir.

Q Was there any relation between the carcinoma of the skin described by Dr. McCauley and the condition which you found there?

Objected to.

Objection overruled. 20

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

A No.

Q And the condition which you found in the neck, could that have been caused by the condition of the face? A Originally, yes; if they had occurred at the same time.

Q Did they occur at the same time? A No, sir. 30

Q How did this case come to you? Was it referred to you by another doctor? A Yes, sir.

Q Which doctor? A Dr. Tymeson.

Q At the time you removed this gland did Mr. Heslin know that he was suffering from cancer?

Objected to as immaterial. 40

Walter R. Tymeson, direct.

By the Court.

Q As far as you know? A As far as I know he did not.

Cross examination waived.

10

WALTER R. TYMESON, sworn in behalf of plaintiff in rebuttal.

Direct examination by Mr. Henegan.

Q Doctor, you are a practicing physician? A Yes, sir.

Q Where is your office? A 310 Main street, Orange.

20 Q How long have you been practicing? A At Orange?

Q Generally. A Twenty-two years.

Q Did you treat John J. Heslin? A Yes, sir.

Q Do you recall when? A He came to me on the 28th of August, 1926.

30 Q For what condition? A Because he had had an acute sore throat with rheumatic symptoms, and that had been followed by a swelling in his neck.

Q What did you do for him? A I told him that very frequently in children and often in adults a lymph gland infection came from an infected throat; that is, tonsils. His tonsils I told him I would take out and if the gland did not go down we would have to look after that later. I took out his tonsils three days later, on August 31, 1926.

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Walter R. Tymeson, cross.

Q At the time you operated on him for tonsils did you find any condition of the throat which you diagnosed as a cancerous condition? A No, sir.

Q Did you know of his having any cancer? A I never heard of that until today in this court room; that's the first I heard about that. 10

Q You referred him to Dr. Scranton? A Yes, Dr. Scranton gave him the anaesthetic when the tonsils were removed and I asked him to go to Dr. Scranton when the gland swelling did not go down, with the idea that perhaps it ought to be removed.

Cross examination by Mr. McCarter.

Q When was it that you took the tonsils out? A August 31, 1926. 20

Q Did you attend him at the time of his death? A I did not.

Q You don't know when he died? A Only through other doctors.

Q That's the only way that you heard that he died of cancer of the throat? A No, I knew he was under treatment at the Orange Memorial Hospital. He was under X-ray treatment.

Q For cancer? A Yes.

Q At the time you took out his tonsils he did not have a cancer and you didn't see any? A No. 30

By Mr. Henegan.

Q When you say the first time you heard of a cancer was here today, you were referring to the skin cancer, weren't you? A Yes, to this so-called mole.

Motion for Direction of a Verdict.

FRANCIS J. McCAULEY, recalled in behalf of plaintiff in rebuttal.

Direct examination by Mr. Henegan.

10 Q Is it possible that from this skin cancer on the face there could have been an inside drain into the region of the throat and a carcinoma developed? A No, sir; not that type cancer at the stage at which I saw it. There were only a few cases on record of basal epithelioma metastasis; that is, spreading.

Q You didn't tell Mr. Heslin when you last saw him that there was danger of this cancer spreading to any other part of his body?

20 Objected to.
Objection overruled.

A No, there would be no occasion to say anything about it.

Cross examination waived.

PLAINTIFF RESTS IN REBUTTAL.

DEFENDANT RESTS.

30 Defendant's counsel moves for the direction of a verdict in favor of the defendant on the ground that there has been a breach of warranty and misrepresentation as pleaded in the answer.

The Court: (After argument.) I suppose the question of sickness would be a jury question. A wart on the face might not be sickness. I also think that the question of materiality is for the jury to decide.
40 I will deny the motion.

Charge to Jury.

Defendant's counsel prays an exception to this ruling of the Court.

Exception noted as ground of appeal.

Mr. McCarter sums up for defendant.

Mr. Henegan sums up for plaintiff.

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CHARGE OF THE COURT.

The Court charges the jury as follows:

SMITH, J.:

Gentlemen: This is a very narrow issue which is presented to you. The plaintiff here was a beneficiary of a policy of insurance issued by the defendant company. The policy is in evidence before you and you may read its terms. The policy was issued and delivered, and subsequently the deceased died. He died on March 7, 1927, and proof was made to the company of his death and payment demanded.

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The payment was refused and the defendant here sets up an affirmative defense that a false representation was made in the application for this policy. There were certain questions asked the deceased when the policy was applied for.

30

There has been proof here as to what those questions were and as to what the answers were; I will not repeat to you all of the questions and answers because you will take the pleadings with you and those questions and answers are stated in the defendant's answer.

It will suffice to say that at least one of them was false in fact. That is the one where he was asked whether he was attended by a physician within the last five years. It has been

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Charge to Jury.

proved in this case that he was; that in November of the year previous to the issuance of the policy he went to a physician and had something on his face treated. It was referred to as looking like a wart or as looking like a mole. So, as I say, at least one of the statements was
10 false in fact.

In order to defeat the plaintiff's right to recover, it must appear that a false representation was made; that it was a representation untrue in fact; that the deceased knew that it was untrue; that it was intentionally made, and that it was a material one.

As I say, I think you must concede that it was false; that there was a representation made that was false, and that the deceased knew that
20 it was false. I am not going into the other questions now because that is the plainest one, but the same rule applies. Now the question remains whether it was intentional on the deceased's part and whether it was a material one on the deceased's part.

From the evidence you have heard it is for you to decide as to whether this representation was a material one and whether it was made with the intention to deceive. You may find that from
30 the evidence; that is, the testimony here on the witness stand and the inferences to be derived from it, from the circumstances surrounding it, from what the condition was, which it is contended was a false statement.

You will see that an insurance company has a right when it is asked to insure somebody to require such person to make certain statements. Those questions are asked for the purpose of deciding or ascertaining on its part
40 whether it will issue a policy. You can see

Defendant's Exceptions to Charge.

that if a man were suffering from a real cancer; that is, cancer of the throat, and he knew it, and he had been treated by a doctor for it, and made his application and did not tell the company of the fact, although asked particularly with regard to it, he could not recover under those circumstances, because the company relies on those representations as to whether it will insure a person. If a person is not in a condition to be insured the company will not consider the policy. On the other hand, there may be statements which would not be material and you might find that there would be no intention of deceiving on the part of the deceased. You might go to a beauty parlor and have something fixed on your face because you didn't like it that way, because it may interfere in some way, and you may find as a fact that it is not material. Therefore, I say it is for you to determine whether or not these statements were made with the intention of deceiving and whether or not such statements as were false were material.

If you decide in favor of the plaintiff, the amount of your verdict would be \$1,000 together with interest from March 7, 1927, which counsel has figured at \$215; otherwise your verdict will be for the defendant.

Defendant's counsel prays an exception to that portion of the Court's charge wherein the Court left it to the jury to find whether or not the false representation was made with the intention to deceive.

Exception noted as ground of appeal.

Defendant's counsel prays an exception to that portion of the Court's charge wherein the Court

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Defendant's Exceptions to Charge.

left it to the jury to find whether the representations were material.

Exception noted as ground of appeal.

Mr. McCarter: I pray these exceptions separately to each of the questions set forth in our answer.

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Exceptions noted as ground of appeal.

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Exhibit P. 1.

EXHIBIT P. 1.

**METROPOLITAN
LIFE INSURANCE
COMPANY**

A Mutual Life Insurance Company Incorporated by
The State of New York 10

No. 4567096 A. —HEREBY INSURES THE
LIFE OF— JOHN J. HESLIN herein called
the Insured, in accordance with the terms of this
Policy, No. 4567096 A and Promises to Pay at its
Home Office in the City of New York ONE
THOUSAND Dollars to MARY A. HESLIN
WIFE Beneficiary, upon receipt of due proof of
the death of the Insured and upon the surrender
of this Policy. The right on the part of the In-
sured to change the Beneficiary, in the manner
hereinafter provided, is reserved. 20

This Policy is issued in consideration of the
Application therefor, copy of which Application
is attached hereto and made part hereof, and of
the payment for said insurance on the life of the
above named Insured, of FORTY FIVE Dollars
and THIRTY FIVE cents, (which maintains this
Policy in force for a period of 12 months from
its date of issue, as set forth below) and of the
payment hereafter of a like ANNUAL premium
on each 1ST day of MAY (hereinafter called the
due date), until TWENTY full years premiums
shall have been paid or until the prior death of
the Insured. 30

The Provisions and Benefits printed or written
by the Company on the following pages are a part
of this Policy as fully as if recited over the
signatures hereto affixed.

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Exhibit P. 1.

period the insurance shall continue in force. At the death of the Insured any unpaid premium or premiums for the current policy year shall be deducted from the amount payable hereunder.

On written request of the Insured, approved by the Company at its Home Office, premium payments may be changed, at any anniversary of the date of issue of this Policy, so as to be payable annually, semi-annually or quarterly in accordance with the published rates in force at the date of issue of this Policy.

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2. AGE:—If the age of the Insured has been misstated, the amount payable hereunder shall be such as the premium paid would have purchased at the correct age.

3. INCONTESTABILITY:—This Policy shall be incontestable after it has been in force for a period of two years from its date of issue, except for non-payment of premiums, and except as to provisions and conditions relating to benefits in the event of total and permanent disability, and those granting additional insurance specifically against death by accident, contained in any supplementary contract attached to, and made part of, this Policy.

20

4. ENTIRE CONTRACT:—This Policy and the application therefor constitute the entire contract between the parties, and all statements made by the Insured, shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid this Policy or be used in defense of a claim hereunder unless it be contained in the application therefor and a copy of such application is attached to this Policy when issued.

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Exhibit P. 1.

5. SUICIDE:—If the Insured within one year from the date of issue hereof die by his own hand or act, whether sane or insane, the liability of the Company hereunder shall be limited to an amount equal to the premiums which have been received, without interest.

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6. CHANGE OF BENEFICIARY:—When the right to change the beneficiary is reserved, and if there be no written assignment of this Policy on file with the Company, the Insured may (while this Policy is in force) designate a new beneficiary, with or without reserving the right of change thereafter, by filing written notice thereof at the Home Office of the Company accompanied by this Policy for suitable endorsement. Such change shall take effect upon endorsement of the same on this Policy by the Company. If any beneficiary shall die before the Insured, the interest of such beneficiary shall vest in the Insured, unless otherwise provided herein.

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7. ASSIGNMENT:—No assignment of this Policy shall be binding upon the Company unless it be executed upon blanks furnished by the Company and filed with the Company at its Home Office in the City of New York. The Company assumes no obligation as to the validity and sufficiency of any assignment.

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8. AGENTS:—No Agent is authorized to waive forfeitures, to alter or amend this Policy, to accept premiums in arrears or to extend the due date of any premium.

9. OPTIONS ON SURRENDER OR LAPSE:—After premiums for two full years shall have been paid on this Policy, the Owner hereof or the Assignee of record, if any, upon written request

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Exhibit P. 1.

filed with the Company at its Home Office, together with the presentation of this Policy for legal surrender or endorsement within three months after the due date of any premium in default, shall be entitled to one of the following options:

(a) CASH SURRENDER VALUE—

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To receive the Cash Surrender Value which shall be the Reserve on this Policy (omitting fractions of a dollar per thousand of insurance) and on any outstanding Paid-up Additions at due date of premium in default, less a surrender charge during the second and third policy years of not more than two and one-half per cent. of the amount of insurance under this Policy. The Company shall deduct from such Cash Surrender Value any indebtedness to the Company for which this Policy is security, the remainder being hereinafter referred to as the "net sum," or,

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(b) PAID-UP WHOLE LIFE INSURANCE—

To have the Insurance continued in force from the due date of premium in default for a reduced amount of non-participating Paid-up Whole Life Insurance, payable at the same time and under the same conditions as this Policy. Such Paid-up Whole Life Insurance shall be for such an amount as the net sum described under (a) above will purchase (in even dollars) at the then attained age of the Insured when applied as a net single premium. Such Paid-up Whole Life Insurance may be surrendered at any time for its then Cash Surrender Value (*viz.*, its full Reserve at the date of such surrender less any indebtedness to the Company on such Paid-up Whole Life Insurance); or,

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T.C.

Exhibit P. 1.

(c) PAID-UP TERM INSURANCE—

To have the Insurance continued in force from the due date of premium in default as Non-Participating Paid-up Term Insurance. If there be no indebtedness to the Company for which this Policy is security, the amount of such Paid-up
10 Term Insurance shall be equal to the amount of insurance under this Policy, plus any outstanding Paid-up Additions, and for a term (in years and whole number of months) such as the Cash Surrender Value as defined under (a) above will purchase at the then attained age of the Insured when applied as a net single premium. If there be any such indebtedness the amount of the Paid-up Term Insurance will be reduced in such proportion as the indebtedness bears to the Cash
20 Surrender Value as defined under (a) above. Such Paid-up Term Insurance may be surrendered at any time for its then Cash Surrender Value (*viz.*, its full Reserve value at the date of surrender).

In the event of default in the payment of any premium, after premiums for two full years shall have been paid on this Policy, if the Owner or the Assignee of record, if any, shall not avail himself of one of the foregoing options, in the manner
30 hereinbefore provided, within three months after the due date of the premium in default, this Policy will be continued, by the Company, for a reduced amount of non-participating Paid-up Whole Life Insurance, as provided under Option (b) above.

The Company, at its discretion, may defer the payment of any Cash Surrender Value under Options (a), (b) or (c) as above for a period not exceeding ninety days after the application there-
40 for is received by the Company.

Exhibit P. 1.

The Reserve held for this Policy and for any Paid-up Additions and the Net Single Premiums mentioned above, shall be computed upon the American Experience Table of Mortality with interest at three and one-half per. centum per annum.

10. REINSTATEMENT:—If this Policy shall lapse in consequence of default in payment of any premium, it may be reinstated at any time, unless the Cash Surrender Value has been paid or the non-participating Paid-up Term Insurance period has expired, upon the production of evidence of insurability satisfactory to the Company and the payment of all overdue premiums with interest at six per centum per annum to the date of reinstatement. Any loan which existed at date of default, together with interest at the same rate to the date of reinstatement, may be either repaid in cash, or if not in excess of the cash value at date of reinstatement, continued as an indebtedness for which this Policy shall be security.

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Exhibit P. 1.

TABLE OF
GUARANTEED LOAN VALUES
AND SURRENDER OPTIONS

Computed in accordance with Paragraph 9 for a
Policy free from indebtedness and without paid-
up additions.

End of Year	Cash Value or Loan Value	Paid-up Non-Participating Whole Life Insurance	Paid-up Non-Participating Term Insurance Continued for	
			Years	Months
2	\$ 45	\$ 88	3	3
3	76	147	5	3
4	114	216	7	4
5	145	267	8	8
6	176	318	9	9
7	208	368	10	8
8	241	417	11	6
9	275	465	12	2
10	309	513	12	9
11	345	561	13	4
12	381	608	13	10
13	419	655	14	4
14	457	702	14	10
15	497	749	15	5
16	539	797	16	0
17	582	845	16	9
18	627	895	17	9
19	674	946	19	5
20	724	Policy	—Life—	
25	780	Paid-up		
30	831	Participating		

For each \$1,000 of the amount of insurance

For each \$1,000 of the amount of insurance

Face amount of policy continued for period specified

If the amount of insurance is in excess of \$1,000, the Loan Cash and
Paid-up Values, as shown in the table, will be proportionate.

Ord.
20-Pay.
Life
Age 48

The values shown in the above table are for complete policy years, with surrender charge, if any, deducted. Values for later years will be computed upon the same basis and furnished on request.

Should default in payment of any premium occur at any other time than at the anniversary date of the Policy, the values for the end of the preceding policy year shall be increased in an amount or for a period equal to one-twelfth of the increase in value for the then current policy year, according to the above table, for each twelfth of such year for which premiums shall have been paid.

Exhibit P. 1.

The Cash Surrender Value at any time other than at the end of the period for which premiums have been paid shall be the Cash Surrender Value at the end of such period less interest from the date of payment to the end of such period at the rate of six per cent. per annum.

The Loan Values provided for in the above table for the end of a policy year can be obtained at any time during such policy year in the manner and according to the following clause entitled "Loans."

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PROVISIONS AND BENEFITS.

11. LOANS:—At any time after premiums for two full years shall have been paid and while this Policy is in force, except when continued as non-participating Paid-up Term Insurance, the Company, on proper and lawful assignment of this Policy and presentation of it for endorsement, will loan to the Owner or the assignee of record, if any, on the sole security thereof, an amount not greater than the Cash Surrender Value at the end of the current policy year. Any indebtedness to the Company on this Policy, at the date of said loan, together with interest in advance on said loan to the end of the current policy year and any unpaid premium or premiums for the current policy year, will be deducted from the amount of said loan. Said loan will bear interest at the rate of six per centum per annum payable annually on each anniversary of this Policy. If interest be not paid when due, it shall be added to the principal, until the entire outstanding indebtedness shall equal the Cash Surrender Value, in which event this Policy shall become null and void, after one month's notice shall have been mailed by the Company to the last known address of the Insured and of the Assignee of record, if any. After the expiration of the premium payment period, or when this Policy is con-

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Exhibit P. 1.

tinued for a reduced amount of non-participating Paid-up Whole Life Insurance, payment of interest on any loan each year, in advance, to the end of the current policy year, will be required. At the option of the Company, the granting of a loan may be deferred for a period not exceeding
 10 ninety days after application therefor is received by the Company, unless such loan is to be applied solely to the payment of premiums due to the Company. At any time while this Policy is in force the whole or any part of any such indebtedness may be repaid. At the death of the Insured any such indebtedness to the Company shall be deducted from the amount payable hereunder.

12. PARTICIPATION IN DIVISIBLE SURPLUS:—
 This Policy is a participating contract while in
 20 force as a premium-paying policy, or as a policy fully paid up by completion of the payment of the full number of premiums specified herein, and the Company will annually, as of the thirty-first day of December of each year, ascertain and apportion any divisible surplus accruing hereon. (See "Notice to Policy-holder" below.) Such divisible surplus will be payable on the next anniversary of this Policy following the next succeeding thirtieth day of April and may, at the option of the
 30 Insured, or of the Assignee of record, if any, be either (a) paid in cash; or, (b) applied within the grace period towards the payment of any premium or premiums; or, (c) applied to the purchase of a participating paid-up addition to the sum insured; or, (d) left to accumulate to the credit of this Policy at such rate of interest as the Company may declare on such funds, but not less than $3\frac{1}{2}$ per centum per annum, and payable at maturity of this Policy or withdrawable in cash
 40 on any anniversary date of this Policy. If no

Exhibit P. 1.

other option is selected by the Insured, or by the Assignee of record, if any, within three months after the date when such divisible surplus is payable, then the divisible surplus will be applied to the purchase of a Paid-up addition to the sum insured. Such Paid-up addition may be surrendered at any time for a cash value at least equal to the amount of the surplus originally applied to its purchase. 10

NOTICE TO POLICY-HOLDER.—The devisible surplus accruing under policies of this class will probably not be sufficient to enable the Company to make any apportionment under this policy before the end of the third year.

13. OPTIONAL MODES OF SETTLEMENT:—Upon written election made to, and accepted by, the Company in accordance with the provisions hereinafter contained, the whole or any part of the amount payable according to the terms of this Policy, will, upon receipt of due proof of the death of the Insured, be retained by the Company and paid out according to one of the following OPTIONS: 20

OPTION 1. (INTEREST PAYMENTS.)—By the payment of Interest, either annually or semi-annually, at the rate of three and one-half per centum per annum on said amount so to be retained by the Company, the first annual Interest payment being payable at the end of one year, or the first semi-annual Interest payment being payable at the end of six months, and by the payment upon the death of the payee, or at the end of a certain number of years, as specified in said written election, of the amount so to be retained by the Company, together with any accrued Interest, to such payee, or to the person designated 40

Exhibit P. 1.

in said election; or, if there be no person so designated, to the executors or administrators of such payee.

OPTION 2. (INSTALMENT PAYMENTS.)—By the payment of equal annual or semi-annual instalments during a number of years certain in accordance with the Table below, for each one thousand dollars of the amount so to be retained by the Company, the first Instalment being payable immediately.

OPTION 2—Instalment Payments

Number Years Specified*	Amount of Each Annual Instalment	or	Amount of Each Semi-Annual Instalment	Number Years Specified	Amount of Each Annual Instalment	or	Amount of Each Semi-Annual Instalment
1	\$1,000.00		\$504.34	16	\$79.88		\$40.38
2	508.60		256.54	17	76.38		38.60
3	344.86		173.98	18	73.26		37.02
4	263.04		132.72	19	70.48		35.62
5	214.00		107.98	20	67.98		34.38
6	181.32		91.52	21	65.74		33.24
7	158.02		79.76	22	63.70		32.22
8	140.56		70.96	23	61.86		31.28
9	127.00		64.12	24	60.16		30.44
10	116.18		58.66	25	58.62		29.66
11	107.34		54.22	26	57.20		28.94
12	99.98		50.50	27	55.90		28.28
13	93.78		47.38	28	54.68		27.68
14	88.48		44.70	29	53.56		27.12
15	83.90		42.40	30	52.54		26.60

Exhibit P. 1.

OPTION 3. (LIFE INCOME.)—By the payment of equal annual Instalments for a fixed period of either ten or twenty years, and for so many years longer as the payee shall survive, in accordance with the Table below for each one thousand dollars of the amount to be so retained by the Company, the first Instalment being payable immediately.

Age of Payee When Policy Becomes Payable	AMOUNT OF EACH INSTALMENT		Age of Payee When Policy Becomes Payable	AMOUNT OF EACH INSTALMENT		Age of Payee When Policy Becomes Payable	AMOUNT OF EACH INSTALMENT	
	Fixed Period of 20 Years	Fixed Period of 10 Years		Fixed Period of 20 Years	Fixed Period of 10 Years		Fixed Period of 20 Years	Fixed Period of 10 Years
10 and under	\$43.24	\$44.46	33	\$49.60	\$51.68	56	\$63.44	\$75.18
11	43.40	44.64	34	50.04	52.22	57	64.00	76.88
12	43.58	44.82	35	50.52	52.78	58	64.54	78.66
13	43.76	45.02	36	51.00	53.38	59	65.04	80.50
14	43.94	45.22	37	51.50	54.02	60	65.50	82.38
15	44.14	45.44	38	52.02	54.68	61	65.92	84.30
16	44.34	45.66	39	52.58	55.38	62	66.30	86.28
17	44.54	45.90	40	53.14	56.14	63	66.64	88.28
18	44.78	46.14	41	53.72	56.92	64	66.94	90.30
19	45.00	46.40	42	54.32	57.74	65	67.20	92.32
20	45.24	46.68	43	54.92	58.62	66	67.40	94.34
21	45.50	46.96	44	55.56	59.54	67	67.50	96.36
22	45.76	47.26	45	56.20	60.52	68	and over same as 67	98.34
23	46.04	47.56	46	56.86	61.56	69		100.28
24	46.32	47.90	47	57.54	62.64	70		102.18
25	46.64	48.24	48	58.20	63.78	71		104.00
26	46.94	48.60	49	58.88	64.98	72		105.74
27	47.28	48.96	50	59.56	66.24	73		107.38
28	47.62	49.36	51	60.24	67.56	74		108.92
29	47.98	49.78	52	60.92	68.96	75		110.32
30	48.36	50.22	53	61.58	70.42	76		111.60
31	48.76	50.68	54	62.22	71.94	77		112.74
32	49.16	51.16	55	62.84	73.52			and over same as 77

Exhibit P. 1.

Any Instalments payable under OPTION 2, or any Instalments for the fixed period of ten or twenty years, as the case may be, under OPTION 3, which shall not have been paid prior to the death of the payee, shall, unless otherwise directed in said written election, be commuted at three and one-half per centum per annum, compound interest, and paid in one sum to the executors or administrators of the payee.

In lieu of semi-annual Instalments under OPTION 2, quarterly or monthly payments thereof, and in lieu of annual Instalments under OPTION 3, semi-annual, quarterly or monthly payments thereof, in each case for proportionate parts, may be elected.

The amounts payable under the foregoing OPTIONS are based upon an assumed interest earning of three and one-half per centum per annum, but if in any year the Company shall declare for that year, upon funds held by it under such OPTIONS, a greater interest rate than three and one-half per cent., the amount payable on the next anniversary of such payments under OPTIONS 1 or 2, or under OPTION 3 within the fixed period of ten or twenty years, as the case may be, shall be increased accordingly.

When so directed in the said written election, but not otherwise, the supplementary contract hereinafter provided for, on legal release thereof, may be surrendered for the amount so retained by the Company, with any accrued interest under OPTION 1, or for the commuted value of any stipulated Instalments yet to be paid under OPTION 2, or for the commuted value of any unpaid Instalments for the fixed period of ten or twenty years, as the case may be, then remaining unpaid under OPTION 3; such commutation under OPTION 3 shall however, in no-

Exhibit P. 1.

wise operate as to payments conditional upon the payee surviving the term during which the instalments certain would have been payable. Such commuted value under either OPTION 2 or 3 shall be the amount calculated by the Company on the basis of compound interest at the rate of three and one-half centum per annum. A payee who has not, by virtue of the terms of said written election, the right to surrender the supplementary contract may not assign or encumber such contract or any payment thereunder. 10

Election of any of the foregoing OPTIONS must be made in writing, addressed to the Company at its Home Office, and may be made (a) prior to the death of the Insured, by the Insured and the Beneficiary jointly, or, if the right to change the beneficiary has been reserved, then by the Insured alone; or, (b) if there be no such election on file with the Company at the time of the death of the Insured, then such election may be made by the beneficiary. In no event, however, will any of the foregoing modes of settlement be available if the Policy is assigned and any assignment will nullify any prior election. 20

No election shall be effective which shall purport to require any Interest or Instalment payment to be made by the Company in a sum less than \$10. 30

Optional settlements may not be elected under a Policy which is payable to a corporation, co-partnership or association.

In case one of the foregoing optional modes of settlement is selected, this Policy must be surrendered, whereupon a supplementary contract will be issued by the Company for the OPTION elected.

Copy of Application attached hereto. 40

Exhibit P. 1.

4567096

Application to the METROPOLITAN LIFE INSURANCE
COMPANY

(Incorporated by the State of New York)

10 This Form to Be Used for Ages 15 and Over for
Ordinary or Intermediate Applications
Not Over \$2,000.

Part	Form O36N.M.
A Use Black Ink	Ordinary Dept.
for Answers	Ed. Apr. 1925
and Signatures	Printed in U. S. A.

1. FULL NAME of person whose life is to be insured. (*Print*) JOHN J. HESLIN JR
- 20 2. Residence. If in country, state R. F. D. Route. Apt. No..... Floor.... No. 89 Street (*Print*) RIGGS PL Front or Rear.... City or Town (*Print*) WEST ORANGE County ESSEX State N J. How long have you resided at this address? 10 years If less than one year give previous address.... To what address shall premium notices be sent?
(Residence
(Place of Business
- 30 3. Place of birth. Town or City. West Orange State. N. J.
4. Date of birth. Month July Day 12 Year 1878 Age nearest birthday? 48 Years.
(Be sure age and date of birth are in accord.)
5. Married.
6. Occupation. If more than one, state all. Nature of Employer's business. Steward Country Club.
- 40 7. Exact duties of Occupation. Directing Dining Service.

Exhibit P. 1.

8. Any change in Occupation contemplated? If yes, give particulars. No.
9. Place of Business. (City, Street and No.)
By whom employed? W. Orange N. J. Essex
Co Country Club
10. Former Occupations. (Within the last ten
years.) Same. 10
11. Do you, within the next twelve months, con-
template journeying outside the United
States or Canada or making an ocean trip?
If yes, state when, where to, for what pur-
pose and for how long? No
12. Have you any intention of making aerial
flights within the next two years? If yes,
give particulars. No
13. Have you any other application or negotiation
for life, accident, or health insurance now
pending or contemplated? If yes, give par-
ticulars. No 20
14. Amount of Insurance desired. \$1000ordi-
nary \$ Intermediate Prem. Payable
Annually.
15. Plan of Insurance as designated in Rate
Book. 20 Payment Life
16. (a) Beneficiary in case of your death.
(Print) MARY A. HESLIN Relationship 30
of Proposed Beneficiary WIFE Occupation
H-W Age 47 P. O. Address 89 RIGGS PL
W. O. (b) Do you reserve the right to change
the beneficiary at any time without the con-
sent of Beneficiary herein designated? (An-
swer yes or no.) Yes
17. Is any one entirely dependent on you for sup-
port? If yes, give particulars. Wife only
18. Are you now insured in this or any other
Company? If yes, give particulars. Name 40

Exhibit P. 1.

- of Company Metropolitan Amount 1000
 Kind of Policy Mod End Year Issued 1906
 If in Metropolitan give Policy Nos. 474339A
 What amount of the above insurance carries,
 (a) Disability Provision? \$.
 (b) Accidental Death Benefit? (Double In-
 demnity) \$.
- 10
19. If now applying for Disability Provision,
 state amount of weekly benefit carried under
 Health Policies issued by this or by any other
 Company. \$.
20. Is the policy for which you are hereby apply-
 ing intended to take the place of insurance
 carried with this or any other Company? If
 yes, give particulars. Policy above maturing
- 20
21. What amount have you paid in advance on
 account of the first premium? \$.
22. Corrections and Amendments. (For Home
 Office use.)
23. Have you ever applied to any Company or
 Association without receiving Insurance in
 the amount or on the plan applied for, or at
 your actual age, or at the normal premium
 therefore? If yes, give particulars. No
 Company or Association Year If not issued
 as applied for, in what respect different?
 Declined or postponed If not advised, so
 state.
- 30
- To be completed in the case of a woman ap-
 plicant, if ever married.
24. What are (in full) the sources of your in-
 come?
25. Number of children living, age and occupa-
 tion of each.
26. Husband's name. (*Print*) Age.... Busi-
 ness.
- 40

Exhibit P. 1.

27. In what Companies and for what amount is he insured in your favor? If in Metropolitan, give policy numbers. If not insured in your favor, state why not. Is application on his life being submitted?.....

It is understood and agreed: 1. That the foregoing statements and answers are correct and wholly true, and, together with the answers to questions on Part B hereof, they shall form the basis of the contract of insurance, if one be issued.

10

2. That no agent, medical examiner or any other person, except the Officers of the Company, have power on behalf of the Company: (a) to make, modify or discharge any contract of insurance, (b) to bind the Company by making any promises respecting any benefits under any policy issued hereunder.

20

3. That no statement made to or by, and no knowledge on the part of, any agent, medical examiner or any other person as to any facts pertaining to the Applicant shall be considered as having been made to or brought to the knowledge of the Company unless stated in either Part A or B of this application.

4. That the Company shall incur no liability under this application until it has been received, approved, and a policy issued and delivered, and the full first premium stipulated in the policy has actually been paid to and accepted by the Company during the lifetime of the Applicant in which case such policy shall be deemed to have taken effect as of the date of issue as recited on the first page thereof.

30

5. In case of apparent errors or omissions discovered by the Company in Part A of this application, the Company is hereby authorized to

40

Exhibit P. 1.

- amend this application by noting the change in the space entitled "Corrections and Amendments," and I hereby agree that my acceptance of such policy, accompanied by a copy of the application so amended, shall operate as a ratification of such changes or amendments, provided,
- 10 however, that no change shall be made as to amount, classification, plan of insurance or benefits, unless agreed to in writing by me.

Signed by Applicant and dated at Orange this
28 day of April 1926

Witness to Signature Sam'l. Berkowitz

Signature of Applicant John J. Heslin

20 CONTINUATION OF THE APPLICATION

The spaces below are for the Applicant's answers only. Nothing but his answers should be inserted. Every question in Part B must be fully answered by the Applicant in the presence of the Agent, or the Medical Examiner if medical examination is required.

Use Black Ink

Part B for Answers

30 and Signatures

1. Have you within the last twelve months applied to any other Insurance Company for insurance without medical examination? If yes, give names of Companies and the amount of insurance issued. If declined or postponed, so state. No
2. What is your height? 5 ft. 5½ in.
3. (a) What is your weight? 128 pounds.
(b) Date when last weighed April 1926

Exhibit P. 1.

4. (a) Change in weight in last two years.
 Decrease.....
 Increase Stationary 28 yrs
 (b) If not stationary, give cause and particulars.
5. What are your measurements? (under vest.)
 Chest 34 inches Waist 27 inches 10
6. Present condition of health? Good .
7. (a) When last sick? Month Year 1908
 (b) Nature of last sickness? Fracture of
 R. Clavicle and right Ankle
 (c) How long sick? 6 weeks
8. Have you ever changed your residence or left your work for more than one month on account of your health? If yes, give date, duration and name of ailment. No
9. Any physical or mental defect or infirmity?
 If yes, give particulars. No 20
10. Any impairment of sight or hearing? If yes, give particulars. No
11. Have you had any surgical operation, serious illness or accident? If yes, give date, duration and name of ailment. Yes See 7
12. Are you ruptured? If yes, give particulars, and state whether you wear a truss. No
13. Have you ever been told there was albumin, sugar, or casts in your urine? No 30
14. Have you ever taken Insulin Treatment? If yes, state dates and for how long. No
15. Have you ever been told that you had any heart trouble? No
16. Name and address of your usual medical attendant? None

Exhibit P. 1.

17. Have you ever had any of the following complaints or diseases?
 Apoplexy, Appendicitis, Asthma, Bronchitis, Cancer or other Tumor, Consumption, Diabetes, Disease of Heart, Disease of Kidneys, Disease of Liver, Disease of Lungs, 10
 Fistula, Fits or Convulsions, Goitre, Habitual Cough, Insanity, Colic, Jaundice, Paralysis, Pleurisy, Pneumonia, Rheumatism, Scrofula, Syphilis, Spinal Disease, Spitting of Blood, Varicose Veins. If yes, give particulars, dates and duration No
18. Have you been attended by a physician during the last five years? If yes, give name of complaints, dates, how long sick, and names of physicians. No
- 20 19. Have you had any treatment within the last five years at any dispensary, hospital or sanatorium? If yes, give date, duration, name of ailment and name of institution. St Marys Hosp Orange See #7
20. How much time have you lost from work through illness during the last five years? None except for accident
21. Have you ever used opium, chloral, cocaine, or other narcotics? No
- 30 22. (a) To what extent do you use beer, wine, or other alcoholic beverages? None
 (b) Have you ever used any of them to excess? If so, when and for how long? No
23. Are you now, or have you ever been engaged in the manufacture or sale of malt or alcoholic liquors? No
24. Have you during the past year resided or 40
 been intimately associated with a person suf-

Exhibit P. 1.

- fering from consumption? If yes, give particulars. No
25. Has any one of your parents, brothers or sisters now, or ever had, tuberculosis, cancer, diabetes, epilepsy, insanity or any hereditary disease? If yes, give particulars. No
26. Family Record Father Dead Age at Death 67 Year of Death 1919 Cause of Death Unknown Mother Dead Age at Death 51 Year of Death 1914 Cause of Death Unknown Brothers Living No. Living 1 Age 44 Health Good No. Dead 2 Age at Death Infancy Age at Death 42 Year of Death 1911 Cause of Death Pneumonia Sisters Living No. Living 2 Age 38 Health Good Age 32 Health Good No. Dead 2 Year of Death Infancy
27. Additional information or remarks.

10

20

I HEREBY CERTIFY that I have read the answers to the questions in Part A hereof and to the questions in Part B hereof, before signing, and that they have been correctly written, as given by me, and that they are full, true and complete, and that there are no exceptions to any such answers other than as stated herein.

Dated at W Orange this 29 day of April

30

Witness to Signature M A Weinmann

Signature of Applicant John J Heslin

40

Exhibit P. 1.

NOTICE TO POLICY-HOLDER

Please Read Your Policy Promptly Upon Its
Receipt

Do not fail to notify the Company at its Home
Office when you change your address.

- 10 *When writing District Office*
or the Home Office give your Policy Number and
state clearly Name, Residence, County and State.

THE COMPANY'S AGENTS

have no authority to waive forfeitures, to alter or
amend this Policy, to accept premiums in arrears
or to extend the due date of any premium.

Checks, Drafts or Money Orders

- 20 in payment of premiums should be drawn to the
order of Metropolitan Life Insurance Company.

Privilege of voting for Directors.

- The election of Directors of the Company is to be
held in New York on the second Tuesday in April,
1927, and every second year thereafter. The
holder of this Policy, after one year from its date,
while it remains in force, will have a right to vote
either in person or by proxy or by mail. For
particulars as to how to vote, apply to the Secre-
30 tary, No. 1 Madison Avenue, New York City.

In the event of the death of the Insured,

- the Claimant should promptly advise the Home
Office, in New York, or the District Office through
which premium payments have been made. Pay
nothing to any representative of the Company for
preparation of claim papers. Deliver the Policy
only to the Company's representative. The Com-
pany is glad to pay and there is no necessity for
help or alleged influence in collecting.
40

Exhibit P. 1.

It is not necessary to employ an attorney or any other person to collect the insurance under this Policy, or to secure any of the benefits it provides.

Premium Payments are invalid

unless made in exchange for an official Home Office receipt signed by the President, Vice-President, Actuary, Treasurer or Secretary of the Company and properly countersigned. 10

District ORANGE N. J.

Number 4567096 A

METROPOLITAN
LIFE INSURANCE
COMPANY 20

A Mutual Life
Insurance Company

Incorporated by
The State of New York

1 Madison Avenue,
New York, N. Y.

Limited Payment Life Policy Insuring the Life of John J. Heslin in the amount of \$1000 for. . . Annual Premium of \$45.35 Payable for 20 years from May 1, 26 the date of issue, or until prior death. 30

Annual Distribution of Divisible Surplus Premiums for Supplementary Contract
Disability Provision \$.
Accidental Death Provision \$.

40

Exhibit P. 1.

Receipt of \$45.35, the first premium hereunder, is hereby acknowledged.

Jas. S. Roberts
Secretary

10 Countersigned
 May 10, 1926
 Signature S Berkowitz

This policy shall not take effect unless or until the first premium therefor, as entered on the foregoing receipt, has actually been paid in cash.

May 1, 26

20

30

40

*Exhibit P. 2.***EXHIBIT P. 2.**

4567096

Application to the METROPOLITAN LIFE INSURANCE
COMPANY

(Incorporated by the State of New York)

10

This Form to Be Used for Ages 15 and Over for
Ordinary or Intermediate Applications
Not Over \$2,000.

Part	Form O36N.M.
A Use Black Ink	Ordinary Dept.
for Answers	Ed. Apr. 1925
and Signatures	Printed in U. S. A.

1. FULL NAME of person whose life is to be
insured. (*Print*) JOHN J. HESLIN JR

20

2. Residence. If in country, state R. F. D.
Route. Apt. No..... Floor.... Front or
Rear No. 89 Street (*Print*) RIGGS PL
City or Town (*Print*) WEST ORANGE
County ESSEX State of N J.

How long have you resided at this address?
10 years.

If less than one year give previous ad-
dress....

To what address shall premium notices be
sent?

30

(Residence
(Place of Business

3. Place of birth. Town or City. West Orange
State. N. J.

4. Date of birth. Month July Day 12 Year
1878 Age nearest birthday? 48 years.
(Be sure age and date of birth are in accord.)

5. Married.

6. Occupation. If more than one state all.
Nature of Employer's business. Steward
Country Club.

40

Exhibit P. 2.

7. Exact duties of Occupation. Directing Dining Service.
8. Any change in Occupation contemplated? If yes, give particulars. No.
9. Place of Business. (City, Street and No.)
By whom employed? W. Orange N. J. Essex
Co Country Club
10. Former Occupations. (Within the last ten years.) Same.
11. Do you, within the next twelve months, contemplate journeying outside the United States or Canada or making an ocean trip? If yes, state when, where to, for what purpose and for how long? No
12. Have you any intention of making aerial flights within the next two years? If yes, give particulars. No
13. Have you any other application or negotiation for life, accident, or health insurance now pending or contemplated? If yes, give particulars. No
14. Amount of Insurance desired. \$1000 Ordinary \$ Intermediate Prem. Payable Annually.
15. Plan of Insurance as designated in Rate Book. 20 Payment Life
16. (a) Beneficiary in case of your death. (*Print*) MARY A. HESLIN Relationship of Proposed Beneficiary WIFE Occupation H-W Age 47 P. O. Address 89 RIGGS PL W. O. (b) Do you reserve the right to change the beneficiary at any time without the consent of Beneficiary herein designated? (Answer yes or no.) Yes
17. Is any one entirely dependent on you for support? If yes, give particulars. Wife only

Exhibit P. 2.

18. Are you now insured in this or any other Company? If yes, give particulars. Name of Company Metropolitan Amount 1000 Kind of Policy Mod End Year Issued 1906 If in Metropolitan give Policy Nos. 474339A What amount of the above insurance carries, (a) Disability Provision? \$. 10 (b) Accidental Death Benefit? (Double Indemnity) \$.
19. If now applying for Disability Provision, state amount of weekly benefit carried under Health Policies issued by this or by any other Company. \$.
20. Is the policy for which you are hereby applying intended to take the place of insurance carried with this or any other Company? If yes, give particulars. Policy above maturing 20
21. What amount have you paid in advance on account of the first premium? \$.
22. Corrections and Amendments. (For Home Office use.)
23. Have you ever applied to any Company or Association without receiving Insurance in the amount or on the plan applied for, or at your actual age, or at the normal premium therefore? If yes, give particulars. No Company or Association Year If not issued as applied for, in what respect different? Declined or postponed If not advised, so state. 30
- To be completed in the case of a woman applicant, if ever married.
24. What are (in full) the sources of your income?
25. Number of children living, age and occupation of each. 40

Exhibit P. 2.

26. Husband's name. (*Print*) Age.... Business.....

27. In what Companies and for what amount is he insured in your favor? If in Metropolitan, give policy numbers. If not insured in your favor, state why not. Is application on his life being submitted?.....

10

It is understood and agreed: 1. That the foregoing statements and answers are correct and wholly true, and, together with the answers to questions on Part B hereof, they shall form the basis of the contract of insurance, if one be issued.

20

2. That no agent, medical examiner or any other person, except the Officers of the Company, have power on behalf of the Company: (*a*) to make, modify or discharge any contract of insurance, (*b*) to bind the Company by making any promises respecting any benefits under any policy issued hereunder.

30

3. That no statement made to or by, and no knowledge on the part of, any agent, medical examiner or any other person as to any facts pertaining to the Applicant shall be considered as having been made to or brought to the knowledge of the Company unless stated in either Part A or B of this application.

4. That the Company shall incur no liability under this application until it has been received, approved, and a policy issued and delivered, and the full first premium stipulated in the policy has actually been paid to and accepted by the Company during the lifetime of the Applicant in which case such policy shall be deemed to have taken effect as of the date of issue as recited on the first page thereof.

40

Exhibit P. 2.

5. In case of apparent errors or omissions discovered by the Company in Part A of this application, the Company is hereby authorized to amend this application by noting the change in the space entitled "Corrections and Amendments," and I hereby agree that my acceptance of such policy, accompanied by a copy of the application so amended, shall operate as a ratification of such changes or amendments, provided, however, that no change shall be made as to amount, classification, plan of insurance or benefits, unless agreed to in writing by me. 10

Signed by Applicant and dated at Orange this 28 day of April 1926

Witness to Signature Sam'l. Berkowitz
Signature of Applicant John J. Heslin 20

CONTINUATION OF THE APPLICATION

The spaces below are for the Applicant's answers only. Nothing but his answers should be inserted. Every question in Part B must be fully answered by the Applicant in the presence of the Agent, or the Medical Examiner if medical examination is required. 30

Use Black Ink
Part B for Answers
and Signatures

1. Have you within the last twelve months applied to any other Insurance Company for insurance without medical examination? If yes, give names of Companies and the 40

Exhibit P. 2.

- amount of insurance issued. If declined or postponed, so state. No
2. What is your height? 5 ft. 5½ in.
 3. (a) What is your weight? 128 pounds.
(b) Date when last weighed April 1926
 - 10 4. (a) Change in weight in last two years.
Decrease.....
Increase Stationary 28 yrs
(b) If not stationary, give cause and particulars.
 5. What are your measurements? (under vest.)
Chest 34 inches Waist 27 inches
 6. Present condition of health? Good
 7. (a) When last sick? Month Year 1908
(b) Nature of last sickness? Fracture of
20 R. Clavicle and right Ankle
(c) How long sick? 6 weeks
 8. Have you ever changed your residence or left your work for more than one month on account of your health? If yes, give date, duration and name of ailment. No
 9. Any physical or mental defect or infirmity? If yes, give particulars. No
 10. Any impairment of sight or hearing? If yes, give particulars. No
 - 30 11. Have you had any surgical operation, serious illness or accident? If yes, give date, duration and name of ailment. Yes See 7
 12. Are you ruptured? If yes, give particulars, and state whether you wear a truss. No
 13. Have you ever been told there was albumin, sugar, or casts in your urine? No
 14. Have you ever taken Insulin Treatment? If yes, state dates and for how long. No

Exhibit P. 2.

15. Have you ever been told that you had any heart trouble? No
16. Name and address of your usual medical attendant? None
17. Have you ever had any of the following complaints or diseases? 10
 Apoplexy, Appendicitis, Asthma, Bronchitis, Cancer or other Tumor, Consumption, Diabetes, Disease of Heart, Disease of Kidneys, Disease of Liver, Disease of Lungs, Fistula, Fits or Convulsions, Goitre, Habitual Cough, Insanity, Colic, Jaundice, Paralysis, Pleurisy, Pneumonia, Rheumatism, Scrofula, Syphilis, Spinal Disease, Spitting of Blood, Varicose Veins. If yes, give particulars, dates and duration No
18. Have you been attended by a physician during the last five years? If yes, give name of complaints, dates, how long sick, and names of physicians. No 20
19. Have you had any treatment within the last five years at any dispensary, hospital or sanatorium? If yes, give date, duration, name of ailment and name of institution. St Marys Hosp Orange See #7
20. How much time have you lost from work through illness during the last five years? None except for accident 30
21. Have you ever used opium, chloral, cocaine, or other narcotics? No
22. (a) To what extent do you use beer, wine, or other alcoholic beverages? None
 (b) Have you ever used any of them to excess? If so, when and for how long? No

Exhibit P. 2.

23. Are you now, or have you ever been engaged in the manufacture or sale of malt or alcoholic liquors? No
24. Have you during the past year resided or been intimately associated with a person suffering from consumption? If yes, give particulars. No
25. Has any one of your parents, brothers or sisters now, or ever had, tuberculosis, cancer, diabetes, epilepsy, insanity or any hereditary disease? If yes, give particulars. No
26. Family Record Father Dead Age at Death 67 Year of Death 1919 Cause of Death Unknown Mother Dead Age at Death 51 Year of Death 1914 Cause of Death Unknown Brother Living No. Living 1 Age 44 Health Good No. Dead 2 Age at Death Infancy Age at Death 42 Year of Death 1911 Cause of Death Pneumonia Sisters Living No. Living 2 Age 38 Health Good Age 32 Health Good No. Dead 2 Year of Death Infancy
27. Additional information or remarks.

30 I HEREBY CERTIFY that I have read the answers to the questions in Part A hereof and to the questions in Part B hereof, before signing, and that they have been correctly written, as given by me, and that they are full, true and complete, and that there are no exceptions to any such answers other than as stated herein.

Dated at W Orange this 29 day of April
 Witness to Signature M A Weinmann
 Signature of Applicant John J Heslin

Exhibit P. 2.

MEDICAL EXAMINATION—Not to be filled out by Agent.

Part C TO BE COMPLETED if, (a) State law requires medical examination; (b) applicant is over age 45; (c) applicant is a married woman; (d) applicant is other than white; (e) Disability Benefits are applied for; (f) Endowment at Age 85, with Increased Indemnity is applied for. 10

Part C

I. If Part B has not been completed by the Agent it must be filled out by the Medical Examiner before completing Part C.

II. If Part B has been completed by the Agent review carefully the questions and answers in same before making your report.

III. Examination must be made in private. No agent or other person to be present or to see your report. 20

IV. Upon completion of your report, forward immediately to the Company's Home Office—Ordinary Department. If examination is refused please return the uncompleted form to the District Manager, stating particulars.

V. In any matter of delicacy or doubt affecting the risk, or if you have any facts or impressions not covered in your report, write directly to the Medical Division and attach to this report. Such communications are privileged and confidential. 30

Witness to Signature.....M. D.

.....
Signature of Applicant.

Exhibit P. 2.

(No Part of the)
 (Applicant's Declaration)

MEDICAL EXAMINER'S REPORT

on John J Heslin Jr
 (Insert Full Name of Applicant.)

- 10
1. Race. (White or what?) White
 2. Occupation. Steward
 3. Anything insanitary or hazardous in the occupation, or in the residence or place of business?
No
 4. (a) Age nearest birthday as given by Applicant? 48
(b) Apparent age? 48
 5. General appearance as to health? Good
- 20
6. Is there any lameness, deformity or loss of limb? No If yes, give particulars.
 7. Is there any evidence of industrial poisoning or occupational disease? No
 8. Rate, rhythm and other qualities of pulse?
78 Reg
 9. Height (in shoes)? 5 feet 5½ inches
 10. Weight (in ordinary clothing)? 128 pounds
 11. Measurements under waistcoat.
- 30
- (a) Chest at full inspiration? (a) 34 inches
(b) Abdomen at level of umbilicus? (b) 27 inches
 12. (a) Is applicant ruptured? (a) No
(b) Is a suitable truss worn? (b) No
 13. Does thorough physical examination and inquiry show any evidence of disease or impairment
- 40
- (a) Of the Brain or Nervous System? No
(b) Of the Circulatory System? No

Exhibit P. 2.

- (c) Of the Respiratory System? No
- (d) Of the Liver, Stomach, Intestines? No
- (e) Of the Skin, Glands, Thyroid? No
- (f) Of the Ears? (Any deafness or discharge? No Of the Eyes? (Test each eye separately.) 10
- (g) Of the Genito-Urinary Organs (including Syphilis or Stricture)? No

14. Examination of Urine.

The urine must be examined if, (a) the applicant is over age 45; (b) the Ordinary or Intermediate insurance already in force in this Company plus that applied for on this application exceeds \$2,000. (See Part A, Question 18.)

Have applicant void a moderate amount of urine before collecting specimen. 20

- (a) Specific Gravity 1016 Reaction Acid
- (b) Albumin None Test used Heat & Nitre
- (c) Sugar None Test used Fehlings
- (d) Was the specimen of urine examined by you passed in your presence? Yes
- (e) Are you sending specimen to Home Office? No

NOTE.—A specimen must be mailed to the Home Office if, (a) albumin or sugar is present; (b) history suggests advisability. If the specific gravity of first specimen is under 1012, get a second specimen, after restricting fluids, and, if the specific gravity of second specimen is still under 1012, mail a portion to the Home Office. *Do not send an alkaline specimen.* 30

Exhibit P. 2.

15. To be answered when the applicant is a woman.
- (a) Any suspicion of present pregnancy?
(If yes, how far advanced?)
- (b) Is this first pregnancy?
- 10 (c) Any abortions or miscarriages? If yes, give dates and causes.
- (d) Any present derangement of function, or suspicion of organic disease?
16. Are you aware of intemperance, or any other circumstance connected with the Applicant, not herein recorded which the Company ought to know? No
17. (a) Do you consider the applicant as first-class, average, or poor? First
- 20 (b) If other than first-class, give your reasons.

I HEREBY DECLARE that I have carefully examined the above named Applicant with the results herein recorded.

Dated at W Orange this 29 day of April 1926

M A Weinmann Medical Examiner
West Orange Residence

Exhibit P. 2.

Carefully review your entire report. See all questions are properly answered and any corrections or erasures are properly made and that the Applicant has——top of this page.

Upon completion mail to Home Office in Envelope
Form O11 D. O.

10

MEDICAL FEES.—The medical fee for an examination on this blank will be as follows: \$500 Intermediate, the fee will be \$1.00 except when urinalysis is required, an additional fee of \$1.00 will be paid. \$1,000 and over, the fee will be \$3.00, except when urinalysis is required, when an additional fee of \$1.00 will be paid.

REPORT OF INSPECTION

1. Advance payment of \$ Is this amount the full first premium? 20
2. (a) Is applicant related to you by blood or marriage? No
- (b) Have you any direct or indirect interest as beneficiary in the proposed insurance? No
3. When and where have you seen the Applicant? April 28 at his home
4. How long have you known the Applicant? 6 months 30
5. How long has Applicant been in his present place of employment? 20 years
6. How much time has Applicant lost during past year from ill-health? Give particulars. None
7. (a) Sex? Male
- (b) Are sight and hearing good? Yes
8. (a) Does Applicant appear older than age given? No 40

Exhibit P. 2.

- (b) Do you believe Applicant is in good health? Yes
9. Is there any evidence of speculation? No
10. Is Non-Medical Industrial insurance also being applied for? No
- 10 11. Are the character of home surroundings and the general position in life equal to or better than those of the usual high-grade mechanic? Better
12. What does careful inquiry of disinterested and responsible persons disclose as to moral character, past and present habits of Applicant? Good
13. Will any insurance now in force or application pending elsewhere be discontinued if the policy applied for is issued? 724339B
20 Policy maturing
14. Race? White

NOTE.—If Applicant's statements in Part B show any history of accident, surgical operation or serious illness, or if in the judgment of the Manager or the Detached Assistant Manager it is deemed advisable, PART C of this form must be completed by the Medical Examiner.

30 I believe that the statements and answers in the application are true and recommend the risk.

S Berkowitz

Title.

Date 4/28/26

Agent

SPECIAL—For Non-Medical \$1,000 or More.
Has Mercantile Report been ordered? Answer
yes or no

(If yes, attach copy of Inquiry ticket to this
Application.)

Exhibit P. 2.

Application reviewed and recommended.
H. J. Gasselbane Mgr.'s Sig.

Detached Office
(Fill in if Policy is to be sent to Detached Point.)

Policy to be Issued to the CREDIT of
Debit No. Title 10

S. BERKOWITZ 52 Agent

PRINT NAME PLAINLY

ORANGE N. J.

DISTRICT PRINT PLAINLY STATE

IMPORTANT TO THE ONE CHARGED
WITH THE REPORT OF INSPECTION.
DO NOT put your signature to statements YOU
CANNOT PERSONALLY vouch for.

The mere filling in of answers is not sufficient, 20
they must be based on an absolute and thorough
investigation.

Points for the Agent to Remember

- 1 COLLECT FULL PREMIUM WHENEVER POSSIBLE.
- 2 PRINT NAMES OF APPLICANT AND BENEFICIARY.
- 3 GIVE NAMES IN FULL (not initials): 30
- 4 USE GOOD BLACK INK.
- 5 GIVE AGE NEAREST BRITHDAY.
First enter date of birth and then figure age at nearest birthday. Be sure that they are in accord.
- 6 READ TO APPLICANT EACH QUESTION AS PRINTED.
Be sure to record the answers as given.

Exhibit P. 2.

- 7 STATE OCCUPATION SO AS TO SHOW WHAT APPLICANT DOES.
Avoid indefinite terms, such as Merchant, Clerk and the like.
- 8 STATE PLAN OF INSURANCE AS GIVEN IN RATE BOOK.
- 10 9 GIVE AGE OF EACH BENEFICIARY.
- 10 10 REVIEW APPLICATION: BE SURE IT IS FULLY COMPLETED.
A little preliminary care may save much future trouble.
- 11 11 THIS FORM OF APPLICATION TO BE USED FOR AGES 15 AND OVER FOR ORDINARY OR INTERMEDIATE APPLICATIONS NOT OVER \$2,000.
In answer to question 14, Part A, it must be indicated whether Ordinary or Intermediate insurance is desired, *by ruling out the kind not applied for.*
- 20 12 MAIL ALL NON-MEDICAL APPLICATIONS WHEN COMPLETED TO HOME OFFICE IN ENVELOPE FORM O11 D.O.

REPORT OF HOME OFFICE INSPECTOR.

- 30 A. Did you see Insured?
B. Did Insured sign the application?
C. Does Insured appear to be in good health?
D. Has Insured ever been rejected by this or any other Company?
E. What is the apparent age of Insured?
F. Is all insurance in force admitted?

Date.....

40

.....Inspector

*Exhibit P. 3.***EXHIBIT P. 3.**

CLAIM DIVISION Form 034 Ord.—Part 1 D.O.
 July, 1926
 Printed in U. S. A.

10 **PROOF OF DEATH**

Metropolitan Life Insurance Company—
 Ordinary Department

To be made by the person claiming the Insurance
(Read instructions.)

1. Statement of the Claimant

4567096A May 1 1926 1000

Number of Policy 424339A

Date of Issue Apr 25 1906

20 Amount of Insurance 1000

1. Full Name of Deceased. John J. Heslin

2. Residence. No. 89 Street Riggs Pl City
 or Town W. Orange State N J

3. Date of Birth. July 12 1878 3 (a). Place
 of Birth. W. Orange N J

4. Date of Death. Mar 7 1926

5. Cause of Death. Cancer of Tonsil
 5 (a). Duration Last Illness..... Yrs. 6 Mos.

30 6. Place of Death. If death occurred in an in-
 stitution or hospital, give the name. No. 89
 Street Riggs Pl City or Town W. Orange
 State N J

7. What date did deceased first consult a phy-
 sician for last illness? About six month
 prior to death

8. Occupation of deceased. Steward

9. Give date deceased quit work. August 1926

Exhibit P. 3.

- 10. Had deceased ever received treatment at any hospital, dispensary or other institution? If so, give full particulars and dates. Tonsil operation only
- 11. If any other policies on deceased in this Company, give policy numbers and amounts. 555079B 10
- 12. Was deceased insured in any other company or society? If so, state names of companies or societies and amount of insurance in each. No
- 13. By what right or relationship do you claim the proceeds of the insurance? Wife
- 14. Was the policy ever assigned, or any proceedings in bankruptcy or insolvency pending at the death of the insured? No 20
- 15. Names of EVERY physician who attended deceased DURING LAST ILLNESS and during two years prior to death, and dates of their attendance. Name. Dr. Tymeson Residence. 310 Main St Orange Dr. Alton Sherman 26 Northfield Rd W Orange Dates of Attendance.....

THE UNDERSIGNED HEREBY CERTIFIES that the foregoing answers apply to the life heretofore insured; that all premiums have been duly paid; 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. 30

Signed Mrs Mary A Heslin. Age 48 Residence: No. and Street 89 Riggs Pl City or Town W. Orange State N J.

Exhibit P. 3.

STATE OF NEW JERSEY,
COUNTY OF ESSEX.

10 Before me, a Notary Public in and for the stated County and State, this 10th day of March appeared Mary A Heslin 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.

(SEAL)

Harry J Hasselbauer

If official seal is not impressed hereon by the Notary, Justice of the Peace, or other official, a certificate from the County Clerk or Court of Record, showing authority to administer oath, must be attached.

20

INSTRUCTIONS

For Preparing Proofs of Death

The intervention of any third person for the collection of the claim, or the payment of commission to any person for pretended services in regard thereto, is entirely unnecessary.

30 Each of the statements composing these proofs must be sworn to before a Notary Public or Justice of the Peace. If the seal of such official is not impressed thereon a Certificate must be obtained from the County Clerk showing that the person administering the oath is duly authorized; or they may be sworn to before the Clerk of a Court of Record, whose seal must be attached.

All proofs of death must be completed at the expense of the Claimant.

40 When a Policy is payable *to the legal representatives* of the insured, the Statement of the Claim-

Exhibit P. 3.

ant must be completed by the executor or administrator, with proof of authority to act attached;

When payable to a *named beneficiary* of full age, the Statement of the Claimant must be completed by such beneficiary;

When payable to a named beneficiary *not of full age* the Statement of the Claimant must be completed by a guardian and certified copy of letters of guardianship furnished;

When payable to an *assignee*, the Statement of the Claimant must be completed by the assignee, with the original assignment, or a properly authenticated copy thereof, attached;

When payable to the *children* of a person, or to any other class of persons whose *names* are *not* separately *mentioned* in the Policy, proof must be furnished of how many children there are, or of how many the class consists, and the names and ages of the persons.

When payable to a beneficiary named in the policy, *if surviving*, has, by the death of such beneficiary, become payable otherwise, proof of the death of such first beneficiary must be furnished by a certificate of death from the public authorities.

When a Coroner's inquest was held, a certified *copy of the verdict* must be submitted. If a copy of the testimony is required, you will be notified. In case of sudden death by accident or otherwise, full newspaper clippings must be furnished.

When the death occurs in an insane asylum, full copy of the commitment papers must be furnished if requested.

When the death occurs out of the United States or Canada, proofs must be verified before

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Exhibit P. 3.

the American Minister or Consul and bear his official certification and must be accompanied by a transcript of the death certified to by the Municipal Authorities or Registrar of the town in which the death occurred.

10 **BEFORE FORWARDING PROOFS**, please see that these instructions are complied with and that each statement is completed and every question therein answered, thus insuring prompt examination of the claim and avoiding delay.

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Exhibit P. 3.

CLAIM DIVISION—Ordinary Department

Form 034 Ord.—Part II

Dec. 1923

D.O.

Printed in U. S. A.

PROOF OF DEATH—Metropolitan Life Insurance Company 10

Declaration Made by Claimant

TO THE METROPOLITAN LIFE INSURANCE COMPANY.

I desire to file the following Statement of Physician with and as part of the Proofs of Death submitted by me under Policy No. 4567096A, 424339B, 555079B.

Name of Insured John J. Heslin 20

Mrs. Mary A Heslin Claimant.

Witness C. F. Kilburn

STATEMENT OF PHYSICIAN

(See Reverse Side)

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. 30

1. Full Name of Deceased? John J Heslin
2. Residence: No. 89 Street Riggs Pl. City or Town W. Orange State N J
3. Date of Death? Month Mar Day 7 Year 1927

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Exhibit P. 3.

4. Sex? Male White or Colored? White Age at Death? 48 Yrs. Apparent Age? 48 Yrs.
5. Place of Death? If death occurred in a hospital or institution, give the name. No. 89 Street Riggs Pl. City or Town W Orange State N J
- 10 6. Cause of Death? (See reverse side.) Cancer of tonsil
Duration from personal knowledge.... Yrs. 6 Mos..... Days
Duration from history given....Yrs. 6 Mos. Days
Contributory or.... Secondary....(Duration)....Yrs.....Mos.....Days
7. Date of your first visit in last illness? About 6 mos ago
- 20 8. Date of your last visit? Mar 6 1927
9. How long had Deceased been ill when you were called to attend in last illness? About 6 mos
10. Did Deceased ever suffer from any form of tuberculosis? If so, please specify. No
11. Was Deceased afflicted with any infirmity, deformity or chronic disease? If so, please specify. No
- 30 12. Was death due to suicide, homicide or accident? If accident, give particulars and date. (See reverse side.) No
13. Was there an inquest or post-mortem examination? No
14. Was Deceased ever treated by another physician or at any hospital or other institution prior to, during, or subsequent to your attendance? If so, please specify time and condition for which treated. Dr. Tymeson Orange, Tonsillectomy about 6 mos ago.
- 40

Exhibit P. 3.

15. Was there any cause, remote or proximate, for the death in the habits, residence, family history, or in the use of alcohol or drugs? No
16. Occupation? (See reverse side.) (a) Trade or particular kind of work Head waiter
(b) General nature of industry or business.. 10
(c) Was death caused by any condition arising from defendant's occupation? No
17. Did any member of Deceased's family die of Tuberculosis? Relationship No Date of Death?.....
18. Have you previously filled out a certificate for this death for this or any other Company? If so, please specify. No
19. Please state the Disease or Diseases for which you attended Deceased and dates of attendance other than asked in Questions 6, 7 and 8. During 1925 had possible skin carcinoma, referred to Dr H. J. F Wallhauser of Newark From Dec. 1925 to Dec 1925 for Throat irritation of unknown cause, about 3 office visits A. L. S. 20
20. Did you certify the death to the Board of Health or Registrar of Vital Statistics? Yes
21. From what college did you graduate and date of graduation? Yale 1914 30

I HEREBY CERTIFY that the answers as above recorded are complete and true to the best of my knowledge and belief.

Signature of Physician Allton L. Sherman
No. and Street 26 Northfield Ave City or
Town W Orange State N J

*Exhibit P. 3.*STATE OF NEW JERSEY
COUNTY OF ESSEX.

10 Before me, a Notary Public in and for the above County and State, this 8th day of March 1927 appeared Allton Sherman M. D. 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.

Joseph F Gerdon

(SEAL)

N P of N J

20 If official seal is not impressed hereon by the Notary, Justice of the Peace, or other official, a certificate from the County Clerk or Court of Record, showing authority to administer oath must be attached.

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Exhibit P. 3.

CLAIM DIVISION—Ordinary Department

Form 034 Ord.—Part II

Dec. 1923

D.O.

Printed in U. S. A.

PROOF OF DEATH—Metropolitan Life Insurance Company 10

Declaration Made by Claimant

TO THE METROPOLITAN LIFE INSURANCE COMPANY.

I desire to file the following Statement of Physician with and as part of the Proofs of Death submitted by me under Policy No. 4567096A

Name of Insured John J Heslin

Mary A Heslin Claimant. 20

Witness Samuel Berkowitz

STATEMENT OF PHYSICIAN

(See Reverse Side)

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. 30

1. Full Name of Deceased? John Heslin
2. Residence: No. 89 Street Riggs Pl City or Town? W. Orange State N. J.
3. Date of Death? Month Mar Day 7 Year 1927
4. Sex? Male White or Colored? White Age at Death? 49 Yrs. Apparent Age? Same 40

Exhibit P. 3.

5. Place of Death? If death occurred in a hospital or institution, give the name. No. 89 Street Riggs Pl. City or Town W. Orange State N. J.
6. Cause of Death? (See reverse side.) Carcinoma of Larynx
 10 Duration from personal knowledge 0 Yrs. 6 Mos. 0 Days
 Duration from history given 0 Yrs. 9 Mos. 0 Days
 Contributory or . . . Secondary
7. Date of your first visit in last illness? July 1926
8. Date of your last visit? Early in Feb. 1927
9. How long had Deceased been ill when you were called to attend in last illness? 2 to 3
 20 months
10. Did Deceased ever suffer from any form of tuberculosis? If so, please specify. No
11. Was Deceased afflicted with any infirmity, deformity or chronic disease? If so, please specify. No
12. Was death due to suicide, homicide or accident? If accident, give particulars and date. (See reverse side.) No
- 30 13. Was there an inquest or post-mortem examination? No
14. Was Deceased ever treated by another physician or at any hospital or other institution prior to, during, or subsequent to your attendance? If so, please specify time and condition for which treated. Neck gland removed by Dr C. W. Scranton E. Orange for examination.
- 40 15. Was there any cause, remote or proximate, for the death in the habits, residence, family history or in the use of alcohol or drugs? No

Exhibit P. 3.

16. Occupation? (See reverse side.) (a) Trade or particular kind of work Waiter at Essex County Country Club, W. Orange (b) General nature of industry or business.....
 (c) Was death caused by any condition arising from decedent's occupation? No
17. Did any member of Deceased's family die of Tuberculosis? No Relationship.... Date of Death.... 10
18. Have you previously filled out a certificate for this death for this or any other Company? If so, please specify. No
19. Please state the Disease or Diseases for which you attended Deceased and dates of attendance other than asked in Questions 6, 7 and 8.
20. Did you certify the death to the Board of Health or Registrar of Vital Statistics? No 20
21. From what college did you graduate and date of graduation? Baltimore Med. Coll. 1908

I HEREBY CERTIFY that the answers as above recorded are complete and true to the best of my knowledge and belief.

Signature of Physician W. R. Tymeson
 No. and Street 310 Main St. City or Town 30
 Orange State N. J.

Exhibit P. 3.

STATE OF N. J.
COUNTY OF ESSEX.

10 Before me, a Notary Public in and for the
above County and State, this 21 day of Mar 1927
appeared W. R. Tymeson known to me as a phy-
sician 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.

(SEAL) Walter Nuffort Notary Public N J.

If official seal is not impressed hereon by the
Notary, Justice of the Peace, or other official, a
certificate from the County Clerk or Court of
Record, showing authority to administer oath
20 must be attached.

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Exhibit P. 3.

CLAIM DIVISION—Ordinary Department

Form 034 Ord.—Part II

Dec. 1923

D.O.

Printed in U. S. A.

PROOF OF DEATH—Metropolitan Life In- 10
surance Company

Declaration Made by Claimant

*TO THE METROPOLITAN LIFE INSUR-
ANCE COMPANY.*

I desire to file the following Statement of Phy-
sician with and as part of the Proofs of Death
submitted by me under Policy No. 429324A

Name of Insured John J. Heslin

Mary A Heslin, Claimant. 20

Witness Samuel Berkowitz

STATEMENT OF PHYSICIAN

(See Reverse Side)

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 30
not to enter upon this certificate, please make
them the subject of special correspondence with
the Home Office, New York.

1. Full Name of Deceased? John Heslin
2. Residence: No. 89 Street Riggs Pl. City
or Town West Orange State N J
3. Date of Death? Month ? Day ? Year 192 ?
4. Sex? M White or Colored? W Age at
Death? ? Yrs. Apparent Age? ? Yrs.

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Exhibit P. 3.

5. Place of Death? If death occurred in a hospital or institution, give the name. No. ? Street ? City or Town.... State....
6. Cause of Death? (See reverse side.)
7. Date of your first visit in last illness? Sept 25, 1926
- 10 8. Date of your last visit? Oct 7, 1926
9. How long had Deceased been ill when you were called to attend in last illness?....
10. Did Deceased ever suffer from any form of tuberculosis? If so, please specify. ?
11. Was Deceased afflicted with any infirmity, deformity or chronic disease? If so, please specify. ?
- 20 12. Was death due to suicide, homicide or accident? If accident, give particulars and date. (See reverse side.) No
13. Was there an inquest or post-mortem examination?
14. Was Deceased ever treated by another physician or at any hospital or other institution prior to, during, or subsequent to your attendance? If so, please specify time and condition for which treated. Yes
- 30 15. Was there any cause, remote or proximate, for the death in the habits, residence, family history, or in the use of alcohol or drugs?...?
16. Occupation? (See reverse side.) (a) Trade or particular kind of work Head waiter (b) General nature of industry or business Essex County Country Club (c) Was death caused by any condition arising from decedent's occupation?
- 40 17. Did any member of Deceased's family die of Tuberculosis? Relationship Date of Death

Exhibit P. 3.

18. Have you previously filled out a certificate for this death for this or any other Company? If so, please specify. No
19. Please state the Disease or Diseases for which you attended Deceased and dates of attendance other than asked in Questions 6, 7 and 8. From..... 10
20. Did you certify the death to the Board of Health or Registrar of Vital Statistics? No
21. From what college did you graduate and date of graduation? Bellevue Med. College 1923

Patient was sent to me only for removal of enlarged arvical lymph modi.

I HEREBY CERTIFY that the answers as above recorded are complete and true to the best of my knowledge and belief. 20

Signature of Physician Charles W Scranton
No. and Street 31 Washington St City or Town
East Orange State N. J.

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Exhibit P. 3.

STATE OF NEW JERSEY,
COUNTY OF ESSEX.

10 Before me, a Notary Public in and for the
above County and State, this 24 day of March
1927 appeared Charles W Scranton known to me
as a physician in regular standing, and made
oath that he personally signed the above state-
ment and the answers by him given to the fore-
going questions are true and full to the best of
his knowledge and belief.

(SEAL)

Harry J Hasselbauer

20 If official seal is not impressed hereon by the
Notary, Justice of the Peace, or other official, a
certificate from the County Clerk or Court of
Record, showing authority to administer oath
must be attached.

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Exhibit P. 3.

CLAIM DIVISION—Ordinary Department

Form O34 Ord.—Part II

Dec. 1923

D. O.

Printed in U. S. A.

PROOF OF DEATH—Metropolitan Life In- 10
surance Company

Declaration Made by Claimant

*TO THE METROPOLITAN LIFE INSUR-
ANCE COMPANY.*

I desire to file the following Statement of
Physician with and as part of the Proofs of
Death submitted by me under Policy No.
4567096A

Name of Insured John Heslin 20

Mary A Heslin, Claimant.

Witness Samuel Berkowitz

STATEMENT OF PHYSICIAN

(See Reverse Side)

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 30
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? Mr. J. Heslin
2. Residence: No. 89 Street Riggs Place
City or Town West Orange State N J.
3. Date of Death? Month March Day 7 Year
1927
4. Sex? Male White or Colored? White 40
Age at Death? 49 Yrs. Apparent Age?
Same

Exhibit P. 3.

5. Place of Death? If death occurred in a hospital or institution, give the name. No. 89 Street Riggs Place City or Town West Orange State N J
6. Cause of Death? (See reverse side.) Carcinoma Larynx
 10 Duration from personal knowledge Yrs. 6
 G S R. Mos. Days
 Duration from history given.....days
 Contributory or Secondary.....
 (Duration)Yrs.....Mos.....Days
7. Date of your first visit in last illness? October 12, 1926
8. Date of your last visit? February 4, 1927
9. How long had Deceased been ill when you were called to attend in last illness? About
 20 10 months
10. Did Deceased ever suffer from any form of tuberculosis? If so, please specify. No
11. Was Deceased afflicted with any infirmity, deformity or chronic disease? If so, please specify. No
12. Was death due to suicide, homicide or accident? If accident, give particulars and date. (See reverse side.) No
- 30 13. Was there an inquest or post-mortem examination? No
14. Was Deceased ever treated by another physician or at any hospital or other institution prior to, during, or subsequent to your attendance? If so, please specify time and condition for which treated. At Orange Memorial Hospital by Drs. Scranton & Tymeson
- 40 15. Was there any cause, remote or proximate, for the death in the habits, residence, family history, or in the use of alcohol or drugs? No

Exhibit P. 3.

16. Occupation? (See reverse side.)
- (a) Trade or particular kind of work
Headwaiter Country Club
 - (b) General nature of industry or business
 - (c) Was death caused by any condition arising from decedent's occupation? No
17. Did any member of Deceased's family die of Tuberculosis? Relationship No Date of Death 10
18. Have you previously filled out a certificate for this death for this or any other Company? If so, please specify.
19. Please state the Disease or Diseases for which you attended Deceased and dates of attendance other than asked in Questions 6, 7 and 8. From October 12 1926 to February 4 1927 for Carcinoma Larynx Duration.... 20
From..... 192...to..... 192..... for..... duration.....
20. Did you certify the death to the Board of Health or Registrar of Vital Statistics? No
21. From what college did you graduate and date of graduation? Albany Medical College, 1915

I HEREBY CERTIFY that the answers as above recorded are complete and true to the best of my knowledge and belief. 30

Signature of Physician George S. Reitter
No. and Street 31 Washington St City or Town
E Orange State N J

Exhibit P. 3.

STATE OF NEW JERSEY
COUNTY OF ESSEX

10 Before me, a.....in and for the above
County and State, this 19 day of March 1927 ap-
peared Geo. S. Reitter known to me as a phy-
sician 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.

(SEAL) James H Owen Notary Public

20 If official seal is not impressed hereon by the
Notary, Justice of the Peace, or other official, a
certificate from the County Clerk or Court of
Record, showing authority to administer oath
must be attached.

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Exhibit P. 3.

CLAIM DIVISION

Form O34 Ord. D. O.—Part III.
Dec. 1926
Printed in U. S. A.

PROOF OF DEATH

10

Metropolitan Life Insurance Company—Ordinary
Department

STATEMENT OF A FRIEND (To be made by a
responsible person over 21 years of age not re-
lated to but intimately acquainted with the de-
ceased and not interested in the claim.)

1. State the full name of the deceased. John
J. Heslin
2. State how long you knew the deceased. 9 20
Yrs.
3. State where the deceased resided during your
acquaintance. Home—West Orange, N. J.
4. State the occupation of the deceased. Cap-
tain of Waiters
5. State the age of the deceased at death. (If
not known, state the approximate age.) 48
6. State the date of death. March 7—1927
7. Did you view the body after death? Yes
8. Can you certify the body was that of the 30
person named herein? Yes
9. Were you present at the burial of the body?
Yes
10. State the place of burial. St. John's Ceme-
tery West Orange
11. State the date of burial. March 10—1927
12. How long have you resided at your present
address? 9 Yrs

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Exhibit P. 3.

13. Are you related to the deceased? No.
14. Are you directly or indirectly interested in the collection of the proceeds of the insurance for which claim is made? No.

10 STATE OF NEW JERSEY
COUNTY OF ESSEX

Signed Eva H. Hays Occupation
Residence: No. and Street Essex County
Country Club City or Town West Orange
State N. J.

20 Before me, a Notary Public in and
for the above County and State this
(SEAL) 9th day of March 1927 appeared Etta
H. Hays known to me, and made oath
that the answers by him given to the
foregoing questions are true and full to the best
of his knowledge and belief.

Joseph F. Gerdon N P of N. J.

If official seal is not impressed hereon by the
Notary, Justice of the Peace, or other official, a
Certificate from the County Clerk or Court of
Record, showing authority to administer oath
must be attached.

30

STATEMENT of the MINISTER or other
PERSON who officiated at the INTERMENT

1. State the full name of the deceased. John J.
Heslin
2. Where did the deceased reside at the time of
death? 89 Riggs Place, West Orange
3. Were you personally acquainted with the de-
ceased? (If so, state for how long.) Yes
40 about 10 years

Exhibit P. 3.

4. Did you view the body? Yes
5. Can you certify that the body of the deceased was that of the person named herein? Yes
6. State date of interment. March 10/27
7. State the place of interment. St John Cemetery, Orange, N J. 10
8. State the name of the church over which you preside or your occupation. St Johns R C Church, Orange, N J

Signed Rev. Thomas J Heron

Residence: No. and Street 94 Ridge St City
or Town Orange State N J.

Date March 10 1927

Witness Rev. J. F. Flanagan

Residence: No. and Street 39 Wallace Pl.
City or Town Newark State N. J. 20

(In pencil.)

R. Smith

3/15/27

STATEMENT of the MANAGER (*To be completed by the representative of the Company.)

*If the amount payable under the policy is not more than \$500, this Statement may be completed by an Assistant Manager, but must be approved by the Manager. 30

1. Name of Deceased. John J. Heslin
2. Number of policy. 4567096A. 424339A—555024B
3. When was last premium paid? (If monthly premium policy, attach Premium Receipt Book.) Orange N J
4. When did the deceased last attend to his usual work? August 1926 40

Exhibit P. 3.

5. From whom did you ascertain this date?
(State name and address of your informant.)
Mary A Heslin—wife
6. Were you personally acquainted with the deceased? No
- 10 7. Did you see and identify the remains of the deceased? Saw remains
8. If you have not seen the remains, how have you satisfied yourself of the identity of the deceased?
9. From your investigation and from the statements of the claimant and others, do you believe the claim to be valid? Yes
10. Was advance notice of death sent to the Home Office? No
- 20 11. Was death due to external violence? (If so, report date of accident and cause, with full particulars and submit newspaper clippings, if any.) No

(Rubber Stamp)
Received in
Claim Division
Ordinary Section
MAR 12 1927
By EM

30 C F Kelhny Ass't Manager
Orange District

Dated Mar 10 1927

O K
H J H
Mgr

*Exhibit D. 1.***EXHIBIT D. 1.**

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

THOMAS CONRAD, of full age, being duly sworn according to law, upon his oath says that, as Special Deputy for John N. Race, Sheriff of Mercer County aforesaid, on the 14th day of July, A. D. 1927, he served a full, true and correct copy of the summons and complaint hereto annexed, and also of the notice endorsed thereon upon METROPOLITAN LIFE INS. CO. a Corp., defendant, by giving and delivering to Christopher A. Gough, Deputy Commissioner of Banking and Insurance, a true copy thereof, personally, and at the same time handing him a service fee of two dollars, said service being made at the office of the Commissioner of Banking and Insurance, at Trenton Trust Bldg., Trenton, New Jersey.

THOMAS CONRAD.

Sworn and subscribed to this
 15th day of July, A. D. 1927,
 before me.

LENA M. BOOZ, 30
 Notary Public of N. J.

Exhibit D. 1.

THE STATE OF NEW JERSEY TO:
 METROPOLITAN LIFE INSURANCE COM-
 (SEAL) PANY, a corporation of New York,

You are summoned to answer the
 annexed complaint of Mary A. Heslin,
 in an action at law in the New Jersey Supreme
 10 Court

AND TAKE NOTICE that unless you file your an-
 swer to said complaint with the Clerk of the New
 Jersey Supreme Court at Trenton, within twenty
 days after service upon you of this writ and the
 annexed complaint, the plaintiff may proceed in
 the suit and judgment may be entered against
 you.

WITNESS, WILLIAM S. GUMMERE, Esquire, Chief
 Justice of the New Jersey Supreme Court at
 20 Trenton this 30th day of June, Nineteen Hundred
 and Twenty-seven.

EDWARD J. KELLEHER,
 Clerk.

LINTOTT, KAHR & YOUNG,
 Attorneys.

30

40

Exhibit D. 1.

NEW JERSEY SUPREME COURT.

COUNTY OF ESSEX.

MARY A. HESLIN,

*Plaintiff,**vs.*METROPOLITAN LIFE INSURANCE
COMPANY, a corporation,*Defendant.**Action
at Law.*

10

Complaint.

Mary A. Heslin, plaintiff in above-entitled cause, residing at 89 Riggs Place in the Town of West Orange, County of Essex, and State of New Jersey, says that:

1. On May 1, 1926, the defendant was and still is a corporation duly incorporated with the power of insuring against death.

20

2. On May 1, 1926, at the request of one John J. Heslin, the husband of plaintiff in this action, and in consideration of the payment to the defendant by said John J. Heslin of the premium of \$45.35 and his promise to pay a like sum annually until twenty (20) full years' premiums shall have been paid, or until the prior death of the insured, the defendant made and issued a policy of insurance in writing, a true copy of which is attached hereto and made a part hereof, thereby insuring the life of said John J. Heslin in the sum of One Thousand (\$1,000) Dollars, and naming the plaintiff, May A. Heslin, his beneficiary.

30

3. Said John J. Heslin complied with all the conditions of said policy.

40

Exhibit D. 1.

4. That the said John J. Heslin died on or about the seventh day of March, 1927.

5. The plaintiff made due proof of the death of said John J. Heslin to the defendant in accordance with the requirements of said policy and otherwise performed all conditions of said policy on her part, and has demanded payment of the defendant.

6. The defendant has wholly refused to pay the sum due on said policy.

Plaintiff demands damages in the sum of One Thousand (\$1,000) Dollars with interest and costs of suit.

LINTOTT, KAHRS & YOUNG,
Attorneys for Plaintiff.

20

ENDORSEMENTS:

I hereby deputize and appoint Thomas Conrad, of Trenton, a Special Deputy to serve the within writ and make return thereto.

Witness my hand and seal this 14th day of July, A. D. 1927.

30

JOHN N. RACE, (SEAL)
Sheriff of Mercer County.

By PHILIP S. VINE,
Under Sheriff.

40

Served within Sum. & Compl't. July 14, A. D. 1927 upon Metropolitan Life Ins. Co. a corp. defendant by leaving a copy of the same in the office of the Commissioner of Banking and Insurance of the State of New Jersey in Trenton Trust Bldg., Trenton, N. J. with a service fee

Exhibit D. 1.

of two dollars, with Christopher A. Gough,
Deputy Commissioner of Banking and Insurance.

JOHN N. RACE,
Sheriff.

By THOMAS CONRAD,
Spec. Dep. 10

Sheriff's Fees	\$4.52
B. Com.	2.
	\$6.52

NEW JERSEY SUPREME COURT.

ESSEX COUNTY. 20

MARY A. HESLIN,
Plaintiff,

vs.

METROPOLITAN LIFE INSURANCE COMPANY,
a corporation,
Defendant.

Action at Law 30

Summons & Complaint,

LINTOTT, KAHRS & YOUNG,
Attorneys for Plaintiff,
810 Broad St.,
Newark, N. J.,

Filed July 18, 1927

EDWARD J. KELLEHER,
Clerk. 40

Exhibit D. 1.

To the within named defendant:

TAKE NOTICE that if the within summons and complaint be served upon you personally and you intend to make a defense, then you must file an affidavit of merits within ten days of such service and must file an answer within twenty days of such service and that in default thereof judgment will be entered against you. The legal service upon a corporation is deemed personal service.

LINTOTT, KAHR & YOUNG,
Attorneys for Plaintiff.

Insurance Policy attached. Printed in full as Exhibit P. 1.

20

ANSWER.

NEW JERSEY SUPREME COURT.

COUNTY OF ESSEX.

30	MARY A. HESLIN, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> METROPOLITAN LIFE INSURANCE COMPANY, a corporation, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>Action at Law. Answer.</i>
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Defendant, a corporation duly authorized to transact business in the State of New Jersey, answering the complaint heretofore filed in this cause, says that:

40

Exhibit D. 1.

FIRST DEFENSE.

1. It admits paragraph 1 of the complaint.

2. Answering the second paragraph of the complaint, it admits that a policy of insurance, dated May 1, 1926, was issued on the life of John J. Heslin, and that Mary A. Heslin was named as beneficiary. It requires the production of the original policy as to the terms and conditions thereof and, except as herein admitted, denies said paragraph. 10

3. It denies paragraph 3 of the complaint.

4. It has no knowledge sufficient to form a belief as to the matters stated in paragraph 4 of the complaint.

5. It denies paragraphs 5 and 6 of the complaint, except that it admits that it has not paid plaintiff's alleged claim. 20

SECOND DEFENSE.

Said policy of insurance was obtained by the insured, John J. Heslin, through fraud.

THIRD DEFENSE.

Said policy of insurance was obtained by the insured, John J. Heslin, through misrepresentation. 30

FOURTH DEFENSE.

1. The said policy of insurance was issued in consideration of an application, copy of which application was attached to and made a part of said policy.

2. In said application, the said John J. Heslin made statements and agreed as follows: 40

Exhibit D. 1.

"It is understood and agreed:

10 1. That the foregoing statements and answers are correct and wholly true, and, together with the answers to questions on Part B, hereof, they shall form the basis of the contract of insurance, if one be issued.

2. That no agent, medical examiner or any other person, except the Officers of the Company, have power on behalf of the Company; (a) to make, modify or discharge any contract of insurance, (b) to bind the Company by making any promises respecting any benefits under any policy issued hereunder.

20 3. That no statement made to or by, and no knowledge on the part of, any agent, medical examiner or any person as to any facts pertaining to the applicant, shall be considered as having been made to or brought to the knowledge of the Company unless stated in either Part A or B of this application."

30 3. In said application, John J. Heslin, the insured made statements or answers to the Medical Examiner of the defendant in answer to a series of questions and then following said statements and answers to said questions, said insured further stated:

40 "I HEREBY CERTIFY that I have read the answers to the questions in Part A hereof and to the questions in Part B hereof, before signing, and that they have been correctly written as given by me and that they are full, true and complete, and that there are no exceptions to any such answers other than as stated herein."

Exhibit D. 1.

4. In said application said insured was asked and answered as follows:

“7 (a) When last sick? 1908.

(b) Nature of last sickness? Fracture of R. Clavicle and right ankle.

(c) How long sick? 6 weeks.”

10

Whereas, in the year 1925 and in the year 1926, prior to and at the time of said application, said John J. Heslin had been and was sick, the nature of said sickness being carcinoma.

FIFTH DEFENSE.

1. Defendant repeats paragraphs 1, 2 and 3 of its fourth defense.

2. In said application said insured was asked and answered as follows:

“9. Any physical or mental defect or infirmity? If yes, give particulars. No.”

20

Whereas, at the time of signing said application, said John J. Heslin had a physical defect or infirmity, namely, carcinoma.

SIXTH DEFENSE.

1. Defendant repeats paragraphs 1, 2 and 3 of its fourth defense.

2. In said application, said insured was asked and answered as follows:

30

“11. Have you had any surgical operation, serious illness or accident? If yes, give date, duration and name of ailment. Yes. See 7.”

40

Exhibit D. 1.

The reference to 7 in said answer is the section 7 of Part B of said application, which reads:

- 10 “7 (a) When last sick? \$1908.
 (b) Nature of last sickness?
 Fracture of R. Clavicle and right
 ankle.
 (c) How long sick? 6 weeks.”

Whereas, said John J. Heslin had had a serious illness, namely, carcinoma, and had had a surgical operation for same.

SEVENTH DEFENSE.

1. Defendant repeats paragraphs 1, 2 and 3 of its fourth defense.
- 20 2. In said application said insured was asked and answered as follows:
- “17. Have you ever had any of the following complaints or diseases * * * cancer or other tumor * * * If yes, give particulars, dates and duration. No.”

Whereas, prior thereto, said John J. Heslin had had cancer or other tumor.

30 EIGHTH DEFENSE.

1. Defendant repeats paragraphs 1, 2 and 3 of its fourth defense.
2. In said application said insured was asked and answered as follows:
- “18. Have you been attended by a physician during the last five years? If yes, give name of complaints, dates, how long sick and names of physicians. No.”

Exhibit D. 1.

Whereas, during said period said John J. Heslin had been attended by physicians.

NINTH DEFENSE.

1. Defendant repeats paragraphs 1, 2 and 3 of its fourth defense. 10

2. In said application said insured was asked and answered as follows:

“19. Have you had any treatment within the last five years at any dispensary, hospital or sanatorium? If yes, give date, duration, name of ailment and name of institution. St. Mary’s Hos. Orange. See #7.”

Number 7 referred to in said answer is section 7 of Part B of said application, which reads: 20

“7 (a) When last sick? 1908.

(b) Nature of last sickness? Fracture of R. Clavicle and right ankle.

(c) How long sick? 6 weeks.”

Whereas, during said period said John J. Heslin had received treatments at a dispensary, hospital or sanatorium other than mentioned by him.

McCARTER & ENGLISH, 30
Attorneys for Defendant.

Filed August 2, 1927.

*Exhibit D. 1.***REPLY.**

NEW JERSEY SUPREME COURT.

COUNTY OF ESSEX.

10	MARY A. HESLIN, <div style="text-align: right; padding-right: 20px;"><i>Plaintiff,</i></div> <div style="text-align: center; padding: 0 10px;"><i>vs.</i></div> METROPOLITAN LIFE INSURANCE COMPANY, a corporation, <div style="text-align: right; padding-right: 20px;"><i>Defendant.</i></div>	}	<i>Action at Law. Reply.</i>
----	---	---	---

REPLY TO FIRST DEFENSE.

20 Plaintiff agrees to produce original policy at time of trial.

REPLY TO SECOND DEFENSE.

Plaintiff denies that said policy of insurance was obtained through fraud.

REPLY TO THIRD DEFENSE.

30 Plaintiff denies that said policy of insurance was obtained through misrepresentation.

REPLY TO FOURTH DEFENSE.

Plaintiff denies the allegations in Fourth Defense as to illness of said John J. Heslin.

REPLY TO FIFTH DEFENSE.

Plaintiff denies allegations in Fifth Defense as to physical defect or infirmity of said John J. Heslin.

40

Exhibit D. 1.

REPLY TO SIXTH DEFENSE.

Plaintiff denies allegations in Sixth Defense as to serious illness of said John J. Heslin.

REPLY TO SEVENTH DEFENSE.

Plaintiff denies allegations in Seventh Defense that said John J. Heslin had had cancer or other tumor. 10

REPLY TO EIGHTH DEFENSE.

Plaintiff denies allegations in Eighth Defense that statements in policies referred to were misrepresentations.

REPLY TO NINTH DEFENSE.

Plaintiff denies allegations in Ninth Defense as to said John J. Heslin having had treatments as therein stated. 20

LINTOTT, KAHR & YOUNG,
Attorneys of Plaintiff.

Filed August 17, 1927.

*Exhibit D. 1.***DISCONTINUANCE.**

NEW JERSEY SUPREME COURT.

COUNTY OF ESSEX.

10	MARY A. HESLIN, <div style="text-align: right;"><i>Plaintiff,</i></div> <div style="text-align: center;"><i>vs.</i></div> METROPOLITAN LIFE INSURANCE COMPANY, a corporation, <div style="text-align: right;"><i>Defendant.</i></div>	}	<i>Action at Law. Discon- tinuance.</i>
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It is hereby stipulated and agreed by and between the attorneys for the respective parties hereto that the within cause be and the same is hereby discontinued without costs to either party as against the other.

On motion of

LINTOTT, KAHRS & YOUNG,
Attorneys for Plaintiff.

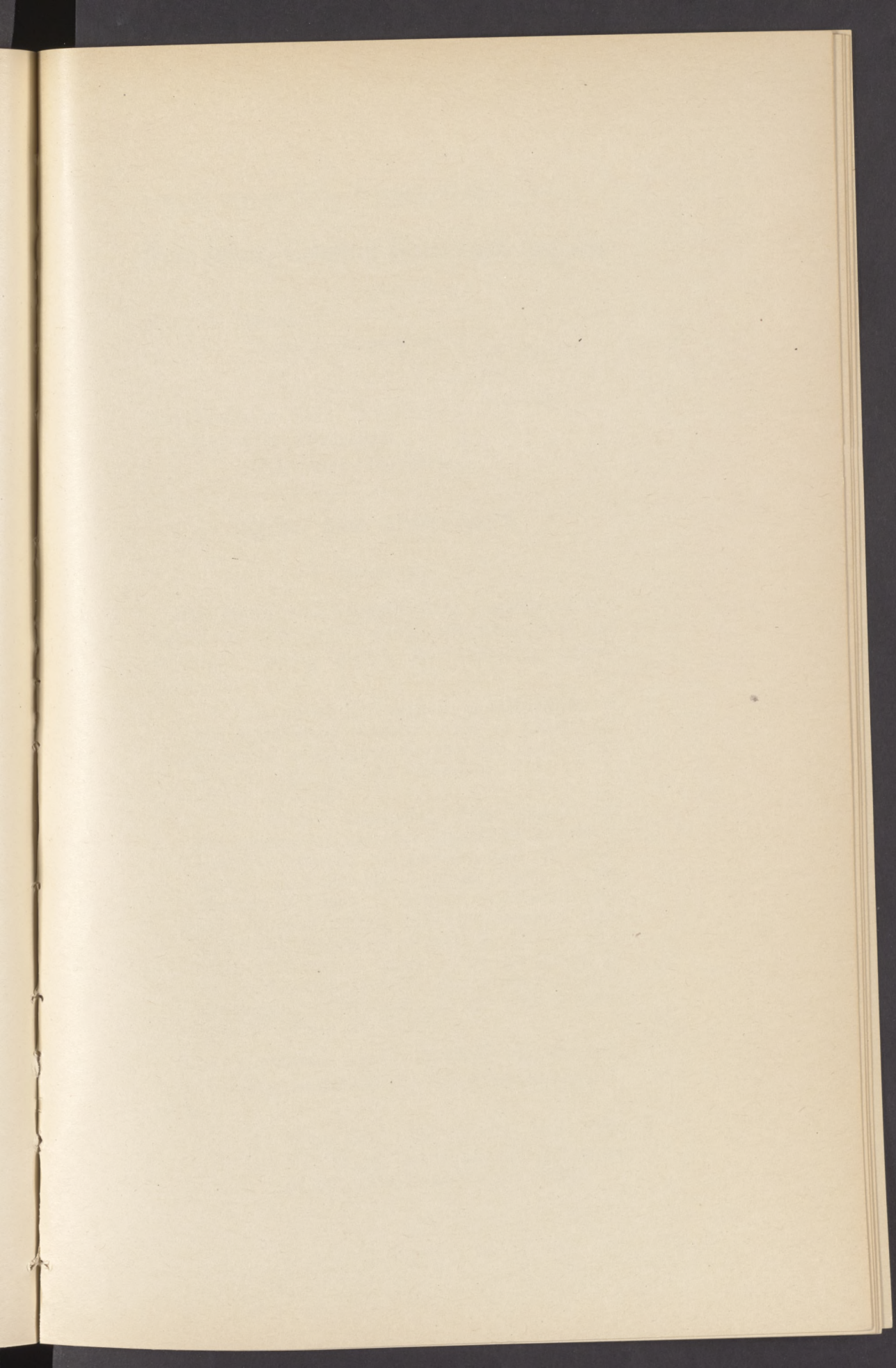
Dated, December 12, 1928.

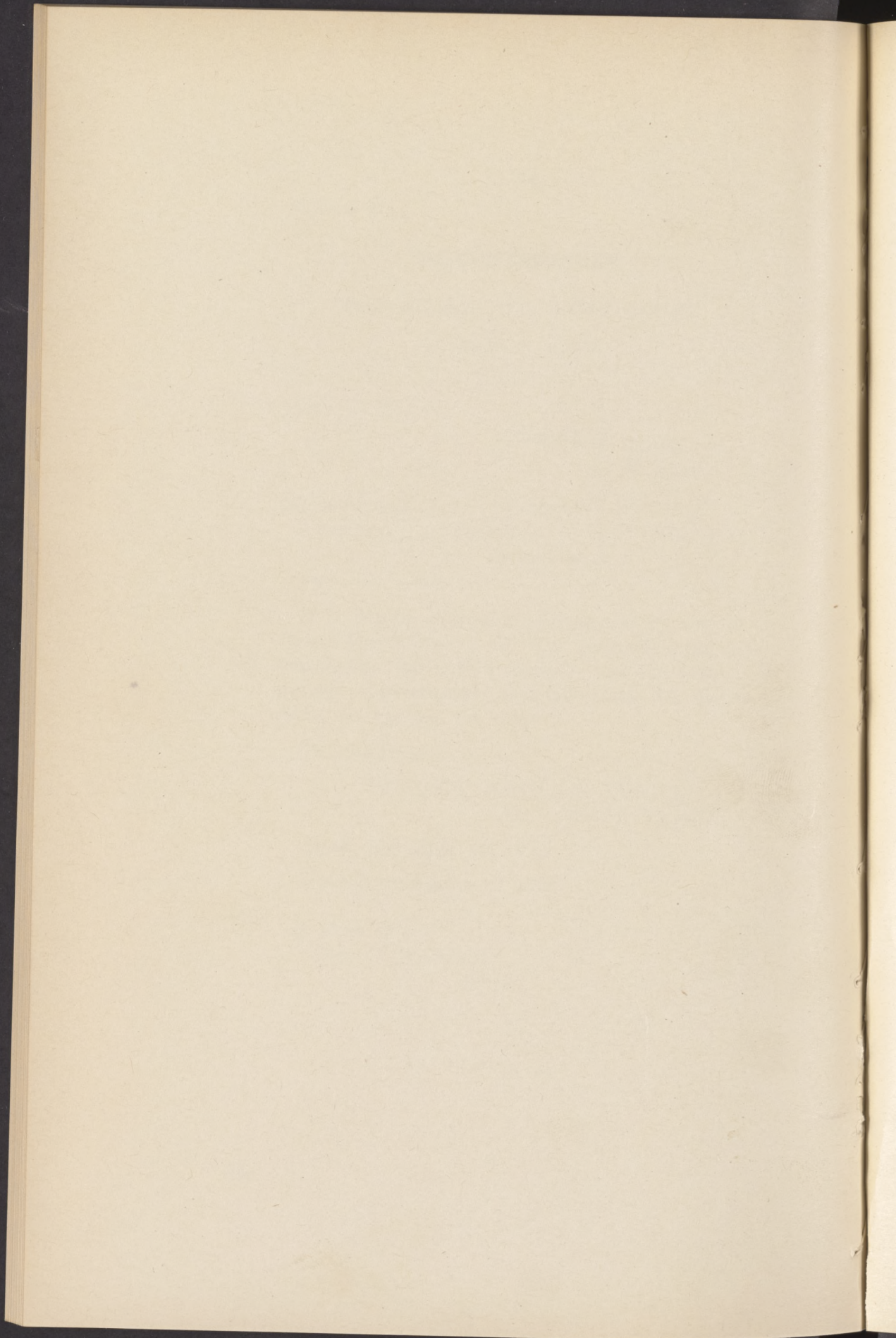
Entered, December 12, 1928.

30

A True Copy.

FRED L. BLOODGOOD,
Clerk.





Arthur W. Cross, Law Printer, 55-57 Lafayette Street, Newark, N. J.

New Jersey Court of Errors and Appeals

MARY A. HESLIN, <i>Plaintiff-Respondent,</i> <i>vs.</i> METROPOLITAN LIFE INSURANCE COMPANY, a corporation, <i>Defendant-Appellant.</i>	}	<i>On Appeal from Supreme Court.</i>
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BRIEF FOR APPELLANT.

Statement.

This action was brought upon a policy of life insurance. The policy was in the usual form and contained among others the following provisions:

“This policy is issued in consideration of the Application therefor, copy of which Application is attached hereto and made part hereof, and of the payment * * * ”
(Case 33, l. 23).

“4. Entire Contract:—This policy and the application therefor constitute the entire contract between the parties, and all statements made by the Insured, shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid this Policy or be used in defense of a claim hereunder unless it be contained in the application therefor and a copy of such application is attached to this Policy when issued” (Case 35, l. 30).

The application, a copy of which was annexed to the policy, contained the following representations:

- “7. (a) When last sick? Month Year 1908
- (b) Nature of last sickness? Fracture
 of R. Clavicle and right Ankle

- (c) How long sick? 6 weeks (Case 53, l. 12).
- “9. Any physical or mental defect or infirmity? If yes, give particulars. No (Case 53, l. 20).
- “11. Have you had any surgical operation, serious illness or accident? If yes, give date, duration and name of ailment. Yes See 7 (Case 53, l. 24).
- “17. Have you ever had any of the following complaints or diseases?
Apoplexy, Appendicitic, Asthma, Bronchitis, Cancer or other Tumor, Consumption, Diabetes, Disease of Heart, Disease of Kidneys, Disease of Liver, Disease of Lungs, Fistula, Fits or Convulsions, Goitre, Habitual Cough, Insanity, Colic, Jaundice, Paralysis, Pleurisy, Pneumonia, Rheumatism, Scrofula, Syphilis, Spinal Disease, Spitting of Blood, Varicose Veins. If yes, give particulars, dates and duration No (Case 54, l. 17).
- “18. Have you been attended by a physician during the last five years? If yes, give name of complaints, dates, how long sick, and names of physicians. No (Case 54, l. 16).
- “19. Have you had any treatment within the last five years at any dispensary, hospital or sanatorium? If yes, give date, duration, name of ailment and name of institution. St. Marys Hosp Orange See #7 (Case 54, l. 20).

“I HEREBY CERTIFY that I have read the answers to the questions in Part A hereof and to the questions in Part B hereof, before signing, and that they have been correctly written, as given by me, and that they are full, true and complete, and that there are no exceptions to any such answers other than as stated herein.

Dated at W Orange this 29 day of April

Witness to Signature M. A. Weinmann
Signature of Applicant John J. Heslin"
(Case 55, l. 22).

The original application was put in evidence by the plaintiff at the trial as Exhibit P. 2 and was of course exactly identical with the copy attached to the policy (Case 59).

At the trial the defendant produced as a witness Dr. Weinmann, who testified (Case 18) that the application was signed by the assured in his presence, and that he, Dr. Weinmann, asked the assured questions Nos. 7, 9, 11, 17, 18 and 19, and that Dr. Weinmann correctly recorded the assured's answers thereto. Dr. Francis McCauley testified on behalf of the defendant that the assured came to him, Dr. McCauley, at the office in the City of Newark, where the latter was then practicing with Dr. Wallhauser, on November 9, 1925. The assured was then suffering from a small skin cancer of the right cheek. Dr. McCauley then used a little acid to remove the growth, following which two applications of radium were given. This operation took place at Dr. McCauley's and Dr. Wallhauser's office, 47 New street, Newark (Case 20-21).

It appeared from the proofs of death, Exhibit P. 3, that the assured died March 7, 1927, from cancer of the larynx (Case 93-94). The existence of the previous growth on the assured's face was admitted by the plaintiff on re-direct examination (Case 15, l. 35). The several misrepresentations in the application were duly pleaded and relied on in the answer (Case 6 to 10).

At the close of the testimony the defendant moved for the direction of a verdict in its favor on the ground that there had been a breach of

warranty and misrepresentation as pleaded in the answer. This motion was denied and the Court left the case to the jury to find whether or not the misrepresentations were intentionally made and whether they were material. Under these instructions the jury found a verdict in favor of the plaintiff, on which was entered the judgment appealed from.

Grounds of Appeal Relied On.

Because the learned Trial Judge denied the motion of the counsel for the defendant to direct a verdict in favor of the defendant.

Because the learned Trial Judge in his charge to the jury said: "From the evidence you have heard it is for you to decide as to whether this representation was a material one, and whether it was made with the intention to deceive."

Because the learned Trial Judge in his charge to the jury said: "Therefore I say it is for you to determine whether or not these statements were made with the intention of deceiving, and whether or not such statements as were false were material."

ARGUMENT.

I.

The learned Trial Judge erred in not directing a verdict in favor of the defendant.

The testimony is short and has been fully and fairly outlined in the statement. The following facts should perhaps be added: Although in fact the growth on the assured's face, which was removed by Dr. McCauley and which was treated by Dr. Wallhauser at their offices in Newark in November, was a skin cancer, it does not

appear, however, that the assured actually knew that the growth was cancerous. It also appeared in evidence, over the objection of the defendant, that the cancer of the larynx, of which the assured died, was not in the opinion of the physicians in any way caused by the previous skin cancer (Case 22, ll. 7, 37; Case 25, l. 17). In denying the motion to direct a verdict the Trial Judge said:

“I suppose the question of sickness would be a jury question. A wart on the face might not be sickness. I also think that the question of materiality is for the jury to decide. I will deny the motion.”

In charging the jury the Trial Judge said among other things, referring to the representations in the application:

“It will suffice to say that at least one of them was false in fact. That is the one where he was asked whether he was attended by a physician within the last five years. It has been proved in this case that he was; that in November of the year previous to the issuance of the policy he went to a physician and had something on his face treated. It was referred to as looking like a wart or as looking like a mole. So, as I say, at least one of the statements was false in fact.

“In order to defeat the plaintiff’s right to recover, it must appear that a false representation was made; that it was a representation untrue in fact; that the deceased knew that it was untrue; that it was intentionally made, and that it was a material one.

“As I say, I think you must concede that it was false; that there was a representation made that was false, and that the deceased knew that it was false. I am not going into the other questions now because that is the plainest one, but the same rule applies. Now

the question remains whether it was intentional on the deceased's part and whether it was a material one on the deceased's part.

"From the evidence you have heard it is for you to decide as to whether this representation was a material one and whether it was made with the intention to deceive."

In question 18 in the application the assured was asked:

"Have you been attended by a physician during the last five years? If yes, give name of complaints, dates, how long sick, and names of physicians." Answer "No."

It was the established fact, as stated by the Trial Judge in his charge as above quoted, that in November of 1925, and within five years, the application being dated in April, 1926, the assured had been attended by Doctors McCauley and Wallhauser, and had had a growth removed operatively from his face. That is something which the assured must have known. When within six months thereafter he denied it he was stating a willful untruth. Questions 7 and 11 were misstated just as plainly, but No. 8 suffices for all purposes of this argument.

The appellant's contention is that on this evidence it was not open for the jury to find that the misstatement which the assured knew when he made it was false was not made with an intent to deceive, or was not material. The authorities on this point are clear and all one way.

Metropolitan Life Ins. Co. v. McTague, 49 L., 587 (Supreme 1887).

In this case a policy had lapsed and a re-ivor application was signed, which contained a statement that the insured had not consulted or been prescribed for by a physician. It appeared in evidence that the assured had been prescribed for by a physician for a cold. The nature of the

prescription did not appear. It was held that the contract was avoided. Magie, *J.*, for the Court said, page 592:

“The Common Pleas, in their opinion before us, declare that this fact did not show the representation to have been false, because it did not appear what sort of prescription the doctor gave, whether one compounded by a druggist or made up of some common remedy. But it is obvious that this circumstance cannot be of the least importance in determining the truth or falsity of the representation in question. That representation did not aver a condition of health, or that it was requisite or proper to consult a physician. It averred that he had not consulted a physician or been prescribed for by a physician. The fact found contradicted this averment, whether the consultation and prescription related to a real disease or an apprehension of disease. Indeed, so material does such a representation seem to be to the contract proposed by the application that, in my judgment, if made falsely and knowingly, it would avoid the contract. But the materiality of the representation in this case is not in question, for, as we have seen, its truth is warranted. Its falsity appears from the fact found.”

Duff v. Prudential Life Insurance Co., 90 L., 646 (C. E. A. 1917).

In this case the District Court found as a fact that the statement made by the insured in his application, that he had never suffered from consumption, was a willful untruth, and ruled that this vitiated the policy and prevented recovery thereunder. On appeal this judgment was reversed by the Supreme Court, on the ground that the statement, if false, did not vitiate the policy in the absence of proof that the company was induced to write the policy through fraud. On appeal to this Court it reversed the Supreme

Court and restored the judgment of the District Court. Black, *J.*, for the Court, said, page 648:

"It seems to us, the necessary result of finding that an application for a policy of life insurance contains a *willful untruth* as to whether the applicant had consumption was necessarily a finding that the policy was procured by fraud.

"The Supreme Court thought there was no proof, that this misrepresentation was material, or that the company may have been aware of its falsity and issued the policy regardless of that fact. The fact that the company asks the question shows it is material, and it is common knowledge to assume that life insurance companies do not accept for life insurance tubercular persons.

"It is said the most essential element of fraud is deceit. What could be the purpose of the insured making a statement, that was a willful untruth about his health, which he must have known was important and material, if it was not to deceive? Many definitions and illustrations of fraud, taken from adjudged cases, will be found collected in 3 Words and Phrases 2943. We agree with the District Court that a statement which is a willful untruth, as found by the District Court, in procuring the insurance policy renders it void, on the ground of fraud."

Kerpchak v. John Hancock, etc. Ins. Co., 97 L., 196 (C. E. A. 1922).

In this case the insured in her application, made a part of the contract, was asked:

"Give name and address of physician last consulted." and she answered "Never had a doctor." In an action on the policy the evidence showed conclusively that within three weeks preceding such statement she went twice to a physician for treatment, who told her she had weak lungs and catarrh, and prescribed for

her. This Court held that a verdict for the defendant should have been directed, Trenchard, *J.*, saying, on page 198:

“The legal rule is that where, as here, a policy provides, as required by our Insurance law, that ‘all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties,’ the policy will be avoided for a misrepresentation in the application, made a part thereof, if the misrepresentation be material and fraudulent; that is to say, if it be the statement of something as a fact, which is untrue, and which the insured stated, knowing it to be untrue, and with an intent to deceive, or which he stated positively as true, without knowing it to be true, and which had a tendency to mislead; such fact in either case being material to the risk. *Prahm v. Prudential Insurance Co.* (New Jersey Court of Errors and Appeals) *post* p. 206.

“Every fact which is untruly stated or wrongfully suppressed must be regarded as material, if the knowledge or ignorance of it would naturally and reasonably influence the judgment of the underwriter in making the contract at all, or in estimating the degree or character of the risk, or in fixing the rate of premium.

“A false statement in the application made a part of the contract that the applicant had not consulted or been attended or treated by a physician, is material to the risk, and, if made knowingly and willfully, will avoid the policy. *Metropolitan Life Insurance Co. v. McTague*, 49 N. J. L., 587.”

The evidence showed that the question in the application was not ambiguous and called for a statement of fact and not the expression of opinion. In this connection the Court, speaking through Trenchard, *J.*, said, page 199:

“The evidence shows conclusively that such answer was false and when made was

known by the insured to be false * * *
the false answer was made understandingly,
knowingly and willfully.”

Locker v. Metropolitan Life Insurance Co.,
8 N. J. Adv. Rep., 548 (C. E. A. 1930).

In this case in the application the insured was asked whether she had ever been an inmate of or received treatment at an asylum, hospital, sanitarium or cure, and she answered “No” whereas in fact she had been an inmate of the New Jersey State Sanatorium for Tuberculosis. She was also asked whether she had consulted a physician for any disease, not including the foregoing answer, and she answered “No” whereas she had consulted physicians. In affirming the judgment entered upon a directed verdict for the defendant, Trenchard, *J.*, said, on page 550:

“The case is almost identical with that of *Kerpchak v. John Hancock Mutual Life Insurance Co.*, 97 N. J. L. 197, in this Court. There it was pointed out, where, as here, a policy provides, as required by our Insurance law, that ‘all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties,’ the policy will be avoided for a misrepresentation in the application, made a part thereof, if the misrepresentation be material and fraudulent; that is to say, if it be the statement of something as a fact, which is untrue, and which the insured stated, knowing it to be untrue, and with an intent to deceive, or which he stated positively as true, without knowing it to be true, and which had a tendency to mislead; such fact in either case being material to the risk. We also therein held that every fact which is untruly stated or wrongfully suppressed must be regarded as material if the knowledge or ignorance of it would naturally and reasonably influence the judgment of the underwriter in making the contract at all, or in

estimating the degree or character of the risk, or in fixing the rate of premium.”

In *Deweese v. Manhattan Insurance Co.*, 34 L., 244 (Supreme 1870), Depue, J., for the Court, said, page 247:

“A misrepresentation in an immaterial matter, not fraudulently intended, will not avoid the policy unless made in reply to a specific inquiry, in which latter case the party contracting to insure, by making specific inquiry, implies that he considers the fact inquired into material, and the other party is bound by it as such.” Citing cases.

Applying the foregoing authorities to the case at bar, we see that under *Deweese v. Manhattan Insurance Co.*, and *Duff v. Prudential Life Insurance Co.*, *supra*, the fact that the defendant asked the questions shows that they are material. The misrepresentation, therefore, is material. The fact that the assured made the representation which he then knew to be false conclusively demonstrates that he was guilty of a willful untruth, and so, under *Duff v. Prudential Insurance Company*, *supra*, the policy is avoided. The case is also directly within the principle of *Kerpchak v. John Hancock, etc. Insurance Co.*, *supra*. It clearly appears, therefore, that it was not open for the jury to find that the representations were not fraudulent or not material. Necessarily, therefore, the false representations were a complete and perfect defense to the action, and a verdict for the defendant should have been directed.

II.

The learned Trial Judge erred in his charge in leaving it to the jury to find out whether the representation was material and made with the intention to deceive.

This follows conclusively from the argument under Point I:

The plaintiff in her reply (Case 12, l. 20) reserved the right to strike out the answer as frivolous, on the ground that the period of incontestibility had run; so that the defense was not open to the defendant company. The policy contained the provision:

“3. Incontestibility: THIS POLICY SHALL BE INCONTESTIBLE AFTER IT HAS BEEN IN FORCE FOR A PERIOD OF TWO YEARS FROM ITS DATE OF ISSUE * * * ” (Case 35, l. 20).

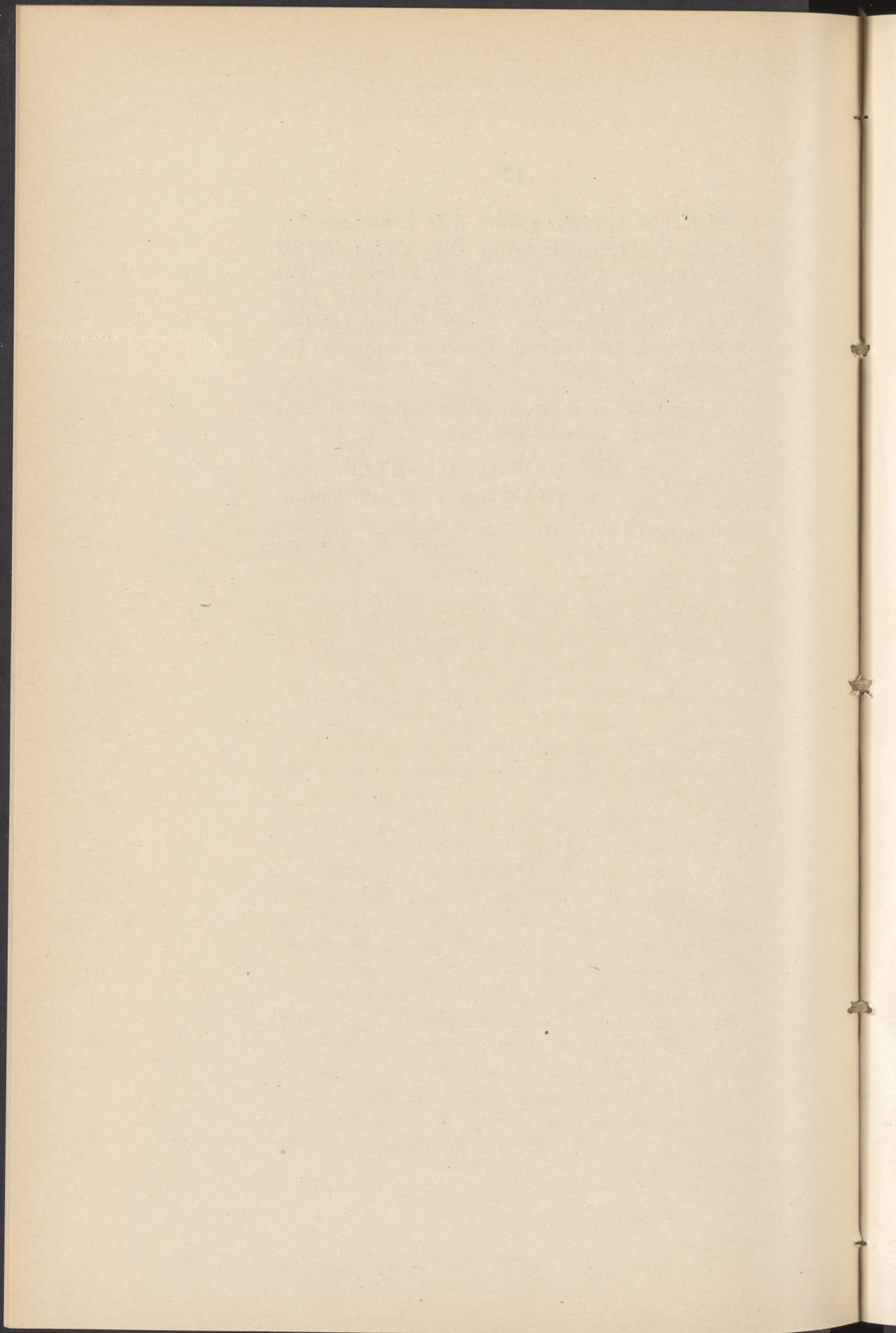
The answer in this suit was filed more than two years after the date of the policy. The Assured had died within the two-year period. There had, moreover, been a prior suit brought by the plaintiff, the pleadings in which were Exhibit D. 1, and in the answer filed in that suit, which was filed well within the two years, the same defense was raised as in the case at bar. That prior suit was discontinued. The record in that suit is Exhibit D. 1. This position was abandoned by the plaintiff and no such motion was ever made, as, indeed, under the authorities it could not have succeeded, the authorities being clear that the death of the insured within two years' contestibility period preserved the defendant's right, and that in any event filing the answer setting up the defense within the period of contestibility is sufficient, even though that action be discontinued.

McKenna v. Metropolitan Life Insurance Co.,
220 N. Y. Supp., 568 (App. Div. 1927); *Mutual
Life Ins. Co. of N. Y. v. Rose*, 294 Fed., 122;
Stiegler v. Eureka Life Ins. Co., 127 Atl., 397
(Md., 1925); *Scharlach v. Pacific Mutual, etc. Co.*,
9 Fed. 2nd, 317 (Circuit Court of Appeals, 5th
Circuit).

Wherefore it is respectfully submitted that
the judgment must be reversed.

G. W. C. McCARTER,
Of Counsel with Appellant.

February Term, 1931.



New Jersey Court of Errors and Appeals

MARY A. HESLIN, <i>Plaintiff-Respondent,</i>	}	<i>Action at Law.</i>
<i>vs.</i>		
METROPOLITAN LIFE INSURANCE COMPANY, a corporation, <i>Defendant-Appellant.</i>	}	<i>On Appeal from Supreme Court.</i>

BRIEF FOR RESPONDENT FACTS

This suit is upon a life insurance policy issued May 1, 1928, upon the life of John J. Heslin, which policy the defendant company alleges was avoided because of answers given to questions in the application made by the assured.

The assured had a mark or blemish on his face, which resembled a mole, and which was present during his entire life and was no more apparent at any one period of his life. (Case 17, l. 36.)

In November of the year previous to the issuance of the policy the assured visited Dr. Francis McCauley who treated the mole—the assured intending to have it removed. The defense is based upon the failure to include these facts in the application questionnaire, and further alleges fraud and misrepresentation upon the assured's part in obtaining said policy.

It is clear that the assured did not realize this growth to be a skin cancer. Dr. McCauley testified that patients are ordinarily not made aware of such conditions in order that needless alarm may not be given them. (Case p. 23, l. 18.)

The assured died on March 7, 1927 from carcinoma, which would have absolutely no connection with the skin cancer. (Case p. 28, l. 9; p. 22, l. 16 and p. 25, l. 14.) It is to be noted that the defendant company's examining physician likewise examined the assured for carcinoma and found no evidence of the same. (Case p. 20, l. 16.) The testimony clearly indicating that such a skin cancer, being treated in its early stages, is not dangerous to life. (Case p. 23, l. 8.)

The plaintiff beneficiary commenced suit upon said policy, to which an answer was filed and a reply filed to the answer, and subsequently both counsel signed a discontinuance of the case. A suit upon the same policy was recommenced on December 17, 1928, and tried before Judge William A. Smith and a jury, and a verdict for the plaintiff having been rendered, the defendant company now appeals to this Court.

ARGUMENT

I.

Any ambiguity in the terms of the contract of insurance is to be resolved against the company.

In the case of *Anders vs. Supreme Lodge, Knights of Honor* (51 L. 175) the New Jersey Supreme Court discussed fully the question as to what the word "true" stands for in the certification made by the assured attached to the application questionnaire.

The certification in that case ran thus:

"I certify that the answer made by me to the questions propounded by the medical examiner of Goethe Lodge, &c., which are attached to this application and form a part hereof, are true, in which there are no misrepresentation or suppression of known facts; * * * The above questions are answered to my best knowledge and belief, and I agree that should Goethe Lodge, &c. convict me of having wilfully made a misstatement, such misstatement shall be deemed evidence of fraud on my part * * * and render all obligations of the Supreme Lodge to me null and void."

The similarity with the certification and a further portion of the policy sued upon in the instant case is apparent.

"I hereby certify that I have read the answers to the questions in Part A hereof and to the questions in Part B hereof, before signing, and that they have been correctly written, as given by me, and that they are full, true and complete, and that there are no exceptions to any such answers other than as stated herein."

And, also,

“4. Entire Contract:—This policy and the application therefor constitute the entire contract between the parties, and all statements made by the Insured, shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid this Policy or be used in defence of a claim hereunder unless it be contained in the application therefor and a copy of such application is attached to this Policy when issued.”

The Court through Chief Justice Beasley, said:

“And this we would do in the present instance by adopting the thesis of the defence, for the language of the stipulation in question is plainly ambiguous. The words are: ‘I certify that the answers made by me, &c., are true, in which there are no misrepresentation or suppression of known facts.’ Upon the interpretation as contended for by the defence, that the allegation that the answers are true means that they are absolutely true, it is obvious that the subjoined certification, that in such absolutely true answers there are no misrepresentations, becomes entirely nugatory. To give a consistent effect to both branches of the clause, it is necessary to read it in the sense that the answers are true to the extent of not being consciously false.”

“This is the way in which a similar stipulation was treated in the Queen’s Bench, in the case of *Fowkes vs. Assurance Association*, 3 Best & S. 917. There the policy provided, ‘that if any statement, &c., was untrue, or if the policy made should have been effected by or through any wilful misrepresentation, conceal-

ment or false averment whatsoever, * * * the policy should be void.' The declaration which formed the basis of the contract contained the following stipulation, viz.: 'I do hereby declare that the above particulars are correct and true throughout. * * * And if it shall hereafter appear that any fraudulent concealment or designedly untrue statement be contained therein,' the policy 'shall be absolutely null and void.'"

"It will be observed, that in the reported case the stipulation, if separated from its context, was to the effect that the policy was to be void if any of the statements on which it rested were untrue, but the court declared that the meaning of this particular stipulation was to be gathered, not from the particular terms in which it was couched, but from such terms in their connection with the rest of the expressions of the contract, and that, on the whole, the contract thus constructed rendered it clear that an untrue statement that would avoid the policy, meant one designedly untrue."

The Court further said:

"At the trial it was proved that one of the statements attached to the application was not true, and Mr. Justice Depue, who presided at the Circuit, instructed the jury that such fact did not, *proprio vigore*, avoid the policy, but that to produce that result it must have been false to the knowledge of the applicant."

"This is the proposition the correctness of which is now challenged."

"But this court is of opinion that the construction adopted is the proper one. In the interpretation of warranties of this class, the

judicial leaning is invariably against a literal rendering of the stipulation, and in favor of construing the clause according to its spirit and purpose. It is to be presumed that the parties dealt with each other, in this particular, in good faith, intending to lay a reasonable basis for the promise to insure, and, consequently, it requires plain and unambiguous terms to induce the court to conclude that it was the conventional purpose that the policy should be a nullity in case the assured had, in his application, unintentionally misstated a fact. Indeed, the conditions of the present case appear to repudiate the hypothesis that it was the intention of these contractors to make the life of the policy dependent upon the absolute and exact verity of the truth of each of the statements in question. For example, the assured, when asked at what age his father died, answered, at the age of seventy-five years. Now, on the theory that absolute truth is required, if it should be shown that the parent died a day or an hour before or after he had reached such designated age, the contract of insurance would be entirely void; and assuredly, it is scarcely conceivable that such an agreement was either consciously offered on the one side or consciously accepted on the other. There is nothing in the law that forbids persons from entering into such preposterous agreements if they see fit so to do; but, fortunately the principles of jurisprudence forbid the court from constructing them out of uncertain phraseology."

The Court concluded:

"In fine, the several parts of this contract will not consist unless upon the theory that

the assured warranted, not the absolute truth of his answers, but only their truth to the extent of his knowledge."

"With respect to the finding of the jury on the question submitted to them, whether the defendant knowingly made the answer which in actual fact was untrue, it is enough to say, that the subject has been carefully examined by the court, and with the result that if the verdict be wrong, it is not so clearly wrong that it can be set aside."

Subsequently, in the case of *Clayton vs. General Accident and Fire Ins.*, 104 L. 364 (1928), this Court said:

"So, we find no error in the court's charge: 'Now that the rule is that if there is any question and answer concerning which there is any ambiguity, that is to be resolved against the company in determining whether or not the answers are false.' This is a correct statement of the law. If there is no ambiguity, there is no place for the application of the rule and the defendant has not been harmed."

It is to be noted that Question 18, which the trial court in its charge stated was answered inaccurately, reads as follows—

18. Have you been attended by a physician during the last five years? If yes, give name of complaints, dates, how long sick, and names of physicians. No. (Case p. 54, l. 16.)

It is respectfully submitted that the above question has to do with the attendance of a physician for sickness, as the period of sickness is asked. The assured would not therefore have answered the question other than "No" had he recalled Dr. Francis McCauley's treatment, the removal of a mole,

bothersome when shaving, would not convey to the reasonable person the concept of sickness.

II.

The representations must materially affect the risk, and that question was for the jury.

It is respectfully submitted that the case of *Clayton vs. Assur. Corp.* (*supra*) is directly analogous with the instant case, and reaffirms the general rule.

In that case this Court had for determination an action to recover money due under a health policy of insurance. The policy was dated December 30, 1925, to run for twelve months from its date, covering the insured for disease contracted during term of policy (Insured contracted a disease). The insured was operated upon for appendicitis on April 16, 1926, and was incapacitated for ten weeks. The trial resulted in a verdict for the plaintiff, upon which an appeal was taken.

In the application for the insurance policy there was attached twenty-one questions, the nineteenth, twentieth and twenty-first being involved in this suit.

“No. 19. Have you been disabled, had any departure from good health, or have you received medical or surgical attention or advice during the past 5 years? Answer: Yes.

Nature of disease? month and year, or injury, duration, result?

Answer: May, 1922. Pneumonia, 3 weeks, Regained health, no effects.”

“No. 20. Last physician consulted?

Answer: Dr. Dillon, 69th St. Lexington Ave., New York City.”

"No. 21. Do you agree that the falsity of any statement in this application shall bar the right to recovery, if such false statement is made with intent to deceive, or materially affects either the acceptance of the risk or hazard assumed by the corporation? Answer: Yes."

Company defends against liability under the policy upon the ground that the answers were misrepresentations, because in November, 1925, plaintiff had a "cold" or a "grippy cold" and consulted a Dr. Grimes, and did not so state in the application, which facts are those in the instant case.

Therefore, there was no error in the trial court's refusal to direct a verdict in the instant case, the court stating in the Clayton case,—

"So, as to the burden of proof, 'If you find the answers were false but not intended to deceive, then you must determine whether the statements materially affected the risk, the burden of proof rests upon the defendant of proving this to your satisfaction by a fair preponderance of the evidence.' So, whether the false statements of the plaintiff in the application materially affected either the acceptance of the risk or hazard assumed by the defendant. This was a jury question. So, as to the materiality left by the court in the charge to the jury as a fact. The questions were not for the court, but for the jury to determine, whether there was fraud or materiality in the plaintiff's answers."

"This subject is exhaustively discussed, with a wealth of citations and illustrations, in 37 Corp. Jur. 458, 178 (c); where the rule to be applied is formulated thus: 'Thus, answers as to disease, injuries or physical conditions

are not false so as to defeat the insurance unless the disease, injury or infirmity relied on is shown to have been such as to affect the general health or probable continuance of life or impair the constitution, and not in its nature simply transitory or temporary indisposition, and even when the questions by their terms include trivial illnesses and injuries unconnected with any specific disease, they should be interpreted to refer to only such illnesses as affect the risk.'” See 14 R. C. L. 1071, p. 250.

there being no evidence to contradict the testimony of the physicians for the plaintiff who stated there was absolutely no connection between the skin cancer treated (which the assured believed to be a mole, Case p. 23, l. 18) and the carcinoma which was the cause of the assured's death. (Case p. 28, l. 9, p. 22, l. 16, p. 25, l. 14.)

III.

In order to avoid the policy, the representation must have been made with the intent to deceive the company, and that question was for the jury.

In the case of *Prahm vs. Prudential Insurance Co.*, 97 L. at 209, this Court sets forth the general rule, found in all the New Jersey cases upon this subject,—

“Where, as here, the policy provides, as required by our Insurance law, that ‘all statements made by the insured shall, in the absence of fraud, be deemed representations and not warranties,’ in order to avoid the policy for misrepresentation in the application, made a part thereof, the misrepresentation must be material and fraudulent; that is to say, it must be the statement of something as a fact which

is untrue, and which the insured states, knowing it to be untrue, with an intent to deceive, or which he states positively as true, without knowing it to be true, and which has a tendency to mislead, such fact in either case being material to the risk. *Guarraia vs. Metropolitan Life Insurance Co.*, 90 N. J. L. 682; *Duff vs. Prudential Insurance Co.*, Id. 646; *Brunjes vs. Metropolitan Life Insurance Co.*, 91 Id. 296; *McAuliffe vs. Metropolitan Life Insurance Co.* 93 Id. 189; *Daniels vs. Hudson River Fire Insurance Co.*, 12 Cush. (Mass.) 416."

Reaffirmed in *Kerpchak vs. Hancock Mutual Life Insurance Co.*, 97 L. at 198 and again in the late case of *Locker vs. Metropolitan Life Ins. Co.*, 151 A. 627.

In the late case of *Clayton vs. General Assurance Corporation (supra)* this Court in re-affirming the doctrine of Justice Depue in *Anders vs. Supreme Lodge Knights of Honor*, stated shortly and clearly, the rule applicable in the instant case. (The facts, as pointed out above, being substantially the same.)

"The vital point raised on this appeal is substantially disposed of adverse to the appellant's contention, in the case of *Anders vs. Supreme Lodge Knights of Honor*, 51 N. J. L. 175. In that case, it was said, it requires plain and unambiguous terms to induce the court to conclude that it was the conventional purpose that the policy should be a nullity, in case the assured had in his application unintentionally misstated a fact."

"Mr. Justice Depue, in that case at the Circuit, instructed the jury that such fact did not avoid the policy, but that to produce that result it must have been false to the knowledge of the applicant. This was held not error. This

disposes of the first point, that it was error to refuse to direct a verdict in favor of the defendant."

This Court, in a unanimous opinion in the case of *Guarria vs. Metropolitan Life Insurance Co.*, 90 L. at 683, used language peculiarly applicable to the instant case in saying,—

"We do not take this view, but, on the contrary, think that the silence with respect to the exception should properly be taken as a statement that there is no exception; and, consequently, if the insured had in fact had one or another of the diseases there was a false statement with respect to that fact. The question then is with reference to the effect of the statement. If it was a warranty the policy falls; if it was only a misrepresentation, the question of intentional falsehood becomes material. The policy says: 'All statements by the insured shall, in the absence of fraud, be deemed representations and not warranties.' The result of this seems to be that they are made the legal equivalent of representations in any case and we must look for fraud in order to vitiate the policy."

This Court thereupon affirmed the trial court's decision in not directing a verdict for the defendant company, as the evidence of intent to deceive was not so conclusive that the jury should not be allowed to pass upon it.

* * *

No direction of a verdict should have been made by the trial court, as it was a clear jury question as to whether or not the answers were material and made with the intent to deceive.

There being uncontroverted evidence tending to show that the assured never knew of the skin cancer (Case p. 23, l. 18), it was for the jury to determine if the assured knew of the skin cancer and, having determined that fact, whether his answer was made with intent to deceive.

As to the question whether the assured had been attended by a physician during the last five years, the plaintiff-respondent respectfully submits the question to be ambiguous and should it not be so considered by this Court, the doctrine of *Clayton vs. General Assurance Corp.* (*supra*) is controlling and the question of the assured's intent to deceive was properly left to the jury. It is respectfully submitted that there is no evidence or proof of fraud in the testimony.

IV.

Under the incontestible clause of this policy, the defendant appellant is precluded from entering a defense.

The incontestibility clause reads,—

“3. Incontestibility: This policy shall be incontestible after it has been in force for a period of two years from its date of issue.” (Case p. 35, l. 20.)

Suit was started for the recovery of this policy more than two years from its date of issue, and therefore there is no defense to this action.

It is true that a prior suit on the same policy was commenced, but was discontinued by stipulation, signed by both attorneys in this case.

In the late case of *New York Life Insurance Co. vs. Steinman*, 143 Atl. 529, Vice-Chancellor Leaming stated,—

“But the clear weight of authority and reason are to the contrary. In the recent case of *Mutual Life Insurance Co. vs. Hurni Packing Co.*, 263 U. S. 167, Mr. Justice Southerland has given this incontestability clause full consideration, including the aspect here involved, in the light of reason and authority. It is there held to be for the benefit of the insured during his lifetime and at his death immediately inures to the benefit of the beneficiary, and that it clearly contemplates that the two years' period there specified shall continue to run against the insurer in the event of the death of the insured during that period, and that it will afford a bar to the defenses which it excludes at the end of the period named whether the insured be then alive or dead.”

V.

In answer to brief filed by Defendant-Appellant. The appellant cites the case of *Metropolitan Life Insurance Co. vs. McTague*, 49 L. 587, which case was heard on appeal in 1887. In 1907 the legislature passed an act (P. L. p. 133, pp. 1) providing that such policies as the one in question were to contain the provision that all statements made by the insured, shall, in the absence of fraud, be deemed representations and not warranties. Prior to this act all statements made by the insured were warranties and the falsity of an answer voided the policy. This was the fact in the *McTague* case, and consequently it has no application to the instant case.

The case of *Duff vs. Prudential Life Insurance Co.*, 90 L. 646, was tried without a jury, the District Court therefore passing on both law and fact.

This Court held:

“It seems to us, the necessary result of finding that an application for a policy of life insurance contains a *willful untruth* as to whether the applicant had consumption was necessarily a finding that the policy was procured by fraud.”

In the late case of *Locker vs. Metropolitan Life Insurance Co.*, 151 Atl. 627, this Court stated:

“The case is almost identical with that of *Kerpchak vs. John Hancock Mutual Life Insurance Co.*, 97 L. 197, 117 Atl., 836, 837, in this Court.”

So that both cases may be dismissed as controlling in this case by this Court's further statement in the *Locker* case:

“The proofs show conclusively that these statements were untrue and known by her to be untrue, were made with an intent to deceive, and were material to the risk.”

It being apparent in all the cases cited by the defendant-appellant, as the Court clearly points out, that the assured made the statements with the intent to deceive.

In *Dewees vs. Manhattan Insurance Co.*, 34 L. 244, cited by the defendant-appellant, the statements by the insured were made in order to induce the company to issue a fire policy. For that reason the language of the Court quoted in the defendant-appellant's brief cannot be criticized, as it is readily seen that a false statement to any of the questions asked in that case would materially affect the

risk, causing the company to refuse the insurance or demand a higher premium.

Wherefore, it is respectfully submitted that the judgment must be affirmed.

LINTOTT, KAHR & YOUNG,
Of Counsel with Respondent.

February Term, 1931.

risk, causing the company to refuse the insurance
or demand a higher premium.

Wherefore, it is respectfully submitted that the
petitioner's case be affirmed.

FINTOTT, KARRIS & YOUNG,
Of Counsel with Respondent.

February Term, 1871.