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Summons.

The State of New Jersey to Commonwealth Casualty Company, a Corporation.

(L.S.) You are Summoned to answer the annexed complaint of Gertrude L. Runyon in an action at law in the Morris Common Pleas Court. 10

And Take Notice that unless you file your answer to said complaint with the Clerk of the said Morris Common Pleas Court, at Morristown, 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. 20

Witness, HON. ALBERT H. HOLLAND, Judge of the Morris Common Pleas Court, at Morristown, this 29th day of January, Nineteen Hundred and Thirty.

E. BERTRAM MOTT,
Clerk.

LEON E. CONE,
Attorney.

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Complaint.

MORRIS COMMON PLEAS COURT.

GERTRUDE L. RUNYON, Plaintiff, vs. COMMONWEALTH CASUALTY COMPANY, (A Corporation), Defendant.	Action at Law. Complaint.

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Plaintiff, residing at Greystone Park, Morris County, New Jersey, says that:

1. The defendant is a corporation engaged in the business of writing casualty insurance.

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2. On December 1st, 1909, it issued to J. Fred Runyon a policy of insurance against bodily injuries or death from accidental means, which policy is numbered 57505. The beneficiary named therein was changed on February 21st, 1913, making the plaintiff herein the beneficiary.

3. Said defendant agreed to pay to the said J. Fred Runyon weekly indemnity for total or partial disability at the rate of Sixty Dollars per month for total disability and Twenty Four Dollars per month for partial disability. In the event of accidental death the defendant agreed to pay to the plaintiff the sum of Six Hundred Dollars.

30

4. Said policy contained a provision that for each full year said policy should remain in force, the benefits thereunder should be increased ten per cent, but in no case to exceed fifty per centum.

40

Said policy at the time of the death of said J. Fred Runyon, to wit, on March 5th, 1929, was in effect twenty years, and the indemnities payable thereunder were increased by virtue of the terms of said contract fifty percent.

5. On January 28th, 1929, the said J. Fred Runyon while walking from the street towards his home slipped on an icy pavement, at Succasunna, New Jersey, and suffered a fracture of the left hip. On March 5th, 1929, because of an un-united fracture and from shock the said J. Fred Runyon died. Said death was caused directly and independently of all other causes by external, violent and purely accidental means.

6. After the death of said J. Fred Runyon the plaintiff herein demanded of the defendant the face amount of said policy payable for an accident resulting in death, plus the fifty percent accumulation, the defendant, however, refusing to pay the same.

Plaintiff demands as damages the sum of Nine Hundred Dollars together with interest from March 5th, 1929, and costs of suit.

LEON E. CONE,
Attorney of Plaintiff.

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Affidavit.

MORRIS COMMON PLEAS COURT.

Gertrude L. Runyon, Plaintiff, vs. Commonwealth Casualty Company, (A Corporation), Defendant.	Action at Law. Affidavit of Merits.

10

State of Pennsylvania, County of Philadelphia. } ss.:

C. William Freed, of full age, being duly sworn according to law, upon his oath deposes and says:

20

I am the Secretary of the Commonwealth Casualty Company, defendant in the above entitled action, and I believe it has a just and legal defense to said action on the merits of the case.

C. WILLIAM FREED.

Sworn and subscribed to before me
this 19th day of February, A. D. 1930.
Lockwood H. Campbell
Notary Public
Commission expires March 7, 1933.

30

Lockwood H. Campbell
600 Walnut St.
Notary Public
Phila. Pa.

40

Certificate of Prothonotary.

IN THE COURTS OF COMMON PLEAS OF PHILADELPHIA COUNTY.

State of Pennsylvania, }
County of Philadelphia. } SS.:

I, John M. Scott, Prothonotary of the Courts of Common Pleas of said County, which are Courts of Record having a common seal, being the officer authorized by the laws of the State of Pennsylvania to make the following certificate, acting by my Principal Deputy, Meredith Hanna, do Certify, That Lockwood H. Campbell Esquire, before whom the annexed affidavit was made, was at the time of so doing a Notary Public for the Commonwealth of Pennsylvania, residing in the County of Philadelphia, duly commissioned and qualified to administer oaths and affirmations and to take acknowledgments and proofs of Deeds or Conveyances for lands, tenements and hereditaments to be recorded in said State of Pennsylvania, and to all whose acts, as such, full faith and credit are and ought to be given, as well in Courts of Judicature as elsewhere; and that I am well acquainted with the handwriting of the said Notary Public and verily believe the signature thereto is genuine, and that said oath or affirmation purports to be taken in all respects as required by the laws of the State of Pennsylvania.

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30

The impression of the seal of the Notary Public is not required by law to be filed in this office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, this 19th

40

New Jersey State Library

day of February, in the year of our Lord One Thousand Nine Hundred and Thirty (1930).

JOHN M. SCOTT, Prothonotary.
by Meredith Hanna Principal Deputy Prothonotary Durante Absentia, Secundum Legem.

10 Court of
Common Pleas
Philadelphia
Penna

Answer.

MORRIS COMMON PLEAS COURT.

20 GERTRUDE L. RUNYON, Plaintiff, vs. COMMONWEALTH CASUALTY COMPANY, (A Corporation), Defendant.	Action at Law. Answer.

30 The defendant corporation, answering the complaint, says:

1. It admits Paragraph One of the complaint.
2. It admits Paragraph Two of the Complaint.
3. It denies Paragraph Three of the Complaint.
4. It admits Paragraph Four of the Complaint.
5. It denies Paragraph Five of the Complaint. 40

6. It admits Paragraph Six of the Complaint but denies that plaintiff is entitled to any damages or claims for moneys under the said policy of insurance.

SEPARATE DEFENSES.

1. The policy of insurance sued on provides for payment in cases of accidental death where the death was caused directly and independently of all other causes by external, violent and purely accidental means, which bodily injuries or their effects shall not be caused wholly or in part, directly or indirectly, by any bodily or mental disease, defect or infirmity, and which shall result in immediate and continuous disability or death, and as the death of J. Fred Runyon was occasioned by other causes independent of accident, and as there was not an immediate death, there is no liability on the part of defendant company to make payment under its policy.

10

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2. The death of J. Fred Runyon was not due to purely accidental means independent of all other cause, and therefore under the terms and conditions of the policy issued to him there can be no recovery.

30

3. The said J. Fred Runyon was suffering from a bodily infirmity at the time of the alleged accident which contributed to his death.

4. The said J. Fred Runyon did not suffer immediate death as result of alleged injury.

ELMER W. ROMINE,
Attorney for Defendant.

40

Reply.

MORRIS COMMON PLEAS COURT.

GERTRUDE L. RUNYON, Plaintiff, vs. COMMONWEALTH CASUALTY COMPANY, (A Corporation), Defendant.	Action at Law. Reply.

10

Plaintiff joins issue on the defendant's answer.

SEPARATE DEFENSES.

20

By way of answer to the Separate Defenses, the Plaintiff says that:

1. The plaintiff admits the First Separate Defense, except so much of the same as alleges that the death of J. Fred Runyon was occasioned by causes other than accident, and that death did not ensue as a result of said accident.

2. The plaintiff denies Paragraph Two of the Separate Defense.

30

3. The plaintiff denies Paragraph Three of the Separate Defense.

4. The plaintiff admits that as a result of said accident, the said J. Fred Runyon, did not suffer immediate death, but denies that by the terms of said policy, immediate death must result before the defendant becomes liable.

LEON E. CONE,
Attorney for Plaintiff.

40

Transcript of Docket.

At a Court of Common Pleas, holden at the Court House in Morristown, in and for the County of Morris, on Thursday the 19th day of June, A. D., Nineteen Hundred and Thirty.

Present—HON. ALBERT H. HOLLAND, Presiding Judge, &c. 10

GERTRUDE L. RUNYON, Plaintiff, vs. COMMONWEALTH CASUALTY COMPANY, Defendant.	No. 2. May Term, 1930. Common Pleas Issue. Action at Law.

20

Attorney for Plaintiff LEON E. CONE. Attorney for Defendant ELMER W. ROMINE.

This case being moved, the following Jury was called and sworn:

1. Lewis Brown. 2. Edward Weary. 3. Russell Lyons. 4. John L. Ogden. 5. Louise Andrews. 6. Anna Dick. 7. Alexander Would. 8. Lester DeBow. 9. Harvey Ort. 10. Mary C. Dunn. 11. Arthur C. Skellinger. 12. Helvia Raby. 30

40

Witnesses:

1. Clarence A. Plume — 1. Ambrose O'Dowd
2. Josephine Davey
3. Rose N. Noach
   Josephine Davey (recalled)
4. Gertrude L. Runyon

10 Constables sworn: Burke and Ducey.

The evidence in this case being closed, the Jury after argument of Counsel and a charge from the Court, retired to a private room to consider their verdict, with Constables sworn to attend them. After being out twenty-two minutes, they returned into Court, saying they have agreed upon their verdict, and by their Foreman say they find a verdict
20 in favor of the plaintiff, Gertrude L. Runyon, in the amount of Nine Hundred ($900.) Dollars and Sixty-Nine Dollars and Fifteen Cents ($69.15) interest, and against the defendants, Commonwealth Casualty Company.

And so say they all.

Therefore, &c.

30

40

Judgment.

MORRIS COMMON PLEAS COURT.

GERTRUDE L. RUNYON, Plaintiff, vs. COMMONWEALTH CASUALTY COMPANY, (A Corporation), Defendant.	Action at Law. On Trial.

10

In an Action at Law Judgment on Trial and Verdict of Jury rendered in favor of the Plaintiff and against the Defendant for the sum of Nine Hundred and Sixty-Nine Dollars and Fifteen Cents damages $969.15

20

and Seventy Dollars and Six Cents Costs of suit 70.06

Whole Amount of Damages and Costs $1039.21

Judgment signed June 19, 1930.

On motion of
LEON E. CONE,
Attorney of Plaintiff.

30

40

Clerk's Certificate.

State of New Jersey, }
County of Morris, } ss.:

I, E. Bertram Mott, Clerk of the County of Morris, and also Clerk of the Court of Common Pleas, holden in and for said County, Do Hereby Certify that the foregoing are full, true and correct copies
10 of the Summons and Complaint; Affidavit of Merits; Answer; Reply; Trial; Notice of Appeal; Appeal Bond, and Judgment, in the case of Gertrude L. Runyon, Plaintiff, vs. Commonwealth Casualty Company (a Corporation), Defendant, as fully and entirely as the same remain on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court and County, at Mor-
20 (Seal) ristown, this Twenty-eighth day of August, A. D., Nineteen Hundred and Thirty.

E. BERTRAM MOTT, Clerk.

By Edwin W. Orr,
Deputy Clerk.

30

40

Notice of Appeal and Grounds.

MORRIS COUNTY COURT OF COMMON PLEAS.

GERTRUDE L. RUNYON, Plaintiff, vs. COMMONWEALTH CASUALTY COMPANY, (A Corporation), Defendant.	Action at Law. Notice of Appeal.

10

To: GERTRUDE L. RUNYON and or LEON E. CONE, her attorney:

You will please take notice that the above defendant appeals to the New Jersey Supreme Court from the judgment rendered in the above entitled action in the above Court on June 19th, 1930, and from each and every part of said judgment, and that the said defendant herewith sets down its reasons and grounds for appeal to be as follows:

20

1. Because the trial Court refused to direct a non-suit in favor of this defendant against said plaintiff for the reasons and grounds set forth at length in the record of said cause.

30

2. Because the said trial Court refused to direct a verdict in favor of the defendant at the close of the entire case for the reasons set forth at length in the record of said cause.

3. Because the trial Court refused to permit answer to a question propounded to plaintiff's witness Doctor C. A. Plume, as to whether the deceased by reason of paralysis agitans was unsteady on his feet and more likely to fall or receive an injury,

40

to which refusal of the court exception was taken.

4. Because the trial Court refused to permit defendant's physician, Doctor Ambrose F. Dowd, to testify as to whether paralysis agitans would make a person more likely to fall or receive an injury, to which refusal of the court exception was taken.

10

5. Because the jury decided in favor of the plaintiff against the weight of the evidence.

6. Because the jury disregarded the charge of the Court.

7. Because the trial Court committed error in its charge.

8. Because the verdict was contrary to the law and facts of the case.

Dated June 21st, 1930.

20

ELMER W. ROMINE,
Attorney for Defendant.

Bond on Appeal.

Know All Men by These Presents, that we, Commonwealth Casualty Company and Fidelity & Deposit Company of Maryland are held and firmly bound unto Gertrude L. Runyon of   in the County of Morris and State of New Jersey in the sum of Two Thousand Dollars ($2000.00), to be paid to the said Gertrude L. Runyon, her executors, administrators and assigns, to which payment we bind ourselves, our and each of our successors and assigns, jointly and severally, firmly by these presents.

30

Sealed with our seals and dated the 26th day of June, A. D. 1930.

40

Bond on Appeal.

The condition is that whereas the above bounden Commonwealth Casualty Company has appealed to the New Jersey Supreme Court from the judgment of the Morris County Court of Common Pleas rendered against it in an action at law wherein the said Gerturde L. Runyon was plaintiff and the said Commonwealth Casualty Company defendant, on June 19th, 1930, for the sum of Nine Hundred Sixty-Nine Dollars and Fifteen Cents ($969.-15) and costs as taxed. 10

Now therefore, if the said Commonwealth Casualty Company shall appear in the New Jersey Supreme Court to be holden at Trenton in the State of New Jersey and prosecute its appeal and stand to and abide by the judgment of said court and pay such further costs, if any, as shall be taxed if the judgment is affirmed, then this obligation to be void, otherwise to remain in full force. 20

Commonwealth Casualty Company
By W. Freeland Kenwick, Pres.
Attest: C. William Freed, Secty.
Fidelity & Deposit Company of Maryland
Elinor W. Ocheltree (Seal)
Attorney in Fact.

Signed, Sealed and Delivered
in the presence of 30
this 26 day of June 1930.
H. Mark Reeve
H. Mark Reeve, Agent
Countersigned at DeLair, N. J.

40

Testimony.

COMMON PLEAS COURT,

Morris County, New Jersey.

Gertrude L. Runyon,
Plaintiff,

10

vs.

Commonwealth Casualty Co.,
a Corporation,
Defendant.

Morristown, N. J., June 19, 1930.

20

Before: Hon. Albert H. Holland, *J.*, and a Jury.

Appearances:

Leon E. Cone, Esq., Attorney for the Plaintiff.

Elmer W. Romine, Esq., Attorney for the Defendant.

(Mr. Cone made an opening address to the jury on behalf of the plaintiff, after which Mr. Romine made an opening statement to the jury on behalf of the defendant.)

30

Mr. Cone: If your Honor please, by consent I will offer the policy and death certificate in evidence on the proof.

(The papers referred to were received in evidence and marked "Plaintiff's Exhibit 1" and "Plaintiff's Exhibit 2", respectively.)

40

CLARENCE E. PLUME, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct-examination by Mr. Cone:

Q. Doctor, you practice medicine at Succasunna, N. J.? A. Yes, sir. 10

Mr. Cone: Do you admit his qualifications?

Mr. Romine: Yes.

Q. Did you treat the late J. Fred Runyon? A. I did.

Q. How soon before his death did you treat him for anything? A. I saw him off and on, perhaps, two months prior to that. 20

Q. Were you called to treat him shortly after January 29th, or thereabouts? A. Yes, sir.

Q. Tell us what you found when you got to the house?

Mr. Romine: What year, Mr. Cone?

Mr. Cone: 1929. I think the accident happened late on January 28, 1929.

A. I called to see Mr. Runyon, who gave a history of having had a fall in the house; unable to stand up or move his left leg. The position of the leg was abnormal, and after making an examination I concluded he had a broken hip. 30

Q. What examination did you make that caused you to arrive at that conclusion? A. Manipulation of the leg, thigh, pulse, point of motion; intense pain in the hip, some crepitus. That is the rubbing of one piece of bone over the other, a marked rigidity of the muscles around the hip. 40

Q. Did you do anything to verify your diagnosis? A. The next day I took an X-ray picture.

Q. Have you the X-ray picture? A. I have

Q. Will you produce it, please? A. (The witness produces an X-ray picture.)

Q. Where was that picture taken? A. Dover
10 Hospital.

Q. What does that picture show? A. It shows an intracapsular fracture of the left hip.

Q. Will you hold that up to the jury? A. (Holding picture before the jury) This is a picture of the entire pelvis. It shows a little change in one picture, decay in the other. This is the right hip (indicating). You will notice the curve of the hip. The neck is regular and rather long as compared to this (indicating). You will notice here
20 there is no neck shown at all. All body of the bone has been pushed together toward the hip; practically destroyed it. This portion of bone, which we call the "great trochanter"; in this you will observe around here (indicating), about three or four inches from the head of the femur, which is right next to it, about an inch and a half, and at the same time it shows small fragments of bone at the point of fracture. It might show here it is in-
30 creased by the overlapping of the two fragments.

Q. What does that line indicate, Doctor? A. That indicates the point of fracture, where that scar was; yes.

Mr. Cone: I offer it in evidence.

(The picture referred to was received in evidence and marked "Plaintiff's Exhibit 3.")

Q. After he was taken to the hospital, what hap-
40 pened to him?

By the Court:

Q. When was he taken to the hospital? A. On the 29th; the picture was taken on the 29th, and he was left at the hospital about a week.

Q. The 29th? What month? A. January, 1929.

Q. After the week, where did he go? A. He was taken back home. 10

Q. Did you continue treating him? A. I did.

Q. Until when? A. The day of his death.

Q. He died March 5th, according to your certificate? A. I believe so.

Q. You made a certificate in which you certified that the cause of death was the fracture of the left hip from slipping on the ice, and the contributing cause being paralysis agitans? A. I did.

Q. What kind of disease is paralysis agitans? A. It is a disease of the center nervous system 20 which causes various symptoms, the most noticeable of which are persistent shaking of the different parts of the body, particularly the hands, and the entire body.

Q. As a disease, is it generally fatal or not? A. As a rule, it is not of itself fatal. Some other disease usually sets in.

Q. Intervening causes result in death? A. Yes, sir. 30

Q. In a patient 64 years of age, which was the age of Mr. Runyon, what are the probabilities of recovery from a fractured hip, such as in this case? A. It is problematical. One must take into consideration that some men of 65 years of age are actually 80 years of age, whereas some 65 years of age equal some 50 years of age. Take a man whose constitution is not robust, his chances are not good.

Q. The shock of the break will cause death. 40

Mr. Romine: I object to that.

Mr. Cone: I will withdraw it.

Q. What will cause the death of the patient? A. Usually the shock of the accident, the ensuing pain, the necessity for the continuation in bed, the immobilization of the patient. They all tend to lower the body resistance, and the majority of them eventually die from a hypostatic condition of the lungs, which is called "hypostatic pneumonia", more or less caused by the weakening of the circulation. Also from the blood settling in the lower portion of the lungs and gradually closing them up.

Q. You knew Fred Runyon before his death? A. I did.

Q. How long do you think that he would have lived, under ordinary circumstances, considering the fact that he had paralysis agitans?

Mr. Romine: I object to that.

The Court: I think that the question is objectionable.

Q. Doctor, assuming the fact that Fred Runyon would not have had the fractured hip such as you treated, would he have died at that time from paralysis agitans? A. I think not.

Cross-examination by Mr. Romine:

Q. Do you know, Dostor, how long Mr. Runyon had been suffering from paralysis agitans? A. I don't know definitely. I understand it was a long time.

Q. Did I understand you to say you had treated

him before the fall on the ice? A. Yes, about a couple of months.

Q. And you treated him for the paralysis agitans? A. Yes.

Q. Did you notice whether his condition was getting worse or not? A. I believe so.

Q. Of course, a person suffering from paralysis agitans is more susceptible to falling on the ice than a person not suffering from such an ailment? 10

Mr. Cone: I object.

The Court: I think that is objectionable. What difference does it make? The question is: Did he fall on the ice or didn't he? The policy was in force on his life, notwithstanding he had paralysis agitans all these years. 20

(Argument follows)

The Court: Objection sustained.

Mr. Romine: Exception.

Q. Would the fact that Mr. Runyon was suffering from paralysis agitans aggravate an injury? A. No.

Q. If he had an injury, would paralysis agitans agitate the injury? A. Agitate it?

Q. Yes. A. No. 30

Q. Aggravate it? A. No.

Q. Would the injury aggravate his infirmity of paralysis agitans? A. Not directly.

Q. Indirectly? A. Yes.

Q. How, indirectly? A. The shock from the injury would necessarily aggravate the lessened resistance of the body which has already been acquired by the paralysis agitans.

Q. And the confinement in bed would have ag- 40

gravated or increased the condition of the paralysis agitans? A. No, it would not increase the paralysis agitans.

Q. I mean by that, would it affect the body insofar as paralysis agitans had theretofore affected the body? A. Ask that again.

10 Q. I will withdraw the question. You said in your testimony, I believe, that a person who had paralysis agitans and was confined to bed, other conditions would develop, such as pneumonia and things of that sort. Did that develop in Mr. Runyon in this case?

Mr. Cone: May I interpose? He said it developed because of the fracture and not because of the paralysis agitans.

20 Mr. Romine: I might put it the other way.

The Court: The doctor is a very intelligent witness. If he doesn't like Mr. Romine's premise, he can refuse it and give a proper answer.

A. Yes, that developed after he was put to bed with his fractured hip.

Q. That would develop with a person who had paralysis agitans, whether they had an injury or

30 not, when they went to bed? A. It is quite probable it would, in time.

Q. In other words, when a person suffering from paralysis agitans is put to bed, there is a certain amount of loss of circulation? A. Yes, sir.

Q. And that has a very bad effect on paralysis agitans? A. That has a very beneficial effect on paralysis agitans.

Q. I mean on the person himself? A. Yes, sir

40 Q. Paralysis agitans arises or comes from what

condition in the body? A. It comes primarily from the nervous system, from the cortex of the brain, and also from the spinal cord.

Q. Does it affect the circulation? A. It affects all the organs of the body.

Q. Does it produce or cause arterio-sclerosis or hardening of the arteries? 10

Mr. Cone: I object to that as immaterial.

The Court: How is that material?

Mr. Romine: It will be, before the case is over.

The Court: I rule it out, then.

Mr. Romine: I expect to produce a physician, but I will take exception, for the moment.

The Court: I don't know that you are entitled to an exception on that. I ask you how it is material. 20

Mr. Romine: Your Honor ruled it out, and I want to take exception.

The Court: You are not offering any reason for it. The exception will be noted.

Q. Did Mr. Runyon develop hardening of the arteries after going to bed? A. No, sir.

Q. What did he develop? A. He gradually became weaker, and in that last two or three days, after the hypostatic condition of the lungs, his whole system gave out. His condition got weaker, bowels clogged up; general structure all— 30

Q. The occasion for his going to bed was really the injury? A. His occasion for going to bed?

Q. Yes. A. Yes, because of his injury.

Q. And by going to bed, that necessarily made

40

the condition that he had as a result of this paralysis agitans worse, did it? A. Yes.

Q. So that necessarily the injury aggravated the condition of paralysis agitans, didn't it? A. It didn't aggravate the paralysis agitans. It aggravated the result of it.

10 Q. Now, you say that a man suffering from paralysis agitans does not as a rule die at this age from that disease, does he? A. No particular reason that I know.

(The last question was read by the stenographer.)

A. No special age at which he dies.

Q. Does a person die as a result of paralysis agitans? A. No.

20 Q. Does a person ordinarily die as a result of a fracture of the hip, such as Mr. Runyon had? A. Elderly persons do.

Q. What do you mean by "elderly"? A. People past sixty.

Q. Some people at seventy and eighty have a fracture of the hip and live, don't they? A. Yes, sir.

Q. In other words, a person may recover from a 30 fracture of the hip such as Mr. Runyon had? A. Oh, yes.

Q. There is no way of really telling whether Mr. Runyon died solely as a result of the fracture of the hip or as a result of the paralysis agitans, is there? A. That is only a matter of opinion. There is no way of telling what a man died from. You may have a fracture of the leg today and die of pneumonia tomorrow.

Q. In this particular case, Mr. Runyon having

40

suffered from paralysis agitans, and having this injury, did not the two, working in conjunction with one another, tend to cause the death? A. Yes, I think I can say it would.

Q. Now, of course, you realized that when you made out the death certificate, did you, Doctor? A. Yes, sir. 10

Q. In the death certificate you stated that one of the contributing causes of death was paralysis agitans, is that correct? A. Yes, sir.

Q. I show you an affidavit or claim to the company, dated March 8, 1929, and on the back is an affidavit of attending physician. Did you make out and sign that report? A. That is my signature, yes, sir.

Q. To the question, "What was the secondary or contributory cause of death?" you inserted "Paralysis agitans", did you not? A. Yes, sir. 20

Q. Of course, Mr. Runyon would not have recovered from the paralysis agitans that he had, at his age?

Mr. Cone: I object to that as immaterial.

The Court: I will allow it.

Mr. Cone: Exception.

A. He would not recover. 30

JOSEPHINE DAVY, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows:

Direct-examination by Mr. Cone:

Q. Mrs. Davy, where do you live? A. I live in Morris Plains, now. 40

Q. Where did you live in January 28, 1929? A. In Succasunna.

Q. With your husband? A. Yes.

Q. What is your husband's name? A. Ralph Davy.

Q. Your husband was the minister of the church up there? A. Yes.

10

Q. On the 28th day of January, 1929, did you have occasion to call at the home where J. Fred Runyon was residing? A. I did.

Q. What kind of a day was that, Mrs. Davy? A. I don't remember the date, but it was very icy.

Q. What was the condition of the walks and the roads? A. Very rough and icy.

Q. Had there been snow and ice? A. It snowed, and it had frozen.

20

Q. You went over to the Runyon home because of what incident? A. My neighbor asked me if that was Mr. Runyon lying on the lawn. He must have just fallen. I ran right over.

Q. When you got there, what did you find and what did you do? A. I found Mr. Runyon lying helpless.

Q. On the ground? A. Yes.

Q. Did he complain of anything?

30

Mr. Romine: I object to that.

Q. Did he make any complaint, utter any sound? A. Not until I spoke to him.

Q. Was there anything to indicate whether he was suffering or not? A. He was moaning.

Q. Did he indicate by any motions where there might possibly be some pain? A. No.

Q. Who else came over there? A. A young man came along. I never knew who he was.

40

Q. Anyone else? A. Not just then. This young man went to the door and Mrs. Lee came out.

Q. Who helped get him into the house? A. Mrs. Lee and this young man.

Q. Mrs. Lee is Mr. Runyon's daughter? A. Yes.

Q. You brought him into the house. Was he able to walk into the house? A. We were all helping, one on each side. He hobbled in; he wasn't able to use his left leg. 10

Q. Did he indicate that there was pain of the right side of the body?

The Court: He just said he wasn't able to use his left leg.

Cross-examination by Mr. Romine:

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Q. Did you see Mr. Runyon fall? A. I did not.

Q. Your attention was attracted to Mr. Runyon after he was on the ground? A. Yes, sir.

Q. You don't know anything about this, how he happened to get there? A. No; I suppose he fell.

ROSE A. NOACK, called as a witness in behalf of the plaintiff, being first duly sworn, testified as follows: 30

Direct-examination by Mr. Cone:

Q. Mrs. Noack, where do you live? A. Succasunna.

Q. Did you live in Succasunna in January, 1929? A. I did.

Q. Do you remember the day when you went over to the home occupied by J. Fred Runyon? A. I do. 40

Q. That was on the 28th of January? A. Yes.

Q. What caused you to go to the Runyon home? A. I had a little boy who had measles. He was outside on the porch. He had an interest in Mr. Runyon, always noticed him going about.

Mr. Romine: I object to what the little boy told her.

10

By the Court:

Q. What did the little boy do? A. He came in to show me that Mr. Runyon had fallen.

Mr. Romine: I move to strike out about Mr. Runyon falling.

The Court: Strike out the statement about falling.

20

A. He slipped with his foot. I went to the door and saw Mr. Runyon lying on his left side on the elbow.

Mr. Romine: I move to strike out as to what the boy showed her.

The Court: Strike out the testimony concerning the little boy's statement about slipping. The fact that he was on the ground and the little boy conveyed the information, I will permit to stand.

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By Mr. Cone:

Q. What kind of day was it? A. It was a very icy day.

Q. The walks and the streets covered with snow and ice? A. Yes, ice crust.

Q. Very slippery? A. Yes.

Q. After the information you received from your

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little boy, what did you do? A. I ran right to Mr. Runyon.

Q. Where was he lying? A. They had him then stretched on the porch, and Mrs. Lee had him on the porch.

Q. Was he making any sound? A. I asked him if he was hurt. 10

Q. Was he making any sort of sound? A. No, he didn't.

Q. Could he walk? A. Not by himself. He was assisted.

Q. Was he able to use both legs or either leg?

> The Court: Why can't you say "at that moment"?
>
> Mr. Cone: I anticipate an objection.

Q. What did Mr. Runyon say? 20

> Mr. Romine: I object to what he said.
>
> The Court: You have got to make the question broader than that. If you can bring the question in as part of the res gestae, I will allow it.

Q. As soon as your little boy gave you the information you say you immediately rushed across the street to where Mr. Runyon was lying? A. 30 Yes, he was very much excited.

Q. A long time elapsed between the time the boy gave you the information? A. I was on the front porch, and he was in the road before they picked him up.

Q. You got there as he was on the porch?

> The Court: Who was on the porch?
>
> Mr. Cone: Mr. Runyon.

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Q. Did he say anything to you?

The Court: Who?
Mr. Cone: Mr. Runyon.

A. I wasn't there.

Q. Where is your little boy? A. At Trenton.

10 Q. How old was he? A. He was eight, then.

JOSEPHINE DAVY, recalled on behalf of the plaintiff, testified as follows:

Redirect-examination by Mr. Cone:

Q. When you got to Mr. Runyon was he still lying on the ground? A. He was.

20 Q. Did he say anything to you?

Mr. Romine: I object, unless it is yes or no.

Q. Did he say anything to you? A. No, although I spoke to him.

Q. After you spoke to him, what did he say to you? A. I said, "Are you badly hurt?" and he said, "I am afraid so."

30 Mr. Romine: I object to that.
The Court: That is objectionable.

Q. Did you ask him how he came to be lying on the ground? A. No.

Q. Did he offer an explanation? A. No.

Mr. Romine: I object.

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GERTRUDE L. RUNYON, the plaintiff, called as a witness in her own behalf, being first duly sworn, testified as follows:

Direct-examination by Mr. Cone:

Q. Mrs. Runyon, where do you live? A. At the State Hospital. 10

Q. Are you employed there? A. I am.

Q. Are you the Gertrude L. Runyon mentioned as being the wife of J. Fred Runyon, in the Excelsior Policy of the Commonwealth Casualty Company? A. Yes.

Q. Are you the Gertrude L. Runyon whose name was added on the policy February 21, 1913? A. Yes.

Q. When did Mr. Runyon die? A. The fifth of March. 20

Q. 1929? A. 1929.

> Mr. Cone: If your Honor please, I understand that counsel for the defendant agrees that proper proof has been made on the company as to the policy.
>
> The Court: It is stipulated on the record. It is only a question as to whether the liability exists. 30

Cross-examination by Mr. Romine:

Q. How long was Mr. Runyon confined before his death? A. In bed?

Q. Yes. A. Around five weeks.

Q. He was at the hospital the latter part of January with the fracture of the hip? A. He was a week at the hospital, and then we had him brought home in an ambulance. 40

Q. He remained home and lingered until March 5th? A. Yes.

The Plaintiff Rested.

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10 Mr. Romine: If the Court please, I desire to move at this time for a non-suit on two grounds:

(1) That there is no proof of accident and injury from accident. There is no proof of the accident itself, except that the man was found lying on the ground.

(2) And, the principle ground, that under the terms of the policy, if there is an accident, death must result by external, violent, 20 and purely accidental means, independently of all other causes, directly or indirectly.

The testimony of Doctor Plume is that the paralysis agitans, coupled with the fracture of the hip, in concert with one another, tended to and did produce the death. Under the case which I have cited to your Honor, a Federal case, which is a decision directly in point on the same kind of policy, it was held 30 that there could be no recovery, because, if one aggravates the other, if the disease aggravates the injury or the injury aggravates the disease, or both together result in death, it cannot be a death as a result of purely accidental means.

(Argument follows.)

The Court: It seems to me that on the first ground of your motion that no accident has been proved, there has been enough

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proof to allow it to go to the jury. A slippery day, a man on the sidewalk, and a doctor immediately in attendance, and a doctor to say there was a fracture of the hip. I deny the motion.

On the question as to whether this is an external and independent and violent death, without any other contributing cause, it seems to me that it becomes largely a question for the jury to decide whether or not this break of the hip was sufficient to come within the terms of the policy, or whether or not the paralysis agitans, which he did have, was also a contributing cause. I deny that motion.

Mr. Romine: I take exception.

AMBROSE S. DOWD, called as a witness in behalf of the defendant, being first duly sworn, testified as follows:

Direct-examination by Mr. Romine:

Q. You are a practicing physician of this state? A. Yes, sir.

Q. You are practicing where? A. In Newark, New Jersey.

Q. How long have you been practicing medicine? A. Twenty years.

Q. Do you specialize in any particular branch? A. Nervous and mental diseases.

Q. You are a graduate of what college? A. University of Vermont.

Q. What year? A. 1910.

Q. You attended what hospital? A. Newark City.

Q. For a regular period of time? A. Yes.

Q. When were you admitted to practice in New Jersey? A. 1911.

Q. Are you connected with any special hospitals in the city? A. Yes.

10

Q. What are they? A. I am connected with the City Hospital.

Q. Newark? A. Yes. The Home and Hospital for Crippled Children, Women's and Children's Hospital, Saint James Hospital, Bethany Home, Irvington General Hospital.

Q. Have you had any experience with persons suffering from paralysis agitans? A. Yes.

Q. Have you had many of these cases or not? A. A large number.

20

Q. Have you had any instances where persons suffering from paralysis agitans suffered a fracture or other injury? A. Yes.

Q. Have you had any number of those? A. A substantial number of those.

Q. Have you treated them? A. Yes.

Q. Therefore, you are familiar with that character of case, are you? A. I am.

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Q. It has been testified in this case that the disease Mr. Runyon was suffering from, paralysis agitans, for a number of years prior to the alleged injury in January, 1929, and that in the latter part of that month, January, 1929, he had a fracture of the left femur and was confined in the hospital and at home for some two or three months before his death. Can you tell us, Doctor, whether paralysis agitans in a case of that kind, affects the injury such as he had, or whether the injury affects

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the paralysis agitans? A. I think they affect each other.

Q. What have you to say as to the resulting death, the effect of these upon death? A. Death is caused by their co-existing.

Q. What is paralysis agitans? A. Paralysis agitans is an occurrence due to degeneration processes in certain parts of the base of the brain. 10

Q. Does it affect the circulatory system? A. Yes, it results very often in old people, and affects it on the other hand.

Q. I believe in this case Mr. Runyon was 64 years of age. Would you say that paralysis agitans in a man of his age was advanced or not? A. Paralysis agitans may be advanced at any age. It depends on when it begins. 20

By the Court:

Q. It may not start until a man gets to be 97? A. That is true.

By Mr. Romine:

Q. In a man of his age, suffering from paralysis agitans, how would that affect him? A. It would make locomotion difficult. It would make maintenance of equilibrium difficult, make him tremulous and unsteady, give him a rigid gait, produce weakness, a general astasia. 30

Q. Would a man at Mr. Runyon's age, suffering from paralysis agitans, be more susceptible to an injury than a person who did not suffer from paralysis agitans.

Mr. Cone: I object. What difference does it make?

The Court: I sustain the objection. 40

Mr. Romine: Exception.

Q. You say a man of Mr. Runyon's age, suffering from paralysis agitans, was more unsteady on his feet? A. A man of any age suffering from paralysis agitans.

10 Q. What effect would that have upon a man, if, suffering from paralysis agitans, he was confined to bed and remained there for two or three months? A. It intensifies the paralysis agitans, and the paralysis agitans retards the recovery from the injury.

Q. In what way would that intensify the paralysis agitans, so far as affecting the general body, the physical condition? A. It causes a lowering of vitality, diminution of vigor, putting anyone to

20 bed this way.

Q. Has it anything to do with circulation? A. Yes. It interferes with circulation. Exercise is essential for the maintenance of proper circulation.

Q. If, as in Mr. Runyon's case, he suffered a fracture of the hip, to what extent would the paralysis agitans affect his injury? A. It would retard the union of the line of fracture. I think that is

30 the answer to the question. I don't know just what you mean.

Q. In other words, would the paralysis agitans of a man who suffers an injury, such as a fracture of the hip, aggravate that injury? A. Aggravate the fracture?

Q. Yes, or the effect of the fracture? A. If the fracture exists, it would retard the union of that fracture.

Q. Would the injury, such as the fracture, ag-

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gravate it or increase the condition, or the result of the condition of paralysis agitans? A. It would intensify it.

Q. Now, in persons of the age of Mr. Runyon, 64 years, suffering from a fracture of the hip; what are the possiblities of recovery in a normal person? A. 64 years of age? 10

Q. Yes. A. There is a substantial possibility of recovery. Ordinarily they do pretty well. It takes a long time, but they do pretty well.

By the Court:

Q. Do some of them die? A. From the fracture of the hip or from a concurrent disease?

Q. If the fracture of the hip is the principal cause? A. No, I don't think they die from the fracture of the hip alone. The fracture of the hip, at 20 64, intensifies the pre-existing conditions.

By Mr. Romine:

Q. A person suffering from paralysis agitans; do they as a rule die as a result of that condition? A. A few of them die directly from that condition. Most of them die from some added condition.

Q. So that, if a person has a fracture of the hip, a man of that age, usually they die from some contributing cause? A. Apoplexy, kidney trouble, 30 heart trouble.

Q. A person suffering from paralysis agitans usually dies from some contributing cause? A. Yes.

Q. Independent of the disease? A. Yes, independent of the disease.

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Cross-examination by Mr. Cone:

Q. Doctor, if Mr. Runyon had not had paralysis agitans, he could have developed hypostatic pneumonia as a result of this fracture just the same? A. Yes.

Q. In a person around the sixties, when there is a break in the bone requiring a continuous period in bed, it brings out latent illnesses in that patient? A. Very often.

Q. In some cases it causes conditions in the body which ordinarily, would not have occurred in that form of illness, had it not been for the confinement to bed? A. It precedes these causes.

Q. Which, under ordinary conditions, would have been easily—

The Court: Or would not have appeared.

A. They die of something at some time.

Q. As I understand, you said the condition of paralysis agitans and the fracture of the hip would cause death? A. Yes.

Q. Invariably? A. I think the probabilities are that it would.

Q. The probabilities are, if a man suffering from paralysis agitans had a fractured hip, such as in this case, he would die? A. I think so.

Q. Suppose a man had no paralysis agitans, was 64 years of age, but not robust or strong, what would be his probabilities of recovery from the fractured hip? A. Not robust or strong? In other words, had something else wrong?

Q. Just an ordinary man of 64, who didn't have paralysis agitans and wasn't a healthy specimen? A. Why, the probabilities are, if he wasn't robust at 64 and had a fracture, he would not be well.

Q. He would not survive? A. He would, at least, have a very long illness.

Q. Doctor, if a man averaged 120 pounds in weight throughout his life, and whose business was always indoors, and at the time of the fracture of the hip weighed 110 pounds, what would his chances be of surviving this fracture, without paralysis agitans? A. I don't think they would be very great.

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Mr. Romine: The defendant rests.

Mr. Cone: No rebuttal.

Mr. Romine: I want to make a motion for a direction of verdict on the same ground that I made before, without repeating.

The Court: Motion denied.

Mr. Romine: Exception.

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(A closing address was made to the jury by Mr. Romine in behalf of the defendant, after which Mr. Cone made a closing address to the jury in behalf of the plaintiff.)

The Court then charged the jury as follows:

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ALBERT H. HOLLAND, *J.*

Ladies and gentlemen of the jury:

On the first day of December, 1909, the Commonwealth Casualty Company of Philadelphia, an insurance corporation, the defendant in this suit, entered into a contract with J. Fred Runyon, in what is generally known as an accident policy, and sometime on or about the 21st day of February,

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1913, the beneficiary in that policy was made Gertrude L. Runyon, the plaintiff in this suit. In other words, it was a contract of insurance between the company and the deceased that they would pay to the beneficiary which he designated, certain benefits for certain occurrences, among
10 them accidental illnesses, accidental death. You will have the policy and you can read it. It provided that they would pay to the beneficiary the sum of $600 on the death of the insured; they insured him against the effects of bodily injuries or death caused directly and independently of all other causes by external, violent, and purely accidental means, which bodily injuries or their effects shall not be caused wholly or in part, directly or indirectly, by any bodily or mental disease, defect
20 or infirmity, and which shall result in immediate and continuous disability, or death.

That policy was maintained until some time in January 28, 1929, when it was agreed between the parties to this litigation that the policy was still in force, with an accumulating feature of ten per cent. each year that it was in force, provided that the entire accumulation should not exceed fifty per cent. of the original total.

30 On January 28, 1929, a winter's day, the testimony in the case discloses that the decedent, J. Fred Runyon, was found lying on an icy sidewalk in pain and moaning, and that when he was helped into the house his left leg was useless, or whatever the words are that the witnesses used to that effect.

Let it be understood, ladies and gentlemen of the jury, that you are the sole judges of the evidence, and that you alone will judge as to the sufficiency
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or the weight or the credibility which you will give to it.

Very soon after Doctor Plume was called in to attend upon the decedent, he took an X-ray picture which confirmed the diagnosis he made that day that the left hip was fractured or broken. The decedent stayed at the hospital where the X-ray was taken for a week. He was thereafter moved to his home and stayed there in bed five or six weeks, and died on March 5, 1929.

Now, the plaintiff in this case claims that she is entitled to recover under that contract, her contention being that the death of J. Fred Runyon was caused by the broken hip, the fractured bone, which brought on the condition of hypostatic pneumonia—I believe that was the term used. She contends that the fact that the decedent had paralysis agitans, a disease which both sides admit existed at the time and for some time previous thereto, did not affect or contribute or cause the death, because she contends such a fracture upon such a man, at that age, with the condition of his robustness, weighing, as I think one of the physicians was asked, 110 or 120 pounds, would probably or possibly result in death, although it might or could have resulted in a recovery; the death being brought on by a great number of causes, the last and final one, I suppose, being that the heart stopped beating, the intervening ones being that the bone did not unite or re-unite, and the serum in the blood, due to the condition of the body, settling in the bottom of the lungs and causing this pneumonic death.

The company, on the other hand, contends it is perfectly willing to perform its part of the bargain

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in this insurance contract, but claims that the attending physician stated, both in his certificate of death and in the proof of loss, that the causes of death were not only the slipping on the ice and the breaking of the left hip bone, but the condition of paralysis agitans, and the company contends
10 that the death is not an accident caused by violent, external means, independent, directly or indirectly, of all other causes. And there, of course, is the question for you ladies and gentlemen to decide. You have heard the doctors on both sides. It must be your decision which will determine from the evidence in this case what the real cause of death was.

If, after a consideration of all the evidence, you believe from a preponderance of evidence on the
20 plaintiff's case, and the burden of proof is on the plaintiff to prove this case before you by a fair preponderance of evidence, and if you believe from that proof and from the evidence that the cause of death was the fracture, and that it was a violent and external accident, and that the paralysis agitans did not contribute to the death or to the causes of death, then your verdict should be in favor of the plaintiff. And if you do not so believe, but, on
30 the contrary, you believe that the paralysis agitans did contribute to the death, or you are not convinced by a fair preponderance of the evidence that the accident was caused by an external, violent, accidental means, then your verdict will be in favor of the defendant. Should you arrive at the determination that the verdict should favor the plaintiff, then you will consider the contract and its accumulating features, which reads as follows:
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> "Section 9: For each full year this policy shall have been maintained continuously in force, the benefits under Section 1 shall be increased ten per cent., but the sum of all such accumulations shall never exceed fifty per cent.,"

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So that, if you find the policy has been in force for more than five times ten per cent. continuously, that would make fifty per cent., it being admitted in this case that the policy was in force for twenty years, you would naturally arrive at the conclusion that, if the plaintiff is entitled to recover anything at all, she is entitled to recover the entire amount of the contract, $900, together with interest from the time demand was made for the payment of the money, as shown by the proof of claim. The question of fact, ladies and gentlemen, for you to determine is the cause of death of the decedent, and that you will have to gather from the evidence.

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I have been requested by the defendant to charge you several propositions of law:

(1) Under the terms of the policy contract in this case, the insurance company was only required to make payment to the beneficiary if death was caused directly and independently of all other causes by external, violent, and purely accidental means. I so charge.

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(2) If the death of the assured was caused wholly or in part, directly or indirectly, by any bodily or mental disease, defect or infirmity, then there can be no recovery under the form of policy in this case. I so charge.

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(3) The burden of proof is upon the plaintiff to satisfy the jury by a preponderance of the evidence that the assured's death resulted solely from accident independent of all other causes. I so charge you.

(4) Where the assured, at the time he receives an injury, is suffering from a disease or defect which, acting with the injury as a contributing factor, causes death, or when such disease or defect aggravates the effect of the injury or the injury aggravates the effect of the disease, and both acting together cause death, the injury is not the sole cause of the death and the death is not within the terms of a policy of insurance against death "effected directly and independently of all other causes through external violent and accidental means." I so charge.

(5) If the evidence in this case establishes that the assured was suffering from a disease or ailment prior to the injury and that one aggravated the other, or that both acting in concert caused or resulted in the death of the assured, then his death was not caused solely by accident and independent of other causes, and, therefore, there must be a verdict of no cause of action. I so charge you.

I have also been requested on behalf of the plaintiff to incorporate several propositions of law to you in the charge:

(1) The fact that Fred Runyon suffered from a weakness or infirmity which might have more readily induced an accident, is no bar to a recovery on the policy in issue in this suit. I so charge.

(2) The fact that a previous weakness or in-

firmity caused this accident to prove fatal where it otherwise would not have produced such result, is not a bar to recovery on the part of the plaintiff. I so charge.

(3) If you are satisfied from the evidence that the accident was the true cause of death, and any illness, disease, or infirmity of Fred Runyon but the occasion, the plaintiff is entitled to recover. I so charge.

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(4) If you find that Fred Runyon suffered an accident which produced an injury which might naturally have produced death in a person of his age, temperament and state of health, you are to bring in a verdict in favor of the plaintiff, even if Fred Runyon would not have died if his temperament or previous health had been different. I so charge.

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(5) You are not to consider the cause of causes, beyond seeking the efficient predominating cause of the accident. You are not to ascertain or determine whether or not this accident might not have happened if the age, health or temperament of the late Fred Runyon had been otherwise than shown by the testimony. I so charge.

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(6) If you find that the accident was the primary cause of death to the late Fred Runyon, then the plaintiff is entitled to a verdict in her favor. But I will add to that, provided, of course, you find no other disease or infirmity or condition contributed to the cause of death.

(7) If you find that the plaintiff is entitled to a judgment, then she is entitled to interest on said judgment from the date of death of Fred Runyon.

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I think it is from the date of filing of the proof of claim. I don't think the company is under obligation to pay, except from the date of filing of claim.

(8) If you find that Fred Runyon suffered an accidental death within the meaning of his policy
10 of insurance with the defendant, and that the plaintiff is entitled to a verdict, then your verdict should be for the face amount of the policy, that is, six hundred dollars ($600.00), plus an increase in the benefits of ten per cent. per year for each year the policy shall have been in force, but the sum of all such increases is not to exceed fifty per cent. of the sum payable for death. In other words, if you find that she is entitled to a verdict,
20 she would be entitled to a verdict of $900, as already stated.

Mr. Romine: I take exception to what your Honor said in this regard; your charge as to death resulting from accident. Your Honor said substantially, if you find that death resulted from the accident and paralysis agitans did not contribute or form a part of the death, then there should be a verdict for the plaintiff. The reason I object to
30 that is this. It excludes all other forms of diseases or any other infirmity that might exist; for instance, as mentioned in one of the cases that I cited.

The Court: You did not claim any other.

Mr. Romine: The testimony on the part of the plaintiff admitted by your Honor was that this man developed a hypostatic pneumonia following

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this injury, and I take it, under the form of the policy and the decision that if any disease develops as a result of this injury or following the injury, whether connected with it or not, that that death results from that injury or infirmity, or the condition of the infirmity, then there could be no recovery. In other words, it must result directly from the accident, and if something else develops after the accident, either attributable or connected or apart from it, from which the assured dies, that is some other cause, and, therefore, cannot be the result of the accident, and that would limit it to paralysis agitans. 10

The Court: I think your objection is answered by other portions of the charge, and by the requests you asked me to charge, which I did. I grant you an exception. 20

Mr. Romine: I desire to take exception to your Honor charging the plaintiff's first request and also the second request, because it seems to be somewhat inconsistent with portions of the charge made at the request of the defendant. I don't know whether it was the third, or what particular number it was. At any rate, it was that request of the plaintiff which dealt with the assured's temperament and condition. Also, the other request —I don't know what the number is—which dealt with the happening of the accident. It was either the fifth or sixth; the fourth dealt with the temperament and condition. 30

The Court: I grant you an exception.

Mr. Cone: If your Honor please, I want to take

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exception to so much of your Honor's charge where you said to the effect, if you believe that paralysis agitans contributed to death, the verdict should be for the defendant, and I want to take exception to your Honor's charging requests four and five of the defendant, and to the addition that your Honor added to my request, number six, on the part of the plaintiff.

The Court: I grant you an exception.

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Exhibit P-1.

No. 57505
Beneficiary changed
See endorsements.

COMMONWEALTH CASUALTY COMPANY
PHILADELPHIA

Hereinafter called the Company 10

In Consideration of the policy fee, the premium, and the statements, warranties and agreements in the schedule endorsed hereon and made part hereof, which statements the Insured makes on the acceptance of this policy and warrants to be true.

Does hereby Insure the person described in said schedule, subject to all the conditions and agreements contained herein and endorsed hereon, from 12 o'clock noon, standard time, of the day this con- 20 tract is dated, until 12 o'clock noon, standard time of the 15th day of January, 1910, and for such further periods, stated in the renewal receipts, as the payment of the premium specified in said schedule will maintain this policy and insurance in force, against the effects of Bodily Injuries or Death, caused directly and independently of all other causes by External, Violent and purely Accidental means, which bodily injuries or their effects shall not be caused wholly or in part, directly or indi- 30 rectly by any bodily or mental disease, defect or infirmity, and which shall result in immediate and continuous disability or death; and against any disease or sickness, as follows:

Benefits for Accidents.

Section 1. If any one of the following losses shall result solely and exclusively from such pure- 40

ly accidental injuries within ninety days from date of the accident the Company will pay, in lieu of any other indemnity:

For Loss of Life, Six Hundred Dollars, Principal Sum, or as provided in Section 4, $5,000.

For Loss of Both Hands by complete severance at or above the wrists, The Principal Sum, or as provided in Section 4, $5,000.

For Loss of Both Feet by complete severance at or above the ankles, The Principal Sum, or as provided in Section 4, $5,000.

For Loss of One Hand and One Foot by complete severance at those places, The Principal Sum, or as provided in Section 4, $5,000.

For Loss of Entire Sight of Both Eyes, if irrecoverably lost, The Principal Sum, or as provided in Section 4, $5,000.

For Loss of Either Hand by complete severance at or above the wrist, One-Half of the Principal Sum. For Loss of Either Foot by complete severance at or above the ankle, One-Half the Principal Sum. For loss of Entire Sight of One Eye, if irrevocably lost, One-Fourth the Principal Sum.

Total Loss of Time.

Section 2.

Or, if such injuries shall not result in any of the losses above specified, but shall from the date of accident disable and prevent the Insured from performing every duty pertaining to any and every kind of business or occupation, the Company will pay for such total disability, for a period not exceeding twenty-four consecutive months, indemnity at the rate per month of Sixty Dollars.

Exhibit P-1.

Partial Loss of Time.

Or, if such injuries shall from date of accident, or immediately following total disability, disable and prevent the Insured from performing important daily duties essential to his business or occupation, the Company will pay for such partial disability, for a period not exceeding six consecutive months, indemnity at the rate per month of Twenty four (40 per cent.) Dollars. 10

Provided always that the combined periods for which indemnity will be paid for any one accidental disability shall not exceed twenty-four consecutive months.

Special Indemnities.

Section 3. 20

Or, for loss of life from sunstroke caused by the sun's rays, freezing or hydrophobia caused directly and independently of all other causes by external, violent and accidental means within ninety days from date of exposure or infection, the Company will pay in lieu of all other benefits the principal sum of $600.

Extraordinary Benefits. 30

Section 4.

Or, if any one of the following losses shall result solely and exclusively from such purely accidental injuries within ninety days from date of the accident, to wit:

(A) In case of accidental loss of life, or accidental loss of two limbs or both eyes (as specified in Section 1 hereof) the Company will pay, in lieu

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Exhibit P-1.

of all other indemnities, the sum of $5,000, as hereinafter provided in this Section.

(B) If the Insured suffer loss of time (as specified in Section 2 hereof) by reason of such accident the Company will pay double the monthly Indemnities otherwise provided under said Section
10 2, *Provided However,* that the said payment of $5,000 or double the monthly Indemnities shall only be due under this Policy if such loss of life, limbs, eyes, or loss of time, is sustained by the Insured in the manner provided in this Section as follows, and not otherwise:

(1) While riding as a passenger within the enclosed part of any railway passenger car, provided for the exclusive use of passengers and propelled by steam, cable, compressed air or electricity and
20 not attached to any freight, coal or logging train, or:

(2) While riding as a passenger on board a steam vessel, licensed for the regular transportation of passengers; provided such loss of life or injuries shall be caused directly by the wrecking of such car or vessel.

Beneficiary Insurance.

30 Section 5.

In consideration of the warranties and the premium, this policy also insures the Beneficiary named herein against the effects of *Bodily Injuries, or* Death, caused directly and independently of all other causes *by External, Violent* and *Accidental* means, which bodily injuries or their effects shall not be caused wholly or in part, directly or indirectly, by any bodily or mental disease, defect or
40 infirmity and which shall result in immediate and

continuous and total disability, or death, as follows:

If any one of the losses named in Section 1 hereof shall result solely and exclusively from such injuries within ninety days from the date of accident the Company will pay the amount named in Section 1 hereof (but not the amount as provided in Section 4 hereof). 10

but only if such injuries or death are received

(1st) While riding as a passenger within the enclosed part of any railway passenger car provided for the exclusive use or passengers and propelled by steam, cable, compressed air or electricity, and not attached to any freight, coal or logging train, or

(2nd) While riding as a passenger on board a steam vessel licensed for the regular transportation of passengers, 20

Provided such injuries shall be caused directly by the wrecking of such car or vessel, and

Provided the said Beneficiary shall be a woman between the ages of eighteen and sixty years other than the Insured, in whole and sound condition mentally and physically and without other insurance in this Company, but in no event shall there be payable, as the result of one accidental happening, more than $5,000, should both the Assured and Beneficiary be affected thereby. 30

The amount above provided for loss of life of Beneficiary shall be payable to the Insured herein named. The payment of any benefit provided under this section shall terminate the policy. Insurance under this Section shall cease upon the completion of the Beneficiary's sixtieth year, at which time another Beneficiary may be substituted.

40

Exhibit P-1.

Benefits for Illness.

No indemnity will be paid for any sickness not common to both sexes.

Permanent Total Blindness or Paralysis by Disease

Section 6.

10 (1) The Company will pay, while this Policy is in full force and effect, the sum of $600. if the insured shall become irrevocably totally blind, which blindness, independent of all other causes, is due to disease, covered by this policy, which shall be contracted by the insured during the period of this policy, or if the insured shall lose the entire use of two hands or two feet or one hand and one foot from paralysis while this policy is in full force and effect, due independently of all other causes,
20 to permanent paralysis caused by disease covered by this policy, which shall be contracted by the insured during the period of this policy, but which blindness of paralysis shall not result in death, but shall render the insured wholly and permanently unable to engage at any time thereafter in any occupation or work for wages or profit, provided always that satisfactory proof shall be furnished to the Company of a continuance of such condition
30 for the period of at least, 52 consecutive weeks.

Confining Disability.

(2) If the Insured shall, independently of all other causes be immediately and wholly disabled and prevented from performing every duty pertaining to any and every kind of business or occupation by Bodily Disease or Sickness that is con-
40 tracted and begins after this policy has been in

Exhibit P-1.

continuous force for sixty days, and shall be necessarily and continuously confined within the house and regularly visited therein by a legally qualified physician, for a period not exceeding six consecutive months, the Company will pay, after the first week, indemnity at the rate per month of $60.

10

Non-Confining Disability.

(3) Or, if, immediately following confinement within the house by such sickness, or if by reason of any sickness contracted and beginning after this policy has been in continuous force for sixty days, the insured shall be wholly disabled from performing any and every duty pertaining to any and every kind of business or occupation and require the regular attendance of such physician, but shall not necessarily be confined within the house, the Company will pay, after the first week, for a period not exceeding four weeks, indemnity at the rate per month of (50 per cent.) $30.

20

Provided always that the combined periods for which indemnity will be paid for any one illness shall not exceed six consecutive months.

30

Special Diseases.

Section 7.

In case of any loss or disability resulting wholly or in part, directly or indirectly, from tuberculosis, rheumatism, paralysis, apoplexy, orchitis, neuritis, locomotor ataxia, hernia, lumbago, lame back, strains, sciatica, vaccination, dementia, or insanity, the limit of the Company's liability (after the first week) shall not exceed four weeks' in-

40

demnity in any one policy year at the rate which would otherwise be payable under this policy.

Disability or less of time resulting wholly or in part, directly or indirectly, from sunstroke, freezing, carbuncles, boils, felons, abscesses, ulcers, blood poison or septicemia, or contact with poisonous or infectious substances is classified as illness and covered only under Section 6 of this policy, the original cause thereof notwithstanding.

10

Ten Per Cent. Increase.

Section 8.

The indemnities under Section 2 and the 2nd and 3d Paragraphs of Section 6 of this policy shall be increased 10 per cent. if the premiums are paid annually in advance.

20

Fifty Per Cent. Accumulations.

Section 9.

For each full year this Policy shall have been maintained continuously in force the benefits under Section 1 (but not as provided in Section 4), shall be increased 10 per cent., but the sum of all such accumulations shall never exceed 50 per cent.

30

Monthly Income for Beneficiary or Assured.

Section 10.

In event of any loss by accident, covered by this policy, involving the payment of $1,000 or more for any indemnity other than monthly indemnity, the Company may, at its option, pay the insured or the beneficiary, as the case may be the amount in 25

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equal monthly installments until the full sum of the indemnity has been paid.

Reduction in Premium After Five Years.

Section 10½.

After this policy has been continuously in force for five consecutive years the Company will, upon receipt of written notice from the insured calling attention thereto, reduce the premium upon this policy twenty-five cents per month ($3 per annum) from and after receipt of such notice.

Agreement.

Section 11.

Any sum provided for loss of life, or due for indemnity at the time of the death of the Insured shall be payable to the Beneficiary named in the Schedule, if surviving; otherwise, to the executors or administrators of the Insured.

Insurance under this policy does not cover death, loss or disability resulting wholly or in part, directly, or indirectly, from any veneral disease or any surgical operation for any chronic ailment.

No claim shall be valid for more than one of the losses herein specified, and any payment hereunder, other than for loss of time or disability, shall terminate this policy.

In event of injury or loss, fatal or otherwise, of which there shall be no external or visible mark on the body, the body itself in case of death not to be deemed such mark, or resulting wholly or in part, directly or indirectly, from disease or bodily infirmity; or injury fatal or otherwise, or disabil-

or loss resulting, directly or indirectly, wholly or in part, from any gas, vapor, narcotic, anaesthetic, poison internally taken, accidentally or otherwise, suicide, sane or insane, riot, strikes, exposure to obvious risk of injury or obvious danger; or from injuries intentionally inflicted upon the Insured
10 by himself or by any other person; or from injuries inflicted upon the Insured by himself or received by him while insane, or while under the influence of any intoxicant or narcotic, or while attempting to evade arrest, or while violating law, or the rules of a corporation, or the rules of a public carrier affecting the safety of its passengers; or while on the right of way, bridge, trestle, or other property of a railway corporation other than stations, platforms and regular crossings prescribed
20 by law, not being at the time a passenger, or employee of such railway in the discharge of duty, the Company's liability shall not exceed one-fifth of the amount that would be otherwise payable under this policy.

Written notice of injury, fatal or non-fatal, or of any illness for which claim can be made, must be given to the Company at Philadelphia within ten days from the date of accident or the begin-
30 ning of illness, and failure on the part of the Insured or the Beneficiary to comply strictly with said notice requirements, shall invalidate any and all claims under this policy.

Affirmative proof satisfactory to the Company of any loss from injury, fatal or non-fatal, or from illness for which claim can be made, must be furnished to the Company at Philadelphia on blanks, which will be provided by the Company on request within thirty days from the date of death, loss of
40

limb or sight, or the termination of disability. No action at law shall be brought before three months after the date of the filing of the required proof of loss, nor brought at all unless within six months from date of death, or loss of limb or sight, or termination of disability. Any claim not brought in conformity with the provisions of this paragraph is forfeited to the Company. Any limitations in this policy contrary to State Laws are hereby extended to the minimum periods provided by such laws.

10

The acceptance of any renewal premium shall be optional with the Company, and if the payment of renewal premium shall be made after the expiration of this policy or of the last renewal receipt, neither the Insured nor the Beneficiary shall be entitled to recover for any accidental injury happening between the date of such expiration and twelve o'clock noon standard time of the day following the date of such renewal payment, nor for any illness originating before the expiration of thirty days after the date of such renewal payment; nor shall the acceptance of an overdue premium or premiums constitute a waiver of the requirement that all renewal premiums be paid in advance as specified in this contract.

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30

The Company shall have the right and opportunity to examine the person of the Insured in the event of injury or illness when and so often as it requires; and in case of death, it shall also have the right and opportunity to make an autopsy. Refusal to permit such examination or autopsy shall invalidate any and all claims hereunder. The consent of the Beneficiary shall not be requisite to a surrender of this policy or to a change of Bene-

40

ficiary. The issuance of this policy cancels all policies of prior date carried by the Company on the Insured.

This policy will not be continued after the Insured reaches 70 years of age and the Company may cancel this policy at any time, without prejudice to the rights of the Insured to any claim then pending, by written notice of cancellation served upon or mailed to the address of the Insured as it appears of record with the Company, together with the unearned portion, if any, of the premium paid, and the Company's check shall be sufficient tender.

The Company will not be liable for Indemnity for loss or disability in excess of the period the Insured is by reason of injury or illness, under the professional care and regular attendance of a legally qualified physician or surgeon. If the Insured is disabled by injury or illness for more than thirty days, he or his representative shall, as a condition precedent to recover hereunder, furnish the Company, every thirty days, a report in writing from his attending physician or surgeon, fully stating the condition of the Insured and the probable duration of his disability.

The Company may, at its option, deduct from any sum payable under Section 1, 2, or 6 one monthly premium for each Ten Dollars ($10.00) of indemnity, to be applied as advance premiums.

The premiums hereon must be paid either at the Home Office of the Company, Philadelphia, or to a person designated in writing by an officer of the Company to receive them, and if paid to any other person, such payments shall not be binding on the Company.

Exhibit P-1.

Notice given to or knowledge acquired by any agent shall not be held to effect a change or waiver of any of the provisions, conditions or limitations of this policy. An agent has no authority to change this policy or to waive any of its provisions, conditions or limitations.

No assignment or change of this policy or waiver of any of its provisions, conditions or limitations shall be valid unless agreed to in writing by the President or Secretary of the Company and endorsed hereon. 10

In Witness Whereof, The said Company has, by its President and Secretary, executed this contract at Philadelphia, Pa., this 1st day of December, 1909, but the same shall not be binding on the Company until countersigned by its authorized Registrar. 20

D. E. STEVENS, President.
E. S. COOK, Secretary.

Countersigned and issued at the Home Office of the Company in Philadelphia, Pa., at 12 o'clock noon, standard time, the day and year last above written.

L. D. SLACK,
Registrar. 30

SCHEDULE

Of Statements, Agreements and Warranties referred to herein and made a part of this Policy.

I hereby apply for a policy of insurance in the Commonwealth Casualty Company, of Philadelphia, Pa., to be based upon the following state- 40

Exhibit P-1.

ments, all of which I warrant to be complete and true, and I agree, if any of the said statements are untrue, or if I fail to fulfill any agreements made then, in either case, said policy and insurance shall be null and void.

1.—My age, nearest birthday, is 45 years. (a) Weight, 138 lbs. (b) Height, 5 feet 8 inches. Race, White.

10

2.—My residence and P. O. Address where all notices are to be sent is, P. O. Box or Street and No. Park Place. City or Town, Morristown, State, N. J.

3.—My occupations are (name them all). Bookseller & Stationer. Classed by the Company as A.

4.—My duties in above occupations are only, Manager Office — Traveling only.

20

5.—I am member of The firm.
and the business conducted is Legitimate Books & Stationery.

6.—I apply for a Excelsior Provident Policy.

7.—If during the life of this policy I take other insurance, I agree to, at once, report such fact to this Company.

8.—In case of death by accident my beneficiary shall be, Full name, Addis S. Runyon; Relationship, Wife; Residence, Morristown, N. J.

30

Beneficiary changed; see endorsement.

9.—I have never been insured in this Company except under Policy No. 55908, which lapsed about Sept. 1909.

10.—I am not insured in any other Company, Association or Society, paying accident or sick benefits except as herein stated.
My monthly income exceeds $......

40

11.—No application ever made by me for insur-

Exhibit P-1.

ance of any kind has been declined, nor any such policy of insurance cancelled or renewal fused by any Company, Association or Society, except as herein stated.

12.—(a) My habits of life are correct and temperate: Yes. (b) I have not in contemplation any special journey or hazardous undertaking. (c) I have never been ruptured or otherwise injured, nor suffered the loss of a limb or the sight of either eye. (d) My hearing or vision are not impaired. (e) I have not had any medical or surgical treatment during the past five years, except as herein stated: No. 10

13.—I am not subject to, do not now have, nor have I ever had, fits of any kind, vertigo, hernia, nor any disease or infirmity, mental, physical, nervous, veneral, chronic, or inherited, except as herein stated. No. 20

14.—I have not been disabled by accident or illness during the past five years to exceed, in the aggregate, weeks, nor have I received more than $ as indemnity for same during that period. I have been successfully vaccinated. Yes.

15.—I understand and agree, (1) that if I contract illness or am injured, fatally or otherwise, after having changed my occupation to one classified by this Company as more hazardous than that herein stated, or if I am injured while doing any act or thing pertaining to any occupation so classified, the liability of the Company shall be only for such proportion of the principal sum or other indemnity as the premium paid by me will purchase at the rates fixed by this Company for such hazardous occupation; (2) that the insurance shall not exceed the amount 30 40

of my average wages, or money value of my time; (3) I expressly waive, on behalf of myself or of any other person who shall have or claim any interest in any policy issued hereon, all provisions of law forbidding any physician or other persons who have attended or examined me, or who may have hereafter attend or examine me, from disclosing any knowledge or information which he thereby acquired.

10

16.—I understand and agree that the insurance is not effective until the policy has actually been issued by the Company, and that the Company is not bound by any knowledge of or statements made by or to any agent unless written hereon. I further agree to accept the policy subject to all its conditions, and pay the monthly premiums of $2. in advance, without notice.

20

17.—The principal sum of Policy applied for is $600.

18.—The monthly indemnity total disability for Accident is $60. For Sickness is $60.

19.—The date of this Policy is December 1st, 1909.

20.—I have paid in advance in addition to Policy Fee $...... for............

21.—I will pay on delivery of Policy in addition to Policy Fee $2. for one Month.

30

(Signed) J. FRED. RUNYON,

(Referred to in Policy as the Insured).

Beneficiary changed Feb. 21, 1913.
From Addis S. Runyon, Wife,
To Gertrude L. Runyon
Relationship, Wife
Residence, Morristown, N. J.
Approved E. S. Cook, Secretary.

40

Exhibit P-1.

Endorsed:

No. 57505

Commonwealth Casualty Company
Excelsior (Provident) Policy

Issued to
J. Fred Runyon.

10

Notice

Premiums must be paid either at the Home Office of the Company or to such person as may be designated by the Company in writing to receive them. Payments made to any other person shall not be binding on the Company.

In case of death by accident or disability by accident or illness, *Written Notice* thereof containing full particulars must be given within 10 days direct to the

20

Commonwealth Casualty Company
Philadelphia, Pa.

Notice to anyone else is not notice to the Company.

30

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Exhibit P-2.

I certify that this is a true copy of the death certificate of the late James Fred Runyon.

(F. G. de Camp, Registrar (Seal)
Roxbury Township)

State Department of Health—Bureau of Vital Statistics.

10

1 Place of Death
County: Morris. State: New Jersey.
Township: Roxbury Twp.
City: Succasunna.

2 Full Name: James Fred Runyon

3 Residence. No. Main St.

Personal and Statistical Particulars

20 4 Sex: M

5 Color or Race: W.

6 Single, Married, Widowed or Divorced: Married

7 If married, widowed or divorced. Husband of Gertrude Dixon

8 Date of Birth: April 14, 1864

9 Age: 64 years; 10 months; 19 days.

10 Occupation of Deceased (a) Trade, profession or particular kind of work: Retired

30 (b) General nature of industry, business, or establishment in which employed (or employer): Stationery

11 Birthplace: Morristown, New Jersey

Parents:

12 Name of Father: John R. Runyon

13 Birthplace of Father: New Jersey

14 Maiden name of Mother: Emma Crowell

13 (a) Birthplace of Mother: New Jersey

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Exhibit P-2.

15 Signature of Informant: Mrs. Andrew Lec, Succasunna, N. J.

16 Filed Mar. 6, 1929. F. G. de Camp, Registrar.

Medical Certificate of Death

17 Date of Death: March 5th, 1929 10

18 I hereby certify that I attended deceased from Jan. 28, 1929, to Mar. 5, 1929, that I last saw him alive on Mar. 4th, 1929, and that death occurred on date stated above, as 5 A. M. The cause of death was as follows: Fractured left hip from slipping on ice

(Duration) 1 mos. 7 ds.

Contributory: Paralysis Agitonis

(Duration) 11 yrs. 20

19 Where was disease contracted if not at place of death?........

(Signed) C. A. Plume, M. D.

(Address) Succasunna, N. J.

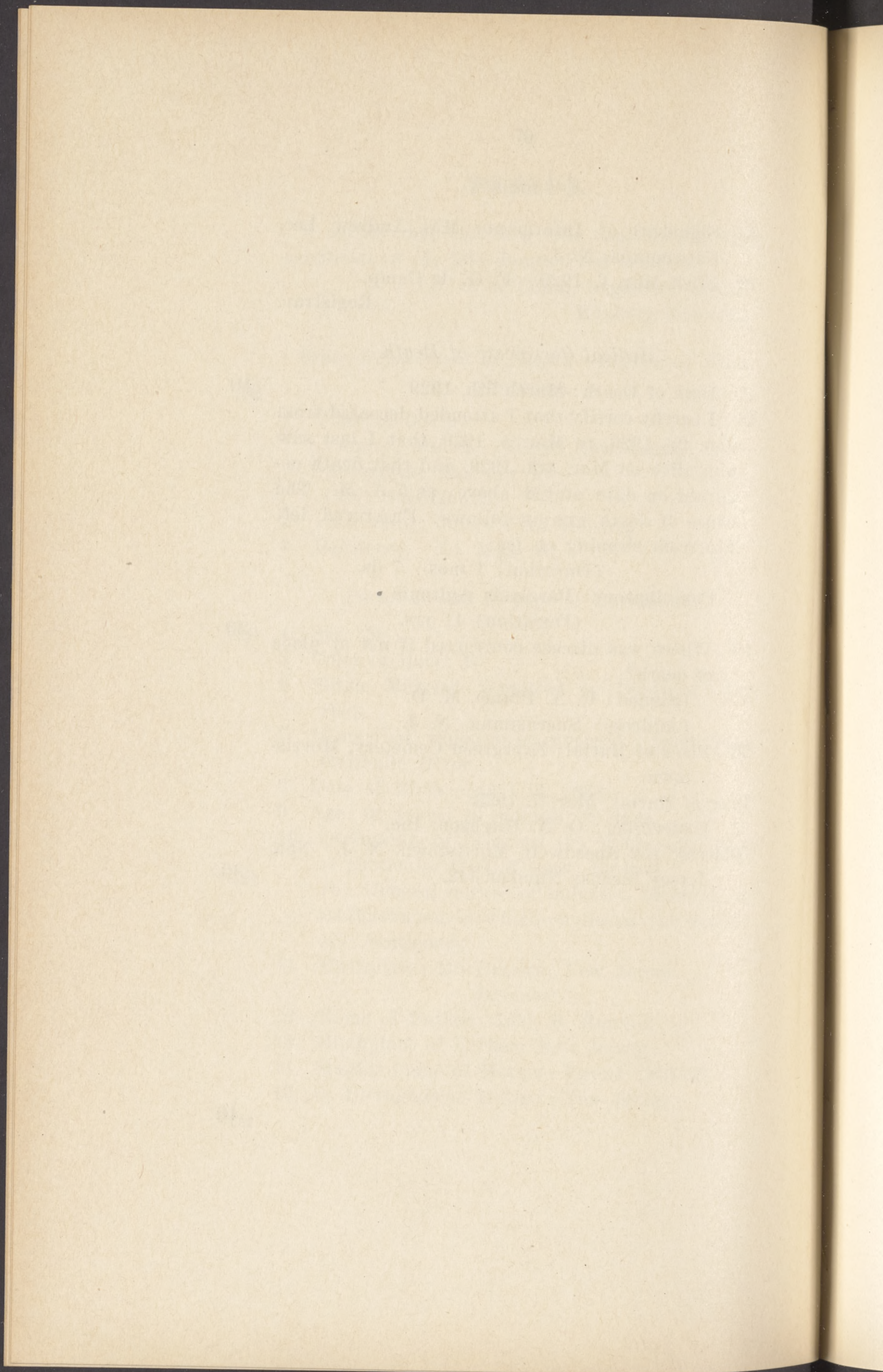
20 Place of Burial: Evergreen Cemetery, Morristown.

Date of Burial: Mar. 7, 1929.

21 Undertaker: O. N. Hughson, Inc.

Address: 150 Speedwell, Morristown, N. J. New Jersey License Number 442. 30

40



Opinion.

Filed April 27, 1931.

NEW JERSEY SUPREME COURT.

No. 107. October Term, 1930.

Submitted October , 1930; decided April , 1931.

Gertrude L. Runyon,
Plaintiff-Respondent,

vs.

Commonwealth Casualty Company, (a corporation),
Defendant-Appellant.

10

On appeal from Morris County Court of Common Pleas.

20

Before Justices Case, Daly and Donges.

For plaintiff-respondent, Leon E. Cone.

For defendant-appellant, Elmer W. Romine.

Per Curiam:

The action was to recover the amount of an accident insurance policy covering J. Fred Runyon and payable to the plaintiff as beneficiary. The policy insured "against the effects of bodily injuries or death, caused directly and independently of all other causes by external, violent and purely accidental means, which bodily injuries or their effects shall not be caused wholly or in part, directly or indirectly, by any bodily or mental disease, defect or infirmity, and which shall result in immediate and continuous disability or death * * *". Mr. Runyon fell on the ice January 28, 1929, suf-

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fered a broken hip and died March 5, 1929. The certificate of death, which, while evidential, was not conclusive, stated: "The cause of death was as follows: Fractured left hip from slipping on ice; duration 1 month 7 days; Contributory; Paralysis agitanis, duration 11 years".

10 The first point presented on appellant's brief is the refusal of the court to grant a non-suit or direct a verdict in favor of defendant, and the gist of the argument is that the death did not result from accident without intervening or contributory causes and specifically that paralysis agitanis was contributory to the death.

There is testimony from which the jury could have found that paralysis agitanis was, with Mr. Runyon, an incurable malady which would have 20 remained with him throughout his life but would not cause death; that the presence of the ailment had, at the time of the accident, lessened the resisting power of the body; that the injury of the broken hip was the proximate cause of death and that the paralysis did not contribute to the death in any way save that when the injury came the powers of bodily resistance had been somewhat reduced; that the paralysis did not aggravate or agitate the in- 30 jury; that the injury did not increase the paralysis; that although the paralysis continued it did not, after the accident, participate in any of the physical manifestations or experiences that caused death; that persons past sixty years of age who meet with a fractured hip ordinarily die therefrom; that the assured was sixty-five years of age; that the age and constitution of the assured were such that, had he not been afflicted with paralysis agitanis, he might have died from the accident; that 40 the assured had been afflicted with that ailment for

many years and that the defendant, inasmuch as the policy was one of annual renewal, had insured him while so afflicted. There was neither allegation nor proof of concealment, misrepresentation or other fraud in obtaining the policy; nor is there any evidence that the injury was caused by the paralysis. 10

With the case in such a posture the jury could have found that the only contribution of the paralysis to the dath was a reduction in the power of the body at the time of the fracture to resist the shock thereof. On the assumption that the facts should be so found, we have the situation that the company from year to year renewed its policy of insurance, covering a man whose vitality was impaired by disease and accepted from him, annually, the policy premium. During the life of the policy 20 the assured was injured and died as a result of the injury. His death was not the culmination of two parallel or participating causes, of which disease was one and accident was the other; nor was it the result of one of these accentuated or made more acute by the other. It was the direct result of the accident, which might not have been fatal had not the bodily vitality been impaired. The accident caught him as he was and laid him low. Against 30 that we think he was insured; otherwise there could be no recovery in any case of death by accident where the victim, had he been possessed of perfect health, might have successfully combated the ravaging ills that follow immediately in the wake of physical crash.

Our conclusion is that there was a fact question, namely, whether the paralysis agitanis was in truth contributory to death, which was properly left to the jury. 40

Appellant next argues that the verdict was against the weight of the evidence. That, however, will not be considered on appeal. Ratz vs. Hillside Bus Owners' Association, 103 N. J. L. 502.

Appellant's final point is that the charging by the court of certain of plaintiff's requests was er-
10 ror. Before charging these requests the court had instructed the jury that if they believed "that the paralysis agitanis did contribute to the death", the verdict should be in favor of the defendant. There could scarcely have been any doubt in the jurors' minds on that proposition. The second and fourth requests, we think, were intended to convey and did convey to the jurors' minds the general principle, enunciated above, that an earlier ailment, that at the time of the accident had lowered the insur-
20 ed's power of bodily resistance but had in no other way entered as a factor, did not thereby necessarily bar a recovery if the accident was actually the cause of death. The fifth request was an instruction that the jury were not to ascertain whether the accident would have happened if the insured's age, health or temperament had been otherwise than the fact was; and that proposition, under the proofs, was sound. There was no evidence to sus-
30 tain a finding to the effect that, had the insured been other than he was, there would have been no accident.

The judgment below will be affirmed, with costs.

40

Order of Affirmance.

NEW JERSEY SUPREME COURT.

OCTOBER TERM, 1930.

GERTRUDE L. RUNYON, Plaintiff-Respondent, vs. COMMONWEALTH CASUALTY COMPANY, (a corporation), Defendant-Appellant.	On Appeal. Order of Affirmance.

10

This cause having been duly argued at the October Term, 1930 of this Court on brief, and the Court having considered the same and found no error in the record or proceedings below:

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It is thereupon ORDERED AND ADJUDGED that the judgment of the Morris Common Pleas Court, be in all things affirmed with costs, and the record remitted to the Court below to be proceeded with according to law and the practice of said Court.

Entered April 30, 1931.

On motion of

LEON E. CONE,

Attorney for Plaintiff-Respondent.

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40

Notice of Appeal to New Jersey Court of Errors and Appeals.

NEW JERSEY SUPREME COURT.

GERTRUDE L. RUNYON, Plaintiff-Appellee, vs. COMMONWEALTH CASUALTY COMPANY, (a corporation), Defendant-Appellant.	Action at Law. Notice of Appeal.

10

To GERTRUDE L. RUNYON or LEON E. CONE, her Attorney:

20

Take Notice that the defendant-appellant Commonwealth Casualty Company (a corporation) appeals to the New Jersey Court of Errors and Appeals from the whole of the judgment entered in the New Jersey Supreme Court in the above entitled cause on the ground that the Supreme Court of New Jersey erred in sustaining the judgment of the Morris Common Pleas Court in favor of the Plaintiff-Appellee instead of deciding in favor of Commonwealth Casualty Company, Defendant-Appellant.

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Dated May 11, 1931.

ELMER W. ROMINE,
Attorney for Defendant-Appellant
Commonwealth Casualty Company.

Service of within Notice acknowledged this 13th day of May A. D., 1931.

40

LEON E. CONE,
Attorney for Plaintiff-Appellee.

Recognizance.

NEW JERSEY SUPREME COURT.

Gertrude L. Runyon, Plaintiff-Appellee, vs. Commonwealth Casualty Company, (a corporation), Defendant-Appellant.	Action at Law. On Appeal. Recognizance.

10

Know all Men by These Presents that we Commonwealth Casualty Company, a corporation organized under the laws of Pennsylvania, and Fidelity & Deposit Company of Maryland, a corporation of the State of Maryland, recognized by the laws of New Jersey, jointly and severally, for ourselves and our respective successors, acknowledge ourselves to owe unto Gertrude L. Runyon in the sum of Twenty-five Hundred ($2500./00) Dollars, to be made and levied by the said Gertrude L. Runyon of our, and each of our, goods and chattels, lands, tenements, hereditaments and real estate to the use of the said Gertrude L. Runyon if failure be made in the following condition:

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Whereas, Gertrude L. Runyon recovered a judgment against the said Commonwealth Casualty Company in the Morris County Court of Common Pleas in the sum of Nine Hundred Sixty-nine Dollars and fifteen cents ($969.15) besides costs, and whereas the said judgment on appeal to the New Jersey Supreme Court was sustained with costs and said Commonwealth Casualty Company has

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appealed from the said judgment to the New Jersey Court of Errors and Appeals,

Now Therefore, the condition of this recognizance is such that if the said Commonwealth Casualty Company, appellant, shall prosecute the said appeal in the New Jersey Court of Errors and Appeals with effect, and also pay and satisfy (if the
10
said judgment be affirmed) all the damages and costs adjudged in the said judgment, and all costs and damages to awarded for delay of execution, then this recognizance to be void, else to remain in full force.

In Witness Whereof we have caused these presents to be executed and attested by our respective proper officers, and our respective corporate seals to be hereto affixed this 14th day of May, 1931.
20

Commonwealth Casualty Company,
W. Freeland Kendrick, President.
(Seal)

Attest: C. William Freed, Secretary.

Fidelity & Deposit Company of Maryland,
By Edward Hoopes (Seal)
Attorney in Fact.

Countersigned at DeLair, N. J,
this 15 day of May, 1931.
30
H. Mark Reeve, Agent.

State of Pennsylvania, }
County of Bucks, } ss.:

Be it Remembered that on this Fourteenth day of May, 1931, before me, the subscriber, a Notary Public in and for the Commonwealth of Pennsylvania, residing in the Borough of Quakertown, personally appeared C. William Freed, who, being
40
duly sworn, on his oath said that he is the Secre-

tary of Commonwealth Casualty Company; that the said corporation is duly incorporated under the laws of Pennsylvania, that W. Freeland Kendrick was at the time of the signing of the foregoing recognizance a President of the said Company; that deponent well knows the corporate seal of the said company, and that the seal first affixed to the said recognizance is the corporate seal of the said company, and was so affixed by authority of the Board of Directors of the said company; that the said recognizance was signed by the said C. William Freed, by authority given to him by the said Board of Directors, and that the said recognizance was signed and sealed in the presence of deponent, whereupon deponent affixed his name thereto as a subscribing witness.

C. WILLIAM FREED.

Affirmed and subscribed to before
me this Fourteenth day of May,
A. D. 1931.
Anna M. Saul,
(Seal) Notary Public.
My commission expires March 9, 1935.

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State of Pennsylvania, } ss.:
County of Phila. }

Be it Remembered that on this 15th day of May, A. D. 1931, before me the subscriber, a Notary Public in and for the Commonwealth of Pennsylvania, personally appeared Edward Hoopes, who being
10 sworn on his oath saith that he is the Attorney in Fact of Fidelity & Deposit Company of Maryland, that the said corporation is organized under the Laws of Maryland; that said Edward Hoopes was, at the time of the signing of the foregoing recognizance, the Attorney in Fact of the said Corporation of Delaware; that the seal secondly affixed to the said recognizance is the corporate seal of the said Corporation, and was so affixed by the authority of the Board of Directors of the said Cor-
20 poration; that the said recognizance was signed by the said Edward Hoopes by authority given to him by the said Directors, and that such recognizance was signed and sealed in the presence of deponent whereupon deponent affixed his name thereto as a subscribing witness.

EDWARD HOOPES.

Affirmed and subscribed to before
me this 15 day of May, A. D.
30 1931.
Anna M. Stuart,
(Seal) Notary Public.
My Commission expires February 19, 1933.

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31 FEB.11.1932

New Jersey Court of Errors and Appeals

GERTRUDE L. RUNYON, Plaintiff-Appellee, vs. COMMONWEALTH CASUALTY COMPANY, (a corporation), Defendant-Appellant.	On Appeal from Supreme Court.

BRIEF FOR DEFENDANT-APPELLANT.

Preliminary Statement.

The above case was originally tried in the Morris Common Pleas Court and resulted in a verdict in favor of the plaintiff for $900. (Printed case, p. 10) which was sustained on appeal by the Supreme Court.

The suit was to recover the amount of an insurance policy covering J. Fred Runyon, which policy provided for payment only in the event of death or bodily injuries *"caused directly and independently of all other causes by external, violent and purely accidental means, which bodily injuries or their effects shall not be caused wholly or in part, directly or indirectly by any bodily or mental disease, defect or infirmity"* (Ex. P-1, p. 49, lines 26 to 33).

The death of assured J. Fred Runyon did not result from accidental injuries but from other causes which combined, resulted in death and for

that reason under the limitations of the policy as a matter of law there can be no recovery.

Motions to non-suit (pp. 32 and 33) and to direct a verdict (p. 39) were refused and exception taken.

There was also error in the Courts charge.

Facts.

The policy sued upon was issued by defendant company to J. Fred Runyon, January 15, 1910 (p. 49, l. 20). It was solely an *accident and health policy.* The beneficiary under the policy was changed, February 21, 1913 to Gertrude L. Runyon (p. 64, l. 38) the plaintiff herein.

The terms of the policy respecting payment in case of death was limited as quoted above. (p. 49, ll. 26 to 33).

It appears that J. Fred Runyon assured, was for a number of years prior to his death suffering from a disease known as "Paralysis Agitans" which condition was unknown to defendant company.

It was claimed that on January 28th, 1929 he suffered a fall resulting in a broken hip and was confined to bed. *Death occurred March 5, 1929 not directly from the injuries but from paralysis agitans combined with pneumonia.*

In the certificate of death (Ex. P-2, p. 66 at p. 67, line 18) the attending physician certified that *"Paralysis Agitans" was contributory to death.*

Dr. Plume, the physician attending J. Fred Runyon, the assured in the policy, testified at the trial on behalf of the plaintiff (p. 23) that Mr. Runyon became weaker, developed hypostatic pneumonia and his whole system gave out and that *paralysis abitans working in conjunction with the injury caused death.*

He further stated that persons did not ordinarily

die from a fractured hip neither did they die from paralysis agitans.

Dr. Dowd a specialist in Nervous and Mental Diseases (p. 33) having treated cases of paralysis agitans in persons suffering fractures stated (p. 35, line 4) that paralysis agitans and the injury (that is the fractured hip in this case) affect each other and that death resulted from their co-existing (p. 35, line 8). The Doctor further testified (p. 36) that the disease of "paralysis agitans" would retard union and aggravate the injury; that ordinarily a person of Mr. Runyon's age would not die of a fractured hip. (p. 37, line 20) usually they die from some contributory cause (p. 37, line 30).

Points for Discussion.

1. There should have been a non-suit or direction of verdict in favor of the defendant.

2. The trial Court committed error in its charge.

3. The Supreme Court erroneously sustained the findings of the trial Court.

ARGUMENT.

1.

There should have been a non-suit or direction of verdict in favor of defendant.

Appellants motion for non-suit (p. 32) as relates to plaintiff's proof under the policy was as follows:

> "Under the terms of the policy if there is an accident, death must result by external, violent and purely accidental means, independently of all other causes, *directly or indirectly.* The testimony of Doctor Plume is that the paralysis agitans, coupled with the fracture of the hip, in concert with one another tended to and did produce the death. Under the case which I have cited to your Honor, a Federal case which is a decision directly in point on the same kind of policy, it was held that there could be no recovery, because, if one aggravates the other, if the disease aggravate the injury or the injury aggravates the disease, or both together result in death, it cannot be a death as a result of purely accidental means". (Italics ours)

The trial Court in denying the motion said:

> "It seems to me that it becomes largely a question for the jury to decide whether or not this break of the hip was sufficient to come within the terms of the policy or whether or not the paralysis agitans, which he did have was also a contributing cause."

The appellant submits in view of the admitted testimony on the part of the plaintiff that the trial

Judge was in error in refusing to grant the motion. There was no positive testimony that J. Fred Runyon died from accidental injuries, in fact Dr. Plume admitted Mr. Runyon could have recovered from the injury were it not for the other complications. The death certificate as made out by Dr. Plume the attending physician, certified that paralysis agitans was a contributing cause of death, he also developed pneumonia some three months after the accident. Dr. Plume's concluding testimony (p. 25, lines 4 to 6) clearly indicated that death resulted from the combined forces of the injury and a disease. It was therefore a matter of law for the Court not a question of fact. The plaintiff's testimony was that *paralysis agitans was contributory.* It was therefore not necessary to leave that question for the jury to decide. It had already been decided by the testimony and plaintiff was bound thereby.

Further it was incumbent on the plaintiff to prove, in order to recover or create a jury question, that death resulted from accidental injury, independent of all other causes, either directly or indirectly. *This plaintiff did not do.*

In Houston v. Traphagen, reported in 47 N. J. L. p. 23, our Appellate Court held:

> "It should appear in order to recover damages for the results of a disease not only that the injury was a possible cause, *but other causes should be excluded.* (Italics ours)

In the case of Order of United Commercial Travelers vs. Nicholson (Fed. 2nd Ed. p. 7) the Court held:

> "The disease certainly contributed in some degree to cause death. *There was no evidence that death had been solely the result of the accident,* not contributed to by the

> disease. Even had the fall caused shock, shock caused pneumonia the case would not have come within the provisions of the policy contract". (Italics ours)

The complaint in the case at bar charges (p. 3, lines 15 to 18) "said death was caused directly and independently of all other causes by external violent and purely accidental means." The plaintiff in preparing the case realized in order to recover under the policy that death must result from accident independent of all other causes. Plaintiff's proof however did not sustain the allegations of the complaint.

In Kinney v. Delaware R. Co., 87, N. J. L. p. 505, the Court held that where the issues are on uncontroverted proof the question is for the Court and not the jury.

The law governing recovery in this case has been laid down repeatedly by the Courts of this Country. In Smith v. Federal Life Insurance Co., 6 Fed. 2nd Ed. p. 283 (a comparatively recent case) the Court said:

> "Where the insured at the time he received the injury is suffering from a disease or defect, *which acting with the injury as a contributing factor, brings about death,* or when such existing disease or defect, aggravates the effect of the injury or the injury aggravates the effect of the disease *and both acting together cause death, the injury is not the sole cause of death."* (Italics ours)

Citing

Maryland Casualty Co. v. Morrow, 213 Fed. p. 599, 130 C. C. A. 179, 52 L. R. A. (N. S.) 1213; Aetna Life Ins. Co. v. Ryan, 255 Fed. 486, 166 C. C. A. 559; Hubbard v. Mutual Acc., 98 Fed. 930: New Amsterdam Casualty Co. v. Shields, 85 C. C. A. 122, 155 Fed. 54; Illinois Commercial Mens

Ass'n. v. Parks, 103 C. C. A. 286, 179 Fed. 794; Bender v. Nat. Mass. Acc. Ass'n. 127 Iowa 25, 102 N. W. p. 190; Stanton v. Travelers Ins. Co., 83 Conn. 708, 78 Atl. p. 317, 34 L. R. A. (N. S.) 445; Kearns v. Aetna Life Ins. Co. 291 Fed. 289, Maryland Cas. Co. v. Glass, 29 Tex. Civ. App. 159, 67 S. W. 1063; Travelers Ins. Co. v. McConkey, 127 U. S. 661 Travelers Ins. Co. v. Harris (Tex. Court App.) 212 S. W. p. 933.

Also in the case of Order of United Commercial Travelers of America v. Nicholson, et als, 9 Fed. (2nd Ed.) p. 7, the Court held:

> "There is no doubt that the burden rested on the plaintiffs to satisfy the jury by a preponderance of proof that Lewis Ostrander came to his death as the result of bodily injuries effected solely by the accident alone and independent of all other causes and that it was not contributed to by disease in any degree."
>
> Citing Travelers Ins. Co. v. McConkey, 127 U. S. p. 661.

Concluding, the Court said:

> "*There is no right of recovery under the contract sued upon if disease contributed in any degree to cause death.* A verdict and judgment obtained in entire disregard of the expressions of the contract". (Italics ours)

The contract of insurance in this case was piain, the meaning is clear, the terms cannot be altered or changed and the beneficiary is bound thereby.

In 32 Corpus Juris, Vol. 32, p. 1091, it is stated that "a contract of Insurance is self evidently a contract by which Insurance is effected and accordingly the nature of Insurance as a legal con-

ception determines the general nature of the contract. * * * Being a voluntary contract *the parties may make it on such terms and incorporate such provisions and conditions as they see fit to adopt and the contract as made measures their rights.*

Justice Trenchard speaking for the Supreme Court in Excello Clothing Co. v. Marquette & Co., 98 N. J. L. p. 327, said, "The law will not make a better contract for the parties than they themselves have seen fit to enter into or alter it for the benefit of one party to the detriment of the other."

There was no dispute about the proof. Both the testifying physicians agreed that death did not result solely from the accident but that a combination of prior disease and injury produced death. Therefore under the law it was the plain duty of the trial Court to construe the contract of Insurance and guided by the universal decisions upon such contracts there could be no other course but direct a non-suit or verdict for defendant.

The Supreme Court however in sustaining the ruling of the trial Court said:

> "Our conclusion is that there was a fact question namely, whether the paralysis agitans was in truth contributory to death, which was properly left to the jury".

It is submitted the Supreme Court evidently misconceived the proofs. The death certificate put in evidence by the plaintiff clearly indicated that paralysis agitans was contributory. All the proofs were to the effect that death resulted from a combination of disease and injury. *There was no proof or evidence that death resulted solely from accident.*

It is inconceivable therefore with these admissions how a jury question could be raised to decide that which was definitely proved by the evidence.

The Supreme Court further intimated in its opinion that the defendant company continued the policy in force for a number of years while assured was so afflicted with paralysis agitans. *There was no proof that the defendant company knew of this condition.* On the other hand the assured knew of his condition and knew that by reason of such it would make him susceptible to fall or injury yet he continued to keep the policy in force by paying the premiums thereby taking the chance of his beneficiary recovering if such a contingency should arise as did in this case.

The Supreme Court further suggested in dealing with the propriety of the trial Court's ruling that there is not "any evidence that the injury was caused by the paralysis." (p. 71). The defense endeavored to bring out both by cross-examination of plaintiff's physician (p. 21, line 10) and Dr. Dowd that a person suffering from paralysis agitans would be more susceptible to falling on the ice but this line of examination was ruled out to which exception was taken. The appellant feels that under the wording of the policy such a question was proper because if the injury was caused other than by purely accidental means the resulting death would not be compensable.

The Supreme Court also said in disposing of this point adverse to appellant (p. 71):

> "His death was not the culmination of two parallel or participating causes, of which disease was one and accident was the other; *nor was it the result of one of these accentuated or made more acute by the other.* It was the direct result of the accident which might not have been fatal had not the bodliy vitality been impaired." (Italics ours)

We fail to see how the Supreme Court could arrive at this conclusion in view of the evidence.

There was no proof that "it was the direct result of the accident" and to the contrary of the conclusion of the Supreme Court, *death according to the undisputed evidence was the result of one of the conditions made more acute by the other.*

Dr. Plume plaintiff's own witness in answer to the question (p. 24, line 31) as to what caused death, said:

> "That is only a matter of opinion. There is no way of telling what a man died from. You may have a fracture of the leg today and die of pneumonia tomorrow."

The following question and answer directed to plaintiff's physician certainly removes all doubt and indicates that it was combined forces of both injury and paralysis agitans which caused death. (p. 24, line 14; p. 25, lines 4 to 7).

> "Q. In this particular case Mr. Runyon having suffered from paralysis agitans and having his injury, *did not the two, working in conjunction with one another, tend to cause the death?*
>
> A. *Yes I think I can say it would.* (Italics ours)

The death certificate made out by the same physician also states definitely that "paralysis agitans" was contributory to death.

The proofs are therefore contrary to the conclusions reached by the Trial Judge as well the Supreme Court.

A number of cases were cited on behalf of plaintiff-appellee in the argument before the Supreme Court. An examination of these cases indicates they have no analogy or bearing on the question before the Court. Reference to such cases will be taken up in the order as cited.

In Prader v. National, 63 N. W. p. 601, the policy provided against recovery while injured in violation of law. Claim was made that insured was intoxicated and that injury was on a Sunday. There being a dispute as to the alleged intoxication the question was properly submitted and the finding according to the evidence of plaintiff sustained that the injury caused the death. *There was no dispute to be submitted in the case at bar.*

Again in Freeman v. Mercantile, 30 N. E. p. 1013, the form of the policy was not the same as in the instant case. The proof there was that peritonitis was induced or caused by the fall or injury and therefore it was properly held that the accident was the efficient cause.

In the present case under review there was no claim that the injury caused paralysis agitans causing death so this case is not applicable.

In Juroch v. Travelers, 108 N. W. p. 728 the disease developed subsequently to the injury and it was held that the injury caused the condition. Quite a different situation from that presented in the instant case.

In Fetter v. Fidelity, 73 S. W. p. 592, setting up that a cancerous kidney was ruptured by blow causing death. In this case the accidental injury was proven to be the proximate cause. But that is not the situation in the case at bar.

Further in Continental v. Colvin, 95 Oac. p. 565, while other conditions were set in motion it was held under the proof that the accidental injury was the efficient and predominating cause. In this case other conditions were set in motion but the proof was positive that the accident caused death. That was not the state of the proof in the case here under review.

In the case of French v. N. Y. Fidelity, 115 N. W. p. 869, it appeared that the injury to the leg

set in motion an infection from which death resulted and the Court very properly held that death was the result of the accident as the injury and infection was so co-related that injury was the producing cause. In the case at bar the injury would not ordinarily cause death. The injury did not set in motion paralysis agitans. Such existed before but the two acting in concert, combined, each just as effective as the other no one being able to determine which was the greater force caused death. *Accident alone did not produce the death.*

None of the cases referred to by plaintiff-appellee on argument before the Supreme Court are in point. In all the cases referred to there was proof on the part of plaintiff that death resulted from the accidental injury and not from other causes.

We can well adopt the rule referred to by plaintiff-appellee in Continental v. Lloyd, 73 N. E. p. 828, that the law does not seek or consider the cause or causes beyond the efficient predominating cause.

Had the plaintiff in the case before this Court proven that the efficient predominating cause of death was the accidental injury and excluded paralysis agitans they would have made out a case under the decisions cited and that was the purport of the ruling in Licklealer v. Iowa, 66 N. W. p. 363, and Kangas v. N. Y. Life, 193, N. W. p. 867, cases cited by plaintiff appellee to justify the action of the trial Court.

It is therefore most respectfully submitted that under the law and the evidence the trial Court should have granted the non-suit or directed verdict for defendant and for which error as well the action of the Supreme Court in sustaining the trial Court, the verdict should be set aside.

2.

The trial Court committed error in its charge.

After charging defendants requests (p. 43, lines 29 to p. 44, lines 30) which in effect were that under the policy of Insurance, in order to recover, the jury must be satisfied by a preponderance of the evidence that death resulted solely from accident, independent of all other causes and that if the disease aggravated the injury or the injury aggravated the disease or both acting together produced death, plaintiff could not recover, the Trial Court then proceeded to charge certain requests of plaintiff which were inconsistent and contrary thereto, and not the law of the case.

The charges as made at request of plaintiff to which objection was made, are as follows (p. 44, line 40):

> "(2) *The fact that a previous weakness or infirmity caused this accident to prove fatal* where it otherwise would not have produced such results, *is not a bar to recovery on the part of the plaintiff.*
>
> 4. If you find that Fred Runyon suffered an accident which produced an injury which might naturally have produced death in a person of his age, temperament *and state of health,* you are to bring in a verdict in favor of the plaintiff, even if Fred Runyon would have died if his temperament or previous health had been different." (Italics ours)

The charging of these requests were misleading. The Trial Court had previously correctly charged that if the disease aggravated the injury or the injury aggravated the disease or both acting to-

gether produced death *the plaintiff could not recover.* In other words the Trial Court had made a clear cut statement to the jury that if there had been any previous weakness or infirmity which standing alone or combining with the injury caused death there could be no recovery yet nevertheless following that statement to the jury the Trial Court proceeded to charge requests Nos. 2 and 4 on behalf of the plaintiff which nullified the preceeding statement. The charging of these requests was prejudicial error. Such latter charges was in effect an authorization for the jury to find for the plaintiff as it excluded from their consideration the right to include or find (if the case was properly left with the jury) whether any other factor, disease or ailment caused or contributed to assured's death.

In Baker v. North Jersey St. Ry. Co., 77 N. J. L. 336 it was held that an instruction calculated to mislead the jury and prejudice the objecting party is cause for reversal.

To charge first that if death resulted from the combined forces of disease and injury and then to submit to the jury the plaintiff's requests couched in such language as to intimate *that if a previous weakness or infirmity caused the accident to prove fatal it was not a bar to recovery* left the jury without any positive statement as to what the law was governing the case, and with two propositions to choose from one which might be right and the other wrong was error. How therefore was the jury to know which was correct.

In Brown v. Public Service Railway Co., 98 N. J. L. p. 747, at page 754, the Court of Errors and Appeals held that,

> "The case falls within the rule that where two distinct propositions are charged, one

correct and the other erroneous, the jury cannot decide which is right, and there is consequently reversible error in the record.

Again in State v. Clayton, 83 N. J. L. p. 673, at page 675, where an erroneous instruction was in question, the Court of Errors and Appeals said:

> "It is argued that this error was harmless because in the body of the charge the degree of murder had been accurately defined. So they had, *but how were the jury to know which was the law?* Our theory of jury trials proceeds upon the fundamental assumption that the trial will take the law from the Court, not that they shall be judges of its correctness or that as between two conflicting statements of the law they will unerringly single out the correct one." (Italics ours)

The following cases are also directly in point.

State v. Erie Railroad, 84 N. J. L. 661;
Niebel v. Winslow, 88 N. J. L. 191;
Collins v. Central Railroad Co., 90 N. J. L. 593;
State v. Sahazian, 98 N. J. L. 430;
State v. Albertalli, 112 Atl. 724 (not officially reported).

3.

The Supreme Court erroneously sustained the findings of the trial Court.

An analysis of the opinion of the Supreme Court indicates that the conclusions reached are not supported by the evidence as to which reference has already been made.

The Supreme Court in summing up the situation and in justifying the conclusions reached intimated that there could be no recovery under such an accident policy unless the Court construed the contract of insurance in the manner arrived at.

In this statement we do not agree. A person may have an accident which produces a fracture or internal injuries from which death might result and if no other factor, infirmity or disease intervenes but those which naturally flow from the injury itself, recovery could be had.

That was the intention in issuing such a policy of insurance, limiting recovery, as evidenced by the express language used.

What the company provided against, by the terms of the insurance policy was recovery in case of death *where some other ailment contributed directly or indirectly* with the accidental injury, and not caused by it, to produce death.

In other words the policy provided against any recovery in just such a case as it here presented in the instant case because were it otherwise then there never would be any limitation and the language used in the policy would be meaningless. As already indicated the parties are bound by the contract. The assured can gain no greater rights than were intended.

In conclusion it is urged that the judgment sustained in favor of the plaintiff should be set aside and reversed for the various reasons argued on behalf of defendant-appellant.

Respectfully submitted,

ELMER W. ROMINE,
Attorney and Counsel for
Defendant-Appellant.

31 FEB.T.1932

New Jersey Court of Errors and Appeals

GERTRUDE L. RUNYON, Plaintiff-Appellee, vs. COMMONWEALTH CASUALTY COMPANY, (a corporation), Defendant-Appellant.	On Appeal from Supreme Court.

BRIEF OF PLAINTIFF-APPELLEE.

Judgment was recovered by plaintiff in the Morris Common Pleas Court and sustained by The Supreme Court, on appeal, based on a policy of insurance covering accidental death. The evidence shows that the deceased died March 5, 1929; cause of death—"Fractured left hip from slipping on ice"—Contributory—"Paralysis Agitonis" (See State of Case, page 67, line 15, Exhibit P-2).

J. Fred Runyon, the assured, the holder of the policy, while walking slipped on an icy pavement at Succasunna, Morris County, New Jersey, and fractured his hip. He received medical attention but died one month and seven days after the accident at the age of 64 years, 10 months and 19 days (see Exhibit P-2, State of Case, page 66).

The diagnosis of a fracture was made by Dr. Plume by manipulation of leg, thigh, pulse, point of motion; intense pain in the hip, some crepitus or the rubbing of one piece of bone over the other and a marked rigidity of the muscles, and then an X-ray picture. (State of Case, page 17,

line 34). The shock of the accident brought on hypostatic pneumonia which brought on death (State of Case, page 20, line 3).

The contention of the defendant-appellant is that the paralysis agitanis was the cause of death or at least one of the causes of death, and it points to the death certificate wherein it lists it as a contributing cause.

Paralysis agitanis is not a fatal disease in itself (State of Case, page 19, line 25) (see also page 24, line 18). The defendant's own doctor, Ambrose S. Dowd, says that paralysis agitanis is not fatal. (See State of Case, page 37, line 28 to bottom of page). Dr. O'Dowd says that a man of the age and constitution of Mr. Runyon not suffering from the paralysis agitanis might have died from this accident. (State of Case, page 38, whole page, and page 39, lines 1 to 12).

Paralysis agitanis was not the cause of death (State of Case, page 20, line 28). It would not aggravate the injury caused by the accident (State of Case, page 21, line 25). On the contrary being in bed for a long period of time would have a beneficial effect on the paralysis agitanis (State of Case, page 22, line 35).

Fred Runyon would have developed hypostatic pneumonia from this fracture, even though he did not have the paralysis agitanis, the defendant admits. (See Dr. O'Dowds testimony, State of Case, page 38, line 1).

As a general proposition of law it is said in 1 C. J. 452, paragraph 127 "The tendency of the courts, under the settled rule of construction applicable to insurance contracts, is to interpret the clause in a manner favorable to the insured, and the insurer is accordingly held liable where the accident can be considered as the proximate cause of death,

although disease may have been present as a secondary cause, or where the death is the reasonable and natural consequence of the injury, although disease may have supervened, or where the accident is the true cause of death or injury and the disease but the occasion. So also if death results from the accident the fact that but for the weakness or infirmities induced by former illness or disease it would not have been fatal will not prevent a recovery."

In Prader vs. National, 63 N. W. 601 where a broken leg aggravated heart disease a recovery was permitted.

In Freeman v. Mercantile, 30 N. E. 1013, 17 L. R. A. 753 peritonitis caused by a fall was grounds for a recovery.

Burning of the feet in a fire and the subsequent development of diabetes therefrom was grounds for a recovery in Jiroch vs. Travellers, 108 N. W. 728.

A recovery was permitted in Fetter vs. Fidelity, 73 S. W. 592, 61 L. R. A. 459 where a cancerous kidney was ruptured caused by a blow and death ensued.

Pneumonia caused by a blow was grounds for a judgment in Continental vs. Colvin, 95 Pac. 565.

An abrasion causing blood poisoning supported a judgment in French v. N. Y. Fidelity, 115 N. W. 869, 17 L. R. A. (NS) 1011.

See also 1 C. J. 471, note 96.

In Continental vs. Lloyd, 73 N. E. 828, about one-half way down the page, the court said, "The law does not consider the cause of causes, beyond seeking the efficient predominating cause, which following it no further than those consequences that might have been anticipated as not unlikely to result from it, has produced the effect. An in-

jury which might naturally produce death in a person of certain temperament or state of health is the cause of his death if he dies by reason of it, even if he would not have died if his temperament or previous health had been different; and this is so as well when death comes through the medium of a disease directly induced by the injury, as when the injury immediately interrupts the vital processes."

It will be noticed that the objections that defendant-appellant makes to the courts charges made at the request of the plaintiff-appellee are made against those charges which practically repeat verbatim excerpts from the above case and the citation from Corpus Juris. (Objections to charges 2, 4 and 5).

"If an accident causes blood poisoning either external or internal, and the blood poisoning causes death, the death is the direct result of the accident." Thompson vs. Columbia Ins. Co., 95 Atl. 231, paragraph 3.

"If diabetes was an effect of insured's accidental injury, and a mere link in the chain between the accident and its effects, the condition of insured would be attributable to the accidental injury and not the disease." Anderson v. Mutual Benefit, 23 S. W. 76, headnote 2. See also Driskell v. Insurance Co., 117 Mo. App. 370; 93 S. W. 882. Western Commercial Travellers v. Smith, 85 Fed. 401; 40 L. R. A. 653. Travelers v. Melick, 65 Fed. 178; 27 L. R. A. 629. Milwaukee Railway v. Kellogg, 94 U. S. 469; 24 L. Ed. 256.

The cause of death was a jury question and the verdict having been found in favor of the plaintiff it is a finding that the accident caused the assured to die. See Lickleader v. Iowa Assn., 66 N. W. 363. Kangas v. N. Y. Life, 193 N. W. 867.

It is conceded by the defendant's expert as well as by the attending physician that paralysis agitanis or agitans is never a fatal disease. In the 9th edition of Nervous and Mental Diseases, a standard work written by Archibald Church, M. D. of Northwestern University Medical School and Frederick Peterson, M. D. of Columbia University Medical School, on Page 582 it is said, "In 1817 Parkinson gave a complete clinical description of a rather common disease, which he termed shaking palsey." Describing the elements, the authors end the paragraph with the following sentence with reference to paralysis agitans *"Never fatal in itself, it lasts until death."*

Medical science tells us that every cause of death has a contributing factor, and the standard death certificate adopted and used by the State of New Jersey has a question or statement, "The cause of death was as follows" and the next question is "Contributory."

The defendant admits that a man of the same physical attributes of J. Fred Runyon at the time of his death would probably have died without paralysis agitans; and that he would have developed hypostatic pneumonia without having the paralysis agitans.

It is admitted, and the testimony is all to that effect, that paralysis agitans is never a fatal disease, or does not kill or cause death, how can it be said that it was the cause of death or one of the causes.

The defendant-appellant cites Smith v. Federal Ins. Co., 6 Fed. (2) 283. In that case the plaintiff pushed a car, and having previously had influenza and being weakened, had a heart attack (acute myocarditis). This was not an accident

but a disease. There is no similarity of facts with the case before the court.

The case of Order of United Commercial Travellers v. Nicholson, 9 Fed. (2) 7, cited by defendant bears no resemblance to the facts in this case. The proof in the Nicholson case showed no violent, external or accidental injuries. There was nothing visible and the plaintiff had suffered from arterio sclerosis, which caused death.

In both of the cases cited by defendant the diseases which the assured suffered from were fatal diseases; in the case before the court the disease paralysis agitans is not a fatal disease and could not cause death.

In Joyce on Insurance, Vol. IV, page 4393 last sentence of top paragraph, the author says "So disease, mental or bodily infirmity within the exception of liability clause must be construed as meaning something more than the disease or infirmity itself, and so to be held to include such disease or mental infirmities only which directly or indirectly contribute to the injury or death."

It is to be remembered that nearly all of the accident policies contain a clause similar to the one in question involved in the case before the Court, providing that the injury or death shall be accidental and caused directly and independently of all other causes by external violent and purely accidental means and not caused by bodily or mental diseases, defect or infirmity.

If the construction which the defendant-appellant desires to put on this clause is carried out, not a single accident policy in the state is worth the paper it is written upon. If a person is ill in bed with typhoid fever, and an explosion should occur in the house and cause his death by being blown up, he could not receover because of his

disease which might have caused his death, under defendant's desired construction. So also if an assured is lying ill in bed with an illness which might possibly prove fatal, and the ceiling caved in upon his head and crushed his skull, there could also be no recovery, if the defendant's contention is to be upheld.

The cause of death resolves itself into a question of fact for a jury and not of law for a court. In Travellers v. McInery, 119 S. W. 171, the assured claimed to have lost sight of an eye by running into something. The company contended that the plaintiff would have lost sight of the eye without the accident because that eye was afflicted with a disease known as choroiditis, which would have resulted in blindness. The court held it to be a jury question and sustained the verdict.

An interesting case, because of the great amount of study the Court evidently gave the cases on the question, and the keen analysis of them, is the case of Goodes v. Order of United Commercial Travellers, 156 S. W. 1001 (paragraph 5). The Court said, "In the Beile case (Beile v. Travelers, 155 Mo. App. 629, 135 S. W. 497) we held in effect, that the policy in question excepted from its provisions of indemnity death caused wholly or in part by bodily or mental infirmity or disease. This language we held means nothing more than that the plaintiff, to recover, was only bound to prove that the accident and not the infirmity with which the insured was afflicted, was the proximate cause of death." On Page 1003, first column, last paragraph, the court went on to say after examining the cases cited, with reference to the case of Modern Woodmen v. Shryock, 54 Neb. 250; 74 N. W. 607; 39 L. R. A. 826, "The conclusion arrived by the Supreme Court of Nebraska was that whether

an accident or a disease caused the death of a party whose life was insured against death by accident, was the sole question which should be submitted to and determined by a jury; unless with reference to that proposition the proofs are so convincing that all reasonable men, in the fair exercise of their judgment would be brought to adopt the same conclusion. In other words the conclusion of the Supreme Court of Nebraska is that the fact that at the time of sustaining the accident the deceased may have other diseases, does not bar a recovery, if the accident in itself and not these diseases was the sole cause of death." On page 1004, second column, top of page, the court continues, "We all know, it is a matter of common experience and common knowledge, that if a young man of twenty-five years of age break a limb the broken limb knits much more rapidly and completely in a man of that age than in one of the age of fifty years. Men seventy years of age or over are not usually insured by accident companies. Parallels might be run indefinitely on this line. Injury to a perfectly healthy man is never apt to result fatally as in the case of a man who is weakened by disease or where one man is much stronger physically than another."

See also the case of Ward v. Aetna, 118 N. W. 70, where the court holds it to be a jury-question.

Where a policy of accident insurance exempted it from liability where the death or accident resulted wholly or partially from disease or bodily infirmity it was held in the case of Vernon v. Iowa Association, 138 N. W. 696, that such a provision must be construed most strongly against the insurer and must be held to apply only to such diseases or mental infirmities as in some manner contribute to the injury or death so that a mere show-

ing that there was disease or bodily or mental infimity would not defeat the beneficiary's right to recover.

In the case of Hall v. General Accident, 85 S. E. 600, the assured had a chronic disease of the kidneys, for several years. In crossing the street he fell and even though the disease might have hastened his death, the court held it to be a jury question. The court in that case cited with approval Continental v. Lloyd, 165 Ind. 52; 73 N. E. 824 and quoted "When two or more causes contribute to an injury, where there is doubt or the facts are of such a character that equally prudent persons would draw different conclusions therefrom, in such cases, which of the contributing causes is the efficient, dominant, proximate cause, is a question to be submitted to a jury."

The policy issued in this case was written in 1909 and after being in existence for over twenty years, having accepted premiums for that time, the company now comes into court requesting this court to lay down a rule for its benefit which would make the holders of all similar contracts, who have carried them over a period of years, the owners of worthless insurance.

The natural processes of nature produces diseases and infirmities with our advancing years; and if we have had accident insurance written while young, and renewed from year to year until we become advanced in age, it would be impossible to collect the benefits for which we have paid, in the event of accident or accidental death, if the contention of the defendant-appellant is to be upheld.

The defendant must have known, and does know, from the very nature of its business, that any man of sixty-four years of age, has some defect, infirmi-

ty or disease. It has continued to accept its premiums but now refuses to undertake its fair and just liabilities.

It is respectfully submitted that:

A. 1. The trial court was correct in refusing to nonsuit.

2. Was correct in refusing to direct a verdict.

B. The verdict is not against the weight of the evidence.

C. The court properly and correctly charged the jury.

D. It was a jury question, and the jury had ample grounds upon which to base its verdict.

E. There was no evidence whatsoever to indicate that any disease was the cause of death.

F. The Supreme Court was correct in sustaining the trial court and its judgment should be affirmed.

The plaintiff-appellee urges that the verdict be affirmed with costs.

Respectfully submitted,

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with Plaintiff-Appellee.

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