NEW JERSEY COURT OF ERRORS AND APPEALS.

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

ON CONTRACT.
WRIT OF ERROR TO
SUPREME COURT.

BRIEF FOR PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This action is brought to recover upon a policy of life insurance issued to the plaintiff's decedent by the defendant company, in the sum of one thousand dollars.

The plea sets up several breaches of warranties.

At a former trial plaintiff recovered a verdict. Defendant took out a writ of error, and the verdict was reversed and new trial granted.

At the first trial all the breaches of warranties, even the breach set up in the amended plea, (see paper book, page) were argued before this court.

The breach of warranty found by this court (see opinion Fish vs. Met. L. Ins. Co., 64 Atl. R. p. 109, 110) was as to the warranty found in the two clauses of the application for insurance which read as follows: "5. The following is the name of the physician who last attended me, the date of the

attendance, and the name of the complaint for which he attended me: Typhoid fever; Jan., 1893; Dr. Braymer. 6. I have not been under the care of any physician within two years, unless as stated in previous line, except."

The additional plea sets up no new defence. The court, in its opinion said:

"Whether or not being under the care of a physician and being attended by a physician is synonymous it is not now necessary to decide. The fact that paragraph 6 refers to the previous line (evidently meaning paragraph 5) indicates that the two were regarded as synonymous, at least by the company which prepared the form of application."

Plaintiff in error therefore tried the case, and will discuss this breach of warranty, as though the two questions were synonymous. Though if not, the legal principle discussed applies to both.

New evidence was introduced in the second trial, as follows:

Examination of the plaintiff.

At page et seq.

"Q. Were you present when the medical examiner of the company, Dr. Horning, made the medical report on the life of Mr. Fish?

A. I was.

Q. Did Dr. Horning ask Mr. Fish at the time he made his medical report anything concerning his being attended by any other physician?

A. He did.

Q. Can you repeat the conversation that they had concerning this matter?

A. Well, Mr. Horning told Mr. Fish that he believed him to be in perfect health and he would give him $3,000 if he wanted it instead of one, and he told him he didn't want it, and I asked him if he mentioned those spells of sickness that he had had, and he said, 'Were you in bed?' He said, 'No, never after I had typhoid fever; I never even laid down.' 'Then,' he said, 'that doesn't count.'

Q. You say he mentioned those spells of illness,—what do you mean by those spells of illness?

A. He never had any illness only a headache; that is all I have known him to have since he had typhoid fever, and vomiting; he has had spells of vomiting.

Q. I don't mean that; you must specify to the jury exactly what Mr. Fish told Dr. Horning.

A. He told the doctor about being doctored by Dr. Sharp and Dr. Jarrett; he told him he had been doctored by Dr. Sharp for vomiting and headache and by Dr. Jarrett for rheumatism that time in the shoulder. Dr. Horning said that was of no account, it was not considered illness because he had not been in bed, and he attended to his business all during the time; I had never known him to lie down."

THE PROPOSITION OF LAW INVOLVED.

The introduction of this evidence raises the following legal proposition:—

> Can contemporaneous conversations of the parties to a written contract as to the meaning in which certain terms were used in the contract, be introduced into evidence?

Specifically the proposition is:—

> Can evidence of the verbal statement, defining the meaning of the terms used in an application for life insurance as announced by the maker of the contract to the applicant at the time of making the application for the insurance, be introduced into evidence?

Plaintiff in error contends that a declaration of the defendant company through its general agent (within the scope of his authority) defining the sense in which certain terms in the application were used, is binding upon the defendant, and proof of that declaration may be put in evidence.

BRIEF OF THE ARGUMENT.

1. The correct principles of the law permit evidence of

the conversations between the parties to a written contract to be introduced, in order to show the meaning of the words used in the contract, as understood by the parties thereto, at the time of making the contract.

2. Parol evidence of the conversations of the parties to the contract in the case at bar, had at the time of entering into the contract, making known to each other the sense in which certain terms in the written contract were used, is admissible, for the reason that there is no limitation of the agent's authority as there was in the case of Dimick vs. Met. Life Ins. Co., 69 N. J. L. 384, 55 Atl. 291.

3. Where a witness at a former trial dies before the second trial, statements made by the witness since the former trial, showing that he, the witness, was mistaken in his former testimony, is admissible.

These questions raised are before the court on a writ of error to the Supreme Court.

ARGUMENT I.

PAROL EVIDENCE OF INTERPRETATION OF PARTIES ADMISSIBLE.

Wigmore on Evidence distinguishes between "volition" and "intent." Volition he defines as "will," while intent he defines as the intended consequence. In section 2413, page 3389, he says: "It may be assumed, then that there is volition preceding every act. But it is also apparent that the act, as expressed and apprehensible to the world at large, or to the other party in particular, may not be such an act as was intended. In those cases, then, where a volition was exercised, but the outward consequences were not produced according to intention, are we to say that because there was a volition, the person (applicant) is necessarily to be fixed with all the consequences, of whatever sort they be? Or are we to say that, because there was no intention of certain consequences, the person (applicant) is necessarily not to be fixed with them? We are to accept neither solution in this form. The latter form is not fair to the community dealing with the person. The former solution is not fair

to the person himself. No practical system of law could be content with either applied in rigid uniformity. The established doctrine of tortious responsibility suggests an analogy, and provides a solution. We are to fix the person with such expressed consequences as are the reasonable result of his volition. In other words, the act as legally effective will be determined, in respect to the three elements of subject, terms and finally, by that expression of it which results, to the other person in the transaction, as the consequence, reasonably to have been anticipated under all the circumstances, of the volition of the actor. This avoids on the one hand the impracticability of the mere external standard, so far as it would have held the person liable for an apparent act which was not the reasonable consequences of his conduct; and on the other hand, it avoids the impracticability of the purely internal standard, so far as it would have exonerated the person from an unintended consequence which he ought to have foreseen and might have avoided. In short, it adapts, to the general doctrine of legal acts, the test of negligence, i. e., responsibility resting on a volition having consequences which ought reasonably to have been foreseen."

"Such is without doubt the general principle of the modern law. 1871, Blackburn, J., in Smith vs. Hughes, L. R. 6 Q. B. 597-607. * * * 'If, whatever a man's real intention may be, he so conducts himself that a reasonable man would believe that he was assenting to the term proposed by the other party, and that other party upon that belief enters into the contract with him, the man thus conducting himself would be equally bound as if he had intended to agree to the other party's terms.' "

The "reasonable result of the volition" of the defendant company in the case at bar, through its agent, its medical examiner, in telling the applicant what the meaning of the terms used in questions five and six were, was to prevent the applicant from disclosing what he otherwise would have disclosed. And: "We are to fix the person with such expressed consequences as are the result of his volition." The expressed consequences in the case at bar, is the agreement

to pay the money under the policy. This result is the "reasonable consequences of his (defendant's) conduct."

Applying the test of negligence, it might at first blush, be said that the applicant was negligent in not answering the questions; but the act of the defendant stopped him from so doing, and we reply: "That no man shall take advantage of his own wrong," and also, that: "No injury can be done to him who is willing."

In Mayor, etc. vs. Dickerson, 16 Vr. 38, the alleged breach of faithful performance of duty was paying out certain moneys without authority. On suit against bondsman, the plea averred that the plaintiff intending to injure the defendant (the bondsman) permitted and induced the alleged breach. Mr. Justice Dixon said: "We think the tenth plea is sufficient. It alleges in substances that the obligees in the bond intentionally brought about the breach now complained of. They must therefore be estopped from complaint. The maxims "volenti non fit injuria," and "nullus commodum capere potest de injuria sua propria," are both in the way of a plaintiff so situated.

"It is unnecessary to consider whether mere neglect of legal duty by the city, or active misconduct on the part of other city officers, would impair the obligations of the sureties."

If the terms used in the application did not mean what the defendant told the applicant they did mean, it was certainly active misconduct upon its part; it not only did wrong, but it was willing that the applicant should not fully answer the questions.

Where a mistake is known to one party, the other party may insist upon the supposed terms.

Wigmore on Ev. Sec. 2416, p. 3396.

The defendant knew of the misapprehension of the applicant in the case at bar.

The trial court did not distinguish the case as presented at the second trial, from the case which was presented at the first trial. This court in reviewing the first trial set aside the verdict on the ground that there had been a breach of warranty in regard to questions five and six. In the first

trial no evidence of the declaration of the company through its general agent (within the scope of his authority) as to the meaning of the attendance and illness mentioned in these two questions was presented. The question raised at the second trial is new in the case.

The case at bar differs materially, in both matter and principle, from that of Dimick vs. Met. L. Ins. Co., 69 N. J. L. 384, 55 Atl. R. 291, decided in this court, in the following particulars:—

First. In that the general agent of the defendant, (within the scope of his authority) announced to the applicant at the time of making the application, the meaning of the questions five and six; he defined them.

The medical examiner is a general agent of the company within the scope of his authority.

Secondly. It differs in that the application ("c") is to be signed in the presence of the medical examiner, before the medical examiner fills out "D." (page). There is an instruction to the examiner as follows: "If any exceptions are to be noted it is important that full particulars be entered. Especial care should be taken in this respect in statements, 5, 6, 12 and 13." Page lines

Thirdly. It differs in that the character of the warranties are different. In the Dimick case, the warranties refer to other insurance, and whether applicant had ever been in a hospital, two patent matters of fact. In the case at bar, the matter is largely one of interpretation, and is: "What is meant by attendance and the care of a physician?" This is a matter of interpretation, and may well be left to the medical examiner to determine the fact for the applicant (as it was in fact left to him to determine, under the special instructions addressed to the medical examiner.) Aside from the general principles of the law permitting evidence of conversations contemperaneous, to be introduced into evidence, under the special facts in this case in view of this clause of special instructions, it is certainly proper to introduce evidence to show that the medical examiner followed the instruction written in the contract itself.

Fourthly. It differs, in that the evidence which plaintiff

seeks to make controlling in the case at bar, does not rest for support upon the principle that notice to an agent is notice to the principal. And therefore, whether there is, or is not, a limitation of the agent's authority is entirely immaterial.

The purpose of this particular evidence is simply to show the meaning of the terms used in the contract as declared and understood by the parties. This does not violate the ordinary rule of law that evidence shall not be admissible to contradict, etc., written contracts; nor does it attempt to show knowledge brought to the principal through its agent. We are not trying to introduce evidence of the language used as "part of the contract." Greenl. Sec. 277. Nor are we trying to "add other words," nor to subtract words. Ibid. What we are trying to do is to read the contract by the light of surrounding circumstances in order more perfectly to understand the intent and meaning of the parties. We are trying to show, not that other language was used which would contradict the contract or vary it, but that the intent of the parties as to the meaning of certain terms therein used, were used to intend certain subject-matters.

What were the circumstances in the case at bar? They were these: the applicant told the medical examiner that he had been attended by certain physicians, and the character of the illness, and was advised by the medical examiner that the questions in point did not mean to cover the matters disclosed. The fact that it appears that the applicant brought certain knowledge to the notice of the medical examiner, that is, to the defendant, is a mere incident of the probative fact. To illustrate: Suppose the medical examiner immediately upon beginning the medical examination, said to the applicant without the applicant having said one word to him: "To save time and trouble, I will tell you that the attendance and care of a physician meant in questions five and six, relate only to serious illness which lay you up in bed, and does not mean to cover every pain, or every time you have been prescribed for by a doctor for some trifling ailment. Now, give me the important matters, and leave out the other." Would we not have the very same principle

of law involved that we have in the case at bar? And yet, no notice or knowledge would have been brought to the defendant at all. Nor would evidence thereof, be for the purpose of contradicting, adding to, subtracting from, or varying the contract.

A declaration of a general agent is binding upon the company.

Redstrake vs. Cumberland Ins. Co., 44 N. J. L. 294.

In Redstrake vs. Cumberland Ins. Co., the contract of insurance provided that further insurance should be disclosed to the company, and approval endorsed upon the policy in writing; that if such endorsement was not had, then the policy was void. Further insurance was obtained; notice given to the company's agent in Salem, the policy surrendered at the time for endorsement. After a considerable time the policy was returned to the insured, with a verbal statement by the agent in the following words: "It was all right." The court held the agent to be a general agent within the scope of his duty, and that the act of the agent was the company's. In fact, no written endorsement was made upon the policy, and under its terms it was void. It was also held that if the declaration of the agent influenced the plaintiff and he acted upon it, it estopped the company from denying its truth. In another case approved in the opinion, a like agent in a similar case stated to the policyholder, that the endorsement had been made, when in fact it had not been made, and the court in that case held that this declaration of the agent estopped the company from denying it.

It is insisted that in the case at bar that the general agent of the defendant company, to wit, its medical examiner, made a declaration which binds the company. And this declaration of the medical examiner was, after being told of certain other facts, (which declaration is an integral part of the contract) that these facts should not be inserted into the contract, that the contract did not mean things of that sort. Its effect was to say to the applicant: "Everything has been put into this contract that belongs in it."

This is evidence of estoppel, not by way of information

given to the agent of the defendant by the plaintiff (which might be objectionable in this State) but is evidence of estoppel by the declaration of defendant to the plaintiff.

A case of importance, and one discussing the matter in a novel manner, is:—

Pechner vs. Phoenix Ins. Co., 65 N. Y. 195, 203.

In this case the question arose as to the introduction of parol evidence, relating to additional insurance. It was claimed by the defendant that parol evidence could not be resorted to for the purpose of varying a written instrument. The court said, at page 203:—

"This claim is, however, a misapplication of that rule, which is a cardinal one in construction and simply designed to ascertain the true meaning and intent of a contract, which all parties concede to be valid. It has no application where the validity or existence of the contract itself is in question. It is familiar law that a written instrument may be shown to be void by parol evidence. It may be thus attacked and overthrown for fraud, illegality, want of consideration or other vice going to the existence of the instrument. If it can be so attacked it can be sustained in the same manner. This doctrine applies to the case at bar. What the defendant says to the plaintiff is substantially this: 'Your policy is void, because when you took out insurance with Ayres you did not observe a clause in it which requires the notice of other insurance to be endorsed in writing on the policy.' 'True,' the plaintiff replies, 'but you have, by your conduct, relieved me from complying with that rule and the policy is valid.' The whole contest is upon the validity or invalidity of the contract, and the sole point is, can a condition precedent be waived by the words or acts of the parties? That is simply an inquiry whether a party can, by his own acts, be precluded from setting up a condition inconsistent with his acts to the injury of an opposite party whom he has thus misled."

In the case at bar the evidence is not aimed to vary or contradict the contract, but to establish the validity of the contract. One cannot vary a contract until it is established; one cannot contradict what does not exist.

Conover vs. Wardell, 20 N. J. Eq. (5 C. E. Gr.) 266.

In this case the facts were these. Complainant contracted to purchase from the defendants the "Wardell Farm." It appeared that the "Wardell Farm" had consisted originally of certain lands north and south of a designated line; that at the time of the making of the contract, or rather, prior thereto, complainant and defendant's broker, visited the land, and the broker told the complainant that all of the land south of the designated line had been sold, and that the land to be sold laid north of the line. As a matter of fact, all of the land south of the line had not been sold. Complainant filed a bill for specific performance of the contract to sell the "Wardell Farm" upon the ground that the deed of conveyance did not convey any of the unsold land making part of the "Wardell Farm" lying south of the line designated. The Chancellor, Zabriskie, admitted parol evidence of the broker to show that he, the broker, pointed out to complainant the designated line north of which his land was to lay, and that the broker told him, the complainant, that only the land north of the line was to be sold to him.

This illustrates the rule permitting parol testimony to show the subject-matter of the contract. It shows the meaning in which the words "Wardell Farm" were used by the parties to the contract.

Attendance by a physician, and care of a physician are physical things capable of different construction by different people, quite as much so as was the "Wardell Farm."

The meaning and distinction between "attendance" and "under the care" of a physician is discussed by the Supreme Court of Maine in Hewey vs. Metropolitan L. Ins. Co., 62 Atl. 600. The court says, at page 602, at bottom of first column: "Consulting a physician and being 'under the care' of a physician, not only in the technical use of the terms, but to the common mind, may mean very different things. A

man may consult a physician without ever being under his care at all. To consult is defined: 'To apply to for direction or information; ask the advice of—as to consult a lawyer; to discuss something together; to deliberate.' Care is defined: 'Responsibility, charge or oversight, watchful regard and attention.' "

The mere calling into a doctor's office for some medicine to relieve a temporary indisposition or the calling at the home of the insured by the doctor for the same purpose cannot be considered an "attendance by a physician" within the meaning of a question in an application for life insurance as to the attendance by the physician upon the applicant.

Billings vs. Metropolitan Life Ins. Co., 41 Atl. 516-518, 70 Vt. 477.

A denial by an applicant for insurance that she had been "attended by a physician" within a certain period prior to her application meant the attendance of physicians for some sickness or disease of more seriousness than a mere temporary ailment.

Brown vs. Met. Ins. Co., 32 N. W. 610-612. 65 Mich. 313, 8 Am. St. Rep. 894.

Merely calling a physician to prescribe for a temporary indisposition not serious in its nature, and not affecting the person's sound bodily health, is not being "attended" by a physician within the meaning of such word in an application for insurance, in response to a printed question. "How long since you were attended by a physician or professionally consulted one?"

Plumb vs. Penn Mutual Life Ins. Co., 65 N. W. 611-614. 108 Mich 103.

The last four cases are cited for the purpose of showing that there is an uncertainty in the meaning of the terms "attendance" and "under the care of" a physician, a latent ambiguity as applied to their subject-matter. There is no abstract ambiguity in the words themselves, it only appears when they are applied to some particular subject-matter.

That ambiguous words may be interpreted is so well settled that no cases will be cited to sustain the proposition.

1 Cooley, Brief on Ins., p. 629.

BUT THE PLAINTIFF DOES NOT RELY UPON THE QUESTION OF AMBIGUITY TO SUSTAIN HER RIGHT TO INTRODUCE THE EVIDENCE IN QUESTION IN THE CASE AT BAR.

We claim the right upon the ground of establishing the validity of the contract, and also upon the further ground that the interpretation of the parties themselves at the time of entering into the contracts, controls; for the purpose of showing the subject-matter, or things, to be covered by the words used.

"As it is a leading rule in regard to written instruments, that they are to be interpreted according to their subject-matter, it is obvious that parol or verbal testimony must be resorted to, in order to ascertain the nature and qualities of the subject, to which the instrument refers. Evidence which is calculated to explain the subject of an instrument is essentially different in its character from evidence of verbal communications respecting it. Whatever, therefore, indicates the nature of the subject, is a just medium of interpretation of the language and meaning in relation to it. So where a house, or mill, is conveyed eo nomine, and the question is as to what was part and parcel thereof, parol evidence is admitted. For this purpose may be given in evidence the acts, declarations of the person making the grant.

Greenl. on Ev. Sec. 286.

It may be argued that this principle applies to material objects, as distinguished from mental objects, but there is, and can be, no distinction in principle. In both instances the purpose is to ascertain the definition (definition means limitation in physical extent as well as in mental extent) of the words used.

The following cases show that no such distinction is made:—

Stoopes vs. Smith, 100 Mass. 63, 66, (1868).

Wells, J. The principle of law is well settled that the obligation of a written contract cannot be abridged or modified by or made conditional upon another preceding or contemporaneous parol agreement not referred to in the writing

itself. * * But it is equally well settled that, for the purpose of applying the terms of the written contract to the subject-matter, and removing or explaining any *uncertainty* or ambiguity which arises from such application, parol testimony is admissible, and has a legitimate office. For this purpose, all the facts and circumstances of the transaction out of which the contract arose, including the situation and relation of the parties, may be shown. * *

The subject-matter of the contract may be identified by proof of what was before the parties, by sample or otherwise, at the time of the negotiation. * *

The terms of the negotiation itself, and statements therein made, may be resorted to for this purpose. * *

* * The purpose of all such evidence is, to ascertain in what sense the parties themselves used the ambiguous terms in the writing which sets forth their contract. If the previous negotiations make it manifest in what sense they understood and used the terms they furnish the best definition to be applied in the interpretation of the contract itself. The effect must be limited to definition of the term used, and identification of the subject-matter."

Mut. Life Ins. Co. of N. Y. vs. Blodgett, 8 Tex. Cir. App. 45, (7894). Headnote 2. "When questions propounded by a medical examiner to an applicant for insurance are of a technical character, or of a nature which elicits the opinion of the applicant upon a matter which comes particularly within the knowledge of physicians, and the answer is dictated by the physician to whom the company has committed the trust of making a medical examination after the facts are fairly and in good faith brought to his knowledge, the company should be bound by his act, and estopped from asserting the falsity of the answer."

The question in this case was "No. 16. Have you ever had any other serious illness, constitutional disease, or injury. Ans. No." The applicant stated she had La Grippe, and the examiner advised her that was not a serious illness contemplated by said question, or that the proper answer was no. It was held that the defendant is estopped from denying the truth of her answer. The matter was a warranty and

the agent had no power to bind the defendant. The application contained this clause: "I also agree that all the foregoing statements and answers, as well as those that I make or shall make to the company's medical examiner in continuation of this application, are by me warranted to be true, and are offered to the company as a consideration of the contract." On the back of the policy is printed: "No agent has power on behalf of this company to make or modify this or any contract of insurance, to extend the time of paying a premium, to bind the company by making any promise, or by receiving any representation as information not contained in the application for this policy."

At the bottom of the Med. Ex.'s report is the following: "I certify that my answers to the foregoing questions are correctly recorded by the medical examiner," which was signed by the applicant. Citing

Ins. Co. vs. Chamberlain, 132 U. S. 304.

Singleton vs. St. Louis Mut. Co., 66 Mo. 63, (1877).

"Spitting of blood." "We think evidence properly admissible to show in what sense the term 'spitting of blood' was used in the application." p. 76.

Palmer vs. Hartford F. Ins. Co., 54 Conn. 488, (1887).

Case where defendant induced the plaintiff to omit doing an act. Held, estopped.

Plaintiff applied for renewal on fire policy on same terms as old policy. Defendant promised to deliver new policy on same terms. The defendant delivered policy with a material change. Plaintiff didn't read nor discover change for 3 months. Loss by fire occurred and suit for recovery and reformation.

Held, entitled to recover.

Brodley vs. The Wash. &c. Steam Packet Co., 13 Pet. 89, (38 U. S.), (1839).

Barbour, J., p. 99. "The cases * * show in how many aspects the question of the admissibility of extrinsic evidence in relation to written contracts has been presented and decided. In some * * cases it has been applied to

ascertain the identity of the subject; in others, its extent." In some the meaning of a term * * where it admitted of several meanings. "But in all this the purpose was the same. To ascertain by this medium of proof the intention of the parties * * *."

The facts in this case are: Plaintiff sues for $35 a day for contract price of boat "until Sydney is put on route." Sydney was on docks for repairs. Defendant offered to prove that he used the Sydney for passengers and mail; and that Franklin was wanted for same purpose; that boat was used only when river was not closed by ice, and when closed that defendant transported passengers and mail by way of land; that when river was thus obstructed defendant could not and did not use the Franklin.

This evidence was rejected below. Held that it should have been received, p. 99.

At p. 100 (bottom). "We think that the rule of law, which admits extrinsic evidence for the purpose of applying a written contract to its subject-matter, justifies its admission, *beyond the mere designation of the thing or corpus,* if we may so express it, on which the contract operates, and extends so far as to embrace the circumstances which accompany the transaction; when without the aid of those circumstances the written contract could not be applied to its subject-matter."

Gray vs. Harper, 1 Story 474, 588. (1841 U. S. Cir. Ct.)

Contract to buy all of edition of books "at the cost thereof."

Story, J., in summing up to the jury, said: "It appears to me, that the words of the written contract, 'at the cost thereof,' ought to be construed, 'all the cost of the copies,' including the allowance to Mr. Sparks, unless it is clearly made out in the evidence, that the parties, in the use of this language, adopted a different construction, and limited cost to the mere expense of the paper, press-work, and binding. I do not think that it is absolutely incompetent for the parties to show, from the conversations between them at the time of the making of the contract, what was the sense, in

which they then understood the word 'cost' as used in the contract. * * Those conversations may be deemed a part of the res gestoe, and thus may be referred to, as explanatory of the real intentions of the parties in the use of the word."

S. C. 10 Fed. Cas. 1010.

Seldon vs. Williams, 9 Watts. 9, (1839).

Headnote. A deed is not always a merger of the articles of agreement for the sale of lands.

Parol evidence of the understanding of the parties in relation to the construction of a written agreement, may be given to explain that which is otherwise ambiguous.

Thorington vs. Smith, 8 Wall. (75 U. S.) 1, 12, (1868).

Confederate money case. "Dollars." Sale of lands—note for $10,000 "dollars" of the purchase money. Situs, Alabama. Time, Rebellion. Suit, after war.

Chase, C. J., at p. 12. "The second question, whether evidence can be received to prove that a promise, made in one of the insurgent States, and expressed to be for the payment of dollars, without qualifying words, was in fact for the payment of any other than lawful dollars of the U. S.?" Evidence admitted.

Pitney vs. Glen Falls Ins. Co., 65 N. Y. 6, (1875).

In this case Norman Pitney insured as of his own property, 2400 pounds of wool. There was a warranty in the policy, warranting Norman Pitney to be the sole owner. Geo. Pitney, a son, owned an interest therein. Norman Pitney returned the policy for correction in order to insure the interest of his son, George. Instead of issuing a policy insuring the interest of both, a clause was added to the old policy, reading: "In case of loss, if any, one-half payable to George N. Pitney, as his interest may appear." The party to whom the policy was issued had no wool which he owned alone. Neither had Geo. N. Pitney. At the trial, evidence was admitted, under objection, to show that Geo. N. Pitney was tenant in common, and that the intent of the parties was to have that interest insured. It was claimed that such parol evidence was inadmissible as affecting a written instrument. The court admitted parol evidence of conversations with the

company's agent, and charged the jury as follows, p. 16: "But in giving construction to this instrument, it is proper for you to look at the surrounding circumstances for the purpose of seeing what the *parties intended,* and if the defendant *intended* to contract that Geo. N. Pitney's interest in that wool, together with the interest of the plaintiff in it, should be insured, and if the circumstances surrounding that transaction satisfy you that that was the intention, you will have the right to say so, and to give such construction as these circumstances require."

This part of the charge was objected to as leaving a question of construction of a written instrument to the jury, when it should have been disposed of by the judge.

It was held that the charge was correct, and that the jury might give such construction to the circumstances as they thought proper as modifying the legal construction which they must take from him.

The court said: "It is well settled that questions as to the meaning of particular words used in a special sense in a written instrument are for the jury."

Particular words have been allowed to be interpreted.

Greenl. on Ev. Sec. 280, (15 Ed. p. 376).

Thus:—

Inhabitant. The King vs. Mashiter, 6 Ad. & E. 153.

Level. Clayton vs. Gregson, 5 Ad. & El. 302.

Thousands. Smith vs. Wilson, 3 B. & Ad. 728.

Freight. Peisch vs. Dickson, 1 Mason 11, 12.

Fur. Astor vs. Union Ins. Co., 7 Cowen. 202.

Duly Honored. Lucas vs. Groning, 7 Taunt. 164.

Dollars. Current Funds. Thorington vs. Smith 8 Wallace 1, 12.

Spitting of Blood. Singleton vs. St. Louis Mut. Ins. Co., 66 Mo. 63.

Good Health. Barnes vs. Fidelity Mut., 191 Pa. 618.

It is always permissible to show what construction the parties to a contract put upon it themselves.

Mut. &c. Co. vs. Blodgett, 8 Tex. Civ. App. 45, 27 S. W. 286.

Snyder vs. Met. &c. Co., 93 U. S. 393, 23 L. Ed. 887.

Every contract is binding on the parties in the sense in which it was mutually understood by them at the time in which it was made.

The Ada, Fed. C. No. 38 (Dav. 407, 2 Ware 408).

In determining what a contract is, the rule is to consider the negotiations passing between the parties. Their conversation in relation to it before completed, if the same is understood by the parties, shall be incorporated in the contract, even though such negotiations are not repeated at the time of its completion; and such previous understanding will constitute a part of it, unless changed or excluded at the time it may be so completed. Gill Mfg. Co. vs. Hurd (C. C.), 18 Fed. 673.

Oral negotiations or stipulations which precede or accompany execution of assignment of patent must be regarded as merged into contract. Woodal vs. Greater, 51 Ind. 539.

In the case at bar, the meaning of the words "attendance" and "under the care" may be received in more than one sense. "As a rule the interpretation of written instruments is with the court as a question of law; but when the intrepretation depends upon the sense in which the promisor had reason to believe the promisee understood them, a fact to be determined from the relation of the parties and the surrounding circumstances, it would seem that it then becomes a mixed question of law and fact. It is not, then, a matter of interpretation merely, but the ascertainment of the minds and intents of the parties."

White vs. Hoyt, 73 N. Y. 505-512, (1878).

Quarry Co. vs. Clements, 38 Ohio 587, (1883).

In an action on contract for stone at $4.50 per perch, the contract was silent as to the number of cubic feet in a perch, and usage of trade failed to show it; held, that the negotiations of the parties defining the number of cubic feet meant was admissible. Johnson, J., (at p. 590). "The rule which

admits this kind of testimony is not at variance with the other general rule, that parol contemporaneous evidence is not competent to modify or contradict the terms of a written contract. The object of evidence of such usage is not to vary or modify the writing, but to ascertain its meaning when words and terms are used which are ambiguous. * *"

McDonald vs. Longbottom, 1 E. & E. 977, S. C., 102 Eng. Com. Law 977. Per Lord Campbell, as to evidence to explain meaning of "your wool." "There cannot be the slightest objection to the admission of evidence of previous conversations, which neither alters nor adds to the written contract, but merely enables us to ascertain what was the *subject-matter* referred to therein."

In Almgren vs. Dutilh, 5 N. Y. 28, (1851), the contract was a charter-party for the whole of a vessel except such part as was "necessary" for the accommodation of the captain and crew, provisions, water and fuel. In loading the vessel it became apparent that the hold would not carry the cargo, and it was then arranged verbally between the captain of the vessel and defendant that the cargo should be loaded in the cabins, etc., for which extra freight was to be charged.

The testimony in relation to what was said between the captain and defendant, both before and after the execution of the charter-party, was objected to on the ground that it went to vary the written contract.

That the parol testimony was inadmissible to prove a contract in variance of the charter-party, and the law could not imply a contract in reference to the parts of the vessel for which extra freight was claimed, as those parts were included in the express contract.

The trial judge charged that the "necessary" part reserved for accommodations, etc., did not mean the absolutely indispensable portions, but the usual and customary, and that if the extra freight was stored in any of these reserved portions of the vessel, at the request of the defendant, the plaintiff was entitled to recover.

Gardiner, J., p. 33. "The testimony of Godecke was properly received, if we are right in our construction of the con-

tract. It did not go to vary the written agreement, but to prove by the acts of the parties the space which they esteemed necessary for the accommodation of the crew. If this was a question of fact, I perceive no objection to its being established by this sort of evidence. The testimony of Ellis and Thompson was to the same point. The only objection taken to any of the evidence was, that it tended to vary the written contract; on the contrary, its sole object was to apply the agreement to the subject of it. This kind of testimony, it is hardly necessary to say, is not only competent, but indispensable."

McMaster vs. New York Life Ins. Co., 183 U. S. 25, 46 L. Ed. 64 Sup. Ct. R.

In this case the suit was brought in the U. S. Circuit Court for Iowa. The plaintiff lived in Iowa. While a statute of Iowa provides that no agent of a life insurance company can be made by any agreement the agent of the applicant, it would seem that this statute only announces the general principles of law on that question, and is not significant. The application in this case provided that the company should not be bound by the agent's receiving any information.

The application contained a clause written in by the agent unknown to the applicant, providing that premiums should be due and payable on the 12th day of December of every year. The policy was dated December 18th. At the time of delivery of the policy to the applicant he asked the company's agent if the policy would continue in force thirteen months from the date of the policy and was told that it would. (See finding 14th). The policy also provided that thirty days grace would be allowed in payment of premiums. The insured died on January 18th, thirteen months after the date of the policy. The company defended upon the ground that the contract required the premium to be paid on December 12th or thirty days thereafter. The court permitted evidence of the conversation between the insured and the company's agent, showing that it was declared, or represented by the company through its agent that the policy was one insuring the insured for a period of

thirteen months, notwithstanding the terms of the written contract itself. Per C. J. Fuller: "And the findings show that the company, by its agent, gave that meaning to the clause, and that McMaster was induced to apply for the insurance by reasons of the protection he supposed would be thus obtained."

Continental Life Ins. Co. vs. Chamberlain, 132 U. S. 304, 33 L. Ed. 341, 10 Sup. Ct. R. 87.

This is also an Iowa case. In this case the applicant was required to state whether he had any other insurance on his life. He was in fact a member of several co-operative associations, and therefore did have other insurance; but the soliciting agent of the company, to whom he stated the facts, believing that insurance of that kind was not insurance within the meaning of the question, wrote "No other" as the proper answer, at the same time assuring the applicant that it was such.

It was held that the company was bound by the interpretation put upon the question by its soliciting agent.

Approved in McMaster vs. N. Y. L. Ins. Co. supra.

In Burges vs. Wickham, 3 B. & S. 696, a vessel called the Ganges, intended for river navigation upon the Indus, was sent upon the ocean voyage to India, temporarily strengthened so as to be fit to meet the perils of such a voyage. She was insured, and in the policy there was found to be an implied warranty that the vessel was seaworthy. The Ganges was not seaworthy in the sense in which that term was usually applied to an ocean-going vessel, but the underwriters knew her condition, and though the adventure was more dangerous than an ordinary voyage to India, it was reasonably safe. The underwriters took the risk at a higher premium than usual, and the owner sued the underwriters; they defended the action on the ground that the vessel was unseaworthy for the purposes of an ocean voyage, and they resisted the admission of evidence to show that, with reference to this particular vessel and voyage, "seaworthy" was understood in a modified sense. The evidence was held to be admissible by Blackburn, J.:—

"It is always permitted to give extrinsic evidence to apply a written contract, and show what was the subject-matter to which it refers. When the stipulations in the contract are expressed in terms which are to be understood, as logicians say, not simpliciter, sed secundum quid, the extent and obligation cast upon the party may vary greatly according to what the parol evidence shows the subject-matter to be; but this does not contradict or vary the contract. For example, in a demise of a house with a covenant to keep it in a tenantable repair, it is legitimate to inquire whether the house be an old one in St. Giles's or a new palace in Grosvenor square, for the purpose of ascertaining whether the tenant has complied with his covenant; for that which would be repair in a house of the one class is not so when applied to a house of the other (See Payne vs. Haine, 16 M. & W. 541).

"In these cases you legitimately inquire what is the subject-matter of the contract, and then the terms of the stipulation are to be understood, not simpliciter, but secundum quid. Now, according to the view already expressed, seaworthiness is not a term relative to the nature of the adventure; it is to be understood, not simpliciter, but secundum quid."

II.

PAROL EVIDENCE ADMISSIBLE BECAUSE AGENT'S AUTHORITY NOT LIMITED.

LIMITATION OF THE AGENT'S AUTHORITY. It is true that the application notifies the applicant of the limitation of the agent's authority, which under Dimick vs. Met. L. Ins. Co., avoids the effect of any notice given to the agent. But the effect of this limitation is avoided by the words and instructions at the bottom of the application. Here the applicant is instructed and required to sign the application in the presence of the medical examiner. Why? In order to verify his signature? No. For this verification has already been done. See at the head of the application paper

"B" where the applicant is required to sign paper "B" in the presence of the solicitor: "So that my (his) signature may be identified." What is the purpose? We discover why in the following lines of instructions to the medical examiner, to wit,:

"Note to the examiner. If any exceptions are to be noted it is important that full particulars be entered. Especial care should be taken in this respect in statements 5, 6, 12 and 13."

Here, in effect, it is said to the medical examiner: "You (for the instructions are addressed to him, not to the applicant) are to use especial care in filling out exceptions to 5 and 6. The instructions are addressed to, and concern only the examiner. *The applicant being required to execute the application in the presence of and under the supervision of the medical examiner, destroys all prior limitations of his (the medical examiner's) authority.*

There is good reason for requiring this blank to be filled up by the medical examiner. It is more important that full knowledge should be given to the company, than it is that some few persons might purposely refrain from disclosing certain facts and thus perpetrate a fraud. More persons would escape discovery of their fraud, than would be discovered; hence the company would be the loser by negligence in this respect.

If the note to examiner is not capable of receiving the construction above suggested, it certainly can be said of it, that it at least notifies him to see that the applicant correctly answers the questions, and for the purpose of seeing it correctly answered, it is competent for the medical examiner to instruct the applicant how to answer the questions. The medical examiner being given express power to *instruct* the *applicant,* the defendant company is *bound by his instructions,* and it is competent to prove these instructions by parol evidence.

What is meant by these questions is a matter of interpretation, and may well be left to a physician to determine the fact for the applicant.

III.

REJECTION OF OFFER OF EVIDENCE. CASE, PAGE

It is submitted that it was proper to show that a witness at a prior trial, admitted his mistake in giving certain evidence; that such prior witness happens to be dead at the time of the second trial, makes no difference, when his former evidence is introduced into the case.

It is respectfully submitted that the court erred in directing a verdict for the defendant, and that the judgment should be reversed, and a new trial granted.

March term, 1907.

THOMAS B. HALL,
Of Counsel with Plaintiff.
HENRY HOLLINSHED, JR.,
Attorney.

New Jersey Court of Errors and Appeals.

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

Brief of Willard P. Voorhees,

Of Counsel with Defendant in Error.

This writ of error brings under review a judgment in favor of the defendant directed by the trial Judge at the Camden Circuit.

The foundation of the suit is a life insurance policy, and the result of a former trial was passed upon by this Court, sub. nom. *Fish vs. Metropolitan Life Ins. Co.* 44 *Vr.* 619.

Two errors only are assigned. (P. 39.)

First. "The Judge before whom the cause was tried refused to permit legal and competent evidence to be given at the trial."

There are two bills of exceptions to which this assignment can apply.

The first is found on page 30. The plaintiff, Mrs. Fish, had been called as a witness for the defendant and was asked what insurance she collected on her

husband's life after his death (p. 29, bottom) and mentioned them. Upon examination her counsel asked:

"Q. Were they what is known as insurance companies?"

Whereupon objection was overruled.

This was clearly incompetent. If the question was relevant it should have been directed to what the companies really were, not what they were known as. It was harmless in any aspect, for in the next question she states, on being asked:

"Q. Are these orders all of them or any of them fraternal beneficial associations? A. They were.

"Q. Which of them are? A. All of them."

The other exception is found at the bottom of page 33, and relates to the rejection of an offer to prove certain facts.

On the previous trial Dr. Wm. Shaeffer had testified. Since that trial he died. His testimony as given on the previous trial was read upon the second trial, and appears on page 27.

The offer which was overruled and is the subject of exception is as follows:

"Q. Mrs. Fish, since the former trial of this case have you ever had any conversation with Dr. Shaeffer, now deceased, relative to his testimony at the former trial?

"(Objected to.)

"The Court: How can that be competent?

"Mr. Hall: I offer to prove by this witness that she had a conversation with Dr. Schaeffer shortly after the former trial of this cause relative to his testimony wherein he testified that he attended Mr. Fish on certain dates; that Dr. Shaeffer had his mind refreshed as to a condition of unfriendliness existing between the doctor and Mr. Fish, and having that condition brought to his mind, he made an examination of his books in the presence of this witness and found according to the record that the attention he gave on the dates which he testified he gave to Mr. Fish was in fact given to a little girl in the family of Mr.Fish; that the charge as stated

in his testimony was against Mr. Fish, and from that he concluded that it had been Mr. Fish to whom he had given the services.

"The Court: The offer is overruled."

It was thereby sought to introduce in evidence a conversation with a witness, not a party to the suit, to contradict such witness's testimony, thereby putting unsworn statements on a par with those given under the sanction of an oath.

Such evidence is clearly inadmissible.

Second. The second assignment of error is directed against the action of the Court in ordering a verdict for the defendant.

The action was brought upon a policy of life insurance issued upon the life of Walter C. Fish, by Anna L. Fish, his wife, as beneficiary. The policy and application are found on pages 40 and 44, respectively. The application is dated on the 15th of April, 1902. The policy is dated April 19, 1902. Walter Cullen Fish, the husband of the plaintiff and the one whose life was assured under this policy, died July 6, 1902.

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

I.

THERE WAS NO ERROR IN THE DIRECTION OF A VERDICT FOR THE DEFENDANT.

The policy (p. 40) was issued upon the following consideration: "In consideration of the answers and statements contained in the application for this policy, a copy of which is hereto annexed *as a part of this contract* * * * * all of which answers and statements are hereby made *warranties.*" The policy also provided

that it was "subject to the conditions set forth on the third page hereof, each and all of which are hereby made part of this contract," and the second condition so set forth is as follows (p. 42):

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

The application, signed by the assured (p. 48), sets forth: "And I further declare, *warrant* and agree that the statements and answers are strictly correct and wholly true, and that they shall form the basis and become part of the contract of insurance, if one be issued, and that if they are not thus strictly correct and wholly true the policy shall be null and void."

In the application it was stated that the applicant had never had certain complaints or diseases, among which was rheumatism (p. 47).

The fourth plea (p. 6, line 35) sets forth this warranty and alleges that it was false in that the plaintiff had had rheumatism, to which the plaintiff join issue (see Replication, p. 11, line 35) by denying that Fish had at the time of making the contract any of said diseases. Again the application sets forth (p. 47): "The following is the name of the physician who *last attended me* and the date of the attendance and name of the complaint for which he attended me: Typhoid fever, January, 1893, Dr. Braymer," and also "I have not been under the care of any physician within two years, unless as stated in previous line."

The defendant alleged breach of this warranty in its plea (p. 7), and on page 12 the Replication of the plaintiff denies that Fish had been under the care of a physician within two years next preceding the application, other than Dr. Braymer.

The application also sets forth (p. 47, line 36): I have never met with, &c., &c.

The defendant alleges a breach of this warranty in the sixth plea (p. 9) in that the decedent had been seriously ill and had before said application been attended

by at least three physicians, naming them (p. 10), which plaintiff denied in her Replication (p. 13).

Again the application sets forth (p. 48): "I have no other insurance on my life except in the following named companies, and for the following amounts, and by the word "companies" I mean any company, association, society or order granting life insurance." At the head of this application, at page 47, line 5, it is stated as follows: "Wherever nothing is written in the following paragraphs it is agreed that the warranty is true without exception."

The breach of this warranty is set forth in the defendant's plea (p. 8, line 34), to which the plaintiff joined issue (p. 12, line 16), denying that the statement made in reference to other insurance in any other company was false, but declares that in all matters and things relating to the contract of insurance the statements were true.

The plaintiff at the trial offered in evidence the policy and the original application (p. 16, line 10). The proofs of death were also offered by the plaintiff (p. 20, line 18).

These proofs were signed by the plaintiff (p. 18, line 20), and were furnished by her (p. 18, line 23). These proofs of death consisted of four sheets of paper, and were the statements made by Drs. Sharp, Jarrett, Fish and the plaintiff. They will be found on page 52, Exhibit P 3. Dr. Sharp's certificate shows that he had attended Mr. Fish on February 23, 1902, March 19, 1902, and April, 1902, which were all before and immediately prior to the application for insurance. His attendance was for nausea, vomiting with headache and fever (p. 57).

Dr. Jarrett's certificate, forming part of the proofs of death, stated that he was in attendance upon Mr. Fish from October 2, 1901, to October 5, 1901, for acute rheumatism.

Mrs. Fish's certificate in the proofs of death contained the statement that her husband was insured in the A. O. U. W. for $2,000, the Heptasophs $1,000, and

the Brotherhood for $500, and that the deceased was aware of this insurance; that he made the applications for them, and paid the premiums (p. 54).

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

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

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

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

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

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

The two doctors above named were sworn and their testimony appears in the printed case, viz: Dr. Jarrett (p. 19), Dr. Ezra B. Sharp (p. 22), and the testimony of Dr. William Shaeffer (p. 28), given at the former trial was read.

Dr. Jarrett states that he attended Walter C. Fish for illness in 1901, September 25, 26, 27, 28, and October 2, 3, 4 and 5, and also identified the proofs of death signed by him, which formed a part of plaintiff's exhibit P 3 (p. 20).

Dr. Sharp states that he attended the decedent professionally in 1902, February 23 and March 19, and on April 17 prescribed for him. These were all a very short time before the date of the application. He also identified his certificate forming part of the proofs of death (p. 24, line 29).

Dr. William Shaeffer also testified (p. 28) that he had attended Mr. Fish professionally between 1886 and 1896, and that in 1896 he attended him. This was to show the falsity of the warranty made in the application (p. 47), viz: "The following is the name of the physician who last attended me, the date of the attendance, and the name of the complaint for which he attended me: Typhoid fever, January, 1893. Dr. Braymer."

Mrs. Fish admitted the attendance of Dr. Jarrett (p. 37) and Dr. Sharp (p. 38).

Interrogatories served upon the plaintiff and answered by her were offered and read (p. 31) wherein the plaintiff stated that on April 15, 1902, the date of decedent's application, he was insured in the N. Y. Life Insurance Company, $1,000, issued December 17, 1895; Fidelity Lodge, A. O. U. W., $2,000, issued February 18, 1896; Conclave of Heptasophs, $1,000, issued February 18, 1897; Witherspoon Brotherhood, $500, issued April 21, 1898; that payments had ceased in the N. Y. Life Insurance Company after one year. Mrs. Fish, the plaintiff, was called as a witness on behalf of the defendant, and stated (p. 29) that she collected the insurance money on her husband's life for the A. O. U.

W., $2,000, the Brotherhood $500, and the Heptasophs $1,000.

This testimony was that of the plaintiff herself, and was in no way contradicted. It was absolute proof of the falsity of the warranty in that behalf in the application (p. 48, line 4, paragraph 12).

Under these conditions there was no question to go to the jury, and the Court did not err in giving binding instructions. Any number of verdicts founded upon this testimony would be set aside. *Baldwin v. Shannon*, 14 *Vr.* 596.

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

There can be no doubt that these statements contained in the application were warranties. The *application* so denominated them. They were annexed to the policy and expressly referred to therein as *"a part of the contract"* statements are hereby made warranties, so that they appeared as warranties upon the face of the instrument itself. *DeWees vs. Insurance Co.* 5 *Vr.* 244.

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

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

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

Nor do the warranties in question relate to matters upon which the insurer should know that the insured could not have the knowledge to fully answer as was the case in *Henn. vs. Metropolitan Life Insurance Co.* 38 *Vr.* 310, where there was inadequate proof of the diseases therein mentioned, although in that case it was conceded that the reasoning in *Lippincott vs. Royal Arcanum,* 35 *Vr.* 307, was correct in holding that "the warranty of a physical fact in answer to such a question as 'Have you ever undergone any surgical operation?' if answered 'No,' is absolute, and if uncontradicted on the proof that the insured prior to that statement had been operated on for appendicitis * * * * then a direction of a verdict would be imperative."

The warranties in the present case were first as to the attendance of physicians upon the insured, which is a physical fact which must have been known to the insured, and it may be remarked, attendance immediately prior to the application and in all probability for the very disease of which the insured died, and so quite material (see testimony of Dr. Sharp, p. 27), and secondly, a warranty as to other insurance, upon his life, likewise a fact which must have been known to the insured.

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

But all the points in this case have been examined and by the unanimous vote of this Court under like evidence in the previous trial the policy has been declared void for breach of warranty.

Fish vs. Metropolitan Life Ins. Co. 44 *Vr.* 619.

It is therefore respectfully submitted that there was

no error in the trial and judgment below should be affirmed.

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

NEW JERSEY

Court of Errors and Appeals

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

WRIT OF ERROR.

(Filed March 19, 1907.)

NEW JERSEY, *ss.*

The State of New Jersey to the Chief Justice and other Justices of our Supreme Court of Judicature,

[SEAL] Greeting:

Forasmuch as in the record and proceedings, and also in the giving of judgment in a certain plaint, which was in our said Supreme Court of Judicature, before you between Anna L. Fish, plaintiff, and Metropolitan Life Insurance Company, defendant, in an action upon contract, manifest error hath intervened, to the great damage of the said plaintiff, as it is said; we being willing that the error, if any there be, should, in due manner, be corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you if judgment be thereupon given and affirmed, then you distinctly and openly send, under your

seal the record and proceedings aforesaid, with all things touching the same, to our judges of our Court of Errors and Appeals in the last resort in all causes, at Trenton, on the nineteenth day of March, next, together with this writ, that the record and proceedings aforesaid being inspected, we may cause to be further done thereupon, for correcting that error, what of right, and, according to the law and custom of the State of New Jersey, ought to be done.

Witness, WILLIAM J. MAGIE, Esquire, our Chancellor and Presiding Judge of our Court of Errors and Appeals, at Trenton aforesaid, the first day of March, nineteen hundred and seven.

S. D. DICKINSON,
Clerk.

HENRY HOLLINSHED, JR.,
Attorney.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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

[Copy.]

HENRY HOLLINSHED, JR.,
Atty. of Plaintiff.
205 Market Street, Camden, N. J.

NEW JERSEY SUPREME COURT.

ANNA L. FISH,

vs.

METROPOLITAN LIFE INSURANCE COMPANY,

ON CONTRACT.
ON POSTEA.

Henry Hollinshed, Jr., Attorney.

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

Witness, WILLIAM S. GUMMERE, Esquire, Chief Justice; WILLIAM RIKER, JR., Clerk.

CAMDEN COUNTY, *ss.*

Metropolitan Life Insurance Company, a corporation under and by virtue of the laws of the State of New York, and registered in the State of New Jersey, was summoned to answer unto Anna L. Fish, of the city and county of Camden and State of New Jersey, in an action of contract, and thereupon the said plaintiff, by Henry Hollinshed, Jr., her attorney, complains for that whereas heretofore, to wit, on the twenty-fourth day of February, at Camden, in the county of Camden and State of New Jersey aforesaid, by a certain instrument or policy of insurance then and there made (one part of the said policy of insurance the said plaintiff now brings here into court, the date whereof is the nineteenth day of April, A. D., nineteen hundred and two), it was witnessed that the said Metropolitan Life Insurance Company, in consideration of the sum of forty dollars and two cents, lawful money of the United States of America, paid into their treasury by the said plaintiff, the receipt whereof was thereby acknowledged, did for themselves, their successors and assigns, agree to pay to the said plaintiff or her legal representatives, the sum of one thousand dollars after good and sufficient proof shall be made upon oath or otherwise to the satisfaction of the said Metropolitan Life Insurance Company, of the death of Walter Cullen Fish (the insured named in the said policy of insurance), then war-

ranted in good health, and did not exceed the age of forty years at his nearest birthday, in case the said Walter Cullen Fish should die, provided the said Walter Cullen Fish should continue to pay yearly the sum of forty dollars and two cents ($40.02) on or before the nineteenth day of April in every year during the life of the said Walter Cullen Fish.

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

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

wholly refused and neglected so to do, and therein hath failed and made default, contrary to the form and effect of said instrument or policy of insurance, and of the said covenant by them in that behalf made as aforesaid, to wit, at Camden, etc., and, therefore, she brings her suit.

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

And the said defendant, by Willard P. Voorhees, its attorney, comes and defends the wrong and injury, when, &c., and says that it did not undertake and promise in manner and form as the said plaintiff hath above thereof complained against it, and of this the said defendant puts itself upon the country.

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

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

evidence and the verdict of the coroner's inquest, if any were held.

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

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

And the said defendant avers that the said answers and statements so contained in the said printed and written application were false and not true in that the said Walter Cullen Fish had had before and at the date of said application disease of the heart, disease of the kidneys, disease of the urinary organs and rheumatism, by reason whereof the

said instrument or policy, according to its expressed conditions, was and is null and void, to wit, at the county of Camden aforesaid, and this the said defendant is ready to verify.

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

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

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

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

And for a further plea in this behalf as to the said declara-

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

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

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

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

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

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

NEW JERSEY SUPREME COURT.

ANNA L. FISH,

vs.

METROPOLITAN LIFE INSURANCE COMPANY.

ON CONTRACT.

Plea filed by the said defendant by way of amendment to the sixth plea heretofore filed by the said defendant in said cause:

And for a further plea in this behalf as to the said declaration, the said defendant, by like leave of the court here for this purpose first had and obtained according to the form of the statute in such case made and provided, says that the said plaintiff ought not to have or maintain her aforesaid action thereof against it, because it says that in and by the answers and statements contained in the printed and written application mentioned in and referred to by said instrument or policy in said declaration mentioned, it was ex-

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

And the said defendant avers that the answers and statements so contained in said printed and written application were false and not true in that the said defendant had been before said application seriously ill with disease of the heart, disease of the kidneys, disease of the urinary organs and rheumatism and said answers were likewise false and not true in that the defendant had been before said application attended by at least three (3) physicians, to wit.: Dr. Harry Jarrett, Dr. William Shaeffer and Dr. Ezra B. Sharp, by reason whereof the said instrument or policy, according to its expressed conditions was and is null and void, to wit, at the county of Camden aforesaid, and this the said defendant is ready to verify.

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

WILLARD P. VOORHEES,
Atty. of Deft.

NEW JERSEY SUPREME COURT.

ANNA L. FISH,

vs.

METROPOLITAN LIFE INSURANCE COMPANY.

ON CONTRACT.

AMENDMENT OF DEFENDANT'S SIXTH PLEA.

WILLARD P. VOORHEES,
Attorney.

I consent that the within amendment to defendant's sixth plea be made and the within plea substituted for the sixth plea of the defendant heretofore filed.

Atty. of Plaintiff.

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

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

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

And the said plaintiff, as to the fourth plea of the said defendant by it above pleaded, denies that the said Walter Cullen Fish had, at the time of making the said contract had any of the diseases therein named, to wit, apoplexy, asthma, bronchitis, cancer or other tumor, consumption, disease of the brain, disease of the heart, disease of the kidneys, disease of the liver, disease of the lungs, disease of the urinary organs, dropsy, fistula, fits or convulsions, general debility, habitual cough, hemorrhage, insanity, jaundice, paralysis, pleurisy, pneumonia, rheumatism, scrofula, spinal disease, spitting or raising of blood, ulcer or open sores, or varicose veins, and of this the said plaintiff puts herself upon the country.

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

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

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

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METROPOLITAN LIFE INSURANCE COMPANY.

ON CONTRACT.

Replication filed by plaintiff by way of amendment to the amended sixth plea of the defendant.

And the said plaintiff by her attorney, Henry Hollinshed, Jr., as to the plea filed by the defendant by way of amendment to the sixth plea of the defendant heretofore filed in

said cause, reaffirms "that the said Walter Cullen Fish had prior to said application never met with any serious personal injury, nor ever been seriously ill except as therein stated below, and for the complaints named and no others," and the plaintiff denies that the said Walter Cullen Fish "did warrant and agree that wherever nothing was written in the paragraphs in said application it was agreed that the warranty should be true without exception.

And the said plaintiff denies that "the statements so contained in said written and printed application were false and not true in that the said defendant had been before said application seriously ill with disease of the heart, disease of the kidney, disease of the urinary organs and rheumatism."

And the said plaintiff also denies "that the said answers were false or not true, or that the said Walter Cullen Fish had been attended by at least three physicians, to wit, Dr. Harry Jarrett, Dr. William Shaeffer, and Dr. Ezra B. Sharp, or that by reason thereof the said policy was according to its express condition null and void," as to all of which matters and things she puts herself upon the country.

HENRY HOLLINSHED, JR.,
Attorney of Plaintiff.

Therefore, let a jury thereupon come before our Chief Justice or some other Justice of the Supreme Court of the State of New Jersey, at a Circuit Court to be holden at Camden in and for the county of Camden, on the second Tuesday of September, in the year of our Lord, one thousand nine hundred and six, by whom, etc., and the same day is given to the parties aforesaid there, etc.

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Afterwards, to wit, on the second Tuesday in September,

in the year of our Lord, one thousand nine hundred and six, at a Circuit Court holden at Camden in the county of Camden, before the Honorable Charles G. Garrison, one of the Justices of the Supreme Court of the State of New Jersey, according to the form of the statute in such case made and provided, by consent of the parties a jury being waived, the issues aforesaid were referred by the said Justice of the Supreme Court to be tried in the Circuit Court in said county of Camden, where the venue is laid.

And afterwards, to wit, on the third day of December, in the year of our Lord, one thousand nine hundred and six, at a Circuit Court holden at Camden in and for said county of Camden, before the Honorable Allen B. Endicott, Circuit Judge, according to the statute in such case made and provided, comes as well the within-named plaintiff and the within-named defendant and the jurors of the jury being summoned also come, who, to speak the truth of the matters and things within contained, being chosen, tried and sworn, say upon their oath, that the said defendant did not undertake or promise in manner and form as the said plaintiff hath in her said declaration alleged.

ALLEN B. ENDICOTT,
Judge.

Judgment signed the nineteenth day of February, A. D., nineteen hundred and seven.

WM. S. GUMMERE,
C. J.

NEW JERSEY SUPREME COURT.

CAMDEN COUNTY CIRCUIT.

ANNA L. FISH,

vs.

METROPOLITAN LIFE INSURANCE COMPANY,

ON CONTRACT.

Appearances:

For the plaintiff, THOMAS B. HALL, ESQ.
HENRY HOLLINSHED, JR., ESQ.
For the defendant, W. P. VOORHEES, ESQ.

BEFORE ENDICOTT, J. AND A JURY.

THE CASE FOR THE PLAINTIFF.

ANNA L. FISH sworn.

By Mr. Hall.

Q. Are you the plaintiff in this case?

A. I am.

Q. Are you the widow of Walter Cullen Fish?

A. I am.

Q. A paper is handed the witness, purporting to be a policy in the Metropolitan Life Insurance Company upon the life of Walter Cullen Fish, and she is asked to state what that paper is.

A. Why it is a policy.

Q. Where did you get that policy?

A. It was brought to us by the agent.

Q. The agent of whom?

A. Of the Metropolitan.

Q. And delivered to your husband?

A. Yes, sir.

Mr. Voorhees. I don't care to have you prove formally the policy.

Mr. Hall. I understand, if the Court please, the policy is admitted.

Mr. Voorhees. The policy with its counter-part, the application; they are made part of one instrument; I hand the application to the Counsel. The two I will admit together.

Mr. Hall. This is the agent's report, is it?

Mr. Voorhees. That is the whole application on which the policy is founded.

(Said paper is offered in evidence and marked Exhibit P. 1; the agent's report and the report of the examining physician, Exhibit P. 2.)

Q. Mrs. Fish, when were you married to Mr. Fish?

A. I was married on the 23d day of October, 1884.

Q. Is Mr. Fish dead?

A. He is.

Q. When did he die?

A. He died on the 6th of July, 1902.

Q. Did you request the Metropolitan Life Insurance Company to pay the insurance due upon the policy?

(Objected to; question allowed.)

A. I did.

Q. Did they pay it or not?

A. No, sir.

Q. Did they refuse to pay it?

A. They did.

Q. Did you furnish the proofs of death of your husband to the company required by them?

A. I did.

(Objected to; question allowed.)

(Exception noted for the defendant.)

Mr. Voorhees. My objection is that she has no right to characterize the paper as proofs of death required by them; the paper speaks for itself.

The Court. I suppose it is only introductory to more formal proof.

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

A. They did.

Q. And did you have those blanks filled out and returned to the Company.

A. I did.

Q. Did you return to the company all the blanks which they furnished to you for that purpose ?

A. I did.

Mr. Hall: Mr. Voorhees, have you those proofs of death ?

(Counsel for defendant at the request of plaintiff's counsel produces the proofs of death.)

Q. The papers purporting to be proofs of death consisting of four yellow papers pinned together are shown to the witness and she is asked : Kindly examine those papers and state whether or not they are the proofs of death furnished and whether they are the blanks which the company furnished to you for that purpose ?

A. Yes, sir, they are.

Q. Mrs. Fish, has the money due upon that policy ever been paid ?

A. No, sir.

CROSS-EXAMINATION.

By Mr. Voorhees :

Q. At the time of your husband's death where did he reside ?

A. 843 Broadway.

Q. What number ?

A. 843 Broadway.

Q. And how long had he lived there ?

A. Oh, that was in—We moved there in December,

Q. What year ?

A. 1901.

Q. 1901 ?

A. Yes.

Q. And he died the following July?

A. Yes, sir.

Q. Where did you live before that?

A. Lived 939 Broadway.

Q. 939?

A. Yes.

Mr. Voorhees: Are these offered (referring to proofs of death.)

Mr. Hall. No, I haven't offered them?

Mr. Voorhees. Do you intend to offer them?

Mr. Hall. Well, you may offer them.

Mr. Voorhees. I don't want to offer them. They were produced; I suppose you will have to offer them; they were produced on notice under the rule. You looked at them.

Mr. Hall. I will offer them.

(Said proofs of death are marked Exhibit P. 3.)

Q. Mrs Fish, I showed you the second page of plaintiff's Exhibit P. 3, and ask you if that is your signature attached to that?

A. It is.

Q. And those are the papers which you transmitted to the company after your husband's death.

A. They are.

Q. Upon the policy which has been offered here?

A. Yes.

PLAINTIFF RESTS.

Mr. Voorhees. I ask for a non-suit. My motion is founded on the plaintiff's testimony contained in the proofs of death. The policy was issued upon the representation of the decedent that he had never been attended by any physician except Dr. Braymer in January, 1903, for typhoid fever, and that he had not been under the care of any physician within two years unless as stated within the previous line, referring to Dr. Braymer. The plaintiff has offered proofs under her own signature,

which were admitted to the Company in which she states that Dr. Sharp attended the deceased during his last sickness, that he had typhoid about ten years before that, that there also appears under her signature the statement of Dr. Sharp, showing that he had been in attendance upon this man on February 23d, 1902, the 19th of March, 1902, the 17th of April, 1902, the 13th of May, 1902, and the 11th of January, 1902. There also appears the statement of Dr. Jarrett that he had attended the decedent for articular rheumatism on October 2d, October 3d, 4th and 5th, 1901. Those are all that appear in the proof of death.

The Court. What is the date of this application, of the clause which says he had been under the care of no physician for two years prior?

Mr. Voorhees. The date is April 15th, 1902. The party died within three months after the application. The proofs of death are by the terms of the policy evidence of the facts therein stated in behalf of but not against the company, and the case stands on its first branch in that. There is another branch also in which the application states that he was not insured in any other company, and the proofs of death show that he was insured. On those two grounds I make my application for a non-suit.

The Court (after argument). The motion will be refused.

(Exception noted for the defendant).

THE CASE FOR THE DEFENDANT.

DR. HARRY JARRETT, sworn.

By Mr. Voorhees.

Q. You are a practicing physician in the city of Camden?

A. I am.

Q. How long have you been practicing here, doctor?

A. 19 years.

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

A. I did.

Q. Have you attended him for illness?

A. I did.

Q. Can you give me the dates?

A. If I re-call it correctly, 1901, September 25th, 26th, 27th, 28th, October 2nd, 3rd, 4th and 5th.

Q. Eight visits?

A. Eight visits in all

Q. I show you the fifth page of plaintiff's exhibit No. 3, and ask you if that is your signature?

A. That is my signature.

Q. Is the body of the paper in your handwriting?

A. It is.

Q. Did you visit Mr. Fish personally?

A. I did at his home.

Q. Talked with him?

A. I did.

Q. And he to you?

A. He did.

CROSS-EXAMINATION.

By Mr. Hall.

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

A. In the room adjoining the store, I presume the sitting room, lying on the couch.

Q. What was the matter with him?

A. Articular rheumatism.

Q. Doctor, do you re-call how you came to be called into the room to see Mr. Fish?

(Objected to.)

A. I was sent for.

Q. Don't you re-call that the circumstances of your attending Mr. Fish came about in this wise—

Mr. Voorhees. I object; it does not make any

difference how he got there; it was the attendance, that is the point. He went there and treated him for articular rheumatism.

The Court. Yes, but to ascertain what the treatment was and whether there was an actual treatment, etc., I suppose he may ask fully as to his visit.

Mr. Voorhees. Your Honor will allow me an exception?

The Court. There is no question now pending. It is a mere intimation of what the Court will allow. You may ask the question, then you will get the benefit of a ruling.

Q. Didn't you go into the store adjoining Mr. Fish's home, the store conducted by him as a florist, and while there, not calling professionally, weren't you requested to step inside and see Mr. Fish, as he wasn't feeling well?

A. I was not.

Q. Your recollection is clear about that, Doctor?

A. To the best of my knowledge it is; I was sent for.

Q. Now, Doctor, when you mention these visits, identify the visits which you have spoken of, how do you identify the persons that you visited?

A. How do I identify the person? I was called to see Walter C. Fish, and he is the person I attended. If I may ask the question I suppose you want to ask me by referring to my books if it was Walter C. Fish or some member of his family?

Q. Yes, that is it.

A. That I cannot say. All accounts are charged up to Walter C. Fish.

Q. Then if you were attending a child or Mrs. Fish, the account would be charged to Walter C. Fish?

A. Always the father as the head of the family.

By Mr. Voorhees:

Q. Did you prescribe for Walter C. Fish at those times?

A. Yes.

Q. Was it the child or his wife or himself?

A. Walter C. Fish, personally.

Q. You remember that?

A. I do remember that?

Q. Have you your books with you?

A. I took a memorandum before leaving.

Q. Have you that memorandum?

A. Jotted down hurriedly with lead pencil. Prior to this occasion I attended the family March 8th and 16th, 1901. My subsequent visits were September—

Mr. Hall. I object; I don't think it is hardly competent.

The Court. I suppose it is hardly competent.

Q. Did you know Dr. William Shaeffer?

A. I did.

Q. Was he a physician in this city?

A. He was.

Q. Is he living?

A. He is deceased.

Q. Were you at the last trial of this case?

A. At the last trial of this case?

Q. Yes.

A. I was.

Q. Did you notice Dr. Shaeffer testifying here in the case?

A. I do not re-call.

Q. You don't re-call?

A. No, I don't re-call; I was late arriving; I don't re-call.

DR. EZRA B. SHARP sworn.

By Mr. Voorhees.

Q. Dr. Sharp, you are a practising physician living in the city of Camden?

A. Yes, sir.

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

A. In Camden?

Q. Yes.

A. Nine years this fall.

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

A. Yes, sir.

Q. Do you recognise Mrs. Fish sitting in the Court here?

A. Yes, sir.

Q. The husband of that lady?

A. Yes, sir.

Q. Did you ever attend Mr. Fish professionally?

A. Yes, sir.

Q. For illness?

A. Yes, sir.

Q. And prescribed for him?

A. Yes, sir.

Q. Can you give me the dates?

A. 1902, February 23rd.

Mr. Hall: I beg pardon; what is that you are reading from?

The Witness. A memorandum I made this morning from my books.

(Objected to.)

Q. Have you your book here?

A. Not with me, no, sir.

Q. Can you give me the dates when you visited him?

Mr. Hall: Without the aid of that.

A. Without the aid of this I simply—

Mr. Hall: I object to the Doctor using that.

The Witness: Simply from the fact that I made the memorandum I know the time when I made it.

The Court: The question is whether you can now—

The Witness: I cannot answer it from memory now,

simply from the fact that I made the memorandum this morning.

The Court. No, but can you now tell ?

A. February 23d, March 19th, and June, I think about—

Mr. Hall. The testimony as to June is not relevant ; I object to that.

The Witness. Well, March 19th and February 23d, and February 11th I believe, or March 11th.

Q. Doctor, I show you the third page of plaintiff's Exhibit 3, and ask you if that is your signature to the paper ?

A. That is my signature.

Q. Did you fill out any part of that paper ?

A. That is my handwriting ?

Q. I show you that and ask you if you can say when you attended Mr. Fish ?

A. Well, those are the dates. I might say that—

Mr. Hall. Is that relevant ?

The Court. I think so ; I think he may use this if he is able to say he has compared this with his book.

Mr. Hall. I object to the question.

The Court. The objection is not sustained.

Whereupon the plaintiff, by her Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT, Circuit Court Judge. [SEAL]

The Witness. This is my handwriting on here, the 23rd day of February, the 19th day of March and then the 17th day of April. The gentleman said he did not want later than that, I believe.

Mr. Hall. I do not want them after the 15th of April. I ask that all be stricken out subsequent to the 15th of April.

Mr. Voorhees. The 17th of April,—there is a question whether he was in sound health when that policy was delivered.

The Court. Yes, that will stand.

Q. Did you prescribe for him at these visits, doctor ?

A. Yes, sir.

Q. Did you talk with him ?

A. Yes, sir.

Q. And he with you ?

A. Yes, sir.

Q. Do you know what you treated him for on the 17th of April ?

A. Well, I have a memorandum here, nausea and vomiting with headache, fever.

Q. Have you any intimation as to what Mr. Fish died of ?

A. Only through hearsay.

(Objected to.)

The Court. He does not know.

Q. I show you a loose sheet of plaintiff's Exhibit 3, in which the cause of death of Walter Cullen Fish is stated. Do you see it, Doctor ?

A. Yes, sir.

Q. What is it ?

(Objected to.)

The Court. Has this been admitted in evidence?

Mr. Voorhees. Yes, the plaintiff's own paper.

The Court. Then he may call upon any witness or Counsel may state, I suppose, what appears in the paper, if it is in evidence.

The Witness. The statement made here is uremic poisoning.

Q. The fact that you treated Mr. Fish the previous April 17th for headache, etc., would that convey to your mind that that was a precursor of his illness which caused his death ?

Mr. Hall. I object to that as entirely immaterial. This cross-examination as I understand is proceeding upon the point of good health. The question of good health is a purely relative term; it is not a potant fact,

and the Courts all hold that unless you show that this man himself knew that he didn't have good health his judgment is conclusive unless it is patently a fraud.

The Court. What is the purpose of the question?

Mr. Voorhees. One of the pleas in this case is that this policy was not delivered to this man Fish while he was actually in good health. That is one of the conditions of the policy.

(Question allowed.)

Mr. Hall. There is one other point I did not make. That is not pleaded; it is not in issue. There is no allegation of that in the plea.

(Question withdrawn.)

Q. Did you know Dr. Shaeffer?

A. Well, I never met Dr. Shaeffer but once, and that was in the Court at the time of the trial before.

Q. Here?

A. Yes.

Q. Did you hear him testify?

A. As I said a while ago, I think Dr. Shaeffer testified after I did, but I don't know that.

Q. Is he alive?

A. Deceased, I believe.

CROSS-EXAMINATION.

By Mr. Hall.

Q. Doctor, the last trial didn't you state the dates at which you attended Walter Cullen Fish were the 23rd of February and the 17th day of April?

A. My memorandum here in my handwriting, the 23rd of February and the 17th of April, yes, sir.

Q. Your testimony at this time is not exactly the same as it was at the last trial—is that true?

A. In what point?

Q. As to the dates of attendance.

A. There is not much difference in that, is there?

Q. Well, that isn't for me to say. Now, Doctor, this

may not be cross-examination—I am not quite certain about that—you say you treated Mr. Fish for headache and sickness at the stomach, nausea !

A. Yes, sir.

Q. Does that of itself indicate or presage any serious illness ?

A. Not of necessity, no, sir.

By Mr. Voorhees :

Q. What do you mean, doctor, by saying " not of necessity ? "

A. Because you might have that in many conditions ; as is known to you and everybody practically, it might arise and actually does arise from a number of conditions.

By Mr. Hall.

Q. It might arise from eating too much Thanksgiving dinner, mightn't it ?

A. Oh, that is an established fact, you know ; that does not need any comment upon it.

By Mr. Voorhees.

Q. Is nausea sometimes an accompaniment of nephritis ?

A. Yes, sir.

Q. That is the disease of which Mr. Fish is said to have died ?

A. That is what I understood ; yes, sir.

Q. And during the progress of that disease, do you have symptoms of nausea ?

A. At times.

(Objected to as irrelevant.)

Mr. Voorhees : I was only answering you ; I did not introduce it.

Mr. Voorhees : I desire, if the Court please, to read the testimony taken at the last trial of Dr. William Shaeffer, who is now deceased. (To the jury.) Gentlemen of the Jury, this case was tried once before, and Dr. William

Shaeffer is now deceased, and I want to read to you the testimony which he swore to on the previous trial.

(Mr. Voorhees then read the testimony referred to.)

DR. WILLIAM SHAEFFER, sworn.

By Mr. Voorhees:

Q. You live in Camden, doctor?

A. Yes, sir.

Q. And are you a practicing physician?

A. Yes, sir.

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

A. Twenty-two years.

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

A. Yes, sir.

Q. Have you attended him professionally?

A. Yes, sir.

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

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

Q. Where did you attend him in 1896?

Objected to.

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

Mr. Voorhees: The application is made in 1902 and the allegation is that he hadn't been attended within two years; now, there appears: "The following is the name of the physician who last attended me, the date of attendance and the name of the complaint for which he attended me: Typhoid fever, in January, 1893, Dr. Braymer."

The Court: The question is allowed.

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

Q. Is it his residence?

A. His residence; yes.

Q. How long a period was that attendance?

A. One visit.

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

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

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

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

Cross-examination.

By Mr. Hall.

Q. How long?

A. One visit.

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

A. Why, pretty certain; yes, sir.

Q. Have you got your books of record here?

A. I haven't them here; no.

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

A. No, sir.

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

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

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

A. No, sir.

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

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

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

A. I don't recall.

By Mr. Voorhees:

Q. How do you fix your date of 1896?

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

The Court: It is allowed.

A. Why, by book-record charge.

Q. Did you consult it?

A. I did; yes, sir.

Mrs. Anna L. Fish re-called.

By Mr. Voorhees.

Q. After Mr. Fish's death, Mrs. Fish, what insurance did you collect on the life of your late husband?

A. Do you mean what companies ?

Q. Yes.

A. He was in the United Workmen, Fidelity—that is the United Workmen, the Heptasophs and Brotherhood of the Union.

Q. Were those on your husband's life ?

A. They were.

CROSS-EXAMINATION.

By Mr. Hall.

Q. Mrs. Fish, what are the character of these associations that you have mentioned as compared with an ordinary life insurance company ?

Mr. Voorhees. I object ; that certainly cannot be within her knowledge.

The Court. I suppose she is hardly qualified to testify as to that.

Q. Were they what is known as insurance companies ?

(Objected to.)

The Court. I do not think that is competent from this witness.

Whereupon the plaintiff, by her Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT, Circuit Court Judge. [SEAL]

Q. Are these orders, all of them or any of them fraternal beneficial associations ?

A. They were.

Q. Which of them are ?

A. All of them.

Q. Who was the agent of the insurance company who took this insurance application ?

A. Mr. Thompson.

Q. Were you present with Mr. Thompson and your husband, Mr. Fish, when the agent, Mr. Thompson, took your husband's application for this insurance ?

(Objected to.)

The Court. The objection is sustained. She is subject now only to cross-examination as to what she was asked about a few minutes ago.

Mr. Voorhees. I wish now, if your Honor please, to offer the interrogatories which were offered to this plaintiff. I think it would be better to have them put into the record.

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

Mr. Voorhees. I now offer the interrogatories and answers in order that they may be marked.

(Said interrogatories and answers are marked Exhibits D. 2 and D. 3.)

DEFENDANT RESTS.

At this point a recess was taken until 1.30 P. M.

Trial of the cause resumed after recess in the presence of Counsel for the respective parties.

PLAINTIFF'S REBUTTAL.

ANNA L. FISH, recalled.

By Mr. Hall.

Q. Mrs. Fish, do you remember Dr. Jarrett's visit to Mr. Fish in the latter part of 1901?

A. I do.

Q. How was it that Dr. Jarrett came to prescribe or was called in to look at Mr. Fish?

A. He was suffering with a pain in his shoulder at the time in the store.

Q. Who was in the store?

A. Mr. Fish.

Q. And how did it come about? Just tell the jury the circumstances.

(Objected to as irrelevant and immaterial.)

The Court. I will take the testimony.

(Exception noted for the defendant.)

Q. Now, just tell the jury, won't you?

A. Dr. Jarrett came in for flowers, and Mr. Fish told him—they were quite intimate—that he had a pain in his shoulder, and he prescribed for him, and said it was rheumatism.

Q. Do you remember how many visits Dr. Jarrett made?

A. No, I do not.

Q. You don't know whether he is correct or not in his statement?

A. No, I couldn't say.

Q. During the time of the visits of Dr. Jarrett, was Mr Fish attending to his regular business?

A. All the time.

Q. Did Mr. Fish complain to you of sickness or ill health?

A. He did not.

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

A. He was not ill at all.

Q. Just state to the Jury the exact time.

A. Well, he went to bed in perfect health, and he waked at half-past six and never spoke a word except that he had a pain in his head, and he died within an hour.

Q. How many years had you lived with Mr. Fish before his death?

A. 22 years.

Q. From your observation of Mr. Fish, and from what he may or may not have said to you, is it your opinion that he was in good or bad health?

(Objected to.)

The Court. I will take the testimony.

(Exception noted for the defendant.)

A. In perfect health I should say; I saw nothing different.

Q. Did he seem to be in that perfect health until the morning he waked up and died?

A. He did; he was away visiting at the time.

Q. Mrs. Fish, since the former trial of this case have you ever had any conversation with Dr. Shaeffer, now deceased, relative to his testimony at the former trial?

(Objected to.)

The Court. How can that be competent?

Mr. Hall. I offer to prove by this witness that she had a conversation with Dr. Shaeffer shortly after the former trial of this cause relative to his testimony wherein he testified that he attended Mr. Fish on certain dates; that Dr. Shaeffer had his mind refreshed as to a condition of unfriendliness existing between the doctor and Mr. Fish, and having that condition brought to his mind,

he made an examination of his books in the presence of this witness and found according to the record that the attention he gave on the dates which he testified he gave to Mr. Fish was in fact given to a little girl in the family of Mr. Fish; that the charge as stated in his testimony was against Mr. Fish and from that he concluded that it had been Mr. Fish to whom he had given the services.

The Court. The offer is over-ruled.

Whereupon the plaintiff, by her Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT, Circuit Court Judge. [SEAL]

Q. Mrs. Fish, did you collect any money on any policy in the New York Life Insurance Company?

A. No, sir.

Q. Had that policy been cancelled or forfeited before the death of Mr. Fish, or when had that policy been cancelled?

A. Why, a year after it was in force.

Q. A year after it had been issued?

A. Yes.

Q. Mrs. Fish: were you present when Mr. Thompson, the agent of the company, and Mr. Fish prepared the application of Mr. Fish for this policy of insurance?

A. I was.

Q. What statement, if any, did Mr. Fish make to Mr. Thompson as to what other insurance he carried upon his life?

Mr. Voorhees. I object; that does not come within the pleadings in this case at all.

The Court. What is the offer, Mr. Hall?

Mr. Hall. The offer is precisely that which was admitted at the last trial as your Honor will see, on page 33 of the printed book, to show that at the time this application was made this insurance was disclosed to the company through its agent, partially written down in the

report made by the agent, and submitted to the company, and that they are bound by that information.

The Court. I will take the testimony.

(Exception noted for the defendants).

(Question repeated.)

A He told them each one that he belonged to.

Q. I know, but you must tell the jury, Mrs. Fish, what each one is.

A. Well, he told him he belonged to the United Workmen and the Heptasophs and the Brotherhood of the Union.

Q. Were you present when the medical examiner of the company, Dr. Horning, made the medical report on the life of Mr. Fish?

A. I was.

Q. Did Mr. Horning ask Mr. Fish?

A (Objected to as leading.)

Q. The Court. Ask your question.

A. Did Dr. Horning ask Mr. Fish at the time he made his medical report anything concerning his being attended by any other physician?

(Objected to.)

Mr. Hall. The purpose of this examination, if the Court please, is as to the interpretation of this contract, an interpretion declared in a declaration by the company itself through its agent to this man as to what these things meant.

The Court. You may put the testimony in.

(Exception noted for the defendant.)

(Question repeated.)

A He did.

Q. In response to that conversation did Mr. Fish tell Dr. Horning——

(Objected to; objection sustained.)

Q. Can you repeat the conversation they had concerning this matter?

Mr. Voorhees. I object to that also on the deeper ground that that is not an issue in this case. There is no question of fraud or misrepresentation in this at all; they have not pleaded that, and certainly it is irrelevant to the issue raised in this case.

The Court. I will allow you to put in your testimony.

(Exception noted for the defendant.)

A. Well, Mr. Horning told Mr. Fish that he believed him to be in perfect health and he would give him $3000 if he wanted it instead of one, and he told him he did not want it, and I asked him if he mentioned those spells of sickness that he had had, and he said "Were you in bed?" He said "No, never after I had typhoid fever; I have never even laid down." "Then," he said, "that doesn't count."

Q. You say he mentioned those spells of illness—what do you mean by those spells of illness?

A. He never had any illness only a headache; that is all I have known him to have since he had typhoid fever, and vomiting; he has had spells of vomiting.

Q. I don't mean that; you must specify to the jury exactly what Mr. Fish told Dr. Horning.

A. Well, when he gave in that Dr. Sharp had doctored him and Dr. Jarrett—

Q. No, tell the jury.

A. What do you want me to say?

Q. Just what you started to tell.

A. He told the doctor about being doctored by Dr. Sharp and Dr. Jarrett; he told him he had been doctored by Dr. Sharp for vomiting and headache and by Dr. Jarrett for rheumatism that time in the shoulder. Dr. Horning said that was of no account, it was not considered illness because he had not been in bed, and he attended to his business all during the time; I had never known him to even lie down.

Q. Did Dr. Shaeffer attend or prescribe for Mr. Fish during 1896?

A. Well, do you mean when he had typhoid fever?

Q. No. When did he have typhoid fever?

A. He had that—well, it is just 16 years ago; I don't know just the year.

Q. 16 years ago?

A. 16 years this December.

Q. 1893—Now, did Dr. Shaeffer ever attend Mr. Fish after 1893?

A. He never did.

Q. He was mistaken then when he says—

A. He told me he was mistaken and was very sorry for it.

Q. The witness is shown paper C. in Exhibit P. 2 and she is asked: Do you know whose handwriting that is?

A. I do not.

Q. Is it Mr. Fish's handwriting?

A. No, it is not.

Q. Do you know from your recollection or observation or what you saw at that time who actually filled out that paper?

A. No, I do not; this is his handwriting (indicating a part of paper B.)

CROSS-EXAMINATION.

By Mr. Voorhees.

Q. You have already said that that was your husband's signature?

A. That is, yes.

Q. That is Exhibit P. 2 shown you?

A. Yes.

Q. Do you recollect, Mrs. Fish, the fact of Dr. Jarrett attending your husband?

A. I do.

Q. And he was there, made several visits to him?

A. I know he was there several times ; I couldn't say how many.

Q. At your husband's house, residence ?

A. Yes.

Q. And you also remember the fact that Dr. Sharp attended him, don't you ?

A. Well he prescribed for him if you call that attending.

Q. Did he come to the house at all ?

A. He came to the house but he never found him out of the store.

Q. And you also remember that Dr. Shafer—

A. No, Dr. Shafer did not.

Q. Did not ?

A. No, sir, he did not.

Q. But the other two you recollect ?

A. I do.

Q. And you recollect that the attendance of Dr. Jarrett was for rheumatism ?

A. It was.

BOTH SIDES REST.

Mr. Voorhees. I desire to make a motion, if your honor please, for a direction of the verdict for the defendant in this case. The grounds are those that I made in making the motion for a non-suit, and also the additional grounds of the fact that the proof of the attendance of other physicians, and the proof of the existence of other insurance upon the life of this decedent are now proved beyond a doubt and beyond a question. I cannot see how the trial of this case and the facts adduced upon this trial differ at all from those which were brought to light on the first trial of this cause. That matter went to the Court of Errors ; they have made a deliverance that these warranties were broken by proof of the attendance of the physician who was present here, and that alone, it seems

to me, is sufficient to cause your Honor to grant the motion which I have made.

The Court. (After argument.) The Court feels impelled, under the decision of the Supreme Court in this case, since its last trial to direct the jury to find a verdict in favor of the defendant. One of the warranties in the application for insurance was that the applicant had not been under the care of any physician during the past two years. The testimony in this case shows that he was under the care of a physician within two years, and under the decision of the Supreme Court I feel impelled to direct you, gentlemen, that you must find a verdict in favor of the defendant. The Clerk will record it.

Whereupon the plaintiff, by her Counsel, prays a bill of exceptions which is allowed and sealed accordingly.

ALLEN B. ENDICOTT, Circuit Court Judge. [SEAL]

NEW JERSEY COURT OF ERRORS AND APPEALS.

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

ON CONTRACT.

ASSIGNMENTS OF ERROR.

And the said Anna L. Fish, by Henry Hollinshed, Jr., her attorney comes and says that in the record and proceedings, and also in the matter contained in the bills of exceptions and in the giving of judgment in said cause in the Supreme Court of New Jersey, there is manifest error in this:

First. That the Circuit Court Judge before whom the cause was tried, refused to permit legal and competent evi-

dence to be given at the trial. (Pro ut the Bills of Exceptions).

Second. Because the Circuit Court Judge before whom the cause was tried, directed a verdict for the defendant. (Pro ut the Bills of Exception.)

Wherefore the said Anna L. Fish prays that the said judgment, by reason of the said errors, and of other errors in the record and proceedings aforesaid, appearing, may be reversed, annulled and for nothing holden, and that the said Anna L. Fish may be restored to all things that she hath lost on occasion of said judgment.

Dated March 7th, 1907.

HENRY HOLLINSHED, JR.,
Attorney for the Plaintiff.

Due and legal service hereby acknowledged.

WILLARD P. VOORHEES,
Attorney for Defendant in Error.

NEW JERSEY COURT OF ERRORS AND APPEALS.

ANNA L. FISH,
vs.
METROPOLITAN LIFE INSURANCE COMPANY,

IN ERROR.
JOINDER IN ERROR.

And hereupon, afterwards, to wit, on the third Tuesday of March, A. D., 1907, etc., the said Metropolitan Life Insurance Company, by Willard P. Voorhees, its attorney, comes into court and says that there is no error either in the record and proceeding aforesaid, or in giving the judgment aforesaid, and he prays here that the court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that

the judgment aforesaid, in manner aforesaid given, may in all things be affirmed, etc.

WILLARD P. VOORHEES,
Attorney for and of Counsel
with Defendant.

NEW JERSEY COURT OF ERRORS AND APPEALS.

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

JOINDER IN ERROR.

WILLARD P. VOORHEES,
Attorney of Defendant.

PLAINTIFF'S EXHIBIT 1.

UNITED STATES OF AMERICA.

Nos. 262554-5 C
Age
40

METROPOLITAN LIFE INSURANCE COMPANY.

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

IN CONSIDERATION of the Answers and Statements contained in the application for this Policy, a copy of which is hereto annexed as a part of this contract, upon the life of Walter Cullen Fish, of Camden, State of New Jersey, hereinafter called the insured, all of which answers and statements are hereby made warranties, and of the payment of the annual premium of Forty Dollars and two Cents,

on or before the delivery of this Policy, and of a like amount on or before the nineteenth day of April, of each and every year during the life of the insured, DOTH HEREBY AGREE, subject to the conditions set forth on the third page hereof, each and all of which are hereby made part of this contract, and are accepted by the insured and assured as part hereof as fully as if herein recited, to pay at its Home Office, in the City of New York, the sum of One thousand dollars to Anna L. Fish, wife of the insured, herein called the assured, if living, otherwise to the legal representatives of the insured, upon the receipt of the Company at its Home Office and its approval of the proofs of death of the insured, made in the manner, to the extent and upon the blanks required by Condition Sixth, and upon the surrender of this Policy, deducting therefrom the premium, if any, for the balance of the policy year.

No obligation is assumed by the Company until the first premium has been paid, nor prior to this date, nor unless upon this date the insured is alive and in sound health.

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

JNO. R. HEGEMAN,
President.

Form C 216 A Life.

CONDITIONS.

Referred to on First Page as part of This Contract.

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

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

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

FOURTH.—Premiums are payable at the Home Office in the City of New York, but at the pleasure of the Company suitable persons may be authorized to receive such payments at other places, but only on the production of the Company's receipt signed by the President or Secretary, and countersigned by the person receiving the payments.

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

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

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

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

Here follows copy of application for this policy; same as *Exhibit P2.*

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

Agent J. Jones

EXHIBIT P2.

METROPOLITAN LIFE INSURANCE COMPANY
(Incorporated by the State of New York.)

Pol. Form No. 262554

A TO BE FILLED OUT AND SIGNED BY THE COMPANY'S AGENT.

B TO BE SIGNED BY THE LIFE PROPOSED.

C TO BE FILLED OUT BY THE MEDICAL EXAMINER AND SIGNED BY THE APPLICANT.

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

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

C Plan—W. L. District—Camden.

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

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

A To Be Filled Out and Signed by the Agent.

AGENT'S REPORT ON PROPOSED RISK

1. Full Name of Life Proposed for Insurance—Walter C. Fish

2. Amount of Insurance—$1000.

2a. Plan of Insurance—Whole life.

3. Residence—No. 843 Street—Broadway City—Camden Which floor of house? Front or rear? State.

3a. Post Office Address—Camden

4. Race—White

5. Married

6. Sex—Male

7. Date of Birth—Feb. 21, 1862

8. Age Nearest Birthday—40 years.

9. Where Born. (Name town, State and country.)—Bethel, N. J.

10. Occupation—Florist Place of Business—845 Broadway.

11. How Are Premiums to Be Paid—$40.02 annually.

12. By Whom Will the Premiums on This Insurance Be Paid? Name—Applicant Relationship to Life Proposed—Self

13. Is Said Life Now Insured in This Company? If so, give numbers of all Policies. No

13a. Any Other Policy in Force?

14. Is the Insurance Applied for to Be an Increase to the Insurance in Force? No

14a. If not, What Policies Are to Be Discontinued?

15. Is Said Life Now Insured in Any Other Company or Society, or Association? If so, give names and amounts. Workmen Heptasophs

15a. Any Other? No.

16. Has Said Life Ever Been Insured in This Company? No

16a. If so, Give Policy Number.

17. Has said life ever applied to any Company, Order or Association for life insurance, and been declined, or postponed, or without receiving the exact kind and amount of insurance applied for? *(If yes, give particulars.)* No

18. Name, Etc., of Beneficiary, Subject to Provisions of Policy Applied for as to Payment. Name—Anna L. Fish Occupation—Housekeeper Relationship—Wife Age—37 years. Residence—No. 843 Broadway Street.

City—Camden State—N. J.

19. Did you see the person to be insured at the time this report was written? Yes

20. Was each question put to the person and answered as recorded? Yes

21. Does the person appear to be a good risk in every respect, and do you recommend that a Policy be issued? Yes

22. Was the standard signature in Part B made in your presence by the life proposed? Yes

23. Is the person any relative of yours or of any employe of this Company? No

24. Does the person appear older than age stated? No

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

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

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

APPLICATION TO THE

METROPOLITAN LIFE INSURANCE COMPANY

(Incorporated by the State of New York.)

(DATE) April 14, 1902.

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

WALTER CULLEN FISH

Signature of Proposed Applicant.

CHAS. H. THOMPSON

Signature of Witnessing Agent.

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

To induce the said Company to issue said Policy, and as

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

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

1A My age nearest birthday is 40 years.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

I further agree that in any distribution of surplus or apportionment of dividends on any policy issued upon this application, the principles and methods which may be adopted by the Company for such distribution or apportionment, and its award of the amount belonging to such policy, shall be and are hereby ratified, confirmed and accepted.

I hereby waive the provisions of Section 834 of the Code of Civil Procedure of the State of New York, and of simi-

lar provisions in the laws of other States. And I expressly agree and stipulate that in any suit on the policy herein applied for any physician who has attended or may hereafter attend me may disclose any information acquired by him in any wise affecting the declarations and warranties herein made.

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

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

Signature of Life Proposed. WALTER CULLEN FISH.

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

Dated at Camden 4-15 1902

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

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

REPORT OF EXAMINING PHYSICIAN.

(No Part of the Declaration of the Applicant.)

D 1. Apparent age—40 years.

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

3. Figure—Good

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

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

7

Living—Good Sisters Dead? Age—3 Cause of Death, if Dead—Convulsions.

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

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

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

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

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

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

12. Is the person ruptured? No

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

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

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

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

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

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

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

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

F. L. HORNING,
Examining Physician's Signature.

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

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

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

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

F. L. HORNING.

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

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

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

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

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

4. State number of children living, if any, and age of each.
5. State number of children dead, if any, age at, and cause of death.
6. State husband's Occupation and Age. Place of business. Residence.
7. A. Is the husband insured in her favor? If so, in what Company or Companies, Associations or Societies, and for what amount? B. If not insured in her favor, state reason why not.
8. From what source does she derive her means of support?
9. If a single woman, A. Occupation and age of Father? B. Occupation and age of Mother?

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

.....

Signature of Agent.

EXHIBIT P3.

1. CLAIMANT'S STATEMENT. To Be Made by the Person Claiming the Insurance.
Policies—No. 262554-5C No. ....C No ....C Date —Year, 1902 Month, April Day, 19 .... Full Name of Deceased—Walter Cullen Fish. Residence—843 Broadway Amount Claimed—$1000. $.... $.... Total, $.... Use ink only. Every question must be fully answered or the proofs will be returned.
1. (a) Birthplace of deceased? Town—Bethel County —Camden State or Country—New Jersey (b) Date of Birth—Year, 1862 Month, Feb Day, 21
2. Place of death of deceased? Street and No.—Pleasantville Town or City—.... County—Atlantic Co State New Jersey
3. Date of Death? Year—1902 Month—July 6 Day—Sunday

4. Cause of Death? (Give full particulars.) Uremia about ¾ of hour duration.
5. Occupation of deceased? (If more than one, specify in detail.) Florist
6. Was deceased at any time connected, directly or indirectly, with the ale, wine or liquor business? If so, when? No
7. Name and address of deceased's last employer? Name —Self Occupation—Business connected with own home. Florist Street .... City—.... State—....
8. When did deceased quit work, and why? Day or so at a time during last illness.
9. Upon what date did deceased first consult a physician for last sickness? June 11, 1902
10. Give names and addresses of all Physicians who attended or were consulted by deceased during last sickness—Dr. Sharp, 504 Broadway, Camden. Dr. Fish, Pleasantville, N. J. Dr. North, Pleasantville, N. J.
11. For how long was deceased confined to house and prevented from attending to business by last sickness? 2 days
12. What was the duration of deceased's last sickness? Years—.... Months—.... Days—24 ("total")
13. Had deceased ever been an inmate of or received treatment at any Hospital, Dispensary or other Institution? If so, give full particulars. No
14. What sickness previous to the last one has deceased ever had? Give full particulars of each sickness, with dates and duration of each. Typhoid fever about 10 yrs ago about 5 weeks
15. Give names and addresses of all Physicians who attended deceased at any time prior to last sickness. Dr. Braymer now deceased
16. (a) Did deceased ever meet with any accident or undergo any surgical operation? If so, give dates and full particulars. No (b) Were deceased's habits of life correct, sober and temperate? Yes (c) Had they always been so? Yes
17. (a) Has this Company ever paid a claim on any mem-

ber of deceased's family? If so, give particulars. Son Albert Fish Died Jan. 25, 1898. (b) Had any application for insurance ever been made to any Company, Society or Association on which a policy was not granted? He was rejected in the Royal Arcanum about 3 weeks ago, without explanation. Carried ins, in N. Y. Life Ins. Dropped on account of expense.

18. Are there any other Policies on deceased in this Company? If so, give numbers and amounts. No

19. Was deceased ever insured in any other Company or Society? If so, state names of Companies or Societies and amount of Insurance in each. A. O. U. W., 2000; Heptasophs 1000; Brotherhood 600. See 17

20. Was deceased aware of this insurance? Yes

21. (a) Who made application for this insurance? State name and relationship. Himself

21. (b) By whom have the premiums been paid? Himself

22. Was deceased in receipt of a Pension? If so, state date granted and where. No

23. Was deceased blind, deaf, dumb, or afflicted with any mental disease or physical infirmity or deformity? If so, give full particulars and state how long such had existed. Slight deafness; about 10 yrs.

24. (a) Was deceased married? Yes (b) If married, is widow or widower alive? Yes

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

25. Are deceased's father and mother living? Yes If Dead, give the following particulars: Father—Age at death, ... Full name, ... Cause of death, ... Place of death, ... Date of death. Mother—Age at death, ... Full name, ... Cause of death, ... Place of death, ... Date of death, ...

26. Give names in full and ages of deceased's brothers and sisters living. Name—Sallie H. Fisher Age—47 (about). Name—.... Age—.... Name—.... Age—....

27. Give the following particulars of deceased's brothers

and sisters who are dead? Name in full—Samuel Fish Age at death—35 Cause of death—I don't know Place of death—603 N. 5th St., Camden. Date of death—Dec. 1890.

28. Give names in full and ages of deceased's children now living.—W. Everett Fish, 14 yrs.; Ethel M. Fish, 8 yrs.

29. Has father, mother, brother, or sister ever had Consumption or any Pulmonary, Scrofulous, or Constitutional Disease or Insanity? If so, give names, relationship, causes of death and dates of death. No

30. Are you now or have you ever been in the employ of this Company? If so where and in what capacity? No

31. Are you in any way related to anyone in the employ of this Company? If so, to whom, where located, and what is the relationship? No

32. (a) By what right or relationship do you claim the proceeds of the Insurance? Widow (b) If policy was ever assigned, give date and purpose of assignment. No

The undersigned hereby certifies that the foregoing answers apply to the life heretofore insured under the above-numbered Policy; that all premiums under said Policy have been duly paid; that the undersigned has a good and valid interest to the amount assured in the life of said deceased; and that whatever other and further proofs may be required by the METROPOLITAN LIFE INSURANCE COMPANY, will be furnished by the undersigned upon demand by said Company.

ANNA L. FISH Age 37,
843 Broadway Residence.

STATE OF NEW JERSEY
COUNTY OF CAMDEN

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

Before me, a Notary Public in and for the above County and State, this 11 day of July appeared Anna L. Fish known to me, and made

[SEAL] *oath that she personally signed the above statement and that the answers by her given to the foregoing questions are true and full to the best of her knowledge and belief.*

JAMES F. BAKER,
Notary Public.

DECLARATION MADE BY CLAIMANT.

To the Metropolitan Life Insurance Company.

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

Dated at Camden this 11 day of July 1902

ANNA L. FISH, Claimant.

Witness—JAMES F. BAKER

ATTENDING PHYSICIAN'S STATEMENTS.

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

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

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

1. Full name of Deceased? Walter Cullen Fish.
2. Residence? No. 843 Broadway Street. City or Town —Camden State—N. J.
3. Occupation? Florist
4. White or colored? White
5. Age at death? 40
6. Apparent age at death? 40
7. Date of death? Year—1902 Month—July Day—6th
8. Cause of death? I. Chief or Primary—Nephritis II. Contributing or Secondary—Uremia
9. How long had Deceased been ill when you were called to attend? A few hours
10. For what disease or diseases have you at any time at-

tended Deceased PRIOR to last illness, and what was their duration? Dates of Attendance—Day, 23 Month, Feb Year, 1902 Day, 19 Month, March Year, 1902 Day, 17 Month, April Year, 1902 Day, 13 Month, May Year, 1902 Day, 11 Month, June Year, 1902 date of first prescription in last illness. Diseases—Nausea and vomiting with headache and fever As above stated. Nephritis. Duration of Diseases—About 24 hours About 24 hours About 24 hours About 24 hours

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

12. Was Deceased afflicted with any infirmity, deformity, or chronic disease? If so, please specify. Slight deafness

13. Did any member of Deceased's family die of Consumption? If so, please give relationship and date of death. No

14. Was Deceased ever treated by any other physician or at any hospital or other institution prior to, during, or subsequent to your attendance? If so, please specify. Dr. Braymer some years ago.

15. Was death the result of Deceased's own hand or act? No

16. Have you previously filled out a Certificate for this or any other Company of this death? If so, please specify. Yes, this Co.

17. Are there any other particulars relating to the sickness or habits of Deceased with which you think the Company should be made acquainted? If so, please specify. See attached note.

18. To what extent, if any, did Deceased use intoxicants? None

19. Was death caused, directly or indirectly, by the use of intoxicating drink, opium, or other drug? No

20. Was an inquest or Post Mortem examination held? No

I Hereby Certify that I attended the Deceased from June 11th, 1902, to July 3rd, 1902, and that the answers as above

recorded are complete and true to the best of my knowledge and belief.

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

STATE OF NEW JERSEY
COUNTY OF CAMDEN

Before me, a Notary Public in and for the above County and State, this 11 day of July 1902 appeared E. B. Sharp, known to me as a physician in regular standing, and made oath that he personally signed the above statement and the answers by him given to the foregoing questions are true and full to the best of his knowledge and belief.

JAMES F. BAKER,
Notary Public.

DECLARATION MADE BY CLAIMANT.

To the Metropolitan Life Insurance Company.

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

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

ANNA L. FISH, Claimant.

Witness—JAMES F. BAKER

ATTENDING PHYSICIAN'S STATEMENTS.

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

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

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

1. Full name of Deceased? Walter C. Fish
2. Residence? No. Broadway and Spruce Street. City or

Town—Camden State—N. J.

3. Occupation? Florist
4. White or colored? White
5. Age at death? 40 years
6. Apparent age at death? 40 years
7. Date of death Year—1902 Month—July Day—6
8. Cause of death I. Chief or Primary—Uraemic Poisoning II. Contributing or Secondary—....
9. How long had Deceased been ill when you were called to attend? Did not know patient until thirty minutes before death.
10. For what disease or diseases have you at any time attended Deceased PRIOR to last illness, and what was their duration? Dates of Attendance—Day, 6 Month, July Year, 1902 Diseases—.... Duration of diseases—....
11. Did Deceased ever suffer from Phthisis Pulmonalis, or any other form of Consumption or Pulmonary disease? If so, please specify. Not to my knowledge
12. Was Deceased afflicted with any infirmity, deformity, or chronic disease? If so, please specify. Did not know patient until thirty minutes before death.
13. Did any member of Deceased's family die of Consumption? If so, please give relationship and date of death. Not to my knowledge.
14. Was Deceased ever treated by any other physician or at any hospital or other institution prior to, during, or subsequent to your attendance? If so, please specify. Dr. Sharp, Camden, N. J.
15. Was death the result of Deceased's own hand or act? No
16. Have you previously filled out a Certificate for this or any other Company of this death? If so, please specify. No
17. Are there any other particulars relating to the sickness or habits of Deceased with which you think the Company should be made acquainted? If so, please specify. No

18. To what extent, if any, did Deceased use intoxicants? Not any

19. Was death caused, directly or indirectly, by the use of intoxicating drink, opium, or other drug? No

20. Was an inquest or Post Mortem examination held? No

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

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

STATE OF NEW JERSEY
COUNTY OF ATLANTIC

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

[SEAL] HENRY LAKE,
Notary Public.

1. Full name of Deceased? Walter C. Fish
2. Residence? No. 843 Broadway Street. City or Town —Camden State—N. J.
3. Occupation? Florist
5. Age at death?
10. For what disease or diseases have you at any time attended Deceased PRIOR to last illness, and what was their duration? Dates of Attendance—Day, 2 Month, Oct Year, 1901 Day, 3, Month, Oct Year, 1901 Day, 4 Month, Oct Year, 1901 Day, 5 Month, Oct Year, 1901 Diseases—Acute Articular Rheumatism. Duration of Diseases—One week.
11. Did Deceased ever suffer from Phthisis Pulmonalis, or any other form of Consumption or Pulmonary disease? If so, please specify. No

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

Signature of Physician—HARRY JARRETT,

Residence: No. and Street—925 Broadway

City or Town—Camden

State—N. J. 10

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