

INDEX

	Page
Transcript of Clerk's Docket.....	- 1
Testimony	4
Decision	35
Specifications	36
Notice of Appeal.....	38
Amended State of Demand.....	39

WITNESSES

Plaintiff's:

Mary Howard,

Direct	4
Cross	10
Re-direct	16
Re-cross	16

Re-called:

Direct	20
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Louis Howard,

Direct	17
Cross	18

Defendant's:

Maud Spats,

Direct	21
Cross	25

D. Lester Dann,

Direct	25
Cross	29

I. Webster Kayle,

Direct	30
Cross	33

EXHIBITS

Plaintiff's:

	Offered Page	Printed Page
Exhibit P-1—Policy No. 14020, dated March 25, 1916.....	5	40
Exhibit P-2—Policy.....	5	
Exhibit P-3—Policy.....	5	
Exhibit P-4—Four receipts.....	6	
Exhibit P-5—Copy of inside of receipt book, Certificate No. 12,201.....	6	43
Exhibit P-6—Copy of inside of receipt book, Certificate No. 13,206.....	6	44
Exhibit P-7—Record of the death of James W. Howard.....	6	
Exhibit P-8—Receipt book.....	10	
Exhibit P-9—Four letters.....	21	
Exhibit P-10—Inside of Receipt Book		45

Defendant's:

Exhibit D-1—Receipt dated August 29 1916, signed by Mary Howard.....	35	46
Exhibit D-2—Three Receipts.....	35	46
Exhibit D-1 for Identification—Re- ceipt dated July 26, 1916.....		48

New Jersey Supreme Court

Transcript of Clerk's Docket

ORANGE DISTRICT COURT

13703

MARY HOWARD,

Plaintiff,

vs.

ESSEX MUTUAL BENEFIT ASSO-
CIATION a corporation,

Defendant.

Action on Contract.
Demand \$500.

20

Summons Issued 4/25/17.

Summons Retble 5/2/17

A. B. Seymour, Plaintiff's Attorney.

E. R. McGlynn, Defendant's Attorney.

Summons returned as follows:

I served the within summons, April 26th, 1917 30
on Miss Marford, she being the bookkeeper of
said corporation by reading the same to her and
delivering to her a copy thereof.

JOHN E. GALLAGHER,

Sergeant-at-Arms,

Constable.

November 28, 1917, Trial had. The following
jury was sworn and served: 40

Transcript of Clerk's Docket

- 10 1. R. Hopworth, Jr. 7. F. Lee Ransdall
 2. John H. Thomas 9. Frank E. Miller
 3. George F. Kocher 10. Charles Sullivan
 4. Martin Shannon 11. Bayard I. Sidman
 5. Augustus L. Schott 12. Albert F. Welsh
 6. John Bellini

Mary Howard sworn and testified.

Policy in evidence marked P-1.

Receipts marked D-1 for identification.

Policies in evidence marked Exhibits P-2 and P-3.

Lewis Howard sworn and testified.

Notice to Produce Exhibit P-4.

20 Books and letters in evidence marked Exhibit P-5, P-6, P-7, P-8, P-9 and P-10 respectively.

Plaintiff rests.

D. L. Dann sworn and testified.

Card in evidence marked Exhibit D-2.

Maude Spatts and I. Webster Kayle sworn and testified.

Defendant rests.

30 Agents report in evidence marked Exhibit P-11.

The jury retires and returning, reporting themselves unable to agree and were discharged.

Order replacing cause on calendar filed December 11, 1917.

January 23, 1918 Retrial had.

40 William Davenport sworn as stenographer.
 Mary Howard sworn and testified.

Transcript of Clerk's Docket

Policies and receipt books in evidence marked Exhibits P-1, P-2, P-3 and P-4.

Proof of death Exhibit P-5.

Book in evidence Exhibit P-6.

Signature marked D-2 for identification.

Receipt marked D-1 for identification.

10

Lewis Howard sworn and testified.

Mary Howard re-called and testified.

Cards and letters in evidence marked Exhibit P-7 and Exhibit P-8.

Plaintiff rests.

Maude Spatts, D. Lester Dann and I Webster Kayle sworn and testified.

Receipt in evidence D-1.

Judgment was thereupon rendered for the plaintiff and against the defendant for \$100.00 debt and \$14.62 costs. 20

January 23, 1918.

On Contract Order—12/14/17.

Amended State of Demand filed November 26, 1917.

Demand for Jury filed September 25, 1917.

State of Demand filed May 2, 1917.

Notice of Appeal filed February 1, 1918.

Appeal Bond filed February 7, 1918.

Plaintiff's costs:

Summons	\$2.10	30
Mileage	.32	
Listing	1.50	
Venire	5.75	
Attorney's fee	5.00	

\$14.62

I Harold J. Trabald, Clerk of the Orange District Court, hereby certify that the foregoing is a true copy of the record of proceedings in the above case as taken from the docket of this Court. 40

HAROLD J. TRABOLD.

Testimony

ORANGE DISTRICT COURT

10	MARY HOWARD, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div> <div style="text-align: center; padding: 5px 0;">vs.</div> ESSEX MUTUAL BENEFIT ASSO- CIATION, <div style="text-align: right; padding-right: 20px;">Defendant.</div>
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Transcript of testimony taken on the twenty-third day of January, nineteen hundred and eighteen, before his Honor, DANIEL A. DUGAN, Judge of the above mentioned Court, at the City
 20 Hall, Orange, New Jersey.

Appearances:

Arthur B. Seymour, Esq., for Plaintiff.

Edward R. McGlynn, Esq., for Defendant.

MARY HOWARD, Plaintiff, sworn:

Direct-examination by Mr. Seymour:

Q. Mrs. Howard, where do you live? A. 227
 30 Valley Road, Montclair.

Q. You are the plaintiff in this suit? A. Yes, sir.

Q. What was your husband's name? A. James W. Howard.

Q. And did the defendant, the Essex Mutual Benefit Association of New Jersey issue any insurance upon your husband's life?

(No answer.)

40 Q. I show you a policy dated March 25, 1916,

Mary Howard—Direct

No. 14020, issued by the Essex Mutual Benefit Association on the life of James W. Howard for \$100.00; that is on your husband's life? A. Yes, sir.

Mr. Seymour: I offer this policy No. 14020 in evidence.

Policy No. 14020 received in evidence and marked Exhibit P-1. 10

Mr. Seymour: This policy reads as follows: (Reads policy).

Q. What was the date of your husband's death, Mrs. Howard? A. August 27, 1916.

Mr. Seymour: Is it admitted that the proofs of death were offered and filed with the company?

Mr. McGlynn: Yes.

Q. Have you collected the insurance on this policy? A. No, sir, I haven't collected it. 20

Q. Have you paid the monthly premiums up to the date of your husband's death? A. Yes, sir.

Q. Now when you paid these premiums, you got receipts and your payments were entered in books? A. Yes, sir.

Q. And the premiums which you paid were premiums to cover other policies besides this one, weren't they? A. Yes, sir. 30

Mr. Seymour: I offer these two other policies in evidence.

Mr. McGlynn: Just for the purpose of showing, if anything, the number of policies he had.

Two policies of insurance received in evidence and marked Exhibits P-2 and P-3 respectively.

Mr. Seymour: I also offer these four receipts and two books in evidence. 40

Mary Howard—Direct

Four receipts received in evidence and marked as one Exhibit, P-4; two books received in evidence and marked Exhibits P-5 and P-6 respectively.

By the Court: Q. What did you husband die
10 of? A. Head trouble; I don't know exactly what they call it.

Mr. Seymour: I offer in evidence this certified copy of the record of death of James W. Howard.

Record of the death of James W. Howard received in evidence and marked Exhibit P-7.

Q. Now one of your policies calls for forty-four cents a month? A. Yes, sir.

20 Q. And another policy calls for \$1.10 per month, is that right? A. Yes, sir.

Q. And another one for \$1.25 per month, is that right? A. Yes, sir.

Q. I show you a receipt dated January 29, 1916, for \$1.54—

Mr. McGlynn: That was before the issuance of the policy we are suing on.

Q. —That is \$1.10 on policy No.13206, and forty-four cents on policy No.14020, isn't it?

30 A. Yes, sir.

Q. Now is that the only receipt you have for the payment of the forty-four cent premium? A. Yes, sir, that is all the receipt that I have; yes, sir.

Q. Who made the monthly payments each month? A. I made them myself, mostly.

40 Q. Where were these monthly payments entered when you made the payments? A. There were slips besides what were put in the books.

Mary Howard—Direct

Q. And you also got receipts besides the book receipts? A. Yes, sir.

Q. Do you know of your own knowledge whether or not when your husband died, you had receipts or entries in the books in premiums up to including the month of your husband's death?

A. Only the last one; when the agent was to the house my husband was out under the grape arbor, and he spoke to him about these papers; he didn't offer him a receipt, and my husband called his attention to it and said: "if anything happens to me when I die, will my wife have any trouble of getting the money?" I was there in the presence of the agent myself.

Mr. McGlynn: I object to this testimony unless it is more closely defined as to when this took place. 20

Q. When was that statement made? A. That was in July.

Q. What was the agent's name? A. The agent's name?

Q. Yes. A. I understood his name was Mr. Peoples.

Q. Had he collected premiums before? A. I never seen the man since then.

Q. Had he collected premiums before each month? A. No, he said he had only been on a short time, then. 30

Q. Did you pay him any money? A. He asked me, but I didn't have enough change, and I brought my husband out more change to finish up the dollar.

Q. Who paid the money? A. My husband.

Q. How much? A. The last receipt which you have made out—July. 40

Mary Howard—Direct

Q. Did he enter the payment in the book? He put it in the receipt—gave me a receipt.

Q. He didn't enter it in any book? A. No, sir.

10 Q. I ask you whether or not the forty-four cent premiums were paid each month from the time the policy was issued up to the time of your husband's death; were they? A. Up until that one day, that's all; they were all put in the book before that.

Q. Forty-four cents? A. Yes, sir.

Q. Now, did you make those payments yourself? A. When I was in and my husband wasn't in I made the payments myself.

20 Q. How many forty-four cent payments did you make? Who made the June payment of forty-four cents? You just told us about the July payment, now who made the June payment? A. I made it myself.

Q. To whom? A. To the agent that they had then.

Q. What was his name? A. Mr. Nelson.

Q. Is he alive or dead? A. I learned that he is dead.

30 Q. Where was that payment entered; was it entered in a book or did you get a receipt for it? A. Mr. Nelson gave us a receipt.

Q. Where is the receipt? A. Why when Mr. Peoples came he didn't put it in there then.

Q. Where is the receipt? A. It's on that slip that you have there—Mr. Nelson's receipt.

Q. Who made the May payment? A. My husband made it himself.

40 Q. Were you present? A. No, sir, I wasn't present; I was just getting ready to take the car when he came in.

Mary Howard—Direct

Q. Mrs. Howard, I show you a book—it isn't a receipt, but a slip—it's a book; we call it a book. Is that the book, can you say, that Mr. Nelson entered the forty-four cent payment? Look at it; did you ever see a book like that before?

A. Yes.

Q. Where did you see it? A. I saw it at my house. 10

Q. And in whose presence? A. My husband and Mr. Nelson.

Q. Who gave it to you? A. I wasn't there when the book was first left there.

Q. Did you see Nelson enter any payments in that book? A. I didn't see Mr. Nelson himself.

Q. Did you see anybody enter payments in that book? A. He was writing when I came in. 20

Q. When your husband died, did you find that in your possession? A. Yes, sir.

Q. What did you do with it? A. When I went down to the office to pay the payments—

Q. To pay what payments? A. They usually always came to the house to collect.

Q. What did you do with the book when you went down to the office, will you tell us? A. I brought it back.

Q. What did you do when you went down there? A. I didn't see anyone there at the office. 30

Q. Was the office closed? A. Yes, sir.

Q. What did you go down there for? A. I usually got it when I went down to pay the dues.

Q. What did you go down on this one occasion for that you are telling us about? A. Why I didn't take the book down, I sent it down by my son.

Q. You just found it closed, you say? A. That was after my husband was dead and buried. 40

Mary Howard—Cross

Q. When your husband died you found this book in your house—in your possession? A. Yes, sir.

Q. Did it afterwards go out of your possession? A. Yes, sir

10 Q. In whose possession was it then? A. Down in the office.

Q. Who left it there? A. The agent, when he came to my husband, he handed the book to him.

Q. Did he take this book? A. Yes, sir.

Q. Did he take the policy? A. No, sir, I kept the policy.

Q. What was the agent's name? A. It's the agent named Peoples.

20 Q. Is he here? A. That's the man right there (indicating).

Mr. Seymour: I offer this book in evidence.

Receipt book received in evidence and marked Exhibit P-8.

Q. Now the date of your husband's death was August 27, 1916? A. Yes, sir.

Q. Did you send any money to the office of the defendant Association for the payment of premiums on this policy? A. Yes, sir.

30 Q. Who did you send? A. I sent my son.

CROSS-EXAMINATION by Mr. McGlynn:

Q. You never paid any money to either the office of the Essex Mutual Benefit Association or to any of the collectors without getting a receipt, or without having it put in these little books, did you, Mrs. Howard? A. After they put them in the book he tore the receipts up afterwards.

40 Q. When you paid the money you also got

Mary Howard—Cross

either a slip like this white one, or they would put it in this book? A. Yes, sir.

Q. And if they didn't put it in this book the first time, the next time they would put it in this book and tear the receipt up? A. Yes, sir.

Q. Then these three books and these four receipts are all the papers that you have showing payment by you of moneys to the Essex Mutual Benefit Association on your husband's policy? 10
A. That's all I can find.

Q. You don't know of any more? A. I haven't found any more.

Q. Now will you tell us when you sent your son to the office of the Essex Mutual Benefit Association to pay the premiums on your husband's life the last time? A. I don't know the date, 20
but I know it was on the last of the week.

Q. Can you tell us the month? A. It was in August.

Q. And how much money did you send down to the Essex Mutual Benefit Association? A. A two-dollar bill.

Q. Did you tell your son how much to pay to the Essex Mutual Benefit Association? A. He could see from the book how much it was.

Q. Was it a \$1.76? A. That's what it amounted to all together. 30

Q. Did he bring back to you twenty-four cents change? A. Yes, sir, he brought back twenty-four cents.

Q. Did he bring back the book with him too? A. Yes.

Q. Is this the book he brought back, do you know? A. It was a book appearing the same as that; I thought it was a book a little larger, but it appears it was the same book. 40

Mary Howard—Cross

Q. Look at this book I am showing you; you would see four payments of forty-four cents each all entered the same day, August 28th, signed by M. Spats. Are those the four payments you sent your son down to make in the month of August, 1916? A. I can't see it very good.

10 Q. If I told you that the last four entries in this book, which apparently is a receipt book for policy No.14020, the one you are suing on—if I told you the last four entries read as follows: June 25, July 25, August 25, and September 25, and under the heading of "Actual date when paid" the four are receipted as August 28 by M. Spats, would you say that was the \$1.76 you sent your son to the Essex Mutual Benefit Association to pay? A. Yes.

20 Q. That is the book he brought back, and these are the receipts that were in the book when he came back as far as you know? A. Yes.

Q. Now do you remember the visit to your house the day after your son went down to the Essex Mutual Benefit Association, by one of the men from the office? A. No, there was not one in my house, not one of them, because I was there myself, and not one of the gentlemen came to see me.

30 Q. Do you remember the Essex Mutual Benefit Association sending back the \$1.76; you got it back, didn't you? A. Yes.

Q. Do you remember how long after your son paid you got it back? A. No, I don't remember how long it was.

40 Q. Do you remember when you received the \$1.76, you gave the person giving it to you the receipt for it? A. No, he never got my receipt.

Q. Did you give him a receipt. A. No.

Mary Howard—Cross

Q. Now I show you a paper dated August 29th, 1916, it reads: "\$1.76; received of the Essex Mutual Benefit Association \$1.76 for returned premium, amount paid after death of the assured on certificate No. 14020; account cancelled in June," then the name "Mary Howard", Look at it, is that your signature? Look at it carefully. A. No, it wasn't, because I didn't sign any paper in my house at all. 10

Q. Do you remember the last time the case was tried? A. Yes, sir.

Q. And I asked you to write your name a couple of times? A. Yes, sir.

Q. These two signatures were made by you—in your handwriting? A. Yes, sir.

Receipt dated August 29, marked containing two signatures marked D-2 for identification. 20

Q. You say you are sure that all the premiums on this policy you are suing for were paid before your husband's death, but you are not sure what day in August you sent your boy down? A. It was the last week in August.

Q. Have you any idea what part of the month it was? A. No, I haven't any idea.

Q. When do you remember paying the last premium on this particular policy ahead of that visit of your son to the office; what was the last time before that? A. It was in July. 30

Q. And that was paid at the house? A. Yes, my husband paid it, and I was in his presence when he paid it.

Q. Do you remember what day in July it was? A. No, I don't remember exactly.

Q. Do you remember how much your husband 40

Mary Howard—Cross

paid him? A. It was near the middle of the month.

Q. Do you remember how much he paid him, Mrs. Howard? Do you think it was \$1.10? A. No, it was more than a \$1.10.

10 Q. Do you think he paid that to Mr. Pfeifer?

A. I never went out to ask the man; I just stood right there and heard him when he asked if there would be any trouble for me getting the money after his death.

Q. Do you know how much your husband paid him at that time? A. I gave him a bill and I didn't take the change.

Q. You don't know how much he paid that day?

A. I heard this man call his name Mr. People.

20 Q. Do you know how much money your husband actually paid him that day, or don't you know? A. (No answer).

Q. Can't you answer the question; can you tell us whether or not you know how much your husband paid in July? A. You have the receipt there.

Q. I am asking you if you remember; if you don't know, say so; I am asking you the question.

30 The Court: If you don't know, say so, Mrs. Howard. A. I told him I didn't know exactly how much it was; I said I gave him a one-dollar bill to get change out of it, and I don't know how much change he got.

Q. Do you know how much your husband paid in June? A. When he was there in June?

40 Q. Do you know how much your husband paid in June? A. All together, no; I don't know exactly all together.

Mary Howard—Cross

Q. Do you know how much he paid in May?

A. The books show.

Q. Do you know how much he paid in May?

A. (No answer).

Q. Do you know how much he paid in April?

A. (No answer).

10

Q. The real amount you know you paid to the Essex Mutual Benefit Association was \$1.76 you sent down with your son, that's the only real amount you know, isn't it? A. (No answer).

Q. Do you remember having any conversation with a man by the name of Kayle from the Essex Mutual Benefit Association (Mr. Kayle, stand up): do you remember having a conversation with that man? A. No.

Q. Never saw him at your house? A. No.

20

Q. Do you remember having a conversation with a man from the Essex Mutual Benefit Association, telling him you wouldn't pay any more premiums; he would have to see your husband? A. No.

Q. You don't remember any such conversation? A. No.

Q. Don't you know as a matter of fact your husband hadn't paid the forty-four cents premium, that he allowed his policy to go and had merely been keeping up the other policy? A. No, I didn't know he let it go.

30

Q. Now, as a matter of fact, Mrs. Howard, you sent this money down to the Essex Mutual Benefit Association a day after your husband died? A. No, sir, the last of the week.

Q. The reason you sent it down was because you read among the papers you found, after your husband died, something that said unless the pre-

40

Mary Howard—Re-cross

miums were paid within seven days, or something like that, you couldn't get the money, and you immediately sent the money down? A. No.

10 Q. The last time we tried this case, didn't you tell us that you read, or somebody told you something about the money would have to be paid within seven days or something or you couldn't make any claim, and that is why you sent it down? A. No, I said I wasn't sure, but I thought I saw it in some of the books; I wasn't sure what book.

Q. As a matter of fact you saw it in that book after your husband died? A. No, he wasn't dead.

20 Q. You want to tell us positively you didn't send the money down to the Essex Mutual Benefit Association a day after your husband died? A. No.

Q. You think it was the last of the week, and you think it was in August? A. Yes.

RE-DIRECT by Mr. Seymour:

30 Q. How many payments did you make on this forty-four cent policy yourself; how many different times and how many payments? A. I can't state just exactly how many, but I made quite a few of them myself.

Q. But they were entered in the book, the forty-four cent book? A. Yes, sir.

RE-CROSS-EXAMINATION by Mr. McGlynn:

40 Q. Do you know how long your husband had this forty-four cent policy? A. Yes, he had it the year before; that is going on two years now, isn't it?

Louis Howard—Direct

Q. Your husband died in August, didn't he?
A. Yes.

Q. Last year? A. No, my husband didn't die last year, 1916.

Q. How long before August, 1916, did your husband have this policy, if you know? A. He had it when Mr. Nelson was there. I paid quite a few of those premiums on that book. 10

Q. You remember that? A. Yes, I do, very well.

Q. What have you in mind; can you tell me how far back in your recollection you can remember your husband having this forty-four cent policy; how many months prior to his death? A. Why he has been dead going on two years.

Q. How long before? A. I paid quite a few but I wasn't there all the time when the agent called. 20

LOUIS HOWARD, sworn on behalf of plaintiff:

Direct-examination by Mr. Seymour:

Q. You are the son of Mary Howard, the plaintiff? A. Yes. 30

Q. And do you remember taking any moneys to the office of the Essex Mutual Benefit Association? A. Yes, sir.

Q. How much money did you pay there? A. \$1.72.

Q. And when did you pay it? A. On Saturday. 40

Q. What date? A. The 29th.

Louis Howard—Cross

Q. What month was it? A. August, the day before he died.

Q. What day did your father die? A. It was on Sunday.

Q. And you went there Saturday to pay those
10 premiums? A. Yes, sir.

Q. You say it was before your father's death?
A. Yes, sir.

Q. Did you pay them? A. Yes, sir.

Q. What kind of a receipt did you get for the money? A. I got a book.

Q. Who did you pay the moneys to? A. I don't know; the man sitting over there (indicating) with glasses on.

20 CROSS-EXAMINATION by Mr. McGlynn:

Q. Who did you pay the money to? A. That man sitting there with glasses on.

Q. Did you ever see that young lady (Miss Spats, stand up)? A. No, sir.

Q. Never saw her? A. No, sir.

Q. This is the book that you took down with the money, isn't it? A. Yes, sir.

Q. And you took a two-dollar bill that your mother gave you? A. Yes.

30 Q. And you paid \$1.76, didn't you? A. Yes, sir.

Q. Not \$1.72? A. It was twenty-four cents change.

Q. And you know it was the month of August, and you are sure it was the day before your father died? A. Yes, sir.

Q. What day did you say your father died?
A. In August.

40 Q. You don't know the date? A. It was on Sunday.

Louis Howard—Cross

Q. And what day of the week did you go down to the Essex Mutual Benefit Association? A. On Saturday.

Q. And you think it was the first Saturday before that? A. It was on Saturday before he died, a quarter of twelve when I went there. 10

Q. You went there the Saturday before the Sunday your father died? A. Yes; the day before.

Q. As a matter of fact your father died on the 27th, which was on Sunday; and didn't you go to the Essex Mutual Benefit Association on the 28th, Monday? A. No, sir.

Q. Did you look at the receipt you got from the office? A. No, sir; I brought it on home.

Q. Do you know the receipt bears the date of August 28th? A. I never looked at it before. 20

Q. Suppose you look at it now; does that make you change your mind at all when you paid that money? A. No, sir.

Q. Do you know your mother's signature, Mr. Howard? A. (No answer.)

Q. Did you ever see your mother write? A. Once in a while; it has been so long.

Q. What do you think about that? Showing witness paper.) 30

Mr. Seymour: I object to that; this man is no expert and the signature was not made in his presence, and besides he says it is a long while since he saw her write; he has to be familiar with the signature.

The Court: He has to be familiar with the signature.

Q. You have seen your mother's signature? A. I have been away for years. 40

Mary Howard—Direct

Q. Don't she write you? A. Not much.

Q. When did she write you last? A. It has been about a year or so.

Q. Well, from the signature you saw a year ago, what do you say about the signature on that paper?
10

Mr. Seymour: I object, he hasn't qualified.

The Court: Let it go in for what it may be worth.

Mr. Seymour: I object to it, because it is not cross-examination, and it is Mr. McGlynn's own testimony. I didn't examine him on anything except the payment he made.

20 Q. What do you think about it, Howard? A. I don't know.

Q. That's all.

MARY HOWARD, plaintiff, re-called:

Direct-examination by Mr. Seymour:

30 Q. I show you a card on which is entered the name of N. J. Nelson, 29 Day Street, Orange, N. J. Did you see Mr. Nelson write that? A. Yes, sir, he wrote that card.

Q. And gave it to you? A. Yes, sir.

Mr. Seymour: I offer this card in evidence.

Mr. McGlynn: I object; I can't see that it is at all material.

The Court: What does it establish?

40 Mr. Seymour: I question whether the

Maud Spats—Direct

return book is genuine which they say shows the payment of August 28th; I question the genuineness of that book.

The Court: I think you had better wait until you get some connected evidence on it. Let it be marked for identification. 10
What does it prove?

Mr. Seymour: It shows whether or not the book contains the genuine signature of Mr. Nelson.

The Court: How does she know he wrote that.

Mr. Seymour: She says she saw him write it and he gave it to her.

The Court: I will allow it.

Mr. McGlynn: I pray an exception. 20

Mr. Seymour: Before we rest I want to offer the letters in evidence, written by Mrs. Howard and myself.

Four letters received in evidence and marked Exhibit P-9.

Plaintiff rests.

30

MAUD SPATS, sworn on behalf of defendant:

Direct-examination by Mr. McGlynn:

Q. You were at one time employed by the Essex Mutual Benefit Association? A. Yes, sir.

Q. In what capacity? A. Stenographer.

Q. And was you in their permanent employ or otherwise? A. No, just substituting for two weeks.

Q. Do you remember what year that was? A. 40
1916.

Maud Spats—Direct

Q. Do you remember what month? A. In August.

Q. I show you premium receipt book of policy #14020, marked Exhibit P—and ask you if your signature appears any place on that receipt book? A. Yes.

Q. How many times? A. Four times.

Q. The last four? A. Yes, sir.

Q. Do you recall, after looking at that receipt book, receiving any cash in connection with that policy? A. Yes.

Q. And do you remember who you received it from? A. That gentleman down there (indicating).

Q. Which gentleman do you mean? A. Mr. Howard.

Mr. McGlynn: Mr. Howard, stand up.

Q. Is that the gentleman that gave you the cash? A. Yes.

Q. Looking at the receipt, can you tell us what day in August you received that money? A. On Monday.

Q. What date? A. The 28th.

Q. The 28th of August? A. Yes, sir.

Q. Are you sure of that? A. Yes, sir, I am.

Q. By whom are you employed now? A. The Prudential.

Q. Do you remember what you did with the money that you took from Mr. Howard on that policy? A. After he gave it to me?

Q. Yes. A. I put it in the cash box.

Q. And was there anything unusual about the transaction which served to fasten itself on your memory; I mean, did you put it through the same channel that other dues were put through, or did

Maud Spats—Direct

you do something else with it which was not ordinary? A. I know I put it in the cash box, and I told Mr. Dann when he came in.

Q. Was this the first Monday that you were there, or was this the first day? A. I don't remember.

Q. But you were only there two weeks? A. Yes, sir.

Q. Had Mr. Dann given you any orders about what you were to do with the premiums brought in on policies which were past due? A. Yes.

Q. What did he tell you?

Mr. Seymour: I object to that; how is that material as to what her instructions were.

Q. I will ask this: Did you follow in this transaction the instructions that had been given to you, or did you forget or violate the instructions given to you?

Mr. Seymour: I object.

The Court: Objection sustained. Ask her just what she did.

Q. Did you do the same thing with this that you would do with premiums, paid on policies not past due?

Mr. Seymour: I object to that.

The Court: Objection sustained. Ask her just what she did.

Q. Tell us just exactly just what you did with that money when you received it, if you remember?

The Court: She said she put it in the cash drawer and entered it in the cash book.

Q. Did you make any special notation in the

Maud Spats—Direct

cash book or drawer about this money, so it would be taken care of? Do you remember testifying at the last trial, Miss Spats? A. Yes.

10 Q. Do you remember what you told us then about what you did about the money, about the the note you pinned fast to it, or something of that kind? A. Yes.

Q. What was it you said then?

Mr. Seymour: I object.

Q. Do you remember now what you testified to about that note? A. Yes, I do.

Q. Now as a result of refreshing of your memory, will you tell us what you did, the same as you told us the last time?

Mr. Seymour: I object as leading.

20 The Court: I think it is somewhat leading; she may not be willing to testify the same as she did before.

Q. Do you remember what you told us the last time?

Mr. Seymour: I object as irrelevant and immaterial.

Q. Do you remember what you did with the money? A. I put it in the cash box.

30 Q. Do you remember anything else besides that? A. Entering it in this book and writing on a slip of paper.

Q. What did you write on the slip of paper?

Mr. Seymour: I object, the paper.

Q. Was the slip of paper kept as part of the records, or just a note which wasn't, as far as you know, kept? A. No, I don't know.

Q. What was on the note?

Mr. Seymour: I object.

40 The Court: I will allow it.

D. Lester Dann—Direct

Mr. Seymour: I pray an exception.

Q. Do you know what it said? A. Just the date and the amount.

CROSS-EXAMINATION by Mr. Seymour:

Q. You cannot say from your own knowledge, 10
regardless of the entry in that book, whether
it was Saturday or Monday you got that money,
can you? Disregarding that book entirely; sup-
pose that book never was produced, and you had
nothing in writing to refresh your memory, can
you say from anything else it was either Satur-
day or Monday? A. I remember it was Monday.

Q. What makes you remember it was on Mon-
day? A. He was the first one that come in to
pay premiums; the first one I had to credit. 20

Q. This book doesn't refresh your memory at
all as to whether it was Saturday or Monday,
is that it? A. I could remember without it.

Q. Could you remember the date without it?
A. Yes.

Q. What time of the day was this premium
paid? A. It was around noon time.

Q. Between twelve and one? Was it after
twelve? A. No, it was before twelve.

30

D. LESTER DANN, sworn on behalf of de-
fendant:

Direct-examination by Mr McGlynn:

Q. Mr. Dann, what was your position with the
Essex Mutual Benefit Association in August,
1916? A. General manager. 40

D. Lester Dann—Direct

Q. And was policy No. 14020 on the life of James Howard actually in force on August 27, 1916?

10 Mr. Seymour: I object to that, that is for the Court to determine from the policy and the evidence.

The Court: I will permit the question.

Q. Question repeated: Was policy No. 14020 on the life of James Howard actually in force on August 27, 1916? A. No.

Q. Now tell the court why it was not in force; what you base your conclusion on?

Mr. Seymour: I object for the same it is merely a conclusion.

The Court: I will permit it.

20 Q. (Question read) Now tell the court why it wasn't in force; what you base your conclusion on? A. Because it was over thirty days from the date of the last payment of dues when death occurred.

Q. I show you this card and ask you what that card is? A. That's our office record of the payments of dues.

Q. And according to that office record some premiums had been paid on policy No. 14020?

30 A. Three times.

Q. And their dates? A. On March 25, April 28 and May 18.

Q. Do you recall the receipt by your company of \$1.76 in connection with this policy No. 14020?

A. I do.

Q. And what was done with that \$1.76? A. It was returned to the insured the next day after it was paid.

40 Q. And is this the receipt you received for the \$1.76 returned? A. It is.

D. Lester Dann—Direct

Q. And who sent from the office of the Essex Mutual Benefit Association the \$1.76, who started it on its way? A. Why I requested the agent to return it.

Q. You are the person who sent it from your office? A. Yes. 10

Q. Now do you remember in connection with the receipt of it, how long after the receipt of it you started it back? A. The next morning.

Q. And do you recall when you got that receipt in connection with sending it out; how long after sending it from the office did you get that receipt back? A. I don't recall whether it was the same day or the next morning; I think it was the next morning when the agent returned it to the office. 20

Q. None of these letters I hand you are about policy No. 14020; just look at them and tell us? A. No, none refer to policy No. 14020.

Q. They are all about these other two policies offered in evidence? A. Policies No. 13206 and 12201, yes, sir.

Q. Did either one of those other policies of Howard's carry the same benefits—the same natural benefits? A. No. 12201 did.

Q. But not the other? A. No, not the other. 30

Q. Was policy No. 12201 in force at the time of his death? A. No, that has been cancelled for nearly a year.

Q. So at the time of his death the other policy he had, No. 13206, that's just the sick benefit and accidental death? A. Disability insurance.

Q. And did your company receive any premiums from either Mr. or Mrs. Howard in the month of July on policy 14020? A. There was 40

D. Lester Dann—Direct

one premium received the latter part of June.

Q. July, I asked you? A. Not in July.

Q. One policy was paid when? A. I believe it was in June.

10 Q. Looking at these papers, tell me what they are?

Mr. Seymour: I object, if your Honor please, until I find out what they are. I object using any papers until shown what they are.

The Court: He can ask the witness and see what it is.

A. Agent's records of collections, submitted to the office.

20 Q. And embraced in those records of agents' returns of collection of premiums, are there returns on policy No. 14020? A. Yes.

Q. And do these agents' returns show any premiums paid on this policy—what do they show? A. They show premiums collected and remitted up to and including June 25.

Q. Mr. Seymour has put in four receipts here, April \$1.10; does that show on your records when entered by Mr. Nelson? A. That is on another policy.

30 Q. But is it in your record? A. I couldn't tell you without looking it up, but I believe it is. That is on one of the other policies; the records on those are not here.

Q. Look at this piece of paper which is dated apparently January 29; tell me if your records refer to policies No. 13206 or 14020; whether that's January or June; can you tell that?

40 Mr. Seymour: I object, if the court please.

D. Lester Dann—Cross

Q. Did you have any records in January of this policy No. 14020? A. No, no records in January; it wasn't issued until March.

Q. Will you turn to your records of June, 1916, and tell us whether there are any entries in June, 1916 which correspond with the receipts which is in evidence? A. Yes, there is. 10

Q. Read the entry. A. "Policy No. 14020, James Howard, June 25; premium forty-four cents; amount collected forty-four cents."

CROSS-EXAMINATION by Mr. Seymour:

Q. Now you state these agents' returns were returned up to and including June 25? A. Yes, sir.

Q. When did they begin? A. In March. 20

Q. Have you got your agents' returns for January here? A. No, we didn't have any January records on this policy.

Q. I asked you if you have got your agents' returns for January here? A. No.

Q. You didn't see any? A. Yes, I did.

Q. Who is I. W. Kayle? A. Assistant Manager at that time.

Q. Is that his signature? A. It looks like it.

Q. Do you know whether it is or not? A. Yes, 30
it is.

Mr. Seymour: I am showing witness a receipt dated January 29, 1916, for \$1.54, your Honor.

Q. How many months since March 25, 1916, were paid on this policy according to your records? A. Four.

Q. What four months are they? A. March, April, May and June. 40

I. Webster Kayle—Direct

Q. Then when Mr. Howard died on August 27th 1916, there were two premiums due according to your records, is that so? A. One premium due.

10 Q. When was that premium due? A. July 25th.

Q. There was one premium due when he died August 27th? A. That's all.

Q. Then he was short, was he not, on August 27th, which was due July 25th, and the premium which was due August 25th? A. He was, yes.

Q. Now then, he paid insurance premiums for four months beginning March 25th? A. He did.

Q. Mr. Nelson was your agent, was he not? A. Yes, he was.

20 Q. For the collection of premiums on policies? A. He was at the time he was hurt.

Q. That's all.

I. WEBSTER KAYLE, sworn on behalf of defendant.

Direct-examination by Mr. McGlynn:

30 Q. Mr. Kayle, how long have you been connected with the Essex Mutual Benefit Association? A. About two years.

Q. Do you remember about when you went with them first? A. Well, about two years ago I assisted him first a little, only partially.

Q. Was you with him in January, 1916? A. I believe I assisted him some at that time, but not in this work—in connection with this.

40 Q. I show you this receipt, which we have been

I. Webster Kayle—Direct

talking about, and ask you whether that is meant for January or June? A. That was in June, I was—

Mr. Seymour: I object to that, he can't testify what that receipt was meant for. I object to the question, because it calls 10 for a conclusion or opinion on the part of the witness.

The Court: I sustain the objection.

Q. Look at this receipt and tell me whether that is January or June? A. June 29th.

Q. And you claim that to be June instead of January?

Mr. Seymour: I object to that; what he thinks is not competent testimony; the Court is here to determine that question. 20

The Court: You are attempting to show this receipt dated January 29th was intended for June 29th, is that the idea?

Mr. McGlynn: The witness himself said he wrote January. What I have shown you so far is that the policy they are suing on is dated March 25th, 1916. Now I say it is probably natural and reasonable, and I think legal to show that—

The Court: I think it would be a matter 30 of argument. He might testify as to the time he gave this receipt. Proceed. I will sustain the objection.

Q. I show you a piece of paper, Mr. Kayle, and ask you if you wrote the pencil writing in that paper? A. Yes, sir.

Q. I ask you to read that receipt.

The Court: No, the receipt speaks for itself; as far as the reading of the receipt is concerned it could not change it. 40

I. Webster Kayle—Direct

Q. Have you received any money from anybody in the Howard family on policy in January, 1916?

A. No, sir, I wasn't collecting at that time for the Essex Mutual Benefit Association.

10 Q. Did you ever have a conversation with Mrs. Howard about premiums on this policy? A. When I called to collect she told me she didn't pay it and I would have to collect it from her husband; that she never paid it.

Q. Did you have a talk with her? A. Yes, sir.

Q. About this life policy No. 14020?

20 Mr. Seymour: I object to that, if the Court please; the question was asked before and ruled out by your Honor on the ground that plaintiff is suing in a representative capacity.

30 Mr. McGlynn: I contend that this plaintiff is not suing in a representative capacity, but is suing in her own individual name, and on that rule of evidence brought up by Mr. Seymour the last time, it is meant to cover suits only which are brought by an administratrix or executor, and not when a person sues in an individual capacity, and I say, if Mr. Howard told an agent of this company that he did not want to keep up the premiums on this policy—as the facts as brought out show—I think it all shows the chain of events.

The Court: I will allow it.

Mr. Seymour: I pray an exception.

Q. What did Howard tell you about this policy?

A. Why I called to collect the next day at ten o'clock—previously I saw him—and I saw him
40 and he told me he would see me the next day,

I. Webster Kayle—Cross

and he decided to discontinue. I tried to persuade him to keep it, but he declined and he said positively he wouldn't continue.

Q. Can you fix the approximate time when that was? A. That was in July, 1916,—before the middle of July.

10

CROSS-EXAMINATION by Mr. Seymour:

Q. Was anybody present when that conversation was held? A. No, we were together in the back yard.

Q. At his house? A. At his house.

Q. What time of day was it? A. That was about 3 o'clock in the afternoon.

Q. What day of the week? A. That I can't say.

Q. Before the middle of July? A. It was about the middle of July; I don't remember the definite date; it was following the last payment collected on that.

20

Q. How did you come to be there? A. Mrs. Howard told me I must see him, and I arranged with him for 10 o'clock and he said he would see me at that time the night that I was there.

Q. How did you come to be there in the middle of July? A. I was there to collect.

Q. You collected on the 25th of the month, didn't you? A. What month? 30

Q. Every month? A. No, not necessarily, often a few days different sometimes.

Q. When was the premium due? A. I believe the 25th, if I remember correctly.

Q. Did you collect any premium from him before the 25th? A. No, the 29th.

Q. Then what were you doing there in the middle of July to have this conversation with him?

A. I was there to collect.

40

I. Webster Kayle—Cross

Q. That's the only reason? A. Why sure, I went to collect when it was due.

Q. Did you collect the June premium from him? A. I couldn't say what premium it was.

10 Q. Did you collect any money from him in June? A. The receipt shows.

Q. I ask you if you collected any money from him in the month of June? A. Yes, I believe I did.

Q. How many times did you collect money from him all together? A. Only once.

Q. That was in the month of June? A. Yes, that's the first time I called there.

20 Q. But you were working for the company in the month of January? A. No, sir, I was simply talking with Mr. Dann about it and assisted him in little things.

Q. But you were working for the company in the month of January? A. I wasn't receiving any pay at all.

Q. What were you doing there? A. Simply consulting with him.

Q. Advising him how to run his business? A. No, sir, talking with him whether I should come with the company.

30 Q. When did you first go with the company? A. As near as I can remember it was about April, I think.

Q. Where did you live in January, 1916? A. Passaic.

Q. Who wrote this insurance, do you know? A. No, I don't.

Decision

Mr. McGlynn: I offer the receipt and the specimen signatures in evidence. Receipt and specimen signatures received in evidence and marked Exhibits D-1 and D-2.

10

Decision

The Court: If these payments were made to the defendant after the death of Howard, of course, the company acted promptly in returning the money, and the insurance could not be collected. The point at issue in this case is the date of the payment of the premium—that is the real point. The plaintiff claims that the payment was made the day before Howard died; the defendant says it was made the day after. There is the point upon which the parties radically differ, and the point upon which we must look for our proofs. Mrs. Howard herself was unable to testify very definitely as to just when the money was sent down. She testified that she furnished the money, and that she gave it to her son, and that he took the money down to the Essex Mutual Benefit Association. The son testified that he took the money down and brought twenty-four cents change back, and that it was the day before his father died.

On the other hand, the defendant says the payment was made the day after. Miss Spats, a witness for the defendant, says at the time she received the money that she made a memorandum of it in the cash book, put the cash in the cash box and then she made a memorandum slip. It

40

Specifications on Appeal

mination of the District Court with which the appellant is dissatisfied in point of law :

1. Because the verdict of the court is absolutely against the weight of the evidence.

2. Because there is absolutely no evidence in the case to support the verdict of the court.

3. Because the court found, as a fact, that the premiums of insurance in this case for the months of June, July, August and September were paid the day before the insurance died, to wit: August twenty sixth, and assuming the conclusion of fact so found by the court to be correct, and assuming that there was evidence in the case upon which the court could base this conclusion, these payments would not have placed the policy upon which the suit was brought, in force because the premiums paid on August twenty sixth, were sixty days in arrears, the same being payable on the twenty fifth of the month and no premiums having been paid on June twenty-fifth nor on July twenty-fifth; and there was no waiver by the defendant company of the payments after the date due as the court further found as a fact, that the defendant company acted promptly in returning the money.

Yours respectfully,

EDW. R. McGLYNN,

Attorney of Defendant-Appellant

To:

Arthur B. Seymour,

Attorney for Plaintiff-Appellee.

Notice of Appeal*(Filed Feb. 1st, 1918.)*

ORANGE COUNTY COURT

10	MARY HOWARD, <div style="text-align: right; padding-right: 20px;">Plaintiff,</div> <div style="text-align: center; padding: 5px 0;">VS</div> ESSEX MUTUAL BENEFIT ASSO- CIATION, <div style="text-align: right; padding-right: 20px;">Defendant.</div>
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TAKE NOTICE that the defendant in the above
 entitled action does hereby appeal to the New
 20 Jersey Supreme Court from the judgment of the
 Orange District Court rendered in the above ac-
 tion on the twenty-third day of January, nineteen
 hundred and eighteen.

E. R. McGLYNN
 Attorney for Defendant

To:

Arthur B. Seymour, Esq.,
 Attorney of Plaintiff.

(Service acknowledged by A. B. Seymour,
 30 attorney of Plaintiff January 31, 1918.)

Amended State Of Demand

ORANGE DISTRICT COURT

(Filed Nov, 26, 1917)

MARY HOWARD,

Plaintiff,

10

VS

ESSEX MUTUAL BENEFIT ASSO-
CIATION OF NEW JERSEY, a cor-
poration,

Defendant.

The plaintiff demands of the defendant the sum of Five hundred dollars for that:

1. On March 25, 1916, one James W. Howard 20
and the defendant entered into a contract where-
by in consideration of the sum of forty-four cents
to it to be paid by said James W. Howard, the
defendant agreed to pay upon the death of said
James W. Howard, the sum of One hundred dol-
lars to the beneficiary in the said contract named,
to wit: May Howard, wife of the said James
W. Howard, upon receipt of due proof of death.

2. Said James W. Howard paid the said
monthly sum of forty-four cents in accordance 30
with the terms of the said contract.

3. Said James W. Howard died on August 27,
1916 and due proof of his death was made or
offered to be made to the defendant.

4. The plaintiff is the beneficiary named in
said contract under the name of May Howard.

Judgment will be claimed for the sum of one
hundred dollars besides interest from August 27,
1916 and costs of suit.

ARTHUR B. SEYMOUR 40
Attorney for Plaintiff.

Exhibit P-1

LIFE CERTIFICATE

ONE-YEAR TERM

10 Reissuable at Option of Association

No. 14020

Age 45

ESSEX
MUTUAL BENEFIT ASSOCIATION
OF NEW JERSEY

HEREINAFTER CALLED THE ASSOCIATION

20 IN CONSIDERATION of the monthly dues, of no dollars, and forty-four cents, and the statements and agreements in the application for this certificate, a copy of which is endorsed hereon and made part hereof, which statements the Member makes, and, by the acceptance of this Certificate, warrants to be true.

30 DOES HEREBY ACCEPT James W. Howard (Hereinafter, called the Member), the person described in the copy of the application indorsed hereon, subject to all conditions and limitations hereinafter contained. For a term of twelve months from noon of the 25th day of March, 1916.

40 DEATH BENEFIT One Hundred (\$100) said amount being payable in event of death from any cause (except those mentioned in paragraph four) to the beneficiary named in said application, if living, otherwise to the executors, administrators or assigns of the member, upon receipt at its Home Office in Newark, N. J., within sixty days there-

Exhibit P-1

after, of due proof of death, which may consist of a certified copy of the certificate of death, filed by the attending physician, with the proper official designated by law, and completed blanks furnished by the Association. Such payment shall fully discharge the obligations created under this Certificate, but shall not affect any claim arising under any other contract for benefits issued by this Association on the life of the member, except that no claim against this Association under Life Certificates shall be valid in excess of Two Hundred and Fifty Dollars, and any dues paid for benefits under Life Certificates in excess of said amount shall be refunded. Upon payment being made this Certificate shall be surrendered to the Association.

1. This Certificate does not cover persons under sixteen or over fifty-five years of age.

2. All dues are payable at the Home Office of the Association on the date when due or within thirty days thereafter. This Certificate and the application therefore shall constitute the entire contract between the parties hereto. All statements in said application shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall void this Certificate unless contained in the written application, a copy of which is endorsed hereon.

3. Consent of the Beneficiary shall not be requisite to a surrender or assignment of this Certificate, or to a change of Beneficiary. A copy of any assignment shall be given within thirty days to the Association, which shall not be responsible for its validity.

Exhibit P-1

4. No Death Benefit shall be paid if death is caused by or is complicated with Tuberculosis or Cancer within six months from the date hereof; nor at all if caused by Suicide (Sane or Insane).

10 This Certificate is issued and accepted subject to the provisions and conditions indorsed hereon and annexed thereto, all of which are referred to and made a part of this Contract, and no modification thereof shall be valid unless indorsed hereon by the President or Secretary, and notice to or knowledge of any Agent or Officer shall not bind the Association, and no act, statement, promise or agreement of any Agent or Officer shall operate as a waiver of any of the terms or conditions of this Certificate, unless it be expressly so agreed in writing, signed by the President or Secretary.

20 Dated, the 25th day of March, 1916, at twelve o'clock noon and to become of force and effect thereafter when delivered to and accepted by the Member while in good health and sound physical condition.

ESSEX MUTUAL BENEFIT ASSOCIATION,
R. M. Colburn,
President.
John C. Moye,
Secretary

30 (Seal) Inspected by S. M. M.

APPLICATION FOR DEATH BENEFITS IN THE
ESSEX MUTUAL BENEFIT ASSOCIATION OF NEW
JERSEY

1. [Name in Full] James W. Howard No. and
40 Street 227 Valley Road Town or City Mont-

Exhibit P-5

clair County Essex State N. J. do hereby apply for membership and to procure the same do make the following warranties as written in said application, each of which it is agreed is material to the risk:

- 1; My age is [last birthday] 45 years 10
2. My weight is 160 pounds
3. My height is 5 ft. 6 in.
4. Male.
5. Colored
6. My occupation is Housework Duties thereof are fully described as follows: General work for private families.
7. Benefits in case of death shall be paid to Name in Full May Howard Relationship, wife.
8. Address of Beneficiary No. and Street Same. 20
17. My father is 63 years old.
18. My mother died at the age of 28 years.
19. The cause of my mother's death was child-birth:

Dated at Montclair, N. J., this 18th day of March, 1916.

Signature of Applicant JAMES W. HOWARD.

Exhibit P-5

30

Copy of inside of receipt book, certificate No. 12201

Date when due	Actual Date when paid.	Amt.	Signature of collector.	
11 Apr 1915	Policy fee	2.00	M. J. Nelson	
11 Apr —	17 Feb 1915	1.25	M. J. Nelson	
11 Mar —				
11 Apr —				40

Exhibit P-6

11	May	1915	15	May	1915	1.25	M. J. Nelson
11	June	—	16	June	—	1.25	M. J. Nelson
			11	July	—	1.25	M. J. Nelson
11	Aug	—	25	Aug	—	1.25	M. J. Nelson

10

Exhibit P-6

*Copy of inside of receipt book, certificate No.
13206*

	Date when due	Actual date when paid	Amt	Signature of collector
	18 Feb 1916	Policy fee	2.00	D. L. Dann
20	18 Feb —	21 Feb —	1.10	D. L. Dann
	18 Mar —	18 Mar —	1.10	M. J. Nelson
	18 Apr			
	18 May			
	18 June			
	18 July			

Cover of Receipt Book

30 Notice of Disability or death must be sent immediately to the Secretary, and not to the agent.

MEMBERS RECEIPT BOOK

Issued By

ESSEX MUTUAL BENEFIT ASSOCIATION

40

Exhibit P-10

Home Office

ESSEX BUILDING

Beaver and Clinton Streets: Newark, N. J.

CERTIFICATE No. 14020

Issued to James W. Howard,

Address 227 Valley Rd

Town Montclair,

State, New Jersey,

Dated March 25, 1916.

10

Exhibit P-10*Inside of Receipt Book*

20

Date when due.	Actual date when paid	Amt.	Signature of Collector
25 Mar 1916	25 Mar 1916	44	M. J. Nelson
25 Apr	— — —	44	M. J. Nelson
25 May	— — —	44	M. J. Nelson
25 June	28 Aug	44	M. Spatz
25 July	— — —	44	M. Spatz
25 Aug	— — —	44	M. Spatz
25 Sept	— — —	44	M. Spatz

30

Exhibit D-1

ESSEX MUTUAL BENEFIT ASSOCIATION

ESSEX BUILDING, NEWARK, N. J.

10 \$1 76/100 August 29 1916
 RECEIVED OF Essex Mutual Benefit Asso.
 One76/100 Dollars
 for return premium amount paid after death of in-
 sured, on Certificate No. 14020 this account can-
 celled in June If the above premium is more than
 seven days overdue, this receipt does not operate
 to renew the Certificate without reinstatement as
 provided therein; if reinstatement be refused,
 the amount hereby receipted for will be returned.
 20 MARY HOWARD

Exhibit D-2

	Number	Name	Occupation
	14020	James W. Howard	Housework
	Month	Year	Street and No.
	Mar.	25/18	227 Valley Rd
		Town	State
30		Montclair, N. J.	
	Other number.		
	Kind of Policy	Class	Premium
	LIFE	B	.44
	1st Week		Male
	Age		Nat'l Death
	45		\$100.00
		Agent	Nelson
	Mar	Apr	May
40	1916 3/25	4/25	5/18

Exhibit D-2

ESSEX MUTUAL BENEFIT ASSOCIATION

ESSEX BUILDING, NEWARK, N. J.

\$1.54

Jan 29 1916

RECEIVED of James Howard One 54...Dollars
for premium due Jan 18 & 25 1916 on Certificate
No. 13206 14020 this payment covers months of
June. 10

If the above premium is not more than seven
days overdue, this receipt does not operate to re-
new the Certificate without reinstatement as pro-
vided therein; if reinstatement be refused, the
amount hereby receipted for will be returned.

Collected by I. W. Kayle

20

ESSEX MUTUAL BENEFIT ASSOCIATION

ESSEX BUILDING, NEWARK, N. J.

\$1.10

April 18 1916

RECEIVED of Mr. Howard One and 10/..Dollars,
for premium due 191 on Certificate No. this
payment covers months of April

If the above premium is more than seven days
overdue, this receipt does not operate to renew
the Certificate without reinstatement as provided
therein; if reinstatement be reduced, the amount
hereby receipted for will be returned. 30

Collected by M. J. Nelson

Exhibit D-1 for Identification

ESSEX MUTUAL BENEFIT ASSOCIATION

ESSEX BUILDING, NEWARK, N. J.

\$1.10

June 5 1916

10

RECEIVED OF Mr. James Howard One and 10/ Dollars for premium due 191 on Certificate No. this payment covers months of

If the above premium is more than seven days overdue, this receipt does not operate to renew the Certificate without reinstatement as provided therein; if reinstatement be refused, the amount hereby receipted for will be returned.

20

Collected by M. J. Nelson

Exhibit D-1 for Identification

ESSEX MUTUAL BENEFIT ASSOCIATION

\$1.10

July 26 1916

30

RECEIVED of James Howard 1 10/ Dollars for premium due July 18, 1916 on Certificate No. 13206 this payment covers months of July.

If the above premium is more than seven days overdue, this receipt does not operate to renew the Certificate without reinstatement as provided therein; if reinstatement be refused, the amount hereby receipted for will be returned.

40

Collected by Pieper

Notice of Appeal

NEW JERSEY SUPREME COURT

MARY HOWARD, Plaintiff-Appellant, v. ESSEX MUTUAL BENEFIT ASS'N., Defendant-Appellee.	}	On Appeal.	10
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To Arthur B. Seymour, Esq., Attorney of Plaintiff-Appellant:

TAKE NOTICE that the defendant appeals to the Court of Errors and Appeals from the whole of the judgment entered in this cause. 20

Respectfully,

E. R. McGLENN,
Attorney of Defendant.

Grounds of Appeal

NEW JERSEY COURT OF ERRORS AND APPEALS

MARY HOWARD, Plaintiff-Respondent, vs. ESSEX MUTUAL BENEFIT ASS'N., Defendant-Appellant.	}	On Appeal.	30
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The defendant-appellant states the following grounds of appeal: 40

Grounds of Appeal

FIRST: Because the Supreme Court affirmed the judgment of the District Court of the City of Orange in favor of the plaintiff-respondent and against the defendant-appellant.

10 SECOND: Because the Court affirmed the judgment rendered in the District Court of Orange in favor of the plaintiff-respondent against the defendant-appellant, stating that the finding of the Trial Judge could not be reviewed since there was evidence to sustain the same, when, as a matter-of-fact it was apparent from an examination of the State of the Case that his finding of fact was erroneous.

20 THIRD: Because the Supreme Court held that the fact that premiums were in arrears at the time of payment of dues, was of no importance as there was nothing in the certificate of insurance which made it void for non-payment of dues, when, as a matter-of-fact, a condition precedent necessary to keep the certificate in force was the payment of monthly dues which were admittedly sixty days in arrears at the time of the alleged payment by the plaintiff of the premiums, the payment of which was practically the sole issue in the case.

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E. R. McGLENN,
Attorney for Defendant-Appellant.

Opinion

NEW JERSEY SUPREME COURT

FEBRUARY TERM, 1918

MARY HOWARD, vs. ESSEX MUTUAL-BENEFIT ASSO- CIATION.

10

Appeal from Orange District Court

Before JUSTICES SWAYZE, TRENCHARD & MINTURN.

Arthur B. Seymour for plaintiff-respondent. 20
Edward R. McGlenn for defendant-appellant.

PER CURIAM:

This is a suit on a life benefit certificate. The only question is whether the premium was paid a day before or a day after the death of the assured. This is a question of fact and we cannot review the finding of the Trial Judge, since there was evidence that it was paid the day before. The fact that premiums were in arrears at the time of payment is of no importance as there is nothing in the certificate which makes it void for non-payment of dues. 30

Let the judgment be affirmed with costs.

1891

THE CO

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New Jersey Court of Errors and Appeals

MARY HOWARD,

Plaintiff-Respondent,

vs.

ESSEX MUTUAL BENEFIT ASSOCIATION,

Defendant-Appellant.

*Brief for
Plaintiff-Respondent.*

The plaintiff-respondent respectfully contends that the judgment of the Supreme Court should be affirmed for the reasons given in its opinion printed in the State of the Case, page 51. In addition thereto Trade Insurance Company vs. Barracliff, 45 N. J. L. 543, is cited wherein it is held: "Where there is in the policy no stipulation or condition for forfeiture on account of non-payment of premiums, a default in payment will not operate in itself as a forfeiture, nor can it be insisted upon by the company as constituting a forfeiture in the absence of any notice." See also 25 Cyc. 826 and cases cited therein.

Respectfully submitted,

ARTHUR B. SEYMOUR,
*Attorney and of Counsel
for Plaintiff-Appellee.*

New Jersey Court of Errors and Appeals

Plaintiff Respondent
 vs.
 Essex Mutual Benefit Association
 Defendant Respondent

The plaintiff respondent respectfully contends that the judgment of the Supreme Court should be affirmed for the reasons given in its opinion printed in the State of the Case, page 51. In addition thereto, the plaintiff respondent, in its brief, is cited to certain cases, and it is respectfully requested that the Court be advised that the plaintiff respondent is not in the habit of paying premiums, a default in payment will not operate as a forfeiture, and that it is insisted upon by the company in its brief as a forfeiture, not that it be insisted upon by the company in its brief as a forfeiture in the absence of any notice. See also 25 C. 200 and cases cited therein.

Respectfully submitted,

ARTHUR E. SEYMOUR

Attorney at Law
 No. 100 State Street

New Jersey Court of Errors and Appeals

MARY HOWARD,

Plaintiff-Respondent,

vs.

ESSEX MUTUAL BENEFIT ASSOCIATION,

Defendant-Appellant.

On Contract.

On Appeal.

Brief of Defendant-Appellant.

Facts.

On March twenty-fifth, nineteen hundred and sixteen, James W. Howard, husband of the plaintiff, became a member of the defendant association, and a copy of his membership certificate will be found in the state of the case, Exhibit P. 1, pages 40 to 43.

This certificate provides for the payment of a death benefit to the plaintiff of one hundred dollars, provided that the monthly dues of forty cents, payable on the twenty-fifth day of each month, were paid on the date when due or within thirty days thereafter.

Plaintiff's testimony was that on August twenty-sixth, nineteen hundred and sixteen, she sent her son to the office of the defendant association and paid one dollar and seventy-six cents, four months' dues (June, July, August and September); that her husband died on August twenty-seventh, nineteen hundred and sixteen. She admitted, however, on cross examination (state of the case, page 12, lines 30 to 40) that the defendant association had sent back the dollar and seventy-six cents, but that she did not remember when it was returned.

The testimony introduced by the defendant on this point (see state of the case, page 26, lines 36 to 40) was that this money was returned the day after it was paid, or on August twenty-ninth. Further testimony introduced by the defendant was to the effect that one dollar and seventy-six cents was paid on August twenty-eighth and not August twenty-sixth. (See plaintiff's Exhibit P. 10, state of the case, page 45.)

The Court found as a fact (see state of the case, page 35) that the company acted promptly in returning the money, but made no real finding of fact as to when the premium was paid, although by inference it was found that it was the day before James W. Howard died, or the twenty-sixth day of August.

The Supreme Court in its decision paid no attention to the return of the dues to the plaintiff, but merely stated that it would not disturb the finding of fact of the Trial Court with reference to when the

The Supreme Court further stated that the fact that the premiums were in arrears at the time of payment was of no importance, as there was nothing in the certificate which made it void for non-payment of dues.

It is from the decision of the Supreme Court affirming the judgment of the District Court that this appeal is taken.

Argument.

It is respectfully urged that the view of Justice Bradley, in the case of *New York Life Insurance Co. v. Statham*, 93 U. S., page 24:

“We agree with the court below that the contract is not an assurance for a single year, with a privilege of renewal from year to year by paying the annual premiums, but that it is an entire contract of assurance for life, *subject to discontinuance* and forfeiture for non-payment of any of the stipulated premiums. Such is the form of the contract and such is its character.”

is the view which is supported by the clear weight of authority, and seemingly by clear reason in the construction of contracts similar to the one in the case now before the Court.

As set forth by *Vance on Insurance*, page 212:

“As a general principle the time specified for the payment of premiums is of the essence of the contract. The ability of the insurer to meet his obligations depends upon the prompt payment of all premiums due him and without requiring payment of premiums *ad diem*, the successful conduct of insurance business would be impossible.”

It is therefore most respectfully urged that the Trial Judge in the case now before the Court failed to grasp one of the defences urged at the trial, to-wit, that although it was of some importance to determine whether or not the plaintiff had paid the dues of her husband either the day before or the day after he died, yet the fact that the defendant association had promptly returned the dues was of still greater importance, for the simple reason that although the contract of insurance did not provide for its forfeiture for non-payment of the monthly dues, still, as a basic principle, the defendant association had a logical and legal right to refuse to accept the dues when offered after the time they were due, unless it was put into possession of facts which reasonably assured it that there was no change in the physical condition of its member.

It is further most respectfully urged that the Trial Judge did not take into consideration in his decision the return of the dues to the plaintiff which she in her testimony had admitted received (state of the case, page 12, lines 30 to 40):

“Q Do you remember the Essex Mutual Benefit Association sending back the \$1.76; you got it back, didn't you? A Yes.

Q Do you remember how long after your son paid you got it

Unless the dues which were paid to the defendant association were retained by the defendant under such circumstances as to constitute a waiver of its right to demand and receive such payments when due or within thirty days thereafter as provided for by its contract, the plaintiff's case was absolutely without merit and judgment should have been entered for the defendant.

While it may be true that in the certificate of membership or policy of insurance in the case now before the Court there was no stipulation or condition for forfeiture on account of non-payment of dues or premiums, surely while the plaintiff's husband was in default for non-payment of his dues or premiums he would be in no legal position, nor would the plaintiff be in any legal position to hold the defendant liable for any loss or for any benefits under the policy of insurance or certificate of membership which occurred during the period while the payment of the dues or premiums were in arrears. To hold otherwise would create a situation not only of hardship, but one which would open the door to a great number of fraudulent cases, for the simple reason that a person holding such a certificate could refuse to pay any of the dues or premiums provided for in the contract until a loss occurred, and then offer to pay to the defendant association or insurance company all the premiums or dues in arrears, and be in a position to recover the benefits provided for in the contract.

It is further most respectfully and strenuously urged that irrespective of the fact that the contract on which the plaintiff based her case contained no condition for forfeiture on account of non-payment of dues or premiums, it was still an absolute legal duty on the part of the plaintiff to prove as part of her case that she or her husband had fully performed the terms and conditions of the contract which it was necessary that either she or her husband should perform, and which, as a matter of right and justice, were conditions precedent to the defendant being held responsible for the benefits which it, in the contract, agreed to pay.

It is further urged, as was urged before the Supreme Court, that, assuming the fact found by the Trial Court to be correct, to-wit, that the premium or premiums were paid on August twenty-sixth, as testified to by the plaintiff, still this would not entitle the plaintiff to recover upon the certificate of membership upon which the suit was based, for the very obvious reason that the premiums due on June twenty-fifth and July twenty-fifth, which under the terms of the certificate of membership now before the Court were given a thirty-day period of grace, as provided for in Comp. Stat., Sec. 2838, were past due and the certificate of membership or policy had lapsed, and the member holding the same or his beneficiary, was entitled to no rights thereunder, and as the defendant association acted promptly in returning the money paid by the plaintiff as soon as the fact of payment had been brought to its officers' attention, and there can be absolutely no question of a waiver of their rights by the acceptance of the premiums or dues by their stenographer or bookkeeper, inasmuch as this point was not urged at the trial, nor should it be given any considera-

It is, therefore, for the reasons set forth above, urged that the judgment of the Supreme Court affirming the District Court, should be set aside and a new trial granted.

Yours respectfully,

E. R. McGLYNN,

Attorney for and of Counsel with the Defendant-Appellant.

Southwestern Bond

John R. Marshall & Co.