

In the examination of the deceased by the defendants' medical examiner, in connection with the application, the following questions were asked and answers given: Q. "Have you now or have you ever had any disease or disorder of the throat or lungs?" A. "Pneumonia one year ago; laid up ten days; fully recovered; no cough following; has also had occasional attacks of bronchitis (mild)."

The defendants said that this answer was untrue, in that she had not fully recovered, and did not disclose the fact that she had had a serious attack of pneumonia in June, 1910.

The deceased was also asked: "When were you last attended by a physician or when did you consult one and for what disease?" She answered: "Cold; four weeks; cleared up in three or four days; attended by Dr. Soday." She was further asked: "Are you now in perfect health?" To which she answered, "Yes."

The defendants said that these answers were untrue, in that, at the time of such examination, she was not in perfect health, and that the disease for which she was being attended by Dr. Soday was tuberculosis, from which she never recovered.

The defendants said that such misstatements and suppression of facts were material to the risk, and should have been made known to the defendants upon the negotiation for the policy; and that, by reason of such misstatements and suppression of facts, the policy is void.

The defendants further said that they were induced to make the policy by the fraud of the plaintiff; that, at the time of the application, he well knew the state of his wife's health, and that she was affected at the time with tuberculosis; and that he procured her to make the application for his benefit; and, for such purpose and in order to secure the issue of the policy, to misrepresent the actual state of her health; and to represent falsely that she was in perfect health, with intent to defraud the defendants of the insurance moneys. . . .

[Summary of the evidence.]

In my opinion, the evidence shews beyond reasonable doubt that the deceased was suffering from tuberculosis when Dr. Soday was called in, in June, 1910, and when, on the 29th August, 1910, she signed the application and gave the answers to the company's examiner. According to her statement to Mr. McIntyre on the 5th November, 1910, she had been unhealthy from childhood up. She was afflicted with a cough during Miss McIntyre's three weeks' visit in June, 1910; and it shewed no improvement when Miss McIntyre left. Mrs. Strano's state of