

In December, 1906, the plaintiff first made claim for the insurance money. The proofs of loss forwarded to the defendants consisted of a statutory declaration of the plaintiff and copies of three letters annexed. The declaration stated that the plaintiff was the wife of the insured, and he had left his home in Toronto in or about November, 1897, and that she had received from him a letter dated the 15th November, 1897, and subsequently two letters from Chicago, one dated the 8th December, 1897, as appeared by the post-mark, and the other the 20th December, 1897 (the three letters copies of which were annexed), and that since that date she had not, nor had any member of his family, received any intimation whatever from him, and she verily believed that, if he had been living, he would have continued to correspond with her, and she was satisfied that his only reason for not continuing the correspondence was the fact that he was dead, and that he had three sons and one daughter, whose names were given.

The declaration and letters were the only formal proofs of death upon which the defendants were asked to pay. There was not laid before them any proof of search or inquiry made for the insured; indeed, none had been made.

Since action the defendants had advertised and made inquiries without result.

G. C. Gibbons, K.C., and G. S. Gibbons, for the plaintiff.

W. E. Middleton, K.C., for the defendants.

MAGEE, J. (after stating the facts at length):—As to whether, on the evidence here, the plaintiff's husband should be presumed to be dead, the answer, I think, must be in the affirmative, though I cannot help having some lingering doubt of the fact. Were it not for the efforts made by the defendants themselves since action, by advertising and following up many answers thereto, I should not have considered the evidence sufficient. But, of the plaintiff were to wait for 10 years more, what more could be done by her than has been done by the defendants? His own family and relatives have not heard from him. He corresponded with his wife frequently during the last six weeks of his known life. His letters give no indication of an intention to drop that correspondence, nor of any lessening of interest in his family. Nor do they suggest his going to any place from which it might be difficult to communicate, nor any probability of his changing his name, nor any reason for doing so. Though apparently recognising the inability to succeed at his own trade, or in Chicago, he does not appear hopeless of success in some other business and place. The