

MULOCK, C.J.Ex.D.

JUNE 13TH, 1912.

STRANO v. MUTUAL LIFE ASSURANCE CO.

*Life Insurance—Misrepresentations as to Health of Assured—
Knowledge and Participation of Beneficiary—Material Mis-
representations—Fraud—Evidence—Avoidance of Policy.*

Action by Domenico Strano to recover \$5,000 under a policy of insurance on the life of his deceased wife, Margaret D. Strano, made for his benefit.

W. A. Henderson, for the plaintiff.

G. H. Watson, K.C., and A. Millar, K.C., for the defendants.

MULOCK, C.J.:—The application for the insurance was made by Mrs. Strano on the 29th August, 1910, and on the same day she underwent a medical examination and answered the questions upon which the examiner made his report to the defendants.

The policy was issued on the 30th September, 1910. On the 3rd February, 1911, Mrs. Strano died of tuberculosis.

The application for the policy contains the following declaration by the deceased: "I, the applicant for the above assurance, hereby declare that, to the best of my knowledge, information, and belief, my health is good, my mind is sound, and my habits temperate; that I usually enjoy good health, and do not practise any habit or habits that tend to impair my health or shorten my life; that the statements made above are respectively full, complete, and true; and I agree that such statements, with this declaration and any statements made or to be made to the company's examining physician, shall form the basis for the contract for such assurance; and, if there be therein any untruth or suppression of facts material to the contract, the policy shall be void and any premiums paid thereon forfeited."

The defence is, that, at the time of the application, the applicant's health, to her knowledge, was not good, nor did she usually enjoy good health, in that, at the time and for some time previously thereto, she had been suffering from and was affected by tuberculosis, from which she afterwards died; that the statement that she usually enjoyed good health was untrue, in that she was subject to and had, at different times, pneumonia, pleurisy; and that, in June, 1910, she had an attack of pneumonia which affected her lungs and resulted in consumption, from which she died.