

which he afterwards died, and that he had on account thereof consulted and had been treated by a physician before and at the time of the application for reinstatement, and had concealed these facts from the defendants. The company tendered to the plaintiff the amount of the premiums paid at the time of and since the reinstatement with interest.

The three questions which, the defendants said, were answered falsely and the written answers thereto were as follows:—

“4. What illnesses, if any, have you had since the date of the above policy? A. None.”

“6. What physicians have treated you or have you consulted since the date of the above policy? A. No.

“7. Are you now in sound health? A. Yes.”

The jury, in answer to questions, found that the written answers to questions 4 and 7 were not in fact untrue and were not material, but that the answer to question 6 was untrue and was material, and that all three answers were acted upon by the defendants. They further found that Bird disclosed to Leeper all the information necessary to enable Leeper to have written truthful answers; that Leeper obtained from Bird full knowledge of all material facts for the purpose of the reinstatement application before Bird signed it; that Bird did not make to Leeper any statement which Bird knew to be false; that Bird was not guilty of any fraud; that Bird was induced by the statements or representations of Leeper to sign the application in the form in which he signed it; that Bird signed it without understanding its full meaning and effect; and that his failure to understand was due to the statements and representations of Leeper.

In accordance with secs. 84 and 95 (*d*) and (*j*) of the Canada Insurance Act, 1910, 9 & 10 Edw. VII. ch. 32, the policy contained these provisions:—

“The policy and the application therefor, copy of which is attached hereto, constitute the entire contract. All statements made by the insured shall, in absence of fraud, be deemed representations and not warranties, and no such statement shall avoid the policy or be used in defence to a claim under it, unless it be contained in the written application and a copy of the application is endorsed upon or attached to this policy when issued.

“At any time within 5 years after any default, upon written application by the insured and upon presentation . . . of evidence of insurability satisfactory to the company, this policy may be reinstated . . . upon payment of . . . arrears of premiums with . . . interest”

It was argued for the plaintiff that, the jury having negatived fraud, the defendants could not rely upon the application for