without any foundation of fact, and both the deceased and the medical examiner knew it.

The force and effect of the medical evidence was that death was probably due to a disease of a blood vessel, and a rupture of the same, and that this diseased condition must have been of some months' standing. The following questions were given to the jury:

1. Was the insurance in question obtained by the fraud of the insured Dr. Duncombe?

2. Was the insured, Dr. Duncombe, at the time he sent in the application for such insurance, on the 27th July, 1901, in good health?

3. If not, did he then know he was not in good health?

4. Did he know that he was not in good health on the 7th day of August, 1901?

5. Did he know it on the 14th day of September, before receiving the policy?

6. And if so, was such knowledge a fact material to the contract?

7. Did he really believe at the time of sending in his application on the 27th July, 1901, that he was in good health?

8. Did he so believe on the 7th August?

9. Did he so believe on the 14th September, 1901?

10. If not, was his real belief a fact material to the contract?

11. Were the misstatements in and in connection with the Medical Officer's report in the application in question material to the contract?

In explaining these questions the jury were told that it was fraud to "know and conceal" or to make false statements about matters that were of consequence to the company; that if the applicant knows that he is not in good health, such knowledge is a fact of consequence to the insurance company, and they should know it. As to the misstatements being material to the company and the contract, they were asked to consider why the statements were required. Was it likely that the questions set down on the application were of no consequence? Are not the answers given to the questions in the application made for the very purpose of enabling the company's officers to decide whether an application should be accepted or rejected?

Questions as to "conditions" together with a large number of legal points, were carefully gone over by the counsel for the insurance company, Mr. Frank Arnoldi, K.C. From his argument it appears that, under the Ontario Insurance Act, "conditions" of a policy to be available as a protection to an insuring company, must be "material" to the contract; that term meaning that they must be of such importance as to have affected the making of the contract had the truth in respect of them been known at the time it was entered into, and this question of materiality under the Act