

MIDDLETON, J.

JUNE 26TH, 1914.

DUFFIELD v. MUTUAL LIFE INSURANCE CO. OF  
NEW YORK.

*Life Insurance—Failure to Give Affirmative Proof of Death of Assured—Presumption from Long Absence, Unheard of—Evidence—Time-limit for Bringing Action—Insurance Act, R.S.O. 1914 ch. 183, sec. 165—Construction of—Absence of Limitation in Policy—Declaration of Death.*

Action to recover the amount due under a policy of insurance on the life of George M. Duffield, alleged to be deceased.

The action was tried without a jury at Toronto.

J. E. Jones, for the plaintiff.

F. Arnoldi, K.C., for the defendants.

MIDDLETON, J.:—By a policy of insurance bearing date the 20th May, 1901, the defendant company promised to pay \$2,500 upon the death of George M. Duffield. By a supplementary memorandum, this money was made payable to Mary J. Duffield, mother of the insured. This policy is a paid-up policy issued upon the surrender of a former policy for a larger amount.

The insured . . . was . . . addicted to excessive drinking. He was married, and was living separate from his wife. At that time he was living with his brother-in-law, Mr. Heath. It was difficult for him to find occupation, owing to his physical unfitness resulting from dissipation. The last seen of him was when Mr. Heath met him in Toronto in 1903. He was then in very bad condition, and it was stated that he was employed upon an orchestra in connection with some theatre in Buffalo. Apparently Duffield was throughout on the best of terms with his own family, though his conduct had entirely estranged his wife. He, however, was not in the habit of communicating, at any rate with regularity, with any of them; and after this chance interview with him in 1903 no trace of him can be found. He was heard of in 1905, but the information then received was in connection with his movements some two years previously; so that it may safely be said that he finally disappeared in 1903 or 1904. Every reasonable inquiry has been made; and I think that the proper inference from the evidence is that he must be presumed to be dead.