

on the 19th April, 1917, brought this action to recover \$3,000, the amount of the insurance, her husband having died on the 19th March, 1918.

The appeal was heard by MULOCK, C.J. Ex., CLUTE, SUTHERLAND, and MASTEN, JJ.

D. L. McCarthy, K.C., for the appellant company.

T. H. Lennox, K.C., for the plaintiff, respondent.

MULOCK, C.J. Ex., delivering the judgment of the Court at the conclusion of the hearing, said that the questions submitted to the jury with their answers were as follows:—

1. Did Joseph Selick, in connection with his application for insurance, answer "no" to the following question, "Have you consulted a physician for any ailments or diseases not included in your above answers?" A. Yes.

2. If so, (a) was such answer untrue? A. Yes, but not deliberate. (b) Was it acted upon by the defendants? A. Yes. (c) Was it material? A. Yes.

3. Did Joseph Selick, in connection with his application for insurance, answer "none" to the following question: "What physician or physicians, if any, not named above, have you consulted or been treated by within the last 5 years, and for what illness or ailment?" A. Yes. If so, (a) was such answer untrue? A. Yes, but not deliberate. (b) Was it acted upon by the defendants? A. Yes. (c) Was it material? A. No.

About the end of February, 1917, Selick had been seriously ill, and attended by a physician; and on the 19th April thereafter made his application for the insurance now in question. In September, 1917, he was again ill, treated by the same physician, and underwent an operation; he died on the 30th March, 1918.

There was evidence to support the finding of the jury that the untrue answers were acted upon by the defendant company.

The members of the Court were unable to understand how the jury, if guided by the evidence, were able to say that the misrepresentation was immaterial. The trial Judge said that that finding was utterly opposed to the weight of evidence and to common sense.

It seemed obvious to the Court that, in reaching their conclusion, the jury must have been influenced by something other than the evidence; and counsel for the defendant company contended that the jury must have been influenced improperly by the following observations addressed to them by the plaintiff's counsel:—

"I have had some experience at the Bar; and, talk about soulless corporations, I don't think I have ever known a case in