Insured had been thrown from a load of hay, and on his examination in a suit for damages against the municipality he swore he had been five weeks in bed suffering from his chest, and was at that time unfit for work of any kind, and had been attended by three doctors. No mention was made of this accident or of the doctors.

In reply to a question whether his grandparents, etc., brothers, etc., ever had pulmonary or other constitutional disease, he replied, "No," and he also stated in reply to questions as to what disease his brother had died from, that he had died from over-growth.

It was shown that an elder brother had been treated by Dr. A., some years before for pulmonary affection, and that insured had said that the brother who died had bled at the lungs, and had been ill for some months before he died. Insured, also, in answer to a question whether any material fact bearing on his physical condition or family history had been omitted, replied "No."

Defendants admitted policy, proofs of death, probate, etc., and accepted burden of proof in pleadings and at the trial, and claimed the right to begin, which was refused.

On motion in Term, copies of letters and documents signed by insured, sent to the Government for leave to remain off a homestead in the North-West, and showing that he had been suffering from congestion of the lungs and illness, from the spring of 1883 to the spring of 1884, were produced. It was shown that the existence of some such documents had been suspected, and that they had been searched for in all the Government offices, but could not be found, and that defendants received them the day after the trial.

Held, that the plaintiff had the right to begin, notwithstanding such admissions.

WILSON, C.J., reserved the consideration of the admission of the new evidence.

Per ARMOUR, J.—It could not be received, as it was merely corroborative, and its suspected existence would have been ground for asking to have the trial postponed.

Per WILSON, C.J.—There should be a new trial. There was evidence to go to the jury as to the truth of answer given respecting the health of the deceased brother. The jury should have been asked to say whether the answer as to inquiries was a misrepresentation in fact: that the certificate meant the answers were given upon a knowledge of the facts, and upon insured's belief in the truth of those facts; and a statement made without knowledge would not be protected by the formula, "best of knowledge and belief," if insured had no knowledge; nor would such statements be protected if made regardless of insured's belief in the truth of such knowledge as he had. The proposal was a warranty that the answers were true according to *the best* of his knowledge.

Per ARMOUR, J.—The direction to the jury, whether insured had stated to the best of his knowledge and belief the truth, in regard to deceased's brother, was sufficient.

As to the accident, it was one which ought to have been mentioned, but it was probably considered of too little importance by insured, or else had escaped his memory at the time of the application, and it was sufficient for the jury to have found insured did not wilfully withhold the fact, but answered to the best of his knowledge and belief; and the proposals were not warranties.

The Court being equally divided, the motion for a new trial was dismissed with costs.

S. H. Blake, Q.C., and *A. Cassels*, for motion.

McMichael, Q.C., *McCarthy*, Q.C., contra.

ARSCOTT [v. LILLEY AND HUTCHINSON.

Keeping a bawdy-house — Habeas corpus — Penalty under 31 Car. II. ch. 2, sec. 6.

Defendant L., a J. P., convicted plaintiff for keeping a bawdy-house, sentencing her to six months' imprisonment, after undergoing two months of which she was released on bail pending appeal to sessions. Appeal was dismissed, and plaintiff again arrested on L.'s warant, under advice of defendant H., County Crown Attorney. She was discharged on habeas corpus under latter warrant, because it did not take into account the two days' imprisonment. She was again arrested, under warrant issued by same justice, upon the original conviction. In an action brought by plaintiff, for penalty of £500, awarded by sec. 6 of 31 Car. II. ch. 2.

Held, reversing Cameron, C.J., at trial, that that section of the act does not apply where prisoner confined upon a warrant in execution.

Held, also, that warrant in execution issued by convicting justice on discharge of prisoner from custody, for defects in former warrant, was the legal order and process of the Court having jurisdiction in the cause.