

KELLY, J.

JANUARY 10TH, 1917.

## \*LANCASTER v. CITY OF TORONTO.

*Insurance—Life Insurance—Contract between City Corporation and Insurance Company—Insurance of Lives of Soldiers being Bona Fide Residents of City at Time of Declaration of War—Meaning of "Resident"—Person Living in House outside City and Working in City.*

Action against the Corporation of the City of Toronto and the Metropolitan Life Insurance Company to recover \$1,000, alleged to be due by the defendants in respect of a policy issued by the defendant company on the life of the plaintiff's husband, Henry Richard Lancaster, who died in the city of Toronto, on the 5th February, 1916.

On the 14th August, 1914, Lancaster enlisted at Toronto for war service, and at once went with his battalion to the Province of Quebec for training.

He had nothing to do with procuring the insurance; the insurance was arranged for by the Council of the City of Toronto, and was intended to cover the lives of all members of the Canadian Overseas Contingent who were bona fide residents of Toronto previous to the declaration of war and had since enlisted. A formal separate application for Lancaster's insurance was made on the 16th December, 1914, signed by the Treasurer of the City of Toronto. But this was said to have been a mistake.

The question was, whether Lancaster came within the terms of the insurance contract entered into by the two defendants.

The action was tried without a jury at Toronto.

A. G. Slaght, for the plaintiff.

C. M. Colquhoun, for the defendant city corporation.

H. S. White and F. C. Carter, for the defendant company.

KELLY, J., in a written judgment, after stating the facts, said that what the defendant corporation intended from the very beginning to contract for was insurance upon the lives of those who at the time of the declaration of war were bona fide residents and who after that time had enlisted.

The plaintiff was married to Lancaster in England in 1903, and came to Toronto in 1910. From that time until the spring of 1913 they lived in Toronto. In March, 1913, they went to