

statements made or to be made to the company's examining physician shall form the basis for the contract for such assurance, and if there be therein any untruth or suppression of facts material to the contract the policy shall be void and any premiums paid thereon forfeited."

The defence was that at the time of such application the applicant's health to her knowledge was not good, nor did she usually enjoy good health, in that at the time and for sometime previously thereto she had been suffering from and was affected by tuberculosis from which she afterwards died; that the statement that she usually enjoyed good health was untrue in that she was subject to and had at different times pneumonia, pleurisy and bronchitis, and that in June, 1910, she had an attack of pneumonia which affected her lungs and resulted in consumption from which she died.

In the examination of the deceased by the defendants' medical examiner, in connection with the application, the following questions were asked and answers given: Q. "Have you now or have you ever had any disease or disorder of the throat or lungs?" A. "Pneumonia one year ago, laid up ten days: fully recovered. No cough following. Has also had occasional attacks of bronchitis (mild)." Defendants said that this answer was untrue in that she had not fully recovered and did not disclose the fact that she had a serious attack of pneumonia in June, 1910.

Defendants further said that on the occasion of the examination in question the deceased was asked: "When were you last attended by a physician or when did you consult one, and for what disease?" She answered: "Cold, four weeks; cleared up in three or four days. Attended by Dr. Soday," and was further asked: "Are you now in perfect health?" to which she answered "Yes." Defendants said that these answers were untrue in that at the time of such examination she was not in perfect health and that the disease for which she was being attended by Dr. Soday was tuberculosis, from which she never recovered.

Defendants said that such mis-statements and suppression of facts were material to the risk, and should have been made known to defendants upon the negotiation for the policy, and that by reason of such mis-statements and suppression of facts the policy was void.

Defendants further said that they were induced to make the policy by the fraud of plaintiff; that at the time of the application he well knew the state of his wife's health, that