

HON. SIR WM. MULOCK, C.J.Ex.D.

JUNE 13TH, 1912.

STRANO v. MUTUAL LIFE ASSURANCE COMPANY.

3 O. W. N. 1372.

*Insurance—Life—Application Fraudulent — Insured Suffering from Tuberculosis—Knowledge and Participation of Fraud by Beneficiary.*

Action by beneficiary under a policy of insurance on his wife's life to recover \$5,000, the amount of the policy. Deceased made application for the policy on Sept. 29th, 1910, stating that her health was good and that she enjoyed good health. The fact was that she had been in poor health from childhood, had suffered at various times from pneumonia, pleurisy and bronchitis, and that an attack of pneumonia in June, 1910, had brought on tuberculosis of the lungs from which she died in February, 1911. The evidence also indicated that both plaintiff and his wife were aware, at the time of the application that she was suffering from tuberculosis.

MULOCK, C.J.Ex.D., *held*, that the untrue statements of deceased voided the policy but that in any case plaintiff was precluded from recovery, being a party to the misrepresentation and concealment practised.

*George v. Provincial Provident Institution*, 28 S. C. R. 544, and *Von Linderlaugh v. Desborough*, 3 M. & Ry. 45, followed.  
Action dismissed with costs.

An action brought by Domenico Strano, husband of Margaret D. Strano, to recover \$5,000 under a policy of insurance effected on Mrs. Strano's life for his benefit.

W. A. Henderson, for the plaintiff.

G. H. Watson, K.C., and A. Miller, for the defendants.

HON. SIR WM. MULOCK, C.J.Ex.D.:—The application for the insurance was made by her on 29th August, 1910, and on the same day she underwent a medical examination and answered the questions upon which the examiner made his report to the company.

The policy was issued on 30th September, 1910.

On 3rd February, 1911, Mrs. Strano died of tuberculosis.

The application for the policy contained the following declaration by the deceased: "I, the applicant for the above assurance, hereby declare that to the best of my knowledge, information and belief, my health is good, my mind sound and my habits temperate; so that I usually enjoy good health and do not practice any habit or habits that tend to impair my health or shorten my life. That the statements made above are respectively full, complete, and true, and I agree that such statements with this declaration and any