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Insurance--Falsity of Material Representations Vitiates Policy--Section 58, Insurance Law Construed (Minsker v. John Hancock Mutual Life Insurance Company, 254 N.Y. 333 (1930))

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tributed directly or indirectly is immaterial. It has been held that if in the act which precedes the injury something unforeseen, unexpected or unusual occurs which produces the injury, then the injury may be said to have resulted through accidental means.[5] The governing principle is well stated to be that "if there is no active disease, but merely a frail general condition, so that powers of resistance are easily overcome, or merely a tendency to disease which is started up and made operative, whereby death results, then there may be recovery even though the accident would not have caused that effect upon a healthy person in a normal state." [6] In determining the liability of the insurer in actions of this type, the doctrine of following the chain of causation is properly restricted by the courts to the terms of the contract as contemplated by the parties.[7]

R. L.

INSURANCE—FALSITY OF MATERIAL REPRESENTATIONS VITIATES POLICY—SECTION 58, INSURANCE LAW CONSTRUED.—Plaintiff beneficiary under her husband's life insurance policy upon his death brought this action for $10,000 on the policy. Defendant denied liability on the ground that the plaintiff's husband gave false answers to questions in regard to previous consultation with and treatment by physicians. Plaintiff contended the answers to such questions were truthfully made to the defendant's local agent and medical examiner and that they had full knowledge of the facts although the answers as contained in the written application were found to be false. The plaintiff claims that the defendant is not deceived and the representations, though material, are not fraudulent. *Held,* for defendant. Minsker v. John Hancock Mutual Life Insurance Company, 254 N. Y. 333, 172 N. E. —— (1930).

Prior to the enactment of section 58 of the Insurance Law[1] the case

[5] Mutual Accident Assn. v. Barry, 131 U. S. 100, 9 Sup. Ct. 755 (1888); Mutual Life Ins. Co. v. Dodge, 11 F. (2nd) 486 (C. C. A., 4th), 59 A. L. R. 1240 (1926); Western Com. Travelers' Assn. v. Smith, 85 Fed. 401 (C. C. A., 8th), 40 L. R. A. 653 (1898).

[6] Silverstein v. Metropolitan Life Ins. Co., at 85, quoting Rugg, *Ch. J.*, in Leland v. Order of United Commercial Travelers of America, 233 Mass. 558, at 564, 124 N. E. 517, 520 (1919).

[7] Schwartz v. Commercial Travelers' Mutual Accident Assn. of America, 254 N. Y. , 172 N. E. , decided June 3, 1930, *aff'g* 227 App. Div. 711, *id.* 132 Misc. 200 (1928); Lewis v. Ocean Accident & G. Corp., 224 N. Y. 18, 20, 120 N. E. 56, 7 A. L. R. 1129 (1918).

[1] N. Y. Insurance Law, sec. 58 (Laws of 1906, ch. 326) provides in part "that every policy of insurance issued or delivered within the state on or after the first day of January, 1907, by any life insurance corporation doing business within the state, shall contain the entire contract between the parties, and nothing shall be incorporated therein by reference to any constitution, by-laws, rules, application or any other writings, unless the same are indorsed upon or attached to the policy when issued; and all statements purporting to be made by the insured shall in the absence of fraud be deemed representations and not warranties. Any waiver of the provisions of this section shall be void."

of Sternaman v. Metropolitan Life Insurance Company[2] was authority upon the question. In that case the insured made truthful answers to all questions asked by the medical examiner, who failed to record them as given and omitted an important part, stating that it was unimportant. There the beneficiary was allowed to show the answers actually given, in order to defeat the claim of forfeiture made by the insurer on account of the falsity of the answers as recorded and this in spite of the fact that it was agreed in the application that the medical examiner employed and paid by the insurer only should not be its agent but solely the agent of the insured.[3] A breach of warranty contained in an application for insurance prior to the enactment of section 58 constituted a defense to a claim upon the policy although the warranty related to an immaterial matter. A misrepresentation contained in the application, on the other hand, only became a defense if it related to a material matter. The Legislature in enacting section 58 of the Insurance Law, apparently had for its purpose to change the law in regard to these two points. The Court in the instant case has definitely decided, in interpreting this statute that the law is the direct converse of Sternaman v. Metropolitan Life Ins. Co. and a long line of cases decided prior to January 1, 1907.[4] The rule of agency was extended too far in holding that oral statements made to insurance agents and examiners should be binding on the company when the applicant in his written statements gave false answers. The law as it now stands appears to be more reasonable and just. The applicant having the knowledge of the true state of affairs[5] should be made to state them truthfully to a company whose only means of information, upon which they assume a large risk, is the applicant's word. The plaintiff here proceeded under the law as it was prior to 1907—the law is now that a disclosure to the defendant's agent or physical examiner is not binding upon the defendant insurance company and the plaintiff cannot recover upon the grounds of disclosure to such agent or physician. It should be noted that the statute applies only to life insurance companies and not to other insurance corporations or associations.[6]

H. M. B.

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[2] 170 N. Y. 13, 62 N. E. 763 (1902).

[3] *Cf.* Flynn v. Equitable Life Ins. Co., 78 N. Y. 568 (1879); Grattan v. Metropolitan Life Ins. Co., 92 N. Y. 374 (1883; O'Brien v. Home Benefit Society, 117 N. Y. 310, 318, 22 N. E. 954 (1889); O'Farrel v. Metropolitan Life Ins. Co., 168 N. Y. 592, 60 N. E. 1113 (1901).

[4] *Supra* Note 3.

[5] The Court states, "When an insured received a policy, it is his duty to read it or have it read, and if an application incorporated therein does not contain correct answers to the questions asked by the medical examiner it is his duty to have it corrected. In such circumstances recovery will no longer be permitted because the medical examiner incorrectly recorded the applicant's answers or because the insured was unable to read or neglected to read the policy."

[6] Baumann v. Preferred Accident Ins. Co., 225 N. Y. 480, 122 N. E. 628 (1919).