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Sept. 26.
Nov. 4.

ALICE G. ROACH.....SUPPLIANT;

AND

HIS MAJESTY THE KING.....RESPONDENT.

Insurance—Returned Soldiers' Insurance Act—Application—False or misleading answers—Fraud—Cancellation of policy.

R. applied for insurance under the Returned Soldiers' Insurance Act, and printed on the form provided for the application for insurance were certain instructions, one reading: "Give full statement of illness or injury of a serious nature, etc." In his written application, in answer to the question "Are you in good health" he answered "Yes," and the question "If not, what is the nature of your illness or injury" he left unanswered. The policy issued on this application. R. at the time of applying was and had been for some time, to his knowledge, afflicted with a chronic valvular disease of the heart, from which he later died. His widow now sues to recover the amount of the policy.

Held that as the very basis of the contract of insurance was the information conveyed in the application therefor, R's concealment of the truth regarding his condition constituted in law a fraudulent misrepresentation which voided the policy.

2. That the fact that R's heart condition was revealed in an application for pension, or in the report of a vocational officer, did not constitute a communication as to his condition of health to the officers of the same Department of Government charged with the administration of the Act here in question, and could not here be introduced as constituting an answer to the questions above mentioned.

PETITION OF RIGHT by the suppliant, seeking to recover the sum of $2,000, the amount of a policy of insurance on the life of her late husband, issued under the Returned Soldiers' Insurance Act.

The action was tried before the Honourable Mr. Justice Maclean, President of the Court, at Edmonton, Alberta.

G. H. Steer, K.C., for suppliant.

R. D. Tighe, K.C., for respondent.

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The facts necessary for the understanding of the case, and the questions of law raised at the trial are stated in the Reasons for Judgment.

THE PRESIDENT, now (November 4, 1931), delivered the following judgment.

This is a Petition of Right wherein the suppliant claims payment of the sum of $2,000 by virtue of a policy of insurance issued by the respondent, in April, 1929, under the provisions of The Returned Soldiers' Insurance Act. Chap. 54 Statutes of Canada, 1920, and amendments thereto, upon the life of the suppliant's husband James Broderick Roach, who died in April, 1930; the benefits under the said policy were payable to the widow of the insured, the suppliant herein. The defence is that the respondent was induced to enter into the contract of insurance by the fraud of the insured.

Sec. 13 of The Returned Soldiers' Insurance Act provides that:

> The Minister may refuse to enter into any insurance contract in any case where there are in his opinion sufficient grounds for his refusing.

Sec. 15 provides as follows:

> No medical examination or other evidence of insurability shall be required in respect of any contract issued under this Act: Provided, however, that the Minister may, for the purpose of determining whether he shall refuse to enter into a contract of insurance in any case under the provisions of section thirteen of this Act, require such medical examination or other evidence of insurability of the insured as he may deem necessary.

Sec. 2 of Chap. 42, Statutes of Canada, 1922, amending the principal Act, enacted as follows:—

> In the exercise of the powers conferred upon the Minister by sections thirteen and fifteen of the said Act, the Minister shall be governed by the provisions of the Schedule to this Act.

The balance of this section is not relevant to the case.

The schedule referred to in the section of the amending Statute of 1922 just mentioned, refers to four Classes of applicants for insurance, and the first three, as amended, might be fully recited.

> CLASS 1—APPLICANTS WHO ARE NOT SERIOUSLY ILL
>
> (*a*) An applicant with dependents, ill with a pensionable disability. Application to be accepted.
>
> (*b*) An applicant without dependents, who is ill with a pensionable disability.

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Application to be accepted.

(c) An applicant with dependents, ill with a disability that is not pensionable.

Application is to be accepted.

(d) An applicant without dependents, ill with a disability that is not pensionable.

Application is to be accepted.

CLASS II—APPLICANTS WHO ARE SERIOUSLY ILL

(a) An applicant with dependents, seriously ill with a pensionable disability.

Application to be accepted.

(b) An applicant with dependents, dangerously ill with a disability that is not pensionable.

Application is to be refused.

(c) An applicant without dependents, seriously ill with a pensionable disability.

Application is to be refused.

(d) An applicant without dependents seriously ill with a disability that is not pensionable.

Application is to be refused.

CLASS III—APPLICATIONS FROM PERSONS IN SO SERIOUS A CONDITION OF HEALTH THAT THEY HAVE NO REASONABLE EXPECTATION OF LIFE

Applications are to be refused.

The application for insurance was made upon a form printed for the purpose. The first page contains printed Instructions For Completing Application Form, and one of the instructions, no. 10, reads: "Give full statement of illness or injury of a serious nature since enlistment." To question no. 10 in the application form, "Are you now in good health?" the applicant in his own handwriting answered "Yes." Question no. 13, "If not, what is the nature of your illness or injury?" was left unanswered. It is quite clear from the evidence, and it need not be enlarged upon, that the insured at the time of his application for insurance was, and had been for a number of years, afflicted with a chronic valvular disease of the heart and of which condition he had knowledge; and of this infirmity he died. The deceased was however usually employed at some light work. Condition 19 of the policy states that the policy shall be incontestable after one year from the date it takes effect, "except for fraud, etc."

The petitioner's counsel conceded that the policy was voidable for fraud but contended that it was upon the respondent to show that if all the evidence as to the physical infirmity of the insured, at the date of his application for

insurance, had been before the officers administering the Act that the policy would not have been issued; and that, putting the same thing in a slightly altered form, if all the evidence disclosed at the trial as to the heart condition of the insured had been disclosed to the Minister he could and should cause the policy to issue by virtue of the schedule to the amending Act of 1922, and that the burden was upon the respondent to show that the policy would not have issued. He also argued that there was no evidence to show that the applicant's answer to question 10 of the application was material, because the Department of Soldiers' Civil Re-establishment had knowledge of the applicant's heart condition (from other Departmental documents, but unrelated to insurance), and he pressed the point that the inference was fairly deducible from the schedule, that if the applicant was not dangerously ill, and had dependents, that then the application was required to be accepted, and, it was claimed, that the insured, according to the evidence, was not at the time of his application dangerously ill and was usually employed in some occupation or other. Generally that was, I think, the argument of Mr. Steer, counsel for the suppliant.

It may be true, as suggested, that had the applicant upon his application, frankly disclosed the actual facts regarding his heart condition, that the policy would or should have issued, but nevertheless it seems to me that by reason of the failure to truthfully answer question 10 in the application form, the suppliant must fail. The Minister had the right to refuse to enter into an insurance contract with Roach, if he thought there was sufficient grounds for so refusing, and he was invested with the discretion as to whether or not he would require medical examination or other evidence of insurability of the applicant. On reference to the schedule it will be seen that in Class I, in the case of "Applicants who are not seriously ill," the application was in all cases to be accepted; in Class II, which refers to "Applicants who are seriously ill," some applications were to be accepted while others were to be refused; and in Class III which applied to "Applications from persons in so serious a condition of health that they had no reasonable expectation of life," the applications were in all cases to be refused. It was imperative, it seems to me, that

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the applicant disclose in his application for insurance all material facts concerning his health, in order that those administering the Act might determine whether or not medical examination, or other evidence of insurability, might or might not be required, and also that it might be determined whether the applicant was not seriously ill, or was seriously ill, or was in so serious a condition of health that he had no reasonable expectation of life. Applications could not be dealt with according to the intent of the schedule unless there was full and truthful disclosure of the facts concerning the applicant's health, so that it might be determined under what Class of the schedule the application would fall, and whether it should be accepted or rejected. In Class III, for instance, at the date of Roach's application, all applications were to be refused.

The very basis of the contract is the information conveyed in the application of the insured. It is indisputably clear that Roach was aware that he had a more or less serious condition of the heart, whatever its probable effect upon his expectation of life. Foolishly, he concealed this fact in his answers to questions in the application form, and this in my opinion constitutes in law a fraudulent misrepresentation which voids the contract. I do not think there is substance in the very ingenious contention made on behalf of the suppliant, that the burden is upon the respondent to show that, at the date of application for insurance the state of the health of the insured was such that his application would not have been rejected even had the true facts been disclosed. He was not then medically examined, and it is not now possible to know what was then his actual heart condition, or what action those administering the Act might have taken upon the application had the true facts been disclosed. The fact that Roach's heart condition was revealed in an application for pension, or in the report of a vocational officer, as shown in evidence, does not constitute a communication as to his condition of health to the officers of the same Department of Government charged with the administration of the Act here in question, and cannot here be introduced as constituting an answer to question 10 of the application.

I therefore think the suppliant must fail, and costs will follow the event.

Judgment accordingly.