

Case No. 4,323. EISNER v. GUARDIAN MDT. LIFE INS. CO.  
[23 Pittsb. Leg. J. 158; 5 Ins. Law J. 613; 22 Int. Rev. Rec. 152; 3 Cent. Law J. 302.]

Circuit Court, E. D. Missouri.

March 31, 1876.

LIFE INSURANCE—ANSWERS CONTAINED IN THE APPLICATION—“THROAT DISEASE. “

The words “throat disease” in any proposal for life insurance construed to mean something more than a temporary inflammation which, at the time the proposal was made, was completely cured.

Action on a policy of life insurance. The proposal and policy contained the usual stipulations that, in case of false answers to any of the questions in the proposal, the policy should be void. Among the questions, the assured was asked whether he had had any of the following diseases, among them “throat disease,” which he answered in the negative. There was evidence tending to show that he had been treated for an ailment of the throat a short time before the application was made.

Upon this point DILLON, Circuit Judge, charged the jury as follows: If you believe that the only previous trouble with the throat of the assured was, that in September, 1871, he consulted Dr. Kohlenheyer, and was advised that his larynx was slightly inflamed; that the doctor prescribed for him about three times at intervals of about a week; that the doctor considered it nervous, temporary, and pronounced it cured; and if the assured had reason to believe when the policy was taken he was in good health, and that his throat trouble had been temporary, was cured, and its effect had passed away, and the insurance was procured, and the answer to question 19 given in good faith, then such a throat trouble, temporary in its nature and cured, and its effect gone at the time of the insurance, would not be such a throat disease as would defeat a recovery on the policy. But if you find that it was more than temporary, of a nature to affect the health, the general health of the assured, or was of such a nature as to be ominous of deeper trouble, or calculated to alarm him, then his answer to the 19th question would defeat a recovery.

Verdict for plaintiff.