originals; and if the proof so made showed a breach of warranty or the falsity of a material representation, as alleged in any of the pleas, the court was right in taking the case from the jury. While the medical examination is not mentioned by name in the policy, it is expressly made a part of the application, which is made a part of the policy. That the application in important particulars was false is established by the certificates of physicians introduced in evidence by plaintiff as part of the proofs of death. So introduced, we have no doubt that the certificates, though not conclusive, were competent evidence against the plaintiff of the facts stated in them. What the significance of the certificate of Dr. Wallace is need not be considered. The importance of that of Dr. Ingalls is evident. It means that the insured visited him first on May 11, 1893, and from that date until the ensuing October 2d he was her medical attendant; that he treated her for no disease, but that she had consumption, and, in his opinion, had had it since the fall of 1892. If it was competent or possible to do it, no adequate attempt was made to remove or break the force of that statement. Dr. Ingalls was not called, and the questions which the plaintiff, as a witness in his own behalf and interest, was not allowed to answer, were directed to the condition of his wife at the time of the first visit only, and to the fact, suggested by two of the questions, that she soon recovered from the slight cold which she then had. If received, full answers to the questions propounded would not have covered the period of her visits to Dr. Ingalls between May 11th and July 29th, when the policy of insurance was issued, and therefore could not have shown an excuse, if excuse were possible, for the failure to state in her application that during that time she had been in attendance at the office and under the advice of Dr. Ingalls, as shown by his statement.

The proposition is asserted, and many citations made of authorities to support it, that "a warranty in an insurance policy is not violated where the insured omitted to mention treatment for a slight cold or temporary ailment or disorder which was cured at the time of the application for insurance, and which left no taint or vice in the constitution or general health of the applicant." But, if conceded in the fullest scope of its terms, the proposition does not meet this case, where one who had consumption went, according to the implications of the questions propounded, to a physician on account of a slight cold, of which she recovered in a few days, but for near three months thereafter, before the policy was taken out, according to the physician's statement, made visits of which no explanation was offered. Neither would the untruthfulness of the answer in respect to Dr. Ingalls have been mitigated if it had been shown that the medical examiner told Mrs. Sladden that he did not wish her to mention any slight cold or accident she may have had, and the physician whom she had consulted, and that she should answer only grave or serious matters. The impropriety, not to say absurdity, of permitting an applicant for insurance to determine what matters of health, which at the time were deemed grave enough to go to a physician about, were too slight and unimportant to mention to a medical examiner when applying for insurance, could not well be emphasized more strongly than by the

facts of this case; but, if the rule admitting such evidence were conceded, it could not apply when, as here, for near three months after the slight cold had gone there was a continued and unexplained attendance upon a physician, who, perceiving the presence of an incurable disease, prescribed no treatment whatever, and gave advice only.

The question has been discussed, but need not now be considered, whether the decision in Insurance Co. v. Fletcher, 117 U. S. 519, 6 Sup. Ct. 837, has been modified by the later opinion in Insurance Co. v. Chamberlain, 132 U. S. 304, 10 Sup. Ct. 87.

The judgment below is affirmed.

STEVENSON v. UNITED STATES.

(Circuit Court of Appeals, Fifth Circuit. March 15, 1898.)

No. 620.

1. CRIMINAL LAW—MURDER—DECLARATIONS.
   Evidence as to the declaration of the defendant, made three months prior to the homicide, that he "intended to kill the next deputy marshal that arrested him," was improperly admitted, as too remote and general to have any legitimate bearing on the issue to be tried.
2. SAME.
   Where conversations and declarations of the accused, after arrest, forming no part of the res gestæ, and not admissible in his behalf, but admissible against him, are proved by the United States, the accused is entitled to have the full conversation or conversations given in evidence.
3. SAME—INSTRUCTIONS—ABANDONMENT OF QUARREL.
   Where there is evidence tending to show that the accused, after provoking a quarrel with deceased, withdrew therefrom, and was thereafter fired upon without warning by deceased, whom he then shot and killed, it is the duty of the court to instruct the jury as to the effect of such withdrawal, and its refusal to do so when requested is reversible error.
4. SAME—JURISDICTION—AVERMENTS IN INDICTMENT.
   Where an indictment for murder in the Chickasaw Nation, Ind. T., avers that both deceased and accused were white men, proof that deceased was a white man establishes the jurisdiction, and the averment as to citizenship of the accused is surplusage.

Swayne, District Judge, dissenting.

In Error to the Circuit Court of the United States for the Eastern District of Texas.

John Stevenson, the plaintiff in error, was, on the 1st day of December, 1893, at a term of the United States circuit court for the Eastern district of Texas, indicted for the murder of one Joe Gaines. On May 13, 1897, he was put upon his trial, and on May 20th was convicted of manslaughter. His amended motion for a new trial was overruled. His motion in arrest of judgment was overruled. The sentence of the court was imprisonment at hard labor for the term of six years and ten months from June 2, 1897, in the Detroit House of Correction, situated at Detroit, in the Eastern district of Michigan, and, besides, a fine of $50 and all costs of this proceeding. The indictment in the usual form charges the murder as committed in Pickens county, Chickasaw Nation, Ind. T., with the further allegation that both the plaintiff in error and the deceased were then and there white persons, and not Indians, nor citizens of the Indian Territory. The evidence of the trial tended to show the facts substantially as follows: The place of the homicide was the town of Paul's Valley, in the house and business place of one W. R. Bandy, situated on Main street, which runs