

the members of the commissioners' court, under the coercive power of this court, made the levy which they did make, the probate judge, a member of that court, failed to deliver the tax-roll to the tax collector of the county so that the levy was not collected, and practically became valueless to the plaintiff. Such conduct on the part of an official suggests that there should be some spur and incentive to the performance of legal duty beyond a judgment of one cent and costs; and following the case last cited, *supra*, (the parties having agreed in open court, the question being one of law, and the jury having been discharged, that the court should determine the matter, and the entry be made as upon a verdict of a jury,) the court finds for the plaintiff in the sum of \$500 as compensation for trouble and attorneys' fees in this cause, and costs of this suit.

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SEMM v. SUPREME LODGE KNIGHTS OF HONOR.

(Circuit Court, S. D. New York. February 14, 1887.)

**LIFE INSURANCE—ANSWERS OF APPLICANT NOT WARRANTIES.**

An applicant for life insurance, under the contract in this case, undertakes to answer the questions put to him according to his knowledge or reasonable belief, and not to misrepresent or suppress known facts, but does not warrant the absolute truth of his answers.

**At Law.**

*Charles Steckler*, for plaintiff.

*Morris Goodhart*, for defendant.

SHIPMAN, J. The question of law is whether, under Semm's application to Humboldt Lodge for membership therein, and the certificate which he received from said lodge, he warranted the truth of the answer which he gave to the question, "Have you been rejected by the medical examiner of any lodge or society?" In my opinion, he was required, under the contract, to answer the question according to his knowledge or reasonable means of belief, and not to misrepresent or suppress known facts, but that he did not warrant the absolute truth of his answers. The reason of the opinion is contained in the applicant's agreement in his printed application for membership.

As stated when the motion for a new trial was made, I have no objection to the verdict on the ground that it is against the weight of the evidence.

The motion for a new trial is denied.

MARCK *v.* SUPREME LODGE KNIGHTS OF HONOR.

(Circuit Court, S. D. New York. February 14, 1887.)

## BENEFIT ASSOCIATION—KNIGHTS OF HONOR—EXPULSION—DEATH PENDING APPEAL—REVERSAL.

A member of a lodge of the Knights of Honor was expelled by his lodge, and appealed to the grand dictator. Pending the appeal he died. Subsequently the judgment of expulsion was reversed by the grand dictator, he was reinstated by vote of the lodge, and his assessments due up to the time of his death were received. *Held*, following the analogy of the common law and of the law of the order, as held by its supreme dictator, that the appeal did not abate by the death of the member, and his benefit should be paid.

## At Law.

*Charles Steckler*, for plaintiff.

*Morris Goodhart*, for defendant.

SHIPMAN, J. Gisbert W. Marck, a member of German Oak Lodge Knights of Honor, was expelled from the lodge on April 8, 1884, appealed to the grand dictator from said sentence, of which appeal said lodge had notice, and died on April 25, 1884, pending said appeal. Subsequently the grand dictator set aside the judgment of expulsion. Marck was reinstated by vote of the lodge, and the dues and assessments which were due up to the date of his death were received. No appeal was ever taken from the vote of reinstatement.

If the analogies of the common law are to be regarded, the appeal did not abate by the death of Marck. *Green v. Watkins*, 6 Wheat. 260. By the reversal of the sentence of expulsion, and by the action of the lodge, he was reinstated as at the date of his expulsion, and was entitled to his benefit. It may be added that such was, at the time, the law of the order, which had held, by its supreme dictator, that if a decision of expulsion was reversed on final appeal, the appellant stands a member as if there had been no such judgment, and he must pay all back dues and assessments; and if, pending the appeal, he dies, has regularly tendered his dues and assessments, and, after death, the appeal is decided in his favor, his benefit will be paid as one who died in good standing, less the amount of his tendered and unpaid dues and assessments.

The motion for a new trial is denied.