

itself disclosed on the face of it no act committed by the prisoner in regard to which he could properly be subject to a criminal proceeding. There were a number of counts in the indictment, but the objection he had to take to the first count would apply to the others. The first count was for obtaining a valuable security by false pretence, and the false pretence alleged, by means of which the policy of insurance was obtained, was two-fold—the false pretence of the authority of the insurer and the false pretence—or what was called false pretence—as to the condition of health of the party insured, by means whereof the policy was obtained. It was perfectly clear that the policy was issued and obtained on the faith of the proposal; that it was not the description of the proposer alone, or the report of the medical referee alone which obtained it. It was granted on the faith of the joint proposal and certificate, and he submitted that if either of the limbs of the false pretence failed, there was no case against the prisoner. The case for the prosecution was that Dr. Whalley filled up the answers in the proposal, but if the agent thought proper, without communicating with Dr. Whalley, to fill in certain signatures in the proposal, and to certify that Law Walker was a fit subject for insurance, the defendant was not responsible. If the agent had done his duty and gone to see Law Walker, either Walker would have signed the proposal and there could have been no prosecution, or he would have objected to it, and there would have been no prosecution. The defendant never saw the proposal in the form in which it was made, he was therefore not responsible for it, and upon the first limb of the false pretence he submitted that there was no case. In regard to the medical certificate, he contended, even assuming that it was a misrepresentation, that it was a misrepresentation not as regarded an existing fact, but as to the quality of a thing, and therefore not indictable in a criminal court. Wherever between two contracting parties there was a fraudulent representation with regard to the quality or condition of that which was the subject of the contract, although it might void the contract at law, it would not support an indictment for false pretences. Had the defendant pretended that there was a person of the name of Law Walker when no such person was in existence, that would have been a misrepresentation as to an existing fact; but when he said in regard to an existing person that his health was good, whereas it might not be so good, that was a misrepresentation as to the quality or condition of the subject matter of contract, and under such a misrepresentation he submitted that no indictable false pretence could lie. The Learned Counsel was farther proceeding to contend that a policy of insurance was not a valuable security within the meaning of the statute, when

His LORDSHIP stated he was of opinion that a policy of insurance was a valuable security within the meaning of the statute. That objection, therefore, would be overruled.

Mr. SEYMOUR said probably his Lordship would reserve that point, and grant him a case upon it.

His LORDSHIP said he would consider the point.

Mr. SEYMOUR then submitted that the policy was void. It was stated on the face of the policy that unless the premiums were paid weekly, it became absolutely void. It had been stated that on some premium receipt book, the time for payment was extended to four weeks; but even granting that to be correct, no premium was paid on the policy until eight weeks after it had been issued, so that it was void on the conditions stated both on the policy and on the book.

Mr. WADDY having followed on the same side, and Mr. FOSTER and Mr. BIRSWORTH having been heard in reply,

His LORDSHIP said he was of opinion the indictment should be sustained. He was clearly of opinion that this policy was a valuable security within the meaning of the Act. The charge against the defendant was that he personally obtained this policy by using certain false pretences. One of them was that Law Walker proposed to insure his life. That was quite beyond the range of the objections taken by the Learned Counsel. It had nothing to do with the quality or condition of a thing; it was a fact that he proposed to insure the life of this man, that was a false pretence. Secondly, he was charged with having stated that he had the authority of Law Walker for insuring his life. That again was a fact, and would be false pretence. Another false pretence would be that he falsely pretended that Law Walker was in good health, that the stamina of his constitution was fairly maintained, and that he was insurable at first-class rates, when, in fact, he was not in good health. Of course, if the Learned Counsel could succeed in satisfying the jury that this was an innocent mistake, there would be no indictment; but in the meantime he must sustain it.

Mr. SEYMOUR suggested that the prosecution ought to call Law Walker's wife, seeing her name was on the back of the indictment.

Mr. FOSTER referred to Baron Alderson's opinion that the prosecutor was not bound to call witnesses because their names were on the indictment, but that they ought to be in Court so that they might, if wished for, be called for the defence.

His LORDSHIP said that, after hearing that opinion, he did not think Mr. Foster was bound to call the witness.

Mr. SEYMOUR said he never thought his friend was bound to call the witness. He merely suggested that she might have been called.

His LORDSHIP.—Do you call her, Mr. Seymour.

Mr. SEYMOUR.—No, my Lord, I call no witnesses. I will go to the jury with the case as it at present stands.

Mr. CAMPBELL FOSTER then summed up the evidence for the prosecution. He said he had not called the wife of Law Walker for the reason that she had been seen walking that morning from the railway station in company with the brother-in-law of the defendant. She was present, however, in Court, and if his learned friend had wished to call her, he could have done so. It had been proved by Mr. Dewey, clerk to the industrial department of the British Prudential Assurance Company, that the proposal signed by the defendant, and which had been put in evidence, had been duly sent up to the head office, in London, and had formed the basis of the policy upon which the latter had been issued. That policy was duly returned to Mr. Taylor, of Dewsbury, and by him it was handed to the defendant. This proposal, it had been proved, was made in Whalley's own handwriting, and the question for the jury to consider was, whether it was false or true? They had the evidence of Mr. Knaggs, of the Huddersfield Infirmary, and that of Law Walker himself, and Mr. Ellis, the relieving officer, also showed that three days before this proposal of insurance was written by Whalley, the latter had given Law Walker a certificate as to his disability, and as to his requirements of relief. Walker had shown them that he was so when the defendant gave him this certificate; and it had also been deposed by Mr. Knaggs that when Walker left the Infirmary he was in a very bad condition, being then suffering from abscess and a serious structural disease of the kidneys. The relieving officer saw Walker in bed on the 1st August, unable to rise owing to the abscess; and it was evident that the defendant, knowing perfectly well his (Walker's) condition, gave him the necessary certificate to enable him to obtain relief. Yet—only three days after this—Whalley, in his own handwriting, filled up the answers in the proposal-paper, which said paper formed the basis of granting the policy of insurance; and he (the defendant) then certified that Walker was in good health, and that his last illness had occurred three months previously, and that it was then only an attack of diarrhoea; that the stamina of his constitution was fairly sustained, and that he was a first-class life for insurance. The policy had therefore been granted upon the representations made by the defendant, and these representations were false within his knowledge, and were done—looking at the circumstances of the case—with the evident object of defrauding the company.

Mr. DREW SEYMOUR then addressed the jury for the defendant. He said he was sure they would not consider him guilty of any affectation when he told them that—looking back many years since he first represented the interests of a prisoner in a criminal court—he entertained the feelings that he felt in the present case. They had before them, in this criminal and disgraceful charge—disgraceful, he meant, if a verdict was returned against Mr. Whalley—a man who was a member of an honourable profession, filling various offices of trust and rank, doing a considerable business in the exercise of his particular calling, and who was ultimately appointed the medical referee to the British Prudential Assurance Company. A doctor of medicine, a member of the Royal College of Surgeons, Dr. Whalley had gone through a career of study to qualify himself for the onerous department of business-life he had chosen. And when the fruits, the rewards of successful industry and intelligence were coming upon him, he was charged—with what?—with attempting by a miserable trick, by a miserable policy, to become possessed of the sum of £33 6s. He (Mr. Seymour) might take his stand upon this, that it went against the common instincts of our common nature for a man in Dr. Whalley's position to do. There must be a mistake somewhere, for how could it be thought or imagined that the defendant would condescend to steep himself in crime for such a paltry stake? His Learned Friend on the other side had argued, "Why, this man, Law Walker, was discharged from the Huddersfield Infirmary in an incurable state," whereas, the fact was, that Walker left the institution of his own accord—as a volunteer—and therefore the statement on the part of the prosecution crumbled into dust and ashes. It had further been stated that the defendant had testified considerable eagerness and anxiety to get possession of the policy, and had gone to the office of Taylor on several occasions in order to obtain it; the plain fact being that he (Whalley) had only once called at the place, and then it was to inquire about the whole number of his policies, eighteen in all, without making any special reference to this of Walker's. Dr. Whalley, it was urged, was Walker's medical attendant, and that he was therefore in a position to judge of the man's state of health, but it had transpired that he had never written a prescription for him, or sent him a single box of pills. The broad and startling statements of the prosecution had thus crumbled beneath the effect of the facts. What was the moral? It was one which underlaid the principle which ought to prevail in all criminal inquiries—that we ought to assume the innocence of the defendant until his guilt is established. Had the prosecution proved to their satisfaction, and beyond all reasonable doubt, that Dr. Whalley, with intent to defraud, fraudulently and wilfully and falsely pretended he had an authority which he had not; and, presuming upon an authority which he had not, signed a certificate which was not only false in fact, but which he knew was false at the time? He confidently stated that they had not. It must also be borne in mind that occasionally wives insured their husbands' lives without the knowledge of the latter, and this theory had never been shut out against him (Mr. Seymour) by the evidence for the prosecution. The jury knew the history of the document which went to the head office of the insurance company, having, as he put it to them, the authority of Law Walker's wife, sanctioned by the general conduct of the husband; and all that the defendant had to do with the business was to fill up the proposal-paper at her wish. It had been admitted, on the other side, that the agent had filled up such proposal-papers without seeing the parties who wished to have their lives insured, relying upon the information and trustworthiness of his canvassers, and had signed such papers without the authority of the said parties. All appeared to be fish that came to the net. The insurance company looked for profits, for a great result, and they took the risk. But it must not be forgotten that it was the duty of the agent to see the life proposed for insurance, and this had not been done in the present instance. And before they could convict his client they would have to make him responsible for something which he had no authority to do. Mr. FOSTER had been extremely

eloquent upon "constitutional stamina." Well, what about this question in the proposal, "Is the stamina of the man fairly sustained?" It meant this, if anything, that Walker, a man thirty-three years of age, with the vital elements within him, appeared to the doctor to be in a condition of apparent health, nothing being perceptible to the contrary. After arguing that 9d. was not a proper remuneration for a medical man in such cases—that it would not pay either to examine a man's urine or inspect the state of his back—the Learned Counsel proceeded to state that the very fact of Walker having been previously insured in a Leeds office—only being thrown out for not duly paying in his subscription—showed that he was a fair life, and that the defendant had no reason to doubt it. "Sometimes Walker used a crutch, and sometimes a stick, but by degrees"—said one medical witness—"he was able to go without either." The fact was, the defendant had so many engagements—his mind was so fully occupied by his business—that if he made an error in describing Law Walker's state of health, such error was easily excusable. And they must be satisfied, not only that what Dr. Whalley signed was false, but that he signed it wilfully, or otherwise they could not convict him of the false pretence stated in the indictment. Mr. Seymour concluded by pointing out the inadequacy of the motive on the part of the defendant—a man who was in such a respectable and successful position in life.

Mr. THOS. DOBSON, surgeon, Holbeck, said he had known the defendant for 25 years; and that the defendant had been with him for five years as a pupil. He had been acquainted with his life at that time, and ever since. His general character for honesty and integrity had been very good. He was a successful practitioner, and was much beloved and esteemed by all his friends.

Mr. MARMADUKE FOX, manufacturer, Mirfield, lived about half-a-mile from the defendant, whom he had known for ten or fifteen years. He had been witness's family doctor for ten years. He was much respected and bore an excellent character.—Cross-examined.—Witness never heard a charge made against the defendant of stealing malt from Mr. Hurst, of Mirfield. He had heard some report on the subject, but he did not know whether it was correct or not.

Mr. ALD. DAY, of Dewsbury, stated that he resided at Mirfield. He had known the defendant for seven years. He had always borne an excellent character, and was a rising man in his profession.—Cross-examined.—Witness knew Mr. Hurst, a Justice of the Peace, at Mirfield. He once heard a report about the defendant stealing Mr. Hurst's malt, but it was generally discredited. By his LORDSHIP.—The report was circulated about six or seven years ago. Since then the defendant had visited with the best families in the neighbourhood.

Mr. SEYMOUR stated that those were all the witnesses he intended to call.

His LORDSHIP then summed up. He said the case was no doubt a very important one indeed for the defendant, and a very important one as it regarded the interests of society. It was important to the defendant not merely on account of the peril in which he was in having a serious punishment inflicted upon him, but also important because, far beyond the mischief which the punishment itself would do him, he would be utterly ruined in character, unable to maintain himself in his profession, or to hold up his head amongst honourable men after he was found guilty of this charge. The jury, therefore, must be exceedingly careful before they came to the conclusion that he was guilty. It had been truly said that in all such inquiries, as indeed in all inquiries in a criminal court of justice, the prisoner stood before the jury with a presumption of innocence in his favour. That presumption, before he could be found guilty, must be broken down by conclusive evidence, by evidence satisfactory to the jury. In all cases of really serious doubt, the character a man had borne in the neighbourhood in which he lived, and in which he was known, was a matter to be considered, and the jury ought to determine whether it was a probable thing in such a man to commit such a crime. If they took his advice on the question of character they would treat that rumour about the malt as so much moonshine. He could not believe that a man in the position of the defendant could escape a prosecution, and then in the immediate neighbourhood, be received by families in honourable and respectable situations in life as a person worthy of respect. If it should come to be a question of doubt with the jury as to whether the defendant was guilty of the charge against him, they should give him the full benefit of the high character he had received. The defendant was a member of a most honourable profession—a profession perhaps to which more than to any other, mankind was indebted, unless indeed that still higher profession, the duty of which was to teach us our duties to Almighty God and our way to eternal happiness hereafter. The defendant would not have been the medical officer of this society if they had not believed him to be a respectable man; and he thought they must begin this inquiry with the belief that up to the time this charge was made the defendant had enjoyed a very honourable and respectable character, and would have been presumed incapable of doing such a thing as this. Still he was not to escape on account of his character if it could be clearly proved against him that he was guilty of this fraud. Good characters were sometimes cloaks for fraud; and it often happened that persons who had remarkably good characters turned out to be good for nothing. After detailing the facts of the case at some length, his Lordship said that if the jury were satisfied that the defendant had no authority from Law Walker to insure his life, and that he said he had Law Walker's authority, for the purpose of defrauding the company, then he would be guilty under this indictment. If they also were satisfied that the defendant, knowing his report to be false, reported that Law Walker was a good life, that the stamina of his constitution was fully maintained, and that he was insurable at first-class rates, that also would be sufficient to convict him under this indictment. His Lordship then went over the evidence relating to the first alleged false pretence, remarking upon the rather loose manner in which the business of the company had been conducted; he said, that, loose though it had been, the mere fact of other persons having done their part of the business in a lax manner, would not excuse the defendant. In regard to the statement that Mrs. Law Walker was aware of her husband's life having been insured, if there was any reason for believing that she had given Dr. Whalley authority to effect this policy, the defendant must know it perfectly well, and although the prosecution had not called the witness, there was nothing to have prevented the learned counsel for the defence from putting her into the box. If she had been able to state that she gave the defendant authority there would be an end to that part of the charge in the indictment. As to the medical report, if the jury believed the statements to have been false, and false to the knowledge of the defendant, then the false pretence was proved; and if by means of this the policy was obtained from the company, he was liable upon this charge. Against the testimony, however, of the medical man, who had described in so unfavourable a manner the condition of Law Walker, they had the man himself, who tripped nimbly into the box, and who looked as well as some of the jury did. He did not look much worse than other young men of thirty-three, and certainly he had falsified the expectations of the medical men who had thought so badly of his condition. It was possible that Dr. Whalley might have entertained more sanguine hopes regarding his health; that he did think the stamina of his constitution was fully maintained, and that he was insurable at first-class rates; but why did he certify at the very same time that he was disabled by abscess for the purpose of obtaining him relief; and why, when he knew he was in that condition, did he state that his last illness had been three months before, and that it had been diarrhoea? His Lordship concluded by directing the jury to give the defendant the benefit of any really serious doubts they might entertain as to his guilt.

The jury then retired to their private room, and after an absence of an hour, returned to Court. The foreman stated that they found the prisoner guilty of insuring the life of Law Walker, without his knowledge, and with filling up the medical certificate falsely; but recommended him to mercy in consideration of the very loose manner in which the business of the Assurance Company was carried on.

His LORDSHIP stated that he would consider the recommendation, and pass sentence in the morning.

### ATTEMPTED FRAUDS BY A DEWSBURY SURGEON.

The trial of THOMPSON WHALLEY (31), surgeon, charged with unlawfully and knowingly obtaining by false pretences from the British Prudential Assurance Company a policy of assurance upon the life of Law Walker for the sum of £33 6s., with intent to cheat and defraud at Dewsbury, was then resumed.—Mr. CAMPBELL FOSTER and Mr. BIRSWORTH conducted the prosecution; and the prisoner was defended by Mr. DREW SEYMOUR, Q.C. (specially retained), and Mr. WADDY.—The prisoner was medical referee of the Company at Dewsbury and Mirfield, and on the 4th of August last, he went to the office of the agent of the Company, Mr. Taylor, at Dewsbury, and obtaining two blank forms of proposal, filled one of them up in favour of Law Walker, a labourer, residing near Mirfield, for £33 6s., payable on death. In the proposal he stated that the applicant's last illness had been three months previous to the date of the proposal, at which time he had been afflicted with diarrhoea, and that he was then in good health; and in the medical certificate which he filled up and signed he stated that the stamina of the applicant's constitution was fully sustained, and that he was a first-class life for insurance. Upon these representations the Company issued a policy in favour of Law Walker, (which was given to the prisoner by the Dewsbury agent, and on which he paid one premium. Some time after, suspicion being aroused, an inquiry took place. It was discovered that in consequence of a serious accident Walker had suffered from abscess in the back in 1864 and 1865, that he had been for some time in the Huddersfield Infirmary, that he had been attended by Dr. Whalley, and that on the 1st of August last, only a few days before the proposal was made, the prisoner had granted a certificate to Walker, in order to enable him to obtain relief from the parish, to the effect that he was suffering from abscess, and was unable to work. It was also found that Walker did not know that his life had been insured, that he had never authorised any one to make a proposal for him, and that he had never paid any premiums upon such a policy. When the Court adjourned last night the examination in chief of Law Walker had been concluded, and the proceedings were commenced this morning with witness's cross-examination.

Law Walker, cross-examined by Mr. SEYMOUR, stated that his father was insured, and that some of his children had been insured. His wife effected the insurance on the children. She was a very active woman, and attended to matters connected with the insurance. She insured her own life and that of the children, and paid the premiums herself. He was insured in the Standard office in Leeds, some time after the accident. He was examined by the medical officer of the Company, Mr. Wordsworth, and passed, and he got a policy. Some time after, that policy dropped, and he had faked several times with his wife about getting his life insured again. He had said that as soon as she could get his life in anywhere he would be insured. His wife was in the court. She had been summoned by the prosecution. Witness believed he had said to Dr. Whalley that it was a bad job he was not insured. He could not say whether he said so about August last; but he had seen Dr. Whalley several times after. He was mending in his health; getting stronger every day, and the Dr. told him that if he took care of himself, he might get quite well again. Dr. Whalley may have seen him walking with his crutch on the road, but he could not say. He did not know that he ever told Dr. Whalley that he had been in the Infirmary.

Mr. SEYMOUR.—Have you told any person that your wife knew of this policy of insurance?

Witness.—Yes; I have told several persons since this charge was made against the defendant that my wife knew this policy had been effected.

Mr. SEYMOUR.—And that she had spoken to Dr. Whalley about getting it done, and found the money for it?

Witness.—Well, I don't know about her finding the money.

Mr. SEYMOUR.—But that she had spoken to Dr. Whalley about getting it done?

Witness.—Yes, she knew about it being done. My wife takes the management of all the money in the house.

Re-examined.—Witness stated that he and his wife lived with his mother. He never gave his wife any money to pay for a premium on the policy. His wife came with him from Dewsbury that morning. Mr. Gloyd did not come in the same carriage. He did not see who his wife walked from the station with. He did not see her walking with Mr. Gloyd, who was the prisoner's brother-in-law.

His LORDSHIP.—What is the state of your health now?

Witness.—I am a good deal better now.

His LORDSHIP.—Can you walk three or four miles?

Witness.—Yes.

Mr. SEYMOUR.—Will your lordship ask him whether he walked to the station this morning?

His LORDSHIP.—That is not so far.

Mr. SEYMOUR.—To the station at Dewsbury, my Lord.

His LORDSHIP.—Well, he says he can walk three or four miles. Are you at all deformed?

Witness.—No.

Mr. JOHN MOON, Manchester, stated that he was one of the officers of the company, and that in consequence of some circumstances he went to Dewsbury and saw Mr. Taylor and the prisoner. He made inquiries of the latter regarding Hepworth's case; and in consequence of what then transpired, he was led to institute the present prosecution in regard to Law Walker's case. He came that morning from the railway station with several of the witnesses. He saw Law Walker's wife at the Leeds station. He knew Mr. Gloyd, and saw him in Court seated beside the prisoner's attorney. Mr. Gloyd was the prisoner's brother-in-law, and he saw Law Walker's wife walking with him from the station. Cross-examined.—Scores of people came out of the train and walked up together. He had the understanding that Law Walker's wife was one of the witnesses for the prosecution. Before that morning, he had heard several say that they believed Law Walker's wife knew all about the policy. That rumour had got about since the matter was broached before the Magistrates.

Mrs. Maria Walker, mother of Law Walker, stated that her son never told her he had insured in the Prudential-office. She never asked the prisoner to effect a policy on her son's life, and never heard of such a policy having been effected. She remembered her son going to the Infirmary in May last. He was suffering from a running abscess in his back. She had seen Mr. Gloyd at the station that morning. She believed her daughter was walking behind that gentleman.

Mr. SEYMOUR.—They walked openly from the station, did they not?

Witness.—Oh, yes.

His LORDSHIP.—I don't see how it could have been done in any other way. (Laughter.)

Mr. SEYMOUR.—Well, Mrs. Walker, judging from the stamina of your constitution, Law Walker must come of a good stock. (Laughter.)

Witness.—He does, sir. (Renewed laughter.)

Mr. SEYMOUR.—I believe your husband is insured in this company?

Witness.—He is, sir.

Mr. SEYMOUR.—And you insured his life for him?

Witness.—I did, sir.

Mr. SEYMOUR.—And told him nothing about it? (Laughter.)

Witness.—He know nothing about it, sir. (Renewed laughter.)

Mr. SEYMOUR.—In your district, husbands allow their wives to do pretty much what they like?

Witness.—Oh, yes, sir. (Laughter.)

Mr. FOSTER.—Who examined your husband?

Witness.—Dr. Whalley did, sir.

Mr. FOSTER.—Well, I hope he enjoys better health than your son?

Witness.—He well, Sir. (Loud laughter.)

Mr. FOSTER stated that that was the case for the prosecution.

Mr. SEYMOUR submitted that his learned friend had not made out any case to sustain his indictment, which in