All India General Insurance Co. Ltd. And ... vs S.P. Maheswari on 5 November, 1959

Equivalent citations: AIR1960MAD484, AIR 1960 MADRAS 484

JUDGMENT

Ramaswami, J.

(1) This Letters Patent Appeal is directed against the decision of our learned brother Basheer Ahmad Sayeed, J. in C. C. C. Appeal No. 54 of 1954, reversing the decree and judgment of the learned Principal City Civil Judge of Madras in O. S. No. 1568 of 1950.

(2) The facts arising for consideration lie within a brief compass and have been established beyond doubt. The plaintiff Maheswari is the wife of the deceased Palanivel Nadar. Palanivel Nadar has a brother-in-law by name C. M. Thyagarajan. This Thyagarajan was the agent of the defendant insurance company, the All India General Insurance Company Limited. Palanival Nadar, as appears from the evidence, was a heavy drinker and afflicted with syphilis. On 2-1-1948 the deceased Palanivel Nadar took out a life assurance policy bearing No. 11096 for a sum of Rs. 5,000/-. Palanivel Nadar died on 13-6-1948 surviving him the plaintiff Maheswari and two minor children. The claim of Maheswari was disputed by the defendant company.

Their case was that the deceased Palanivel Nadar submitted his proposal for insurance on 1-12-1947 and made a personal statement on 3-12-1947. In answering the question in the personal statement he did not disclose two material particulars within his knowledge regarding his health and habits. In the statement Ex. B-3 the deceased in answer to the questions which are to be answered by him and filled up with the subscribing declaration that the foregoing answers were true in every particular and that he had not withheld any material information and that he thereby agreed that that declaration together with the proposal for assurance shall be basis of the contract to be made between him and the All India General Insurance Company Limited, to the question, "Do you take alcoholic liquor" he has answered that he took the same occasionally in company, and to the question "whether he had any affection of gonorrhoea, syphilis etc.", his answer was an emphatic "No".

On the death of Palanivel Nadar at the early age of 35, it was found that he had died on account of cirrhosis of the liver, ascites and syphilis. In the well-known Dorland's American Illustrated Medical Dictionary, 22nd Edition, the first is defined as a disease of the liver, marked by progressive destruction of liver cells due to an inadequate diet in heavy drinkers. Ascites is explained as an accumulation of clear yellow fluid in the perritoneal cavity producing painless swelling of the abdomen due to inflammation or dropsical. In cases of hemorrhagic ascites, the fluid is mixed with blood. Syphilis is a well-known venereal disease for which salversan injection was the well-known

specific.

The term "syphilis" is derived from the name of a shepherd infected with the disease in the poem "Fracastorius" (1530) in which the term first appears and according to some the word is derived from the Greek words together plus to love. It is a contagious venereal disease leading to structural and cutaneous lesions. Its primary local seat is a hard or true chancre. It results from contract, usually coitus. The several stages of syphilis are primary, secondary and tertiary. In course of time from its primary local seat chancre, it extends to the skin and to nearly all the tissues of the body, even to the bones. In fact the certificate of Dr. U. Krishna Rao (the present Speaker of the Madras Assembly) proved by him as D.W. 1 shows that Palanivel Nadar was being treated by him for syphilis in 1946 and 1947. Ex. B-9 is the medical attendance certificate issued by Dr. R. Narayanaswami and against column 5 of that certificate it is mentioned that the blood was positive for Syphilis infection.

In these circumstances, the defendant insurance company repudiated their liability on the ground that the deceased did not make mention in the personal statement made by him before the medical examiner of the ailments he suffered from prior to his application, and that he had received treatment both at Madras and Bangalore for his complaints about which he did not make mention. Inasmuch as Palanivel Nadar died within six months of taking out the policy, his case would not attract the protection given under S. 45 of the Insurance Act. In fact there was no answer to the charge of the defendant company for avoiding the claim made under the policy and the learned trial Judge upheld the contention of the defendant company and dismissed the suit. On appeal, our learned brother Basheer Ahmed Sayeed, J., came to a contrary conclusion and decreed the suit. Hence this appeal by the defendant company.

(3) The origin of insurance and insurance law in England, United States of America and India is interesting and deserves more than a passing mention.

(4) This history can be gathered from the leading American treatise, Richards on Insurance, 5th Edn., Vol. 1, pp. 36 to 38. (A). The origin of insurance is obscure. Loans on bottomry are of ancient date, and from this maritime usage the earliest form of insurance may have developed. The practice of marine underwriting probably started in connection with the revival of commerce in the twelfth or thirteenth century.

{(A) See also the very brief "Historical Reference" Vol. 12 of the Encyclopaedia Britanica 1951 Edn., p. 453.} At that time the ocean commerce of Christendom was largely undertaken by the Lombards, merchants of the north of Italy, who had established trading companies generally throughout Europe, and who appear to have carried the practice of marine insurance wherever they had mercantile dealings. There is ample evidence of its use in the middle ages. The word "policy" is of Italian derivation. At its initial stage, the contract of insurance was underwritten by individuals and was regulated by mercantile custom, which became the foundation of all the laws and codes subsequently enacted upon the subject.

(5) A recorded mention of insurance in England in 1548 indicates that the practice of insuring had been in vogue there for some time, and somewhat later, on the opening of Queen Elizabeth's first

Parliament Lord Bacon said: "Doth not the wise merchant in every adventure of danger give part to have the rest assured?" A chamber of insurance was established in London under patent granted by Queen Elizabeth in 1574. But for many years after its introduction into that country, the law of insurance was unknown to the Common Law Courts, and insurance disputes were as a rule settled by the arbitration of mercantile men. The first reported insurance case belongs to the year 1589, and is mentioned by Sir Edward Coke, in which it was held.

> "where as well the contract as the performance of it is wholly made or to be done beyond sea, it is not triable by our law, but, if the promise be made in England it shall be tried."

In 1601 a special tribunal for the trial of marine insurance cases was established in England. This Court, which consisted of the Judge of the Admiralty, the recorder of London, two doctors of the civil law, two common lawyers, and eight grave and discreet merchants, or any five of them, fell into disuse within a century after its organisation, and by degrees insurance disputes began to come within the jurisdiction of the common law Courts of England. In 1756 Lord Mansfield was appointed Chief Justice of the Court of King's Bench, and during his long and illustrious career as a judge he was conspicuous in making the policy of insurance the subject of careful study. From foreign ordinances, writings of jurists, and usages of trade, he drew and shaped the principles of insurance law.

(6) Turning to the United States of America, Richards points out, in colonial days in the United States insurance was mainly conducted by individual underwriters. The first marine insurance office was opened in Philadelphia in 1721 and fourteen years later a South Carolina gentleman established the earliest fire insurance office. Probably the only incorporation of an insurance organisation prior to the Revolution was "The Philadelphia Contributionship for Insuring Houses from Loss by Fire", a mutual company incorporated by a special Act of the Pennsylvania colonial legislature in 1752. The absence of corporate insurers can be ascribed to an Act of Parliament in 1715, which incorporated two English companies with monopolistic privileges and prohibited any other stock insurance companies in His Majesty's dominions.

After the Revolution, incorporation by special Legislative enactment became common, and today, in nearly all states, insurance organisations are incorporated under the general corporation laws as administered by the department of Insurance.

(7) In regard to India (B), as in England so in India mutual aid associations and those formed to amass and to operate Provident funds appeared fairly early and still survived as rivals of the more purely commercial types of enterprise. So, too, the private insurer or mere partnership firm has been obliged to give way before the joint stock company. Of the early pioneers from overseas the pride of place must be given to the Sun Insurance which was founded in 1710. Meanwhile, however, Insurance in India had come into existence independently.

{(B) See Barwell's, The Law of Insurance in British India (Butterworth) p. 8 and foll. "Beginnings of Insurance in India.} The Madras Equitable was established as far back as 1829. Lamentably it went

into liquidation in 1921, thus just failing to complete its centenary. From the very start indigenous insurance enterprise followed the two distinct channels, that is to say, the mutual Associations once early established continued to maintain their popularity, while commercial insurance was gradually being built up in competition with the foreign controlled interest. It is interesting to note that the Oriental Government Security Life Insurance Company, Bombay, came into existence in 1874.

By 1935 no fewer than 383 insurance companies and societies were doing regular business in India of whom 231 were Indian and 152 non-Indian. It will be noticed at once that the preponderating business continued to be in the nature of Life Assurance in all its forms, in which has to be included endowment policies and the provision of amenities. Just prior to the Great European War of 1914-18 some attempt was made by domestic legislation in India to deal with the control of insurance undertakings. In England the statutes of 1870-72 relating to companies engaged in the business of insurance had been repealed by the Insurance Companies Act 1909. Three years later the Indian Life Assurance Companies Act (VI of 1912) was passed following in large measure the model of the last-named English statute.

Earlier in the same year the Provident Insurance Societies Act (V of 1912) had become law. Sixteen years later was passed the Indian Insurance Societies Act (XX of 1928). That Act effected certain amendments in Act VI of 1912 but was more largely concerned in providing machinery for the collection of statistical information as to class of insurance business other than life insurance, carried on in India by external companies.

In 1935 the Government of India decided to proceed with the reform of Insurance Law without waiting for the enactment of further legislation in England--which legislation had been expected ever since the Committee presided over by Mr. A. C. Clauson, K. C. had reported in 1927. By 1938 the Government of India had enacted the Insurance Act, 1938. (C). Subsequently, the Insurance Amendment Act 47 of 1950 (C) introducing changes of far-reaching character in the insurance law came to be passed. See Statement of Objects and Reasons printed at p. 4675 of Vol. 5 AIR Manual of which valuable commentary an up-to-date edition will soon be forthcoming. Insurance has always been one of the spheres in which the conflict of principles of freedom of commerce and welfare of the State have contended for recognition and supremacy and affords an interesting study if only for the reason that it involves a fascinating enquiry as to the methods by which various countries in different parts of the world have attempted to resolve this conflict.

{(C) T. Dutt's Commentaries on the Insurance Act No. IV of 1938 (Edn. 1953) and K. B. Venkoba Rao's. The Law of Insurance of India (1950) (Tripathi and Co.). The latter contains a good summary of the provision of the Insurance Amendment Act XLVII of 1950.} Minimum interference by the State with the maximum publicity was one method and direct State control was another. The authors of the 1950 amendment short of nationalisation went as far as it was possible in making stringent provisions relating to control of investment, limitation of expenses of management, prohibition of payment of excessive remuneration etc. But by 1956 for reasons of State policy the Life Insurance Corporation Act, 1956 (Act 31 of 1956) was enacted to provide for the nationalisation of life insurance business in India by transferring all such business to a Corporation established for the purpose and to provide for the regulation and control of the business of the Corporation and the

matters connected therewith or incidental thereto.

The Government of India in exercise of the powers conferred by S. 48 of the Act 31 of 1956 has made the Life Insurance Corporation Rules 1956. In other words, life insurance has become nationalised and therefore problems arising as in the instant case have come to be of great material importance and in the solution of which all should freely indent upon English and American precedents, one insurance law being practically the same in England U. S. A. and India.

(8) The aim of insurance (D) which is preeminently a modern conception is in the nature of a provision against loss or damage. Its aim is to provide against dangers which beset human life and dealings. Those who seek it endeavour to avert disaster from themselves by shifting possible losses on to the shoulders of others, who may be willing for a pecuniary consideration to take the risk thereof. Those who grant insurance undertake the risk with a view to obtain a fair amount of profit upon their investment. It is therefore a business proposition both to the insurers and the insured, and both of them enter upon a common understanding in a business-like way.

{(D) C. Kameswara Rao Treatise on the Law of Insurance (1957) (Law Book Co.)} (9) Insurance is a contract upon speculation and its legal conception is a contingent contract as defined in S. 31 of the Contract Act. A precise definition of a contract of insurance has nowhere been stated, but, generally, it may be defined as a contract whereby, for a stipulated sum called premium, one party undertakes to indemnify another against loss from certain specified risks.

(10) One great principle of insurance law is that a contract of insurance is based upon utmost good faith Uberrima fides; in fact it is the fundamental basis upon which all contracts of insurance are made. In this respect there is no difference between one contract of insurance and another. Whether it be life or fire or marine the understanding is that the contract is uberrima fides and though there may be certain circumstances from the peculiar nature of marine insurance which require to be disclosed, and which do not apply to other contracts of insurance, that is rather an illustration of the application of the principle than a distinction in principle. From the very fact that the contract involves a risk and that it purports to shift the risk from one party to the other, each one is required to be absolutely innocent of every circumstance which goes to influence the judgment of the other while entering into the transaction.

Mutual trust and confidence is the basis upon which the parties proceed. The insurer trusts to representations of the assured, and proceed upon the confidence that he does not keep back any circumstance in his knowledge, so as to mislead the insurer into a belief that the circumstance does not exist, or to induce him to estimate the risk as if it did not. On the other hand, the assured relies upon the honesty of the insurer for the communication of every fact which he ought to know before he invests his money and the non-disclosure of which will affect his judgment, as for instance, where the insurer grants a policy where he will never run any risk thereunder.

This duty to disclose not only exists at the time of entering into the contract but continues during its subsistence and after the risk has happened, Brownlie v. Campbell, (1880) 5 AC 925 HL, per Jessel M. R. London Assurance v. Mansel, (1879) 11 Ch D 363 at p. 367; Per Lord Mansfield, Carter v.

Boehm, (1766) 97 ER 1162; Susiladevi v. Oriental Govt. Security Life Assurance Co., Ltd., AIR 1948 Mad 182.

(11) The insurer's sources of information (E) are (1) the assured himself (2) the opinion of persons to whom the latter may consent to refer the insurer and lastly (3) there is the opinion formed by the medical examiner appointed by the insurer, and to whose inspection the "life" must submit himself. These are the only avenues of information which affect the contract by reason of the doctrine of disclosure, informed as that doctrine is by the rule of good faith. It s thus not necessary to refer to any confidential channels of information to which an insurer or his agents may have access.

{(E) Barwell: The Law of Insurance in British India P. 397 and foll.} (12) The principles underlying the doctrine of disclosure and the rule of good faith oblige the proposer to answer every question put to him with complete honesty. Honesty implies truthfulness. But it happens that no man can do more than say what he believes to be the truth. It is, however, common knowledge that mankind is constantly, albeit honestly in error; that indeed, in an attempt accurately to describe his own physical, moral or mental condition a man is peculiarly the victim of erroneous ideas. That this is so depends not merely upon the more ordinary impediments in the way of self-observation, but, quite as often, upon the absence of sufficient general or special knowledge to which whatever may have been self-observed has yet to be related, if correct conclusions are to be drawn.

(13) In practice modern insurers obtain their information through a number of carefully drawn questionnaires. They are commonly referred to as "forms", one of which is intended to be completed by the proposer and for that reason is usually styled "The Proposal Form" or simply "the proposal". When the proposer is seeking to insure the life of another, a form embodying questions which the life himself must answer has also to be completed and signed by the life in the manner prescribed, which now-a-days invariably involves a concise statement in the form of a declaration so drawn as in terms to assert the truth of the answers to the specific questions which the form contains.

There are, next, one or two forms for the completion of which the medical examiner appointed by the insurer is held, in the one case partly, and in the other wholly, responsible. Allianzund Stuttgartar Life Insurance Bank Ltd. v. Hemanta Kumar AIR 1938 Cal 641. There are, lastly, forms intended for completion by private referees, to whom the life to be assured is content that the insurer should address pertinent questions.

(14) What usually happens is that whatever agent is personally interested in putting through the particular transaction assists the proposer and the life (where the latter is not himself the proposer) correctly to answer the printed questions. The more experienced and better trained the agent, the more likely is an honest proposer to be able to do justice to the questions put to him. The fact that the insurance agent fills up proposal form with the information given by the proposal giver and assists the latter unable to do it himself makes no difference to the liability of the insured: Srinivasa Setty v. Premier Life and General Insurance Co., Ltd. AIR 1958 Mys. 53.

(15) The forms in the completion of which the medical examiner bears a part stand on a different footing. One of these forms must be signed by the life himself, and its purport is to record the

answers which the medical examiner is expected to aid the life in giving correctly. The medical examiner is always instructed to explain the questions which are largely of technical medical significance so that the life may fully comprehend the nature and point of the information which is thus sought of him; and the medical examiner is usually instructed himself to enter the considered answers which the life gives to the questions thus explained.

This form usually concludes with a declaration in similar terms to the one alluded to above; and the life is required to sign it. Sometimes, but by no means always, the form contains a space for a declaration on the part of the medical examiner to the effect that he has explained the questions to the other declarant and has properly recorded the latter's answers. The second form with which the medical officer is concerned is one which has to be entirely completed by himself and must bear his signature. This form is intended to be a written record of the nature of his examination, which often includes the results of one or more clinical tests as well as his considered opinion and advice upon the desirability, from the insurer's point of view, of assuming the risk.

(16) Lastly, there are the forms to be completed or the statements otherwise made by the private referees. These are often referred to as the "Private Friend's Report." Usually the covering letter to the private friends states that the person addressed is by the life expressly mentioned as one able to give information as to the latter's general state of health and concerning his habits of life. The addressee is informed that it is important for the proposer that every circumstance connected with his health and habits should be communicated. Finally, the addressee is assured that his report will be treated as strictly private and confidential. The questions addressed to a private friend are rarely less than twenty. (Barwell).

(17) The duty of disclosure comes under two heads, viz. (i) representation and (ii) warranties: representations which are made the basis of the contract and those which do not constitute the basis of the contract of insurance. The former are known as warranties. A representation is not strictly speaking a part of the contract of insurance or of the essence of it, but rather something collateral or preliminary and in the nature of an inducement to it. A false representation unlike a false warranty will not operate to vitiate the contract or avoid the policy unless it relates to a fact actually material or clearly intended to be made material by the agreement of the parties.

It is sufficient if the representation is substantially true. A misrepresentation renders the policy void on the ground of fraud while miscompliance with warranty operates as an express breach of the contract. A stipulation inserted in writing on the face of the policy on the literal truth or fulfilment of which the validity of the entire contract depends is a warranty. The stipulation is considered to be on the face of the policy although it may be written in the margin or transversely or on a subjoined paper referred to in the policy.

The tendency to construe every representation as a warranty is dangerous and would operate harshly against policyholders. In the words of Lord St. Leonards in Anderson v. Fitzgerald, (1853) 4 HLC 484 policyholders acting with all proper prudence may be led to suppose that they have made a provision for their families by an insurance on their lives when in point of fact if the above rule of interpretation were applied, the policy would not be worth the paper on which it is written.

(18) The effect of a warranty is to bind the assured "hand and foot" to a strict compliance with its terms. As Lord Shaw stated in Condogianis v. Guardian Assurance Co. Ltd., AIR 1921 PC 195 "where in a contract of insurance the case is one of express warranty, if in point of fact the answer to a question in the proposal form is untrue, the warranty still holds, notwithstanding that the untruth might have arisen inadvertently and without any kind of fraud. Secondly, the materiality of the untruth is not in issue; the parties having settled for themselves by making the fact the basis of the contract and giving a warranty-that as between them their agreement on that subject precluded all inquiry into the issue of materiality".

Thus, if a person effecting a policy of insurance says "I warrant such and such things which are here stated", and that is part of the contract, then, whether they are material or not is quite unimportant; the party must adhere to his warranty, whether material or immaterial. But if the party makes no warranty at all but, simply makes a certain statement, if that statement has been made bona fide unless it is material, it does not signify whether it is false or not false. Indeed, whether made bona fide or not if it is not material, the untruth is quite unimportant. If there is no fraud in a representation it is perfectly clear that it cannot affect the contract; and even if material but there is no fraud in it, and it forms no part of the contract, it cannot vitiate the right of the party to recover.

(19) What is representation? In insurance law the word representation bears a technical meaning. It means a verbal or written statement made by the assured to the underwriter, at or before the making of the contract, as to existence of some fact or state of facts calculated to induce the underwriter more readily to assume the risk, by diminishing the estimate he would otherwise have formed of it. Defined in this manner, a representation, in relation to a contract of insurance, must have the particular object of inducing the underwriter to enter into the contract, on the strength of the statement of facts contained in the representation.

The facts so stated must have reference to the risk undertaken, and must be such as may reasonably be presumed likely to influence the judgment of a prudent underwriter; such facts are called "material facts" and a representation of such facts "a material representation", all other facts and representations thereof being immaterial. It is the falsehood of such representation only that will avoid the policy.

(20) Representations may be of two kinds (i) a positive affirmation, based upon knowledge that the facts represented either do or will exist, and (ii) a mere declaration of belief or expectation that such facts do or will exist. The Marine insurance Act, 1906, recognises the above classification by declaring that "a representation may be either a representation as to a matter of face, or as to a matter of expectation or belief". Though Arnold (Arnold on the Law of Marine Insurance and Average 14th Edition S. 527) refers to a third class of representations, viz., a mere communication of information received from others; this supposed third class must always fall within one or of the two classes specified above. Representations of the first kind are called "positive representations" which again are sub-divided into (1) affirmative and (2) promissory, while representations of the second kind are called representations of statements of expectation.

(21) Therefore the main distinction between representation and warranty is that as a general rule answers to questions are representations and not warranties, though it is possible for persons to stipulate that answers to certain questions shall be the basis of the contract, in which case they become part of the warranties. In the case of a warranty materiality or immateriality of the fact warranted signifies nothing. Its incorrectness constitutes a defence to an action on the policy, even though it be not material and be made in perfect good faith. But, in the case of a representation, the insurer can avoid the policy only by proving that the statement is false and fraudulent or that it was false and material to the risk. In other words, it is only a material misrepresentation that can avoid a policy if the truth of the facts contained in the representations be not warranted by the policy.

(22) Thus, the materiality of the distinction between warranties and representations has induced many a shrewd insurer to introduce into the policy express stipulations making the representations and statements contained in the proposal and the answer in the declaration the basis of the contract and as part of it. By a stipulation of this character the assured binds himself "hand and foot" more tightly that his application contains a full, true and just exposition of all the facts enquired for and that the truth of all the particulars stated is expressly warranted. The effect is that the absolute truth of all those representations, statements and answers is fully guaranteed, and, whether they be material or immaterial if any one of them is untrue, the contract is avoided.

This extends even, to cases of proposal on joint life plan, where survivor, it has been held, could not claim on policy because of false answers to medical questions by deceased: Vaman Ganesh v. Western India Life Insurance Co. Ltd. AIR 1954 Nag 325; Guardian Assurance Co. Ltd. v. J. Rustomji and Co., 162 Ind Cas 443 (Lah). The basis of a thing is that upon which it stands, and on the failure of which it falls; and where a document consisting partly of statements of fact ad partly of undertakings for the future, is made the basis of a contract of insurance, this must mean that the document is to be the very foundation of the contract, so that if the statements of fact are untrue, or the promissory statements are not carried out, the risk does not attach.

(22a) The rule that a policy of insurance based upon the absolute truth of all the statements and representations in the proposal or declaration, is vitiated, however trivial or immaterial the misstatements or misrepresentations be and however innocently and inadvertently they were made, is undoubtedly too technical and hard. To refuse to enquire into the materially of the statement or the innocence of the assured, though such statements and representations cannot affect the judgment of a prudent insurer in accepting the risk, is to deny justice and fairplay. The object of providing warranties is to guard against fraud, and when fraud is absent the reason of the rule vanishes.

In every case of insurance the assured hardly ever acts under legal and expert advice, while the insurance companies have an army of expert advisers who frame the questions in the declaration and prepare the proposal form. The assured relies more upon the directions and advice of the company's local or canvassing agent, who generally first approaches the assured with a request to insure. In such a state of things, to apply the rigid and stringent rule of warranties to trivial and inconsequential misstatements is to throw the innocent assured entirely at the mercy of the insurer. Lord Moulton, L. J. expressed strong disapproval of the way in which an insurance is effected,

making all the answers in the proposal form the subject of warranties, so as to make a single inaccuracy or subtle deviation from truth avoid the policy; see Joel v. Law Union and Crown Insurance Co., (1908) 2 KB 863.

(23) The doctrine of Uberrima fides is certainly not intended to be a one way traffic, but calls for reciprocal obligation resting on the insurance company viz., that the company through its agent and medical officers has also obligations to carefully explain and assist, in the case of the insurance agent, the proposer and the life (where the latter himself is not the proposer) in correctly answering the printed questions. The more experienced and the better trained the agent the more likely is the honest proposer able to do justice to the questions put to him. Similarly, it is incumbent upon the medical examiner to explain the questions which are largely of medical technical significance so that the life may fully comprehend the nature and point of information which is thus sought of him. The medical examiner also must enter the considered answers which the life gives to the questions thus explained. The more experienced and better trained the medical examiner the more likely is the honest life able to do justice to the questions put to him.

A carefully drawn up questionnaire being the sources of the questions, the more simple, intelligible and essential these questions are framed, both in English and in the vernacular the better it will be for the collection of all relevant information for deciding the assumption of the risk. In East and West Life Insurance Co. Ltd. v. Venkiah, 1944-2 Mad LJ 37: (AIR 1944 Mad 559) the obligations lying upon the insurance company to make the assured fully understand the contents of this information were emphasised. Only when such obligations are discharged by the company it would be fair to insist that in answering the questions put by the agent and the medical examiner the life is bound to observe good faith towards the insurer and must make full, direct and honest answers to all without evasion or fraud and without suppression, misrepresentation or suggestio falsi or suppressio veri, within the knowledge of the insured: Kulla Ammal v. Oriental Govt. Security Life Assurance Co. Ltd. (Mack and K. Naidu JJ.).

(24) To sum up, in policies of life insurance there is an understanding that the contract is Uberrima fides and no party is allowed to play hide and seek but each will have to place his cards on the table; and even mental reservations of any kind are not allowed. This Uberrima Fides is a two-way traffic. Contracts of insurance, being contracts of faith, imposition by either party will constitute good ground for avoidance.

(25) The development of insurance business has been marked by many instances of far-sighted ideas aiming at increasing the inducements to honest people to provide for the future through the medium of insurance. Prominent among such idea is that which has expressed itself in what is known to day as an "indisputability or (as it is sometimes called) an "incontestability" clause, as one of the terms of a policy of life insurance. There is no doubt that where circumstances point to the proposer being absolutely honest the inclusion of such a clause in the policy offered to him is thoroughly good business.

It is a great privilege to a policyholder if it means that within such limitations as the phraseology of the clause imports, the policy-holder is freed from the danger of the claim being disputed upon

many grounds commonly taken as defences to an action on the contract. This has received statutory recognition under S. 45 of the Insurance Act of 1938. Inasmuch as the claim in the instant case arose within six months after the affecting of the policy, this indisputability requires no further consideration.

(26) These principles in so far as this country is concerned, can be gathered from: Shiv Kumar v. North British and Merchantile Insurance Co. Ltd. AIR 1936 Sind 222; Light of Asia Assurance Co. Ltd. v. Karatoya Debi, AIR 1936 Cal 437; AIR 1921 P. C. 195; Oriental Government Security Life Assurance Co. Ltd. v. Narasimhachari, ILR 25 Mad 183; Lakshmi Shankar v. Gresham Life Assurance Society Ltd. AIR 1932 Bom 582; New York Life Insurance Co. v. Phoebe Stella Gamble, ILR 27 Cal 593: Great Eastern Life Assurance Co. Ltd. v. Bai Hira, AIR 1931 Bom 146; manufacturers Life Insurance Co., Ltd. v. Haridasi Debi 42 Cal WN 823: (AIR 1939 Cal 8); Bharat Insurance Co. Ltd. v. Subalchandra 48 Cal WN 263; Western India Life Insurance Co. Ltd. v. Sm. Asima Sirkar, ; Imperial Pressing Co. v. British Crown Assurance Corporation Ltd. 21 Ind Cas 836: (AIR 1914 Cal 53); Muthappa Chettiar v. Venus Assurance Co. Ltd. Delhi, AIR 1944 Mad 281; Rajan v. Asiatic Govt. Security Life Assurance Co. Ltd., AIR 1939 Mad 159.

(27) This brings us on finally to the topics of nondisclosure or misrepresentation which are practically the positive and negative aspects of the same thing. The effect of misrepresentation on the contract is precisely the same as that of non-disclosure; it affords the aggrieved party a ground for avoiding the contract. There are a number of dicta and one decision to the effect that life insurance is an exception to the general rule that innocent misrepresentation may afford grounds for avoiding a policy and that the misrepresentation must be fraudulent to have this effect upon a policy of life insurance. But in order to give the insurer grounds for avoidance both under non-disclosure as well as misrepresentations, both must relate only to material information.

(28) What facts are material, the concealment of which or the misrepresentation of which, would afford a ground for the avoidance of the policy?

(29) The following information can be gathered from the standard treatises on the law insurance.

(30) Prestong and Colinvaud's Law of Insurance (founded on Porter's Law of Insurance), 1950, Edition, (Sweet and Maxwell), statues at page 102: Everthing is material which will guide a prudent insurer in determining whether he will take the risk and, if so, at what premium and on what condition.

> "In determining the question whether a particular fact is one which ought to be disclosed, the test to be applied is not what the assured thinks, nor even what the insurers think, but whether a prudent and experienced insurer would be influenced in his judgment if he knew of it. There are dicta to suggest that the test is, "What would a reasonable assured consider material?", but S. 18(2) of the Marine Insurance Act, 1906, adopts the test of the judgment of a prudent insurer and, since marine and non-marine insurances law is identical in this respect, this test may be regarded as the proper one.

> It is at any rate clear from the authorities that the fact that the assured did not know that a fact was material is no excuse where a reasonable assured would have done so, and that mere ignorance of materiability, as opposed to ignorance of the material facts, can never excuse the assured, even though he acted in perfect good faith. It does not matter whether the omission to communicate a material fact arises from intention, or indifference, or mistake, provided the assured knew of the fact in question. What is regarded as material by the "more experienced and intelligent insurers carrying on" the business in question at the time is what matters, and the general practice of insurers is relevant in this respect."

This is subject to this order: Life Insurance is peculiar in that the assured is often genuinely ignorant as to the fact most material in assessing the premium, the state of his own health. The rule therefore is warranties apart, the insurers may only avoid the policy of the assured knowingly misrepresent his state of health, as he is bound to disclose no more than he actually knows. He is not bound to disclose facts which he does not know or facts within the knowledge of the insurers.

(31) MacGillivray on Insurance Law, Fourth Edition, 1953, (Sweet and Maxwell) has the following to say on the test of materiality in S. 854: In order to establish that a fact is material and ought to have been disclosed, it is not necessary for the insurers to prove that they would have acted differently if the fact had been disclosed; it is sufficient for them to establish that the fact, if known, might have induced reasonable insurers to decline the risk or increase the premium.

(32) 45 Corpus Juris Secundum S. 594 (at page 393) speaking of concealment, states at page 594: While some courts have refused to apply to life insurance the strict and technical rules as to concealment which have been adopted as to marine insurance, and held that the concealment must be fraudulent to defeat a recovery on the policy, other courts have applied the strict rule that failure of insured to make known a material fact within his knowledge will vitiate the policy, without proof of any conscious design to defraud.

> "It has been said to be the applicant's duty to disclose to insurer every fact bearing on, or pertaining in any way to, the insurability of his life, especially where specific questions are put to the applicant calling for such information; and failure to disclose the whole truth has been held tantamount to giving false information. An intentional or wilful concealment or suppression of a material fact constitutes a fraud which will avoid the policy; and if the applicant purports to answer a question by giving only an incomplete or evasive answer, concealing facts which should properly be stated in response to the question, and these concealed facts are material, the policy is voidable. If the applicant has answered the questions asked in the application, he is justified in assuming that no further information is desired. If he wholly fails to answer questions the company waives information as to matters thus asked for by accepting the application without objection."

(33) 29 American Jurisprudence, in regard to concealment generally, states in S. 540:

"Contracts to insurance have been deemed, broadly speaking, to be contracts Uberrima Fides that is, of the utmost good faith, and the applicant for insurance is bound to deal fairly with the insurer in the disclosure of facts material to the risk. This principal is fully applicable in the case of marine insurance; the insured must disclose all facts material to the risk, and in default of such duty the contract may be avoided by the insurer.

In other kinds of insurance, however, the rule has not been applied without qualification. As to other than marine insurance, the general rule is that if the insurer makes no inquiry and the insured makes no representations as to the facts in questions, concealment not amounting to actual fraud in relation to such facts is not a ground of avoidance of the insurance contract, as the insured may assume that the insurer has satisfied himself as to the risk. Concealment, in order to avoid a policy of insurance must involve a matter material to the risk, unless the policy provides any concealment shall avoid it in which event the concealment stands upon the same footing as a warranty; and when the insurer asks no information in regard to a certain matter, it is a fair assumption that it regards the matter as immaterial.

Moreover, if the insurer propounds questions to the applicant and he makes full and true answers, he is not answerable for an omission to mention the existence of other facts about which no inquiry is made of him, although they may turn out to be material for the insurer to know in taking the risk. Nor can an insurer accepting an application with questions would have disclosed. (sic). If, however, inquiry is made by the insurer as to a fact, concealment or non-disclosure in relation thereto is as fatal in the case of life, fire, or animal insurance, for instance, as it is in the case of marine insurance. Indeed, if the concealment relates to a matter with reference to which inquiry is made, the intention with which the matter is concealed is immaterial, and a policy may be avoided by the insurer even where no inquiry regarding the facts in question is made if the concealment amounts to actual fraud.

The insured may not withhold information of such unusual and extraordinary circumstances of peril to the property as could not, with reasonable diligence, be discovered by the insurer or reasonably anticipated by it as foundation for specific inquiries. Furthermore, concealment which is not fraudulent will avoid a fire policy if the conditions annexed to the policy and the form of application require the concealed fact to be stated, and if one of the conditions expressly provides that 'any misrepresentation or concealment' will vitiate the policy, or if the policy provides that no recovery shall be had under it if any circumstance material to the risk is suppressed. Also, if the insured undertakes to state all the circumstances affecting the risk, a full and fair statement of all such circumstances is required. To a like effect, if an answer of the applicant to a direct question of the insurers purports to be a complete answer to the question, any substantial omission in the answer avoids a policy issued on the faith of the application, unless it appears from the face of the application that the question is imperfectly answered."

Again, in dealing with specific diseases or ailments, it is stated at p. 459:

> "If the insurer propounds a question to an applicant for insurance, as to whether he has or has had certain specified ailments or diseases, the applicant, at the risk of having the policy otherwise avoided, must truthfully state and disclose such material information as he possesses in regard to the present or previous existence of such ailment or diseases. A statement as to afflictions with certain ailments is material as a matter of law, and where an insured makes a warranty that he has not had a specified ailment, it is immaterial that the insured's general health was not affected thereby if he had had such ailment. To a like effect, a denial in an application for life insurance, that the applicant had contracted syphilis, is a representation as to a material matter the falsity of which entitles the insurer to rescind the contract thus induced."

(34) 22 Halsbury's Laws of England (Simonds Edn.) at pp. 200-201 has formulated the basic rules to be observed and which carefully observed would be very helpful in avoiding insurance pitfalls:

> 1. A fair and reasonable construction must be put upon the language of the question which is asked, and the answer given will be similarly construed. This involves at times close attention to the language used in either case, as the question may be so framed that an unqualified answer amounts to an assertion by the proposer that he has knowledge of facts and that the knowledge is being imparted. Provided these canons are observed, however, accuracy in all matters of substance will suffice, and misstatements or omissions in trifling and insubstantial respects will be ignored.
>
> 2. No excuse will be accepted for being careless or slipshod or for perpetrating slips of the pen, unless of course the error is so obvious that no one could be regarded as misled. If the proposer puts 'No' when he means 'Yes', it will not avail him to say it was a slip of the pen; the answer is plainly the reverse of the truth.
>
> 3. An answer which is literally accurate, so far as it extends, will not suffice if it is misleading by reason of what is not stated. It may be quite accurate for the proposer to state that he has made a claim previously on an insurance company, but the answer is untrue if in fact he has made more than one.
>
> 4. Similarly where the space for an answer is left blank, so that the question is not answered at all, the reasonable inference may be that there is nothing to enter as an answer. If in fact there is something to enter as an answer, the insurers are misled in that their reasonable inference is belied. It will then be a matter of construction whether this is mere non-disclosure, the proposer having made no positive statement at all, or whether in substance he is to be regarded as having asserted that there is in fact nothing to state, although the form of the question precludes the insertion of a bare "No".

5. Where an answer is unsatisfactory, as being on the face of it incomplete or inconsistent, the insurers may as reasonable men, be regarded as put up on inquiry so that if they issue a policy without any further inquiry they are assumed to have waived any further information. The mere leaving of a blank space, however, will not normally, having regard to the inference mentioned above, be regarded as sufficient to put the insurers on inquiry.

6. Sometimes a proposer may find it convenient to bracket together two or more questions and give a composite answer. There is no objection to his doing so, provided the insurers are given adequate and accurate information on all the points covered by the questions.

7. Any answer given, however accurate and honest at the time it was written down, must be corrected if, up to the time of acceptance of the proposal, anything supervenes make it inaccurate or misleading.

(35) Bearing these principles in mind, if we examine the facts of this case there can be no doubt that the dismissal of the suit by the learned trial Judge was the only possible conclusion that can be came to on the evidence on record. In regard to the syphilitic affliction, the deliberate non-disclosure would certainly avoid the policy. In regard to the representation by the deceased that he used to take alcohol occasionally in company, it is found to be a deliberate misrepresentation at the time it was made and even if construed as a promissory representation, it proved thoroughly misleading.

The deceased at all material times up to the time of his death was heavy drinker and found to have had cirrohosis at the time of his death. Need it b pointed out that but for this non-disclosure and misrepresentation, embodied as the component parts of the contract and operating as warranties, no prudent insurer would have accepted the deceased life, if at all or at the least for the normal premium as has happened in the instant case.

(36) In these circumstances, we have no option but to set aside the decree and judgment of our learned brother, which do not flow either the evidence on record of flow the settled law on the subject, and restore the dismissal of the suit by the learned trial judge. This Letters Patent Appeal is allowed but in the circumstances without costs.

Anantanarayanan, J.

(37) I am in entire concurrence with my learned brother that this appeal ought to be allowed. Since we are constrained to differ, with great respect, from the learned Judge (Basheer Ahmed Sayeed, J.) I think that it is only proper that our grounds should be set forth in detail.

(38) The crux of the matter in controversy is whether the insured individual (Palanivel Nadar) was suffering from the disease of syphilis prior to the taking out of the policy. If he was, I do not think that it can be seriously disputed that this categorical negative to the relevant question in the form, amounted to a misrepresentation within the warranty, which would vitiate the contract. Upon the

facts, I am unable to see how any other conclusion is possible. The relevant documents here are Exs. B-1 and B-8. Taking up Ex. B-8 first, which is the certificate of the attending physician during the last illness, it is clear that the patient had syphilis, and that he admitted an exposure to the infection in March 1948 (Question 5). This, by itself, is consistent with a theory that the insured individual contracted syphilis after taking out the policy, which, of course, would not affect the basis of contract. But it is very clear from Ex. B-1 a memorandum of Dr. Krishna Rao, (P.W. 1), that the doctor treated Palanivel Nadar for syphilis in 1946 and 1947. The relevant remarks of the doctor (P.W. 1) were as follows:

> "I see that he has taken anti-syphilitic treatment in 1948. Perhaps these were done after his last insurance. I remember treating him in 1946 and 1947 for syphilis. It is difficult to say how long before that he had the disease."

(39) It is important to note that this statement of the doctor Krishna Rao (D.W. 1) in the memorandum (Ex. P-1) could have been challenged, when it was proved in evidence. Normally, we should expect such a statement to be challenged in cross examination, with reference to the fallibility or otherwise of the memory of the doctor, the extent to which he was relying upon any contemporary record, for the two years of treatment specified by him, etc. But greatly to our surprise, we find from the evidence (p. 31 of the printed papers--respondent's documents) that the doctor (D.W. 1) proved the document in chief-examination, and that there was not the slightest attempt, in cross-examination, to cast doubt upon the accuracy of the statement in Ex. B-1.

Surely, under these circumstances, and taken along with the specific entries in Ex. B-8, the only conclusion possible is that the insured individual suffered from syphilis in 1946 and 1947, that he was treated for the infection by Dr. Krishna Rao (P.W. 1), and that the learned counsel for the plaintiff in the suit (O. S. No. 1558 of 1950 of the City Civil Court, Madras) was not prepared to challenge or contest any part of the statement in Ex. B-1.

(40) The learned Judge states that the doctor (D.W. 1) has added in Ex. B-1 that it was difficult to state how long before 1946 and 1947 Palanivel Nadar, had the disease, and further that if it could be proved that he died of syphilis and was drinking before the last of the previous policies, then the claim of the heirs could be contested on the ground of 'suppressio veri'. The learned Judge adds:

> "This shows that the doctor himself was not sure as to the position which the company would take in regard to these matters."

With great respect, we think that this is perfectly explicable, for the doctor (D.W. 1) must have been very well aware that his personal knowledge was one thing, and that proof of facts by the company which a court would accept was another. We find absolutely nothing in Ex. B-1 to detract from the definiteness or clearness of the statement of Dr. Krishna Rao that he did remember treating Palanivel Nadar for syphilis in the year 1946-47. Since not the slightest attempt was made to challenge that statement in cross-examination, it has necessarily to be accepted as true.

(41) The learned Judge was aware of this great difficulty in accepting the claim of the plaintiff (respondent here) that, as the heir of Palanivel Nadar, she was entitled to collect the policy amount. For the learned judge himself observed:

> "It may be that he was suffering from syphilis in 1946 and 1947, and it is possible that the disease might have left him by reason of any treatment that he had taken or it may be that he had undergone the treatment for syphilis without his knowledge. These possibilities cannot be ruled out altogether."

My learned brother has already expounded the law in detail, relating to the doctrine of 'uberrima fides' and to the consequent legal principle that, with regard to representations forming the actual warranty, materiality is not the test at all. The authorities are abundantly clear that, even if the insured had no knowledge of the precise character of the disease, and even if the symptoms had subsided by the time the policy was taken out, the misrepresentation within the warranty would still vitiate the contract. Perhaps the true position at law is best illustrated by reference to what appears to be an extreme case.

I might immediately refer to AIR 1936 Cal. 437, where a contract of insurance was held to be vitiated because, the assured gave in writing erroneous particulars of brothers and sisters alive or dead, apparently under a misconception as to the scope of the question. It is sufficient to set forth here, the observations of Lord Shaw in AIR 1921 P. C. 195, which is one of the leading cases upon the subject:

> "If in point of fact the answer is untrue, the warranty still holds, notwithstanding that the untruth might have arisen inadvertently and without any kind of fraud. Secondly, the materiality of the untruth is not in issue, the parties having settled for themselves by making the fact the basis of the contract."

In Halsbury's Laws of England (Third Edition Lord Simonds) volume 22 section 371 pages 195, 196 the entire law upon this aspect will be found summarised, with reference to the leading cases:

> "If the truth of the statement has been warranted or made a condition precedent to the contract or the basis of the contract, the contract has been broken if it is in fact untrue and the stipulated consequences follow; nor is it necessary to consider..... whether the untrue statement was of any materiality whatsoever; it may be so to something o trivial or remote that no insurer would really be influenced one way or another; the contract is, however, broken."

(42) Apart from this we do not think it is at all probable that Palanivel Nadar had syphilis, without knowledge of the disease. Actually, the entry in Ex P-8 shows that he had this knowledge, though he assigns the exposure to infection to a later period (March 1948). My learned brother has already dealt with the true nature and symptoms of this grave disease. It is sufficient for me to observe that, according to the medical text books there is hardly any organ or tissue of the body which this disease cannot affect. It brings about pathological changes of tissue technically known as gumma, and the

degenerative brain changes may also bring about a characteristic form of insanity, as one of the remote sequelae of this disease. There can be no doubt that it is a disease which does vitiate or affect the life expectation of the individual.

(43) I now turn to another aspect of the matter, which appears to me of great interest and importance. This is the situation resulting from the law as to warranty, particularly in a country like India where the medical questions in the standardised questionnaire might have to be answered, in a large number of instances, by assured who are unacquainted with English, and to whom the technical terms employed would have to be explained by equivalents in the regional languages, such as Tamil in this State.

(44) Fortunately, we have the advantage of codification, and the great hardship resulting from the doctrine that misrepresentations within the warranty, even with reference to the most trivial or non-material details would vitiate the contract, which has been stressed by Courts even in the United Kingdom, as my learned brother has observed, appears to have been realised by our Legislature in enacting the Insurance Act IV of 1938. Section 45 of this Act, apparently based upon the Canadian statute section 125(2) of the Ontario Insurance Act, has been enacted with the intention that the application of the rigid and stringent rule of warranty to trivial or inconsequential misrepresentations ought to be mitigated in the interests of justice. Sec. 45 runs as follows:

> " No policy of life insurance effected before the commencement of this Act shall, after the expiry of two years from the date of commencement of this Act and no policy of life insurance effected after the coming into force of this Act shall, after the expiry of two years from the date on which it was effected, be called in question by an insurer on the ground that a statement made in the proposal for insurance or in any report of a medical officer, or referee, or friend of the insured, or in any other document leading to the issue of the policy, was inaccurate or false, unless the insurer shows that such statement was an a material matter or suppressed facts which it was material to disclose and that it was fraudulently made by the policy holder and that the policy-holder knew at the time of making it that the statement was false or that it suppressed facts which it was material to disclose."

This, to a considerable extent, does mitigate the rigour of the rule that the most trivial misrepresentation within the ambit of the warranty, might still be a good enough defence for the Insurance company to refuse payment on the policy.

(45) But it appears to me, upon a further examination of the subject, that the state of affairs is still defective, and it is upon this aspect that I desire to make one or two observations, before I conclude.

(46) I have carefully scrutinised the standard questionnaire form, which is now being used by the Life Insurance Corporation of India which does appear to be condensed and improved form of the differing questionnaires used by individual companies in the past. It will still have to be borne in mind that, so long as a fair number of the assured are persons with an imperfect knowledge of English, or no knowledge of English, much of the justice and fairplay of this procedure will depend

upon the finding of proper equivalents to the clinical entities included in the questions, 1944-2 Mad L. J. 37: (AIR 1944 Mad 559) is an interesting case of this Court, which related to non-disclosure of an attack of arsenic dermatitis. King and Shahabuddin JJ. pointed to the defects arising from a translation into Telugu of the questions, and observed:

> "Though we cannot commend the practice of calling upon an insured person who knows only Telugu to answer questions couched in English, the duty of making himself acquainted with the contents of what he was igning undoubtedly lay upon Janakiramayya himself."

Again, in AIR 1931 Bom. 146, one of the questions, (No. 5g) is extracted and set forth as follows;

> "Have you ever suffered from indigestion, abdominal pain or discomfort, fistula, piles, rupture, dysentery, sprue, or any other affection of the digestive organs"

(47) Even if we assume that precise Tamil equivalents have been found, or are now being employed, this kind of question does bring into relief the peculiar complexity or difficulty that I am commenting upon. The question does suggest, in the form in which it is couched, that certain affections of the digestive organs are being specified, for the purpose of the enquiry. But the little reference that I have been able to make is sufficient to show that, medically speaking, neither fistula nor piles should really be classified as affections of the digestive organs. My scrutiny of the standard form now being used, reveals certain marked defects.

I shall content myself with one or two instances. Questions 7(a) is whether the insured has even suffered from giddiness, fits, neurasthenia, neuralgia, paralysis, insanity, nervous breakdown or any other disease of the brain or the nervous system? Similarly question 7(c) is whether the insured has suffered from "fainting attacks, pain in chest, breathlessness, palpitation or any disease of the heart?" It seems to me that this evidences a fine confusion between actual clinical entities of disease and mere symptoms. Commenting upon question 7(a), I would observe that the term 'neurasthenia', which literally means 'nervous weakness', does not appear to be in favour of scientific medicine. The reason is obvious, that this is a very vague relative and non-descript term. The possible mischief can be acutely illustrated, with reference to question 7(c) set forth above.

The mode of the question seems to imply that breathlessness and palpitation are either cardiac diseases, or associated with a cardiac disease. This is thoroughly inaccurate. It is well-known that, while such symptoms may certainly occur in several cardiac conditions they may equally occur under totally different and utterly trivial conditions, such as a psychological state of anxiety (Cardiac Neurosis), or even indigestion. Of course, the argument is possible that even such trivial occasions or indispositions might be revealed by the assured, and that he is bound to do so. But let us suppose that some such quite trivial ailment, where the physician tells the patient that he has nothing to worry about, is forgotten, and is not mentioned. Let us further suppose that the assured dies within the two year period set forth in section 45, of a condition like coronary Thrombosis, which is really a vascular condition or crisis, popularly miscalled "a heart attack", because that organ is affected by the formation of a blood clot.

We can thus see that great injury might be caused by the refusal of the Insurance company to honour the contract, because of an alleged non-disclosure relating to some very minor ailment, which had no reference at all to the life expectation. Equally, it is clear that the regional languages might not contain precise medical equivalents; the best that are available might b e extremely imperfect, or even misleading. It seems to me, therefore, that two changes are necessary. Firstly the questionnaire should be further reviewed by a body of experts, and condensed and modified in such a form, that it consists of clear and simple questions, symptoms and diseases being separately dealt with, as far as possible, to which categorical answers of 'Yes' or 'No' are feasible.

Secondly I think that, having the great advantage of codification, we should go further and indicate that, even within the two year period, only misrepresentations which are material, in the sense of having some effect upon life expectation, whether direct or indirect, should be allowed in defence for avoidance of the contract. Of course, within this period, the further conditions laid down in section 45 need not be made applicable. For instance, it may not at all be necessary to lay down that the policy holder know that the statement was false, or that he fraudulently suppressed this knowledge.

But, if the law is to be retained, as it stands, cases of hardship and injustice might arise, within the two year period, which the courts would be powerless to remedy, since the principle of warranty would hold the field. I might also observe that, with modern scientific methods of medical examination including serological and x-ray tests in cases of doubt, it should be more and more possible for Insurance Companies to satisfy themselves about life expectation by accurate data, which have nothing to do with what the insured man says about his own health.

(48) Appeal allowed.