the Supreme Court of the United States, which was delivered by Story, J. He says: "We are of opinion the instructions were properly given. The policy procured by misrepresentation was not utterly void *ab initio*, but merely voidable, and till avoided by the underwriters upon due proof of the facts, it must be treated for all practical purposes as a subsisting policy." The question, he continues, "is not how the policy may now be treated by the parties, but how it has been treated by them at the time when the policy declared on was made." And it is, he says, "in our judgment free from all reasonable doubt that notice of a voidable policy must be given to the underwriters, within the words and meaning of the stipulation in the policy." Indeed we are not prepared to say that the Court might not have gone further, and have held that a policy existing and in the hands of the insured, and not utterly void upon its very face, without any reference whatever to any extrinsic facts, should have been notified to the underwriters, even though by proofs, afforded by such extrinsic facts, it might be held in its very origin and inception a nullity. He then explains what he supposes to be the object of the stipulation that notices of other insurances should be given, namely: that the underwriters might be able to judge whether they ought to insure at all, and at what premium, and whether there still remained such substantial interest of the insured in the premises as will guarantee on his part vigilance, care, and strennous exertion to preserve the property, and that they may also know the rateable proportion which they would have to bear in case of loss. And he thinks if these clauses are construed with a close and scrutinising jealousy, it will have the effect of discouraging the establishment of such offices, or of restraining their operations to cases where the parties and premises are personally known to the underwriters. However, he says, "be these considerations as they may, we see no reason why, as these clauses are a known part of the stipulations of the policy, they ought not to receive a fair and reasonable interpretation according to their terms and obvious import." And he adds—"we are of opinion that there is no error in the instructions. On the contrary, there is strong ground to contend, that the stipulations as to notice of any prior or subsequent policies were designed to apply to all cases of policies then existing in point of fact, without any enquiry into their original validity and effect, or whether they might be void or voidable." Now, I confess my inability to discern any essential distinction between this case and that upon which we are called on to decide.

The whole of these remarks of Mr. Justice Story apply equally to the one as to the other. Misrepresentation, which is fraud, vitiates the policy as surely and as effectually as the want of giving notice of another insurance can do; and if the policy in the first case must still be communicated under the stipulated condition, so must equally the policy on the other. The language of