INSURANCE—AGREEMENT THAT STATEMENT SHOULD BE THE BASIS OF THE CONTRACT—EFFECT OF NSWERS MADE BY ASSURED TO MEDICAL REFEREE OF INSURERS —NON-DISCLOSURE OF MATERIAL FACTS—ABSENCE OF FRAUD.

In *Joel* v. *Law Union & Crown Ins. Co.* (1908) 2 K.B. 863 the Court of Appeal (Williams, Moulton and Buckley, L.JJ.) have refused to affirm the judgment of Alverstone, L.C.J. (1908) 2 K.B. 431, noted ante, vol. 44, p. 532. The action was on a policy on the life of one Robina Morrison, and the defence was non-disclosure of material facts. On the application for the insurance the insured signed a declaration that the statements made in her application were true and were to form the basis of the contract. Subsequently, before the execution of the policy, she was interrogated on behalf of the company by their medical adviser, (1) as to whether she had ever suffered from mental derangement, and (2) as to the names of any doctors she had consulted. She answered the first question in the negative, as the jury found, without fraud; and in answering the second she omitted to mention the name of a doctor whom she had consulted for nervous depression, but as the jury found, she foolishly but not fraudulently, concealed the fact. At the same time she signed a further declaration that her answers were true, but this declaration did not state that her answers were to be part of the basis of the contract. The policy did not refer to the application or second declaration. The assured committed suicide. She had prior to the application suffered from acute mania, but the jury found she was ignorant of the fact; and they also found that the name of the doctor she had consulted was material for the defendants to know, but that the insured was not aware that it was material. On this state of facts Lord Alverstone, C.J., held that the plaintiff was not entitled to recover, but the Court of Appeal, though agreeing with him that the second declaration was not made part of the basis of the contract, yet were of the opinion that in the absence of any evidence of the doctor who put the questions, as to what took place at the time, and what explanation he gave the assured, it was not possible to say that the second declaration was per se sufficient evidence of such non-disclosure of a material fact as in the absence of fraud to render the policy voidable. A new trial was therefore ordered.