the insurance was refused on the ground that the property belonged to P., and not to M. In an action on the policy, the defendants endeavoured to prove that other insurance on the same property had been effected by P., and set up a condition in the policy that in such case the company should only be liable to pay its ratable proportion of the loss. This condition was not pleaded, and the policies to P. were not produced nor the terms of his insurance proved. Evidence was given, subject to objection as to its admissibility, that P. had effected insurance to cover advances made to M. on the ice, and had been paid his loss. The plaintiff obtained a verdict for the full amount of his policy, which was affirmed by the Supreme Court of New Brunswick in banc.

Held, affirming the decision of the Court below, that the whole property in the ice insured was in M.; that the clause in the agreement stating that the ice houses and implements were to be the property of P. meant that the buildings and implements only were to pass to P. as he was to convey the property vested in him by the agreement to M. on completion of the contract, and could not so convey the ice, which M. was to deliver on board vessels, and which he could not do unless it was his property.

Held, further, that the declaration in the application did not make M. pledge himself to the truth of the statements therein absolutely, but only so far as known to him and as material to the risk, and questions of materiality and knowledge were for the jury who found them in favour of M.

Held, also, Strong, J., dissenting, that the declaration was not a warranty of the truth of the statements, but a mere collateral representation.

Per Strong, J.—It was a warranty, but as it was confined to matters within the knowledge of M. and material to the risk, the result is practically the same.

Held, as to the further insurance, that the condition should have been pleaded, but if available without plea it was not proved; what evidence was given should not have been received.

Per Strong, J.—It was not shown that P.'s insurance was on the ice insured by M., who was not bound to deliver any specific ice under the contract.

Per Gwynne, J. — The damages should be reduced by the amount received by P.

Appeal dismissed with costs.

Weldon, Q.C., and *Jack* for appellants.

F. E. Barker for respondent.