p. 347) so far as it determines that there was no breach of the condition of the bond, which was the only defence set up.

As regards the merits of the case upon the evidence they are not such as to warrant us in allowing a new defence by way of amendment to be set up at this stage, for I also agree with the Court below that the evidence does not warrant the conclusion that there was in the application, having regard to surrounding circumstances, of which the appellants, officers and agents had notice, any untruth, evasion or concealment of material facts.

The appeal should be dismissed with costs.

TOURNIER, J.—Did not hear the argument in this case.

TASCHEREAU, J.—This appears to be a very simple case.

All the findings, but one, were in favor of the plaintiffs at the trial before Mr. Justice James without a Jury. The finding against them is that an attack of apoplexy, which the deceased had, occurred four years before the application and not five as stated in the answers to the application. But there is no such issue raised by the defendants as remarked by the Supreme Court of Nova Scotia. This, alone, disposes of this appeal. I should dismiss it.

GWYNNE, J.—It must, I think, be admitted that the medical adviser of the Company who recommended the acceptance of the risk in question acted with great indiscretion, but the question before us is not as to the indiscretion of the medical adviser of the Company, but whether any of the answers of the deceased, in his application for the insurance, to the questions therein, do, or do not, constitute a breach of warranty contained in the bond of membership, which constitutes the policy of insurance in the present case, and upon this point I am unable to come to the conclusion that his answers to the 11th and 12th of such questions do not, in view of the evidence, constitute a breach of warranty avoiding the contract.

The 11th question is:—"Has the party had, or been afflicted since childhood, with any of the following complaints (here follow several enumerated complaints in which are) apoplexy, paralysis or any serious disease? Give full particulars of any sickness you may have had since childhood. When were you confined to the house by sickness?"

To the whole of this the applicant answered:—"No disease except a slight attack of apoplexy five years ago."

The 12th question is:—"Has the party ever been seriously ill? With what? Is the said party now in good health?"

To the first part of this question the applicant answered "apoplexy." To the second "yes."

Now the whole substance of the warranty which is contained in these answers is:—That the applicant had never, since childhood, had any serious disease, nor any one of the enumerated diseases except apoplexy, a slight attack only of which he had five years preceding the day upon which he was making his application, namely, the 23d Feby., 1885. The learned Judge who tried the case came to the conclusion that the attack of apoplexy, which the evidence showed the deceased to have had just four years, and not five years preceding his making his application for insurance, was only a slight one. I confess that the evidence does not lead my mind to the same conclusion, for it was attended with partial paralysis and his gait was affected thereby and his memory impaired to that extent that neither ever became perfectly restored; and as to his state of health at the time of his making the application for insurance, all, I think, that can be said in its favor is that it was, perhaps, as good as it could be after an attack of apoplexy, but that it was impaired by that attack, from which, as in my opinion the weight of the medical evidence is that the deceased never wholly recovered, and that in February, 1885, when he made his application for insurance, his health was so affected thereby that he was not a fit subject for insurance, a fact of which, as a medical man himself, which the deceased was, he cannot, I think, be assumed to have been ignorant.

We cannot lose sight of the fact, also, that the applicant, after having had the attack of apoplexy, had two attacks of bleeding at the nose, the second of which was very serious. Now, although bleeding at the nose may arise from other causes, still, as the evidence shows, it is a frequent attendant upon apoplexy and indicative of apoplectic tendencies, and after an attack of apoplexy it is a bad symptom. In one of those attacks the hemorrhage appears to have been excessive, insomuch that the doctor who attended the applicant for it, being the same doctor who had attended him for the apoplexy, pronounced it to be a bad symptom, and this medical man having been applied to by the deceased to examine him for the purpose of effecting the insurance, declined to do so. Moreover, it appears that the deceased himself, about one month before his death, and consequently a short time before his making application for this insurance, in a conversation with a friend of his, J. H. Harris, whom he was in the habit of meeting in consultation, himself stated that this second attack of hemorrhage had been quite a severe attack.

Then, it appears that he had the attack of apoplexy just four years, and not five years, preceding his making application for this insurance. If the question now was whether or not this difference as to the time when he had the attack was material I should be obliged, upon this evidence, to say that, in my opinion, it was. But the question is not as to its materiality, but whether the variance as to the time when the applicant had the attack of apoplexy constitutes a breach of warranty, and in answer to this question I am obliged to say that, in my opinion, it was.

Upon the whole, I find it impossible to say that the applicant's answers to the above 11th and 12th questions appear to me to be, in all respects, fair and true. On the contrary, as the evidence strikes my mind, I am forced to the conclusion that in view of the circumstances above referred to, and of the state of health of the applicant which, as a medical man, he ought, and I think must, have known was not good in the sense in which he must have known, the question to be put, there was in his answers to these 11th and 12th questions untruth, evasion and concealment of facts so as to avoid the policy of insurance.

I am, therefore, of opinion that the appeal should be allowed and the action in the Court below dismissed with costs.

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## OUR SOCIETY.

The MUTUAL RELIEF SOCIETY of NOVA SCOTIA was organized at Yarmouth in 1881.

It was incorporated by Act of Provincial Parliament in 1885, for the purpose, as set forth in said Act, "of establishing a more equitable, less expensive, and more permanent system of Mutual Relief, adapted to the wants of families and persons of scanty earnings, and conducted upon sound principles in accordance with the best plans of affording benefit and relief to its membership."

It was registered at Ottawa, July 16, 1886, and licensed to transact the business of Life Assurance on the assessment plan in the Dominion of Canada, under the "Insurance Act of 1886."

As its general plan of organization and method of work are well set forth in the Act itself and the by-laws,—to which the reader is referred for further information,—it is deemed that little need be said upon those matters in general, except to emphasize one or two of the more essential features.

The first point, then, to which especial attention is invited, is the matter of expenditure in management of its affairs.

Of course it is a well understood fact in connection with the launching of any new enterprise, and so placing it before the public as that it shall claim attention and ensure success, demands personal effort and a corresponding expenditure of money. But the methods that would be justifiable and proper in a business or enterprise heavily capitalized, are inapplicable, wholly beyond the