

Representations, though in writing, said Lord Mansfield, in *Bize v. Fletcher*, hold less than a warranty.

There is this material difference between a representation and a warranty—a warranty is always a part of the written policy, and must appear upon the face of it; but a representation is only a matter of collateral information on the subject of the insurance, and makes no part of the policy. A warranty must be strictly and literally complied with; but it is sufficient if a representation be substantially correct. An untrue representation is not in itself a breach of the contract (although by the terms of the contract it may become so), but if the untrue representation be material, it will in itself avoid the policy either on the ground of fraud, or because it has misled the insurer. (1 Park, 285, 7th ed.) Duer differs; lect. xiv.

When a man is asked how old he is, and he says thirty, though he be fifty, as he is thirty and more, it may be said he answers not untruly. Yet, it must be held that the answer is not true.¹

Suppose the insured is asked: State the highest rate of premium ever paid by you for insurance of this same subject. If he answer falsely, it will be held a false representation in matter essential; falsely inducing undue confidence, the insured must not gain. The policy is null. So held on appeal in Scotland in 1814. Vo. "Fraud," Shaw's Digest.

§ 195. Effect of insurer's knowledge of a fact.

Will the insurer's knowledge about a fact save the insured from the accusation of representing facts untruly, where the insurer's knowledge aided him to see the exact position of things?

Will knowledge of the agent be held that or al and estop him? It was held in the affirmative in *Rouley v. Empire Ins. Co.*² In this case the agent filled up blanks in the application, and it contained a material misrepresentation not authorized by the applicant; it was held the act of the company, and so it was held in *Drury v. Conway Ins. Co.*³

*Insurance Co. v. Wilkinson*¹ was a life insurance case. The age of the mother of insured was not given by him, except as he got it from the insurer's agent, who got it from some other source, and his report of it was adopted by the applicant and stated in the application, and it was untrue in fact.

If the insured be misled by the insurers he is not to suffer, *Newcastle F. Ins. Co. v. Macmoran*, 3 Dow, 255; *Hartford Prov. Ins. Co. v. Harmer*, 3 Bennett.

Parol evidence is admissible to show that description annexed to a policy was drawn by the agent of the insurer: P. 408, 2 Sup. Ct. R. of Ca.

In *Harris v. Queen Ins. Co.*,² the plaintiff sued as executor upon what is called an "indisputable" life policy which had been effected by his testator, the deceased. The company set up a misstatement by the assured as voiding the policy. The plaintiff replied that the company published to the assured advertisements containing this statement: "A Queen's life policy is unchallengeable, except on ground of fraud." The Court held the company bound by their advertisements, and gave judgment for the plaintiff.

§ 196. Different kinds of representations.

Representations are divided into promissory and others.³

§ 197. Substantial compliance.

The representation that ashes are kept in brick is sufficiently complied with, if they be kept in iron, or equally safe mode of deposit. So the representation that casks of water with buckets are kept in each story, though untrue, if a reservoir be at the top of the house with pipes from it to each story, if found by skilled persons equally efficacious, it would be a substantial compliance, says Angell, 158.

Arnould and Duer are directly at variance in regard to the nature of a representation, and its connection with the contract of insurance. Arnould maintains, and the other English writers on insurance are of the same opinion, that a representation is collateral to

¹ *Cazenove v. Br. Eq. Ins. Co.* Jurist of 1860,
² 86 N. Y.
³ 13 Gray.

¹ 13 Wallace R.

² *Queen's Bench (Eng.)*, 1864.

³ Query: Are promissory representations anything else than warranties?