them was by mistake misrepresented by the written contract."

These authorities leave no room for uncertainty as to the principles upon which this remedial equity should be administered. Let us endeavor to apply them to the facts of this case. The plaintiff is bound to prove clearly that there was a real agreement between him and the defendants different from that expressed in the policy. He must show that there was a mutual assent to the terms which he says should be expressed in the policy. In order to succeed he must shew that there was an assent by the company to the insertion in the policy of the existence of the $1000 insurance in the Gore Mutual; or, to put it in the broadest and most liberal manner for the plaintiff an agreement mutually assented to that he should be insured from the 6th February until the 6th of April notwithstanding the existence of this other insurance. Nowhere did the company enter into such an agreement. How or by whom was their assent given to any such term? The answer given is: by the agent Suter. But this seems to me to rest on an entire misapprehension of his functions, either actual or assumed. He neither had nor pretended to have authority to give the Company's assent to any contract of insurance for two months. He did not undertake, either expressly or impliedly, that the policy should be issued in a certain form or embody certain terms, for he did not undertake that a policy should be issued at all. The plaintiff did not suppose that in what took place between him and Suter the latter was binding the Company to such a contract as that which he now seeks to enforce. He knew that Suter was not assuming to do more than to forward his application for the consideration of the Board, and to insure him until he was advised of the result, or for 30 days at most. He was perfectly well aware that the proposal to which the Board was asked to assent was his written application and his own statement already quoted shows that he was fully alive to the importance of the application containing correct information as to existing insurances. Conceding that the evidence establishes with sufficient clearness that Suter had notice of the fact that the particular property in question was insured in the Gore Mutual, that does not advance the plaintiff's case. His knowledge of that fact would not create a contract of the Company which neither he nor the plaintiff supposed was being made. Notice to him might reasonably and justly be treated as notice to the Company for the purposes of any contract which he was then, as agent, making on behalf of the Company; but I cannot perceive how it can import a term into a contract which was not to be made through him, but which, to the knowledge of the plaintiff, was beyond his functions.

Then if the assent was not given by Suter it was never given, for it is clear that the authorities at the head office had no idea of the existence of the other insurance. If Suter did not no one on behalf of the defendants did, agree to insure the plaintiff for two months, notwithstanding the other insurance. On the 19th February, when the Board agreed to insure the plaintiff for that period, they acted upon the application and upon it alone. It appears that it was after some hesitation they accepted the risk. The Court is not at liberty to assume that it would have been accepted had the Board been aware of the additional insurance. Indeed, this case appears to me to involve precisely the same considerations as led Sir John Stuart to afford relief in Fowler v. Scottish Equitable 28 L. J. Ch. 225.

I believe that the soundness of that decision has never been questioned and its appositeness will justify a brief reference to it although it has been frequently referred to in our reports. The Plaintiff applied to the London agent of the Defendants to effect an insurance upon the life of a person named Haire, in whom they were interested. Haire was a merchant residing at Gibraltar, and in the course of his business was in the habit of visiting ports in Morocco and other ports on the Mediterranean and on the coasts of Africa and Asia. The plaintiffs allege that they notified the London agent of these facts, and that they expressly stipulated with him that the policy proposed to be granted on the life of Haire should not be vitiated by his visiting such ports on certain conditions, which were only arranged after much discussion. Upon the faith of this agreement and before any policy was actually issued, the plaintiff paid the first premium. The policy, when issued, provided that if Haire should depart beyond the limits of Europe, it should be void, but upon it was endorsed a memorandum that Haire should be at liberty, without license or extra premium, to visit Tangiers or any other port within the Mediterranean; but that it was understood that he was not to reside out of Europe at any place in the Mediterranean beyond the period of three months, or to go into the interior of Asia or Africa. It was alleged that the mistake was in the endorsement being limited to Tangiers and ports in the Mediterranean, instead of extending to any ports on the coasts of Africa or Asia.

The Queen's Counsel pointed out that the course of dealing and the evidence in the cause shewed that whatever the general authority of Cook might have been as an agent, what actually took place was that the agreement which the plaintiff intended to make was to have its force and legal effect from an instrument to be executed in Edinburgh. The London agent could negotiate the terms of a policy with any person desirous of effecting one with the Society, but the policy itself was an instrument to be made in Edinburgh, which was the headquarters of the Society. The agreement, in the opinion of the V. C., was made in plain and