

The decision at the trial proceeded upon the finding that the deceased had represented by his answers that his attack of apoplexy was five years before he made his application, whereas it was only four years, and further that (if the materiality of the answer were important), it was shown by the medical evidence to be material, because the longer the time after such an attack the less was the danger of another similar attack.

The court considered that the issue on which the trial judge had pronounced was not raised by the pleading, and that there was no statement made by the deceased to the effect that the attack of apoplexy occurred five years before the application.

The allegation of the pleading is, that he stated that he was confined to his house by sickness five years before the application, and it is averred that in truth and in fact he had been confined by a severe attack of apoplexy within four years.

The answer of the deceased, as pleaded, may not have asserted in so many words that the last time he was confined was five years ago, but if that was not what it meant, it was not negatived by the pleader's averment that the deceased was confined within four years, and the Defendants should have taken exception to the pleading instead of joining issue on it.

We must treat the pleading as asserting that the deceased untruly represented that he had not been confined to his house within five years. To do otherwise, particularly after the battle at the trial has been fought on that understanding of the issue, would not be in the spirit of the Judicature Act, but would be exceeding the strictness of the bygone days of special demurrers, when after pleading over, and a *foltoli* after verdict, such an objection would not have been entertained.

Then as to the proof:

It will be observed that the issue is not strictly whether the attack of apoplexy had occurred five years before the application. It is whether the deceased had within that period been confined to the house by sickness. The proof, it is true, as well as the importance of the statement, turns on the apoplectic attack, and the pleader has specified that illness as the occasion of confinement to the house within four years, and limits his proof by that pleading. But it is not unimportant to note the exact form of the issue, because, in the judgment in discussion, it is said, and said truly, that there was no statement made by the deceased that the attack of apoplexy occurred five years before the application. The result of the answers to the three consecutive questions: "Give particulars of any sickness you may have had since childhood?" "When were you confined to the house by sickness?" "Has the party ever been seriously ill?" may be that the confinement five years ago was by reason of the apoplexy, but there is no statement of that in so many words. It was equally true as mentioned in the judgment that the enquiry is nowhere made in the application, when the attack of apoplexy occurred, and the questions being general, one would not look for specific enquiries about matters that are not heard of until after the answers are given. But the application paper must, in this as in other respects to which I may yet advert, be looked at reasonably, and as understood and intended to embody information given in good faith by the one party to be acted upon by the others. The answers were manifestly intended to convey, and would naturally be understood to convey, that the Applicant had not been confined to the house by sickness within five years before the application. That was an untrue answer. It was contended for the Plaintiff, before us, that the allegation of the defence being that the deceased had been confined within four years, and the proof falling short of demonstrating that the attack for which Dr. Farish was called in on the 2nd of January, 1881, and for which he attended the patient 49 days, or say until the 19th of February, when he discontinued his visits because the patient was himself a doctor, actually kept the deceased indoors at any time after the 23rd of February, which was just four years before the application, it ought to be held that the defence was not proved. That cannot be truly called a reasonable contention. The facts to which I have just alluded would support, and taken in connection with the other evidence may be said to compel, the inference of the fact that it was well within the four years before the deceased was able to leave the house, but that is not essential. The question was the truth of the answer as to five years. Was that substantially true, as it might have been if the time fell some days or weeks short of the full time? Under the old system of pleading, the traverse being of the five years, the averment would have been that he had been confined within five years, to wit within four years, and proof of the substantial inaccuracy of the answer would have sustained the plea, without regard to the time laid under the *velicet*. The present pleading cannot be construed more strictly.

Now if it happened that in place of the old illness being apoplexy, it had been a broken arm, or something from which the recovery had been perfect, and which had no possible relation to

the cause of the death, the answer would as I apprehend, have avoided the bond. In other words we have not to inquire into its materiality. The insurers ask for information on which they may base what inquiries they please before accepting the risk, and the contract is upon the express terms that if the answers are untrue, their liability shall not attach. The agreement in this case is not distinguishable from that in *Anderson vs. FitzGerald*, 4 H. L. C. 484. The corresponding part of the contract in that case may be taken as stated by Parke B., at p. 495. "At the end of the list of questions the assured subscribed a declaration to the effect that the particulars should form the basis of the contract between the assured and the company, and that if there should be any fraudulent concealment or untrue allegation contained therein, or any circumstances material to the insurance should not have been fully communicated to the company, all the money paid on account of the insurance should be forfeited and the policy should be void."

The association of the words "fraudulent concealment or untrue allegation," afforded more room for construing the document as meaning that the untrue allegation must be tainted with fraud, than can be found in the words "untruth, evasion or concealment of facts" which are used in the contract before us.

There is nothing that can be laid hold of, such as existed in cases like *Fowkes vs. Manchester and London Assce. Assn.* 3 B. & S., 917, to modify the *prima facie* signification of the word "untruth." "The question is," said Blackburn J., in *Fowkes' case*, "what is the meaning of the word 'untrue'?" *Prima facie* it means 'inaccurate,' not necessarily implying anything wilfully false." *Cazmore vs. British Equitable Assce. Co.*, 6 C. B. H. S., 437, the subject is very fully illustrated, as it is in numerous other cases, many of which were cited in the argument.

The circumstance that the attack of apoplexy occasioned the confinement of the deceased to the house at a later date than five years before the application, forms the only direct bearing of that illness upon the issue. The discussion which occupied much of the time at the trial, and on the arguments as to the greater probability of a recurrence of the malady after an interval of only four years than after the lapse of five, does not become important, unless the materiality of the answer and its materiality in relation to that particular malady has to be decided. In my opinion we have not to consider the subject in that aspect. If it were otherwise, I should not consider the finding of Mr. Justice James open to objection, nor do I understand a different view to have prevailed in the full court, the decision proceeding upon the more technical objections.

Upon these grounds I think the judgment for the defendants should be restored.

This being so it is not necessary to examine closely the other questions dealt with by Mr. Justice James. I have not failed to give attention to them, and I may say generally that I see no reason to differ from him in his conclusions.

The principle which makes the truth or untruth of the answers under a contract like the one before us, the matter to be inquired into, irrespective of the motives of the applicant, does not require or justify so narrow and literal a reading of the answers as to give them an effect which cannot have been intended by the parties. The questions must be read in the light of their apparent purpose, and if a question is ambiguous it must be understood in the way that will best sustain the answer. These principles will be found applied and illustrated in the judgment of the Judicial Committee of the Privy Council in *Moore vs. Connecticut M. L. Ins. Co.*, 6 app., cas. 144. One cannot read the questions in this case without observing that like some of those observed upon in *Moore's case*, their literal meaning must be qualified in some way. For example, in one of those which it is asked if the applicant has had or been afflicted since childhood with any one of a list of complaints, including cough and spitting or raising of blood, it is obvious that those words are not to be understood in their largest sense. *Moore's case* is direct authority for this. So when the age of the applicant and the date of his birth were asked, the duplicate question asking only the same information in two forms, the inquiry must be for the purposes of keeping within the Company's rules as to insurable age, and to govern the rate of premium. For those purposes no note is taken of the fraction of a year, and whether in this case the applicant was born on the 19th of February, or the 23rd, he truly presented himself as a man of 50. The answer was not in my view of the question an untruth within the meaning of the contract.

I am satisfied that we should allow the appeal and with costs.

SIR W. J. RITCHIE, C. J.—I am of opinion that the appeal should be dismissed with costs.

STIRONG, J.—I agree with the judgment of the Court below as delivered by Mr. Justice Weatherbee (reported in N. S. 20 Rep.