

*Fides.*—Where in an application for insurance it was erroneously stated that the applicant was forty-one years of age when he was really forty-four:—

*Held*, that, evidence was admissible to show that the statement was made in good faith and without intention to deceive.

*Cerri v. Ancient Order of Foresters* (1897), 28 O.R. 111; 25 O.R. 22-23, and *Hargrove v. Royal Templars of Temperance* (1901), 2 O.L.R. 126 followed.

Where a statement as to age is found to be material and untrue, it lies upon the person seeking to uphold the contract to make proof that the statement was made *bonâ fide* and without intention to deceive.

A new trial ordered to allow plaintiff to bring in evidence of good faith.

*Dillon v. Mutual Reserve Fund Life*, 10.

2. *Benevolent Society—Certificate—Effect of Will on Insurance Money*—"Legal Heirs Designated by Will"—*Election*—*R.S.O. 1887, ch. 136, secs. 5, 6, 7 and 10.*—Where a testatrix, who had obtained a certificate of insurance in a benevolent society and had declared "her legal heirs as designated by her will" to be the beneficiaries thereunder, devised the life insurance money to pay certain debts:—

*Held*, this disposition was inoperative, as being repugnant to

the statute under which the insurance arose: *R.S.O. 1887, ch. 136, secs. 5 and 10*, and that the insurance moneys should go to the "legal heirs" designated in the will.

*Held*, also, that the children of the testatrix were not bound to elect between the benefits specifically devised to them and the insurance money, as the direction was nugatory and the will should be read as if the invalid clauses were expunged.

*Hearle v. Greenbank* (1749), 1 Ves. Sr., at p. 307, followed.

*Griffith v. Howes*, 15.

3. *Beneficiary not Named in Policy—Policy not in Accord with Application—Mutual Mistake—Right to Proceeds—Act for Benefit of Wives and Children*—58 Vict. (N.B.), ch. 25.]—C. applied for insurance, the policy to be payable in event of death to his wife, but the company, in accordance with its rules, issued a policy payable on its face to the personal representatives, though in fact in such circumstances it would pay the proceeds only to the beneficiary named in the application. C. was unaware of this at the time of his death:—

*Held* (Davis and Mills, JJ., dissenting), that the wife was entitled to the proceeds of the policy as against the representatives of the estate.