was the misrepresentation material to the risk? But see the case of *Howard* v. *Kentucky & Louisville Mut. Ins. Co.*, decided in the Supreme Court of Kentucky, and reported in *Am. Law Reg. for Sept.* 1853, p. 686, where the decision in the case of *Stebbins* v. *Globe Ins. Co.* is approved.

§ 198. *Proof of Representations Inconsistent with Policy Not Admitted.*

Though, as has been already seen, proof of the representations of the insured is sometimes admitted for the purpose of affecting or varying the construction of the policy, this is never the case when the representations and the policy are contradictory of, and inconsistent with each other. In a case like this, the general rule applies, and the policy is considered the sole evidence of the actual agreement.[1]

In 2 Hall, verbal representation of an agent of the insured was attempted to be proved, to restrain a policy; the evidence was excluded, the Court saying that the terms of the policy were clear, and could not be waived by such frail proof. But if it be more comprehensive in favor of the insured, he will get the benefit of it. However, *Bize* v. *Fletcher* did not judge *that* expressly. The defendants did contend that a slip of paper wafered to the policy, and containing a written representation by the insured, restrained the voyage. It did not, but it might have done so. Were a policy not clear, a representation like that ought to bind the insured.

§ 199. *Statement Not Material to the Risk.*

If a false statement be made, but not material to the risk, or if the risk be *less*, the insurers must pay; as if a man, whose house is covered with *tin*, describe it as covered with wood, the insurers must pay.

There is no difference between marine, fire or life insurance in regard to the construction of representations. The rule is, that so far as they are material to the risk, they must be substantially fulfilled. If the insurer has relied upon them, and has thereby been induced to enter into a contract which he would otherwise have declined, any material want of truth in them will render invalid the policy based upon them. It is not necessary that the misrepresentations should be *intentionally* made; they may be the result of mistake, accident or inadvertence, on the part of the insured, and still be binding upon him. It is enough that the insurer has been misled, and though no fraud was *intended* by the assured, it is nevertheless a fraud upon the insurer, and avoids the policy. But a misrepresentation of an *immaterial fact will not generally vitiate the contract.*[1] Thus it has been held, that where the interest of the insured in the subject matter of the contract is a qualified, conditional, temporary, or equitable one, a description of the property by him as "his," or a representation that he is the owner of it, is not such a misrepresentation as will avoid the policy.[2]

Representation of facts, so far as material to the risk, must be true; *per* Story, J., in *Hazard* v. *N. E. Maine Ins. Co.*, 1 Sumner. But, in all such cases, facts of, 1st, truth of representations, 2nd, materiality, are for the jury. *Ib.*

The meaning of a representation is to be that of the place where made, as New York, if the insurance be after correspondence and in favor of a New York man by a Boston company, though the policy be dated Boston.

Story thought otherwise in the *Hazard* case,[3] but this part of his judgment was reversed.[4]

Duer says that promissory representations, though not written, but proved by parol, and though made in good faith, must be complied with, else *actio non.*[5]

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[1] *Bize* v. *Fletcher*, Douglas, 271: *N. Y. Gas Light Co.* v. *Mechanics' Fire Ins. Co.*, 2 Hall, 108. Babington on Auctions, p. 21, shows the evil of admitting proof of representations before the policy.

[1] *Stetson* v. *Mass. Mut. Fire Ins. Co.*, 4 *Mass.*, 330; *Strong* v. *Manufacturers' Ins. Co.*, 10 *Pick.* 40; *Curry* v. *Commonwealth Ins. Co.*, *id.* 535; *Farmers' Ins. Co.* v. *Snyder*, 16 *Wend.* 481.

[2] *Strong* v. *Manufacturers' Ins. Co.*, 10 *Pick.* 40; *Curry* v. *Commonwealth Ins. Co.*, *id* 535; *Fletcher* v. *Commonwealth Ins. Co.*, 18 *Pick.* 419; *Tyler* v. *Ætna Ins. Co.*, 12 *Wend*, 507; *S. C.*, 16 *id* 385. But see *contra*, *Columbian Ins. Co.* v. *Lawrence*, 2 *Peters*, 25; and also this point further considered *post.*

[3] 1 Sumner. [4] See 8 Peters.

[5] *Alsop* v. *Coit*, 12 Mass.