

(2) Paragraph 11 does not state a material fact on which plaintiff can rely. What is material is the favourable report of the committee on plaintiff's application. This is set out in paragraph 10, and is confirmed by the statement of defence of the benefit fund. . . .

This paragraph should therefore be struck out.

(3) Paragraph 18 must be allowed to stand. This may prove to be a most material fact in support of the claim, as will appear from a perusal of *Ferguson v. Provincial Provident Institution*, 15 P. R. 366. To the cases there cited a reference may also be added to a case of *Girdleston v. North British Mercantile Ins. Co.*, L. R. 11 Eq. 197. In giving judgment, Bacon, V.-C., said (at p. 201): "In the bill the plaintiff charges that the contention raised by the letter of 24th April, 1868, and the letters subsequently written on behalf of the defendant company, is entirely contrary to the truth and honour of the said agreement for the insurance of his life, and the whole course of conduct of all parties concerned in the transaction. Part of that course of conduct he might have said much more distinctly was to be proved by the way in which they had entered into policies of assurance with other persons situated as the plaintiff was, the contract being the same in all cases."

This decision is cited in *Bray on Discovery*, p. 467, as shewing that in such cases defendants must give full discovery to shew their ordinary practice (if such there be) under similar contracts, especially if it has not been to insist on a strict construction of the agreement.

(4) Paragraph 20 should also be allowed to stand, in view of the case last cited. It is merely another way of saying that the conduct of the defendants in this case "is entirely contrary to the truth and honour of their agreement" with plaintiff.

(5) Paragraph 24. This is not material and should be struck out. The benefit fund, as already stated, have put in a defence by which they express no opinion on the merits other than is to be inferred from their approval of plaintiff's claim to a pension. And they therefore submit the matter to the Court.

(6) Paragraph 25 should be allowed to stand. As stated on the argument, it is, in plaintiff's view, a material fact, as shewing the attitude of the commissioners, and involving a recognition by them of plaintiff's right to a pension.

An order will issue in accordance with the foregoing conclusions. As the substantial success is with plaintiff, the costs will be to him in the cause.