causes of death and to non-payment of dues which do not affect the questions in the action.

The bond bears date the 23rd of February, 1885. It is set out in the statement of claim, with an allegation of the death and of the proofs of death.

The statement of defence is so laudably concise that I shall not attempt to abbreviate it.

The Defendant Company says that:

1. It was an express condition of the said Bond of Membership, and the Bond was issued to the said John L. R. Webster, upon the express warranty that the said Bond should be null and void if any of the answers made in the application for the same should be untrue, evasive, or if the applicant should conceal any facts; and the Defendant Company says that the said John L. R. Webster in his application (which was declared to be part of the consideration for, and a part of the contract of indemnity), did make untrue and evasive answers, and did conceal facts in his said application—to wit:

a. The fact of the day of his birth.

b. That he had not, nor been afflicted with no disease, except a slight attack of apoplexy.

c. That he was at the time of the said application in good health.

d. That he was confined to house by sickness five years before said application, when in truth and fact—

a. He was not born on the day mentioned in the said application.

b. That he had been afflicted with a severe attack of apoplexy, and not a slight attack.

c. That he was not in good health to his own knowledge at the time of his application made.

d. That he had been confined to the house by a severe attack of apoplexy, within four years of said application, and for more than once during said period, with profuse bleeding at the nose.

The Application which bears the same date as the bond states that the applicant was a physician; that he was born on the 23rd of February, 1835; that his age was 50 on the day of the application; and then questions 11 and 12 are answered thus:

11. Has the party had, or been afflicted since childhood with any of the following complaints?

Apoplexy, bronchitis, coughs, disease of heart, disdisease of kidneys, disease of liver, disease of lungs, fits or convulsions, insanity, palpitation, paralysis, piles, rupture, spinal disease, spitting or raising blood, or any serious disease.

Give full particulars of any sickness you may have had since childhood. No disease except a slight attack of apoplexy.

When were you confined to the house by sickness? Five years ago.

12. Has the party ever been seriously ill? If so, when, with what? Apoplexy. Is the said party now in good health? Yes.

After the questions on the application paper there is this memorandum:

It is hereby declared and warranted that the above are in all respects, fair and true answers to the foregoing questions; and it is acknowledged and agreed by the undersigned, that this Application and Warranty are a part of the consideration for, and shall form a part of the Contract for Indemnity; and that if there be, in any of the answers herein made, any untruth, evasion, or concealment of facts, then any Bond granted upon this Application shall be null and void.

In January, 1881, the deceased had an attack of apoplexy. Dr. Farish attended him for it for seven weeks, and then left him, not because he had fully recovered, but because he thought further attendance unnecessary, the patient being himself a doctor. Several doctors were examined, the contest concerning the attack of apoplexy being whether it was a severe or a slight attack, turning on a criticism of the word "slight," which the applicant had used as contrasted with the term "severe"; but whether that was a fair criticism, having regard to the applicant's explanation given by the next answer, in which the illness was stated to have been serious, may well be questioned.

The deceased died of apoplexy on the seventh day of June, 1885, less than four months after he effected this insurance. Evidence was given to show that he had never fully regained his strength after the illness of 1881, traces of the attack remaining in his speech and gait; and it was proved that two years before the application he had had profuse bleeding at the nose for which Dr. Farish had attended him.

The evidence touching the age of the deceased in the Plaintiff's statement in the proofs of loss of February 19th, 1835, as the date of his birth, taken from a paper called a "Family Record," which was produced at the trial but got mislaid. It is thus described in the printed case:

It is a half sheet of foolscap paper containing entries or memoranda on one page only, and has no heading or signature.

These entries or memoranda purport to give the date of marriage of Dr. John L. R. Webster's parents, the date of his own birth, and the dates of his brothers and sisters, and the dates of death of some of them, the date of his own marriage, and the dates of birth of his children. There are some alterations, interlineations and erasures on the paper.

The memorandum or entry referring to his own birth and in which there is no alteration, interlineation or erazure, is as follows:—J. L. R. W., born Feb'y 19th, 1835.

The whole paper is in the handwriting of John L. R. Webster, now deceased.

The case was tried before Mr. Justice James who found in favor of the Plaintiff on all the questions raised by the defence, except the one which related to the date of the apoplectic attack, the answer in the application paper being understood to be that that attack was as long as five years before the application; and he gave judgment dismissing action.

The Plaintiff moved against that judgment, and the Court reversed it and gave judgment for the plaintiff, dealing only in the opinion delivered, with the one question of the five years, and treating the others as for the purposes of that motion finally disposed of by the trial judge.

From that judgment the defendants appeal. They contend that the judgment given at the trial was right, and the action properly dismissed, and while they maintain that the trial judge was correct in the view he took of the five years point, they insist also that he ought to have found in their favour in all, or some, of the other alleged misstatements, and that therefore the action should have been dismissed, even if the five years question were properly dealt with by the court in banc. To this contention it is answered in the first place that the Defendants, not having moved against the findings of the trial judge, are precluded from now questioning them.

This answer overlooks in my opinion the true nature of the proceeding.

The issu for trial was whether, under the terms of the contract, the bond was even an operative instrument. It was null and void ab initio, if any one of the allegations of the defence was sustained. The defence advanced four reasons for holding the bond inoperative. The learned Judge held that it was inoperative for one of those reasons but not for the others. The Defendants could not have moved against the judgment. The action was dismissed. They would not have been heard to complain, as the foundation of a motion, that while the judgment was in their favor the judge ought to have found more than one reason for his conclusion to dismiss the action. But when the judgment was attacked they had a right to insist that it was the proper judgment to render upon the whole evidence.

The rules of the Judicature Act authorising a notice in place of a cross appeal do not apply.

We must therefore regard all the allegations of the defence as open for consideration if necessary to be insisted on.