

that it is not needful to set out verbatim what is referred to in order to satisfy the statutory expression "in full." It is enough to unite by express reference, as is here done, the basis of the contract and the actual contract resting thereon. That was held on the Dominion statute by the Supreme Court in *Venner v. Sun Life Assurance Co.*, 17 S. C. R. 394 (1889), followed by the same Court in 1898, and held applicable to the construction of the Ontario statute of 1892, which is in terms the same as the section now under consideration: *Jordan v. Provincial Provident Institution*, 28 S. C. R. 554.

I am disposed to think, however, that the proper sub-section which applies to this controversy is sub-sec. (2) rather than (1) of sec. 144, having regard to the difference in the legislative language. Sub-section (1) is addressed to such terms and conditions as modify or impair the contract; whereas (2) provides for statements in the application or inducing the entering into of the contract by the corporation, which, being erroneous or false, and material, avoid the contract *ib initio*. The language of the statute was used in the original Dominion statute as to contracts of life insurance, and a plain distinction is marked in the books between conditions subsequent affecting the policy prejudicially and those which operate to nullify the contract from the outset. The point I make has been judicially considered by Mr. Justice Gwynne in *Fitzrandolph v. Mutual Relief Society of Nova Scotia*, 17 S. C. R. at p. 342, where, in view of the like distinction of expression in the Dominion statute, he says that the former (as to modifying or impairing) "has application only to conditions subsequent . . . and not to a warranty of the truth of matters upon the faith of which the contract is based."

If sub-sec. (2) of sec. 144 is alone to be considered, it appears to me to contain in *gremio* sufficient to indicate that the terms which go to avoid the contract need not be contained in or indorsed upon the contract "in full." It is enough if the contract "be made subject" to any stipulation as to avoiding the contract by reason of any statement inducing the entering into of the contract by the corporation. In this case the contract is made subject to the preliminary statements and declaration, by the words of incorporation in the preamble already set forth in this opinion.

Besides this, I think that there is an express notice given on the face of the agreement (p. 2) that if any suppression or misstatement of any fact affecting the risk of the company be made at the time of the payment of the first or any subse-