payment of a second composition on the death of all the original trustees. It speaks of the new trustees as "successors to the party or parties in whose name the titles shall have been expede and recorded," viz., the original trustees; and when it speaks of "the death of the existing vassal" I apprehend it means the death of the last survivor of the original trustees. But perhaps it is sufficient to say that this enactment is superseded by section 5 of the Act of 1874, the terms of which alone are to be construed.

On the whole matter, I think that the Lord Ordinary has arrived at a sound conclusion.

LORD JUSTICE-CLERK—That is my opinion also, and LORD YOUNG (who was present at the hearing of the case but absent at the advising) requested me to say that he concurred.

LORD TRAYNER having been absent at the hearing gave no opinion.

The Court adhered.

Counsel for the Pursuers and Reclaimers—The Solicitor-General (Dundas, K.C.)—C. D. Murray. Agent—Peter Macnaughton, S.S.C.

Counsel for the Defenders and Respondents—Campbell, K.C.—Craigie. Agents—Fraser, Stodart, & Ballingall, W.S.

Saturday, February 20.

SECOND DIVISION.

[Lord Kincairney, Ordinary.

THE LIFE AND HEALTH ASSURANCE ASSOCIATION, LIMITED, *v.* YULE.

Insurance — Accident Insurance — Condition — Agent and Principal — Misstatements in Proposal by Agent of Insurers without Knowledge of Insured—Authority of Agent — Effect of Signing Proposal of Insurance without Reading it—Personal Bar.

A, a milk purveyor, at the request of B, an insurance canvasser, agreed to take out an insurance against driving accidents. At the request of A, who was busy at the time, B filled up the proposal for insurance without asking A any questions, and A signed it without reading it over. To the question whether any accident had happened "in connection with vehicles or horses now in use, or with the drivers now in your service," the reply was negative, although it was the fact that two accidents had happened in connection with one vehicle and one horse in use by A at the date of the proposal. The declaration annexed to the proposal signed by A set forth that the questions were answered correctly and fully to the best of the signer's knowledge and belief.

Following on the proposal, a policy of insurance was made out, a condition of which was that if there was any misstatement in the proposal the policy should be void.

Thereafter an accident occurred in connection with one of A's milk carts. The insurance company denied liability on account of misstatement in the proposal. A maintained (1) that the misstatement was immaterial, and (2) that B, who was the insurance company's agent, had filled up the misstatement without consulting A.

Held (1) that the misstatement was material; (2) that it was A's duty to read the answers in the proposal before signing it, and that he must be taken to have read and adopted them; and (3) that B in filling in the false answer in the proposal was acting as agent for A and not for the insurance company, and that therefore the policy was void.

This was an action of reduction by the Life and Health Assurance Association, Limited, against John Yule, milk purveyor, Partick, concluding for the reduction of a policy of insurance on the ground of misstatement in the proposal in terms of which the policy was issued.

A proof was led, which disclosed the following circumstances:—In the end of July 1901, Robert Wylie, the pursuers' local agent, called on the defender and asked him to insure with the pursuers against claims made for personal injury or injury to property caused by the vehicles or horses attached to them belonging to the defender. The defender agreed to insure for £200 at a premium of £3. The defender was busy in his shop at the time, and told Wylie to write out the proposal himself and that he would sign it. Wylie produced and filled up a proposal form framed by the Assurance Company and containing certain questions to be answered by the insured. The fourth query in the proposal was—"Has any accident happened in connection with the vehicles or horses now in use, or with the drivers now in your service? Give full particulars." To this query Wylie without asking the defender any questions filled in the answer "No." At the bottom of the proposal was the following declaration—"I declare that the above questions have been answered correctly and fully to the best of my knowledge and belief, and I agree that this declaration and the answers above given will be the basis of contract between me and the company, and I agree to accept a policy subject to the usual conditions prescribed by the company and to be endorsed on the policy." Thereafter the defender signed the proposal without reading it over.

Prior to the date of the proposal two accidents had happened, one in connection with a horse and another in connection with a vehicle still in use by the defender at the date of the proposal. On 6th January 1900 a horse and vehicle belonging to the defender backed into a railing, causing damage

thereto. The horse concerned in this accident was still in defender's use at the date of the proposal. On 4th October 1900 a horse and van belonging to the defender knocked down a man, the wheel passing over his leg. The van employed on this occasion was also in defender's use in July 1901. Wylie deponed that he knew of this last accident, having insured the defender against it with another insurance company called the Law Accident Insurance Company, but that he considered the accident so trivial that he did not put it down in the proposal.

Following on the above proposal, a policy of insurance dated 1st August 1901 was issued to the defender. The eighth condition of assurance on the back of the policy was as follows:—"If there shall be any misstatement in or intentional omission of a material fact from the proposal for this insurance, . . . this policy shall be void, and the premiums paid shall be forfeited to the association."

On 25th March 1902 the defender intimated a claim under the policy against the pursuers on account of an accident which occurred on 13th February 1902.

The pursuers declined to admit liability, and raised the present action of reduction, contending that the misstatements in the proposal vitiated the policy.

The defender maintained (1) that the misstatements were immaterial, and (2) that they had been written by the pursuers' own agent.

On 21st July 1903, the Lord Ordinary (KINCAIRNEY) pronounced the following interlocutor:—"Finds that the answer to the question 4 in the proposal for the insurance libelled, signed by the defender, was untrue and was a material misstatement, and that the policy following thereon is therefore reducible: Therefore reduces the said policy, finds and declares in terms of the conclusions of the summons, and decerns."

Note.—[*After a statement of the facts set forth in the narrative.*]—"I understood that the pursuers do not impute fraud or wilful falsehood to the defender. They only say that the statements were false in fact. They contend that the misstatements, or either of them, in the proposal vitiate the policy and lay it open to reduction. The defender submitted that the misstatements had not that effect, and I think he rested his argument on two grounds.

"In the first place, he maintained that the misstatements were immaterial, and could not have affected the pursuers' judgment as to the risk which they undertook. He referred to Bell's Prin., sec. 474, and to Porter on Insurance, p. 168. It appears to me that on this point a distinction is to be taken between misstatement and non-disclosure, there being no question of fraud; for it is not difficult to suppose an insurer may without much or any fault omit to mention circumstances which may appear to him unimportant. But there can be no such excuse for misrepresentation, and I think it is a very hard thing to hold a misrepresentation in a proposal for a policy immaterial. The question would not have been put had it been considered immaterial. The second accident was in itself slight. No great damage was done; only a small portion of a railing was broken. But the fact that the defender used a horse which got so much out of control as to back into a railing with such violence as to break it might well be thought by the pursuers to be worth considering. The third accident was, I understand, in itself more serious, but not more indicative of danger in the future. I think that the erroneous answer to the fourth question, although merely negative, falls within the category of misstatement and not of non-disclosure. The defender cannot account for the statement by his omission, inadvertence, forgetfulness, or ignorance, because, as will immediately appear, he says that he never read the questions at all.

"The defender's second answer is this, that he neither wrote nor dictated the answers, but that they were written by the pursuer's canvassing agent, Wylie, without any information from him.

"Now, I rather think that this was so, and certainly I consider Wylie's conduct in a high degree reprehensible. He wrote the answers, not, I think, caring a great deal whether they were true or false, but yet with a loose kind of notion that they were true. I do not think he meant to deceive or was conscious of saying what was false; he simply did what very unfortunately so many people do—he carelessly asserted in his answers more than he knew. The blame is not very much less than the blame of conscious falsehood, but it does not seem possible to hold that the pursuers, as Wylie's principals, can be held liable for an act of this sort.

"It was certainly the defender's duty to read the questions and answers and the declaration before he signed them, and I hold that no man can escape liability for a deed which he has signed merely by the allegation that he did not read it. That wholesome principle was asserted and illustrated in a very valuable case quoted by the pursuers' counsel—*The New York Life Company* v. *Fletcher*, 117 United States Reports, 1885, p. 519. The principle of judgment in such cases appears to be that answers to questions of that sort in insurance cases are held to be conditions of the contract of insurance, and that the declaration amounts to a warranty. The following authorities were referred to:—*Weems* v. *Standard Insurance Company*, August 1, 1884, 11 R. (H.L.), 48; 21 S.L.R. 791; *Cruickshank* v. *Northern Accident Insurance Company*, 21st November 1895, 23 R. 147, 33 S.L.R. 134, in which, in somewhat special circumstances, the judgment was against the company; *Reid & Company* v. *The Employers' Accident Company*, June 28, 1899, 1 F. 1031, 36 S.L.R. 825; and *Seaton* v. *Heath*, 1899, 1 Q.B. 782, *reversed Seaton* v. *Burnand*, February 27, 1900, 16 Times L.R. 232.

"On the whole, I am of opinion that this case must be classed among those in which

a policy of insurance has been held to be voided by a misstatement in the proposal."

The defender reclaimed, and argued—(1) The two former accidents were not material. They were hardly worthy of the name of accidents. (2) Wylie was the agent for the pursuers, and acted on their behalf when the insurance proposal was filled up. He had acted as the agent for the Law Accident Company when the insurance of August 1900 was made, and knew of the accident which occurred in October 1900. He, acting as the pursuers' agent, must therefore either be held to have thought the former trifling accidents immaterial and not sufficient to vitiate the policy, or he must be held to have made the misstatement, and the defender was not responsible for it—*In re Universal Non-Tariff Fire Insurance Company*, 1875, L.R. 19 Eq. 485; *Cruickshank* v. *Northern Accident Insurance Company, Limited*, November 21, 1895, 23 R. 147, 33 S.L.R. 134. This last case went even further than the present, because there the misdescription was dictated by the insured, and yet it was held not to invalidate the policy.

Argued for the pursuers and respondents —(1) The misstatements were material. (2) The defender had asked Wylie to fill up the proposal. Wylie therefore when doing so acted as the agent for the defender. There was no evidence that Wylie knew anything about the accident in January. It was the duty of the defender to read over the statements in the proposal before he signed it, and he must be taken as having adopted them—*Biggar* v. *Rock Life Assurance Company* [1902], 1 K.B. 516. The case of *Cruickshank* (*supra*) was distinguishable, as there the insurer's agent had all the means of information in his possession, having seen the insured walk across the floor.

At advising—

LORD JUSTICE-CLERK — The pursuers desire to reduce a policy of insurance issued to the defender on the ground that in the answers to questions required by their rules to accompany the application for the policy there were misrepresentations in point of fact. It cannot be disputed that this was so. To the question whether any accident had happened "in connection with vehicles or horses now in use, or with the drivers now in your service," the reply was negative, and the proposal containing this reply was signed by the defender below the declaration that the particulars contained in the proposal were true and correct. It is the fact that at least one horse and one vehicle which were in his possession at the date of the policy had been in use by him when two accidents happened in the year 1900.

I agree with the Lord Ordinary in holding that in that state of the facts the declaration as applied to the answer to the question was a misrepresentation, and that it was material. If, therefore, it was really made by the defender it would be fatal to the validity of the policy which was issued in respect of the declaration.

But it is maintained that although there was misstatement that ought not to be held to void the policy, because in fact the defender did not truly make the statement but only signed the paper after the agent who was canvassing him to take out a policy had made out the answers without his being asked the questions or knowing what was being written. I again agree with the Lord Ordinary that the defender cannot be allowed to escape from the consequences of his signing a paper as correct upon the allegation that he did not read it, and that the truth of answers to such questions in insurance proposals constitute part of the conditions of the contract, so that a misstatement in a proposal will avoid the obligation in the policy. I am of opinion that the defender cannot escape that consequence on the allegation that he did not know what he was signing, because he allowed another to make it out for him, even although that other was acting as an agent-canvasser for the pursuer. I hold that in filling up the paper for the defender at his request he was acting for him. Further, I hold that if the defender did not choose to see that there were no misstatements in the proposal before he signed it he must be held responsible for it as being his.

I am therefore for adhering to the interlocutor of the Lord Ordinary.

LORD TRAYNER—I agree with the Lord Ordinary. The policy sought to be reduced was issued on the basis that the questions put to the defender had been answered correctly to the best of his knowledge and belief. The answer to the fourth question it is not now disputed was not correct, but was in fact untrue. If the defender had considered the fourth question and answered it according to his knowledge, the answer, instead of being a negative, would have been an affirmative. Unfortunately for the defender (whom I absolve from any intention to deceive the pursuers) he allowed that question, and indeed all the questions, to be answered for him by a person who had not the knowledge necessary and who did not ask for information with regard to any of the matters to which the question referred, to enable him to answer correctly. That person was the agent of the pursuers in some respects, but in answering the questions I think he acted as the agent not of the pursuers but of the defender. It is no good answer on the part of the defender that he did not read what Wyllie had written. He must be held bound by what he signed, as he was bound to read and know what it was that by his subscription he was representing or attesting. I concur in the views expressed by Mr Justice Wright in the case of *Biggar*—a case resembling the present in all material respects.

LORD MONCREIFF—I agree in the result.

The fourth query and answer are as follows:—"(4) Has any accident happened in connection with the vehicles or horses now in use, or with the drivers now in your service? Give full particulars." Answer —"No."

The declaration signed by the defender is—"I declare that the above questions have been answered correctly and fully to the best of my knowledge and belief; and I agree that this declaration and the answers above given will be the basis of contract between me and the company, and I agree to accept a policy subject to the usual conditions prescribed by the company, and to be endorsed on the policy." The answer was untrue in fact, but if it had been made to the best of the defender's knowledge and belief that would have been a good defence.

The defender, however, is not in a position to plead that that answer was true "to the best of his knowledge and belief," for two reasons—*first*, his case is that he did not write or dictate that answer, and that it was not read over to him; *secondly*, if he had read the query and returned that answer it would not have been "true to the best of his knowledge and belief," because he admittedly knew that he had in his possession and in use at least one vehicle and one horse in connection with which accidents had occurred—a *factum proprium et recens*.

As to the attempt to throw the blame on the pursuers' canvasser, no such case is made on record.

Besides, in filling up the paper Wylie acted for the defender, who says that he had no time to attend to it.

The result is that the defender must be held to have known the contents of the paper which he signed, and to be bound by the answer.

The LORD JUSTICE-CLERK intimated that LORD YOUNG, who was present at the hearing but absent at the advising, concurred.

The Court adhered.

Counsel for the Pursuers and Respondents—Guthrie, K.C.—Grainger Stewart. Agents—Menzies, Black, & Menzies, W.S.

Counsel for the Defender and Reclaimer—G. Watt, K.C.—Munro. Agents—St Clair Swanson & Manson, W.S.

Saturday, February 20.

SECOND DIVISION.

[Lord Pearson, Ordinary.

RIDDELL *v.* LANARKSHIRE AND AYRSHIRE RAILWAY COMPANY.

Railway—Compulsory Taking of Land—Expenses of Arbitration — Tender — Lands Clauses Consolidation (Scotland) Act 1845 (8 *and* 9 *Vict. c.* 19).

A railway company served on a landowner a notice to treat for six acres of his land, and on 9th August 1898 entered on possession of the land, undertaking by written agreement to pay interest at 5 per cent. from that date "on the amount of his compensation when ascertained or agreed on."

On 23rd July 1901 the company made a formal tender to the landowner of £1300 "in full of all his claims of every description in respect of his right and interest" in the land taken. This offer was not accepted, the arbitration was proceeded with, and by award dated 21st March 1902 the oversman fixed the compensation at £1265, with interest at 5 per cent. "from the 9th day of August 1898, the date agreed upon by the parties."

Held that the sum in the tender included the interest which the railway company undertook to pay in the agreement of 1898, and that therefore the amount of the award, consisting of the principal sum and the interest thereon to the date of the tender being in excess of the sum tendered, the landowner was entitled to the expenses of the arbitration.

In this action David Riddell of Auchenback, Paisley, sued the Lanarkshire and Ayrshire Railway Company for, *inter alia*, £595, 10s. 7d., being his expenses in a statutory arbitration by which the defenders had acquired about six acres of his land for the purposes of their railway.

The defenders pleaded that they were not liable in the expenses of the reference, in respect that the sum tendered by them to the pursuer exceeded the sum awarded by the oversman.

The facts leading up to the action were as follows:—On 8th July 1898 the defenders served on the pursuer a notice to treat for the purchase of his land. On 9th August they entered upon the land, and by written agreement dated 31st August they undertook to "pay interest at 5 per cent. per annum on the amount of his compensation when ascertained or agreed on from the date when possession was taken."

While parties were arranging for the arbitration the defenders, by tender dated 23rd July 1901, offered to the pursuer's agents £1300 sterling "in full of all your client's claims of every description in respect of his right and interest as proprietor in the land . . . taken from him by this Railway Company." On 26th July the pursuers' agents acknowledged receipt of the tender, and made a counter proposal stating the pursuer's willingness to accept £1500 "in full of his claims against your company for ground acquired by them, interest at 5 per cent. to be paid on said sum from the date of the service of the notice to treat, my client to be relieved of the whole expenses incurred by him from the inception of this matter until its final settlement," and on a certain understanding as to accommodation works."

As nothing resulted from these negotiations arbiters were nominated and an oversman appointed. In the arbitration the pursuer claimed "the sum of £2500, with interest thereon at the rate of £5 per centum per annum from the 8th day of July 1898 till paid." Proof was led in December 1901, and, the arbiters having differed, the