

(1938) 03 CAL CK 0030
In the Calcutta High Court

Allianz Und Stuttgarter Life Insurance Bank Ltd.

APPELLANT

Vs

Hemanta Kumar Das

RESPONDENT

Date of Decision : 18-03-1938

Acts Referred:

Citation : AIR 1938 Cal 641

Hon'ble Judges : Panckridge, J;Costello, J

Bench : Full Bench

Judgement

Costello, J.—This is an appeal from a judgment of Lort-Williams J. whereby he gave a decree in favour of the plaintiff in a suit which was brought by one Hemanta Kumar Das against the Allianz Und Stuttgarter Life Insurance Bank Ltd. to recover a sum of Rs. 5000 on the basis that he was the assignee of a policy of insurance issued by the defendant company on the life of a man named Noot Behari Das. Hemanta Kumar Das, the plaintiff, is the third son of Noot Behary Das. The defendants are incorporated in Germany and have their head office in India at Delhi : they also have an office in Calcutta. The policy was issued on 16th February 1934, and in the same month it was assigned by Noot Behari Das to his son, the present plaintiff. A notice of the assignment was given to the defendant company and an appropriate endorsement was made on the policy itself stating that it had been assigned to Hemanta Kumar Das. The insured Noot Behari Das died in Calcutta on 22nd February 1936, that is to say, almost exactly two years after the date on which the policy was issued. No question arose as to the right of the plaintiff to sue. But the defendants resisted the claim on the ground that the policy had been rendered void by reason of breaches of warranties made by the insured Noot Behari Das at the time when the policy was entered into. The policy is expressed to have been issued upon the basis of the proposal form which was signed by the insured. The defendants in para. 6 of their written statement say that the proposal contained a number of untrue statements and particulars of those untrue statements are given in the following passage:

The said Noot Behari Dass untruly stated that his age on his next succeeding birthday would be 54 when (as he well knew) he had already attained an age between 67 or 70 years as also untruly stated that he did not suffer, and had never suffered from any diseases of the urinary organs; as also untruly stated that he had not then and never had had any difficulty in passing urine; and untruly stated that he did not then suffer and never had suffered from stricture or from diabetes; and lastly untruly stated that he had never suffered from any other complaint.

2. When the matter came on for trial, the only points raised on behalf of the defendants were the questions whether there was any untrue statement with regard to the age of the deceased and, secondly, whether he had, in fact, suffered from some affection of the urinary genital region which rendered untrue the answers given by him in the proposal that he had never suffered from any such malady. It is obvious that the onus of establishing that the deceased had been guilty of making untrue statements in either of those two particulars rested upon the Insurance Company. Broadly speaking, the learned Judge at the trial came to the conclusion that the Insurance Company had not established either that there was any understatement or misstatement as to the age of the deceased, or that there was any misstatement with regard to his state of health at the time when the policy was entered into. It may be observed at the outset that the policy itself states that-subject to the conditions and privileges stated on the reverse of this policy and in accordance with the proposal and declaration lodged with the company, the Allianz Und Stuttgarter Life Insurance Bank Ltd. hereby assures the life of Mr. Noot Behari Das son of late Mr. Earn Prosad Das, 97/2/1, Baranshi Ghose Street, Calcutta, aged 54 years, for the sum of Rs. 5000 only, payable on the death of the insured or at the latest on 1st February 1949. The premium on this policy amounts to Rs. 474-1-0 only per annum and is payable for 15 years or until the earlier death of the assured. The first policy year commences on 1st February 1934. It would seem therefore, that the policy was in effect, an endowment policy. The sum secured by it was to be paid at the end of 15 years from 1st February 1934 or upon the death of Noot Behari Das whichever event first occurred.

3. Some little importance attaches to that fact because the policy was issued upon the basis of what is described as Table II- H without profits; whereas originally the proposal put in by Noot Behari Das had been for an insurance upon the basis of Table I-H without profits. And it appears upon the face of the proposal form itself that in the space for the description of the Table and Term there were originally these words "I-H, 15 Limited payments." That was struck out in red ink and "II-H 15 Vide M/S" in red ink was substituted. The reason why I say that alteration is of some little importance is because Mr. Barwell appearing on behalf of the Insurance Company has sought to rely on certain letters which passed between the defendant company and Noot Behari Das at or about the time when the insurance was being effected. It is perhaps convenient if I refer to these letters straightway, because Mr. Barwell has sought to argue that in spite

of what appears on the face of the policy itself, to the effect that the contract consisted of the policy and the proposal, one must take into account this correspondence for the purpose of deciding whether or not the question of the age of the deceased avoids the policy ab initio. The letters in question are three in number; two of them are dated 9th February 1934, and the third is undated, but it appears from an endorsement upon it that it was received by the Insurance Company on 17th February 1934. The first letter is in these terms:

In connexion with your above proposal for insurance we beg to state that it is not possible for us to accept insurance on your life for 15 years limited payments, but we are prepared to accept" the same for 15 years endowment and at increased rates on account of your very stout physique and abdominal girth. The acceptance letter is accordingly forwarded herewith. Kindly remit Rupees 122-1-0 on account of your first quarterly premium and return to us the enclosed proposal form supplement for the aforesaid change in the plan of insurance duly signed by you at an early date to enable us to cover risk on your life without unnecessary loss of time if all be in order. Your horoscope is returned herewith, receipt of which please acknowledge.

4. It will be necessary for me to say something further upon the question of the horoscope a little later on. In passing, I may observe that that last sentence is with reference to the fact that the proposer or, as the company calls him "the proponent" had submitted a horoscope in order that the Insurance Company might be satisfied. from that as to the age given by the proposer on the proposal form. Along with the letter I have just read, there came a document which at first sight seems to be a letter specially written to the proposer. Looking at the printed copy of it, as it appears in the paper book (apart from the fact that there is a heading superadded)" there is nothing to indicate that this document is other than a letter specially written to Noot Behari Das. It is addressed from Delhi and dated 9th February 1934. It reads as follows:

Dear Sir, Your proposal for Rs. 5000 Table II.H. Term 15 years.

We have the pleasure to inform you that your proposal for life insurance has been accepted and a policy will be issued on payment of the amount. of first premium as stated above at the Company's Head Office in Delhi. This sum should be paid immediately as until it is paid the assurance is not in force and the Managers retain the power of declining to complete the transaction. If payment be not made within 15 days from this date, evidence of continued good health may have to be produced at your expense. Any sickness, accident or rejection of a proposal by another Assurance Company, or any other occurrence in the meantime which alters the facts previously stated to the company must be communicated to this office in writing so as to allow consideration of your case by the Manager and if all be in order to re-approve the same, otherwise the assurance will not be valid.

5. And then follows the paragraph upon which Mr. Barwell has laid very great

stress. It appears to run thus:

In the event of your age on entry being subsequently proved to be above 60 years next birthday your assurance shall be automatically vitiated ab initio. Yours faithfully.

6. Now, referring once again to the first of the two letters of 9th February 1934, I find these words "kindly return to us the enclosed proposal form supplement". The third of the three letters is in this form:

Dear Sir,

Re : Proposal No. 8291.

Please make the following change in my proposal for insurance:

PLAN.

Change from 15 years limited payments to 15 years endowment. Please incorporate the above in my proposal for insurance. Yours faithfully.

7. That was how it must have read when it was sent by the Insurance Company to the proposer in order that he might send it back to them with his signature upon it and that he in fact did. Upon the strength of these three documents, Mr. Barwell has argued that the policy must be construed as if it had incorporated in it or had, at any rate, been issued upon the footing that if it subsequently became proved that the age of the assured was above 60 years, the whole policy should cease to have any effect whatever. Mr. Barwell has put forward that argument in order to surmount the difficulty which arises from the fact that the policy bears upon it on p. 3 under a heading, "Special Provisions" though perhaps it is not necessarily associated with that heading, a statement to this effect or rather these words:

The age of the insured under the within policy is hereby admitted. Allianz Und Stuttgarter.

8. Then there is the signature of the Manager for India and it is dated 16th February 1934. That date is of the utmost significance, because it is actually the date of the policy itself which on the front page contains these words : "Delhi dated 16th February 1934" and it is signed by the Manager for India and contains another signature of the examiner of it. It appears therefore from an examination of the policy itself that the age was admitted at or about the time when the policy was issued and still more clearly when one looks at the proposal form. Further when one looks at the books or literature issued by the Company not only to the public but to their own agents, it is clear beyond all question whatever that the submission of the proof of age was an essential preliminary to a consideration of the transaction. We find in the little Manual issued by the Company, which is described as "Instruction for Agents" this very pertinent paragraph:

The age stated in the application for assurance must be proved to the satisfaction of the company before any claim under the policy can be paid. Age will be admitted on the policy at any time on satisfactory proof of the same being produced.

(A similar statement to the same effect appears on the policy itself). The paragraph then continues thus:

However in the case of male proponents above 45 years of age and in case of all female proponents, the evidence of age must as a rule accompany the proposal for assurance. The scrutiny of the case cannot be undertaken until the proof of age has been accepted by the Company.

9. Thus it appears that where the proposer is over 45 years of age, as Noot Behari Das admittedly was, before his proposal for insurance would be considered, he had to submit proof of age. The paragraph then states this:

The Company recognizes as proof of age, School or University certificates, extract from service book or official birth register and only in the absence of the above proofs, horoscope or entry in family bible. In the case of horoscope however the company retains the right to scrutinize them according to its own standard as to their liability and may insist on a supplementary proof, if it is not satisfied, it goes without saying however that an old genuine horoscope would, if in order, be accepted as final proof of age.

10. Turning now to the proposal form, we find touching upon the question of age these questions:

2. (b) Date of birth and (b) Day. Month Year age next birthday - next birthday.
54- 3. What bona fide proof Horoscope of age can you produce? N.B.-Proof of age (school, or University must be submitted Certificate, Extract from along with proposal of Service Register or Muni male lives above 45 and cipal Birth Register, Bap- below 20 years of age. tismal Certificate, original Horoscope or what else?)

11. It was therefore obligatory upon the proposer to submit in the proposal form some proof of age and he did, in fact, submit a horoscope which is said to have been cast or produced very shortly after the date of his birth. The horoscope has not been challenged as being other than a genuine document and thus it fulfils the description, to use the word of the booklet of an "old genuine horoscope." It must be assumed that the company took pains to scrutinize this horoscope according to its own standard; at any rate, it did not, as it might have done, insist on any supplementary proof. On the contrary, by returning the horoscope in the letter of 9th February (the first of the three letters which I have read) without any comment, it becomes quite clear that the Company were content to accept that horoscope as furnishing proof of age, and upon the faith of the horoscope they put on the policy the endorsement which I have read, whereby it was made plain that the age of the assured was admitted: and so the assured

himself or anyone looking at the policy might not unreasonably come to the conclusion that there would be no further difficulty or obstacle as regards the question of age when the time came for the policy to mature. The policy was assigned by Noot Behari Das to his son. It might equally well have been assigned by Noot Behari Das to someone outside the family. In my opinion, any assignee of the policy on seeing the endorsement as to proof of age upon it, was entitled to come to the conclusion that the question of the age of the deceased had been settled once and for all. In other words, to use the exact expression we find in the company's own book that the old genuine horoscope has been accepted as "final proof of age." But so far from that being the case, however in the particular matter we are now discussing, it turned out that when the present plaintiff, Hemanta Kumar Das, wrote a letter, as he did on 24th February 1936, informing the company that his father died on 22nd February and that he was the son of the deceased and assignee of the policy and therefore claimed payment of the amount assured under the policy, the Company refused to admit the claim on the grounds which I have already indicated. Dealing with the contentions of the defendants as a whole the learned Judge said this:

Further the defendants say that the proposer made these statements fraudulently, and fraudulently concealed diverse fact material to be known to them, and of which at all material times they were ignorant, namely that he was then suffering from a filarial or some other infection of the scrotum and had so suffered for a considerable period, that he had been constantly afflicted with ulcerine or other sores thereon and had frequently suffered from stricture as also from incontinence of urine. The onus of proving all these allegations lay upon the defendants.

12. The learned Judge summed up the matter in this way:

After a careful consideration of the whole of the evidence I am not satisfied that the defendants have succeeded in discharging the onus of proof which lay upon them. I do not believe the witnesses called on their behalf who gave evidence about the age of the assured. Their evidence was wholly unreliable, nor, in my opinion, is this deficiency cured by the documentary evidence tendered which is insufficient and inconclusive.

The medical evidence falls far short of what should be required especially where charges of fraud are made but also with respect to the allegation that the statements made by the assured were untrue.

In my opinion the most that can be said for the defendants is that there were grounds for suspicion which were a legitimate subject for inquiry, but they were not justified in view of the facts ascertained in resisting the plaintiff's claim and certainly not in recklessly launching charges of fraud against the assured.

13. With that latter statement of the learned Judge I find myself entirely unable to agree. In my opinion, a careful examination of the whole of the facts and circumstances of the case, viewed in the light of the evidence, showed that there

were features in connexion with the claim which justified the company in taking the view, prima facie of course, that there were circumstances in connexion with the matter which warranted them in resisting the claims which were made by Hemanta Kumar Das as being the assignee of the insured, and therefore in my opinion the strictures made by the learned Judge upon the defendants were not really justified. At the same time however I have come to the conclusion after paying the greatest attention to all that Mr. Barwell has said that on the whole, the decision arrived at by the learned Judge upon the merits of the case was correct and I agree, speaking generally, with the opinion expressed by the learned Judge both on the question of age and upon the question of the health of the deceased.

14. I shall say a few words with regard to the second of the two points first because I think it can be disposed of quite briefly. The allegation set up by the defendants was to the effect that it was an untrue statement on the part of the deceased when he said in answer to the question which is No. 7 of the "Personal Statement" made at the time of the medical examination:

7. (e) Diseases of the urinary organs (kidney-stone), stone of the bladder, turbid or blood-stained urine, difficulty in passing urine, stricture, gravel, albuminuria or diabetes? - (e) No.

12. (a) Have you ever consulted or been treated by any medical practitioner? If so, why and when? Give his name and address. - (a) No.

15. The defendants endeavoured to prove by the evidence which they put forward at the trial that the deceased Noot Behari Das in the month of February 1934, and indeed prior to that time, must have been suffering from some affection of his scrotum which had a grave effect on the urinary genital tract and that region generally and that such an affection could properly be described as a disease of the urinary organs, and for that reason, the answer to the question which I have read was an untrue statement. A number of witnesses were called. In particular, a witness describing himself as a homeopathic physician and surgeon whose name was Keshab Krishna Roy gave evidence. He it was who attended the assured during his last illness and signed the certificate of death and also signed what is described as the "death claim form." It appears however that the deceased was only ill immediately before his death for a period of about one month and this doctor, Keshab Krishna Roy, first attended the deceased on 5th February 1936, that is to say, less than three weeks prior to the date of his death. At that time he found the patient suffering from fever and ulceration of the scrotum. A number of questions were put to this medical man in examination-in-chief designed to show that he had had opportunities of observing the condition of Noot Behari Das for a number of years prior to February 1935, even if he had not made an actual physical examination of him. At first sight it does seem that this doctor was of opinion that Noot Behari Das did suffer in the urinary genital region from some disease or affection. But a closer examination of this witness' evidence shows that he really could not speak with any special

knowledge as to the condition of the deceased at any time anterior to the year 1935. Therefore in the opinion of the learned Judge and also in my opinion, the evidence of this witness does not go far enough.

16. With regard to the other witnesses who were called concerning the question of the deceased's physical condition, their evidence on the whole is decidedly nebulous and unconvincing. In my opinion, the learned Judge was quite right in coming to the conclusion that the defendants had not established the onus which undoubtedly lay upon them, particularly having regard to the fact that they did not elect to call as their witness the doctor who had conducted the medical examination which took place as part of the proceedings leading up to the issue of the policy and on the basis of which, largely at any rate, the policy was issued. The fact that the defendants did not put the medical man into the witness-box is perhaps not surprising when one looks at the answers given by him to the short questionnaire which appears under the heading "genitourinary diseases." The effect of these answers comes to this that the medical examiner stated quite clearly that at the time of the examination which took place on 8th January 1934 the proposer Noot Behari Das was not suffering from any kind of disease whatever in the region indicated by the aforementioned heading. The learned Judge however thought in the interests of justice that this medical man ought to be asked to testify in the case and, accordingly, the medical examiner was called to the witness-box as what is generally described in this country a "court witness." Accordingly, the medical examiner did give his evidence, and the evidence he gave entirely refuted the contentions which were being put forward on behalf of the defendant Company. It was not unnatural that he maintained that the statements which he had put in his report of 8th January 1934, were correct. They were based on an actual examination of Noot Behari Das and accordingly this medical examiner reiterated his opinion that at the time when the proposal for insurance was made, Noot Behari Das had no disease or affection of the scrotum or any other disease of a urinary genital nature. That being the position, it follows that in order to get rid of the testimony of their own medical examiner, the Insurance Company were faced with the position that they were obliged to say that he was dishonest and even fraudulent. As far as one can make out, however there is not the smallest justification for any such suggestion. We are bound to take the view that the evidence given by the medical examiner far outweighed the unsubstantial or rather the sketchy evidence given by Dr. Keshab Krishna Roy, and the other witnesses who were called by the defendants to give evidence concerning the state of health and the bodily condition of Noot Behari Das on February 1934, and for a period prior thereto. We entirely agree that the defendants did not discharge the onus which lay upon them concerning the question whether the answers given by Noot Behari Das on the matter of his health were untrue.

17. There remains the question of age and that is really the crucial matter in this case. The case put forward on behalf of the defendants, who are the appellants before us, is that first of all it ought to be held that they have succeeded in

demonstrating that the age of Noot Behari Das was not 54 years as stated by him on the proposal form but was somewhere about 67 years or even more. The defendants further say that having established that there is thus a serious misstatement or under-statement in the proposal form, they are entitled to rely on the fact by reason of the policy having been issued on the basis of the proposal form that the proposer in effect warranted that the answers given by him in the matter of age were true. Therefore, once it is established that such answers were untrue, there is a breach of warranty of such a kind that it avoids the policy altogether; in other words, there is a breach of warranty which is in the nature of a condition. No criticism can be put forward as regards that contention, viewed as a proposition of law. If a policy is issued on the basis of statements made in a proposal form and made in what is called a personal statement" to the medical examiner, then if those statements eventually prove to be untrue, other things being equal, the policy would be avoided. In this particular case, the defendants relied upon a further fact, namely the stipulation which they say was either imported into the contract or formed part of the basis of the contract, because it was contained in the letter of 9th February 1934, the first of the two letters of that date, the letter which set forth the terms upon which the defendants were prepared to accept the proposal form of Noot Behari Das. In answer to that, the plaintiff said, first of all, that

you, the defendants, have not succeeded in showing that my father made any misstatement as to his age; in other words, you have not succeeded in establishing that there was any untrue statement at all on the question of age.

18. Of course, if that is the position, the question of the effect of the warranty does not arise at all. For, if there is no untrue statement, there can be no breach of warranty. Then, further the plaintiff said that even if he knew that the defendants had satisfactorily established that there was untrue statement as to his father's age, they could not now rely on that, because they had put themselves out of Court by reason of their expressing themselves satisfied with the age as stated by the assured by reason of the fact that they had placed upon the policy an endorsement to the effect that the age of the assured under the policy was "admitted". Therefore, says the plaintiff, the defendants are met by a plea on the side of the plaintiff which is in the nature of an estoppel. To that the defendants on their side retort that the plaintiff is not entitled to rely on the fact that the age was "admitted" because of the saving clause-if I may so describe it - which is contained in the final paragraph of the defendants' letter of 9th February 1934. As regards the question whether in fact there was an untrue statement with regard to the age, the learned Judge, as I have shown by reading a passage from his judgment, came to the conclusion that the defendants had not succeeded in discharging the onus which lay upon them. On that view of the matter, of course, it would not be necessary for me to consider either the effect of the admission of age as contained in the endorsement of the policy or the effect of the saving clause contained in the letter of 9th February 1934. We must therefore first of all say whether we are in agreement with the learned Judge on

the pure question of fact, whether there was a misstatement or not or an understatement. The learned Judge at the outset discarded as being totally unreliable the evidence as to age which was given orally. He characterized that part of the evidence in these terms: "On the question of age some of the witnesses gave some amusing but not very reliable evidence." The learned Judge seems to have come to the conclusion that he could not act upon the oral testimony.

19. In addition to that evidence however, three documents bearing on the question of the age of the deceased were put in evidence on behalf of the defendants. The first is a certified extract from the register of deaths, at Nimtollah Burning Ghat concerning one Radharani of 99/2/1 Baranshi Ghose Street. She was the wife of Noot Behari Das and she died in 1933 shortly before the policy was taken out. At the time of her death, as it appears from the certificate, her age was given by her son, Hemanta Kumar Das, who was the informant, as being 61 years. Mr. Barwell, as regards that certificate, says that if the age of Radharani was really 61 years in 1933, it is almost quite inconceivable, if not impossible, that the age of her husband in 1934 could have been no more than 50 years because he says that there was evidence indicating that it is not customary in Hindu society that a man should marry a girl older than himself; but on the contrary according to Hindu ideas the age of the wife ought to be at least eight to ten years less than that of the husband. Mr. Barwell contended that Hemanta was right when he stated that his mother was 61 years of age in 1933 and so it follows that Noot Behari Das must have been wrong when he gave his age as 54 in 1934.

20. The second document was a certified extract from the register of births relating to Ward No. 6 under the Calcutta Municipality which showed that a daughter was born to one Noot Behari Das of No. 97/2 Baranashi Ghose Street on 24th March 1892. The name of the informant who gave the particulars set out in that certificate was given as Noot Behari Das. Mr. Barwell accordingly argued that the birth referred to was that of a daughter of the Noot Behari Das who was the assured with whom we are concerned and so if in February 1934, his age was only 54, then at the time when this daughter was born, he would have been of the age of about 11 years only. Assuming the evidence afforded by the certificate to be correct, says Mr. Barwell, it is clear beyond doubt that Noot Behari Das, as the father of the female child born on 24th March 1892, must have been very much older than 54 years in 1934.

21. The third document was a certified copy of an entry relating to the registering of a deed which was apparently presented for registration by one Noot Behari Das of No. 97/2 Baranashi Ghose Street in the month of August 1891 at the Registry Office in Calcutta. Mr. Barwell once more pointed out that if Noot Behari Das was only 54 in February 1934, then in the year 1891 he would have been a small boy aged only about 12 years and therefore quite incapable of entering into such a transaction as is indicated by the certified copy of the entry in the register. It appears that the deed in question was a deed of sale of the

actual property in which Noot Behari Das lived and died. I need say no more about this particular document except that, as Mr. Chatterjee argued that the transaction represented by it was not undoubtedly outside the powers of a boy of 12 years of age, it is not of much assistance to the Court on the question of the age of Noot Behari Das one way or the other.

22. With regard to the first two of these documents the one relating to the death of Noot Behari Das's wife and the other relating to the birth of his daughter, the learned Judge came to the conclusion that the certificates were by themselves not sufficient to establish that the actual age of Noot Behari Das was other than that as stated by him in February 1934. And commenting on all the three documents the learned Judge remarked that as regards the first two of them

no attempt was made to identify the persons named therein. It was suggested on behalf of the defendants that these entries referred to the assured and his daughter and wife and show that he could not have been of the age stated by him. In my opinion, they cannot be accepted without evidence of identification, and are not sufficient in law, without such evidence of identification, to establish the defendant's case.

23. Then the learned Judge refers to certain authorities. As regards the third document the learned Judge says:

Again there was no attempt to give any reliable evidence of identification. The evidence of Suresh Chandra Das was on this point obviously hearsay and inadmissible.

24. Having come to that conclusion, as I do, that the learned Judge was right on the question of fact, namely that the defendants had not established that there was any untrue statement touching the age of the deceased, it is not necessary that I should say very much more upon this point except this. I am not sure that the learned Judge has not taken rather too narrow a view as to the effect of the certificates. The law relevant to this point is very succinctly stated on the basis of the authorities in the well-known treatise on Insurance Law by E. L. Macgillivray, Edn. 7, p. 548 where the learned author sums up the matter thus:

The age of the deceased may be proved "(1) by direct evidence as to the date of birth; (2) by birth certificate, that is to say, by production of a certified copy of the entry in the Register of Births or in some other public record of the birth which is admissible in evidence; (3) by baptismal certificate, that is to say, by production of a certified copy of the entry in a baptismal registration to give that direct evidence that the child was a very young infant when baptized; (4) by production from the proper custody of a family Bible or Testament wherein the births of members of the family have been regularly recorded. The birth or death certificate ought to be accompanied by evidence of identity if there is any room for doubt as to whether the person named in the certificate and the person whose life is insured are one and the same.

25. In this connexion, we were referred to a judgment of McCardie J. in the case in *Brierley v. Brierley and Williams* (1918) LRP 257 where, following the decision in *In Re: Goodrich; Payne v. Bennett* (1904) LRP 138, he held that the entry in the register of births, deaths and marriages is by Statute "prima facie but not con-elusive evidence of all the facts" required by Statute to be entered therein.

26. In the present instance, it seems to me that on the whole the first two certificates I have mentioned did establish the propositions which Mr. Barwell put forward. Undoubtedly, prima facie, they were evidence of the facts stated in them. Mr. Chatterjee was inclined to argue and would have argued had it been necessary that perhaps the identification was not clear beyond all questions. In my view, there was sufficient to ensure that these certificates prima facie established the propositions set forth in them; because as the plaintiff did not choose to call any kind of evidence to displace the testimony afforded by the certificates, it ought to be taken, contrary to the view expressed by the learned Judge on this point, that there was in all probability a misstatement on the question of age. Whether that was so or not, it is not necessary further to consider having regard to the opinion I hold concerning the effect of the admission of age as endorsed on the policy.

27. It is to be borne in mind that this was an insurance by a man who admittedly was, at any rate, at the age of over forty-five years. He himself stated that he was fifty four. Therefore the transaction came within the category of those proposals which require at the outset the furnishing by the "proponents" of proof of their age. Noot Behari Das was required to furnish proof of his age. He produced a horoscope. The horoscope was accepted by the company as being sufficient. Therefore, we may take that the company issued the policy upon the footing that they were insuring the life of a man whose age was fifty four. This is not a case where the proposer says that his age was fifty four and the Company merely accepted that statement at its face value and proceeded to issue a policy on that footing and subsequently, either shortly afterwards or a long time afterwards, admitted the age as stated in the policy in accordance with the provisions of Clause 9 (2) thereof. This was a case where the whole transaction from the very beginning proceeded upon the basis that the company had satisfied themselves that the proposer was of the age of fifty four and then issued the policy accordingly. In my view therefore the admission contained in the endorsement at page 3 of the policy is of such a character that the defendants when the policy matured could not be heard to say that the age of the insured was anything different from what he himself had stated it to be in February 1934. It is not necessary that one should apply in terms the principle of estoppel, because that is merely a rule of evidence. In my view, this matter goes far deeper than that. The question of the age of the deceased was a definite and determining factor in the transaction from the very outset. I am not sure whether Mr. Barwell was really minded to challenge that aspect of the matter, and if he had not thought that there were matters other than the possible under-statement as to age, on which he could rely, he would not have been very

optimistic as to the success of the resistance to the claim. Mr. Barwell has relied to a very large degree upon the fact that in the letter of 9th February 1934 there was a final paragraph which seems at first sight to bring it about that if the real age of the assured was more than sixty years the policy is then avoided, whether there is any admission as to age or not. But the view I take of that paragraph of the letter of the 9th February is this, that although I stated at the time when I was reading it that it appeared to be a personal letter, it is in fact no more than a printed form which is used for the purpose of accepting proposals for insurance and that final paragraph, though it might apply to cases where there is a misstatement as to age by a man of an age between twenty and fortyfive who had not been required to give proof of his age, would not do so in a case where a proposer is under twenty or over fortyfive and so is required to give-proof of his age. In my view, having regards to the admission contained in the endorsement and the fact that the policy was issued on the life of a man of the age of fortyfive, it cannot apply to an under-statement as to the age of the assured even if in fact there is any such under-statement. For these reasons, I think that the conclusion arrived at by the learned Judge to the effect that the plaintiff is entitled to succeed is correct, and this appeal must be dismissed with costs.

Panckridge, J.

28. I agree. In my opinion the final clause in the common form printed letter of acceptance despatched by the appellants to the insured on 9th February 1934 had no application to the policy subsequently issued by them. It would be a surprising thing if after the appellants had expressly and on the face of the policy admitted the age of the insured to be 54, they could be allowed subsequently to repudiate that admission. I imagine such a course to be permissible if it could be shown that the admission has been obtained by fraud, as for example by the production of a forged horoscope. Nothing of this sort is suggested to have occurred. Mr. Barwell submits that the effect of the admission is to preclude the Company from showing that the age of the insured is any age more than 54 and less than 60 and by so doing, reducing their liability in accordance with Clause 9, Sub-clause (ii) of the privileges and conditions appearing in the policy. In my opinion, the admission prevents the Company from disputing the admitted age of the insured for any purpose. In other words, from the date of the issue of the policy the Company cannot show that the age of the insured was some age other than 54 for the purpose of showing that it exceeded 60. It would have been perfectly simple to add a proviso to the sub-clause or to the admission if it had been the Company's intention to reserve any such rights as is suggested. It must be remembered that age is not admitted in all cases at the time the policy is issued; indeed it often has not been admitted at the death of the insured, in which case the burden of proving age is on the claimants. Where however an admission has been made, the Company must be taken to have abandoned any rights, they would otherwise have had to rely on Clause 9 or on the stipulation in the printed letter of acceptance. As to the issues of fact, I am in complete agreement with the judgment that has just been delivered. I also share my

learned brother's opinion that the conduct of the appellants does not merit the criticism made upon it by the learned Judge. I think the circumstances which were brought to the notice of the appellants were highly suspicious and I consider that the description of their charges of fraud as reckless is unjustified by the circumstances.