They complain also of the supplementary act, but they hardly contend that the legislature, in passing the act to unite the two institutions, parted with any power which was reserved in the original charter of Jefferson College to enact any proper law to alter, modify, or amend the act providing for that union. Extended argument upon that topic does not seem to be necessary, as there is not a word in the act which favors such a construction or which gives such a theory the slightest support. Proper care was taken by the legislature to protect the rights of these complainants by incorporating into the act uniting the two colleges a provision that the new corporation should discharge and perform those liabilities without diminution or abatement. Such contracts were made with the trustees and not with the State, and it is a mistake to suppose that the existence of such a contract between the corporation and an individual would inhibit the legislature from altering, modifying, or amending the charter of the corporation by virtue of a right reserved to that effect, or with the assent of the corporation, if, in view of all the circumstances, the legislature should see fit to exercise that power.

DECREE IN EACH CASE AFFIRMED.

INSURANCE COMPANY v. WILKINSON.

1. The assured, in a life policy in reply to the question, "had she ever had a serious personal injury," answered "no." She had, ten years before, fallen from a tree. The criteria of a serious personal injury considered.
2. This is not to be determined exclusively by the impressions of the matter at the time; but its more or less prominent influence on the health, strength, and longevity of the party is to be taken into account, and the jury are to decide from these and the nature of the injury whether it was so serious as to make its non-disclosure avoid the policy.
3. Insurance companies who do business by agencies at a distance from their principal place of business are responsible for the acts of the agent within the general scope of the business intrusted to his care, and no limitations of his authority will be binding on parties with whom he deals which are not brought to their knowledge.

Statement of the case.

4. Hence, when these agents, in soliciting insurance, undertake to prepare the application of the insured, or make any representations to the insured as to the character or effect of the statements of the application, they will be regarded, in doing so, as the agents of the insurance companies, and not of the insured.
5. This principle is rendered necessary by the manner in which these agents are sent over the country by such companies, and stimulated by them to exertions in effecting insurance, which often lead to a disregard of the true principles of insurance as well as fair dealing.
6. In such cases the insurers cannot protect themselves under instructions to their agents, that they are only agents for the purpose of receiving and transmitting the application and the premium.
7. Therefore, where the agent had inserted in the application for life insurance a representation of the age of the mother of the assured at the time of her death, which was untrue, but which the agent himself obtained from a third person, and inserted without the assent of the assured, it was the act of the company, and not of the assured, and did not invalidate the policy.
8. To permit verbal testimony to show how this was done by the agent does not contradict the written contract, though the application was signed by the party. It proceeds on the ground that it was not his statement, and that the insurance company, by the acts of their agent in the matter, are estopped to set up that it is the representation of the assured.

IN error to the Circuit Court for the District of Iowa; the case being thus:

The Union Mutual Insurance Company, of Maine, insured the life of Mrs. Malinda Wilkinson in favor of her husband. Both husband and wife, prior to the rebellion, had been slaves, and the husband came to Keokuk, Iowa, from Missouri. The company did business in Keokuk (where the application was made and the policy delivered), through an agent, one Ball, to whom it furnished blank applications. The mode of doing business appeared to have been that the agent propounded certain printed questions, such as are usual on applications for insurance on lives, contained in a form of application, and took down the answers; and when the application was signed by the applicant, the friend and physician forwarded it to the company, and if accepted, the policy was returned to this agent, who delivered it and collected and transmitted the premiums.

On this form of application were the usual questions to be

answered by the person proposing to effect the assurance; and by the terms of the policy it became void if any of the representations made proved to be untrue.

Among the questions was this one:

"Has the party ever had any *serious* illness, local disease, or *personal injury;* if so, of what nature, and at what age?"

And the question was answered:

"No."

So, too, after an interrogatory as to whether the parents were alive or dead,—they being, in the case of Mrs. Wilkinson, both dead,—were the questions and answers:

"*Question.* Mother's age, at her death?
"*Answer.* 40.
"*Question.* Cause of her death?
"*Answer.* Fever."

Mrs. Wilkinson having died, and the company refusing to pay the sum insured, Wilkinson, the husband, brought suit in the court below to recover it. The defence was that the answers as above given to the questions put were false; that in regard to the first one, Mrs. Wilkinson, in the year 1862, had received a serious personal injury, and that in regard to the others, the mother had not died at the age of 40, but at the earlier age of 23, and had died not of fever but of consumption.

As to the first matter, that of the personal injury, the judge (under a rule of practice in the State courts of Iowa, adopted by the Circuit Court of that district, and which allows the jury in addition to its general verdict to find also special verdicts and answers to interrogatories put), required the jury to respond to certain interrogatories. These and the answers to them were thus:

"*Interrogatory.* Did Malinda Wilkinson, in the year 1862, receive a serious personal injury, by falling from a tree?

"*Answer.* Yes, injured; not seriously.

"*Interrogatory.* Were the effects of such fall temporary, and had these effects wholly passed away without influencing or

affecting her subsequent health or length of life prior to the time when the application for insurance in this case was taken?

"*Answer.* Yes."

As to the other matter, the age at which the mother died and the disease which caused her death, evidence having been given by the defendant tending to show that she died at a much younger age than forty years, and of consumption, the plaintiff, in avoidance of this, was permitted (under the plaintiff's objection and exception) to prove that the agent of the insurance company, who took down the answers of the applicant and his wife to all the interrogatories, was told by both of them that they knew nothing about the cause of the mother's death, or of her age at the time; that the wife was too young to know or remember anything about it, and that the husband had never known her; and to prove that, there was present at the time the agent was taking the application, an old woman, who said that *she* had knowledge on that subject, and that the agent questioned her for himself, and from what *she* told him he filled in the answer which was now alleged to be untrue, without its truth being affirmed or assented to by the plaintiff or the wife.

This the jury found in their special verdict, as they had the other facts, and found that the mother died at the age of 23; did not die of consumption; and that the applicant did not know when the application was signed how the answer to the question about the mother's age and the cause of her death had been filled in.

In charging the jury, the court said, on the first branch of the case—that relating to the personal injury—that if the effects of the fall were temporary, and had entirely passed away before the application was taken, and if it did not affect Mrs. Wilkinson's health or shorten her life, then the non-disclosure of the fall was no defence to the action; but, on the other hand, that if the effects of the fall were not temporary, and remained when the application was taken, or if the fall affected the general health, or was so serious that it might affect the health or shorten life, then the non-

disclosure would defeat recovery, although the failure to mention the fall was not intentional or fraudulent.

On the second branch—that relating to the age of the mother—the court said to the jury, that if the applicant did not know at what age her mother died, and did not state it, and declined to state it, and that her age was inserted by the agent upon statements made to him by others in answer to inquiries *he* made of them, and upon the strength of his own judgment, based upon data thus obtained, it was no defence to the action to show that the agent was mistaken, and that the mother died at the age of 23 years.

Verdict and judgment having gone for the plaintiff, the insurance company brought the case here on error.

Messrs. G. G. Wright, Gilmore, and Anderson, for the plaintiff in error:

I. In the instruction in the first branch of the case (where the subject of the injury arose), the court told the jury that they were to be the judges as to the *seriousness* or extent of any unreported personal injury; to consider how far it affected the health or life; that they were to weigh its effect as increasing or not increasing the responsibility of the insurance; that temporary injuries were to be disregarded, and only those considered which were permanent or which might affect the life or health of the assured in after years. Now what is the case? Here is an association which has made life insurance its special business through a long term of time; which carefully and accurately systematizes the principles which shall enable it to estimate longevity; which from a comparison of a multitude of examples, has learned to estimate in figures, the probable hereditary transmission of certain diseases; the effect of different occupations upon the life and health; the probable result of the various forms of accidental injury, as creating predisposition to disease; whose experience has taught it how to place an average pecuniary value on each different form of injury, on its extent, its duration, and the time when it happened. This association proposes to issue life policies, and says to each applicant,

"Give us accurate answers to all the questions which we propound. Before we can accept or reject your application or fix your rate of insurance, you must inform us truly as to the facts of which we inquire; your personal and family history are as material as your age." The applicant answers untruly, it may be from carelessness, or it may be wilfully. The consequences are the same. The policy is issued to a person in name, who differs from the person described in the application, just so far as the facts are conceded or perverted.

Now with such a case the jury are instructed that they may pass upon the materiality of the answers. What is this but an instruction that they may make a new contract for the parties, and then enforce it by their verdict.

All the statements in the application are express warranties; and nothing is so well settled in the law of insurance as that if there is a warranty, it is a part of the contract that the matter is such as it is represented to be. The materiality or immateriality signifies nothing. The decisions to this effect are fully set forth in the seventh edition of Smith's Leading Cases, vol. 1, p. 783; note to *Carter* v. *Boehm*.

The simple question to be determined, was whether Mrs. Wilkinson, in 1862, by falling from a tree, met with a personal injury which was "serious" at the time when it occurred; not whether it was material as affecting the hazard of the insurance; and not whether its effects were temporary and passed away without permanent injury. These were questions which the company was entitled to determine for itself, either on the statement of the fact alone, or by seeking further information. It was entitled to know the truth, and the application did not state it.

II. On the remaining part of the case the question to be discussed is, had the court and jury, under any pretence whatever, any right to take into evidence the parol statements made by the applicant, or others, which were contemporaneous with the signing of the application. The plaintiff sues on that contract as it stands. It had not been reformed in equity; but stood, on the day of trial, just as the

respective parties had signed it. We have, then, this anomalous position in a court of law: the plaintiff sues on a *written* contract, signed by himself as one of the parties; he asks a recovery according to the terms of that contract, and yet, in the same breath, is permitted by the court to contradict and vary the terms of this written contract, by proving what was stated by himself and others at and before the signing of the same. This is contrary to all precedent.

In *Smith* v. *Empire Insurance Company*,* the action was on a policy of insurance. The original application was brought by the plaintiff to one V. C., the company's agent, in an incomplete state, with the understanding that the agent was "to fill in the rest of it when he got where he could write." Pursuant thereto, the agent afterward inserted what he thought proper to make the application complete, including a statement that "there was no incumbrance except the Petrie mortgage," which was not true in fact. The application was made a part of the policy. It was held that the plaintiff constituted V. C. his agent to complete the application, and was responsible for what he in good faith inserted, and that the policy was avoided by such false statement.

In *Brown* v. *The Cattaraugus Mutual Insurance Company*,† one Ide was the company's agent, and drew up the application, making certain representations as to the distances at which the building stood from other buildings. When the application was made and signed, Ide stated to Brown (the person assured) that the application was correct, and contained all that the company required, that he, Brown, had nothing to do or say about making or preparing the application or making the measurement or survey. When the application was presented to Brown to sign, he stated to Ide that he did not know anything about the rules and regulations of the company, to which Ide replied that *he* was agent and surveyor; that the application as prepared, was all the company required; Brown then said that relying on the correctness of Ide's statements, as to the sufficiency of the

* 25 Barbour, 497. † 18 New York, 385.

application, he would sign it; and did sign it; Ide forwarded it to the company's office and the policy was issued on it, and delivered by Ide to the plaintiff. At the trial it was proved that the representations in the application were not correct. It was contended that the facts created an estoppel against the insurance company, alleging a breach of the warranty. But the court say:

"If the doctrine of estoppel could have such an application, it would entirely abrogate that established rule, that parol evidence is not admissible to contradict or vary a written contract.

"The application is the application of the plaintiff; the signature of the agent only imports that he procured the application for the company; and when the plaintiff seeks to enforce the contract of insurance, he must take it according to its terms; and submit to whatever makes against him as well as assert whatever makes in his favor."

If the position taken in the Circuit Court be affirmed, it will be as applicable to litigated cases on promissory notes, and other written contracts. In all these cases the statements—the parol agreements—of the parties will be admissible to "*estop*" each other, and hence to contradict and vary the written contract. It has ever been held that the written contract shall be an estoppel of all contemporaneous agreements. The rule is one of the highest value. This new rule is the converse of it.

Messrs. McCrary, Miller, and McCrary, contra,

On the first part of the case cited *Wilkinson* v. *Connecticut Mutual Life Insurance Company.**

On the second they relied on the fifth edition of the American Leading Cases;† as containing the latest and most complete list and review of the cases; the whole concluding with a judgment adverse to the view taken in the cases of *Smith* v. *Empire Insurance Company*, and *Brown* v. *Cattaraugus Mutual Insurance Company*, cited and relied on by the other side.

* 30 Iowa, 119. † Vol. 2, p. 917; note to Carpenter *v.* Insurance Co.

Mr. Justice MILLER delivered the opinion of the court.

On the first branch of the case the court said to the jury that, if the effects of the fall were temporary, and had entirely passed away before the application was taken, and if it did not affect Mrs. Wilkinson's health or shorten her life, then the non-disclosure of the fall was no defence to the action. On the other hand, if the effects of the fall were not temporary, and remained when the application was taken, or if the fall affected the general health, or was so serious that it might affect the health or shorten life, then the non-disclosure would defeat recovery, although the failure to mention the fall was not intentional or fraudulent.

It is insisted by counsel for the defendant that if the injury was considered serious *at the time*, it is one which must be mentioned in reply to the interrogatory, and that whether any further inquiry is expedient on the subject of its permanent influence on the health, is for the insurer to determine before making insurance. But there are grave and obvious difficulties in this construction. The accidents resulting in personal injuries, which at the moment are considered by the parties serious, are so very numerous that it would be almost impossible for a person engaged in active life to recall them at the age of forty or fifty years; and if the failure to mention all such injuries must invalidate the policy, very few would be sustained where thorough inquiry is made into the history of the party whose life is the subject of insurance. There is, besides, the question of what is to be considered a serious injury at the time. If the party gets over the injury completely, without leaving any ill consequence, in a few days, it is clear that the serious aspect of the case was not a true one. Is it necessary to state the injury and explain the mistake to meet the requirements of the policy?

On the other hand, when the question arises, as in this case, on a trial, the jury, and not the insurer, must decide whether the injury was serious or not. In deciding this, are they to reject the evidence of the ultimate effect of the injury on the party's health, longevity, strength, and other

similar considerations? This would be to leave out of view the essential purpose of the inquiry, and the very matters which would throw most light on the nature of the injury, with reference to its influence on the insurable character of the life proposed.

Looking, then, to the purpose for which the information is sought by the question, and to the difficulty of answering whether an injury was serious, in any other manner than by reference to its permanent or temporary influence on the health, strength, and longevity of the party, we are of opinion that the court did not err in the criterion by which it directed the jury to decide the interrogatory propounded to them.*

Passing then to the second branch of the case. The defendant excepted to the introduction of the oral testimony regarding the action of the agent, and to the instructions of the court on that subject; and assigns the ruling of the court as error on the ground that it permitted the written contract to be contradicted and varied by parol testimony.

The great value of the rule of evidence here invoked cannot be easily overestimated. As a means of protecting those who are honest, accurate, and prudent in making their contracts, against fraud and false swearing, against carelessness and inaccuracy, by furnishing evidence of what was intended by the parties, which can always be produced without fear of change or liability to misconstruction, the rule merits the eulogies it has received. But experience has shown that in reference to these very matters the rule is not perfect. The written instrument does not always represent the intention of both parties, and sometimes it fails to do so as to either; and where this has been the result of accident, or mistake, or fraud, the principle has been long recognized that under proper circumstances, and in an appropriate proceeding, the instrument may be set aside or reformed, as best suits the purposes of justice. A rule of evidence adopted by the

* Wilkinson v. Connecticut Mutual Life Insurance Co., 30 Iowa, 119.

courts as a protection against fraud and false swearing, would, as was said in regard to the analogous rule known as the statute of frauds, become the instrument of the very fraud it was intended to prevent, if there did not exist some authority to correct the universality of its application. It is upon this principle that courts of equity proceed in giving the relief just indicated; and though the courts, in a common law action, may be more circumscribed in the freedom with which they inquire into the origin of written agreements, such an inquiry is not always forbidden by the mere fact that the party's name has been signed to the writing offered in evidence against him.

In the case before us a paper is offered in evidence against the plaintiff containing a representation concerning a matter material to the contract on which the suit is brought, and it is not denied that he signed the instrument, and that the representation is untrue. But the parol testimony makes it clear beyond a question, that this party did not intend to make that representation when he signed the paper, and did not know he was doing so, and, in fact, had refused to make any statement on that subject. If the writing containing this representation had been prepared and signed by the plaintiff in his application for a policy of insurance on the life of his wife, and if the representation complained of had been inserted by himself, or by some one who was his agent alone in the matter, and forwarded to the principal office of the defendant corporation, and acted upon as true, by the officers of the company, it is easy to see that justice would authorize them to hold him to the truth of the statement, and that as they had no part in the mistake which he made, or in the making of the instrument which did not truly represent what he intended, he should not, after the event, be permitted to show his own mistake or carelessness to the prejudice of the corporation.

If, however, we suppose the party making the insurance to have been an individual, and to have been present when the application was signed, and soliciting the assured to make the contract of insurance, and that the insurer himself

wrote out all these representations, and was told by the plaintiff and his wife that they knew nothing at all of this particular subject of inquiry, and that they refused to make any statement about it, and yet knowing all this, wrote the representation to suit himself, it is equally clear that for the insurer to insist that the policy is void because it contains this statement, would be an act of bad faith and of the grossest injustice and dishonesty. And the reason for this is that the representation was not the statement of the plaintiff, and that the defendant knew it was not when he made the contract; and that it was made by the defendant, who procured the plaintiff's signature thereto.

It is in precisely such cases as this that courts of law in modern times have introduced the doctrine of equitable estoppels, or, as it is sometimes called, estoppels *in pais*. The principle is that where one party has by his representations or his conduct induced the other party to a transaction to give him an advantage which it would be against equity and good conscience for him to assert, he would not in a court of justice be permitted to avail himself of that advantage. And although the cases to which this principle is to be applied are not as well defined as could be wished, the general doctrine is well understood and is applied by courts of law as well as equity where the technical advantage thus obtained is set up and relied on to defeat the ends of justice or establish a dishonest claim. It has been applied to the precise class of cases of the one before us in numerous well-considered judgments by the courts of this country.* Indeed, the doctrine is so well understood and so often enforced that, if in the transaction we are now considering, Ball, the insurance agent, who made out the application, had been in fact the underwriter of the policy, no one would doubt its applicability to the present case. Yet the proposition admits of as little doubt that if Ball was the agent of

* Plumb *v.* Cattaraugus Ins. Co., 18 New York, 392; Rowley *v.* Empire Ins. Co., 36 Id. 550; Woodbury Savings Bank *v.* Charter Oak Ins. Co., 31 Connecticut, 526 · Combs *v.* The Hannibal Savings and Ins. Co., 43 Missouri, 148.

the insurance company, and not of the plaintiff, in what he did in filling up the application, the company must be held to stand just as he would if he were the principal.

Although the very well-considered brief of counsel for plaintiff in error takes no issue on this point, it is obvious that the soundness of the court's instructions must be tested mainly by the answer to be given to the question, "Whose agent was Ball in filling up the application?"

This question has been decided differently by courts of the highest respectability in cases precisely analogous to the present. It is not to be denied that the application, logically considered, is the work of the assured, and if left to himself or to such assistance as he might select, the person so selected would be his agent, and he alone would be responsible. On the other hand, it is well known, so well that no court would be justified in shutting its eyes to it, that insurance companies organized under the laws of one State, and having in that State their principal business office, send these agents all over the land, with directions to solicit and procure applications for policies, furnishing them with printed arguments in favor of the value and necessity of life insurance, and of the special advantages of the corporation which the agent represents. They pay these agents large commissions on the premiums thus obtained, and the policies are delivered at their hands to the assured. The agents are stimulated by letters and instructions to activity in procuring contracts, and the party who is in this manner induced to take out a policy, rarely sees or knows anything about the company or its officers by whom it is issued, but looks to and relies upon the agent who has persuaded him to effect insurance as the full and complete representative of the company, in all that is said or done in making the contract. Has he not a right to so regard him? It is quite true that the reports of judicial decisions are filled with the efforts of these companies, by their counsel, to establish the doctrine that they can do all this and yet limit their responsibility for the acts of these agents to the simple receipt of the premium and delivery of the policy, the argu-

ment being that, as to all other acts of the agent, he is the agent of the assured. This proposition is not without support in some of the earlier decisions on the subject; and, at a time when insurance companies waited for parties to come to them to seek assurance, or to forward applications on their own motion, the doctrine had a reasonable foundation to rest upon. But to apply such a doctrine, in its full force to the system of selling policies through agents, which we have described, would be a snare and a delusion, leading, as it has done in numerous instances, to the grossest frauds, of which the insurance corporations receive the benefits, and the parties supposing themselves insured are the victims. The tendency of the modern decisions in this country is steadily in the opposite direction. The powers of the agent are, *primâ facie*, coextensive with the business intrusted to his care, and will not be narrowed by limitations not communicated to the person with whom he deals.* An insurance company, establishing a local agency, must be held responsible to the parties with whom they transact business for the acts and declarations of the agent, within the scope of his employment, as if they proceeded from the principal.†

In the fifth edition of American Leading Cases,‡ after a full consideration of the authorities, it is said:

"By the interested or officious zeal of the agents employed by the insurance companies in the wish to outbid each other and procure customers, they not unfrequently mislead the insured, by a false or erroneous statement, of what the application should contain, or, taking the preparation of it into their own hands, procure his signature by an assurance that it is properly drawn, and will meet the requirements of the policy. The better opinion seems to be that, when this course is pursued, the description of the risk should, though nominally pro-

* Bebee *v.* Hartford Ins. Co., 25 Connecticut, 51; The Lycoming Ins. Co. *v.* Schollenberger, 8 Wright, 259; Beal *v.* The Park Ins. Co , 16 Wisconsin, 241; Davenport *v.* Peoria Ins. Co., 17 Iowa, 276.

† Savings Bank *v.* Charter Oak Ins. Co., 31 Connecticut, 517; Horwitz *v.* Equitable Ins. Co., 40 Missouri, 557; Ayres *v.* Hartford Ins. Co., 17 Iowa, 176; The Howard Ins. Co. *v.* Bruner, 11 Harris, 50.

‡ Published A.D. 1872, vol. 2, p. 917.

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ceeding from the insured, be regarded as the act of the insurers."*

The modern decisions fully sustain this proposition, and they seem to us founded in reason and justice, and meet our entire approval. This principle does not admit oral testimony to vary or contradict that which is in writing, but it goes upon the idea that the writing offered in evidence was not the instrument of the party whose name is signed to it; that it was procured under such circumstances by the other side as estops that side from using it or relying on its contents; not that it may be contradicted by oral testimony, but that it may be shown by such testimony that it cannot be lawfully used against the party whose name is signed to it.

JUDGMENT AFFIRMED.

EX PARTE MCNIEL.

1. The statutes of the several States regulating the subject of pilotage are, in view of the numerous acts of Congress recognizing and adopting them, to be regarded as constitutionally made, until Congress by its own acts supersedes them. *Cooley* v. *The Board of Wardens of the City of Philadelphia* (12 Howard, 312), affirmed.
2. The sum of money given by statute as half-pilotage, to a pilot who first tenders his services to a vessel coming into port and is refused, is not a "penalty," but is a compensation under implied contract.
3. Although a State statute cannot confer jurisdiction on a Federal court, it may yet give a right, to which, other things allowing, such a court may give effect.

SUR petition for a writ of prohibition to the judge of the District Court of the United States for the Eastern District of New York.

Mr. Donohue, in support of the petition; Mr. F. A. Wilcox, contra.

Mr. Justice SWAYNE stated the case and delivered the opinion of the court.

Alexander Banter filed his libel in the District Court

* Rowley v. Empire Ins. Co., 36 New York, 550.