one which was known at the date of the original patent as *a proper substitute* for the ingredient left out, which latter qualification is entirely omitted in the instruction given to the jury. (2.) But the instruction is also erroneous because it would allow a patentee to secure in a reissued patent inventions for combinations fewer in number than the whole described in the original patent, though the original patent contained no description whatever of any such invention, in violation of the express provision of the Patent Act and of the decisions of this court.

JUDGMENT REVERSED with costs, and the cause remanded with directions to issue a

NEW VENIRE.

Mr. Justice STRONG concurred in the judgment, but not in all the positions taken in the preceding opinion.

Mr. Justice BRADLEY did not sit, and took no part in the judgment.

INSURANCE COMPANY *v.* NEWTON.

1. Every admission upon which a party relies, is to be taken as an entirety of the fact which makes for his side, with the qualifications which limit, modify, or destroy its effect. When, therefore, the agent and officers of an insurance company stated to the agent of a party claiming upon a policy of insurance that the preliminary proofs presented were sufficient as to the death of the insured, but that they showed that the insured had committed suicide, the whole admission must be taken together. If sufficient to establish the fact of the death of the insured, it was also sufficient to show the manner of his death.
2. The preliminary proofs presented to an insurance company, in compliance with the condition of its policy of insurance, are admissible as *primâ facie* evidence of the facts stated therein, against the insured and on behalf of the company.

ERROR to the Circuit Court for the Eastern District of Missouri.

Mrs. Newton, widow of J. H. Newton, brought suit in the court below, against the Mutual Life Insurance Com-

pany, of Newark, New Jersey, upon two policies of insurance on the life of her husband, issued by the company's agent at St. Louis.

The policies stipulated for the payment of the insurance-money within ninety days after due notice and proof of the death of the party insured, but they provided also that the policies should be void if the insured should die by his own hand.

In answer to the action, the company averred that the insured did thus die, and that the policies thereupon ceased to be binding.

The insured died at Los Angeles, in California, in June, 1870, and proofs of his death were delivered by the father of the plaintiff to the agent of the company in August following. These proofs consisted of several affidavits, giving the time, place, and circumstances of his death, and the record of the finding of the jury upon the coroner's inquest. The finding was that the deceased came to his death "by a pistol-shot fired by a pistol in his own hand through the heart."

On the trial, the father of the plaintiff testified that he was the agent, in the matter of these policies, of his daughter, and that, acting in that capacity, he had delivered the written proofs mentioned to the agent of the company at St. Louis, and had demanded payment of him, and afterwards also of the officers of the company at the home office in Newark; that at neither place was any objection made either by the agent or the officers of the company to the form or fulness of the proofs of the death of the insured; that the agent had said that they were sufficient as to form, but that at both places objection was made, at the same time, that the proofs disclosed a case of suicide, and on that account payment of the insurance was refused.

The plaintiff having closed her case, the company offered as evidence the preliminary proofs of the death of the party insured, and presented to the company by the father, as above said. The court excluded them, and the company excepted. In its charge, the court having referred to the affidavits presented by the plaintiff, said:

"It appears that the company, upon receiving the affidavits, claimed that they showed that Newton had taken his own life, and refused to pay; and the agent has so testified on the stand as a witness, and says the company never denied or doubted the fact of Newton's death, and that the affidavits showed it; but placed their refusal to pay upon the distinct and specific ground that he took his own life, and that this fact appeared (as the company claimed) from the proofs of loss furnished by the plaintiff.

"Under these circumstances, the court instructs you that the defence based upon want of notice and proof of death, is not sustained.

"On the merits the company sets up the defence that the deceased 'died by his own hand;' that is, that he purposely took his own life. This defence is met by a denial.

"This is an affirmative defence, and hence the burden of showing, by a fair preponderance of testimony, that Newton purposely took his own life, rests upon the defendant."

To this charge the defendant excepted, and verdict and judgment having been rendered for the plaintiff the company brought the case here, on exceptions to the evidence and to the charge.

Messrs. F. T. Frelinghuysen and E. L. Stanton, for the plaintiff in error, cited 1 Greenleaf on Evidence,* *Campbell* v. *Charter Oak Insurance Company*,† *Irving* v. *Excelsior Insurance Company*,‡ and other cases,§ to show that the whole of the admission must go to the jury, or none of it, and that the preliminary proofs of death were properly admitted, if not by way of estoppel at least as evidence to be considered by the jury.

Mr. T. Z. Blakeman, *contra*, and in support of the judgment, relied on *Cluff* v. *Mutual Benefit Life Insurance Company*‖ as in point.

* Sections 201, 202. † 10 Allen, 213. ‡ 1 Bosworth, 507.

§ Ætna Insurance Co. *v.* Stevens, 48 Illinois, 31; Hoffman *v.* Ætna Insurance Co., 1 Robertson, 501; affirmed, 32 New York, 405; New York Central Insurance Co. *v.* Watson, 23 Michigan, 486.

‖ 99 Massachusetts, 317

Opinion of the court.

Mr. Justice FIELD delivered the opinion of the court.

The court below allowed the statement of the company and its agent to the witness as to the sufficiency of the proofs of death of the insured to be received as conclusive of that fact, but by its charge to the jury in effect separated the admission of that fact from its accompanying language, that the proofs disclosed a case of suicide, and held that this latter statement was of an independent fact to be established by the company. In this particular we think the court erred. Every admission is to be taken as an entirety of the fact which makes for the one side, with the qualifications which limit, modify, or destroy its effect on the other side. This is a settled principle which has passed by its universality into an axiom of the law. Here the admission related to the two particulars which the proofs established, the death of the insured and the manner of his death, both of which facts appear by the same documents. They showed the death of the insured only as they showed that he had committed suicide, and all that the officers of the company evidently intended by their declaration was that they were satisfied with the proofs of the one fact because they established the other. The whole admission should, therefore, have been taken together. If it was sufficient to establish the death of the insured, it was also sufficient to show that the death was occasioned in such a manner as to relieve the company from responsibility.

But the court also erred in excluding from the jury the proofs presented of the death of the insured when offered by the company. When the plaintiff was permitted to show what the agent and officers of the company admitted the proofs established, it was competent for the company to produce the proofs thus referred to and use them as better evidence of what they did establish.

But independently of this position the proofs presented were admissible as representations on the part of the party for whose benefit the policies were taken, as to the death and the manner of the death of the insured. They were presented to the company in compliance with the condition

of the policy requiring notice and proof of the death of the insured as preliminary to the payment of the insurance-money. They were intended for the action of the company, and upon their truth the company had a right to rely. Unless corrected for mistake, the insured was bound by them. Good faith and fair dealing required that she should be held to representations deliberately made until it was shown that they were made under a misapprehension of the facts, or in ignorance of material matters subsequently ascertained.

There are many cases which hold that where a mistake has occurred in the preliminary proofs presented, and no corrected statement is furnished the insurers before trial, the insured will not be allowed on the trial to show that the facts were different from those stated. The case of *Campbell* v. *The Charter Oak Insurance Company*, decided by the Supreme Court of Massachusetts,* and the case of *Irving* v. *The Excelsior Insurance Company*, decided by the Superior Court of the City of New York,† are both to this effect. It is not necessary, however, to maintain any doctrine as strict as this in the present case; and possibly the rule there laid down is properly applicable only where the insurers have been prejudiced in their defence by relying upon the statements contained in the proofs. Be that as it may, all that we now hold is that the preliminary proofs are admissible as *primâ facie* evidence of the facts stated therein against the insured and on behalf of the company. No case has come under our observation, other than the present, where the preliminary proofs presented by the insured have been entirely excluded as evidence when offered by the insurers, the question being in all the cases whether these proofs estopped the insured from impeaching the correctness of their statements, or from qualifying them, or whether they were subject to be explained and varied or contradicted on the trial.

The case of *Cluff* v. *The Mutual Benefit Insurance Company*, in the Supreme Court of Massachusetts,‡ cited by the plaintiff, is far from sustaining his position. There the bene-

* 10 Allen, 213. † 1 Bosworth, 50. ‡ 99 Massachusetts, 317.

ficiary had submitted in connection with the preliminary proof certain slips cut from newspapers showing reports that the insured had died in known violation of law. On the trial upon the issue whether the plaintiff had, ninety days previous to the commencement of the suit, furnished the company sufficient proof of the death of the insured, the plaintiff put in evidence certain affidavits by which that proof had been made, but did not offer the slips; the latter were then offered by the company and were excluded, and the Supreme Court, in reviewing the case, held that the exclusion was not a valid ground of exception unless it plainly appeared that the insurers were prejudiced thereby, and that they were not so prejudiced because the fact of death was otherwise sufficiently shown. "When an apparent ground of defence," said the court, "is disclosed by a separate and unnecessary narration of circumstances, and the proofs required by the policy are complete without that narration and disclosure, it cannot be said that the party has failed to comply with the conditions imposed upon his right to litigate his claim; and the effect of such disclosure to defeat the action must depend upon the degree to which the plaintiff is bound by the statement. If not sworn to by the plaintiff, nor treated by him in such manner that he is concluded by his conduct, the whole question will be open to explanation and proof upon the main issue subject to the usual rules of evidence."

In the present case the proofs presented were sworn to; they consisted, as already stated, of affidavits and the record of the finding of a jury under oath. Here the narration of the manner of the death of the deceased was so interwoven with the statement of his death that the two things were inseparable. The fact that the proofs were presented by the father of the plaintiff and not by the plaintiff herself cannot change their character. They were the only proofs presented, and without them there was no attempted compliance with the condition of the policies. He was the agent of the plaintiff with respect to the policies, intrusted by her with the presentation of the preliminary proofs.

Presented in her name and by her agent in the matter, and constituting the essential preliminary to her action, they must stand as her acts, and the representations made therein must be taken as true until at least some mistake is shown to have occurred in them. As already said, no suggestion is made that these proofs do not truly state the manner of the death of the insured. It is sought, however, to avoid their effect in favor of the company by taking a part of the statement of its officers as to what the proofs showed, and rejecting the residue, and then excluding the proofs themselves. This position cannot be sustained without manifest injustice to the company.

The judgment must, therefore, be

REVERSED, AND A NEW TRIAL ORDERED.

CARY, COLLECTOR, *v.* THE SAVINGS UNION.

Where depositors in a savings bank do not receive a fixed rate of interest independently of what the bank itself may make or lose in lending their money, but receive a share of such profits as the bank, by lending their money, may, after deducting expenses, &c., find that it has made, such share of profits is a "dividend" within the meaning of the Internal Revenue Act of 1864, as amended by the act of 1866, and not "interest."

ERROR to the Circuit Court for the District of California; the case being thus:

An act of Congress passed in 1864, as amended in 1866,* enacted that there should be levied and collected a tax of five per centum on all dividends thereafter declared due, wherever and whenever the same should be payable to depositors as part of the earnings, income, or gains of any savings institution:

"*Provided*, That the annual or semi-annual *interest* allowed or

* 13 Stat. at Large, 283; 14 Id. 138.