**The risks of life assurance : suggested by a history of the case of Geach v. Ingall, in which the Imperial life Assurance Company, by the verdicts of three different special juries, was defeated in an attempt to evade payment of a policy.**

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# RISKS OF LIFE ASSURANCE,

SUGGESTED BY A

## HISTORY OF THE CASE OF GEACH v. INGALL,

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## Imperial Life Assurance Company,

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## To evade Payment of a Policy.

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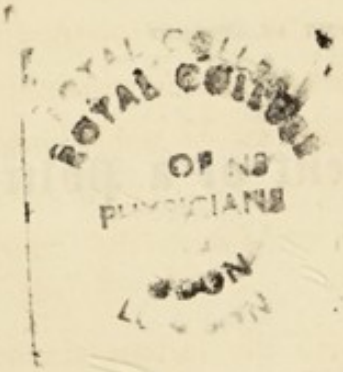


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# LIFE ASSURANCE.

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THE present defective state of the law with reference to Life Assurance is placed in so strong a light by the circumstances of the late case of GEACH *v.* INGALL, that it is hoped a narrative of them, may, by calling public attention to the subject, prepare the way for the consideration of some remedy and for the prevention of the recurrence of such cases.

When the unequal position of the contracting parties is considered, a powerful company on the one hand, and an individual generally of moderate means on the other, it is clear that cases of hardship and injustice may occur, without exciting that notice which would ultimately lead to the prevention of them, but it is only on the occurrence of cases of the gross and flagrant character of the present that the interests of public justice force the consideration of the subject on public attention, and call for those alterations in the law which can alone settle the matter on a secure and permanent basis.

The general conclusions to which the various circumstances of the case in question give rise, and which are stated in the course of the narrative, are collected towards the end for purposes of reference, and it is to these conclusions that attention is more particularly called, as they shew how little security is afforded by the present state of the law to the widow, orphans, and representatives of those who may have insured their lives as a provision for their families, and that a

system, which, when carried out with honesty and good faith, and under proper regulation, should be a blessing to society and one of the greatest advantages, as it is one of the highest refinements of civilization, bids fair to become "a mockery, a delusion, and a snare."

The following are the facts of the late case of "GEACH *v.* INGALL":—

In the year 1832 Mr. JOHN SCOTT, formerly a tradesman at Tunstall, in Staffordshire, came to reside in Birmingham, and in a year or two afterwards commenced business for himself as a factor and lock manufacturer. In the year 1837 he added to his trade that of a railway carriage lamp manufacturer, and for several years carried on an extensive business with most of the railway companies in England and abroad.

It being essential for the purposes of this business that Mr. Scott should travel a great deal by railway (then a new mode of conveyance) he was advised by several of his friends to insure his life as a provision for his wife and children in case any accident should befal him, and generally as a prudent course for a man in his circumstances and condition in life. Amongst others of his friends by whom he was advised to insure his life, was Mr. Charles Geach, his banker, and Mr. Henry Edmunds, the agent for the Imperial Life Office (both of these gentlemen being connected with him in business as the manager and sub-manager of the Birmingham and Midland Banking Company, where Mr. Scott kept his banking account), and also by Mr. Barnett, the agent in Birmingham for life department of the Norwich Union Office, to whom he was also well known. In consequence of this advice he obtained from Mr. Barnett and filled up, about the month of April, 1840, the usual printed form of proposal to the Norwich Union Life Office, for a policy on his own life for £2000.

At the request of Mr. Barnett, Mr. Scott was examined by his own medical man, Mr. Thomas Williams, a surgeon in

extensive practice in Birmingham, who had known him intimately for years, by whom the usual printed certificate of sound health was filled up and sent to Mr. Barnett, the agent for the Norwich Office. Also at the request of Mr. Barnett, Mr. Scott presented himself to Dr. Ingleby, a physician of great reputation, then the medical examiner for the Norwich Office, and for a great many other offices, and esteemed an examiner of great care and strictness. Dr. Ingleby made a strict examination in the presence of Mr. Barnett, and reported to the Norwich Office that Mr. Scott's was a perfectly sound and insurable life.

It having come to the knowledge of Mr. Henry Edmunds, the agent for the Imperial Office, before the papers were all completed, that Mr. Scott had proposed to insure with the Norwich office, he persuaded Mr. Scott to withdraw his proposal: stating that at the time Mr. Geach and himself had advised him to insure his life, it was taken for granted that Mr. Scott knew that Mr. Edmunds was himself an agent for an office, and that the insurance was solicited for the Imperial Life Insurance Company.

Mr. Scott applied to Mr. Barnett to release him from the negociation with the Norwich Office, but this Mr. Barnett declined to do, unless he paid the expenses and something by way of compensation to him, for the loss of his commission on the premiums; this was ultimately arranged at about £6, and paid by Mr. Scott. Mr. Barnett long afterwards complained of the conduct of Mr. Edmunds in depriving the Norwich Office of the benefit of the insurance.

Mr. Scott obtained from Mr. Edmunds, the agent, the printed forms used by the Imperial Office on a proposal for insurance, and again presented himself for examination to his own surgeon, Mr. Williams. The usual certificates of sound health were filled up by Mr. Williams as private medical referee, and by a friend as private referee, and returned to Mr. Edmunds. At the request of Mr. Edmunds, Mr. Scott presented himself for examination to Mr. Joseph Wickenden

an eminent surgeon in Birmingham, the medical examiner for the Imperial Life Office. Mr. Wickenden made a long and strict examination, and reported to the office that Mr. Scott's was a perfectly sound and insurable life.

The proposal and other necessary certificates and papers having been completed, were sent to the office of the Imperial Office in London, by Mr. Edmunds, on the 4th of May, 1840, and on the 13th, a policy was issued by the Imperial Life Office, on the life of Mr. Scott, for £2000, at the annual premium of £53. 8s. 4d.

It will be seen by these circumstances, that much more than the usual means and opportunities were afforded for the detection of any fraud, or concealment, or unsoundness, in the life, and that no amount of candour on the part of the assured, or investigation or precaution on the part of the Office, before granting a policy, will preclude it from disputing the payment after death.

In January, 1841, Mr. Scott assigned his policy of insurance to Messrs. Simcox, solicitors, of Birmingham, by way of mortgage, to secure a loan ; and in February, 1842, charged it, also with the payment of any balance which might be due, to the Town and District Banking Company in Birmingham, to which bank he had removed his account ; of both these transactions the Imperial Office had notice.

From the date of the policy until the early part of the year 1841, but more especially during the year 1842, Mr. Scott continued to pursue his business of a railway carriage lamp manufacturer with great activity and perseverance, and with an amount of personal labour, described by his family, his clerks, and workmen, to be untiring and incessant ; but in consequence of want of sufficient capital and other causes, his exertions and sacrifices did not render him successful. In the month of April, 1842, he became a bankrupt.

The premiums payable on the policy in 1840 and 1841 were paid by Mr. Scott. Another premium came due in May, 1842. Both the mortgagees of the policy and the assignees of Mr.

Scott's estate, believed Mr. Scott's to be so good a life at this time that they declined to pay the premium to keep the policy on foot until they had first ascertained whether the Imperial Office itself considered it worth any thing ; the price communicated by the office to Mr. Edmunds, the agent, being more than the amount of the premium then due, it was arranged between the assignees of Mr. Scott's estate and the mortgagees of the policy, that it should be put up for sale by public auction, and the premium and expenses be repaid out of the purchase money.

The sale was advertised for three successive weeks, in all the Birmingham newspapers, to take place at the Acorn Tavern, in Birmingham, on the 17th of October, 1842. About twenty people attended at the place of sale, amongst whom was the agent for the Imperial Office, who stated publicly, in answer to an inquiry by the auctioneer, that the office was willing to purchase the policy; many persons bid, amongst whom was a gentleman, who, it afterwards appeared, was bidding for Mr. Scott himself. The agent for the office bid first for the policy, and continued to bid until the biddings reached £100, as it was then supposed on behalf of the office; but the biddings having exceeded the price at which the agent for the office and Mr. Scott's agent were commissioned to purchase, or were willing to give on their own account, it was knocked down to Mr. Samuel Beale, a merchant, in Birmingham, for £135, and the policy was afterwards assigned to him by all parties interested.

The premium becoming due on the policy in May, 1843, was paid by Mr. Beale, and about the same time the option of a bonus, or a reduction in the annual premium, was offered to him by the office, and, at the request of the office, the policy itself was sent to London to have the necessary alterations made in the figures.

On the 11th December, 1843, Mr. Scott died.

From these facts it will be seen that the Imperial Life Office received premiums and declared bonuses in respect of this

policy—were willing to purchase it—permitted it to be transferred to a purchaser, whom they afterwards acknowledged—and in every respect treated it as a valid policy for three years and three quarters.

In January, 1844, the certificate of the birth and death of the assured, and all other necessary documents, were forwarded to the office, and the payment of the amount assured claimed by Mr. Beale. At the expiration of about three months, the claimant was informed by Mr. Edmunds, the agent, that the office had unfavourable impressions, and that he expected they would decline to pay the money.

An interview afterwards took place between the claimant's brother, Mr. W. J. Beale, and Mr. Samuel Ingall, the actuary of the Imperial Life Office, at which Mr. Ingall stated that the directors did not absolutely refuse to pay the money, but that they had "unfavourable impressions," which they were willing to afford the claimant an opportunity to remove; upon being pressed, however, Mr. Ingall declined to state what grounds the directors had for the "unfavourable impressions" referred to, but hinted that they were willing to compromise. The following correspondence then took place:—

[COPY.]

Birmingham, March 29, 1844.

Sir,

On my return from London, where I have been engaged for some time on Parliamentary business, I have learnt, with great surprise, that the Directors of the Imperial Life Assurance Company object to pay the amount assured upon the life of the late John Scott, under a policy effected by him in May, 1840, and purchased by me, from his assignees, in 1842. I am satisfied that it can only be from a misrepresentation of the facts of the case, that the directors can have raised this objection. Since my return, I have seen Mr. Edmunds, your agent here, and my brother, Mr. W. J. Beale, and although they have fully detailed to me the communications made by you to them, at an interview about a fortnight since, I am unable to understand, definitely, the grounds upon which the objection of the directors rest; except, indeed, that an assurance was granted by another office, to a person of whom I know nothing, and of which I never heard till after the death of Scott, seven or eight months after I had purchased the policy in question, and that the directors of that company think they can successfully resist the payment.

Surely the directors cannot be aware that Mr. Scott was examined by Dr. Ingleby, on the part of the Norwich Office, and by Mr. Wickenden, their own medical man, before this policy was granted, and was reported perfectly healthy; and that Mr. Wickenden has stated, recently, that he has a distinct recollection of the case, and that he has examined the lungs of the deceased, and that they were not more diseased than they would become in a few months, and could not alone have been the cause of death. If the directors are not inclined to be satisfied with the statements of their own respectable agent, I can, I am sure, convince them by other testimony, and I shall feel myself unfairly dealt with if they force me into litigation. But I must distinctly state, that I can consent to no compromise; and must, therefore, beg that you will inform me, at your earliest convenience, whether the directors will be willing to give me an opportunity to remove the unfavourable and erroneous impressions which they appear to have formed, or that they require me to prove my claim in a court of law.

I am, Sir,

Yours obediently,

SAMUEL BEALE.

Addressed, S. INGALL, Esq., Actuary,
Imperial Life Office,
Cornhill, London.

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[COPY.]

Imperial Life Office, Sun Court, Cornhill,
London, April 10, 1844.

Sir,

I have to acknowledge receipt of your letter of yesterday's date, as well as the one you refer to from Mr. Samuel Beale, dated 29th ultimo, and in reply to that I beg to state, that the directors of this company are willing to give him an opportunity to remove the unfavourable impressions they have formed, relative to the insurance effected on the life of the late Mr. John Scott, and are ready to receive any communication on the subject.

I am, Sir,

Your most obedient servant,

SAMUEL INGALL, Actuary.

W. JOHN BEALE, Esq.
Waterloo Street, Birmingham.

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[COPY.]

Birmingham, 11th April, 1844.

Sir,

I am in receipt of your letter of the 10th instant; and as my brother will be from home for some time, and as I find by its tenor that the settlement of this matter will have to be left in my hands, I at once reply to it. It would be absurd for Mr. Beale to attempt to remove the unfavourable impressions stated to be entertained by the directors, without their grounds being specifically given; and he certainly has a right to expect that you will candidly tell him the grounds on which they resist his demand.

I shall lay the correspondence before the assignees of Scott, and obtain their instructions to act; for however reluctant Mr. Beale may be to enter into

litigation, I cannot help looking upon your letter, after being so long delayed, as evidence of such a proceeding being necessary.

I am, Sir,

Yours obediently,

W. J. BEALE.

SAMUEL INGALL, Esq., Actuary,
Imperial Life Office,
Cornhill, London.

The office not deigning a reply to the last letter, Mr. Beale wrote on the 21st of May, requesting an answer, and received the following reply.

[COPY.]

Imperial Life Office, Sun Court, Cornhill,
London, May 23, 1844.

Sir,

I beg to acknowledge receipt of your letter of the 21st instant, relative to the insurance effected here on the life of the late Mr. John Scott, which has this day been laid before the court of directors of this company, who, after a deliberate consideration of the case, have determined to leave the matter in the hands of their solicitors, Messrs. Le Blanc and Cook, to whom I must beg to refer you, in case you wish to make any communication on the subject.

I am, Sir,

Your most obedient servant,

SAMUEL INGALL, Actuary.

SAMUEL BEALE, Esq.
Birmingham.

It will thus be seen, by the conduct of the Imperial Office in this case, that an office has the power to drive claimants into an unequal litigation, or force them into a disadvantageous compromise by refusing to inform the claimants under the policy, their reasons for objecting to pay the money without litigation.

In the month of May, 1844, Mr. Samuel Beale, the claimant, commenced an action against the Imperial Office, using the names of Mr. Charles Geach, Mr. Charles Ratcliffe, and Mr. Thomas Bittlestone, the trade assignees and official assignee of the estate and effects of Mr. Scott, as plaintiffs, by virtue of the usual power of attorney inserted in the assignment of the policy to him ; the nominal plaintiffs being the assignees of the

estate of Mr. Scott, and the nominal defendant being Mr. Samuel Ingall, the actuary of the office; the real parties interested being Mr. Samuel Beale, the purchaser of the policy, and the Imperial Life Insurance Company.

The grounds upon which the office disputed the policy were first disclosed to the claimant by the pleas filed in answer to his claim in the action. In substance they stated, that before May, 1840, Mr. John Scott had been afflicted with symptoms of consumption, of which he subsequently died; besides this, the pleas accused Mr. Scott of having committed all kinds of fraud in obtaining the policy, that he was in bad health at the time he proposed to insure, that he had a liver complaint, that he did not refer the office to his usual medical man, and made other charges.

Thus it will be seen that the defence of the Imperial Office in this action, was a charge of fraud against Mr. Scott, made for the first time, after his death, when he was unable to vindicate his character and lend his aid, when it became necessary, to compel the office to perform its part of the bargain.

The cause came on for trial at Warwick, before Lord Denman and a special jury of the county, at the Summer Assizes in 1844. It was distinctly proved by parties not interested in the policy, that Mr. Scott was a man of very active habits, that he was habitually regardless of exposure by night, and that his entire occupation was such as to be utterly inconsistent with a consciousness that he had within him the seeds of consumption, or that he was not a man of strong constitution. The only important witness called by the office in answer to this, was an apothecary from Stockport, in Cheshire, who stated that Mr. Scott, whilst on a journey of business in May, 1836, had spit about a teaspoonful of blood in his presence; but even he admitted that at the very time he had an ulcerated throat, which might have caused the bleeding; he also stated

that he did not consider it dangerous, that he did not caution him, and that he permitted Mr. Scott to go on his journey on the following day. This one act of spitting of blood, spoken to but by one witness, not corroborated by the other witnesses in the room with Mr. Scott at the time, who were also examined, happening so early as May, 1836, was attempted by the office to be connected with the death of Mr. Scott (mark the dates) happening in December, 1843. All the other accusations against the good faith of Mr. Scott, were abandoned on the trial; the question ultimately for the jury, was one involving the credibility of the witnesses, they considered that Mr. Scott had not had consumptive symptoms before May, 1840, and returned a verdict for the claimant, a verdict with which Lord Denman afterwards expressed his concurrence to one of the special jurors.

In the following term the Imperial Office moved the Court of Exchequer, in which court the action was brought, for a rule to shew cause why the verdict obtained at Warwick should not be set aside, and a new trial granted upon the ground that Lord Denman had misdirected the jury, by telling them that the claimant had a right to begin first on the trial instead of the office, and that the question for them to consider was, whether the assured had had such a spitting of blood, as, at the time of the policy, tended to shorten life, instead of whether he had had a spitting of blood at any time before the date of the policy.

These questions were argued in May, 1845; and the Court of Exchequer decided that Lord Denman was right in permitting the claimant to begin first on the trial at Warwick, but that he had misdirected the jury by telling them that the question for them, was, whether the assured had had such a spitting of blood before May, 1840, as tended to shorten life, instead of whether the assured had had a spitting of blood before that time "properly so called, being a disease of that name."

The verdict of the jury was as much an answer to the one question as the other, but nevertheless the office obtained a rule for a second trial, thus turning the verdict obtained by the claimant at Warwick in his favour into a positive punishment, inasmuch as it is a rule, that when a mistake has been made by a judge on a trial, the verdict is good for nothing, and that each party must pay his own expenses.

After the evidence given on the first trial and this decision of the court, the office thought it wise to strike out several of their pleas, amongst which was the plea, that Mr. Scott was not in good health at the time of the policy, thus admitting upon the record—said to be the most solemn and formal way of admitting any thing—that Mr. Scott *was* in good health at the time the policy was granted; thus shewing, that while there is no limit to the queries, whether particular or general, which an office may require to be answered by a person proposing to insure, the admission by the office of the fact that the life was at the time in good health, will not, as in the case of the Imperial, prevent an office from taking advantage of any one questionable answer given by the assured under a misapprehension of the meaning of any one of the queries, and that, too, at a time when his explanation cannot be obtained.

It was then supposed, that the fact of whether Mr. Scott was or was not in good health at the time of the policy was all the claimant had to prove, and for which alone he had taken witnesses to Warwick on the trial. It was therefore objected that this plea should not be struck out, without payment by the office of the expenses of the claimants' witnesses, and it was believed that the order giving permission to strike out this plea was conditional upon payment of these expenses, but the agent for the office took an objection to the wording of the order of the judge, and they were not allowed.

This cause was tried at Warwick, a second time, before Sir

Nicholas Tindal, the late Chief Justice of the Common Pleas and a special jury of the county, at the Spring Assizes in 1846; the same witnesses were called on both sides, with the exception of Dr. Ingleby, of whose valuable presence as a witness the claimant was deprived by his then recent death, and after a trial of nearly twelve hours, the jury again discredited the witnesses called by the office, and returned a verdict in favour of the claimant.

It is believed that some persons connected with the office became privately aware that the late Chief Justice Tindal, for some reason or other was dissatisfied with the verdict, and being also aware that according to the present practice of the Court this fact alone would entitle them to a new trial, upon payment of some portion of the expenses attending the last, it was thought worth while to apply to the Court for a rule for a third trial, on this ground, at all events, but as the payment of any costs whatever would be escaped if a weak place could be discovered in the summing up of the learned judge, counsel were also instructed to take all possible objections to the statements made by the learned judge with reference to the law, in the hope of fixing him with a misdirection, and obtaining a rule absolute for a third trial without payment of any costs whatever.

The office moved for and obtained a rule in Easter Term, 1846, to shew cause why the second verdict should not be set aside and a third trial granted, upon the grounds,

1st. That the office having struck out some of their pleas, they were entitled to have begun first on the second trial, and that the judge was wrong in letting the claimant begin.

2nd. That the judge was wrong in telling the jury that the question for them was, whether the assured had had a spitting of blood from the lungs before May, 1840, instead of whether he had had a spitting of blood from disease.

3rd. That the judge was wrong in telling the jury that it was the duty of the office to make out to their satisfaction that the assured had had the particular complaints relied on as invalidating the policy, instead of telling them that the onus of proving that he had *not* had any of these complaints, lay on the claimant; and, lastly, the learned counsel for the office said, "He moved, upon the ground that the last verdict was against evidence, but as to that he should say nothing, as of course their lordships would ask the opinion of the learned judge who tried the cause."

When the notes of the late Chief Justice Tindal were read by the Court, previous to the argument, it was found that the Chief Justice had not, as is usual in all cases, appended a report as to his opinion of the propriety of the verdict, and it was not until after one of the Barons of the Exchequer had conferred with him in his private room, and after he had again referred to his notes, that the Chief Justice expressed his dissatisfaction with the verdict; upon this being reported to the Court, it was immediately ruled, without hearing the claimant's counsel, that the office should have a third trial on payment of the taxed costs of the second. With this, however, the counsel for the office was not instructed to be content, and urged the three grounds of misdirection, stated above, with a view to escape the payment of these costs. The Court after hearing the arguments decided that the judge was right in permitting the claimant to begin first on the second trial, that the judge was right in all he had said to the jury as to the question they had to determine, but that he was wrong in telling the jury that it was for the office to make out to their satisfaction, that the assured had had consumptive symptoms before May, 1840, and that he should have told them, that it was for the claimant to make out that he had not!

Upon this ground the claimant's second verdict was set aside,

and a third trial granted, without payment of any costs whatever.

By the last decision, the purchaser of this policy was placed in a worse position than if he had had a verdict against him on the first trial, the two verdicts in his favour, by reason of the misdirection of the learned judges who tried the cause having resulted only in the irrecoverable expenditure of many hundreds of pounds; his position was also altered for the worse by the retirement from the Midland Circuit of M. D. Hill, Esq, Q.C. who had led in the cause on both trials, and also by the decision of the Court, by which it would appear that the claimant on another trial would, in effect, be required to prove a negative. In spite of these disadvantages, the claimant determined, as far as possible, to resist this injustice and oppression. The cause was tried a third time, at Warwick, at the Summer Assizes in 1846, at an enormous expense, before Mr. Justice Patteson and a special jury of the county. Mr. M. D. Hill, Q.C., was brought to Warwick on a special retainer of three hundred guineas. Professor Partridge and other eminent medical men, with above thirty other witnesses were subpœned, and the result was the same as in the two former trials. The following is the report of *The Times* newspaper, of the 10th May, 1846.

[*Extracted from* THE TIMES *newspaper, August* 10, 1846.]

MIDLAND CIRCUIT.

WARWICK, SATURDAY, AUGUST 8.

CIVIL SIDE.—Before Mr. Justice PATTESON and a Special Jury.

GEACH AND OTHERS, ASSIGNEES OF JOHN SCOTT, A BANKRUPT, DECEASED, V. INGALL, ACTUARY OF THE IMPERIAL INSURANCE OFFICE.

This extraordinary cause, which lasted from nine o'clock till seven yesterday, from nine o'clock till past two to-day, was an action upon promises brought in the name of the assignees of a bankrupt of the name of John Scott, deceased, by the purchaser at auction (a Mr. Beale, as we caught the name), of a policy of insurance upon the life of the said John Scott, upon the 13th of May, 1840, effected in the Imperial Insurance Office for the sum of £2,000, against the defendant, as the actuary or public officer of the said Imperial Insurance Company; and was a third trial, a new trial having been twice granted, after

verdict against the office on each occasion, for misdirection of the learned judges —on the first occasion the Lord Chief Justice of England (Denman), and on the second the late Lord Chief Justice of the Common Pleas. The real issue was, as to what was "spitting of blood."

Mr. M. D. Hill, Q.C., Mr. Whitehurst, Q.C., and Mr. Mellor, conducted the case of the plaintiffs. Mr. Humphrey, Q.C., and Mr. Waddington were the counsel on behalf of the office.

The case having on the two former occasions appeared in the columns of THE TIMES, we must now, in the present crowded state of the columns of the paper, restrict our report to little more than an outline, though it is one of very considerable importance. On both the former trials, as above stated, the company were defeated in their resistance, as it will be seen below they were also on the present.

The policy was effected on the 13th of May, 1840, the examination questions put by the office, of which one was as to the having or ever having had "spitting of blood," having been answered satisfactorily to the office in favour of the life, both by the assured and by his medical attendant, and the assured having been examined by Mr. Wickenden, the medical gentleman employed on the part of the office, as also by the medical examiner on the part of another office, by both of whom the life was approved of, and the recommendation in favour of it made to their respective employers. The assured became a bankrupt; Messrs. Geach and others were appointed assignees under the fiat, and put up the policy for sale by public auction, when the gentleman who now sued in the name of the assignees became the purchaser for the sum of £135. The questions put to the assured and his medical attendant, were, as will be seen, very strict indeed, and, as usual, the truth of the answers thereto was declared to be the basis of the contract, and this declaration the assured had signed. The death occurred in the month of December, 1843, of consumption, beyond all question. The deceased was evidently a member of a very consumptive family. On the part of the plaintiffs were called a vast number of witnesses, certainly more than a score, whose evidence went most strongly to negative the fact of the deceased having been the victim of consumption in May, 1840, and also the fact of his having, or ever had, spitting of blood. The witnesses for the office, with the exception of medical gentlemen, a Mr. George Richmond Collis, and Mr. Wickenden, the examiner for the office, were all (or very nearly, if not quite so), near relatives of the deceased, whose interest under the policy was of course practically lost by the assignment for the benefit of creditors under the fiat of bankruptcy; and it was advanced for the plaintiffs, that they had either an interest in giving testimony in favour of the office, or an ill feeling towards the other parties.

Mr. Justice PATTESON commenced his summing up by observing upon the great misgivings and apprehensions that he felt in directing the jury, after two such eminent judges as Lord Denman and the late Lord Chief Justice Tindal had been held to have misdirected.

The jury, without leaving the box, in a very few minutes returned a verdict for the plaintiffs, for the amount of the policy, £2,000.

The plaintiffs (in form—the purchaser of the policy, in substance and effect) have thus had three successive verdicts for them, a thing unprecedented, at all events for a very long space of time, if not altogether so. The costs, the whole

of which, between party and party, fall upon the office, will probably far exceed the £2,000, the amount of the policy itself.

## The extraordinary nature of this litigation attracted the notice of the public press.

[*Extracted from* THE TIMES *of August* 11, 1846.]

Our paper of yesterday contains the report of a trial of very considerable importance to the public, which, after having lasted an entire day and a half, was brought to a conclusion at Warwick on Saturday. The subject of dispute was a claim made on the Imperial Insurance Office, and resisted by that company. A policy had been effected some years ago on the life of a person who had since died, and his representatives or assignees, on demanding the money now due, were met by an allegation that the office had become absolved from all liability by some error in the original contract. This is not an isolated case, for the public will doubtless remember that a similar defence was set up some time ago by the Argus Office, to a claim of a similar character. The Imperial seems, however, to have displayed an almost invincible energy in saving its funds as far as possible from the grasp of claimants. Already had two actions been brought, and two verdicts returned, against the office, on this single policy for £2000, when the managers of the company try their luck a third time, and are again told by a jury that they are liable to pay the money. It is seldom that an individual shows so much obstinacy in resisting a pecuniary demand as to go into court a third time, after having been defeated twice; but the Imperial Insurance Company will not give in so long as there is any quibble to be disposed of which may offer a chance of victory. In the case which has suggested these observations, the facts had already been decided against the office by two juries, though, on the point of an alleged misdirection by the judge in both instances, a new trial had been granted. Mr. Justice Patteson might well express his misgivings and apprehensions in summing up, after the captiousness exhibited in excepting to the directions of two such eminent judges as Lord Denman, and the late Lord Chief Justice Tindal. A company eagerly on the look-out for any flaw in the legality of the proceedings, to be made available, if possible, against the mere truth and justice of the case, would naturally watch most eagerly for any thing like a weak point in the direction of the judge presiding at the third trial. It might have been imagined that a fair and liberal interpretation of a contract would have been all that a public company would desire; but here we have an instance of a determination to reject the opinion of juries upon the facts, so long as there is a legal loophole for creeping out of a morally binding engagement.

This system of repudiation may answer once now and then, but it cannot be productive of benefit to the companies adopting it, when it is known that they calculate, among their other risks, the risk of avoiding, by the chances of law, the payment of the money due on the policies that may have been granted. It is as well for the public to understand that there are insurance offices whose tables of advantages to the assured ought to be qualified by an *addendum* to the effect that the sums promised will be only payable after one, two, or three actions—as the case may be—shall have been brought for their recovery. The

term "assurance" must be considered a misnomer, as applied to those companies in which the practice we have alluded to is prevalent. A person is said to be "assured," or "insured," because it is made quite certain, that if so much is paid by way of premium, so much money will at his death be surely available for his representatives. What "assurance" can there be for an individual who takes out a policy in an office which, after receiving the annual premium during his life, refuses to pay the sum agreed upon when it becomes the turn of the company to perform its part of the contract? We do not hear of cases in which insurance offices decline accepting any further payment from persons suspected of having given false information as to their state of health, though it is obvious that such falsehood could be investigated much more readily, and might much more easily be ascertained, in the lifetime than after the death of the party charged with misstatement. We do not for a moment mean to urge that public companies should yield, any more than private individuals, to unjust demands; though it would be liberal as well as politic on the part of rich and powerful associations not to examine too rigidly the technical accuracy of a claim, so long as the intentions of the opposite party have been fair, and no fraud has been attempted. Even if, through error, an individual may have suppressed some fact, of the existence of which he might not have been aware at the time of making the declaration preliminary to insuring his life, such a mistake ought not, in our opinion, to be taken advantage of to vitiate his policy without any consideration being made for the premiums he may have been paying. When we think of the insidious nature of some diseases, which may exist unknown to medical advisers, and to the patient himself, we may well caution the public against effecting policies in offices which take every possible advantage of the error or ignorance of the assured, when it is the turn of the company to pay instead of receiving. The decision come to three times, in the case of the Imperial, will, we hope, operate as a warning to those offices that are disposed to litigate unfairly and too pertinaciously the claims to which they are liable. The costs will, in this instance, most probably amount to much more than the sum in dispute. We may also fairly calculate, as part of the loss, the impression that must be created in the mind of the public, by the fact, that, after two adverse verdicts, the Imperial made a third unsuccessful effort to resist payment of what a third jury has decided to be a just demand.

Of a long article which appeared in the *Medical Times* of the 15th of August, 1846, that part which bears on the medical view of the question only is extracted.

We quote this case (GEACH v. INGALL) because of its medico-legal interest, and of the uses it may possibly serve as a precedent in future similar litigations.

Without for a moment wishing to reflect upon the Imperial Office, we cannot help thinking that in the present case, they were guilty, to say the least of it, of indiscretion. The insured had been passed by the medical referee of the Norwich Union, before applying for admission into the Imperial, the medical officer of which, again, gave him an unqualified certificate of soundness. In a few years afterwards, the man dies, after a not protracted illness, and an idle rumour arising in a family broil, about the deceased having spat blood, this is forthwith

seized upon as a plea for the non-payment of the policy. And not satisfied with one verdict, it is brought before a jury three several times, at a cost which we apprehend will leave little of the £2000 as a memento of victory.

As we have said, the whole question, or rather quibble, turned upon the spitting of blood, and the probability of its connexion with diseased lungs. There was no direct evidence whatever that the medical examiners could detect, or the man's friends and fellow workmen had ever observed, of his tendency to pulmonary consumption. All that could be said of one party, not very distinguished for general good character or veracity, was, that the man had been known to spit blood—not frequently, and never in profusion, but now and then, mixed with mucus, when he was suffering from ulcerated sore throat. Another party, that had for years been in almost daily communication with the man, swore that they had never observed any such thing. Certainly with conflicting evidence like this, backed by the certificates of two competent medical men, it seems any thing but an act of wisdom to send the case three times before a jury. But granting that the man had been seen to spit blood, this is no proof that his lungs were diseased. We apprehend that very few people pass through life without spitting blood some time or other. Very many people, in certain states of dyspepsia, or disordered general health, are as subject to bleeding from the gums, the mucous membrane of the mouth, the fauces, or the tonsils, as others, suffering from determination of blood to the head, are liable to bleeding from the nose. And if an ignorant bystander seeing a man spit blood, under the circumstances above mentioned, or after having picked his teeth, or chafed his gums, is to report the poor fellow the victim of hœmoptysis, and on this solitary ground an exception is to be taken to his health, and to the validity of his assurance, we expect very few to be safe. Any man, at this rate, might be made the subject of disqualification. In strictest language, the ejection of blood from the mouth, is *spitting* of blood, no matter what the source of it; but this is not the conventional signification of the phrase, nor that to which it is strictly limited as the question of an insurance office. The expression bears relation to the origin of the effusion, not to its exit from the mouth. Spitting of blood, whether the term be popular or professional, is always understood to signify *hœmoptysis*, the expectoration of blood. This is precisely the sense in which it is applied in insurance questioning, for it is generally followed by—"Or other disease of the lungs." Hœmoptysis is always regarded as very probable evidence of pulmonary disease, if it be not a vicarious function; and the inquiry concerning it, like other inquiries respecting coughs, expectoration, pains in the chest, &c. is not put on account of itself (the hœmoptysis), but on account of the ailment of which it is likely to be a symptom. But to say that the mere fact of a man having spat blood is proof of his physical unsoundness, it being unknown from what quarter the blood proceeded, or what was the cause of its discharge, is about as rational as to charge a man with chest affection, because he was known to have a violent cough, consequent upon having half choked himself with some beverage or other swallowed too hastily.

Yet an injustice of this sort has been perpetrated, and, we fear, too often. Ourselves once knew a man refused admittance into an insurance office, despite the testimony of his own surgeon, and of the physician to the institution, in his favour, merely because one of the clerks of the company deposed to having more than once seen the poor fellow spit blood. The fact was, they were in the habit

of smoking a pipe together, occasionally, at the same tavern, and it was the custom of the individual in question to pick his teeth after having finished his tobacco, and that little dental operation was generally followed by loss of blood from the gums. The case of the sufferer was hard enough; for not only was he refused admission into the office in question, but the other offices in the town, hearing of his rejection by the one aforesaid, refused him also, and he was therefore left utterly without the means of making the provision he desired for his wife and children. He was, in truth, a living illustration of the old proverb which speaks of giving "a dog a bad name." But bad as his case was, it would have been much worse had this idle story got afloat some time after his admission into an insurance office, and the company warned him to retire on pain of expulsion for having intentionally attempted to defraud them; or if, having been duly and honourably admitted, he had paid through a long course of instalment, and at last died, in obedience to the common law from which none are exempt, and the company having found out from some idle tale-teller the unworthy quibble in question, the widow and orphan children of this poor fellow had been deprived of their rights, and made paupers through the instrumentality of a little pot-house or street gossip. Such would inevitably have been the issue, had the man been placed in the circumstances above mentioned.

As we before said, we make no comments on the case upon which we base this article; but we cannot help thinking with the judge and the jury, that two opinions could scarcely be formed upon it, and we sincerely hope, for the credit of medical jurisprudence, that we shall seldom have such litigation re-enacted.

The office did not move to set aside this third verdict and obtain a fourth, but the claimant is indebted for this forbearance to the unmistakeable expression of public opinion on the subject.

When the time for taxation of costs had arrived, the following letters were exchanged between the claimant and the office.

[COPY.]

To the DIRECTORS OF THE IMPERIAL LIFE OFFICE.

Gentlemen,

The time having now arrived for the final settlement of my claim in respect of the policy on the life of the late John Scott, before instructing my attorneys to tax the costs, I beg respectfully to call the attention of the directors to the following circumstances.

My solicitor's bills for the three trials and two arguments in London, (including special fees rendered imperative on the last trial), amount to upwards of £2000, and I am informed, that if the directors choose to avail themselves strictly of their legal position against me as to costs, that, although successful throughout, the expenses of the two first trials, as well as of the two arguments in London, can be thrown upon me; so that the result will be, if the directors do insist upon a strict taxation of costs (taking the purchase of the policy and my personal expenses into account), I shall, after all my success, lose money, in addition to the anxiety which has necessarily attended so lengthened a litigation. Looking, however,

at the facts, that my connection with the directors and with the policy did not begin until two years and a half after they had granted it; that it was known to all who attended the public sale by auction at which I bought it, that the agent was willing to purchase; and, that after the death of Scott, the directors invited all the litigation which has followed, by meeting my request to know their reasons for refusing to pay, by a reference to their attorneys; I cannot bring myself to believe that the directors will do otherwise (the result of the litigation having fully justified my proceedings), than close the matter in a spirit that will put to rest, in the minds of myself, my friends, and the public, the strong feelings of injustice and persecution, which the course taken by the office has hitherto engendered, and that in terminating the litigation, they will also terminate the real cause of quarrel between us, by placing me in the same situation as though the policy had been paid at once and without question, which, otherwise, must still remain, and prevent my closing my connection with the directors in the friendly spirit which I desire, and which I am satisfied will alone ultimately promote the real interests of the office.

Respectfully requesting a reply to this letter,

I am,

Yours obediently,

SAMUEL BEALE.

West Cottage, Edgbaston,
November 7, 1846.

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[COPY.]

Imperial Life Office, Sun Court, Cornhill,
London, 11th November, 1846.

Samuel Beale, Esq.
Birmingham.

Sir,

I am instructed to acknowledge the receipt of your letter of the 7th instant, and to inform you, that the directors feel it to be their duty to decline compliance with your request; their belief, that the policy referred to was obtained from them through fraudulent misrepresentations and wilful concealment of material facts, being unshaken.

I am, Sir,

Your most obedient servant,

SAMUEL INGALL, Actuary.

By this letter it will be seen that the opinions of the directors of the Imperial Life Office are unshaken by the verdicts of three different special juries, and that the highest and most solemn justification of the conduct of Mr. Scott, the most complete proof of his integrity which the law of the land affords, does not prevent them from still fixing upon his memory the charge of "fraudu-

lent misrepresentation and wilful concealment," after having been told by three juries that these accusations are false.

In the spirit displayed by the Imperial Office throughout this litigation, the solicitor for the office appeared before Master Walter, the taxing officer, on the 24th of November last, and used his best efforts to reduce the amount at which the costs should be taxed; the result is, that the attorney's bills against the purchaser of the policy amount to considerably more than £2000, of which the office has only to pay £646.

The history of this case involves many very important considerations to the public, with reference to the present system of Life Insurance, and illustrates the following positions:—

1st. That no amount of candour on the part of the assured, or of investigation or precaution on the part of the office before granting a policy, will preclude it from disputing the payment after death.

2nd. That an office, by refusing to state its reasons for disputing payment of a policy after the death of the assured, have the power to drive his widow, orphans, or representatives, into an unequal struggle for the enforcement of their claims at law, or to force them into a disadvantageous compromise.

3rd. That an office is at liberty to receive premiums, grant bonuses in respect of a policy, offer to purchase it, and in every other respect treat it for years as a valid policy, and afterwards dispute its validity.

4th. That every defence in an action on a policy of insurance must necessarily be a charge of fraud against the assured, made for the first time after his death, when unable to vindicate his character, and aid his family in obtaining the benefits of the insurance.

5th. That whilst there is no limit to the queries, whether particular or general, which an office may require to be answered by a person proposing an insurance, the admission by the office of the fact that the assured was, at the time of the policy, in

good health, will not preclude it from taking advantage of any one questionable answer given by the assured, under a misapprehension of the meaning of any one of these queries, and that, too, at a time when his explanation cannot be obtained.

6th. That although the declaration signed by the party previously to an insurance amounts to a warranty against the prior or present existence of nearly all the diseases, and symptoms of diseases, that flesh is heir to, the owner of the policy cannot recover, unless he can make out affirmatively to the satisfaction of a jury, after the assured is dead, that he had *not* had at any time, from infancy upwards, all or any one of the diseases, or symptoms of diseases, mentioned in the proposal upon which the office may choose to raise an objection. In other words, that as the law now stands, the claimant, in an action on a policy, is, in effect, put to the monstrous absurdity of proving the affirmative of a negative proposition.

7th. That in a climate like that of England, the general questions used by all offices, such as—"Have you at any time had consumptive symptoms?" are ensnaring, inasmuch as any cold or cough, or other derangement of the general health, may be so called.

8th. That a verdict of a jury in favour of the claimant on a policy of insurance is thus no security, inasmuch as it is in the power of an office, having a comparatively unbounded command of money, to raise by their pleadings a multiplicity of complicated questions to be tried; and by taking exceptions to particular expressions of the presiding judge with reference to the particular state of the law applicable to any one of these questions, deprive the claimant of his verdict and his expenses, and bring about a second and even a third trial, with the same consequences, at an expenditure ruinous to any but a public company.

9th. That a verdict of a jury in favour of a claimant on a policy of insurance is no security, inasmuch as, in case the presiding judge does not arrive at the same conclusion on the facts as the jury, that the superior courts as a rule, will, upon some terms or other, put the claimant to the risks and anxieties of a

second trial. Thus practically rendering the concurrence of the judge, in the unanimous opinion of twelve special jurors, essential to its validity.

10th. That under the present strict rules of allowance and taxation of costs, no amount of success in an action on a policy of insurance will entitle the claimant to his expenses, however great, if the presiding judge, in the slightest particular, mistakes the law applicable to the case, or more than about one half of his unavoidable expenditure with an ultimate verdict undisturbed in his favour.

11th. That a contest at common law, between the widow, orphans, or representatives of an assured, and a public company, as to the validity of a policy of assurance, after the removal by death of the party whose acts are to be impeached, is unfair and unequal, both with reference to the present state and practice of the law, and the relative condition of the parties.

Many persons who have paid great attention to this subject think that the life accepted and the policy once granted by the office, that on public grounds it should ever afterwards be unimpeachable; others, again, think, that unless a policy is impeached by an office within one or two years, or some other limited time after its date, that from thenceforward the office should be precluded from disputing it; by others it is thought that a society should be formed for the protection of policy holders, to aid them with money and advice when driven into unequal litigation with an insurance office; but all agree in considering the position of policy holders and insurance offices at the time when it is their turn to complete their part of the bargain, as unfair and unequal, and requiring legislative or other interference.

There is yet another defence which an office may at any time set up, and which practically throws the holders of policies seeking to recover the amount insured, into the power of the office, namely, that the funds and capital of the company are insufficient to meet the demands upon them, for by the terms of

the contract the company is only pledged to the extent of its capital stock; a consideration which cannot fail to have its weight with all who may be interested in the subject. Thus, the directors of an office have the power to resort to this as a defence when it will suit their purpose, in addition to all other chances of defeating a policy. So long, however, as offices are permitted to possess all these means of getting out of the payment of their policies, when they become claims, all the public can do is to *endeavour* to protect themselves by a careful selection of the office with which they insure, and to avoid such offices as the Imperial, who, as in this case, as stated by the editor of *The Times*, "will not give in so long as there is any quibble to be disposed of which will afford the chance of victory," and who "reject the opinions of juries upon the facts, so long as there is any legal loophole for creeping out of a morally binding engagement."