DISCLOSURE UNDER LIFE INSURANCE CONTRACTS

ABSTRACT

Insurance operates on the premise of utmost good faith, where both the insured and insurer are obligated to honestly disclose all relevant information. This principle ensures fair allocation of economic losses among policyholders. Lord Mansfield's 1766 statement emphasized the duty of utmost good faith, making non-disclosure grounds for voiding the insurance contract. In life insurance, equal understanding between the proposer and insurer at the contract's inception is crucial. The Consumer Insurance Act of 2012 altered disclosure obligations, emphasizing reasonable care. Legal provisions, like Section 45 of the Insurance Act of 1938, govern the timeframe for challenging a life insurance policy based on non-disclosure. Recent judgments, such as "Sulbha Prakash Matalgaoker Vs. Life Insurance Corporation of India" and "Reliance Life Insurance Ltd v Rekhaben Nareshbhai Rathod," highlight evolving legal perspectives on disclosure's impact on claims. Disclosure in life insurance involves physical and moral risks, and both parties must ensure full disclosure. Recent amendments, shifting focus to policy issuance scrutiny, underscore the significance of upfront transparency. Utmost good faith remains the cornerstone, fostering fairness and trust in insurance contracts.

KEYWORDS: Insurance – Utmost Good Faith – Disclosure Obligations – Life Insurance – Fair Allocation

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INTRODUCTION:

Insurance is an agreement between two people in which one person agrees to aim the peril of the other for a fee known as the premium and vows to pay a certain amount to the opposite party upon the occurrence of a certain unforeseen eventor on the expiry of a specific period in the particular instance of life assurance, or to reimburses the opposing side just on the occurrence of some unforeseen outcome in the scenario of general insurance.

The fundamental role of insurance is the fair allocation of the insured's economic losses, in other sense, paying those who have suffered from the pool made up by the payments from all policyholders. The protected person's payment to the fund is proportional to the risk against which he is safeguarded, it is the insurer's unique role to estimate and collect this payment. It is also his responsibility to administer the money and reimburse the insured who have experienced losses.

This is advantageous to both the insurer and, as a result, the policyholder. The covered is certain that he will continue to be protected by the insurance scheme, which relieves him of tension. The company gains from the fund's investment. The party carrying the risk is known as the "insurer" or "assurer," while the party for whom the risk is covered is known as the "insured" or "assured." As a result, it is frequently stated that insurance is one of those unusual types of contracts in which two parties are engaged, namely the insured and the insurer. They are legally recognized as contracts of the utmost good faith, and both parties are obligated to exchange and reveal any significant facts pertinent to the contract.

This utmost good faith is one of the fundamental and universal concepts of insurance, and it is also known in Latin as "uberrimae fidei." This implies that each individual has the right to accept the other's assertions, and that each party should have a realistic belief that the other is operating in fairness and not attempting to hide or misrepresent. Insurance is sometimes described as the guarantee of reimbursement for certain expected risks in consideration for a monthly contribution. Insurance is designed to protect an individual's, companies, or other entity's financial health in the case of a sudden misfortune. Certain types of insurance are mandated by law, while others are voluntary.By accepting the terms and requirements of an insurance policy, the insured and therefore the insurer form a contract.

The theory driving insurance is that a collection of people subjected to comparable hazards band together and contribute to the establishment of a bucket of money (a pool is formed via payments made by persons wishing to protect oneself from universal danger). Throughout a case, if a person suffers a loss as a result of such risk, he is reimbursed from the comparable monetary pool.[1]

Because the risk involved and the assured's manipulation of data are frequently legitimate reasons to void the contract, the insured must disclose all significant facts that are within his actual or inferred knowledge. Lord Mansfield (known as the Father of English Commercial and Insurance Law) articulated this rule clearly in 1766, during a historic landmark English contract case **Carter vs. Boehm**[2], in which Lord Mansfield articulated the obligation of utmost faith and added that

"Insurance may be contract upon speculation. Breach of this duty renders the insurance contract voidable. But it should be noted here that, if he had the means of discovering the truth with ordinary diligence, the agreement can't be avoided. Usually these duties are modified by the terms of the contract. The burden of proving that there has been a breach of these duties lies entirely on the insurers. Consequent,ly non-disclosure on the part of the insured will entitle the insurer to avoid the contract ab initio (from the initially) notwithstanding the absence of any fraudulent intent. Contract of Insurance must be within the sort of a written agreement, signed and dated by both the parties."

Hence it is not only the insurance company which can be suffering from lying or non-disclosure of material facts, but the people therein group too are going to be affected. Lower claims refers higher surplus. This surplus is that the reason why people get "noclaimbonus" or discounts generally insurance and high bonus rates just in case of policies participating in profits.

DOCTRINE OF UTMOST GOOD FAITH:

The theory of utmost good faith, often described as uberrimae fides in Latin, is a universal principle of contracts that requires contractual participants to conduct due diligence and therefore not deceive or conceal key facts for the contract f from one

[1]"Ms. Nargis Yeasmeen, 'Consequences of Non-Disclosure in the Contract of Insurance' < IOSR Journal of Business and Management (IOSR-JBM) e-ISSN: 2278-487X, p-ISSN: 2319-7668. Volume 17, Issue 6.Ver. III (June. 2015), PP 29-36www.iosrjournals.org> assessed on November 11, 2022."

[2]"Carter vs. Boehm (1758-1774) All Er. Rep 183 (a decision of 1766)."

another. This philosophy applies to the majority of contract forms, including insurance contracts. As a result, a person must always be truthful and accurate in the details they supply to the insurance provider. The insurer is also required to behave in good conscience in all of its transactions with the policyholder.

Insurance contracts are a subset of contracts that include characteristics such as utmost good faith, insurable interest, indemnification, subrogation and contribution, and the theory of the proximate cause, that are similar to all areas of insurance. Certain duties in an insurance contract distinguish it from others, and because of this, an insurance contract is sometimes known as a "Contract of good faith."

This necessitates that all parties involved operate in good faith toward one another. This implies that each side has the right to trust the opposing side's representations, and each sidewould have a rationalanticipation that the other party is operating in good faith and not attempting to hide or deceive. In a contract entered into in good faith, the parties have an positive responsibility to each other to disclose all important information concerning the deal. It is not only forbidden to lie, but it is also forbidden to speak up.As a result, the insured must disclose any important facts that are likely to impact the insurer's decision on the amount of premium owed by the insured. The failure to disclose relevant information renders the contract voidable at the insurer's discretion.

Frequently, the insurer must depend only on the outline and data entered into the application form. The insurance company does not have any method of validating the information, and after an insurance risk has occurred, the subject-object of insurance may have gone up in flames or been washed away. As a result, any misdescription, misrepresentation, or outright dishonest statement made by the insured will result in the insurer compensating incorrect claims. As a result, it is an implied requirement or principle of insurance that the assured provide full disclosure of all important detailsrelating to his hazard that he is mindful of.

Nevertheless, given the impending liberalization, it is reasonable to anticipate insurers to be much more client-friendly and provide risk survey and analysis, appraisal, and other services, either directly or through brokers, surveyors, and so on. It remains to be observed if and to what degree these circumstances may weaken this idea.

However, the common consensus is that the assured understands his business and hazard best and should make every effort to communicate that specific component whenever possible.

Romer LJ in **Seaton vs. Heath**[3] underlined the rationale for insurance contracts as, "*Contracts of insurance are generally matters of speculation. Where the person desiring to be insured has the means of knowledge as to the risk, and the insurer has not the means or not the same means*".[4]

This duty of utmost good faith is sort of different from ordinary good faith, which needs honesty in providing information but doesn't require disclosure of all one knows. It is different from the overall fiduciary duty between a client and a solicitor or between a doctor and a patient.

Lord Millett stated in **Bristol and West Building Society v Mothew [1996] EWCA Civ 533**[5]that,

"*A fiduciary is someone who has undertaken to act for and on behalf of another in a particular matter in circumstances which give rise to a relationship of trust and confidence.*"

In principle, the relationship between an insurer and an insured is equivalent and the duty of utmost good faith for the insurer does not require an insurer to act on the best interests of the insured and vice versa.

BREAKING DOWN 'DOCTRINE OF UTMOST GOOD FAITH:

In the Insurance market, the doctrine of utmost good faith requires the party seeking insurance to disclose all relevant personal information. For Instance, if one is applying for life insurance, then one is required to disclose any previous health problems that he/she may have had. Likewise, the insurance broker selling the coverage must disclose the critical information that one must realize one's contract and its terms.

The doctrine of utmost good faith provides general assurance that the parties involved during a transaction are being truthful and acting in an ethical way. This will include

[3]"Seaton vs. Heath (1899) 1 Q.B. 782."
[4] Ibid at 793.
[5]"Bristol and West Building Society v Mothew [1996] EWCA Civ 533"

ensuring all relevant information is out there to both parties while negotiations are happening place or amounts are being determined.

This is a fundamental principle of insurance law. Both the parties to the contract are required to determine utmost good faith and will disclose every material fact known to them. There is no difference between a contract of insurance and the other contract except that during a contract of insurance there's[6] a requirement of utmost good faith. The burden of proof to point out non-disclosure or misrepresentation is on the insurance company[7] and therefore the onus may be a heavy one.[8] The duty of good faith is of a continuing nature in as maximum amount no material alteration are often made to the terms of the [9]contract without the mutual consent of the parties.

UTMOST GOOD FAITH IS IMPLIED IN LIFE INSURANCE CONTRACTS:

The life insurance have need that both the parties should safeguard the principle of utmost good faith. The utmost good faith enunicate that both the parties, proposer (insured) and insurer must be of the equivalent mind at the time of contract because only then the risk may be correctly ascertained. They must form full and true disclosure of the facts material to the risk.

The Consumer Insurance (Disclosure and Representations) Act 2012 abrogated the obligation of revealing information in consumer insurance contract. Prior the consumer was dependent upon a commitment of utmost good faith (uberrime fide) which required by the holder to furnish with material data and facts to the insurance company when at first reaching just because and the restoring the equivalent a protection contract. However, presently the principle obligation of the customer is to take sensible and due consideration not to make a distortion or extortion (that an inability to answer a safety net provider's solicitation to affirm or revise data recently given can likewise be a deception).

The person protected (insured) is considered to find out about the conceivably guaranteed object with regard to the life coverage contract, including the clinical records. Therefore, he/she should present and report precisely any important information with minute details related to the insured person or thing whatsoever, regardless of whether it is being

[6]"General Assurance Society Ltd. v. Chandumull Jain AIR 1966 SC 1644."
[7]"Life Insurance Corporation of India v. Smt. G.M.Channabasamma (1991) 1 SCC 357."
[8]"Life Insurance Corporation of India v. Parvathavardhini Ammal AIR 1965 Mad 357."
[9]"United India Insurance co. Ltd v. M.K.J Corpn. (1996) 6 SCC 428."

addressed, such specific ailments as he/she has ever experienced, smoking propensities, and even specific extraordinary exercise propensities like stone climbing, paragliding and plunging. The backup plan examines all the important realities so it can impact the choice of the insurance company whether to concur or question any potential hazard that he may dominate. Consequently, it is an absolute necessity for the protected person to adhere to endorsing standard and a proposition for the conclusion will be acknowledged with a customary premium, nonetheless, if the forthcoming safeguarded doesn't follow the standard mentioned impliedly or expressly, the guaranteeing may question the main purpose of the contact enforce, or acknowledge it yet with a higher premium.

- Some focuses are:

1. **What to be disclosed**: The company's planclearly is to know all the significant realities, yet you can't be compelled to reveal something you can't in any way, shape, or form attempt to learn. For instance, certain ailments might be promptly recognizable to prepared doctors, yet these things can't be anticipated by the normal layman to self-analyze and uncover.

2. **Non-clinical application**: If under any circumstances the insured manages to get insurance without the physical assessment, the backup plan would generally have huge trouble in contending that something not ensured by inquiries on the case or the type of an individual doctor is valid.

3. Medical application: if the approach is finished with the candidate's physical assessment, the backup plan can't hold any oversights or misdiagnoses by the restoratively qualified individual worried against the applicant.

4. Medical assessments: the supplier of the information has the voluntary option to exchange or replace the information delivered orally with fitting clinical appraisals or assessments.

LEGAL PROVISIONS IN INSURANCE ACT RELATING TO UTMOST GOOD FAITH:

Section 45 of the "Insurance Act of 1938" stated that life insurance policies could not be put into doubt by the insurance company after two years from the start of the policy

unless the insured made such material misstatement while dishonestly trying to suppress relevant details that he believed was crucial to the insurance policy. This provision allowed the insurer to launch an inquiry even when the two-year term had expired and to reject the claim if the substantial concealment was shown to be purposeful.

Nevertheless, with said enactment of The Insurance Laws (Amendment) Act, 2015, Section 45 was altered to the result that such insurance cannot be brought into question by an insurer only three years after the policy's issuance on any cause, even deception. The above legislation has tightened the knot around the heads of life insurance firms, requiring that all subsequent agreements entered into be scrutinised at the time of policy issue, rather than at the time of claim processing, as was the everyday procedure in the sector of life insurance.

The Section 45 amendment furthermore calls into question the doctrine of Uberieme fidie's significance in contemporary insurance contracts, as the emphasis for insureds would then transition to withholdingrelevant information for a duration of three years instead of disclosing it at the time of entering the contract itself in order to avoid paying huge premiums and to facilitate policy granting.[10]

INFORMATION THAT ARE SIGNIFICANT:

Material information in life insurance include age, salary, profession, fitness, lifestyle, location, genetic factors, and insurance plan. Material facts are established not merely on the ground of opinion; consequently, the applicant should reveal all information that are necessary, not only are those that the proposer believes pertinent.

Basically, the contact of insurance expect the policy holder to relied upon to represent to (portrayal obligation) and report (exposure obligation) all important data identified with the guaranteed element before making an arrangement in a life coverage insurance policy. The material realities inside life insurance contracts are grouped into two significant classes:

1. **Physical danger:** It focuses on every physical factor of the policyholder; for example, age, home, day-by-day propensities, and significant side interests.

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[10]"Chandni Arora, 'India: Relevance Of Uberrimae Fidei In Life Insurance In The Present Day' < https://www.mondaq.com/india/insurance-laws-and-products/808124/relevance-of-uberrim> assessed on November 11, 2022."

2. **Moral peril:** it is identified with the character and good attributes of the person insured. This is about the view of extortion or untrustworthiness that may produce a risk for a strategy, regardless of whether the safeguarded has just been paid legitimately.

It's hard to choose whether in reality in facts and information provided by the insured for the insurance policy are material or irrelevant. What material proof do highlight, be that as it may, include:

a) Facts exhibiting higher dangers in extra security plans, for example, dangerous occupations (e.g., tolerant related attendant or birthing assistant);

b) External factors that make the hazard higher than it ought to be, for example, exceptional pastimes (for instance paragliding, swimming, and so forth.)

c) Evidence causing the hazard higher than anticipated (for example smoker, heavy drinker).

d) The life coverage document (for instance subtleties of inclusion and past cases to which the past protection strategy has ever protested the guaranteed item or some other specific situation in which the present insurance agency dominates).

e) Other disaster protection approaches which the guaranteed may have.

- **Each Parties Responsibilities:**

It is the responsibility of both the proposer and the insurer to disclose any significant information that would impact the proposer's choice to seek insurance or not. Because the decision is based entirely on the concept of subject matter, the life to be covered by insurance in life insurance, and thus the important information concerning the specific topic is understood or presumed to be understood more by the insured; it is, even more, the proposer's obligation to publicize the necessary details.

- **Complete and accurate Disclosure:**

Utmost good faith requires accurate and complete disclosure of all fundamental information. Complete and accurate suggests that there ought to be no suppression, deception, partial exposure, or dishonesty of the insured subject matter.

- **The Duty's Scope:**

The responsibility of transparency ends once the proposal form is entirely and correctly completed, assuming there isn't any other information that he deems or believes to be relevant and have not been declared.

The insured cannot claim that he failed to reveal it due to negligence, mistake, or whatever; he did not consider it important to the contract.[11]

- **Lawful implications:**

Mostly in lack of absolute good faith, the agreement will be voidable at the discretion of the party that experienced damage as a result of non-disclosure. Deliberate non-disclosure constitutes as fraud and is "Void abinitio," thus accidental non-disclosure is revocable at the discretion of the person not at error. Again when the person not at blame has confirmed the voidable contract, he cannot later escape it.
For example, if the insurer keeps taking the premium despite knowing of a non-disclosure, such as a falsification of age, the provider cannot nullify the contract and cannot deny reimbursing the amount of the claim. If the non-fault party does not use its right, the deal remains in effect.

EFFECT OF DISCLOSURE IN LIFE INSURANCE:

During an insurance contract, the principle of good faith, or "uberieme fidie," imposes an obligation on both the insurer and the insured. However, it is important to note that these responsibilities go away as quickly as the insurance contract is created. This plainly demonstrates that the responsibility of transparency does not arise from the insurance contract. This responsibility is neither contract nor tort, fiduciary nor legislative in nature, but it is founded on the jurisdiction first established by the Courts of Equity to avoid oppression..

According to the interpretation to Section 17 of the "Indian Contract Act of 1872", simple silence does not constitute fraud unless there is a responsibility to talk. As a result, we will conclude that the legal responsibility outlined in the Explanation does not apply in

[11]"iEduNote, 'Utmost Good Faith in Insurance Contract, Marine Insurance, Life Insurance' <https://www.iedunote.com/utmost-good-faith> assessed on November 11, 2022."

circumstances where there is a compelling case of intentional malicious misrepresentation.

Lord Atkin stated the legal foundation of disclosure during a landmark decision in a well-known case of "**Bell vs. Lever Bros. Ltd1931 All ER Rep (1st) 32"**[12]where he said that,

"there are certain contracts expressed by law to be contracts of the utmost faith where material facts should be disclosed. If not the contract is voidable. Apart from special fiduciary relationships, contracts for partnership and contracts of Insurance are leading instances. In such cases the duty does not arise out of the contract; the duty of the person proposing the insurance arises before the contract is made."

EFFECT OF REPRESENTATION IN LIFE INSURANCE:

Representations are assertions that a party makes to another whether prior to or during the execution of a contract, concerning any fact or event that is not an intrinsic element of the contract.[13]When the policy is finally accepted, these declarations are considered to have accomplished their duty.[14]

A simple narration of assertions given at the time of the contract's conclusion does not constitute a warranty.[15]Nevertheless, when representations are made an intrinsic element of the transaction, it constitute warranties, and if they are inaccurate, the insurance is frequently canceled, even if the loss is not caused by the truth withheld or misled. Following three years after the policy's inception, a life insurance policy cannot be brought into doubt on the basis of deception.

When addressing with representations as situations negating an agreement, care should be given to whether such representations are intentional or unintentional, and if they are introductory or for the entirety of the agreement. The Insurance Act establishes three elements for determining intentional misrepresentation:

> *"(a) The statement must get on a material matter or must suppress facts which it had been material to disclose;*
>
> *(b) The suppression must be fraudulently made by the policyholder; and*

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[12]"Bell vs. Lever Bros. Ltd 1931 All ER Rep (1st) 32"
[13]"Behn v. Burness, (1863) 3 B&S 751."
[14]"Pawson v. Watson, (1778) 98 ER 1361"
[15]"Wheelton v. Haristy, (1857) 8 E and B 232."

(c) The policy-holder must have known at the time of creating the statement that it had been false or that it suppressed facts which it had been material to disclose."

The insurer bears the responsibility of demonstrating that the policyholder concealed essential facts[16] in order to acquire insurance, and all of the aforementioned elements must be shown collectively[17]. Through deciding whether a material fact has been suppressed, it is essential to determine if the silencing corresponds to a truth that is in the restricted awareness of the individual who plans to purchase the policy, as well as whether it could not be discovered through reasonable inquiry by a reasonable human being.[18]

SIGNIFICANT JUDGMENTS AFTER THE LIFE INSURANCE LAWS (AMENDMENT) ACT, 2015 :

In "**Sulbha Prakash Matalgaoker Vs. Life Insurance Corporation of India"**[19], The SC found that because the unreported condition was not related to the nature of the death, the purported suppression did not possess a character that might disentitle the dead from obtaining his lifetime covered by insurance, and so the claim's rejection was unwarranted.

In "**Neelam Chopra Vs. Life Insurance Corporation of India"**[20], National Commission continues to examine Sulbha Matagaonkar, concluding that

"*it is clear that suppression of any information relating to pre-existing disease, if it has not resulted in death or has no direct relationship to the cause of death, would not completely disqualify the claimant for the claim." It was also determined that concealment of a condition with no relevance to the reason for death, such as in the present case where the policyholder passed away as a result of "Cardio Respiratory Arrest, cannot be deemed as substantial information and should not be used to deny the claim entirely*."

In "**Reliance Life Insurance Ltd v Rekhaben Nareshbhai Rathod"**[21], which dealt extensively with insured's disclosure obligations and observed that

[16]"Life Insurance Corporation v. Smt. G.M. Channabasemma, AIR 1991 SC 392."
[17]"Life Insurance Corporation v Smt. B. Kusuma T. Rao; (1991) 70 Comp Cas 86."
[18]"Life Insurance Corporation v. Smt. G.M. Channabasemma, AIR 1991 SC 392."
[19] "Sulbha Prakash Matalgaoker Vs. Life Insurance Corporation of India Civil Appeal No. 8245 of 2015."
[20]"Neelam Chopra Vs. Life Insurance Corporation of India Revision Petition No. 4461 of 2012."

"The *object of the proposal form is to gather information about a potential client, allowing the insurer to get all information which is material to the insurer to know in order to assess the risk and fix the premium for each potential client. Proposal forms are a significant part of the disclosure procedure and warrant accuracy of statements. Utmost care must be exercised in filling the proposal form. In a proposal form, the applicant declares that she/he warrants truth. As this Court held in there is a clear presumption that any information sought for in the proposal form is material for the purpose of entering into a contract of insurance."*

CONCLUSION:

To summarise, it is the proposer's responsibility to provide complete information and accurate facts. The contract can be deemed invalid and defective if actual information are not disclosed and intentional misrepresentation is made. The requirement of disclosure in life insurance applies until the danger begins. Insurance A financial deal requires the highest level of good faith. As a result, it is critical for the insured to reveal all necessary details at the point of policy initiation because then his kin will not face issues making a claim in the tragic event of the life insured's demise.

To restore consumer and community trust in the value of life insurance policies, it is critical to address the fundamental and procedural injustice that exists today in disputes handling systems. The public has a reasonable expectation that claims would be processed fairly, both practically and meaningfully. Likewise, this study has maintained that utmost good faith, the fundamental requirement that regulates life insurance contracts, needs more than just procedural and substantive fairness. Yet, even the best intentions have done nothing to alter substantive injustice in terms of the policy.

SUGGESSTIONS:

Section 45 of The Insurance Act 1938 provides power to the insurance company that if there is fraud or non-disclosure of fact by the policy holder, the company can withdraw or call of the contract but only if they find within the time span of 3 year which could be reduced and the should be a regulation stating a monitory fine with no return in the premium or reducing of a huge and definite percentage of premium.

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[21]"Reliance Life Insurance Ltd v Rekhaben Nareshbhai Rathod (1) Civil Appeal 4261/2019."

Further the law drafters should draft and make provision which will more expressly define the material facts and disclosure and non-disclosure and would result to what consequence in The Insurance Act 1938 in the similar kind of way as it has been defined under section 183[1] and 184 of "The Insurance Act of Ontario Annotated".[22]

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- *Life Insurance Corporation of India v. Smt. G.M.Channabasamma (1991) 1 SCC 357.*

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[22]"Duty To Disclose
183(1) An applicant for insurance and a person whose life is to be insured shall disclose to the insurer in the application, on a medical examination, if any, in any written statements or answers as evidence of insurability, every fact within the person's knowledge that is material to the insurance and is not so disclosed by the other.
Failure to Disclose (2) subject to Section 184, a failure to disclose, or a misrepresentation of, such a fact, renders the contract voidable by the insurer."

- *Life Insurance Corporation of India v. Parvathavardhini Ammal AIR 1965 Mad 357.*
- *United India Insurance co. Ltd v. M.K.J Corpn. (1996) 6 SCC 428.*
- *Bell v. Lever Bros. Ltd 1931 All ER Rep (1st) 32.*
- *Behn v. Burness, (1863) 3 B&S 751.*
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