least binding upon him until set aside, as of course it might be on proof of fraud. See Freem. Judgm. §§ 174, 175; Cheney v. Patton, 134 Ill. 422, 25 N. E. 792; Id., 144 Ill. 373, 34 N. E. 416; Prentiss v. Holbrook, 2 Mich. 372; Louis v. Brown Tp., 109 U. S. 162, 3 Sup. Ct. 92.

If anything is due the appellant from Corbin, it should be recovered in an action or suit against him alone, not upon this bill for conspiracy against the appellees jointly. The decree below is affirmed.

NEW YORK LIFE INS. CO. v. McMASTER.

(Circuit Court of Appeals, Eighth Circuit. March 21, 1898.)

No. 976.

1. SPECIFIC PERFORMANCE—FRAUD—MISTAKE.
A contract may be reformed in equity where a parol agreement was made which failed of embodiment in the subsequent written contract through the fraud of one, or the mistake of both, of the parties to it; but such agreement, and the fraud or the mistake, must be clearly proven before any such relief can be granted.

2. INSURANCE—PRELIMINARY NEGOTIATIONS—CONSIDERATION.
Where an insurance company, in preliminary negotiations, agreed with an applicant, when he signed the application, to insure him for a longer time than was subsequently fixed by the policy, the oral agreement is not binding, since nothing was paid in consideration thereof, and the applicant was at liberty to reject the policy before payment of the premium. Customary negotiations for insurance do not constitute a contract, where there is no intention to contract otherwise than by policies made and delivered upon payment of the premiums.

3. SAME—REFORMATION OF CONTRACT—ESTOPPEL.
Where it is sought, on the plea of fraud, to reform a policy so as to give it the legal effect claimed under an oral agreement made in preliminary negotiations, the insurance company is not estopped from denying that the actual contract was the oral agreement, unless there was on its part a willful intent to deceive, or such gross negligence as is tantamount thereto, involving some moral turpitude or breach of duty.

4. SAME—ACCEPTANCE OF POLICIES—KNOWLEDGE OF CONTENTS.
An applicant for insurance, who accepts policies, the provisions of which are plain, clear, and free from all ambiguity, is chargeable with knowledge of the terms and legal effect of these contracts. It is his duty to read and know the contents of the policies before accepting them, and, where he fails to do so, he is estopped from denying knowledge thereof, unless he proves that he was dissuaded from reading the policies by some trick or fraud of the other party.

5. REFORMATION OF CONTRACTS—MISTAKE.
The mistake which will warrant the reformation of a contract must be made in common by the parties to it. A court of equity may not reform a written agreement, on the ground of mistake, so as to impose on one of the parties obligations which he did not intend to assume.

6. WRITTEN CONTRACTS—PAROL NEGOTIATIONS.
No representation, promise, or agreement made, or opinion expressed, in the previous parol negotiations, as to the terms or legal effect of the resulting written agreement, can be permitted to prevail, either at law or in equity, over the plain provisions and just interpretation of the contract, in the absence of some artifice which concealed its terms, and prevented the complainant from reading it.

7. LIFE INSURANCE—REFORMATION OF POLICY.

An application for life insurance was signed December 12, 1893, when the agent told the applicant that one premium would carry his policy 13 months. The agent wrote on the application, "Please date policy same as application." The policy was dated December 18th, and required payment of premiums December 12th, annually, with a provision for 1 month of grace. The first premium was paid and policy delivered December 26th. December 12, 1894, a collector called for the second premium, and was told that insured did not intend to keep up the insurance, but that, if he decided to do so, he would pay the premium within the month of grace. He did not pay, and never objected to, or complained of, the policy or its terms. He died January 18, 1895; and a bill was filed to so reform the policy as to advance the term of insurance 6 days, making it run 13 months from December 18, 1893, and so cover the death on January 18, 1895. *Held*, that the relief must be denied, in the absence of proof that through the fraud of one, or the mistake of both, of the parties, the policy failed to embody the preliminary parol agreement, or that the agreement was on a valuable consideration.

Appeal from the Circuit Court of the United States for the Northern District of Iowa.

This is an appeal from a decree which so reformed five policies of life insurance as to advance the term of insurance described in them six days, and which in this way made them cover a death which occurred on the sixth day after the policies had expired by their terms. Each of the policies was dated on December 18, 1893. By each, the New York Life Insurance Company, the appellant, insured the life of Frank E. McMaster in the sum of $1,000, for the benefit of his executors, administrators, and assigns, in consideration of his written application, "and in further consideration of the sum of twenty-one dollars and —— cents, to be paid in advance, and of the payment of a like sum on the twelfth day of December in every year thereafter during the continuance of this policy." Each policy contained these stipulations: "If any premium is not thus paid on or before the day when due, then (except as herein otherwise provided) this policy shall become void, and all payments previously made shall remain the property of the company. After this policy shall have been in force three months, a grace of one month will be allowed in payment of subsequent premiums, subject to an interest charge of five per cent. per annum for the number of days during which the premium remains due and unpaid. During the said month of grace the unpaid premium, with the interest as above, remains an indebtedness due the company; and, in the event of death during said month, this indebtedness will be deducted from the amount of insurance." Each policy was issued upon a written application, which was dated on December 12, 1893. The policies were delivered to McMaster, and the first premiums were paid, on December 26, 1893. He never paid the premiums due on December 12, 1894, and he died on January 18, 1895, on the sixth day after the policies had expired. Fred A. McMaster, the administrator of the estate of the deceased, and the appellee in this case, exhibited his bill in the court below to so reform these policies that their terms of insurance should commence on December 18, 1893, and should expire at midnight on January 18, 1895, after the death of the insured. In his bill he set forth two grounds for the relief which he sought: (1) That, after the insured had signed his applications for these policies, the agent of the insurance company wrote into them, without his knowledge, the words, "Please date policy same as application," and the company made the annual premiums due on December 12th in each year, when they would have been due on December 18th if those words had not been inserted in the applications; and (2) that the contract for the insurance was that the insured should have policies of the kind which he received, which should remain in force 13 months from the time when the first annual premiums were paid, without further payments, and that the policies actually delivered remained in force only 12 months and 17 days after their delivery. The answer denied the averments of the bill, and these facts were established by the evidence: In order to induce the insured to make his applications for the policies, the solic-