with the defendants for an insurance for £500 on his stock in trade, that he paid the premium therefor, £12 10s., and obtained the following receipt from the agent of the company:

The Beacon Assurance Co., Chief Offices, 6 Waterloo Place, London, England, and Kingston, Canada West.

(*Interim Receipt.*) *Agent's Office, 27th October*, 1856.

No. 108. Received of William D. Penley, the sum of £12 10s., currency, being the premium for an insurance to the extent of £500, currency, on property described in the order of this date, subject to the approval of the Board at Kingston; the said premises to be considered insured for 21 days from the above date, within which time the determination of the Board will be notified. If approved, a policy will be delivered; otherwise the amount received will be refunded, less the premium for the sum so insured.

(Signed) R. NEWBERRY, *Agent.*

That the defendants did, within the time specified, approve of said contract, and retained the said sum, promising to deliver a policy to plaintiff immediately. That in the interim, on the 1st November, 1856, the plaintiff's premises were burnt, and that plaintiff thereby, became entitled to the £500. That defendants refuse to pay or issue a policy, pretending that they had not approved of said contract of insurance. The b" then prayed that they may be ordered to issue a policy, or to pay the amount specified.

The answer denied that the Board approved of the proposal, that they returned or offered to return the £12 10s.; that within the 21 days, they refused to accept the risk, and that they communicated with their agent, whom they believed informed the plaintiff. That plaintiff never obtained a policy, and that at the expiration of the 21 days, the contract in the receipt expired; that the agent had no authority to continue any liability thereunder, and that plaintiff was so aware. The defendants then set out, that on all their policies there is the following condition. "It is furthermore hereby expressly provided, that no suit or action of any kind against this company, for the recovery of any claim upon, under, or by virtue of this policy, shall be sustainable in any court of law or chancery, unless such suit or action shall be commenced within the term of six months next after the loss or damage shall occur; and in case any suit or action shall be commenced against said company, after the expiration of six months after such loss or damage shall have *occurred, the lapse of time shall be taken and deemed as conclu*sive evidence against the validity of the claim, thereby so attempted to be enforced." That plaintiff, not having brought this suit within the time so limited, is not entitled to relief.

The plaintiff having joined issue, evidence was gone into, the effect of which appears in the judgment of the Court.

G. Morphy, for the plaintiff.

Roaf, for the defendants.

The cases cited in *Walker* v. *Provincial Insurance Company*, ante, p. 162, were relied upon in this case.

THE CHANCELLOR.—This is a bill to recover from the defendants, the amount of an insurance effected in their office by the plaintiff, or in the alternative, to compel them to issue a policy to him, for the amount. A receipt only, is held by the plaintiff; and he states that the defendants promised to issue a policy as soon as possible. The receipt is dated in October, 1856, and the fire occurred on the 1st November, of the same year. The object of the bill, is to obtain relief in this court—there being no relief in law, the contract not being under seal. As to the jurisdiction of equity in such cases, I find very little authority for it in England. In the case of *Motteaux* v. *London Assurance Company*, (1 Atk 545,) Lord *Hardwicke*, considered policies of insurance, as properly within the jurisdiction of the law courts. But Courts of Equity in the United States, have entertained these cases, and have decreed relief; and in *Mead* v. *Davidson*, (3 A. and E. 303,) Lord *Denman*, admits the jurisdiction of courts of equity to compel the execution of a formal policy, on the underwriter's promise to indemnify, and on his acceptance of the premium. And in *Jones* v. *Provincial Insurance Company*, (16 Q. B. U. C. 477,) the Chief Justice of Upper Canada, expressly refers to this Court as having jurisdiction. We therefore assume the jurisdiction, until the Court of Appeal or the Legislature, alters it; and which, it appears the Courts of Equity in the United States have always maintained.

In the defence set up, it said, 1st, that there was no risk assumed; and 2nd, that as the policies issued by the Company, contain a condition requiring actions to be brought in six months, and as that was not done in this case, the Court cannot interfere.

As to the first ground it entirely fails. The evidence of the agent proves, that on receiving the proposition for insurance, he sent it to Kingston, and subsequently told the plaintiff that he was insured; and has an entry in his books, which he says would not be there unless the plaintiff was insured. The letters between the agent and the head office, are not produced; some of them may have referred to this case, and could, perhaps, have thrown much light on it; and why they were destroyed is not stated. If accidental, it would not be right to visit the wrong on the company. We have, therefore, as regards the agent, his statement to the plaintiff, that he was insured, and the entry in the book. We have also, the fact, that immediately after the fire, one of the directors of the company, went to Belleville, and gave the agent directions to allow the plaintiff to dispose of whatever furniture he chose; and thus by their own act, the company clearly showed their liability, just at the time when they had power to set up this defence. And then, too, the secretary is not produced, to prove from the books of the company, that the risk was not assumed, or to prove what was the authority of the agent. We think then, that the agent was clearly the agent of the company to bind them, and that he did so bind them, by telling the plaintiff he was insured, and by the entry in his book.

Then as to the delay in bringing the action, according to the terms of the company's policies, and the case of the *Provincial Insurance Company* v. *Ætna Insurance Company* (16 Q. B. U. C. 135,) referred to by Mr. *Roaf*, I think the regulation is legal, and that the company has thus a right to lay down a limit for actions to be brought. It is, I think, a sound rule, and I am prepared to act upon it. That condition, however, does not apply here. This is a proceeding against the company for not issuing a policy, and the rule vitiating the policy, does not apply, for the company are wrong-doers, and cannot set up as a defence, that delay has occurred, since they have not issued that to which the penalty of delay is attached, and by which the plaintiff's right might be affected. The defence, therefore, entirely fails on both grounds, and the decree will be in favor of the plaintiff. In drawing up the decree, it would, I think, be well to look at the cases in the United States, as to the form in which it should be drawn.

SPRAGE, V. C.—It appears to me, there was an insurance effected by the plaintiff, for a year, and that it continued until the fire. With regard to the limitation of time for bringing an action, the regulation presupposes that the party is armed with his policy; and if he is not in possession of his policy, how can the limitation apply, and especially when the company by its own default, has not given a policy? The plaintiff is, therefore, I think, entitled to the relief prayed for.

SPRAGE, V. C.—I also agree with the learned Chancellor. I think the agent of the company, had sufficient authority to bind the company—that he was an agent to keep books, and by the entry there, did so bind. The limitation referred to, clearly applies to a policy, and not to cases where no policy has been issued.

Decree for the plaintiff with costs.

GENERAL CORRESPONDENCE.

TO THE EDITORS OF THE LAW JOURNAL.

Assessment Act—Township Rates—County Rates.

Southampton, July, 1859.

GENTLEMEN,—I, in common with I dare say many others, find much difficulty in reconciling with each other several parts of the Assessment Act of 1853.

Sec. 31 says that the several townships, counties, &c., shall each year estimate all sums that may be required, &c., making due allowance, &c.

Sec. 33 says that the County Council, in apportioning any county rate, shall do so on the equalized assessment rolls of the preceding year; and that the aggregate value of such