

Reports and Notes of Cases.

Province of British Columbia.

COURT OF APPEAL.

BROWN'S TRAVELLING BUREAU v. TAYLOR.

Macdonald, C.J.A., Martin, McPhilips, J.J.A.] [44 D.L.R. 204.

Insurance—Undertaking to have policy ready at a certain time—Agent staying hand of company—Policy not ready—Liability for premium.

An insurance agent who undertakes to have an insurance policy ready at a certain date, and, by an unauthorized departure from the terms of the application, stays the hand of the insurance company so that the contract is not concluded or the policy issued until after the date agreed upon, cannot recover the insurance premium from the insured.

Sir Charles H. Tupper, K.C., for appellant. Martin, K.C., for respondent.

ANNOTATION TAKEN FROM 44 D.L.R.

What is the Exact Moment of the Inception of a Contract of Insurance
By F. J. LAVERTY, K.C., Montreal. Author of "*Insurance Law of Canada.*"

This judgment appears to be based partly on the issue of fact as to what was the agreement between the parties, and partly on the finding in law that the policy did not cover the respondent when he went aboard his ship at Montreal on the 2nd June.

The question of the exact moment of the inception of a contract of insurance has given rise to a number of important decisions; the latest is that of the House of Lords in 1916, *Allis-Chalmers Co. v. Fidelity & Deposit Co. of Maryland*, 114 L.T.R. 433. Plaintiffs had requested a bond guaranteeing them against loss through the dishonesty of their Paris manager to be in force "from issuance"; in terms the bond recited that it covered plaintiffs from March 8, 1912, to March 7, 1913; it was executed on March 8, and immediately tendered to plaintiffs, but as their manager was absent, it was arranged to stand over to his return, which occurred on April 18, on which date he paid the premium. The Paris manager had disappeared on April 13, and by the 18th plaintiffs suspected that he might have absconded. They later claimed for defalcations occurring before April 18, but their action was dismissed on the grounds that they had concealed material facts, and that the contract was not completed until April 18.