thereby prevent him from continuing to be a member of that congregation." No special reason was apparent, therefore, for the exercise of the prerogative, and to have allowed an appeal under the circumstances would simply have been to encourage similar applications in almost every suit decided by the Supreme Court.

INSURER AND INSURED.

The judgment of the Court of Appeal of Ontario in the case of *Billington* v. *The Provincial Insurance Company*, which we print in this number, decides a question of vast importance in the law of Fire Insurance. It deals with the power of the Company's agents, or of the party effecting the insurance, to vary by mere loose conversations the contract embodied in the application and the policy. The majority of the Court have adhered to the principle, fully recognized as applicable to contracts of other kinds, that the agreement of the parties must be gathered from the terms of the written contract, and not from parole evidence of what one of the parties supposed to be the agreement. In this case there was an omission to state the previous insurance in another company. The agent was verbally informed that there was another insurance, but the amount was not specified, and there was no mention whatever of the fact in the application or in the policy. It may seem hard in such a case that the insured should suffer. But clearly he could not recover unless the contract were changed, and another contract, to which the Company did not assent, were substituted. If the Courts treat such variations as immaterial, where will the laxity end? Even as it is, insurance contracts in too many cases are not looked upon as solemn agreements imposing obligations on each party as well as giving rights. The premium is paid like a tax bill, and there the matter rests, unless a fire occurs and the policy has to be produced as the basis of a claim. As Chief Justice Moss remarks: "In other business transactions men ordinarily scrutinize with care the terms of important contracts. In the case of insurance contracts inattention seems to be the rule." If the decisions of the Courts encourage this habit of inattention, there will be no safety or certainty for the contracting parties. It is preferable to lay down at once a rule, however stringent, that has the merit of being easily understood and applied, rather than open the door to the tremendous mass of litigation which must inevitably proceed from confusion and uncertainty on so important a subject.

REPORTS.

COURT OF ERROR AND APPEAL.

Toronto, December 17, 1877.

Present:—Chief Justice Moss, Justices Burton Patterson, and V. C. Blake.

BILLINGTON v. THE PROVINCIAL INSURANCE COMPANY.

Fire Insurance—Omission to state previous Insurance—Verbal Notice to Agent.

The plaintiff when making application for insurance mentioned to the defendants' agent that there was a previous insurance in the Gore Mutual, but could not remember the amount which was on the property insured with the defendants. The policy contained a proviso that in case the insured should have already any other insurance against loss by fire on the property, and not notified to the Company and mentioned in or endorsed upon the policy, the insurance should be void. The policy contained no mention of the insurance in the Gore Mutual. *Held*, that the plaintiff could not recover.

Moss, C. J.—All the facts which, in my judgment, are material to the decision of this case, lie within a narrow compass, and are not open to serious controversy.

On the 6th February, 1875, the plaintiff applied to the defendants, through Robert W. Suter, their local agent at Dundas, to effect an insurance against loss by fire to the amount of $6,000, for two months, on certain agricultural machinery in process of construction in a manufactory in Dundas. He signed the defendant's usual form of application, which contained a direct enquiry as to other insurances, and an express agreement on the part of the applicant, that the application should form a part and be a condition of the insurance contract. Suter's authority extended to receiving applications for insurances, and receiving premiums and issuing interim receipts for policies. These receipts are sent to him by the defendants in blank, and filled up by him as occasion required. Their form was that of an acknowledgment of the receipt of money as a premium for an insurance, to the extent of a named sum, upon property described in an application, subject, however, to the approval of the Board of Directors, in Toronto, to whom power was reserved to cancel the contract at