the contract for sale, was the holder of a policy insuring the house against fire; the house was burnt down in the interval between the date of the contract and the time fixed for completion of the purchase; the vendor received the insurance money from the office; and the question was whether the purchaser was entitled, as against the vendor, to the benefit of the insurance, either by way of abatement of the purchase money or reinstatement of the premises. The Master of the Rolls decided against the purchaser's claim.

We have before stated our opinion that, both on principle and on the authorities, the decision of the Master of the Rolls was correct. Our opinion is now confirmed, and having considered the reasons given by Lord Justice James in support of the opposite view, his dissent does not in any degree diminish our confidence that the law on the subject has been correctly laid down by Lords Justices Brett and Cotton, who constituted the majority in the Court of Appeal.

We say, with the sincerest respect for the able and admirable senior Lord Justice, that, being aware of his strength, and that he would adduce and urge in support of his dissent everything that could be adduced and urged, we have been unable to feel the force of his reasoning, and therefore are rather fortified than otherwise in our original opinion. Lord Justice Cotton, in a careful judgment, in which Lord Justice Brett substantially concurred, held that, apart from any question arising out of the 14 Geo. 3, c. 78, a contract of fire insurance was a personal contract of indemnity collateral to the land; that the contract for sale passed all things belonging to the vendors appurtenant to or necessarily connected with the use and enjoyment of the property mentioned in the contract, but not the benefit of a contract of fire insurance, and that (as was conceded) if there had been no insurance, the destruction of the house by fire would have been no answer to the vendor insisting on specific performance without compensation; that the contract of insurance was not a contract of repair—but to pay a sum of money, that by express condition in the policy, if not by the general law, the assignee, by way of purchase of the thing insured, was not entitled to the benefit of the fire policy. Lord Justice Brett pointed out that a fire policy in this respect must be governed by the same considerations as a marine policy, as to which it had been held that the assignee of insured goods, who had never contracted for the benefit of the insurance was not entitled to any benefit, and that the assignor, not retaining any interest, was not himself entitled to any benefit: *Powles* v. *Innes*, 11 M. & W. 10. This was the turning point of the case.

If the contract of insurance were collateral the purchaser was really out of court. On this question Lord Justice James was of a different opinion, holding that a fire policy is in effect a contract that if a fire happen, the insurance company will make good the actual damage sustained by the property. In support of this he said that he was not aware of any case in which, on an insurance by a tenant for life, the value of the life interest had ever in any way been regarded by an insurance office in paying on its policies; and that the provisions of the 14 Geo. 3, c. 78, enabling any person interested to require the office to lay out the money in rebuilding, tended in the same direction to support his opinion.

There were, however, other contentions of the appellant with which the court had to deal. It was said that between the date of the contract and the time for completion, the vendor was merely a trustee for the purchaser, that he only obtained the insurance money from the office on the strength of his legal title. Here, again, Lord Justice James differed from his brethren, holding that a vendor, after the date of the contract for sale, is strictly and properly a trustee, and, therefore, that any benefit which accrued to him enured for the advantage of the beneficial owner. Lords Justices Cotton and Brett pointed out that a vendor, pending the completion of the contract, was a trustee only in a qualified sense, the purchaser's right depending on his acceptance of the title and the payment of the purchase money, and that it was because of the uncertainty as to the fulfilment of these conditions that the office could not defend an action on a fire policy by an unpaid vendor: see *Collingridge* v. *The Royal Exchange Corporation*; 37 L. T. Rep. N. S. 525. From this it would appear that it is only because of the uncertainty above mentioned, and the impossibility of predicating whether the conveyance will ever be completed, that it is no defence for an insurance company to show that the policy holder suing is an unpaid ven-