same effect must be given to the certificate, but the question still remains, What was the contract effected by this proposal and acceptance? Can it be anything more than this? We have accepted the risk offered upon the premises, and agree to insure them for the time specified, provided the facts and circumstances in regard to the risk and the condition, situation and value of the property be as represented in the application, and that the insurances which you have notified us of in that application are the only other insurances existing upon it, and we will, if you require it, issue you a policy containing similar stipulations.

That it was the intention of the Company that all such notifications should be made to the head office in writing is manifest, I think, not only from the fact of their making a specific enquiry as to such further insurances in the application, but also from the proviso near the foot of the policy which, after referring to the sixth condition, further provides that if any additional insurance be effected on the property the assured shall at once give notice to the head office, and have it endorsed on a certificate of consent given.

They appear to have endeavored to guard against any misapprehension or mistake by providing that the information upon which the Directors were to act should be in writing, and in guarding in the body and conditions of the policy against being bound by notices given to agents, except only in the case of the provisional receipt. If they have failed to accomplish this object it is in consequence of the insufficiency of the language used to convey their meaning, and to my mind they have sufficiently expressed it, and all parties, I think, clearly understood that the application was the basis, and the only basis upon which the plaintiff proposed for insurance, and by which alone the Directors intended to be bound; that and its acceptance alone constituted the contract, and the sooner people learn that this is the mode in which these insurances are effected, and that their effect is not to depend upon loose conversations with agents, in my opinion, the better.

I am quite unable to concur in the view that the Company can be prejudiced, because they issued the policy after receiving the proofs of loss in which this additional policy was referred to. They were bound in accordance with the certificate they had granted to issue a policy, but they were not bound to endorse upon it the fact of another insurance existing of which they had not been notified. I am of opinion, therefore, that if this were a bill filed upon the short date certificate to enforce payment of the insurance money the plaintiff must have failed, as he must fail now, because he establishes no such contract as alleged, and there is nothing, therefore, to reform by. I am of opinion, therefore, that the appeal should be allowed.

BLAKE, V. C.—The evidence is not satisfactory to my mind, in support of the allegation of notice to the agent, of the insurance in the Gore District Mutual Insurance Company. In the Court below the testimony given was considered sufficient to support this finding which must be taken in appeal as the true conclusion from the evidence. I think a verbal notice to the agent, such as that here found to have been given, is sufficient on an application for the usual *interim* receipt. This receipt, however, only binds for 30 days from its date. As the fire took place after the expiration of the 30 days, the plaintiff can have no claim thereunder. He is, therefore, obliged to base his claim to recover either on the short date or usual policy. It then becomes a dealing between the plaintiff and the Company. The short form of policy was issued "subject to all conditions of the policies of the Provincial Insurance Company of Canada, of which the assured admits cognizance." Looking at the application, and looking at clauses 6 and 19 of the conditions on the policy, it is clear that it was intended that the information as to prior insurances should be in writing. The power of the agent ended in the matter with the dealing on the footing of the certificate. Then came the contract between the plaintiff and the Company represented by the short form policy. This required the notice in writing, which was not given, and I therefore think the plaintiff is disentitled to succeed.

I coincide in the view taken by the Chief Justice of the Court as to the disposition of the costs of the litigation.

PATTERSON, J., dissented from the judgment of the Court, and held that the notice to Suter was sufficient. He considered it quite clear that the plaintiff was anxious to have the Gore Mutual policy inserted in the application, and that Suter spoke of having some memorandum at his office which would enable him to state the particulars of it. The plaintiff depended upon Suter inserting the particulars. It appeared, however, that Suter had only a note of the gross amount of the Gore Mutual policy, and not of the particulars, and he sent away the application as it was. The plaintiff's rights must depend not on any estoppel, but on the effect of what was done as a matter of contract. On this branch of the enquiry, the learned Judge remarked that he had had great fluctuations of opinion, and he was still by no means free from doubt. But after anxiously considering all the data from which the contract was to be deduced, he could not see that the defendants could insist upon more than was done by the plaintiff. The insurance effected by an interim receipt and that evidenced by a policy is one contract of insurance, evidenced in the first place by the receipt and continued by the policy. The omission to notice the existing policy in the application was not of itself fatal. Undoubtedly there must be notice given of the