ing an action in that Court to recover $600 under a policy issued by the defendants insuring against disablement from accident and certain other causes.

The appeal was heard by FALCONBRIDGE, C.J.K.B., CLUTE and SUTHERLAND, JJ.

M. Wright, for the plaintiff.

Shirley Denison, K.C., for the defendants.

The judgment of the Court was delivered by CLUTE, J.:— The action was brought under a policy of insurance, the plaintiff claiming $600 for disablement arising from an attack of appendicitis, and continuing for twelve weeks from the 24th November, 1909, to the 16th February, 1910.

The defendants plead that disablement from appendicitis is not within the policy, and further contend that the required notice in writing was not given by the plaintiff, for the neglect of which he is barred.

Dealing with the last objection first, the policy, clause 11, declares that "no claim shall be valid unless written notice of the happening of an injury or event which may give rise to a claim, or of any illness or disease, is given to the head office of the company in Toronto within ten days from the date of the happening thereof."

Verbal notice was given to the local manager within ten days from the 24th November, the date of disablement. A letter was written to the local manager at Belleville on the 27th January, 1910; but written notice to the head office was not given until the 4th February, 1910.

Mr. Wright urged that the event meant the disablement and its termination; and that, therefore, the plaintiff was entitled to ten days after he had left the hospital, which did not occur until the 16th February. The plaintiff was wholly unfit for business for a number of days after he entered the hospital, but this affords no excuse. The giving of the notice under the terms of the policy was, in my opinion, a condition precedent to the plaintiff's right to recover; and the fact that it was not given is fatal to the plaintiff's right of action.

It was argued that, even if this should be so, there was a waiver, inasmuch as blanks for the proof of claim were sent on, filled out and returned to the company; but the proof of claim itself contains this clause: "By furnishing this blank and investigating the claim, the company shall not be held to admit the validity thereof or waive the breach of any condition of the policy." This clause is a sufficient answer to the alleged waiver.