In the case of the Security company I am unable, for the reasons I have already mentioned, to come to the conclusion that the premium was paid to that company, and I am of opinion that the respondent is liable to the appellant to make good the loss which the appellant has sustained, owing to the respondent not having obtained a binding contract from that company.

It was argued by Mr. Moss that all the respondent was required to do was to "buy insurance" to the required amount, and that, having employed the Insurance Brokerage and Contracting Company to obtain it, and having received the policies from that company duly executed and having delivered them to the appellant, his whole duty was performed, but I am not of that opinion. What the respondent undertook to do was to procure binding contracts of insurance, and to do all that was necessary on his part to procure them, which involved the payment of the premiums; and, having failed in that duty, in respect to the insurance with the Security company, he is, in my opinion, liable to the appellant for the loss occasioned thereby.

It may be unfortunate for the appellant that the question of the liability of the companies whose policies are, in my opinion, binding on them, has not been determined as between them and the appellant, for it may be that, if the appellant proceeds against them, a different state of facts may be developed in the actions against them, and the result may be that they will escape liability, because on those facts the conclusion cannot be properly drawn that the premiums were paid to them.

Upon the whole, I am of opinion that the appeal should be allowed, and that there should be substituted for the judgment dismissing the action, judgment for the appellant for the amount for which the Security Mutual Fire Insurance Company would have been liable upon its policy for $1,000, with interest from the date from which interest would have run against the company; the amount of principal and interest to be settled by the Registrar if the parties are unable to agree to it.

The appellant should have the costs of the action, except as to the issues on which it has failed, and the respondent should have his costs of these issues, and there should be no costs of the appeal to either party.

MACLAREN and HODGINS, JJ.A., concurred.

MAGEE, J.A., agreed in the result.

Appeal allowed in part.