in *Johnston* v. *Milling*, 16 Q.B.D. 460, and by Field, J., in *Societe Generale de Paris* v. *Mildirs*, 49 L.T.N.S. 55, and by Cockburn, C.J., in *Frost* v. *Knight*, L.R. 7 Ex. 111, and shewed that the plaintiff was continuing to recognize the contract as still in existence.

Held, that the plaintiff's action before placing the matter in his solicitor's hands shewed decisively that he had adopted the defendant's repudiation, and that the expressions used by the solicitors in their letter were not sufficient to nullify the effect of that decision. When the letter was written it was quite impossible for the plaintiff to have carried out the original contract as he had parted with most of the hay the defendant had agreed to buy, and it could hardly be supposed that he could have instructed his solicitors to write a letter that would commit him to perform his part of the original contract. Written, as the letter evidently was, without a full apprehension of the matter, it was not necessary to hold that it overrode the election the plaintiff had previously made to treat the contract as rescinded.

Verdict for plaintiff affirmed and appeal dismissed with costs.

Phippen and *Hartley*, for plaintiff. *Aikins*, K.C., and *Robson*, for defendant.

Killam, C.J.] WHITLA *v.* ROYAL INSURANCE CO. [Jan. 10.

Fire insurance—Interim receipt—Nature of contract entered into by—Conditions—Authority of sub-agent to bind company by interim receipt—Payment of premiums in cash—Condition as to other insurance being cancelled.

Action by plaintiff as assignee of one Bourque to recover on a contract of insurance alleged to have been created by an interim receipt. Bourque, who then held a policy of insurance in the Manitoba Assurance Co. for $2,000 on his stock-in-trade, wrote to Dumouchel, a sub-agent of the defendants, informing him that he had a stock of over $5,000 which was insured for $2,000 in the Manitoba Co., that people had told him it was a weak company, and that he was going to abandon that insurance, and that he wished to insure for about $3,000. Dumouchel replied that he would be glad to have his insurance, and requesting him to send $75 for the premium. Bourque then wrote that he could not pay the amount at once, but would do so later, in reply to which Dumouchel sent him a promissory note payable to his own order for $51, and asked him to sign the note and return it with a cheque for $25. This was done, and Dumouchel sent Bourque the usual interim receipt, promising the subsequent issue of a policy which was to be subject to the conditions indorsed on the interim receipt. These were the usual statutory conditions, without alteration or addition, one of which provided that the policy should be void if there was any prior insurance on the property unless the consent of