

notice of rejection was sent to B., and no policy was issued within the said time, which expired on March 4th, 1891. On April 17th, B. received a letter from the manager, asking him to remit funds to pay his note maturing on March 1st. He did so, and his letter or remittance crossed another from the manager, mailed at Owen Sound, April 20th, stating the rejection of his application and returning the undertaking and note. On April 24, the insured property was destroyed by fire. B. notified the manager by telegraph, and on April 29th the latter wrote returning the money remitted by B., who afterwards sent it again to the manager, and it was again returned. B. then brought an action which was dismissed at the hearing, and a new trial ordered by the Divisional and affirmed by the Court of Appeal.

*Held*, affirming the decision of the Court of Appeal (*Barnes v. Dominion Grange Ins. Co.*, 22 A.R. 68, and of the Divisional Court, 25 O.R. 100), GWYNNE, J., dissenting, that there was a valid contract by the company with B. for insurance for four years; that the statutory conditions in The Ontario Ins. Act (R.S.O. 1887, c. 167) governed such contract, though not in the form of a policy; that if the provision as to non-receipt of a policy within fifty days was a variation of the statutory conditions, it was ineffectual for non-compliance with condition 115, requiring variations to be written in a different colored ink from the rest of the document, and if it had been so printed the condition was unreasonable, and that such provision, though the non-receipt might operate as a notice, was inconsistent with condition 19, which provides that notice shall not operate until seven days after its receipt.

*Held* also, that there was some evidence for the jury that the company, by demanding and receiving payment of the note, had waived the right to cancel the contract, and were estopped from denying that B. was insured.

Appeal dismissed with costs.

*Aylesworth*, Q.C., for the appellant.

*Cameron*, for the respondent.

Ontario.]

[Dec. 9, 1895.

CANADA ATLANTIC RY. CO. *v.* HURDMAN.

*Railway company—Loan of cars—Reasonable care—Breach of duty—Negligence—Risk voluntarily incurred—Volenti non fit injuria—"Kicking" cars on switch.*

A lumber company had railway sidings laid in their yard for convenience in shipping lumber, over the line of railway with which the switches connected, and followed the practice of pointing out to the railway company the loaded cars to be removed, the railway company thereupon sending their locomotive and crew to the respective sidings in the lumber yard and bringing away the cars to be despatched from their depot as directed by the bills of lading.

*Held*, affirming the decision of the Court of Appeal for Ontario (22 A. R. 292), and of the Queen's Bench Divisional Court, (25 O.R. 209) that in the absence of any special agreement to such effect, the railway com-