meant to charge therefor, and having used it thereafter, . . . the onus rested upon him to establish clearly that plaintiffs had withdrawn the letter and left the rate open for subsequent arrangement. . . .

The appeal should be allowed with costs and judgment entered for plaintiffs for the amount payable on the footing I have mentioned.

MARCH 6TH, 1903.

C.A.

DOHERTY v. MILLERS AND MANUFACTURERS INS. CO.

Fire Insurance—Mutual Plan—Annual Renewal—Proposal for Increased Premium — Non-acceptance — Condition of Payment in Advance.

Appeal by plaintiffs from judgment of STREET, J. (4 O. L. R. 303, 1 O. W. R. 457), dismissing with costs an action brought by a firm of manufacturers at Clinton, Ontario, against the company which had insured their property against fire upon the mutual system by two policies for $20,000 and $10,000 respectively. A fire took place on the 16th November, 1901. Street, J., held that, under the events which happened, no contract existed between plaintiffs and defendants for an insurance for the year beginning 31st October, 1901.

G. F. Shepley, K.C., and W. Proudfoot, K.C., for appellants.

J. H. Moss and C. A. Moss for defendants.

The judgment of the Court (MOSS, C.J.O., OSLER, MACLENNAN, GARROW, MACLAREN, JJ.A.) was delivered by

OSLER, J.A.—The plaintiffs' insurance with the defendants for the year 1900-1901 expired at noon on the 31st October, 1901, and I am of opinion that it was not thereafter renewed or continued.

If there was any renewal contract, when did it arise? Not on the 31st October, for defendants' letter of 28th October was not answered, nor was the renewal undertaking sent, nor was the cash premium paid to them by plaintiffs as required by that letter. From 31st October to 6th November plaintiffs were uninsured. How does plaintiffs' letter of 6th November or defendants' reply thereto of 7th November alter the situation? In no respect that I can see. By the former plaintiffs merely proposed some modification of the new rate defendants were proposing to charge, and did not, as required