

August, 1877, the Respondent applied to this agent to effect with the Company an insurance for \$2,000 on a general stock of hardware and other goods contained in the building in Orangeville, which was the subject of insurance in the other action, and a premium of \$40 was agreed on.

An interim receipt was thereupon given to the Respondent by the agent, which is in the following terms:—

“ Interim Receipt.

“ Fire Department. Interim Protection Note.

“ Queen Fire and Life Insurance Company.

“ Chief Office, Queen Insurance Buildings, Liverpool. Canada Head Office, 191 St. James Street, Montreal.

“ No. 33 Orangeville Agency, 3rd August, 1877.

“ Mr. William Parsons, having this day proposed to effect an insurance against fire, subject to all the usual terms and conditions of this Company, for \$2,000, on the following property in the town of Orangeville, for twelve months, namely, on general stock of hardware, paints, oils, varnishes, window glass, stoves, tinware, castings, hollow ware, plated and fancy goods, lamps, lamp glasses, and general house furnishing goods.

“ And having also paid the sum of \$40 as the premium on the same, it is hereby held assured under these conditions until the policy is delivered or notice given that the proposal is declined by the Company, when this interim note will be thereby cancelled and of no effect.

“ (Signed), A. M. KIRKLAND,
Agent to the Company.

“ N.B.—The deposit will be returned, less the proportion for the period, on application to the agent signing this note, in the event of the proposal being declined by the Company. If accepted, a policy will be prepared and delivered within 30 days. If the holder does not receive a policy during the specified period, he should apply to the head office in Montreal.

A fire happened on the same day, before a policy had been delivered to the Respondent.

The action was brought upon the interim receipt. The declaration which was framed upon it, as originally drawn, set out the conditions of the Company as those to which the insurance was declared by the interim note to be subject. It is agreed that the declaration was afterwards amended by striking out these conditions, though the amendment does not appear on the record.

Having regard to the arguments addressed to their Lordships, it is only material to refer to one of the company's usual conditions, the 4th, which provides, among other things, that the Company will not be liable for any loss or damage when more than 10 lbs. weight of gunpowder is deposited or kept on the premises, unless the same is specially allowed in the

body of the policy, and suitable extra premium paid. This quantity of gunpowder is smaller than that mentioned in the statutory condition above set out, 10 (g), which provides that the Company is not liable for loss or damage occurring while, among other things, more than 25 lbs. weight of gunpowder are stored or kept in the building containing the property insured.

It is admitted that at the time of the fire gunpowder exceeding 10 lbs. in weight was kept in the building destroyed by the fire, and the jury have found that the quantity so kept was less than 25 lbs.

It is contended on the part of the Respondent that the contract must, by force of the Ontario Act in question, be treated as being without any conditions; or, if subject to any, to the statutory conditions only.

The judgment of their Lordships in the other action has disposed of the first of these contentions. The second raises the question, whether the Company's own conditions or the statutory conditions are to be regarded as forming part of the contract, and its answer depends upon a consideration of the further question, whether the interim note is a policy of insurance within the meaning of that term in the Ontario Act.

This note is not a policy of insurance in the common understanding of that word, and was certainly not understood to be so by the parties to it. It is expressly a contract for a policy, making interim provision until a policy is prepared and delivered. It contains a proposal for insurance, which, if accepted by the Company, would result in a policy to be based on the terms of the proposal, and issued by the Company to the Respondent; the Company having an option to decline the proposal, in which case no policy would be delivered. The proposal thus offered for acceptance is “ to effect an insurance subject to all the usual terms and conditions of this Company,” and pending the acceptance or refusal of the Company, and until the policy is delivered or notice given that the insurance is declined, the property is “ held assured by these conditions.” No doubt this last stipulation forms a contract of insurance during this interval; but the whole agreement is preliminary only, and, in substance, the note is a proposal for a policy to be carried into effect, if accepted by the delivery of a