by Mr. Stanger, his chief clerk, and was then forwarded to, and received by, the respondent on the evening of the same day. The respondent went to his office early on the morning of Saturday, July 14, when he directed Mr. Stanger to transfer the insurance from the Scottish to the appellant company, and was informed that, in accordance with usual practice, the transfer had already been made in his books The respondent left early in the forenoon; and, after his departure, Mr. Stanger posted, about 2 p.m., a report to the appellants, informing them, *inter alia*, that an insurance of Mr. King's premises had been effected on their behalf. The office was then closed for the day, and immediately afterwards Mr. Stanger learned that there was a fire on the premises, but could not ascertain the amount of damage which had been done. The respondent heard of the fire for the first time on the Sunday forenoon, from Mr. King junior, whom he then informed that the insurance had been transferred from the Scottish to the appellant company. Mr. King, whose father still held the interim receipt of the Scottish company, without notice of cancellation, stated that he said in reply: "Well, I will expect you to see me out of the matter." According to the respondent's account, the answer he received was: "All right; do whatever you like with it." On the Monday a written claim for the amount of his loss was preferred by Mr. King against the appellants, and the claim and an estimate of the loss were, on that day, sent to them by the respondent On the same day the premium which had been received by the respondent was transferred in his cash-book from the credit of the Scottish company to that of the appellants, who eventually paid $2,872 to Mr. King. The appellants, in January, 1889, filed a writ against the respondent, alleging that he had been guilty of willful deceit, and had fraudulently effected, or purported to effect, a transference of the insurance in his books after the fire had occurred, in the knowledge that the Scottish office, and not the appellants, were the only insurers at the time, with the fraudulent purpose of relieving himself of a possible claim of the instance of the Scottish company, in consequence of his neglect to give a written notice of cancellation pursuant to their instructions. On that issue the case went to trial before Mr. Justice Wurtele, who acquitted the respondent of all imputations of fraud, and dismissed the action, with costs. The appellants then carried the case to the appeal side of the Court of Queen's Bench, where, admitting that the transfer had been made in the respondent's books before the fire occurred, they nevertheless insisted that the charge of fraud had been proved. The Court of Queen's Bench, consisting of five judges, unanimously affirmed the decision of Mr. Justice Wurtele, and dismissed the appeal with costs.

After stating that their Lordships were unable to differ from the conclusion arrived at by the courts below, they state that the appellants did not confine their arguments alone to the issue raised before Mr. Justice Wurtele and the Court of Queen's Bench, and then say:

They argued that their pleadings, taken in connection with the evidence adduced at the trial, disclosed such negligence, or breach of duty, committed by the respondent, acting in the capacity of their agent, as was in law sufficient to infer his liability to them for the sum claimed in the action. On the other hand, the respondent maintained that the new cause of action, brought forward there for the first time, was not within the appellants' declaration, that the evidence given at the trial was not directed to it, and that it ought not to be entertained by that board. Upon the merits of the new question the argument of the respondent, shortly stated, was that he had authority from Mr. King, jun., to transfer the risk from the Scottish company to the appellants, and that notice to cancel the receipt of the Scottish company was therefore unnecessary, that according to the practice of insurance agents, a valid substitution was made by the entries of Saturday, July 14, of the appellants for the Scottish company as insurers of the premises, and that the practice was in conformity with the principles recognized in "Routh v. Thompson" (13 East. 274), and similar decisions. In any view he maintained that his representations to the appellants, to the effect that they were the insurers at the time of the fire, were made by him in good faith and in the reasonable belief that such was the fact, derived from the general understanding and course of dealing in that part of the world. He also maintained that Mr. Hansen, according to the custom of insurance offices there, was charged with the duty of enquiring into the legal liability of the appellants, and that the whole circumstances bearing upon that liability, as they appeared in the respondent's books, were fully disclosed to him. Their Lordships were of opinion that in the circumstances of the appeal the appellants were not entitled to raise any issue except that of fraud.

(Their Lordships here cite authorities sustaining their opinion, and proceed.) If the allegations of fraud and willful misrepresentation were expunged, it was exceedingly doubtful whether there would remain an intelligible charge of negligence. Their Lordships did not find it necessary to rest their decision upon that ground. When a question of law was raised for the first time in a court of last resort upon the construction of a document, or upon facts either admitted or proved beyond controversy, it was not only competent but expedient, in the interests of justice, to entertain the plea. The expediency of adopting that course might be doubted, when the plea could not be disposed of without deciding nice questions of fact, in considering which the court of ultimate review was placed in a much less advantageous position than the courts below. But their Lordships had no hesitation in holding that the course ought not in any case to be followed, unless the court was satisfied that the evidence upon which they were asked to decide established beyond doubt that the facts, if fully investigated, would have supported the new plea To accept the proof adduced by a defendant in order to clear himself of a charge of fraud, as representing all the evidence which he could have brought forward in order to rebut a charge of negligence, might be attended with the risk of doing injustice. In this case there were various points upon which the evidence did not appear to their Lordships to be so full and satisfactory as it might and probably would have been had the question of negligence been raised at the trial. The points touching the authority of the respondent to make a transfer of the risk on behalf of the assured and the honesty of his belief in the validity of the transaction of which the appellants complained depended, as was shown by their argument, upon the degree of credibility to be attached to different witnesses, a matter which ought to have been submitted to the judge before whom they were examined. There were two other points upon which light might have been thrown had the plea of negligence been taken before him, these being (1) the ordinary course of insurance business, and (2) the position and duties of an insurance adjuster. Were their Lordships to decide upon the evidence as it stood and the arguments addressed to them, they could only be guided by their own knowledge of the course of insurance business in this country, which the evidence showed to be so far different from that followed in the city of Montreal as to make it unsafe to assume that conduct which might tend to show negligence in the one case would do so in the other. Their Lordships would, therefore, humbly advise Her Majesty to affirm the judgment appealed from and to dismiss the appeal, the costs of which must be borne by the appellants.