

but the House of Lords (Lord Loreburn, L.C., and Lords Macnaghten, Atkinson and Collins) reversed the judgment of the Court of Appeal and restored that of the trial court—their lordships holding that there was evidence of negligence on the part of the defendants sufficient to support a verdict in favour of the plaintiff. Their lordships appear to think that the fact that the defendants had omitted to keep their fence in proper order was not very material, and their omission to maintain it could not be regarded as the effective cause of the accident, but they hold their omission to lock the turntable, having knowledge that children were accustomed to play with it, which they took no steps to prevent, constituted negligence. It may be useful to compare this case with that of *Smith v. Hayes*, 29 Ont. 283.

INSURANCE, LIFE—VOIDABLE POLICY—BENEFIT OBTAINED BY FRAUD
OF AGENT—RECOVERY OF PREMIUMS PAID UPON MISREPRESENTATION OF AGENT.

Refuge Assurance Co. v. Kettlewell (1909) A.C. 243 is the case known in the courts below as *Kettlewell v. Refuge Assurance Co.* The House of Lords (Lord Loreburn, L.C., and Lords Halsbury, Ashbourne, Macnaghten and James) have affirmed the decision of the Court of Appeal (1908) 1 K.B. 115 (noted ante, vol. 44, p. 275). The facts were that the plaintiff had taken out a policy with the defendant company, and after it had been in force for a year, the defendants' agent represented to the plaintiff, who proposed to let it lapse, that if she paid four more premiums the policy would remain in force, and she would have no more premiums to pay. She accordingly paid the premiums for the four more years, relying on this representation, and, the defendants then refusing to give her a paid up policy, she brought this action to recover the four premiums. All the courts below held she was entitled to succeed, and their decisions have now been unanimously affirmed by the House of Lords, without calling on the respondents, and apparently deeming the case so plain as not to call for any reasons. Lord Loreburn, L.C., putting the significant question to counsel for the appellant: "Do you really contend that the principal can keep the money obtained by the fraud of the agent?" To which the learned editor adds the note "May one be pardon'd and retain the offence?"—Hamlet. This at first sight may not seem very apposite, but when we remember that Shakespeare uses the word "offence" here as equivalent to "the fruit of iniquity," it is seen that it is singularly apt.