able time elapsed before the fire and loss, &c., for such notice of the happening of the said erection or addition to be allowed by the endorsement on the policy, yet the plaintiff did not give such notice to the Secretary, &c., nor was the same allowed, &c. and the policy became void, &c.

The fifth plea was, that before the making of the policy an application was made by the plaintiff for the insurance, and in such application the situation of the store, &c., was represented and described, &c; and that after the making of the policy new and additional buildings were erected, which were adjacent to and around the said building or store, &c.; and although the risk to the store was changed thereby, yet the plaintiff did not make to defendants any new representation in writing of such new and additional buildings, or of the change of risk thereby, whereby the policy became void, &c.

The plaintiff took issue on these three pleas, and he replied on equitable grounds to them, that the condition in the said pleas mentioned is as follows: By-law 14. The following circumstances will vitiate a policy, unless written notice containing full particulars shall be given to the Secretary of this Company, and the consent of the Board obtained thereto, endorsed on the policy, and signed by the President and Secretary, the Board reserving to themselves the power to approve or reject such:—1st. Of the removal of goods or other personal property insured in this company. 2nd. Of alienation by mortgage or otherwise, or any change in title or ownership of property insured in this Company. 3rd. Of any insurance subsisting, or that shall be effected in any other Company, on property insured in this Company, without the consent of the Board. 4th. Of any alterations or additions to the building insured in this Compony. 5th. Of the erection or alteration of any building within the limits described in the application. 6th. Of any misrepresentation in the answers given to the several queries in the application. 7th. Any change in the occupancy of the premises assured.

By-law 15. That when any alterations or additions are made to any building insured with this company, notice of the same shall be forthwith given to the Secretary, in writing; and the agent shall, if so directed, survey the same and report to the Board whether such alterations or additions have increased the risk: and if so, an additional premium note shall be taken for such amount as shall be determined upon by the Board; and it may be optional with the Company to reject such alterations, and to cancel the policy. And in the event of any alterations to any adjacent buildings, or be the erection of others, or of any other thing deemed dangerous, within the limits described in the application of the insured, a similar notice shall be forthwith given, and the Company may in like manner cancel the policy, the same to be recorded on the policy by the Secretary; but no such alterations or additions to form a part of the original claim in the event of any loss by fire. And the plaintiff further says, that after the making of the said alterations in the 3rd, 4th, and 5th pleas mentioned, which consisted in building a wooden shed next adjoining to the said premises so insured, and before any breach by the plaintiff of the said condition, the plaintiff did forthwith give verbal notice thereof to the agent of the defendants, one Thomas Ryal, he being the proper person to receive the same, and having the power and authority from the defendants to receive the same, and to make the representations and agreement hereinafter mentioned; and the said agent did then inspect the said alterations so made, and did then for and on behalf of the said Company represent to the plaintiff that the same was not an alteration or addition to the building so insured within the meaning of the said policy, and that the same did not increase the risk of the said insurance, and that the same was not required to be notified in writing to the said Company, or the consent of the Board obtained thereto to be endorsed on the said policy; and the said agent did then, as did also the said Company, waive, exonerate and discharge the plaintiffs from giving the said written notice, or procuring the consent of the said Board to the said alterations to be endorsed on the said policy.

The trial took place at Woodstock, in October, 1868, before Morrison, J.

The policy was admitted and put in, also the plaintiff's application for the insurance. The loss was also admitted:

The plaintiff called Thomas Ryal, who stated that he was an agent of the Company for that part of the country: that he knew the store and its situation, that he had built it and sold it to the plaintiff. He also stated that after the insurance the plaintiff called on him to inspect a shed and root-house he had built in the rear of the store insured: that before the erection of these additions the store was seventy-six feet from the Town Hall, as described in the plaintiff's application, and set out on a diagram produced, and that the new erections caused the building to be nearer the Town Hall. He also said that in his opinion the erection did not increase the risk, although the shed and root-house adjoined the store, and that the plaintiff called his attention to the alteration with a view to his giving notice to the Company, but that he believed he told the plaintiff it was not necessary to do so. He further said, he was only an agent for the purpose of obtaining risks and collecting assessments, and for which duties he was paid by fees, and that he understood the fire originated in the shed.

With this testimony the plaintiff closed his case, and *M. C. Cameron*, Q. C., for defendants, submitted that the plaintiff should be non-suited, as no notice of the alterations and addition was given to the Secretary, &c., as provided for.

J. H. Cameron, Q. C., for the plaintiff, contended that as the pleadings stood the plaintiff was entitled to recover. The defendants' counsel urged that Ryal was not an agent of the Company for the purpose of inspecting, or of waiving any right of the Company: that he had no power to bind the Company, nor was any proved: that he (Ryal) was the agent of the plaintiff, and that the notice must be to the Secretary: that the defendant's pleas were proved and the plaintiff's replication was not proved but negatived.

The learned Judge, although his opinion was against the plaintiff, would not stop the case, but allowed it to go to the jury, reserving leave to