preme Court, and, therefore, a decision, under the circumstances, of high authority, although not of course binding upon this Court, where it was held that the insurance company, under a state of facts not unlike those in the present case, must prove that the notice to cancel was received by the company before the fire, and that a notice sent before, but not received until after, the fire, was wholly ineffectual, the rights of the parties having under the contract been vitally altered by the intervening fire.

I adopt this view of the law as sound. Giving such a notice is wholly the voluntary act, and for the exclusive benefit, of the insured. So long as it rests in intention the insurer has no power or control over the matter whatever. The notice may be recalled up to the last moment before it reaches its statutory home in the hands of the insurance company, and what is equivalent to a recall may be accomplished by indirect, as well as by direct, interference on the part of the insured, as in this case by an erroneous address upon the letter intended for the defendants, but retarding its delivery.

I think the appeal fails, and should be dismissed with costs.

MACLENNAN, J.A., gave reasons in writing for the same conclusion.

MOSS, C.J.O., and MACLAREN, J.A., also concurred.

SEPTEMBER 14TH, 1903.

C. A.

SAUNBY v. LONDON WATER COMMISSIONERS.

Water and Watercourses—Injury by Dam—Statutory Authorization—Water Commissioners—Notice of Action—Limitation of Actions—Easement—Prescription — Laches — Injunction—Damages.

Appeal by defendants from judgment of FALCONBRIDGE, C.J., 1 O. W. R. 567, in favour of plaintiff for an injunction and damages in respect of the penning back, by a dam erected by defendants on the river Thames, of water needed for the purposes of plaintiff's mill in the city of London.

A. B. Aylesworth, K.C., and T. G. Meredith, K.C., for appellants.