ings, six of which are occupied by tenants and one by assured." In the application the question as to how many tenants, was answered "six tenants and applicant," but the defendant's agent was informed, and he advised them that "the largest house of the lot the applicant will occupy himself." A variation of the statutory conditions was printed on the policy in these words, "This policy will not cover vacant or unoccupied buildings (unless insured as such), and if the premises shall become vacant or unoccupied * * * this policy shall cease and be void unless the company shall by endorsement * * allow the insurance to be continued."

Held, that the defendants could not escape liability upon the ground that the actual facts were not before them at the time of the application, nor by their variation of the statutory conditions that the policy would not cover vacant or unoccupied houses.

Held also, that the variation as to the premises becoming vacant or unoccupied in a case like this, where the houses were of a class likely to be occupied by monthly tenants or by tenants for short periods, where the moving out of one tenant and leaving the tenement vacant one day whether the insured was aware of it or not, might avoid the policy, was unreasonable, and the reasonableness of the variation was to be tested with relation to the circumstances at the time the policy was issued, and not in the light of those existing at the time at which the condition was sought to be applied.

Smith v. *City of London Ins. Co.*, 14 A. R. 328; and *Ballagh* v. *Royal Mutual Fire Ins. Co.*, 5 A.R. 87, cited.

Semble, following the *Citizens Insurance Company of Canada* v. *Parsons*, 7 App. Cas. 96, 121, when an attempted variation of a statutory condition has been held for any reason not binding, the other conditions must then be read as if the attempted variation was not in the policy.

Held also, that the fact that three or four of the houses having been vacant to the knowledge of the plaintiff, for some months before the fire, was under the third statutory condition, a change material to the risk, and the risk was increased by it, and the failure to notify the defendants voided the policy "as to the part affected," which in this case was the whole block.

Held also, following *Reddick* v. *Saugeen Mutual Fire Insurance Company*, 14 O.R. 506, that the provisions of the third statutory condition could not be distinguished from those of the first, as to the meaning of the word "risk," and matters relating to title were not covered.

Held also, following *Imperial Fire Insurance Company* v. *Bull*, 18 S.C.R. 697, that the defendants having under an agreement paid the mortgagees and taken an assignment of the mortgage, could not hold it against the mortgagor (plaintiff) even though they could show the mortgagor never had any claim against them, and that that case is no authority for holding that the effect of the agreement between the mortgagees and the defendants, limited to the extent of the mortgagees' interest, was to do away, as between the mortgagor and the defendants, with the conditions upon which the policy was issued.

Judgment of FALCONBRIDGE, J., affirmed.

Myers, Q.C., and *W. J. Clark*, for the appeal.

Wallace Nesbitt, and *R. McKay*, contra.