

for four years, giving an undertaking to pay the amounts required from time to time, and a four months' note for the first premium. He received a receipt beginning as follows: "Received from B. an undertaking for the sum of \$46.50, being the premium for an insurance to the extent of \$1500 on the property described in his application of this date," and then providing that the company could cancel the contract at any time within fifty days by notice mailed to the applicant, and that non-receipt of a policy within the fifty days, with or without notice, should be absolute evidence of rejection of the application. No notice of rejection was sent to B. and no policy was issued within the said time, which expired on March 4th, 1891. On April 17th B. received a letter from the manager, asking him to remit funds to pay his note maturing on May 1st. He did so, and his letter or remittance crossed another from the manager, mailed at Owen Sound, April 20th, stating the rejection of his application, and returning the undertaking and note. On April 24th the insured property was destroyed by fire. B. notified the manager by telegraph, and on April 29th the latter wrote returning the money remitted by B., who afterwards sent it again to the manager, and it was again returned. B. then brought an action, which was dismissed at the hearing, and a new trial ordered by the Divisional Court and affirmed by the Court of Appeal.

Held, affirming the decision of the Court of Appeal (*Barnes v. Dominion Grange Insurance Company*, 22 Ont. App. R. 68, and of the Divisional Court, 25 O. R. 100), Gwynne, J., dissenting, that there was a valid contract by the company with B. for insurance for four years; that the statutory conditions in The Ontario Insurance Act (R. S. O. 1887, c. 167) governed such contract, though not in the form of a policy; that if the provision as to non-receipt of the policy within fifty days was a variation of the statutory conditions, it was ineffectual for non-compliance with condition 115 requiring variations to be written in a different coloured ink from the rest of the document, and if it had been so printed, the condition was unreasonable; and that such provision, though the non-receipt might operate as a notice, was inconsistent with condition 19, which provides that notice shall not operate until seven days after its receipt.

Held, also, that there was some evidence for the jury that the company, by demanding and receiving payment of the note, had