The third question was as to the effect of the McLaughlin agreement and the Murray order. The policy insured the soda-water fountain and attachments, "the property of the assured." Statutory condition 6 (a) provides that an insurance company is not liable for the loss of property owned by any other person than the assured, unless the interest of the assured is stated in or upon the policy." The fountain was sold to the plaintiffs under the McLaughlin agreement, and the ownership and title were to remain in the vendors until the price was paid; the property was to be at the risk of the purchaser; the property was to be insured by the purchaser, "with loss payable to the vendors as their interest may appear."

The learned Judge was of opinion that the plaintiffs could maintain their claim for the loss upon the fountain and accessories. They were the plaintiffs' property in the popular sense though the legal title was in the McLaughlins. Out of $1,890, the plaintiffs had paid all but $730 and interest. The McLaughlins were not really "owners;" their contract recognised an interest in the purchasers. Upon the wording of the condition itself, the term "owner," was not synonymous with "holder of an exclusive title."

Reference to Hopkins v. Provincial Insurance Co. (1868), 18 U.C.C.P. 74; J. Gainor & Co. v. Anchor Fire and Marine Insurance Co. (1913), 24 W.L.R. 656; Ryan v. Agricultural Insurance Co. (1905), 188 Mass. 11; Keefer v. Phœnix Insurance Co. of Hartford (1901), 31 S.C.R. 144.

The fountain and accessories were not "property owned by any other person than the assured:" Davidson v. Waterloo Mutual Fire Insurance Co. (1905), 9 O.L.R. 394. The amount allowed was not in excess of the plaintiffs' cash interest in the fountain etc.

The order given in favour of Murray was merely a direction to pay him $550 out of the moneys due under the policy. Whether it was an assignment in law of that amount so as to vest the right to sue for it in Murray, and to divest the plaintiffs' right, could not be decided in the absence of Murray. So far as appeared at the trial, the plaintiffs still had the right to sue for the amount due on the policy.

Judgment for the plaintiffs for $902, with interest from the date of the writ and costs; the $750 in Court to remain there, and the balance of $152 to be paid into Court. No part of either amount is to be paid out except on notice to McLaughlin & Co. and Murray. Any party interested may apply, on notice, in Chambers, for payment out.