

previous delivery of the premium notes in consideration of which the policies purported to be issued ; but the cheques dated Oct. 31st, 1898, for the cash portion of the premium on the \$20,000 policy, and Oct. 31st, 1899, for the cash portion of the renewal of that policy and the first premium on the \$10,000 policy, were sent on or about their respective dates, along with the required premium notes, to the defendants. On Oct. 27th, 1900, the executive officer of the defendants wrote to the plaintiffs enclosing a receipt for \$363.23, being the amount of the cash premium for the renewal of both policies. The letter was on a printed form, stating that a receipt "renewing" the policies was enclosed, and asking the plaintiffs to remit the amount of the cash premium. It also asked for new premium notes, and stated that the old ones were enclosed, as they were. The plaintiffs retained the receipts, but did not send the money or the notes until after Dec. 20th, 1900, when, in answer to a letter of the executive officer, they enclosed the notes duly signed, and stated their willingness to accept a sight draft for the cash renewal, which they afterwards honoured. On Oct. 28th, 1901, the same officer again enclosed renewal receipts in a letter on the same form as above, but the amount of the cash payment was higher, and on Nov. 6th, 1901, the plaintiffs wrote to the defendants calling attention to the increase ; the officer answered the next day that the defendants had been obliged to increase the rate ; and on the following day the plaintiffs wrote as follows :—" If you cannot do better we will have to accept, but we are going to ask you to reconsider the matter and meet us in this if at all possible. . . . Kindly give this your consideration and let us hear from you." On November 11th the officer wrote to the plaintiffs : " The consulting board carefully considered your risk before making the advance in rate they did, and had no alternative but to do so to procure the re-insurance we required. Trusting this explanation will prove satisfactory to you." No answer was made by the plaintiffs to this.

On Nov. 16th, 1901, a fire took place, and damage was done to the property covered by the defendants' policies. Two days afterwards the plaintiffs sent the defendants a cheque for the amount of cash demanded and new premium notes, but the defendants returned them. The defendants reinsured their risk as soon as the premiums became payable, and had not cancelled these reinsurances down to the time of the trial.

Held, that no contract existed between the plaintiffs and defendants for an insurance for the year beginning on Oct. 31st, 1901.

Seemle, that if the plaintiffs had unqualifiedly accepted the renewal terms, the condition providing for payment in advance of the cash premium would have been waived ; for the intention of the defendants in delivering the receipt, where the money had not in fact been paid, was to keep the policy in force and to give the plaintiffs credit for the amount.

Proudfoot, for plaintiffs. *Barwick*, K.C., for defendants.