

The only thing affecting plaintiffs to which defendants point is the fact that an interim receipt valid only for 30 days (for that, I think, is its proper construction) was issued to and received by plaintiffs. This receipt, however, was issued apparently as matter of routine by an under officer of defendants. It is on the usual printed form, and was not passed upon nor required to be passed upon by the general manager, who had just made the parol contract. It was, it is true, received by plaintiffs, but the evidence shews, and the Chief Justice has found, that they did not observe that it by its terms might modify the earlier parol contract. And after they received it they paid the full year's premium. So long as the question was, contract or no contract, the fact that an interim receipt in this limited form had issued was of prime importance, the argument by the defendants being of course that it and it alone created the only contract between the parties. But beginning, as I think we must, with the finding in plaintiffs' favour that there really was the completed prior parol contract, the importance of the interim receipt at once practically ceases, because in such case, and upon this branch, its only use must be as shewing or tending to shew that plaintiffs had agreed to accept it in performance of or substitution for the larger contract, a contention for which there is, in my opinion, no foundation.

The remaining question is as to the effect of plaintiffs' failure to disclose the incumbrance upon their property at the time of the application for insurance.

The parol agreement, apart from the interim receipt, included, in my opinion, as a term to be necessarily implied to carry out the intention of both parties, that a proper written policy would issue in due course. And I also think, differing in this respect to some extent from the opinion of the learned Chief Justice, that plaintiffs were only entitled to claim, and defendants bound to tender, a policy in the usual form then used by them, that is, a policy subject to the statutory conditions and to such variations of these conditions, properly printed, as were just and reasonable: *Citizen Ins. Co. v. Parsons*, 7 App. Cas. 96, at pp. 126, 127; *Eureka Ins. Co. v. Robinson*, 56 N. Y. St. 226, at p. 264; *De Greve v. Metropolitan Ins. Co.*, 61 N. Y. St. 594, at p. 602; *Machine Co. v. Ins. Co.*, 50 Ohio St. 549, at p. 556; *Smith v. State Ins. Co.*, 64 Iowa St. 716, at p. 718.

There is in this case, as in the *Parsons* case, an interim receipt which states that the insurance is "subject to the terms and conditions contained in the policies of the company, at the date hereof." And while, in my opinion, the