

error to have used the later form, and nothing turns upon the error.

Should plaintiff rest her case, as she did at the trial, on this receipt alone, then the policy she would be entitled to have considered would be one having all the statutory conditions with variations then used by this company.

The defence is rested upon No. 8 of the statutory conditions. That condition provides that the company shall be free from liability for loss "if there is any prior insurance in any other company, unless the company's assent thereto appears" on or indorsed on the policy.

This contract is so plain that it requires nothing in this case but to ascertain whether or not the insured had a prior insurance. Nothing was said to the agent of defendants as to a prior insurance. There was no written application. There is nothing to complicate the case, as often has occurred when the question of prior insurance has been raised, by reason of representation or want of it. The prior insurance in question here was one of \$2,000 in the Commercial Union Assurance Company, by virtue of a policy dated 22nd January, 1898, for the term of three years, and renewed by payments and receipts so as to have it kept in force in plaintiff's favour at the time of the fire. She is the person that the policy refers to as having paid the premium, and named as the assured.

The loss is made payable to George Gooderham, who held a mortgage on the property. It is said that he was the person who effected this insurance, and that he did it as a mortgagee, without consulting plaintiff.

The facts are, that the mortgage is dated 14th August, 1888, for \$3,500, signed by plaintiff and her husband, who are called in the instrument the mortgagors, though she is shewn upon the face of it to have been the registered owner under the Land Titles Act, and both covenant with the mortgagee that they will insure the buildings to the extent of their insurable value. The husband admits that he paid the premiums on such insurance, when charged up in the account of the mortgagee, with interest. The principal was also reduced by such payments. These payments may or may not have been made during the currency of the last renewal of the particular policy referred to as issued by the Commercial Union. I infer . . . that the premium on the first issuing in 1898 of the policy was thus paid. The wife intrusted all that sort of business to the husband as her agent. It is clear, I think, that he did what he pleased in regard to payments on the mortgage and the insurances, and she was