

Queen's Bench that the interim receipt was in force.<sup>1</sup>

In *Browning v. Provincial Ins. Co.*, a certificate of insurance was got by one Joel Leduc, reading "said insurance to be subject to all the conditions in the policy of the company." The policies of the company read "A. B., as well in his own name as for and in the name of every other person to whom the same doth or may, or shall appertain in part or in all, doth make insurance," &c. Leduc insured so in Montreal flour that he was shipping to Newfoundland, property of Browning. The vessel on her way to Newfoundland was lost, and almost all the flour. Browning sued on the insurance that Leduc, his agent, had effected. <sup>2</sup> The certificate was held not to be the complete contract, but that reference to the policies usual was to be made, and might be made.<sup>3</sup>

In a case in the Queen's Bench, Upper Canada (A.D. 1858), *Goodfellow v. The Times and Beacon Ass. Co.*, the insured was given a provisional receipt in these words: "Received from Messrs. J. G. & Co., \$14 premium for an insurance of \$2,000, on property described in

<sup>1</sup> There was a conflict of opinion among the judges who took part in this case. There were two judges who dissented from the judgment of the Queen's Bench, and this judgment reversed the unanimous judgment of the Court of Review. So the opinion which prevailed was held by four judges only, while five were in favor of the Company, which was held liable.

A letter of acceptance mailed can't be recalled, but you can recall the private messenger, it was said in argument in *Household Fire, &c., v. Grant*. "The post office is treated as the agent of both parties," by Thesiger, L.J., in above case, and he approves *Taylor v. Merchants F. Ins. Co. Bramwell, diss.*, seems to say the law ought to be the same as if we had no post,—sed? For we have a post.

In Scotland they used to hold acceptance not effectual till it reached its destination, and in a case in which an acceptance and an after refusal to accept reached the offerer at the same time, by an irregularity in the post office, acceptance was held neutralized. *Countess of Dunmore v. Alexander, Bell's Illustrations, Law of Scotland, 1830, p. 86, vol. 1.* That would not be held now in England, for acceptance mailed would be irrevocable.

<sup>2</sup> In England undisclosed principal may sue on mercantile contracts made by his agent, subject to any defences which may exist against the agent. ? In Quebec province. See Hudon case.

<sup>3</sup> Arnould, Vol. 1, p. 223 (3rd ed.) to the contrary notwithstanding.

the order of this date, subject to the approval of the board at Kingston; the said party to be considered insured for 21 days from the above date, within which time the determination of the board will be notified. If approved, a policy will be delivered; otherwise the amount of the receipt will be refunded less the premium for the time so insured. This was held not an absolute insurance for 21 days certain, but that the company might reject the risk within the 21 days at any time, and on notice the risk would end (one judge dissenting).

In *Fried v. Royal M. Co.*<sup>1</sup> a premium was taken by an agent in New York, conditioned that the policy should be issued from the Head Office at Liverpool, or the premium returned if the insurance were declined. The policy was sent from Liverpool to the New York agent. He retained it, yet the insurance was held good; the contract was held perfected though the policy was not had by the insured, save so; the company was condemned.

#### § 23. Interim receipts operation.

Interim premium receipts may really operate insurances during the interim term unless the wording be special.<sup>2</sup>

A memorandum or receipt, such as mentioned above, means that the insurance is to be according to the terms of the policies ordinarily used by the insurer.<sup>3</sup>

#### § 24. Negotiation for insurance by letter.

A question may arise as to the time at which the contract becomes complete when the negotiation for the insurance is carried on by letter. The doctrine that an offer to insure made by letter remains open till the letter is received by the other party, and that the offer cannot be retracted before that time, except personally or by letter so that the notice of the retraction may reach the party before he has dispatched a letter accepting the offer, is approved by many. The contract

<sup>1</sup> 47 Barbour, 127.

<sup>2</sup> See the two interim receipts in *Montreal Assurance Co. v. McGillivray*.

In England interim receipts must be upon stamped paper (not so in Quebec).

<sup>3</sup> See observations of Aylwin, J., in case of *McGillivray*.