The reinsurance policy was issued contemporaneously and was described as a policy for reinsuring in the sum of $— for and during the term of the original policy, "property covered by the policy No.— issued for $— in favour of —." It provided: "This policy is admitted and declared to be subject to the same rates, risks, conditions, valuations, endorsements, privileges, assignments, transfers, and modes of settlement as are or may be assumed or adopted by the said reinsured company, whose policy this follows: loss, if any, and expense of adjustment shall be payable pro rata at the same time and in the same manner as by the said reinsured company."

During the currency of the policy, on the 10th March, 1913, the American company was placed in liquidation in the State of Pennsylvania. The result of this was that those holding policies ranked as creditors in the liquidation for the unearned pro rata portion of the premiums paid. The theory upon which the action was brought was that this entitled the liquidator to claim against the reinsuring company the unearned pro rata proportion of the reinsurance premium.

The risk of the contract having once commenced, there could be no apportionment or return of premium unless this was expressly stipulated for in the contract: Tyrie v. Fletcher (1777), Cowp. 666. If there had been complete failure of consideration, the premium would have been recoverable, not under the policy, but as money had and received, or upon the theory of quasi-contract.

It was admitted that the policy was not cancelled by the action of either party, but it was said that it "became void or ceased" within the meaning of the condition, and therefore the unearned portion of the premium should be returned. As between the original insured and the American company, the original policy did, by reason of the bankruptcy of the insuring company, become void and cease, within the meaning of this clause; but there was no provision in the reinsuring policy which provided for a return of the premium in the event of the original policy becoming void or ceasing. The conditions quoted must be regarded as endorsed on and forming part of the reinsuring contract, and would have become operative had the reinsuring company become insolvent.

The learned Judge knew of no law, and none was cited, which would warrant the holding that a policy became void, and that the insuring company must return the premium, merely because the insured became insolvent.

The contract was an entire contract to insure for the entire period, and no right of apportionment existed unless stipulated for.

The reinsuring company had no knowledge of the insolvency of the original company until long after the expiry of the policy.