no effect. The only insurances mentioned in or endorsed upon the policy which the defendants issued to the plaintiff are those in the Hastings Mutual and Canada Mutual.

The plaintiff commenced one action in the Court of Queen's Bench upon this policy, and daclared in the usual way. The defendants pleaded, with other pleas, the conditions to which I have referred. To this the plaintiff replied on equitable grounds, and also added a count to his declaration by which a reformation of the policy was sought. This count, after stating the terms of the policy as in the first count, alleges that at the time of effecting the insurance the plaintiff had an insurance in the Gore Mutual to the extent of $1,000, of which the defendants had notice before and at the time they effected the risk, and that with such knowledge they agreed to accept the risk and to insure the plaintiff's property, and to mention the other insurance in the policy, or have it endorsed thereon; and that by mistake they omitted to do either, of which the plaintiff had no knowledge until after the loss; and that the policy ought to be reformed and amended by the mention therein of the existence of the policy in the Gore Mutual of $1,000. It then claims in effect that the policy should be treated as reformed, and the plaintiff be entitled to recover upon that footing. The defendants answered this count by two pleas. By the first they denied notice of the Gore Mutual policy, and the agreement to mention it in or endorse it on their policy, and the alleged mistake. The second plea set up the conditions previously referred to, and that the applicant shall be bound by his representations on making his insurance, and if the agent of the Company makes the application for the insured he shall be considered the agent of the insured and not of the Company; that the plaintiff made his application through Suter, the agent of the defendants at Dundas, and that the application was in writing and was forwarded to the defendants at their Head Office in Toronto; and the defendants' policy now in question was issued thereon, that the application contained no statement or mention of the policy of $1,000 in the Gore Mutual, nor had the defendants, or their directors, or any of the officers of the Company at the Head Office any notice of such policy before the making of the application, or of the defendants' policy, although the plaintiff had communicated the existence of the said policy of $1,000 to Suter at the time he made his application, but Suter had no authority from the defendants to change, or vary, or waive the said conditions, and he did not give the defendants any notice thereof, and the defendants had no notice unless the notice to Suter was notice to them, which they deny. That immediately after the application of the plaintiff the defendants' policy was delivered to him, and he was aware and had the means of knowing that the policy of $1,000 was not endorsed or otherwise acknowledged by the defendants in writing, and that he was guilty of laches in not seeking sooner to reform the policy. That the conditions on the policy were made expressly with the intention of preventing fraud and collusion between the insurer and the agents of the Company by requiring the knowledge of the Company, and that if applications are made for insurance by an agent of the defendants he shall be considered the agent of the insured and not of the defendants as to the application, and that they are not bound by the notice to a knowledge of Suter without their acknowledgment endorsed on the policy, or otherwise expressed in writing, and that the policy of $1,000 was not omitted to be endorsed on the policy of the defendants, or otherwise acknowledged in writing through any error or mistake of the defendants. Similar allegations are contained in the plaintiff's equitable replication to the third plea to the first count and the defendants' rejoinder thereto.

At first sight this record seems rather complicated and embarrassing, but I think there is no doubt that the substantial question to be determined is whether the plaintiff has an equity to have the policy reformed. He cannot succeed if the policy remains in its present shape. Either the condition as to giving notice of existing insurances must be expunged or the policy must be reformed and amended as the added count puts it by the mention therein of the existence of the policy in the Gore Mutual of $1,000. The former alternative is out of the question for the defendants have an undoubted right to provide for the case of the insurances in the Hastings Mutual and the Canada Mutual. The case then is to be determined on precisely the same principles as if the more correct and convenient course had been adopted of filing a bill for the rectification of the policy. It might perhaps be surmised that the plaintiff would have sought relief in that mode, and from the appropriate forum, if he had not clung to the hope that by suing at law he might obtain the advantage of the opinion of a jury.

The plaintiff's right to recover being dependent on his right to a reformation of the instrument, the question is whether he can consistently, with the established doctrines of equity, obtain that relief. I take it that the principles upon which the Court acts are clear and well-defined. They have been amply illustrated and explained in modern cases, but they were long since enunciated with considerable precision. Before the Court will assume to rectify an instrument it must be satisfied beyond all reasonable doubt that there was a common intention different from the expressed intention, and a common mistaken supposition that it was correctly expressed. It is essential that clear proof should be adduced of a real agreement between the parties different from