8th March, 1909, when the same language was used as in the present case, and the circumstances were the same, except that there was then a watchman. They were correctly informed on the 24th June of the condition of the premises and that the watchman had been withdrawn; and, in consequence of this change, they charged and were paid a higher premium. The time mentioned to them as that at which the plaintiff hoped to get the control of the premises and resume active construction and complete and operate the smelter had not arrived at the time of the fire.

In the circumstances, I am of opinion that the defendants accepted the risk on the understanding that the words in the application and the policy correctly described the premises as they stood; and the defendants, having accepted the higher premium with full knowledge and on this understanding, are now estopped from asserting the contrary.

It is also to be noted that the plaintiff gave a warranty that the smelter was not to go into operation during the currency of the insurance.

I do not think that the insured premises were or became "vacant or unoccupied," within the meaning of the 4th addition above quoted. These words were clearly intended to apply to buildings that were finished or occupied or ready for occupation.

If the claim of the defendants is well founded, then the insurance never attached, as there would be no such buildings on the property of the company as those described in the policy. And yet it may be noted that the defendants have made no offer of a return of the premium.

On the question of value and insurable interest, it is proved that the buildings, machinery, etc., cost about $60,000, and there is evidence that they were worth at the time of the fire from $40,000 to $50,000. It is true that the president of the company said he would not give more for them than $25,000 or $30,000; but he does not say that they were not worth much more. The claim of the first mortgagee was only about $29,000, so that there is no evidence to sustain this . . . defence.

On the whole, I am obliged to come to the conclusion that the learned Chief Justice gave too narrow a construction to the words of the application and policy, and did not give sufficient weight to some of the proved facts and circumstances that shew what was within the knowledge and in the minds of the parties.

MOSS, C.J.O., GARROW and MAGEE, JJ.A., concurred.

MEREDITH, J.A., dissented, agreeing with the view of the trial Judge, and stating reasons in writing.