

The action was tried without a jury at St. Catharines.
A. C. Kingstone, for the plaintiff.
R. S. Robertson, for the defendants.

SUTHERLAND, J., in a written judgment, said, after stating the facts, that the plaintiff had sustained a loss which entitled her to claim \$1,500 under the policy.

It was proved that on the 15th December, 1916, the defendants sent a letter addressed to the plaintiff as "F. Veltre, Esq."; at her address at Thorold, enclosing \$11.34, the unearned premium for the remainder of the term, and notifying her that the policy was cancelled, and the defendants would not be liable should a fire occur after the 22nd December, 1916. The letter was registered; it was not delivered to or received by the plaintiff or her husband up to the time that the fire occurred. The letter apparently reached Thorold on the 16th December. It was ultimately returned to the defendants at their office in Toronto.

It was admitted that \$11.34 was more than the unearned premium for the remainder of the term; but "a tender by the debtor of more money than is due to his creditor is a good tender of the sum really due." Harris's Law of Tender (1908), p. 76.

By statutory condition 11 (Insurance Act, R.S.O. 1914 ch. 183, sec. 194), the insurance may be terminated by the company by giving seven days' notice to that effect, and, if on the cash plan, by tendering therewith a ratable proportion of the premium paid, for the unexpired term, calculated from the termination of the notice, and the policy shall cease after such notice or notice and tender as the case may be, and the expiration of the seven days; and, by condition 15, any written notice to the assured may be by letter delivered to the assured or by registered letter addressed to him at his last post-office address notified to the company.

The learned Judge was of opinion that condition 15 applied, and that the written notice was effective and the tender made by enclosing the amount in the letter need not be a personal one. The two conditions should be read together, and the tender may accompany the registered letter where the notice is given in that way.

In Lavery on the Insurance Law of Canada (1911), p. 80, it is said that "in determining when cancellation by the insurer shall be effectual, the principal test is whether the unearned portion of the premium has been paid over to and actually received by the insured;" but the facts of the cases cited for that proposition are different from the facts here; and, once the insurance company have posted the registered letter tendering therewith the un-