

remedy in his own hands; he may refuse to accept the risk at all unless the application is put in writing and signed by the applicant; and, if he chooses not to do this, and he is misled and suffers loss, why should that loss not fall rather upon him than upon the insured? It may well be that the draftsman of the condition in framing it had in view just such a case as this, but, however that may be, the condition is, I think, applicable to an oral application.

Then what is the effect of the condition? Its purpose is manifestly, I think, to secure to the applicant the very contract for which he has applied, unless the insurer informs him in writing that the policy sent to him is a different one, and points out the particulars in which it differs from his application. Whether the condition requires the policy to be read just as it would have been drawn had it been written in accordance with the terms of the application, or affords a ground for the rectification of the policy so as to make it agree with the application, or precludes the insurer from setting up any term of the policy as issued which is inconsistent with the terms of such a policy as would have been issued had it been written in accordance with the terms of the application, is, I think, unnecessary to consider, because, in my opinion, in one or other of these ways plaintiffs are entitled to rely on the condition to meet the defence which defendants have set up, and, even if the condition affords only ground for the rectification of the policy, plaintiffs are entitled to recover without what Patterson, J.A., in *Billington v. Provincial Ins. Co.*, 2 A. R. at p. 185, called the useless form of having the policy actually reformed.

In *Fowler v. Scottish Equitable Ins. Co.*, 28 L. J. Ch. 225, the difficulty in the way of the plaintiff obtaining a reformation of the policy was, that there was no consensus ad idem; he had intended to effect the insurance only on the terms that were proposed to the agent, but the head office, from which the policy issued, intended to enter into the contract only on the terms of the policy as issued.

Condition 2, as I read it, gets rid of such a difficulty . . . and its effect is, I think, to secure to the applicant for insurance the very contract for which he has applied, though the policy sent to him is a different one, unless the notice for which it provides is given by the insurer. This is no more, in such a case as this, than imputing to the insurer the knowledge which his agent has, and I can see no injustice in doing that. . . .

Appeal dismissed with costs.