

limiting the insurance to thirty days, but of such limitation no notice in writing was given to the plaintiffs. On Nov. 30, the plaintiffs, in the belief that the insurance was for a year, paid the annual premium to the agent, who according to his usual course paid it over to the defendants on Jan. 20 following, when it was duly accepted by the defendants. No policy, however, was issued, and a fire subsequently occurring some ten months after whereby the goods were destroyed, the defendants repudiated the liability on the ground that the insurance was for thirty days only.

*Held*, 1. There was a valid parol contract for insurance for a year, and that nothing subsequently took place to modify or impair it, the interim receipt under the circumstances not having such effect.

2. Under the parol contract an implication was raised that a proper policy would be issued subject to the statutory conditions and such variations thereof as were just and reasonable, and that was substantially the effect of the interim receipt, and which, though ineffective to restrict the duration of the contract, must be looked at as part of the evidence surrounding it.

Under the first statutory condition the applicant for insurance, is not to misrepresent or omit to communicate any circumstances material to be made known to the company to enable it to judge of the risk, while a variation thereof on the company's policies required the applicant to communicate the existence of any mortgage or other incumbrance and the amount thereof, and it was objected that the applicant had omitted to communicate the existence of a mortgage on the insured property whereby the insurance was vitiated.

*Held*, that whether the first statutory condition was alone considered or the variation thereof, which in effect was the same, the object was to obtain information as to the risk before accepting it, which information is usually obtained by questions and answers in a written application, and as there was no such application here and no question put at all either written or verbal, there was no duty imposed on the insured to communicate the fact of the existence of the mortgage; and *semble*, the existence of the mortgage was not, in the circumstances of the case, a fact material to be made known to the company.

Judgment of MEREDITH, C.J.C.P., 7 O.L.R. 180, affirmed.

*Watson*, K.C., for appellants. *Riddell*, K.C., and *S. B. Woods*, for respondents.