

Reference to *Sharkey v. Yorkshire Insurance Co.* (1916), 37 O.L.R. 344, 54 S.C.R. 92, and discussion of the judgments in that case.

In the present case, the provisions of statutory condition 8 could not be applied until the plaintiffs had proved that the interim receipt, upon which the action was brought, was not in accordance with the terms of their application for such insurance, and that the defendants did not point out in writing the particulars wherein it so differed. And the only point of difference that was material was, whether the insurance was one for the long date—one year—or was one for the short date—30 days. If for the short date only, the defendants were not liable; if for a year, the defendants were liable.

The parties were agreed upon two things: (1) that a contract of insurance was made; and (2) that it was made orally, by telephone.

The interim receipt recited an application for insurance for 12 months, but gave it for 30 days only.

The onus of proof was on the plaintiffs, and, in order to succeed, they must have proved at the trial either: (1) that the contract of insurance was for 12 months; or (2) that, on an application for 12 months' insurance, the defendants, without pointing out in writing that their interim receipt was for 30 days at most, sent to them their interim receipt for that short date only. These questions were purely questions of fact; the trial Judge did not quite so deal with them; and, if the case had now to be determined by the Chief Justice alone, he would probably reach the conclusion that the plaintiffs had failed to satisfy the onus in both respects. But in this Court the Judges had had the benefit of a full discussion of these considerations, and yet three of them at least were able to find in favour of the plaintiffs on one or both of the questions, and the judgment of the Court must be in favour of the plaintiffs.

RIDDELL, J., read a judgment in which he stated the facts, and said that it appeared to him that the defendants, upon receipt of the application in writing, chose to accept the written application rather than to carry out the oral arrangement. Their manager, upon receipt of the written application, issued an interim receipt in answer and expressly referred to it. The defendants must be in the same position as if the written document shewed the contract. When the application is for a 12 months' policy, any policy furnished "after" such application shall be deemed "to