40,187 f

29475

In the Privy Council.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

BETWEEN THE LONDON AND LANCASHIRE LIFE ASSURANCE COMPANY (DEFENDANTS) - - - APPELLANTS,

AND

JEAN FLEMING (PLAINTIFF) - - - - RESPONDENT.

Case

OF THE APPELLANTS.

1. This is an Appeal from an Order of the Court of Appeal for Ontario, dated the 30th day of June, 1896, dismissing with costs an Appeal of the Appellants from the Judgment of the Honourable William Ralph Meredith, one of the Chief Justices of the High Court of Justice of Ontario, pronounced in an Action brought by the Respondent against the Appellants. The trial of the Action was commenced on the 27th day of January, 1896, before the Chief Justice Meredith and a Jury, but in the course of the trial the Jury were discharged by consent, and eventually the Action stood over for Judgment until the 11th day of March, 1896, when the Chief Justice pronounced Judgment for the Respondent for $10,412·60 and costs. In the Court of Appeal the Judges were equally divided in opinion, and the Appeal was therefore dismissed.

2. The Action was brought by the Respondent as assignee of two Policies of Insurance, under the seal of the Appellants, upon the life of one James Fleming, who died on the 15th day of June, 1895. A copy of the Statement of Claim will be found on page 2 of the Record.

3. The said Policies were dated the 4th day of December, 1894, being each of them for the sum of $5,000 respectively, and were expressed to be "in "consideration of the sum of One hundred and five dollars eighty cents., now "paid by the said James Fleming to the said Company," and contained a proviso that the Policy and the sum thereby assured was to be subject to the conditions thereon endorsed. Rec., p. 25 Exhibit No. 1.

Rec., p. p. 26-27

4. Among such conditions were the following :

" (1) Policies shall not be in force until the first premium be paid. . . . . "

" (9) Receipts for premiums are only valid when on the printed form, " signed by the manager, and countersigned by an official or " agent of the company."

" (10) If a note or other obligation be taken for the first or renewal " premium, or any part thereof, and such note or obligation be " not paid when due, the policy or assurance becomes null and " void, at and from default, but such voidance of the policy or " assurance shall not relieve the maker thereof, from payment of " the note or obligation and the premium shall be considered as " earned and shall be recoverable by the company."

Rec., p. 3

5. Various defences were raised by the Appellants' Statement of Defence, which will be found at p. 3 of the Record. Of these the only defences which are material to this Appeal may be stated as follows, viz. :

(*a*) That whereas the said James Fleming had agreed by the terms of his application that the contract of assurance should not take effect until the first premium should have been paid, the agent of the Company had, in breach of his duty as such agent, delivered the said Policies without having received the payment of the premiums therefor, but having received only two certain notes payable to the agent himself, and that no premium having ever been paid on the said Policies there was no contract of assurance.

(*b*) That if the agent had authority to deliver the Policies on the receipt of the said notes, and the said notes were taken for premiums for and on behalf of the Company, the said Policies had each of them become null and void in pursuance of the 10th Condition endorsed thereon by reason of the non-payment of the said notes when due.

6. There was also a Counterclaim claiming delivery up of the said Policies to be cancelled.

7. It will be gathered from the above that the points in the case are :

(1) Were the said Policies ever in force ?

(2) If so, did they subsequently become null and void ?

Precisely the same considerations govern the case of each Policy.

8. In the year 1894, one W. H. White was acting as general agent in Toronto of the Appellants, who are an English Life Assurance Company,

carrying on business, amongst other countries, in Canada and having a branch office there. White was appointed agent upon the terms of an Agreement dated the 2nd day of August, 1892. By the 2nd Clause of such Agreement it was provided that he should canvass for new insurances; that he should remit as directed from time to time to the Appellants' office at Montreal all moneys, securities for money, notes, or bills which he might receive in connection with the Appellants' business; that he should collect the premiums, for which the receipts or policies should have been sent to him, payable in his district, but should not under any circumstance collect or receive payment of any premium without giving the Head Office receipt or policy therefor. It was further, by the 3rd Clause thereof, provided that all premiums should be paid in cash or notes approved by the Company; that the agent should not receive payment for premiums or renewals thereof in any other manner; and by the 4th Clause that he should have no authority to make, alter, vary, or discharge any contract on behalf of the Appellants, or to waive any forfeiture on their behalf, or assume to bind the Appellants to do any act whatever without the written instructions and authority of the Appellants. The Agreement also by the 10th Clause thereof provided that as compensation the agent was to receive in respect of all premiums paid in cash 55 per cent. on the first year's premium, and that he was to remit to the Appellants in cash each month, for all new assurances for which official receipts should have been sent to him, up to the 20th day of the month. Rec., p.p. 28-30. Exhibit No. 6.

9. It was proved in the evidence in the course of the trial that where notes were offered for the premiums, such notes had to be submitted to the head office for approval before being taken, and that the agent was supplied with forms of receipts to be given by him in the event of such notes being taken, and with forms of the notes to be so taken, which latter purported to make the amount of the note payable to the Appellants or order. A form of such receipt called "Agent's Interim Receipt" and a form of such note were produced at the trial, and constitute Exhibit No. 17 in the Record. Rec., p. 15. Rec., p. 36 Exhibit No. 17.

10. The course of business to be gathered from the evidence and the documents produced seems to have been as follows: If the applicant paid the premium to the agent at the time of application, or at any time before the risk was accepted by the Appellants, the agent handed to the Applicant an "Agent's Interim Receipt," which varied in form according as the premium was paid in cash, or by note, or partly in cash and partly by note. If the risk was accepted by the Appellants the agent was furnished by the Appellants with an "Interim Acceptance Receipt" which, in the case of the premium having been already paid to the agent was by him at once handed to the applicant, and covered his risk, upon the terms and conditions of the policy to be issued, until the policy was in fact subsequently issued and delivered to him. If however the premium had not been paid before the Interim Acceptance Receipt was forwarded to the agent, it was the agent's duty to retain the same until he had Rec., p. 36 Exhibit No. 17. Rec., p. 32 Exhibit No. 10. Rec., p. 6

received payment of the premium, and in the event of his not being able to obtain payment, to return the Interim Acceptance Receipt to the Appellants.

11. It appears from the evidence that on or about the 19th November, 1894, one James Fleming delivered to White for transmission to the Appellants a written application for an insurance on his own life for $5,000, at a premium of $105·80, which application contained an agreement on the part of the said James Fleming that any contract of insurance should not take effect until the first premium should have been paid. At the same time he handed to White his own promissory note of that date for $105·80, payable Six months after date to White's order at the office of Burk and Graham, who were White's own bankers. The said note was neither in the form provided by the Appellants, nor had it been submitted to the Appellants for their approval. In return for it White gave a receipt, of which the following is a copy :

Rec., p. 30 Exhibit No. 7.

Rec., p. 34 Exhibit No. 15.

Rec., p. 36 Exhibit No. 18.

" No. 4,400. (In duplicate). Note payable 6 months.
" London and Lancashire Life Assurance Company.
" Agent's Interim Receipt.

" Received from James Fleming, Esq., of Wyevale, his promissory
" note for One hundred and five $\frac{80}{100}$ Dollars (on which the sum
" of . . . . . Dollars has been credited) being for the
" first premium for an assurance of $5,000 on the life of himself,
" provided the application be accepted by the Company, and if
" accepted I agree to deliver the Official Acceptance Receipt from
" the head office of the Company in Montreal ; or should the said
" application be declined, I undertake to return to James Fleming,
within 15 days. " W. H. W."
" Esq., or to his order, the said promissory note ^ ~~It is hereby~~
" ~~understood and agreed that if the note be not paid at maturity~~
" ~~the Policy or Official Receipt shall be null and void, but never-~~
" ~~theless the note shall be paid in full.~~*

* So ruled out in original.

" (Sgd.) W. H. WHITE,
" Dist. Mangr.

" Date, 19/11/94.
" Place—Toronto."

The said receipt was in the form supplied by the Appellants, except that the concluding sentence in such form was ruled out, and the words " within 15 days " and the the initials " W. H. W " were added by interlineation to the preceding sentence. By the "Official Acceptance Receipt" therein mentioned, is meant the " Interim Acceptance Receipt " previously referred to.

12. No evidence whatever was given at the trial as to what took place at the time the said note was taken and the said receipt given. It will be seen hereafter that the learned Judges in the Courts below, whose opinion was in favour of the Plaintiff, assumed that the note was handed by James Fleming to White, for the purpose of his discounting the same and thereby raising the money for the payment of the premium, should the risk be accepted. No evidence whatever was given to justify such assumption; the discounting of the note which was for the exact amount of the premium, would not have raised the sum necessary to pay the premium, and the note in fact, as can be gathered from the indorsement on it, was not discounted by White until the 27th March, 1895, when he discounted it for his own purposes.

Rec., p. 34 Exhibit No. 15.

13. On the 27th November, 1894, White forwarded the said application to the Appellants' head office at Montreal, together with another application by one McGlade, and the receipt of such applications was acknowledged by the Manager on the following day. At some date which is not clear upon the evidence, but between the 28th November, 1894, and the 4th December, 1894, James Fleming's application was altered from an application for one policy for $5,000, to one for two policies for $5,000 each, which application so altered was accepted by the Appellants. This is shewn by the two official "Interim Acceptance Receipts," which were forwarded by the Appellants to White for delivery to James Fleming in a letter of the 5th December, 1894, by which they gave White notice that they had debited the said premiums to his account. No evidence was given as to when these receipts were handed to James Fleming, but they were produced at the trial from the custody of the Plaintiff with the countersignature of White which was necessary for their validity.

Rec., p. 30. Exhibit No. 7.

Rec. p. 36. Exhibit No. 8.

Rec., p. 32 Exhibit No. 10.

Rec., p. 32 Exhibit No. 9.

14. It appears that at this time nothing had been received in respect of the premium on the second proposed assurance for $5,000. White, however, subsequently on the 10th December, 1894, received in respect of it a note of Robert Fleming for the sum of $105·80 being the exact amount of the premium on such insurance, payable to W. H. White or order three months after date at the office of Burk & Graham aforesaid. This note also was not in the form furnished by the Appellants, nor was it submitted to the Appellants for their approval. No Agent's Interim Receipt appears to have been given for Robert Fleming's note, and it is probable that one of the Interim Acceptance Receipts forwarded to White on the 5th December, 1894, was thereupon handed to James Fleming, and was treated as a sufficient receipt for the said note, though there is no reference whatever in the said Interim Acceptance Receipt to the fact that the said note had been taken by White. Robert Fleming's note appears from the indorsement upon it to have been discounted by White on the 22nd December, 1894. White never received from James Fleming, nor from any one on his behalf anything in payment of the said premiums or either of

Rec., p. 37 Exhibit No. 20.

them except the said two notes of the 19th November, 1894, and the 10th December, 1894.

Rec., p.p. 9, 15. 15. It is quite clear that the Appellants at the time the said applications were received by them did not know or have any notice or suspicion of the fact that any note had been taken by White in connection with the premiums on the said proposed insurances, and that they remained ignorant of such fact Rec., p. 17. until after the death of James Fleming. The Appellants at the time when they forwarded the said Interim Acceptance Receipts, naturally and reasonably assumed that White, in accordance with the terms of his employment, no notes having been submitted to the Appellants for their approval, had either received the premiums in cash and held the same on their behalf or would receive the same in cash to be held by him on their behalf before delivering up to James Fleming the said receipts.

16. It seems to have been the custom of the Appellants to have their accounts with their agents made up to the close of the calendar month, and accordingly White sent to the Appellants on the 31st December, 1894, a letter, Rec., p. 33 Exhibit No. 11. of which the following is a copy :

" Toronto, Dec. 31st, 1894.

" Manager, London & Lancashire Life,
" Montreal.

" Dear Sir,
" I omitted to enclose settlement of new premiums. Hence I wired
" you to-day as follows :—Mailed my note $135·16 for premiums Fleming,
" McGlade, Thompson, which I enclose herein.

" Yours truly,
" (Sgd.) W. H. WHITE."

Rec., p. 33. Exhibit No. 12. And on the 3rd January, 1895, the Appellants acknowledged the receipt of the said letter and note in a letter, of which the following is a copy :

" Montreal, January 3rd, 1895.

" W. H. White, Esq.,
" 18, Toronto St.,
" Toronto, Ont.

" Dear Sir,
" I am in receipt of your letter of the 31st ult. enclosing note at Three
" months for $135·16, which we will hold as requested.

" Yours truly,
" (Sgd.) B. HAL BROWN,
" Manager."

The note which was enclosed was a promissory note of W. H. White himself, the amount being for the balance of the first year's premiums upon James Fleming's two insurances and upon two other new insurances on the lives of McGlade and Thompson respectively, after deducting therefrom the 55 per cent. to which White was entitled under the terms of his Agreement with the Appellants upon the amount of new premiums received in cash, but only upon those received in cash. It is uncertain whether the note in question was endorsed by White's brother or not, but nothing seems to turn upon this. Rec., pp. 28-30. Exhibit No. 6.

17. The sending of the said note and the acceptance of the same by the Appellants was not strictly speaking in accordance with the ordinary course of business, which was, if the premium had been paid in cash to remit cash, and if a note in approved form had been taken for the premium, to forward such note to the Appellants.

18. The next step appears to have been that on the 22nd January, 1895, White wrote to the Appellants for the Thompson and Fleming policies, which having been carried into their books as "Policies issued" were at once sent to him under cover of a letter, dated the 23rd January, 1895, by which his attention was again called to the fact that his account was debited with the amount of the premiums. The Fleming policies were the policies now in question, and it may be assumed that they were ultimately delivered to James Fleming, though in the circumstances above stated White had no right so to deliver them until he had collected the premiums in cash which he never did. Rec., p. 33. Exhibit No. 13.

19. It is submitted that it is a fair inference from the evidence, that the said policies were forwarded to White by the Appellants in the belief on their part that White had received the amount of the premiums in cash, and held the same for them, inasmuch as White, as before stated, had no right to part with the Interim Acceptance Receipts, unless he had collected the premiums in cash. Moreover the fact that White, when sending his promissory note, deducted the 55 per cent., to which he was only entitled under his Agreement if the premium had been paid in cash, led the Appellants to believe that he had in fact received payment of the premiums in cash.

20. It appears that the note given by Robert Fleming, and dated the 10th December, 1894, having become overdue, the same was renewed by a note for two months, dated the 21st March, 1895, made payable as the previous note had been to White, and that such note was at once by him indorsed to Burk and Graham. No notice of the said renewal was given by White to the Appellants, nor was any communication with reference to the said transaction made to the Appellants, who remained in entire ignorance that the premiums had not been paid and received in cash. A few days afterwards, viz. on the 27th March, 1895, White appears to have discounted with Burk and Graham, James Fleming's note of the 19th November, 1894. Rec., p. 34. Exhibit No. 15. Rec., p. 34. Exhibit No. 15.

Rec., p. 34. Exhibit No. 14. 21. On the 5th April, 1895, the Appellants sent to White a statement of their accounts with him, in which a debit was shown of the amount of his note for $135·16, the due date of which was the 3rd April, 1895. The said note has never been paid.

22. The note for $105·80 given by James Fleming on the 19th November, 1894, became overdue on the 23rd May, 1895, and the renewal note for $105·80 given by Robert Fleming on the 21st March, 1895, became overdue on the
Rec., p. 18. 25th May, 1895. Neither note was paid, but it appears that shortly afterwards Robert Fleming brought to White a renewal note and five dollars, and asked him if he would renew the two notes, or one or other of them (it is not clear which) as the Flemings were unable to pay them. White was unable to get Burk & Graham to renew the said notes or either of them, but it seems that the sum of five dollars was on the 6th June, 1895, paid on account of the note of 19th November, 1894, which was then overdue.

23. The Appellants had apparently by this time become suspicious whether White had received the premiums for the Fleming policies at all, for on the 31st May, 1895, they elected to treat both policies as cancelled, by writing the words "Not taken" opposite the entries with reference to them in the "Agent's Credit Journal." This was their usual method in cases where the premium on a new policy was not paid. On the
Rec., p. 16. same date they credited White in their books with $211·60, being the amount of the two premiums of $105·80 previously debited to him on the two Fleming
Rec., p. 7. policies. It was in evidence that at this time the Appellants had no knowledge
Rec., p. 11. of the fact that James Fleming was then ill. It was also in evidence that at the beginning of June, 1895, the Appellants having become dissatisfied with the conduct of their agent White, sent Torrop, one of their inspectors, to Toronto to ascertain the exact position of affairs, to propose a settlement and submit the proposals to the Appellants for approval. Certain proposals were
Rec., pp. 12, 22. accordingly forwarded to the Appellants but were at once repudiated by them by telegram as being unsatisfactory. It may have been that, as stated by Albert White, the brother and bookkeeper of W. H. White, the note of the latter for $135·16 dated the 31st December, 1894, was included in the settlement proposed by Torrop. If so, it was probably a mistake made by Torrop, and is unimportant as the Appellants at once repudiated the proposals made.

Rec., p. 7. 24. On the 13th June, 1895, James Fleming purported to assign the two policies to his mother Jean Fleming, the present Respondent, and the document purporting to effect such assignment was sent to the Appellants for registration. The Appellants refused to register the assignment and at once returned the document, their reason for so doing being that the policies were not in force. At that time the Appellants had no knowledge or notice of James Fleming's illness.

25. James Fleming died of consumption on the 15th June, 1895. The Appellants first heard of the death on the 17th or 18th June, 1895. Rec., pp. 5, 11.

26. A considerable body of evidence was given at the trial as to certain matters which took place after the death of James Fleming. It seems that the Appellants having then for the first time become aware of the fact that White, who was about this time dismissed from his agency, had received the James Fleming and Robert Fleming notes and had discounted them with his bankers, in whose hands they still were overdue and unpaid, were for some unexplained reason anxious to get possession of them. In the course of their negociations with White, they appear to have supplied the money necessary to obtain the overdue notes of James Fleming and Robert Fleming from White's bankers. By this means they obtained possession of the Fleming notes, and upon so doing handed back to White his own note as part of the settlement, and it is absolutely clear that he was not then treated as a debtor in respect of such note. It is difficult to see how what took place after James Fleming's death can have any bearing upon the question whether the policies were then in force, unless it amounted to evidence of some admission on their part that they were still in force. It is submitted that this cannot even be contended and that the whole of the evidence in question is quite irrelevant, and attention is only called to it on the part of the Appellants by reason of the importance which the Respondent seems to have attached to it in the Courts below. Rec., p. 17.

27. The learned Chief Justice decided in favour of the Respondent, the Plaintiff in the Action. His Judgment will be found on pages 39-43 of the Record. On Appeal by the Defendants, the Court of Appeal were equally divided in opinion, Hagarty, C. J. O., and Burton, J. A., thinking that the Defendants' Appeal ought to be allowed, and Osler, J. A., and Maclennan, J. A., thinking that it ought to be dismissed. The reasons of Hagarty, C. J. O., will be found on pages 46-48 of the Record, those of Burton, J. A., on pages 48, 49, and those of Maclennan, J. A., in which Osler, J. A., concurred, at page 50 of the Record. Rec., pp 39-43. Rec., pp. 46-48. Rec., pp. 48, 49. Rec., p. 50.

28. The learned Chief Justice held that the Appellants accepted White's note in satisfaction and discharge of the premiums payable by James Fleming, saying that White had at that time possessed himself by means of the discount of Fleming's promissory notes, and had in hand far more money than would have been sufficient to pay to the Appellants that part of the premiums to which they were entitled. It is submitted that this is entirely unwarranted by the evidence. James Fleming's note was not, in fact, discounted till the 27th March, 1895, and the learned Chief Justice disregarded the evidence of Mr. Brown the manager and White himself, which was to the effect that in certain special cases where the agent had not received the premiums an arrangement had been made that he should send to the Rec., pp. 7, 21

Appellants his note not in payment of the premiums but as evidence of the debit, that is as evidence that he was properly debited with the amount of the premiums which he ought in due course to collect and for the collection of which he was responsible. The learned Chief Justice said that he preferred to rely on the language used in the correspondence read in connection with what had taken place, and the manner in which the Appellants afterwards treated and dealt with the policies. There is however nothing in what had previously taken place, to show that the Appellants were aware that the premiums had not been received by their agent in cash, and if they were in the belief that he had so received them, their acceptance of their agent's note, instead of a remittance in cash, would only have been an indulgence to him. With regard to the manner in which the Appellants afterwards treated and dealt with the policies, all that happened was that they entered them in their books as "issued policies" long before they knew the true state of the facts, that on the 23rd January, 1895, they forwarded the policies to him, at which time they may well have believed from his applying for the policies that he had received the premiums in cash, and that on the 31st May, 1895, before the death of James Fleming, and at a time when they did not even know that James Fleming was ill, they treated the policies as cancelled, and that they subsequently, when still unaware either of James Fleming's illness or of his death, refused to register the assignment of them to the Respondent. There is nothing, it is submitted in the correspondence, to show that they accepted White's note in satisfaction and discharge of James Fleming's liability, and even if, contrary to what the Appellants submit and contend, White's note is to be taken as a payment of the premiums due from James Fleming, it was payment by White as James Fleming's agent, and subject to the 10th condition endorsed on the policies, just as a payment by James Fleming's note approved by the Appellants would have been. In other words, even assuming that the note was to be taken as payment during its currency, the policies on its non-payment when due became null and void. The learned Chief Justice also relied on the following clause contained in a bond given by White to the Appellants in 1891 :

Rec., p. 35. Exhibit No. 16.

> " It is understood and agreed that this bond will cover payment of " any and all notes made by W. H. White that the Company may accept " from the said W. H. White, for premiums under policies effected by him " as well and effectually as if no such note or notes were taken."

Rec., p. 14.

It was, however, in evidence that this bond had no relation to the state of affairs which existed under the Agreement of the 2nd August, 1892, and even if it had any such relation, a perusal of the bond will show that the reference is not to notes taken in satisfaction and discharge of premiums otherwise unpaid, but to notes taken from the agent for premiums which had been received by him.

Rec., p. 43.

29. The learned Chief Justice also stated that the inclination of his opinion was that the receipt by White of the proceeds of the discount of the

Fleming notes amounted to a receipt by him as agent of the Appellants of a payment in cash from James Fleming. And in the Court of Appeal, Maclennan, J. A., with whose reasons Osler J. A., concurred, explicitly decided that the notes of James and Robert Fleming had been given to White for the purpose of his discounting them and paying the premiums out of the proceeds of the discount; that White had discounted the first note and received the proceeds thereof on the 27th November, 1894, and had discounted the second note and received the proceeds thereof on the 22nd December, 1894, and that thereupon such proceeds became on their receipt by White moneys of the Appellants in such a manner that the premiums were actually paid in cash to the Appellants. Rec., pp. 50, 51.

30. It is submitted that there is absolutely no evidence of any agreement between James Fleming and White, that White should discount the notes given to him and apply the proceeds to the payment of the premiums, and that what evidence there is, and it is entirely documentary, as to the circumstances in which the Fleming notes were given and taken, is directly adverse to the existence of any such agreement. White was called at the trial by the Appellants and was subjected to a long cross-examination on the part of the Respondent. No question whatever was put to White suggesting that there had been any such agreement, though the point was vital to the Respondent's case. The suggestion on the cross-examination rather was that he had discounted the notes for his own purposes. And on referring to the copy of the receipt given for James Fleming's note of the 19th November, 1894 it will be seen that it does not purport to be White's personal receipt, but a receipt given by him as agent on behalf of the Appellants, who are named at the head of it, and signed by him as District Manager. Rec., p. 19. Rec., p. 36. Exhibit No. 18.

31. Further, it is not the fact, so far as can be gathered from the evidence that the proceeds of the discount of both notes had been received by White and were in his hands on the 31st December 1894. There was no evidence as to the times when the notes were discounted, except the indorsements on the notes themselves, and according to these James Fleming's note of the 19th November 1894, was not discounted until the 27th March 1895, long after the policies were issued. Robert Fleming's note, however does appear from the indorsement to have been discounted on the 22nd December, 1894, so that it is the fact that the proceeds of that note had reached White's hands before the 31st December, 1894, not however, it is submitted for the reasons already given as moneys of the Appellants, but as White's own money, he being liable upon the note by the terms of the indorsement. Rec., p. 34. Exhibit No. 15. Rec., p. 37. Exhibit No. 20.

32. The Appellants submit that the Judgment appealed from ought to be set aside and the appeal allowed for the following among other

REASONS.

1. Because the policies in question were by the 1st condition indorsed thereon not to be in force until the first premium was paid and in neither case was the first premium paid.

2. Because the giving of the notes of James Fleming dated the 19th November, 1894, and of Robert Fleming dated the 10th December, 1894, did not constitute such payment.

3. Because the said notes were not, nor was either of them, given to White for the purpose of his discounting them and applying the proceeds in payment of the premiums.

4. Because the said notes were not, nor was either of them, in fact, discounted for that purpose, and the proceeds thereof were not in any case when received by White the moneys of the Appellants.

5. Because the giving by White of his note of the 31st December, 1894, and the receipt of the same by the Appellants, did not amount to a transaction by which the Appellants accepted White's note in payment of or in satisfaction and discharge of the said premiums.

6. Because White's note was accepted by the Appellants either as an indulgence to him on the footing that he had already received the premiums in cash, or as evidence of his liability to account to them for the premiums which, the risk having been accepted, he had to collect.

7. Because if the notes given by the Flemings to White constituted during their currency a payment of the premiums, the policies became null and void under the 10th condition endorsed thereon on the non-payment of the notes when due.

8. Because if the note given by White to the Appellants constituted during its currency a payment of the premiums the policies became null and void under the said condition on its non-payment when due.

9. For the reasons appearing in the Judgments of Hagarty, C. J. O., and Burton, J. A.

C. ROBINSON.

TYRRELL T. PAINE.

In the Privy Council.

On Appeal from the Court of Appeal fo Ontario.

BETWEEN

THE LONDON AND LANCASHIRE LIFE ASSURANCE COMPANY - - (*Defendant* APPELLANT

AND

JEAN FLEMING - - - - (*Plaintiff*) RESPONDEN

Case

OF THE APPELLANTS.

PAINES, BLYTH & HUXTABLE,
14, St. Helen's Place, E.C.,
Appellants' Solicito

Reynolds Blogg & Cope, Printers, 4, Union Court, Old Broad Street, E.C.
Telephone No. 11684.