Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Equitable Fire and Accident Office, Limited, v. The Ching Wo Hong, from His Britannic Majesty's Supreme Court for China and Corea; delivered the 19th December 1906.

Present at the Hearing:

LORD MACNAGHTEN.
LORD DAVEY.
LORD ROBERTSON.
LORD ATKINSON.

[*Delivered by Lord Davey.*]

This is an Appeal from a judgment of His Majesty's Supreme Court for China and Corea at Shanghai, dated the 8th July 1905. The action was brought by the Respondents upon two policies of insurance against fire, dated respectively the 1st October 1904 and the 14th November 1904, effected by them with the Appellant Company upon stock in trade and other goods in a shop belonging to the Respondents in Shanghai. The Appellants denied their liability on two grounds, the first of which only was raised and argued before their Lordships. That ground of defence was that the policies had become null and void by reason of the Respondents having omitted to give the Appellant Company notice of an additional insurance effected by the Respondents with the Western Assurance Company, without the consent of the Appellant Company, on the same goods. The Respondents denied that there was, at the date of the fire, or ever had been, any effective insurance

with the Western Assurance Company. The learned Judge who tried the action gave judgment for the Respondents.

The policies sued on were in the same form. They both contained a clause in Chinese characters immediately following the operative part of the policy in these words:

"No additional insurance on the property hereby covered is "allowed except by the consent of this Company endorsed "hereon. Breach of this condition will render this policy "null and void."

And one of the conditions endorsed on the policies was as follows:—

"12. The Insured must, at the time of effecting the "Insurance, give notice to the Company of any Insurance or "Insurances already made elsewhere on the Property hereby "Insured, or any part thereof, and on effecting any Insurance "or Insurances during the currency of this Policy elsewhere "on the Property hereby insured, or any part thereof, the "Insured must also forthwith give notice to the Company "thereof so that the particulars thereof may be endorsed on "the Policy, and unless such notice be given, the Insured will "not be entitled to any benefit under this Policy, and on the "happening of any loss or damage, the Insured shall forthwith "declare in writing, to the Company, all other Insurances "effected by him, or by any other person, on any of the "Property, and the giving of such notices at the respective "times aforesaid shall be a condition precedent to the recovery "of any claim under this Policy."

The fire took place on the 5th December 1904. Prior to that date a policy, dated the 1st December 1904, had been executed by the directors of the Western Company in favour of the Respondents for 3,000 taels. This policy was found in the Respondents' safe after the fire, but the premium on it was never paid.

The Western Company's policy was not put in evidence at the trial, but it may be assumed that it was in the same form as the specimen to be found in the Record, and also that it was intended to cover the same goods as the Appellant Company's policies. The finding of the learned Judge with respect to it is:—"No "premium was paid on it, the Plaintiffs" (the

present Respondents) "and the Western have "treated it as non-existing, and no claim has "been made under it or will be made under it." Whether under these circumstances the Appellant Company can resuscitate an instrument which the parties to it agree in treating as void for the purpose of avoiding its own liability, is open to question. And it would perhaps be enough for the decision of this Appeal to say, as the learned Judge in effect finds, that there was no sufficient evidence before the Court of the existence of any insurance of which the Respondents were bound to give notice to the Appellant Company. But as the point which was relied on by the Appellant Company has been fully argued before them, their Lordships think it better to express their opinion upon it.

According to the specimen or blank form of the Western Company's policies in the Record it was witnessed that the insured, having paid the sum of (blank) for insuring against loss or damage by fire the property (described) in the sum (mentioned), the Company agreed (but subject to the conditions on the back thereof, which were to be taken as part of the policy) that if the property described should be destroyed or damaged by fire, and so forth, the Company would pay certain sums. And the 11th endorsed condition was in the following words:—

"This insurance will not be in force until, nor will the "Company be liable in respect of any loss or damage happening "before the premium, or a deposit on account thereof, is "actually paid, and no such payment or deposit and no pay- "ment in respect of the renewal of this policy shall be good "unless a printed form of receipt for it, issued from the "office of the Company and signed by one of the Company's "authorised officers or agents, shall have been given to the "insured."

The question, therefore, is whether, the premium not having been paid either wholly or partially, the policy executed by the Western Assurance Company ever became effective, and

this must be decided in the same way as if an action had been brought by the Respondents on that policy. The Western Company, it should be said, always repudiated any liability, and the Respondents, of course, did not seek to enforce it.

It is plain from the language of the condition that it applies as well to the first premium as to any renewal premium, or indeed it may be said that it applies primarily to the first premium. The instrument must be read as a whole for the purpose of ascertaining the intention of the parties, and effect, so far as possible, must be given to every part of it. Their Lordships are of opinion that the eleventh condition qualifies and restricts the engagement of the Company and converts what would otherwise be an absolute engagement into a conditional one, and that the words "having paid" to the Company are common form words or words of style for expressing the consideration for the Company's engagement which would become accurate when that engagement became effective. The Judicature Act provides that where the rules of law and of equity differ the rules of equity shall prevail. It is familiar law that in equity a vendor was never held to be estopped by a statement in the conveyance that the purchase money had been paid or even by an endorsed receipt for the money signed by him so as to exclude the enforcement of the vendor's lien. Their Lordships think that in any case the parties should not be held in equity to be estopped as between themselves from showing that the consideration had not in fact been paid. But in the present case they think that the condition read with the operative part of the instrument negatives any such estoppel; for the only meaning which can be given to the words is that the consideration must be not only expressed to be paid, but actually paid. Their

Lordships cannot treat the fact of the executed policy having been handed to the Respondents as a waiver of the condition or attach any importance to the circumstance. What was handed to the Respondents was the instrument with this clause in it, and that was notice to them, and made it part of the contract that there would be no liability until the premium was paid. It is not a question of conditional execution, but of the construction of what was executed.

The learned Counsel for the Appellant Company cited and relied on a decision of the Court of Appeal in England in *Roberts* v. *Security Company, Limited*, [1897] 1 Q. B. 111. It is enough for their Lordships to say that the words of the instrument in that case were different from those which their Lordships have to construe, and they are relieved from saying whether they would otherwise have been prepared to follow it.

No other point was argued before their Lordships, who will therefore humbly advise His Majesty that the Appeal should be dismissed. As the Respondents do not appear, there will be no order as to costs.