Judgement of the Lords of the Judicial Committee of the Privy Council on the Appeal of Kirkpatrick and others v. *The South Australian Insurance Company, Limited, from the Supreme Court of South Australia; delivered February 24th*, 1886.

Present:

THE LORD CHANCELLOR.
LORD BLACKBURN.
LORD HOBHOUSE.

THE only question in this appeal is whether the 100*l*. which was remitted by the Plaintiffs on the 25th January 1883, and received by the Insurance Company on the next day, is to be taken to have been in part paid and accepted by way of renewing two policies called 10 & 11, which at that time had lapsed. That question must be decided by reference to all the previous communications between the parties.

It is clear that for some time the Office had been urging the Plaintiffs, or giving them the very broadest hints, that the policies should be renewed, and on the 2nd of January 1883 they telegraphed that the amount of premiums which had been mentioned in four previous telegrams should be wired,—that is, their Lordships understand, should be remitted by telegraph. On the next day the Office wrote to the Plaintiffs. They recapitulated all the previous applications, among which was the request that the premiums should be wired. The answer to that letter came on the 13th January by telegram, and it was to the effect that "The "whole of the premiums will be wired to you "Monday first,"—which is next Monday. A

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question has been raised whether in construing the effect of the communications between the parties the contents of that telegram should be imported, because it is said that it was not in the knowledge of either of the parties when it was sent or when it was received. Their Lordships however think that as it was undoubtedly received by the Insurance Company, although there may have been some carelessness on the part of their clerks, the knowledge of it must be ascribed to the company, and it must be taken as an integral part of the correspondence.

So taking it, what we find is that on the Monday mentioned the premiums were not remitted; but soon afterwards, on the 25th January, 100*l.* was sent "for premiums" and received by the Defendants. At that time there was some amount owing by the Plaintiffs to the Defendants for premiums received by the Plaintiffs in the character of agents of the Defendants, but not as much as 100*l.* The Defendants at that time knew of all the amounts that were then due to them by the Plaintiffs, and there is no evidence that they had any reason to believe that there were other amounts received by the Plaintiffs which they had to account for as their agents. Under these circumstances their Lordships consider that, although the Defendants did not make in their books any specific appropriation of any part of the 100*l.* to the payment of the premiums on the two lapsed policies, they must be taken to have received that portion of the 100*l.* in respect of those policies, the renewal of which they had been urging from time to time. All other terms of the contract are ascertained, the money was paid, and there was from that moment a perfectly good contract for renewal of the old insurances. Their Lordships wish to add that even if the telegram of the 13th of January is to be struck

out of the correspondence as not being within the knowledge of the parties, yet it is at all events very doubtful whether that could make any difference in the decision of the case.

The result is that their Lordships think that the decision below was erroneous. The Chief Justice decided in favour of the Plaintiffs. The Judgement of the Supreme Court should have been to dismiss the appeal with costs. Their Lordships will now advise Her Majesty to make a decree to that effect, and the Respondents must pay the costs of this appeal.