a policy, which contains additions to or variations from the statutory conditions, it is upon him, and not upon the company, to show that such are not just or reasonable. The matter is not yet settled, as an appeal is awaiting argument before the Supreme Court at Ottawa.

The principal judgment of the Court was by Osler J., who said in substance:—It is plain that the company has the right to vary or add to the conditions. This is implied in the phrase of the Statute "if the company desires to vary the conditions." But, unless the desire is evidenced in the prescribed manner, the added or varied conditions are not legal or binding on the insured, because in that case they form no part of the contract, not having been brought to his notice. The object of the conspicuous type and ink of different colour is to give him notice that there are conditions which the company is exacting, and which, by accepting the policy containing them, would by the general law of the land become part of his contract. Equally true is it that, when evidenced in the prescribed manner, such conditions become part of the contract, subject to the qualification that they may be annuled if adjudged to be not just and reasonable. When they are thus part of the contract, I do not see that there is any presumption against their justice and reasonableness. The contract having been made and evidenced in a lawful manner, the bonus must be on the insured to get rid of it, if he can, it must rest upon him in the first instance to show why any of the terms should not be binding upon him. Then, is this Co-insurance Clause one which is not just and reasonable. It is a condition, not unusual in English fire policies, and it is said to be equitable, though it does compel the insured to keep up insurance to a certain specified proportion of his stock. The Clause is of comparatively modern date, having been introduced in England by Statute in 1828, for revenue purposes. It is based upon the equitable principle, that where the insured elects to stand his own insurer, upon any portion of his property, he should be regarded as if he were another company interested to the same amount as the excess, and, consequently liable for a corresponding portion of the loss. I see nothing in the nature of such a stipulation which should induce us to hold it unjust and unreasonable. It is really no more than a limitation of the amount which the company is willing to undertake as its liability upon the policy, when the lower rate of premium is accepted. It is the subject of special contract in each particular case. I am not capable of understanding how a clause of this nature, deliberately accepted by the insured in a contract for consideration, can well be described as a condition exacted by the company. If that was not their agreement, it seems idle to say that they had not the option of refusing the policy, and of not insuring with the company at all; or of insuring at the higher premium free from the Co-insurance Clause. The Legislature has placed no restriction upon the powers of an insurance company to establish its own rates, or to make alternative rates for special terms of insurance, and it goes without saying that it may stipulate for the amount of the risk. If this may be done by the contract of insurance, apart from the conditions dealt with by the Act, it is not easy to see why a condition providing for the same thing is unjust and unreasonable, especially when it is agreed upon in consideration of a reduced rate of premium, as in the present case.

Maclennan, J., agreed with Osler. Whether a condition is just and reasonable, depends on its nature, and also upon the circumstances. Some conditions might be unjust under all circumstances; and the justice of others might depend on the subject of insurance, or the surrounding circumstances. When the appliances for extinguishing fires are imperfect or absent, conditions might be just and reasonable, which would be otherwise where appliances were present and efficient. In the present case there is nothing special in the subject of insurance, or in the circumstances affecting the risk. The stock may be large and the proportion of the risk assumed by the insured considerable, and I see nothing unjust or unreasonable in this condition as applied to this case; Lister, J., also agreed.

The dissenting judgments were by Sir George Burton and Moss, J., and their view as expressed by the former was shortly as follows:—I am disposed to set aside entirely the consent of the insured to the condition as part of the contract. The Statute rejects the fiction of agreement, and truly regarding every variation or addition as something exacted by the company, not voluntarily agreed to by the insured, requires them to be accompanied by the declaration, that they are in force only so far as they shall be held to be just and reasonable to be exacted. If we had no such Statute, and the insured had placed before him the option of insuring at a higher rate without the Co-insurance Clause, and at the lower rate with it, he would be bound by his election; but it is notorious, that men even beyond the average of the insuring public, would find it difficult to clearly understand the meaning and effect of a policy insuring goods to the extent of $15,000. as it appears on the face of the policy, subject only to the Co-Insurance Clause, and it is, I think very fairly urged by the insured, that one of the tests of the reasonable nature of a variation should be its simplicity, and the capability of its being easily undersood by the average insured. It is, of course, not pretended that the company, a highly respectable one, acted otherwise than with the utmost fairness in effecting this insurance, but applying the test—that parties insured are a class requiring protection, some companies being disposed to act inequitably and to over-reach, and individuals being in the matter of insurance improvident—the condition in question will not bear it. It is safe to say that most persons, not being experts, would find it somewhat difficult to appreciate the general effect of the condition, and, when applied to a particular partial loss, which would require the making of a somewhat complicated calculation, the result would not be easily understood. The stock insured in this case was that of a wholesale grocer, varying in value from day to day, and the proprietor could form no accurate judgment of the receipts and additions to that stock or the daily sales; the market value of such a stock might in a single night very greatly increase or decrease, and in the former case without any act on his part, and without his knowledge or consent, he would find his policy reduced, or, in the event of his being insured in other companies and one or more of these policies becoming invalid, the loss would fall not upon the other companies, but upon him. Would it be a reasonable condition to be exacted by the company, to allow that sudden rise in value to effect the insurance. Eckardt v. Lancashire Insurance Company, 27 Ont. App. 373.