

Full Court.]

[Nov. 15, 1898.

MARGESON v. GUARDIAN FIRE AND LIFE ASSURANCE CO.

*Fire insurance—Condition as to appraisal of loss—Assured discharged from compliance by act of company—Proofs of loss—Waiver.*

A policy of fire insurance contained a provision that "in the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent appraisers, etc."

*Held*, per GRAHAM, E.J., McDONALD, C.J. and RITCHIE, J., concurring, that the company having repudiated all liability in respect of the claim, they most distinctly averred that there was no disagreement as to the mere amount of the loss, and therefore no appraisal would be required, and that the assured having asked for an appraisal, and having named two disinterested appraisers, was discharged from the performance of the condition by the company's refusal.

*Held*, also, that the matter of the appointment of appraisers was one for negotiation, and that the plaintiff M. having named one person who was not accepted, was not therefore debarred from naming another.

Per MEAGHER, J., dissenting. 1. The trial judge having found that there was a disagreement as to the amount of loss within the meaning of the clause of the policy on that subject, there was no sufficient reason for dissenting from his finding.

1. That in the event of a disagreement such as arose in this case, an appraisement in the manner prescribed in the conditions became an essential step, and that the award or appraisement was a necessary part of the proofs of loss to be furnished.

3. That there was no such waiver as would have entitled plaintiffs to recover in the absence of such compliance with the conditions of the policy; and that a denial of liability which may have been founded upon such want of compliance would not operate as a waiver.

*W. B. A. Ritchie*, Q.C., for appellant. *Mellish* for respondent.

Full Court.]

REG. v. COX.

[Nov. 15, 1898.

*Crown case reserved—Grand jury panels—Criminal Courts and procedure—Powers of Dominion and Local Legislatures.*

By c. 38 of the Acts of Nova Scotia for 1898, the number of grand jurors to be summoned at any term of the Supreme Court in any county of the province was reduced to 12 instead of 24 as formerly, and 7 grand jurors were empowered to find a true bill in any matter instead of 12 as formerly. By a special Act passed on the same day (Acts of 1898, c. 101,) the list of grand jurors for the county of Hants having been destroyed by fire, the clerk of the County Court at Windsor was authorized to draw the names of 12 grand jurors to serve as such at the next term of the Supreme Court at Windsor. Upon the grand jury, summoned under the provisions