IMPORTANT FIRE INSURANCE DECISION IN COURT OF APPEAL

(Continued from page 983)

tion to pay loss caused by an explosion when fire ensues.

As regards the variation in the North British and Mercantile policy the plaintiff said that this variation was not in conspicuous type, did not conform to the Quebec Insurance Act, and was not a just and reasonable requirement on the part of the company.

Judgment of Lower Court.

Justice Maclennan, in his judgment, maintained the claim of the plaintiff for the full amount of the loss resulting from both fire and explosion. He found that under Statutory Condition 11 both companies were liable, notwithstanding the agreement between the insured and the insurer from explosion risk, and, as regards the North British and Mercantile Company's variation, that it was not in conspicuous type, was not in conformity with the Quebec Insurance Act, and was not a just and reasonable requirement on the part of the insuring companies, and, therefore, without effect.

First Judgment Reversed.

The unanimous judgment of the Court of Appeal, as rendered reecntly by Mr. Justice Pelletier, finds that there was error in the judgment of first instance maintaining the action of the plaintiff and condemning the defending insurance companies to pay the amounts claimed. It was also held that there was error in the interlocutory judgment on an inscription-in-law, which refused the companies' motion, asking leave to amend their defence.

The question to be determined, Mr. Justice Pelletier said, was clearly as to whether the Quebec Statutory Conditions could be held to override or interfere with the freedom of contract as between insured and insurer. In the case of the North British and Mercantile Company the Court found that the variation of Statutory Condition 11 was made strictly in conformity with the Statute and was most just and reasonable; it was further held that it was unnecessary to have particular reference to either the Statutory Conditions or the variations because these had no application to a policy which contained the clear and unequivocal contract of the parties.

Curtis & Harvey Company, the Court said, had asked for insurance against fire and had undertaken that they would not claim for loss caused by explosion. The Statutory Conditions were intended only to prevent insuring companies from imposing conditions which had not been assented to by the assured, but once an assured had made his own conditions, he could not be taken by surprise and was bound by the contract which he asked the insuring company to enter into.

Only Liable for Fire Loss.

"The insurance companies should be condemned to pay such damages as were caused by fire," the judgment concludes, "but not the damages resulting from explosion. The parties have committed a common error in submitting that the actions should be maintained or dismissed in toto, and consequently the proof made does not sufficiently distinguish between the damages which were caused by fire and those resulting from explosions. Considering that it is impossible to render judgment without this proof being made, the judgment of February 13, 1919, is reversed, as well as the interlocutory judgments of April 26 and December 2, 1918. Preuve avant faire droit is ordered on the inscription-in-law, and the motion for permission to amend the defence is accorded without costs (with right reserved to respondent to reply to the amended plea); and it is further ordered that the records shall be sent back to the Superior Court for completion of the proof. Costs in the Superior Court are reserved, but respondent is condemned to pay the costs of the appeal."

Chief Justice Lamothe, and Justices Lavergne and Carroll concurred in the finding pronounced by Justice Pelletier.

This was one of the last cases in which the late Mr. Justice Cross sat. Before his death, however, his Lordship prepared notes which concur in the Court's finding, and so make the judgment unanimous.

Curtis & Harvey (Canada), Limited, was represented by Mr. Peers Davidson, K.C., with Mr. Eugene Lafleur, K.C., as counsel; the companies were represented by Mr. J. A. Mann, K.C., with Mr. A. W. Atwater, K.C., as counsel.

The plaintiff has given notice of appeal to the Privy Council. It is, however, difficult to say at what date the case will be heard. It is interesting to note that a similar question was decided on the 8th of May, 1919, by Mr. Justice Baillache in the Queen's Bench Division, England, in the case of the Hooley-Hill Rubber Co against the Royal Insurance Company and others. In that case T.N.T. was in the course of manufacture, when it took fire, which communicated to the buildings, and after the lapse of twenty minutes an explosion occurred. The insurance companies tendered the amount of the loss, resulting from the fire, prior to the explosion, and were upheld both by the referee and the Court. This case followed the principle laid down in Stanley versus Western Assurance Co., 1868, 3 Exchequer, page 71. Appeal in the Hooley-Hill case has been taken to the Court of Appeal in England, and will probably reach the House of Lords.