

REPORTS AND NOTES OF CASES

Dominion of Canada.

SUPREME COURT OF CANADA.

Que.] EASTERN TOWNSHIPS BANK v. SWAN. [Nov. 21, 1898.

*Appeal—Question of practice—Hearing—Peremptory order—Notice.*

Where a grave injustice has been inflicted upon a party to a suit the Supreme Court of Canada will interfere for the purpose of granting appropriate relief, although the question involved upon the appeal may be one of local practice only. *Lambe v. Armstrong*, 27 Can. S.C.R., 390, followed.

Under a local practice prevailing in the Superior Court in the District of Montreal, the plaintiff obtained an order from a judge fixing a day peremptorily for the adduction of evidence and hearing on the merits of a case by precedence over other cases previously inscribed on the roll, and without notice to the defendants. The defendants did not appear, and judgment by default was entered in favour of the plaintiffs.

*Held*, reversing the decision of both Courts below, that the order was improperly made for want of notice to the adverse party, as required by the Rules of Practice of the Superior Court, and that the defendants were entitled to have the judgment revoked and set aside upon a requête civile.

*Atwater*, Q.C., and *Duclos* (*Brown*, Q.C., with them), for appellants. *Brousseau*, for respondents.

N. B.] [Nov. 21, 1898.

EMPLOYERS' LIABILITY ASSURANCE CORPORATION v. TAYLOR.

*Accident insurance—Condition in policy—Notice—Condition precedent.*

A policy of insurance against accidents contained the following condition: "In the event of any accident within the meaning of this policy happening to the insured, written notice containing full name and address of the insured, with full particulars of the accident, shall be given within thirty days of its occurrence to the manager for the United States at Boston, Mass., or the agent of the Corporation whose name is endorsed hereon." The insured having died from an accident, his widow, as beneficiary, brought an action on the policy, to which the company pleaded want of notice under the above condition. The plaintiff demurred to this plea, and her demurrer was allowed by the Supreme Court of New Brunswick. On appeal to the Supreme Court of Canada,

*Held*, reversing the judgment appealed from, Gwynne, J., dissenting, that the giving of the notice was a condition precedent to a right of action on the policy, and that the demurrer to the plea must be overruled.

*Owen Ritchie*, for appellant. *Pugsley*, Q.C., and *Blair*, for respondent.