

Province of Manitoba.**KING'S BENCH.**

Macdonald, J.,

[August 26.]

PATTERSON v. CENTRAL CANADA INS. CO.

Fire insurance—Meaning of words "stored or kept" in relation to gasoline on premises—Excessive claim for loss as a defence to action on policy—Provision in policy for settlement of amount of loss by arbitration.

1. The proper construction to be given to the words "stored or kept" in a condition of a fire insurance policy providing against liability of the company for loss or damage occurring while gasoline, etc., is stored or kept on the premises, is that they do not apply to a small quantity kept on hand for domestic purposes, but import the idea of warehousing or depositing for safe custody or keeping in stock for trading purposes.

Thompson v. Equity Fire Ins. Co., Privy Council decision not yet reported, but reversing 41 S.C.R. 491, followed.

A clause in a policy of fire insurance providing for the settlement of the amount of the loss or damage suffered by the insured by arbitration, whether the right to recover is disputed or not and independently of all other questions, unless made by the policy a condition precedent to the right to bring an action, will not prevent the insured from suing without taking any steps towards such arbitration.

Scott v. Avery, 5 H.L. 811, and *Caledonia Ins. Co. v. Gilmour* (1893) A.C. 85, followed.

The goods, insured for \$1,000 were valued at \$1,400 in the application. After the fire, the plaintiff in his proofs of loss swore that his loss was \$2,359.50, but the trial judge estimated the loss at only \$400.

Held, that this inflation of values was not fraudulent to the extent of vitiating the policy.

Howell and Garland, for plaintiff. *S. H. McKay*, for defendants.

Prendergast, J.]

[August 18.]

WINNIPEG OIL COMPANY v. CANADIAN NORTHERN RY. CO.

Railway Act, R.S.C. 1906, c. 37, s. 298—Evidence—Fire started by sparks from locomotive.

The plaintiff's premises, adjoining the defendants' railway, were discovered to be on fire about five minutes after the pas-