

Osler, J.A. (*Eckhardt v. Lancashire Insurance Co.*, 27 A.R. at p. 381), is "intrinsically" unjust and unreasonable; and, as Hagarty, C.J., would have done in the Peoria case, if it had been open to him to do so, I unhesitatingly "pronounce against the fairness" of the variation.

There remains to be considered the question whether the policies in the first three cases are avoided by the alleged misrepresentation in the applications for the insurance.

In the Rimouski case, the answer of Jeffery to the question, "24. Have you ever had any property destroyed by fire?" was in the negative; and in the Anglo-American and Montreal-Canada cases, the question, "Have you ever had any property destroyed or damaged by fire?" was answered in the negative.

The question of the materiality of these representations is made by the Insurance Act a question of fact for the jury, or for the Court, if there is no jury, and that issue has been found against the appellants. The circumstances relied on by the learned Judge for coming to that conclusion are fully stated in his reasons for judgment, and it is unnecessary to repeat them, or to say more than that I am unable to say that he erred in so deciding.

It may be observed, in view of the importance that counsel for the appellants contended was attached by insurance companies to the information which was sought to be obtained by the questions as to an applicant for insurance having had property destroyed by fire, that no such question was asked by the Crown Life Insurance Company.

I would, for these reasons, affirm the judgments appealed from and dismiss the appeals with costs.

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MAY 23RD, 1913.

\*REX v. GARTEN.

*Criminal Law—False Pretences—Purchase of Cattle—Payment by Cheque—Dishonour of Cheque—Insolvency—Fraud—Purchase through Agent—Representation—Evidence—Conviction.*

Case stated by MORGAN, JUN. Co.C.J., who tried the defendant, in the County Court Judge's Criminal Court for the County of York, upon a charge of false pretences, and found him "guilty."

\*To be reported in the Ontario Law Reports.