

JUNE 14TH, 1912.

ANGLO-AMERICAN FIRE INS. CO. v. MORTON.

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO.

S. C. R.

Appeal from a decision of the Court of Appeal for Ontario, 19 O. W. R. 870, reversing the judgment at the trial in favour of the defendants (appellants.)

This was an action on a policy insuring premises used at the time as billiard and pool rooms and a bowling alley, and the main defence was that a portion of the premises having been leased for a restaurant without notice to the company this was a change material to the risk which avoided the policy. The trial Judge gave judgment for the company on this ground.

The Court of Appeal reversed this judgment on the ground that the defendants had not proved that the change in the use of the premises was material and that, in the absence of evidence, it could not be said that a restaurant, even where gasoline is used, is more hazardous than a billiard room.

The defendants appealed to the Supreme Court of Canada, and were heard by SIR CHARLES FITZPATRICK, C.J., and DAVIES, IDINGTON, DUFF, ANGLIN and BRODEUR, JJ.

THEIR LORDSHIPS affirmed the judgment of the Court of Appeal by an equal division of the Judges.

D. W. Saunders, K.C., for the appellants.

Hamilton Cassels, K.C., for the respondents.

Appeal dismissed with costs.