

be done with the car, and otherwise acted towards the plaintiff in a way consistent only with the assumption that the insurers were liable. The adjuster denied these assertions; but, apart from his denial, it was fairly clear that, when he was despatched by the insurers to investigate the claim, they could not have been aware of the exact nature of the accident. In fact, it would be one of his duties to investigate this, as well as to ascertain the amount of the damage and to report.

The policy contained this provision: "This company shall not be held to have waived any provision or condition of this policy, nor of this endorsement, or any forfeiture thereof, by any requirement, act, or proceeding on its part relating to the appraisal or to any examination herein provided for."

In the face of this provision, it was difficult to see how any act of the adjuster could be binding upon the defendants. But, quite apart from this provision, nothing that the adjuster was alleged to have done could estop the defendants from setting up the defence that the loss was not covered by the policy. The power to bind the defendants in this way could not be a necessary incident of the adjuster's duties, and it would require some express authority from the insurers to enable him to waive their rights or to estop them from setting up this defence: see *Atlas Assurance Co. v. Brownell* (1899), 29 Can. S.C.R. 537; *Commercial Union Assurance Co. v. Margeson* (1899), 29 Can. S.C.R. 601.

*Action dismissed with costs.*

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MASTEN, J., IN CHAMBERS.

JUNE 16TH, 1920.

RE BRITISH AMERICAN FELDSPAR LIMITED.

*Company—Winding-up—Petition by Creditor for Order—Winding-up Act, R.S.C. 1906 ch. 144—Previous Assignment for Benefit of Creditors—Substantial Number of Creditors Desiring Winding-up to Proceed under Assignment—Adjournment of Petition—Costs.*

Petition by W. Gardner for the winding-up of the company, under the Winding-up Act, R.S.C. 1906 ch. 144, and amending Acts.

T. H. Barton, for the petitioner.

H. S. Fisher, for the company, assignee, and certain creditors.

H. S. White, for certain creditors.