curred in it, if it were limited to such conditions only as do not affect the risk.

The same view as was entertained by Patterson, J.A., was expressed by Armour, J., in Parsons v. Queen's Insurance Co., 2 O.R. at pp. 59 et seq.; and the view of Armour, J., was concurred in by Rose, J., in Graham v. Ontario Mutual Insurance Co. (1887), 14 O.R. 358, 365. . . .

[Reference to Lount v. London Mutual Insurance Co. (1905), 9 O.L.R. 699; Cole v. London Mutual Insurance Co. (1908), 15 O.L.R. 619, 622; McKay v. Norwich Union Insurance Co. (1895), 27 O.R. 251; Eckhardt v. Lancashire Insurance Co. (1900), 27 A.R. 373, 393; City of London Fire Insurance Co. v. Smith (1888), 15 S.C.R. 69, 72 et seq.; Eckhardt v. Lancashire Insurance Co. (1900), 27 A.R. 373, 31 S.C.R. 72.]

We are bound by the Eckhardt case to hold that every variation from or addition to a statutory condition is not to be held to be prima facie unjust and unreasonable, but that the justice and reasonableness of a variation or addition must be judged upon the circumstances of the case in which it is sought to be applied.

Tried by that test, I am of opinion that the variation of the statutory conditions upon which these appellants rely is not a just and reasonable condition to have been exacted by them.

But for the statutory condition, an action might be brought to recover the money payable under the policies at any time within 6 or 20 years (depending upon whether the contract was or was not under seal) after it became payable.

The Legislature has enabled that period to be reduced to 12 months; and, in the view of the Commissioners and of the Legislature, it was reasonable to provide that the right of action should be barred if an action was brought within that period.

In the language of Osler, J.A., speaking of an analogous condition, in Smith v. City of London Fire Insurance Co., 14 A.R. 328, the variation which is sought to be engrafted on the contracts of insurance is purely arbitrary, and, therefore, unjust and unreasonable. Twelve months from the happening of the loss—not from the accruing of the cause of action—is a short time to allow to the insured in which to bring his action, and to reduce that period by one half is, in my judgment, an unjust and unreasonable limitation of the rights of the insured.

The variation is one which, to use again the language of