IMPORTANT FIRE INSURANCE DECISION IN COURT OF APPEAL

A decision of great importance to fire insurance companies was given on the 18th inst., when the Court of Appeal, Montreal, reversed a judgment of the Superior Court that had condemned the North British and Mercantile Insurance Company, and the Guardian Assurance Company, Limited, of London, England, to pay to the Curtis and Harvey (Canada) Co. $126,891.80, which the lower court found was due on three fire insurance policies after the explosion which wrecked the Curtis and Harvey powder plant at Dragon, near Rigaud, on August 18, 1917.

The judgment on appeal affects twenty-six other companies, who, with the ones just mentioned, were insurers of the Curtis & Harvey manufacturing establishment at Dragon.

The records in the North British and Guardian cases are ordered back to the Superior Court in order that proof may be made as to the amount of the loss resulting from fire only, allowing the companies to make the proof, which was refused, namely, that they had not made any contract against explosion loss, had no power to do so, and had not asked or received any premium for such risk, with costs in the Court of Appeal against the respondent, costs in the Superior Court being reserved.

History of the Case.

It will be remembered that on August 18, 1917, a series of explosions and fires took place at Dragon in the Curtis & Harvey plant, which completely demolished the entire establishment, involving a loss of considerably over one million dollars.

As a result of the destruction of its establishment Curtis & Harvey (Canada), Limited, went into voluntary liquidation, and the liquidator, J. L. Apedaile, was appointed to wind-up its affairs. The liquidator claimed from the twenty-eight insuring companies the sum of $622,000, being the amount of the insurance obliged to contribute to the loss, as established by Messrs. Cheese and Debbage, insurance adjusters appointed to represent the insuring companies. The companies resisted the claim on the ground that the policies contained a provision "warranted free of claim for loss caused by explosion of any of the materials used on the premises."

Actions were instituted against the companies and proceedings as regards twenty-six companies were stayed pending adjudication in the cases of the North British and Mercantile Insurance Company and the Guardian Assurance Company, these two companies having policies with wordings and conditions typical of the policies of all the other companies.

The actions were tried before Mr. Justice Maclennan in the Superior Court in December, 1918, and the facts revealed in the evidence showed that a fire began in what is known as a nitrator in which was contained Trinitro-toluol, commonly known as T.N.T. The fire burned with increasing fury in the nitrator, extended to the building, and after a lapse of between five and ten minutes there was a terrific explosion. This explosion was followed by other explosions, the breaking out of fires over the entire plant, which were in turn followed by other explosions and other fires.

It was also established by the companies that the wording or body of the policy containing the clause exempting insurers from explosion risk had been prepared and submitted to the company, accepted by them, and the premium based upon this condition. Printed on the back of the policies were the statutory conditions of the Quebec Insurance Act, among which is Condition 11, which reads as follows:

"The company shall make good, loss caused by the explosion of gas in a building not forming part of the gas works, and all other loss caused by any explosion causing a fire and all loss caused by lightning even if it does not set fire."

The policy of the Guardian Assurance Company did not contain any variation of this statutory condition, but that of the North British and Mercantile Company contained a variation to the effect that the company would not be obliged to pay loss caused by an explosion unless fire ensued and then be liable for the fire loss only.

Plea of Defence Rejected.

At the trial the companies moved to amend their defences, alleging that they had no right, power or authority to do explosion business in Canada, and that, moreover, they did not undertake any contract of explosion insurance, no premium for explosion risk was asked or paid, and no such risk was contemplated.

The lower court dismissed the application of the companies and refused the amendment.

The companies also tendered evidence in support of the amendment to the effect that they had no right to enter into a contract of explosion insurance, had not asked or received any premium for the same and had, in fact, not entered into such contract. This evidence was also ruled out by the presiding judge.

The answer of Curtis & Harvey (Canada), Limited, to the defence of the insuring companies was that, notwithstanding the fact that in the body of the policy it was provided that no claim should be made for loss caused by an explosion, yet by Statutory Condition 11 the law imposed an obliga-

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