N.S.] MARGESON *v.* COMMERCIAL UNION ASSURANCE CO. [June 5.

Fire insurance—Construction of contract—"Until"—Condition precedent —Waiver—Estoppel—Authority of agent or adjuster.

Certain conditions of a policy of fire insurance required proofs, etc., within fourteen days after the loss, and provided that no claim should be payable for a specified time after the loss should have been ascertained and proved in accordance with this condition. There were two subsequent clauses providing respectively that until such proofs were produced, no money should be payable by the insurer and for forfeiture of all rights of the insured if the claim should not for the space of three months after the occurrence of the fire, be in all respects verified in the manner aforesaid.

Held, that the condition as to the production of proofs within fourteen days was a condition precedent to the liability of the insurer; that the force of the word "until" in the subsequent clause could not give to the omission of such proofs within the time specified, the effect of postponing recovery merely until after their production; and that the clause as to the forfeiture after three months did not apply to the conditions specially required to be fulfilled within any lesser period.

Neither the local agents for soliciting risks, nor an adjuster sent for the purpose of investigating a loss under a policy of fire insurance, can be considered as persons having authority from an insurer, either by their acts or words, to waive compliance with conditions precedent to the insurer's liability or to extend the prescribed time thereby limited for the fulfillment of their requirements, and as the policy in question specially required it, there could be no waiver except by indorsement in writing upon the policy signed by an officer of the company having authority for that purpose. *Atlas Assurance Co.* v. *Brownell*, 29 S.C.R., followed.

Drysdale, Q.C., for the appellant. *Borden*, Q.C., for the respondents.

Ont.] [June 5.

CARROLL *v.* ERIE COMPANY AND PROVINCIAL NATURAL GAS CO.

Res judicata—Damages—Rectification.

In an action relating to the construction of a deed the plaintiff claimed the benefit of a reservation contained in a prior agreement, but judgment was given against him on the ground that the agreement was superseded by the deed. He then brought an action to reform the deed by inserting the reservation therein.

Held, that the subject matter of the second action was not res judicata by the previous judgment. Appeal allowed with costs.

The plaintiff in an action to reform an agreement may be awarded damages.

Aylesworth, Q.C., for appellants. *Douglas* for respondent Erie Co. *Cowper* for respondent Provincial Natural Gas Co.