

be tried by the standard afforded by the statute, and held not to be just and reasonable if they impose upon the insured terms more stringent or onerous or complicated than those attached by the statute to the same subject or incident:" *Smith v. City of London Insurance Co.*, 14 A. R. at p. 337, 15 S. C. R. 69. See also *Ballagh v. Royal Insurance Co.*, 5 A. R. at p. 107; *May v. Standard Insurance Co.*, 5 A. R. at p. 622.

Now, does the variation here "impose upon the insured terms more stringent or onerous or complicated" than are imposed by the statutory conditions in the matter of ascertaining the amount of loss?

The most serious differences between the two conditions are: (1) the variation prohibits the arbitration provided for by the statutory condition under the Arbitration Act, and substitutes for it an appraisalment; and (2) it compels the insured to pay the expense of his own appraiser and one-half the expense of the umpire, in any event, while the statutory condition provides that where the full amount of the claim is awarded, costs shall follow the event, and that in other cases all questions of costs shall be in the discretion of the arbitrators.

If the last sentence of the variation had been omitted, it might fairly be argued that since 6 Edw. VII. ch. 19, sec. 13, amending the Arbitration Act, the provisions of the latter Act would be applicable to the appraisalment; but by the express provision against the arbitration under the statutory condition which provides that the Arbitration Act shall be applicable to the reference, I think it was the intention of the company to exclude the application of that Act.

If the language used is sufficient to deprive the plaintiff of the benefit and protection of the provisions of the Arbitration Act (which I do not deem it necessary to decide), the variation would be within the rule above quoted, and manifestly unjust.

Without determining whether any of the provisions of the Arbitration Act are applicable to the appraisalment, it is quite clear that the plaintiff would be bound by the findings of the majority of the appraisers as the result of their own personal opinions only, and he would be debarred from calling witnesses and having them examined on oath touching the amount of his loss.