

MIDDLETON, J.

NOVEMBER 15TH, 1919.

*ROSS v. SCOTTISH UNION AND NATIONAL INSURANCE
CO.

*Stay of Proceedings—Action Brought for same Causes as Former
Action—Res Judicata—Action for Reformation of Contract
upon which Former Action Brought—Time-limit for Bringing
Action—Ontario Insurance Act, sec. 1914, condition 24—
Estoppel—Costs—Motion—Forum—Court or Chambers.*

Motion by the defendants for an order staying proceedings in this action and directing the plaintiffs to pay the costs of the action up to this time, upon the ground that the action was vexatious and an abuse of the process of the Court, in that the causes of action had all been disposed of in an earlier action between the same parties, and also upon the ground that, the action being to recover upon a fire insurance policy, and it being admitted that the fire occurred more than a year prior to the commencement of this action, the limitation prescribed prevented the action from being successfully prosecuted.

See Ross v. Scottish Union and National Insurance Co. (1917), 41 O.L.R. 108; S.C. (1918), 58 Can. S.C.R. 169.

The motion was heard in Chambers.

Shirley Denison, K.C., for the defendants.

H. J. Macdonald, for the plaintiffs.

MIDDLETON, J., in a written judgment, said that in the present action the plaintiffs sought to have it declared that the restriction in the policy as to the insurance upon five dwelling-houses was improperly inserted in the policy, and for the rectification of the policy by deleting the restrictive provision, or, in the alternative, to recover an amount equal to the insurance as damages for fraud of the defendants in improperly inserting the restrictive words in the policies issued.

The learned Judge was of opinion that, according to the present practice, it was obligatory upon the plaintiffs to assert all their claims in the one action. He had failed to find any case since the Judicature Act which suggested that a party might in a second action seek to reform a contract upon which he had brought an action and failed. Here there was in reality but one cause of action.

The second objection must also prevail. The fire took place in 1916—this action was not brought until 1919. The statutory