never having become effectual in law, never had any force or validity whatever, and nothing done under it could be justified by it; and therefore by law No 3519 had no foundation and must be quashed.

F. E. Hodgins, for motion. *Fullerton*, Q.C., and *Caswell*, for city.

Meredith, C.J.] ECKHARDT *v.* LANCASHIRE INS CO. [Oct. 17.

Fire insurance—Variation from statutory conditions—"Co-insurance clause" "Not just and reasonable"—R.S.O., c. 203, s. 171.

The plaintiffs, by a contract with the defendants, insured their stock-in-trade against fire for $15,000, "subject to seventy-five per cent. co-insurance"—these last words being conspicuously printed in red ink on the face of the policy. The policy contained a "co-insurance" clause printed in red ink among the variations of the statutory conditions, as follows: "The premium having been reduced in consideration of this condition, the insured shall during the currency of this policy maintain insurance concurrent with this policy on each and every item of the property insured to the extent of seventy-five per cent. of the actual cash value thereof, and if the insured shall not do so, the company shall only be liable for the payment of that proportion of the loss for which the company would be liable if such amount of concurrent insurance had been maintained." During the currency of the policy the plaintiffs sustained a loss by fire of $42,120.17, the cash value of the property insured being $115,000, and the whole amount of the insurance upon it, including the $15,000 named in the defendants' policy, $70,000. The defendants had two alternative rates of premium, one for insurance with, and the other for insurance without, the "co-insurance" clause, the former being substantially less than the latter, but the plaintiffs had no actual knowledge of this, except in as far as that knowledge was obtained from the terms of the policy.

Held, following *Wallace* v. *Lancashire Ins. Co.*, 23 A.R. 224, that the "co-insurance" clause was a condition and a variation of statutory conditions 8 and 9; and, as it could not, under the circumstances, be found to be "not just and reasonable," within the meaning of section 171 of the Ontario Insurance Act, R.S.O., c. 203, it was binding on the insured.

W. Cassels, Q.C., and *Anglin*, for the plaintiffs. *Osler*, Q.C., and *McInnes*, for defendants.

Meredith, C.J.] WARD *v.* CITY OF TORONTO. [Sept. 23.

Lessor and lessee—Covenant for renewal—Compensation for improvements—Notice.

Where a covenant in a lease to the effect that if at the expiration of the term the lessee should be desirous of taking a renewal lease, and should have given to the lessors thirty days notice in writing of this desire, the lessors would renew at a rental to be fixed as therein directed, provided that if the lessors did not see fit to renew the lessee should receive compensation for his permanent improvements.

Held, that in order to get the benefit of the proviso it was necessary tha