

perial charter, the Citizens' Insurance Company—incorporated by an Act of the Dominion Parliament, passed in 1876—and the Western Assurance Company, incorporated by the Parliament of Canada before Confederation, and whose charter was subsequently amended by the Dominion Parliament, having been authorized to do fire insurance business throughout the Dominion of Canada by virtue of a license granted to them by the Minister of Finance under the Acts of the Dominion of Canada relating to Fire Insurance Companies, issued respectively in favour of the plaintiffs, The Queen Insurance Company an interim receipt, and the other two companies a policy of insurance, whereby they insured certain properties situate in the Province of Ontario.

In all these cases, which were decided by the Ontario Courts in favour of the plaintiffs (see 4 App. Rep. pp. 96, 103, and 281), the question of the constitutionality of the Ontario "Fire Insurance Policy Act," R. S. O. c. 162, was raised, and the Supreme Court of Canada, after hearing the arguments in all these cases, delivered one judgment treating separately the other points raised on the argument by each particular company, and it was—

Held, 1. That the Fire Insurance Policy Act, R. S. O. c. 162, is not *ultra vires*, and is applicable to insurance companies (whether foreign or incorporated by the Dominion) licensed by the Dominion Parliament to carry on insurance business throughout Canada.

2. That the legislation in question prescribing conditions incidental to insurance companies contracting within the limits of the Province is not a regulation of trade and commerce within the meaning of these words in sub-section 2, section 91, B. N. A. Act.

3. That an insurer in Ontario who has not complied with the law in question, and has not printed on his policy or contract of insurance the statutory conditions in the particular manner indicated in the statutes cannot set up against the insured his own conditions or the statutory conditions; the insured, alone, in such a case, is entitled to

avail himself of any of the statutory conditions.

Per TASCHEREAU and GWYNNE, J. J., dissenting.—That the power to legislate upon the subject matter of insurance is vested exclusively in the Dominion Parliament by virtue of its power to pass laws for the regulation of trade and commerce under the 91st section of the B. N. A. Act.

Robinson, Q. C., and Bethune, Q. C., for appellants, and McCarthy, Q. C., for respondents in *Citizens Ins. Co. v. Parsons*.

Robinson, Q. C., and Small for appellants, McCarthy, Q. C., for respondents in *Queen Ins. Co. v. Parsons*.

Bethune, Q. C., and Mowat, Q. C., for appellants, and McCarthy, Q. C., for respondent in *Western Assurance Co. v. Johnstone*.

BICKFORD V. LLOYD.

Award—Motion to set aside—Time for moving.

This was an application by the Court of Chancery to set aside an award. The award was made on the 13th August, 1878; Trinity Term began on the 26th August and ended on the 7th September,—Michaelmas Term began on the 18th November and ended on the 7th December. The notice of motion was given on the 2nd December, 1878. Before the Supreme Court the plaintiff contended *inter alia* that the delay had been caused by the act of the party supporting the award, who had on the 14th September before the end of the next term served a notice on him of his intention to appeal.

Held—Affirming the judgment of the Court of Appeal for Ontario that the submission being made within the 9 & 10 Wm. III. the application to set aside the award was too late, and no sufficient reason had been assigned for the delay.

Hector Cameron, Q. C., for appellant.

McCarthy, Q. C., for respondent.

WELLINGTON MUTUAL INS. CO. V. FREY.

Mutual Insurance Company.

Held—That a policy issued by a Mutual Insurance Company is not subject to the requisites of the R. S. O. c. 162, and