

The first legislation in this Province restricting the right of insurers to introduce conditions into contracts of insurance entered into by them came into force on the 1st July, 1876 (39 Vict. ch. 24).

[Reference to the provisions of that Act.]

The Act contained no express provision that, if any condition, other than or different from the statutory conditions, was held by the Court or Judge before whom a question relating thereto is tried to be not just and reasonable, the condition should be null and void; but in the revision of 1877 that was expressly provided for by sec. 6 of the Fire Insurance Policy Act (ch. 162).

The question as to the rule to be applied in determining whether a variation of the statutory conditions is just and reasonable, within the meaning of the Act, had been discussed in many cases, and very divergent views have been expressed on the subject.

One view was, that "conditions dealing with the same subjects as those given by the statute, and being variations of the statutory conditions, should 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." That was the view enunciated by Patterson, J.A., one of the commissioners by whom the statutory conditions were framed: *Ballagh v. Royal Insurance* (1880), 5 A.R. 87, 107; *May v. Standard Fire Insurance Co.*, 605, 622.

It is a little singular that the learned Judge who expressed that view held in *Parsons v. Queen's Insurance Co.* (1882), 2 O.R. 45, that a variation of the statutory condition as to the keeping of gun-powder by providing that the company should not be responsible if more than ten pounds of it should be deposited or kept on the premises—although the statutory condition was applicable if more than twenty-five pounds should be stored or kept in the building insured—was a reasonable variation.

[Reference to Mr. Justice Patterson's note-book No. 14—Guelph Assizes, 27th March, 1882.]

In *Smith v. City of London Fire Insurance Co.* (1887), 14 A.R. 328, 337, Osler, J.A., quoted the passage from the opinion of Patterson, J.A., which I have quoted, and said that it had been expressed without, so far as he had noticed, any dissent on the part of the other members of the Court, and that he con-