

to fill in, marking a brick building in red, and a frame building in black, in this case it being marked in black. There was no special rate of premium for a building built of boards, and the rate charged to Smith was that specified in the tariff of the company for a brick building, he having authority to fix such rate.

The application was sent to the head office and a policy issued thereon describing the building as brick, the word written "boards" in the application being read by mistake as "brick." The mistake was not brought to the notice of the head office until the insured premises were destroyed by fire and a claim was made for the amount of the loss under the policy, but after receiving notice of the error, the company, under a clause in the policy, caused such claim to be submitted to arbitration, but refused to pay the amount awarded to Smith on the ground that, owing to the mistake in the policy, there had been no mutuality of contract between them and Smith, and no valid contract ever existed between them.

*Held*, affirming the judgment of the Court of Appeal for Ontario, 14 Ont. App. R. 328, that there was a valid contract existing between the company and the assured, but even if there were not, the company could not set up want of mutuality after treating the contract as existing by the submission to arbitration and in other ways.

By the 17th statutory condition in the Act relating to insurance companies, R.S.O. c. 62, a loss shall not be payable until thirty days after the completion of proofs, unless otherwise provided by statute or agreement of the parties.

*Held*, that this was a privilege accorded to the company, who could not extend the time limited by a variation of the condition under sec. 4 of the above Act, though such period might be shortened.

*Per* STRONG, J.—That inserting a clause in a policy extending the time for payment of loss to sixty days, in the form prescribed by said sec. 4, is not a variation by agreement of the parties within the meaning of the said statutory condition.

*Robinson, Q. C.*, and *Millar*, for the appellants.

*McCarthy, Q. C.*, for the respondents.

Quebec.]

MOLSON et al. v. LAMBE es qual.

*Prohibition—Licensed Brewers—Quebec License Act—41 Vic. ch. 3—Constitutionality of.*

R., a drayman in the employ of J. R. M. & Bros., duly licensed brewers under 43 Vic. ch. 19 (Q.) was charged before the Court of Special Sessions of the Peace at Montreal, with having sold beer outside of the business premises of J.R.M. & Bros., but within the revenue district of Montreal, in contravention to the Quebec License Act 41 Vic. ch. 3. On a writ of prohibition issued by the Superior Court at the instance of appellants claiming *inter alia* that being licensed brewers under the Dominion Statute they had the right of selling beer by and through their employees and draymen without a provincial license, and that the Quebec License Law of 1878 and its amendments were unconstitutional, and if constitutional did not authorise the complaint and prosecution against R.:

*Held*, reversing the first holding of the Court below, that the Court of Special Sessions was the proper tribunal to take cognizance of the alleged offence of R., and therefore a writ of prohibition did not lie in the present case. (Taschereau & Gwynne, JJ., dissenting.)

Affirming the judgment of the Court below, (M.L.R., 2 Q.B. 381), that the Quebec License Act of 1878, 41 Vic. ch. 3, (P.Q.) is constitutional. Gwynne, J., dissenting on the ground that the Quebec License Act, 1878, imposed no tax upon brewers, and therefore the prohibition should be ordered to be issued absolutely.

Appeal allowed with costs.

*Kerr, Q. C.*, for appellants.

*Geoffrion, Q. C.*, for respondent.

QUEBEC STREET RAILWAY COMPANY V. CORPORATION OF THE CITY OF QUEBEC.

*Street Railway—By-law—Construction of—Notice—Six months.*

The Quebec Street Railway Company were authorised under a by-law passed by the Corporation of the City of Quebec and an agreement executed in pursuance thereof to construct and operate in certain streets of the city, a street railway for a period of forty