

failing to agree thereon, shall submit their differences to the umpire so chosen, and the award in writing by the said umpire and at least one of the said appraisers as to the amount of said damage and loss shall be binding upon the assured and the company. The assured and the company shall pay the appraisers respectively selected by each of them, and each shall pay one-half the expenses of the umpire. (b) It is furthermore hereby expressly provided and mutually agreed, that no arbitration shall be had under said condition No. 16, and that no suit or action against the company for the recovery of any claim shall be sustainable in any court of justice, until after an award shall have been made fixing the amount of such damage and loss in the manner above provided, in all cases where the company shall, within 30 days after completion of the proofs of loss, give notice to the assured that the company requires the amount of the damage and loss to be adjusted by the said appraisers."

Within 30 days after proof of loss, and before action, the defendants appointed an appraiser, and gave the notice provided for in the variation. No other notice of or application for arbitration was given or made.

The plaintiff refused to appoint an appraiser, and brought this action.

The defendants plead the variation as a bar to the action, and in the alternative they plead the 16th statutory condition, and by the statement of defence purport to appoint an arbitrator on their behalf.

If the variation is held to be invalid, and the defendants are entitled to rely on the 16th statutory condition, no application having been made in compliance with sec. 6 of the Arbitration Act, the motion is now too late and must fail, on the authority of the judgment of the King's Bench Divisional Court on the appeal in *Cole v. Canadian Fire Insurance Co.*, ante 906.

The only other question for determination is whether the variation is binding upon the plaintiff, and that depends upon whether it can be held to be one that is "just and reasonable to be exacted by the company."

In the judicial consideration of variations of the statutory conditions, this rule for determining whether they are "just and reasonable" has been well settled, viz.: "Conditions dealing with the same subjects as those given by the statute and by variations of the statutory conditions should