Where therefore a judge of a District Court refused to certify the pleadings so as to enable an application set down for the Divisional Court and an order was obtained from a judge to allow such an appeal to be set down, such order was held to be of no avail, and the appeal was struck out.

R. U. Macpherson, for the motion. *Hugh Rose*, contra.

Boyd, C.] BOARDMAN *v.* NORTH WATERLOO INS. CO. [Dec. 28, 1899.

Insurance—Condition—Change material to risk—Non-occupancy.

Whereby a condition in a fire policy on a dwelling house, any change material to risk, etc., should avoid the policy, the fact of the premises being unoccupied and vacant did not constitute a breach of such condition.

Maybee, for plaintiff. *E. F. B. Johnston*, Q.C., and *Reade*, for defendants.

Boyd, C.] SPAHR *v.* NORTH WATERLOO INS. CO. [Dec. 28, 1899.

Insurance—Statutory conditions—Condition requiring occupation of premises —Untenanted—Meaning of.

The conditions in a policy of fire insurance provided that "If the premises insured became untenanted or vacant and so remained for more than ten days without notifying the company," etc., "the policy will be void," is a reasonable condition, and the word "untenanted" therein must be read as synonymous with "unoccupied."

Where therefore the occupant of a house left it for several weeks, but left furniture and clothing therein, while a person went there to feed the pigs and chickens and water the flowers, and on two occasions the insured's husband slept in the house, it was held that the house was untenanted and vacant within the meaning of the condition.

Maybee, Q.C., for plaintiff. *E. F. B. Johnston*, Q.C., and *Reade*, for defendants.

Divisional Court.] NORTHEY MFG. CO. *v.* SANDERS. [Dec. 28, 1899.

Sale of goods—Specific article—Warranty—Parol evidence.

Under a written contract for the sale by description of a specific article, namely a gasoline engine with a pump standard, it not being pretended that it did not answer such description, such contract must be taken to cover, as it purported to do, the whole contract between the parties, and parol evidence is not admissible to show a warranty made prior to the entering into of the contract which is inconsistent with the written warranty as it would be allowing the admission of parol evidence to control, vary, add to or subtract from the written contract; and the statements alleged to have