

Machinery and Supply Company Limited; and by striking out the clause directing a reference as to damages. No costs of the appeal.

HIGH COURT DIVISION.

KELLY, J.:

MARCH 11TH, 1918.

BABAYAN v. PHŒNIX INSURANCE CO.

Insurance (Fire)—Proofs of Loss—Overestimation of Value of Stock of Goods Destroyed or Damaged—False Statements not Amounting to Fraud or Dishonesty—Actions on Policies—Time for Commencement—Lapse of 60 Days after Completion of Proofs—Failure to Separate Damaged from Undamaged Goods—Assessment of Loss—Reduced Estimate—Costs of Actions.

This action and four other actions, each against a different insurance company, were brought by the same plaintiff, to recover for loss and damage by fire to a stock of goods owned by the plaintiff and contained in a warehouse in Toronto, upon five policies issued by the defendant companies respectively.

The actions were tried together, without a jury, at Toronto.
 R. S. Robertson and G. H. Sedgewick, for the plaintiff.
 D. L. McCarthy, K.C., for the defendants.

KELLY, J., in a written judgment, said, after stating the facts, that the chief defences were the following: (1) that the plaintiff did not comply with the Ontario Insurance Act, R.S.O. 1914 ch. 183, and the statutory conditions, in that he refused to separate the damaged from the undamaged property; (2) that he did not comply with the demand of the defendants to be furnished with better proofs of loss than those which he delivered; (3) that the actions were brought prematurely, in that 60 days had not elapsed after completion of the proofs of loss; (4) that the plaintiff's statements in his declaration of the 30th March, 1916, were false and fraudulent, and that, under statutory condition 20, his claim was vitiated and void; (5) that the statements in the plaintiff's declaration of the 7th July, 1916—that the account accompanying it was just and true, that he did not know the cause of the fire, and that the fire did not occur by any wilful act or procurement