

and Mercantile Company's variation, that it was not in conspicuous type, was not in conformity with the Quebec Insurance Act, and was not a just and reasonable requirement on the part of the insuring companies, and, therefore, without effect.

First Judgment Reversed.

The unanimous judgment of the Court of Appeal, as rendered by Mr. Justice Pelletier, finds that there was error in the judgment of first instance maintaining the action of the plaintiff and condemning the defending insurance companies to pay the amounts claimed. It was also held that there was error in the interlocutory judgment on an inscription-in-law, which refused the companies' motion, asking leave to amend their defence.

The question to be determined, Mr. Justice Pelletier said, was clearly as to whether the Quebec Statutory Conditions could be held to override or interfere with the freedom of contract as between insured and insurer. In the case of the North British and Mercantile Company the Court found that the variation of Statutory Condition 11 was made strictly in conformity with the Statute and was most just and reasonable; it was further held that it was unnecessary to have particular reference to either the Statutory Conditions or the variations because these had no application to a policy which contained the clear and unequivocal contract of the parties.

Curtis & Harvey Company, the Court said, had asked for insurance against fire and had undertaken that they would not claim for loss caused by explosion. The Statutory Conditions were intended only to prevent insuring companies from imposing conditions which had not been assented to by the assured, but once an assured had made his own conditions, he could not be taken by surprise and was bound by the contract which he asked the insuring company to enter into.

Only Liable for Fire Loss.

"The insurance companies should be condemned to pay such damages as were caused by fire," the judgment concludes, "but not the damages resulting from explosion. The parties have committed a common error in submitting that the actions should be maintained or dismissed in toto, and consequently the proof made does not sufficiently distinguish between the damages which were caused by fire and those resulting from explosions. Considering that it is impossible to render judgment without this proof being made, the judgment of February 13, 1919, is reversed, as well as the interlocutory judgments of April 26 and December 2, 1918. *Preuve avant faire droit* is ordered on the inscription-in-law, and the motion for permission to amend the defence is accorded without

costs (with right reserved to respondent to reply to the amended plea); and it is further ordered that the records shall be sent back to the Superior Court for completion of the proof. Costs in the Superior Court are reserved, but respondent is condemned to pay the costs of the appeal."

Chief Justice Lamothe, and Justices Lavergne and Carroll concurred in the finding pronounced by Justice Pelletier.

This was one of the last cases in which the late Mr. Justice Cross sat. Before his death, however, his Lordship prepared notes which concur in the Court's finding, and so make the judgment unanimous.

Privy Council Appealed To.

From these judgments Curtis & Harvey (Canada) Limited, appealed to the Judicial Committee of the Privy Council, and these appeals were heard in London during the week of July 9, 1920, arguments of Council occupying practically the entire week.

The judgments just rendered have the effect of confirming the judgments of the Court of Appeal at Montreal, and fixing the liability of the Insurance Companies for fire only and relieving them from any loss or damage resulting from explosion.

The case for Curtis & Harvey (Canada) Limited was argued before the Judicial Committee by Sir John A. Simon, K.C., M.P., the late Col. Peers Davidson, K.C., (of the Canadian Bar).

The case for the Insurance Companies by R. A. Wright, K.C., and J. A. Mann, K.C., (of the Canadian Bar).

The Canadian attorneys representing Curtis & Harvey (Canada) Limited, were Davidson, Wainwright, Alexander & Elder; the Guardian Assurance Company Limited, Atwater, Surveyor & Bond and the other insurance companies by Foster, Mann, Place & Company.

TRAFFIC RETURNS **Canadian Pacific Railway**

Year to date	1918	1919	1920	Increase
Sept. 30 ..	\$108,138,000	\$121,186,000	\$114,203,000	\$23,017,000
Week ending	1918	1919	1920	Increase
Oct. 7 ..	\$3,458,000	\$3,965,000	\$5,356,000	\$1,391,000
Oct. 14 ..	3,534,000	4,029,000	5,689,000	1,660,000

Grand Trunk Railway

Year to date	1918	1919	1920	Increase
August 31 ..	\$34,408,555	\$30,384,474	\$38,814,039	\$8,429,565
Week ending	1918	1919	1920	Increase
Sept. 7 ..	\$1,346,596	\$1,949,914	\$2,473,270	\$523,356
Sept. 14 ..	1,415,000	2,178,855	2,680,720	501,865
Sept. 21 ..	1,456,812	2,163,619	2,483,460	330,841

Canadian National Railways

Year to date	1918	1919	1920	Increase
Sept. 30 ..	\$56,492,833	\$66,642,628	\$71,207,168	\$75,646,540
Week ending	1918	1919	1920	Increase
Oct. 7 ..	\$1,789,180	\$2,140,414	\$2,637,913	\$517,499
Oct. 14 ..	1,715,665	2,012,883	2,901,892	888,019