

TEETZEL, J.

NOVEMBER 29TH, 1907.

WEEKLY COURT.

COLE v. LONDON MUTUAL FIRE INSURANCE CO.

Stay of Proceedings—Action on Fire Insurance Policy—Variation of Statutory Condition 16—Not “Just and Reasonable”—Onerous Terms—Appraisement—Arbitration—Expiry of Time for Moving under Arbitration Act, sec. 6.

Motion by the defendants to stay proceedings in an action upon a policy of fire insurance until after the appraisal required under a variation of the statutory conditions or until after the arbitration provided for in the 16th statutory condition.

W. H. Hunter, for defendants.

G. C. Gibbons, K.C., for plaintiff.

TEETZEL, J.:— . . . In the present case, the 16th statutory condition, which provides for a reference under the Arbitration Act, is struck out by a variation indorsed on the policy in these words: “10. Condition No. 16 is hereby struck out and the following inserted in lieu thereof: (a) In pursuance of the powers conferred by R. S. O. ch. 203, sec. 145, sub-sec. 3, it is hereby expressly provided and mutually agreed, if any difference arises as to the value of the property insured, of the property saved, or the amount of the damages or loss, such value and amount and the proportion, if any, to be paid by the company shall, whether the right to recover on the policy is disputed or not, and independently of all other questions, be submitted to and ascertained by two competent and disinterested appraisers, one to be appointed by the assured and one by the company. The said appraisers shall first select a competent and disinterested umpire, but in case of their failure to agree on such umpire within 10 days, he shall be appointed by the Judge of the County Court of the county wherein the loss happens. The said appraisers shall then together estimate and appraise such value and amount in detail, stating separately sound value and damage and loss; and in the event of the two appraisers