

arisen upon the provisions of the British North America Act, 1867, relating to the distribution of legislative powers between the Parliament of Canada and the Legislatures of the Provinces, and, owing to the very general language in which some of these powers are described, the question is one of considerable difficulty. Their Lordships propose to deal with it before approaching the facts on which the particular questions in the actions depend. It will only be necessary to premise that "The Citizens Insurance Company of Canada," the defendants in the first action, were originally incorporated by an Act of the late Province of Canada, 19 and 20 Vict., c. 124, by the name of "The Canada Marine Insurance Company." By another Act of the late Province, 27 and 28 Vict., c. 98, further powers, including the power of effecting contracts of insurance against fire, were conferred on the company, and its name changed to "The Citizens Insurance and Investment Company;" and, finally, by an Act of the Dominion Parliament, its name was again changed to the present title, and it was enacted that, by its new name, it should enjoy all the franchises, privileges, and rights, and be subject to all the liabilities of the company under its former name.

The Queen Insurance Company is an English fire and life insurance company incorporated under the provisions of the Joint Stock Companies Act of the Imperial Parliament, 7 & 8 Vict., c. 110. It has its principal office in England, and carries on business in Canada.

The defendant company in each of the actions is the appellant.

The statute impeached by the appellants, as being an excess of legislative power, is an Act of the Legislature of the Province of Ontario (39 Vict., c. 24), intitled "An Act to secure uniform conditions in policies of Fire Insurance."

The preamble of the Act is as follows:—

"Whereas under the provisions of an Act passed in the 38th year of the reign of Her Majesty, intitled 'An Act to amend the laws relating to Fire Insurances,' the Lieutenant Governor issued a commission to certain commissioners therein named, requiring them to consider and report what conditions are just and reasonable conditions to be inserted in fire insurance policies on real or personal property in this province: And whereas a majority of the said commissioners have, in pursuance of the requirements of the said Act, settled and approved of the conditions set

forth in the schedule to this Act; and it is advisable that the same should be expressly adopted by the Legislature as the statutory conditions to be contained in policies of fire insurance entered into or in force in this province:

It enacts as follows:—

"1. The conditions set forth in the schedule to this Act shall, as against the insurers, be deemed to be part of every policy of fire insurance hereafter entered into, or renewed, or otherwise in force in Ontario, with respect to any property therein, and shall be printed on every such policy with the heading 'Statutory Conditions,' and if a company (or other insurer) desire to vary the said conditions, or to omit any of them or to add new conditions, there shall be added in conspicuous type, and in ink of different colour, words to the following effect:—

*Variations in Conditions.*

"This policy is issued on the above statutory conditions, with the following variations and additions:—

"These variations (or as the case may be) are, by virtue of the Ontario Statute in that behalf, in force so far as, by the Court or Judge before whom a question is tried relating thereto, they shall be held to be just and reasonable to be exacted by the company."

"2. Unless the same is distinctly indicated and set forth in the manner or to the effect aforesaid, no such variation, addition, or omission shall be legal and binding on the insured; and no question shall be considered as to whether any such variation, addition, or omission is, under the circumstances, just and reasonable, and on the contrary the policy shall, as against the insurers, be subject to the statutory conditions only, unless the variations, additions, or omissions are distinctly indicated and set forth in the manner or to the effect aforesaid.

"3. A decision of a Court or Judge under this Act shall be subject to review or appeal to the same extent as a decision by such Court or Judge in other cases."

The schedule contains twenty-one conditions under the head "Statutory Conditions." The following of them are material to the particular questions to be decided in the appeals:—

"After application for insurance, it shall be deemed that any policy sent to the assured is intended to be in accordance with the terms of the application, unless the company shall, in writing, point out the particulars wherein the policy differs from the application."

8. "The company is not liable for loss if there is any prior insurance in any other company, unless the company's assent thereto appears therein, or is endorsed thereon, nor if any subsequent insurance is effected in any other company, unless and until the company assent thereto by writing, signed by a duly authorized agent."

"In the event of any other insurance on the property herein described having been assented to as aforesaid, then this company shall, if such other insurance remain in force, on the happening of any loss or damage, only be liable for the payment of a rateable proportion of such loss or damage without reference to the dates of the different policies."