

Master's Office.]

CLARK V. UNION FIRE INS. CO.

[Master's Office.]

I do not say that a barber connected with an hotel or boarding house may not, by arrangement with the hotel or boarding house keeper, follow his ordinary calling on Sunday in such hotel or boarding house, and be considered in the light of a servant kept in a private family to do the family work of a barber on Sunday as well as upon other days.

In this case we cannot do otherwise than discharge the motion, but without costs.

GALT, J., concurred.

OSLER, J.—I feel bound by the decision of the House of Lords in the case of *Philips v. Innes*, 4 Cl. & F. 234. In my judgment the cases of a baker and a barber are not distinguishable. I question very much the expediency of prohibiting barbers from carrying on their business on the first day of the week.

*Motion dismissed.*

#### MASTER'S OFFICE.

CLARK V. UNION FIRE INS. CO.

*Insurance — Provincial companies — B. N. A.*

*Act—Foreign contracts—Lex loci contractus.*

A company incorporated by a Provincial Legislature for the business of insurance, possesses the same attributes and franchises within the jurisdiction creating it as a company incorporated by the Imperial or Dominion Parliament, and may enter into contracts outside the Province, wherever such contracts are recognized by comity or otherwise.

The term "Provincial objects," in the B. N. A. Act, refers to local objects within a Province, in contradistinction to objects which are common to all the Provinces in their collective or dominion quality.

The legislative enactments of a country have no binding force *propria vigore* in another country; and a legislature cannot authorize corporations created by it to carry on business in a foreign country. Where, however, a legislature assumes so to do, such authority is only a legislative sanction to the agreement of the corporators to transact their business at home and abroad.

A contract executed in Toronto and delivered to the contractee in New York is governed by the laws of Ontario.

So a contract signed and sealed in blank in Toronto, and sent to an agent in New York to be filled up and delivered to the contractee there, is a contract made in Ontario by relation to the signing and sealing there.

Where no place of payment of a policy of insurance is mentioned in the policy it must be assumed that the place of payment is where the head office of the insurance company is situated.

[Mr. HODGINS, Q.C.—Oct. 30.]

The facts of the case fully appear in the judgment.

*Falconbridge*, for claimant.

*W. A. Foster*, for plaintiff.

*A. C. Galt*, for defendant.

THE MASTER IN ORDINARY :—This is a claim brought in by the Export Lumber Company of New York against the defendants, a Fire Insurance Company incorporated by the Legislature of Ontario, 39 Vict. c. 93. The policy is dated 5th August, 1880, and was delivered to the claimants on the 7th or 8th, and the fire occurred on the 10th of the same month. On the 11th the claimants tendered a cheque for the premium, which was immediately returned by the defendants.

The principal defences are that the defendants being a Provincial company have only limited powers, and could not make contracts in foreign countries, and that the premium not having been paid or tendered until after the loss occurred, the policy is void.

In arguing that the contract was *ultra vires* it was contended that as the B. N. A. Act (s. 92 subs. 11) empowered the Provincial legislatures to incorporate companies with "Provincial objects," this corporation could have no existence, and therefore no power to contract, outside this Province; and in any event that not having obtained legislative sanction authorizing contracts of insurance outside the Province, this contract was void.

The substantial objection is against the legislative jurisdiction of the Provincial legislature; for it was contended that a corporation created by it has not the *status* nor capacity to contract outside of provincial jurisdiction which a Dominion corporation possesses. There is no warrant for this contention. There is nothing in the B. N. A. Act, nor in the classes of subjects within their legislative authority, which would place these legislatures outside the definition given by writers on this subject :—"The colonial legislatures, with the restrictions necessarily arising from their dependency on Great Britain, are sovereign within the limits of their respective territories." 1 Story's Const § 171. "The legislative bodies in the dependencies of the Crown have *sub modo* the same powers of legislation as their prototype in England, subject, however, to the final negative of the sovereign." 1 Broom's Com. 122.