

Appeal allowed with costs.

Laidlaw, K.C., and *Claver*, for appellant. *D. L. McCarthy*, K.C., for respondents.

Ont.]

[Dec. 23.

ANGLO-AMERICAN FIRE INSURANCE CO. *v.* HENDRY.

*Fire insurance—Application—Misrepresentation — Materiality
—Statutory conditions—Variation.*

In an action on a policy insuring a stock of merchandize, the company pleaded—That the stock on hand at the time of the fire was fraudulently overvalued. That the insured in his application concealed a material fact, namely, that he had previously suffered loss by fire in his business. That the action was barred by a condition in the policy requiring it to be brought within six months from the date of the fire. This was a variation from the statutory condition that it must be brought within twelve months.

Held, affirming the judgment of the Appellate Division (29 O.L.R. 356), that the evidence established the value of the stock at the time of the fire to be as represented by the insured; that the materiality to the risk of the non-disclosure of a former loss by fire was a question of fact for the judge at the trial who properly held it to be immaterial; and that the question whether or not the variation from the statutory conditions was just and reasonable depended on the circumstances of the case, and the courts below rightly held that it was not.

Held, per Davies, Anglin and Brodeur, JJ.—That the insured having supplied, on demand, duplicate copies of the invoices of goods purchased between the last stock-taking and the time of the fire as well as copies of the stock-taking itself, was not obliged to comply with a further demand for invoices of purchases prior to said stock-taking.

Appeal dismissed with costs.

DuVernet, K.C., and *Heighington*, for appellant. *Rowell*, K.C., and *George Kerr*, for respondents.

N.S.]

[Nov. 17.

CURRY *v.* THE KING.

Criminal law—Perjury—Form of oath.

On trial of an indictment for perjury it appeared that the prisoner when called as a witness in the proceedings in which