to sell, and C. to buy, mining property for $125,000, to be paid $5,000 down and the balance in annual instalments of $24,000. The $5,000 was paid and in March, 1905, when an instalment was overdue and the second accruing, a new agreement was executed, to which C. was a party, for sale of the property to a mining company for the same price and on the same terms. This agreement provided that nothing in it should affect the right of the vendor to claim from C. the amount payable under the original contract up to March, 1905, otherwise the latter was to be merged in the new contract. The mining company made default in their payments and, as provided in their contract, the vendors gave notice that the contract was at an end and, later, sold the property for $75,000. They then took action against C. for the amount unpaid on the original agreement and recovered judgment. After the final sale of the mine C. applied for and obtained from a Judge an order declaring that V. & Co. were not entitled to enforce their judgment against him except for costs. On appeal from the affirmance of this order by the Appellate Division:

Held, affirming the decision of the Appellate Division, (32 Ont. L.R. 200,) that, by extinguishing the interest of the mining company in the land and then selling it, V. & Co. had put it out of their power to place C. in the position he was entitled to occupy on making payment and had thus disabled themselves from enforcing their judgment.

Appeal dismissed with costs.

W. M. Douglas, K.C., and *Lefroy*, K.C., for appellants. *Shepley*, K.C., and *H. S. White*, for respondent.

N.S.] EVANGELINE FRUIT CO. *v.* PROVINCIAL FIRE INSURANCE CO. [June 24.

Fire insurance—Statutory conditions—Gasoline "stored or kept" on premises—Supply kept near building—Material circumstance—Non-disclosure.

By a condition in a policy of insurance against fire the policy would be void if more than five gallons of gasoline were "kept or stored" at one time in the building containing the property insured.

Held, that keeping, 15 or 16 feet from said building, under an adjacent platform a barrel of gasoline for supplying the quantity required for daily use was not a breach of such condition.

Held also, reversing the decision of the Supreme Court of Nova Scotia, (48 N.S. Rep. 39,) that as the company, when