

and the jury having negatived negligence, their finding should not be ignored.

W. B. A. Ritchie, Q.C., and King, Q.C., for appellants.
Drysdale, Q.C., for respondents.

N.S.] ATLAS ASSURANCE CO. v. BROWNELL. [June 5.
Fire insurance—Condition in policy—Time limit for submitting particulars of loss—Condition precedent—Waiver—Authority of agent.

A condition in a policy of insurance against fire provided that the assured "is to deliver within fifteen days after the fire, in writing, as particular an account of the loss as the nature of the case permits."

Held, 1. following *Employers' Liability Assurance Corporation v. Taylor* (29 Can. S.C.R. 104) that compliance with this condition was a condition precedent to an action on the policy.

Held, 2. A person not an officer of the insurance company, appointed to investigate the loss and report thereon to the company, was not an agent of the latter having authority to waive compliance with such condition, and if he had such authority he could not, after the fifteen days had expired, extend the time without express authority from his principal.

Held, 3. Compliance with the condition could not in any case be waived unless such waiver was clearly expressed in writing signed by the company's manager in Montreal as required by another condition in the policy.

Drysdale, Q.C., and Currie, Q.C., for appellants. Dickie, Q.C., and Congdon, for respondent.

N.S.] ZWICKER v. FEINDEL. [June 5.
Sale of land—Misrepresentation of Vendor—Estoppel—Counterclaim—Reformation of deed—Amendment of pleadings.

In an action of trespass to land the defendants by counterclaim alleged that the locus was intended to be included in a purchase by them from the plaintiff but that owing to the plaintiff having stated that the boundary of the lot to be purchased was a certain pine tree which was not the boundary the defendants were misled, and they asked that the deed be reformed so as to contain the piece on which the alleged trespass occurred. The Supreme Court of Nova Scotia held that plaintiff had wilfully deceived defendants as to the boundary, but as the counterclaim did not allege fraud the deed could not be reformed, but defendants should be left to their remedy by action.

Held, reversing such judgment (31 N.S.Rep. 232) that, under R.S.N.S. 5 ser. c. 104, the court below could have amended the counterclaim by inserting the necessary allegation, and the Supreme Court of Canada could likewise amend it under 43 Vic. c. 34 (ss. 63 to 65 R.S.C. c. 135).