Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeals of The Citizens Insurance Company of Canada v. Parsons, and The Queen Insurance Company v. Parsons, from the Supreme Court of Canada; delivered 26th November 1881.

Present:

SIR BARNES PEACOCK.
SIR MONTAGUE SMITH.
SIR ROBERT P. COLLIER.
SIR RICHARD COUCH.
SIR ARTHUR HOBHOUSE.

The questions in these appeals arise in two actions brought by the same Plaintiff (the Respondent) upon contracts of insurance against fire of buildings situate in the Province of Ontario, in the Dominion of Canada.

The most important question in both appeals is one of those, already numerous, which have 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

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the first action, were originally incorporated by an Act of the late Province of Canada, 19 & 20 Vict., c. 124, by the name of "The Canada Marine Insurance Company." By another Act of the late Province, 27 & 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), intituled "An Act to secure "uniform Conditions in Policies of Fire Insur-"ance."

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, intituled '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."

10. "The Company is not liable for the losses following, that is to say, among others :—

(*g*) "The Company is not liable for loss or damage occurring while petroleum," and various other enumerated substances, "or more than 25 pounds' weight of gunpowder, are stored or "kept in the building insured, or containing the property insured, "unless permission is given in writing by the Company."

The distribution of legislative powers is provided for by Sections 91 to 95 of "the British North America Act, 1867;" the most important of these being Section 91, headed "Powers "of the Parliament," and Section 92, headed "Exclusive Powers of Provincial Legislatures."

Section 91 is as follows :—

"It shall be lawful for the Queen, by and with the advice and consent of the Senate and House of Commons, to make laws for the peace, order, and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces; and for greater certainty, but not so as to restrict the terms of this section, it is hereby declared that (notwithstanding anything in this Act) the exclusive legislative authority of the Parliament of Canada extends to all matters coming within the classes of subjects next herein-after enumerated, that is to say,—"

Then follows an enumeration of 29 classes of subjects.

The section concludes as follows :—

"And any matter coming within any of the classes of subjects enumerated in this section shall not be deemed to come within the class of matters of a local or private nature comprised in the enumeration of the classes of subjects by this Act assigned exclusively to the Legislatures of the provinces."

Section 92 is as follows :—

"In each province the Legislature may exclusively make laws in relation to matters coming within the classes of subjects next herein-after enumerated, that is to say,—"

Then follows an enumeration of 16 classes of subjects.

The scheme of this legislation, as expressed in the first branch of Section 91, is to give to the Dominion Parliament authority to make laws for the good government of Canada in all matters *not coming* within the classes of subjects assigned exclusively to the provincial legislature. If the 91st section had stopped here, and if the classes of subjects enumerated in Section 92 had been altogether distinct and different from those in Section 91, no conflict of legislative authority could have arisen. The provincial legislatures would have had exclusive legislative power over the 16 classes of subjects assigned to them, and the Dominion Parliament exclusive power over al other matters relating to the good government of Canada. But it must have been foreseen that this sharp and definite distinction had not been and could not be attained, and that some of the classes of subjects assigned to the provincial legislatures unavoidably ran into and were embraced by some of the enumerated classes of subjects in Section 91; hence an endeavour appears to have been made to provide for cases of apparent conflict; and it would seem that with this object it was declared in the second branch of the 91st section, "for greater certainty, "but not so as to restrict the generality of the "foregoing terms of this section" that (notwithstanding anything in the Act) the exclusive legislative authority of the Parliament of Canada should extend to all matters coming within the classes of subjects enumerated in that section. With the same object, apparently, the paragraph at the end of Section 91 was introduced, though it may be observed that this paragraph applies in its grammatical construction only to No. 16 of Section 92.

Notwithstanding this endeavour to give pre-

eminence to the Dominion Parliament in cases of a conflict of powers, it is obvious that in some cases where this apparent conflict exists, the legislature could not have intended that the powers exclusively assigned to the provincial legislature should be absorbed in those given to the Dominion Parliament. Take as one instance the subject "marriage and divorce," contained in the enumeration of subjects in Section 91; it is evident that solemnization of marriage would come within this general description; yet "solemnization of marriage in the Province" is enumerated among the classes of subjects in Section 92, and no one can doubt, notwithstanding the general language of Section 91, that this subject is still within the exclusive authority of the legislatures of the provinces. So "the raising of money by any mode or system of taxation" is enumerated among the classes of subjects in Section 91; but, though the description is sufficiently large and general to include "direct taxation within the "Province, in order to the raising of a revenue "for provincial purposes," assigned to the Provincial Legislatures by Section 92, it obviously could not have been intended that, in this instance also, the general power should override the particular one. With regard to certain classes of subjects, therefore, generally described in Section 91, legislative power may reside as to some matters falling within the general description of these subjects in the legislatures of the Provinces. In these cases it is the duty of the Courts, however difficult it may be, to ascertain in what degree, and to what extent, authority to deal with matters falling within these classes of subjects exists in each legislature, and to define in the particular case before them the limits of their respective powers. It could not have been the intention that a conflict should exist; and, in order to prevent such a result, the

language of the two sections must be read together, and that of one interpreted, and, where necessary, modified, by that of the other. In this way it may, in most cases, be found possible to arrive at a reasonable and practical construction of the language of the sections, so as to reconcile the respective powers they contain, and give effect to all of them. In performing this difficult duty, it will be a wise course for those on whom it is thrown to decide each case which arises as best they can, without entering more largely upon an interpretation of the statute than is necessary for the decision of the particular question in hand.

The first question to be decided is, whether the Act impeached in the present appeals falls within any of the classes of subjects enumerated in Section 92, and assigned exclusively to the Legislatures of the Provinces; for if it does not, it can be of no validity, and no other question would then arise. It is only when an Act of the Provincial Legislature *primâ facie* falls within one of these classes of subjects that the further questions arise, viz., whether, notwithstanding this is so, the subject of the Act does not also fall within one of the enumerated classes of subjects in Section 91, and whether the power of the provincial Legislature is or is not thereby overborne.

The main contention on the part of the Respondent was that the Ontario Act in question had relation to matters coming within the class of subjects described in No. 13 of Section 92, viz., "Property and Civil Rights in the Province." The Act deals with policies of insurance entered into or in force in the Province of Ontario for insuring property situate therein against fire, and prescribes certain conditions which are to form part of such contracts. These contracts, and the rights arising from them, it

was argued, came legitimately within the class of subject, "Property and Civil Rights." The Appellants, on the other hand, contended that civil rights meant only such rights as flowed from the law, and gave as an instance the *status* of persons. Their Lordships cannot think that the latter construction is the correct one. They find no sufficient reason in the language itself, nor in the other parts of the Act, for giving so narrow an interpretation to the words "civil rights." The words are sufficiently large to embrace, in their fair and ordinary meaning, rights arising from contract, and such rights are not included in any of the enumerated classes of subjects in Section 91.

It becomes obvious, as soon as an attempt is made to construe the general terms in which the classes of subjects in Sections 91 and 92 are described, that both sections and the other parts of the Act must be looked at to ascertain whether language of a general nature must not by necessary implication or reasonable intendment be modified and limited. In looking at Section 91, it will be found not only that there is no class including, generally, contracts and the rights arising from them, but that one class of contracts is mentioned and enumerated, viz., "18, bills of exchange and promissory notes," which it would have been unnecessary to specify if authority over all contracts and the rights arising from them had belonged to the Dominion Parliament.

The provision found in Section 94 of the British North America Act, which is one of the sections relating to the distribution of legislative powers, was referred to by the learned Counsel on both sides as throwing light upon the sense in which the words "property and civil rights" are used. By that section the Parliament of Canada is empowered to make provision for the uniformity of any laws relative to "property and civil rights"

in Ontario, Nova Scotia, and New Brunswick, and to the procedure of the Courts in these three provinces, if the provincial legislatures choose to adopt the provision so made. The Province of Quebec is omitted from this section for the obvious reason that the law which governs property and civil rights in Quebec is in the main the French law, as it existed at the time of the cession of Canada, and not the English law which prevails in the other provinces. The words "property and civil rights" are, obviously, used in the same sense in this section as in No. 13 of Section 92, and there seems no reason for presuming that contracts and the rights arising from them were not intended to be included in this provision for uniformity. If, however, the narrow construction of the words "civil rights," contended for by the Appellants, were to prevail, the Dominion Parliament could, under its general power, legislate in regard to contracts in all and each of the provinces, and, as a consequence of this, the Province of Quebec, though now governed by its own Civil Code, founded on the French law, as regards contracts and their incidents, would be subject to have its law on that subject altered by the Dominion Legislature, and brought into uniformity with the English law prevailing in the other three provinces, notwithstanding that Quebec has been carefully left out of the uniformity section of the Act.

It is to be observed that the same words, "civil rights," are employed in the Act of 14 Geo. III., c. 83, which made provision for the government of the Province of Quebec. Section 8 of that Act enacted, that His Majesty's Canadian subjects within the Province of Quebec should enjoy their property, usages, and other civil rights, as they had before done, and that in all matters of controversy relative to property and civil rights, resort should be had to the laws

of Canada, and be determined agreeably to the said laws. In this Statute the words "property" and "civil rights" are plainly used in their largest sense; and there is no reason for holding that in the Statute under discussion they are used in a different and narrower one.

The next question for consideration is whether, assuming the Ontario Act to relate to the subject of property and civil rights, its enactments and provisions come within any of the classes of subjects enumerated in Section 91. The only one which the Appellants suggested as expressly including the subject of the Ontario Act is No. 2, "the regulation of trade and commerce."

A question was raised which led to much discussion in the Courts below and at this bar, viz., whether the business of insuring buildings against fire was a trade. This business, when carried on for the sake of profit, may, no doubt, in some sense of the word, be called a trade. But contracts of indemnity made by insurers can scarcely be considered trading contracts, nor were insurers who made them held to be "traders" under the English bankruptcy laws; they have been made subject to those laws by special description. Whether the business of fire insurance properly falls within the description of "a trade" must, in their Lordships' view, depend upon the sense in which that word is used in the particular Statute to be construed; but in the present case their Lordships do not find it necessary to rest their decision on the narrow ground that the business of insurance is not a trade.

The words "regulation of trade and commerce," in their unlimited sense, are sufficiently wide, if uncontrolled by the context and other parts of the Act, to include every regulation of trade ranging from political arrangements in regard to trade with foreign Governments, requiring the sanction of Parliament, down to

minute rules for regulating particular trades. But a consideration of the Act shows that the words were not used in this unlimited sense. In the first place, the collocation of No. 2 with classes of subjects of national and general concern affords an indication that regulations relating to general trade and commerce were in the mind of the Legislature, when conferring this power on the Dominion Parliament. If the words had been intended to have the full scope of which in their literal meaning they are susceptible, the specific mention of several of the other classes of subjects enumerated in Section 91 would have been unnecessary; as, 15, banking; 17, weights and measures; 18, bills of exchange and promissory notes; 19, interest; and even 21, bankruptcy and insolvency.

"Regulation of trade and commerce" may have been used in some such sense as the words "regulations of trade" in the Act of Union between England and Scotland (6 Anne, c. 11), and as these words have been used in other Acts of State. Article V. of the Act of Union enacted that all the subjects of the United Kingdom should have "full freedom and intercourse of trade and navigation" to and from all places in the United Kingdom and the Colonies; and Article VI. enacted that all parts of the United Kingdom from and after the Union should be under the *same* "prohibitions, restrictions, and *regulations of trade*." Parliament has at various times since the Union passed laws affecting and regulating specific trades in one part of the United Kingdom only, without its being supposed that it thereby infringed the Articles of Union. Thus the Acts for regulating the sale of intoxicating liquors notoriously vary in the two kingdoms. So with regard to Acts relating to bankruptcy, and various other matters.

Construing therefore the words "regulation

of trade and commerce" by the various aids to their interpretation above suggested, they would include political arrangements in regard to trade requiring the sanction of Parliament, regulation of trade in matters of inter-provincial concern, and it may be that they would include general regulation of trade affecting the whole Dominion. Their Lordships abstain on the present occasion from any attempt to define the limits of the authority of the Dominion Parliament in this direction. It is enough for the decision of the present case to say that, in their view, its authority to legislate for the regulation of trade and commerce does not comprehend the power to regulate by legislation the contracts of a particular business or trade, such as the business of fire insurance, in a single province, and therefore that its legislative authority does not in the present case conflict or compete with the power over property and civil rights assigned to the Legislature of Ontario by No. 13 of Section 92.

Having taken this view of the present case, it becomes unnecessary to consider the question how far the general power to make regulations of trade and commerce, when competently exercised by the Dominion Parliament, might legally modify or affect property and civil rights in the provinces, or the legislative power of the provincial legislatures in relation to those subjects; questions of this kind, it may be observed, arose and were treated of by this Board in the cases of L'Union St. Jacques de Montreal *v.* Belisle, L. R. 6, P. C. 31, and Cushing *v.* Dupuy, L. R. 5, Appeal Cases 409.

It was contended, in the case of the Citizens Insurance Company of Canada, that the Company having been originally incorporated by the Parliament of the late Province of Canada, and having had its incorporation and corporate rights confirmed by the Dominion Parliament, could not

be affected by an Act of the Ontario Legislature
But the latter Act does not assume to interfere with the constitution or status of corporations. It deals with all insurers alike, including corporations and companies, whatever may be their origin, whether incorporated by British authority, as in the case of the Queen Insurance Company, or by foreign or colonial authority, and without touching their status, requires that if they choose to make contracts of insurance in Ontario, relating to property in that province, such contracts shall be subject to certain conditions.

It was further urged that the Ontario Act was repugnant to the Act of the late Province of Canada, which empowered the Company to make contracts for assurance against fire "upon such "conditions as might be bargained for and agreed "upon between the Company and the assured." But this is, in substance, no more than an expanded description of the business the Company was empowered to transact, viz., to make contracts of assurance against fire, and can scarcely be regarded as inconsistent with the specific legislation regarding such contracts contained in the Act in question.

It was further argued on the part of the Appellants that the Ontario Act was inconsistent with the Act of the Dominion Parliament, 38 Vict., c. 20, which requires fire insurance companies to obtain licenses from the Minister of Finance as a condition to their carrying on the business of insurance in the Dominion, and that it was beyond the competency of the provincial legislature to subject companies who had obtained such licenses, as the Appellant Companies had done, to the conditions imposed by the Ontario Act. But the legislation does not really conflict or present any inconsistency. The statute of the Dominion Parliament enacts a general law applicable to the whole Dominion, requiring all

insurance companies, whether incorporated by foreign, Dominion, or Provincial authority to obtain a license from the Minister of Finance, to be granted only upon compliance with the conditions prescribed by the Act. Assuming this Act to be within the competency of the Dominion Parliament as a general law applicable to foreign and domestic corporations, it in no way interferes with the authority of the Legislature of the Province of Ontario to legislate in relation to the contracts which corporations may enter into in that province. The Dominion Act contains the following provision, which clearly recognizes the right of the Provincial Legislature to incorporate insurance companies for carrying on business within the province itself:—

"But nothing herein contained shall prevent any insurance company incorporated by or under any Act of the Legislature of the late Province of Canada or of any province of the Dominion of Canada from carrying on any business of insurance within the limits of the late Province of Canada, or of such province only according to the powers granted to such insurance company within such limits as aforesaid, without such license as herein-after mentioned."

This recognition is directly opposed to the construction sought to be placed by the Appellants' Counsel on the words "provincial objects" in No. 11 of Section 92,—"the incorporation of "companies with provincial objects," by which he sought to limit these words to "public" provincial objects, so as to exclude insurance and commercial companies.

Chief Justice Ritchie refers to an equally explicit recognition of the power of the provinces to incorporate insurance companies contained in an earlier Act of the Dominion Parliament (31 Vict., c. 48) which was passed shortly after the establishment of the Dominion.

The learned Chief Justice also refers to a remarkable section contained in the Act of the Dominion Parliament consolidating certain Acts

respecting insurance, 40 Vict., c. 42. Sect. 28 of that Act is as follows :—

"This Act shall not apply to any company within the exclusive legislative control of any one of the provinces of Canada, unless such company so desires; and it shall be lawful for any such company to avail itself of the provisions of this Act, and if it do so avail itself, such company shall then have the power of transacting its business of insurance throughout Canada."

This provision contains a distinct declaration by the Dominion Parliament that each of the provinces had exclusive legislative control over the insurance companies incorporated by it, and therefore is an acknowledgment that such control was not deemed to be an infringement of the power of the Dominion Parliament as to "the "regulation of trade and commerce."

The declarations of the Dominion Parliament are not, of course, conclusive upon the construction of the British North America Act; but when the proper construction of the language used in that Act to define the distribution of legislative powers is doubtful, the interpretation put upon it by the Dominion Parliament in its actual legislation may properly be considered.

The opinions of the majority of the Judges in Canada, as summed up by Chief Justice Ritchie, are in favour of the validity of the Ontario Act. In the present action, the Court of Queen's Bench and the Court of Appeal of Ontario unanimously supported its legality; and the Supreme Court of Canada, by a majority of three Judges to two, have affirmed the judgment of the Provincial Courts. The opinions of the learned Judges of the Supreme Court are stated with great fulness and ability, and clearly indicate the opposite views which may be taken of the Act, and the difficulties which surround any construction that may be given to it.

Mr. Justice Taschereau, in the course of his vigorous judgment, sought to place the Plaintiff in the action against the Citizens Company in a

dilemma. He thinks that the assertion of the right of the province to legislate with regard to the contracts of insurance companies amounts to a denial of the right of the Dominion Parliament to do so, and that this is, in effect, to deny the right of that Parliament to incorporate the Citizens Company, so that the Plaintiff was suing a non-existent Defendant. Their Lordships cannot think that this dilemma is established. The learned Judge assumes that the power of the Dominion Parliament to incorporate companies to carry on business in the Dominion is derived from one of the enumerated classes of subjects, viz., "the regulation of trade and commerce," and then argues that if the authority to incorporate companies is given by this clause, the exclusive power of regulating them must also be given by it, so that the denial of one power involves the denial of the other. But, in the first place, it is not necessary to rest the authority of the Dominion Parliament to incorporate companies on this specific and enumerated power. The authority would belong to it by its general power over all matters not coming within the classes of subjects assigned exclusively to the legislatures of the provinces, and the only subject on this head assigned to the provincial legislature being "the incorporation of companies with provincial "objects," it follows that the incorporation of companies for objects other than provincial falls within the general powers of the Parliament of Canada. But it by no means follows (unless indeed the view of the learned Judge is right as to the scope of the words "the regulation of trade and commerce") that because the Dominion Parliament had alone the right to create a corporation to carry on business throughout the Dominion that it alone has the right to regulate its contracts in each of the provinces. Suppose the Dominion Parliament were to incorporate a company, with

power, among other things, to purchase and hold lands throughout Canada in mortmain, it could scarcely be contended if such a company were to carry on business in a province where a law against holding land in mortmain prevailed (each province having exclusive legislative power over "property and civil rights in the "province") that it could hold land in that province in contravention of the provincial legislation; and, if a company were incorporated for the sole purpose of purchasing and holding land in the Dominion, it might happen that it could do no business in any part of it, by reason of all the provinces having passed Mortmain Acts, though the corporation would still exist and preserve its status as a corporate body.

On the best consideration they have been able to give to the arguments addressed to them and to the judgments of the learned Judges in Canada, their Lordships have come to the conclusion that the Act in question is valid.

Their Lordships have now to consider separately the two appeals.

The Citizens Insurance Company of Canada v. Parsons.

This Company, whose incorporation has been already described, has its head office in Montreal, and carries on business in Ontario and the other provinces of Canada.

The Respondent insured with the Company, through its local agent in the town of Orangeville, Ontario, a building situate in that town, occupied as a hardware store, for one year in $2,500, and, on the 4th May 1877, a policy of the Company containing this insurance was issued by the agent at Orangeville to him. This policy was made subject to the usual conditions

of the Company, which were endorsed on it. The following is alone material:—

"The assured must give notice to this Company of any other insurance effected on the same property, and have the same endorsed on this policy, or otherwise acknowledged by the Company in writing, and failure to give such notice shall void this policy.

* * * *

"And this policy is made and accepted under the conditions above mentioned, which are to be used and resorted to in order to explain the rights and obligations of the parties hereto in all cases not herein otherwise specially provided for."

The conditions contained in the Ontario Act were not printed in the policy, nor was any reference made to them in it.

On the 3rd August 1877 the insured building was destroyed by fire. The Respondent thereupon brought the present action.

At the time the insurance was made and the policy issued by the Citizens Company, another insurance had been effected on the same building with the Western Assurance Company, of which no notice was given by the Respondent to the Citizens Company, nor was it endorsed on or indicated in the policy, nor did the acknowledgment or assent of the Citizens Company thereto in writing in any way appear. These omissions constituted a breach not only of the conditions endorsed on the policy, but also of the condition in relation to prior insurances contained in the Ontario Act already set out, and consequently, if either of these conditions forms a part of the contract between the parties, the Respondent's action against the Company must fail. It is admitted that this is so, but it is contended, on the part of the Respondent, that neither the agreed nor the statutory conditions are binding upon him, and that the contract of insurance is subject to no conditions whatever. The Courts of Canada have sustained this contention.

The question turns on the construction of the Ontario Act. It is not disputed by the Company that the conditions endorsed on the policy, which form the actual contract between the parties, are, by force of the statute, displaced, inasmuch as they are not shewn to be variations from the statutory conditions in compliance with the provisions of the Act. The question to be decided is, whether the effect of this non-compliance is to make the contract subject to the statutory conditions, or to reduce it to a bare contract of insurance without any conditions.

Section 1 enacts that "the conditions set forth "in the schedule to the Act shall, as against the "insurers, be deemed to be part of every policy." Notwithstanding this express enactment, it is contended that they are not to be so deemed, unless they are printed on the policy. The section, no doubt, goes on to enact, but not in the form of a proviso or condition, that the conditions "shall be printed on every such policy "with the heading 'Statutory Conditions'"; but it does not enact that, if there be an omission so to print them, they shall not be deemed to be a part of the contract. Printing the statutory conditions is made a necessary part of the mode prescribed by the Act of showing variations from them, and is unquestionably essential to the validity of any such variations, for the section further enacts that if insurers desire to vary the statutory condition, 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."

Section 2 provides what may be called a penalty for the non-observance of these last-mentioned provisions. It enacts that, unless distinctly

indicated in the manner prescribed, "no such "variation, addition, or omission shall be legal "and binding on the insured," and, "on the "contrary,"—here follows the consequence and penalty,—"the policy shall, as against the in-"surers, be subject to the statutory conditions "only." The effect of these enactments in the present case is that the conditions written on the policy are not binding on the insurer, either by virtue of the actual contract, or as variations from the statutory conditions, because they are not indicated to be so in the manner prescribed by the statute. Printing the statutory conditions is a necessary part of the manner prescribed for indicating these variations, and the penalty provided by the Act for not observing that manner is that *the policy becomes subject to the statutory conditions.* No provision is made for the omission to print the statutory conditions as a separate default; and their Lordships think, looking at the object and scope of the two sections, that, in the absence of an express enactment to that effect, it cannot be implied that the intention of the legislature was that, in a case where the company had printed its own conditions, but had failed to print the statutory ones, the policy is to be deemed to be without any conditions. Indeed, such an implication would seem to be opposed to the principle of the Act, which is that, except in the case of variations properly indicated, the statutory conditions shall be deemed to be part of every policy.

It was further contended, and the contention seems to have been supported by some of the Judges, that if the statutory conditions, in cases like the present, are to be deemed to be a part of the policy, they form a part of the contract only as against the insurers, and are not binding on the assured. Their Lordships cannot agree with this construction of the Act.

The first section of the Act, which declares that the statutory conditions shall be deemed to be part of every policy of fire insurance, also contains the words "as against the insurers," and it is evident that these words must have the same meaning in both sections. If the construction put on them by the Respondent be correct, it would follow that in a case where an insurance Company implicitly followed the direction of the statute, and printed the statutory conditions on its policies without more, the conditions would still be a part of the contract only as against the Company, and the assured would not be bound by them. Such a construction leads to manifest absurdity, and to consequences which the legislature could not have intended. The preamble of the Act shows that the conditions were passed by the legislature as being "just and reasonable." On looking at the twenty-one conditions contained in the schedule, it will be found, as might naturally be expected, that they are all, with a trifling exception, protective of the insurers, though probably less stringent than those usually imposed by the Companies themselves. They impose obligations, not on the insurers, but the assured. To construe the statute, therefore, as enacting that these conditions are binding only on the insurers for whose protection they are introduced into the contract, and not on the assured by whom they are to be performed, would be to affirm that the Legislature had used words signifying, in effect, that the conditions which it has declared shall be a part of the contract shall not be binding at all. But effect may be given to the words in question without resorting to such a construction of them.

Strong reasons would be required to show that the words "as against the insurers" are used in

the 2nd section in a different sense from that in which they are used in the 1st, but none can be suggested. The 2nd section provides as an alternative, that unless the variations are shown in the prescribed manner, the policy shall, as against the insurers, be subject to the statutory conditions only, that is to say, the variations as against the Company shall not, and the statutory conditions shall, avail. If the Respondent's construction were to prevail, though the consequences under this section might not be so manifestly absurd as in the case already adverted to of a Company having simply printed the statutory conditions without more, it would still lead to much injustice; for if a Company in making variations, though in all other respects complying with the statute, should not use what might be thought conspicuous type or ink of the right colour, not only would the variations it had attempted to make be of no effect, but it could not invoke the statutory conditions, and the insured would be free from any conditions whatever.

It may possibly have been intended to give to the assured an option, if he thought the Company's conditions more favourable to him than the statutory ones, to stand upon the actual conditions; but it could not have been intended, nor does the language of the Act need such a construction, that he should be set free from both sets of conditions. The meaning of the legislation, though no doubt unhappily expressed, appears to be, that whatever may be the conditions sought to be imposed by insurance companies, no such conditions should avail against the statutory conditions, and that the latter should alone be deemed to be part of the policy, and resorted to by the insurers, notwithstanding any conditions of their own, unless the latter

are indicated as variations in the prescribed manner.

Their Lordships being of opinion that the policy in this case became subject to the statutory conditions, and there having been a breach of those conditions, the Plaintiff's action against the Citizens Insurance Company fails. They will therefore humbly advise Her Majesty to order that the judgments appealed from be reversed, and that the rule obtained by the Company to set aside the verdict and enter a nonsuit be made absolute.

The Queen Insurance Company v. *Parsons.*

This English Corporation carries on business at Orangeville through an agent. On the 3rd August 1877, the Respondent applied to this agent to effect with the Company an insurance for $2,000 on a general stock of hardware and other goods contained in the building in Orangeville, which was the subject of insurance in the other action, and a premium of $40 was agreed on.

An interim receipt was thereupon given to the Respondent by the agent, which is in the following terms:—

"Interim Receipt.

"Fire Department. Interim Protection Note.

"Queen Fire and Life Insurance Company.

"Chief Office, Queen Insurance Buildings, Liverpool.

"Canada Head Office, 191, St. James Street, Montreal.

"No. 33. Orangeville, Agency, 3rd August 1877.

"Mr. William Parsons, having this day proposed to effect an insurance against fire, subject to all the usual terms and conditions of this Company, for $2,000, on the following property in the town of Orangeville, for 12 months, namely, on general stock of hardware, paints, oils, varnishes, window glass, stoves, tinware, castings, hollow ware, plated and fancy goods, lamps, lamp glasses, and general house furnishing goods.

"And having also paid the sum of $40 as the premium on the same, it is hereby held assured under these conditions until the policy is delivered or notice given that the proposal is

declined by the Company, when this interim note will be thereby cancelled and of no effect.

" (Signed) A. M. KIRKLAND,
" Agent to the Company.

" N.B.—The deposit will be returned, less the proportion for the period, on application to the agent signing this note, in the event of the proposal being declined by the Company. If accepted, a policy will be prepared and delivered within 30 days. If the holder does not receive a policy during the specified period, he should apply to the head office in Montreal."

A fire happened on the same day, before a policy had been delivered to the Respondent.

The action was brought upon the interim receipt. The declaration which was framed upon it, as originally drawn, set out the conditions of the Company as those to which the insurance was declared by the interim note to be subject. It is agreed that the declaration was afterwards amended by striking out these conditions, though the amendment does not appear on the record.

Having regard to the arguments addressed to their Lordships, it is only material to refer to one of the Company's usual conditions, the 4th, which provides, among other things, that the Company will not be liable for any loss or damage when more than 10 lbs. weight of gunpowder is deposited or kept on the premises, unless the same is especially allowed in the body of the policy, and suitable extra premium paid. This quantity of gunpowder is smaller than that mentioned in the statutory condition above set out, 10 (*g*), which provides that the Company is not liable for loss or damage occurring while, among other things, more than 25 lbs. weight of gunpowder are stored or kept in the building containing the property insured.

It is admitted that at the time of the fire gunpowder exceeding 10 lbs. in weight was kept in the building destroyed by the fire, and the jury have found that the quantity so kept was less than 25 lbs.

It is contended on the part of the Respondent that the contract must, by force of the Ontario Act in question, be treated as being without any conditions; or, if subject to any, to the statutory conditions only.

The judgment of their Lordships in the other action has disposed of the first of these contentions. The second raises the question, whether the Company's own conditions or the statutory conditions are to be regarded as forming part of the contract, and its answer depends upon a consideration of the further question, whether the interim note is a policy of insurance within the meaning of that term in the Ontario Act.

This note is not a policy of insurance in the common understanding of that word, and was certainly not understood to be so by the parties to it. It is expressly a contract for a policy, making interim provision until a policy is prepared and delivered. It contains a proposal for insurance, which, if accepted by the Company, would result in a policy to be based on the terms of the proposal, and issued by the Company to the Respondent; the Company having an option to decline the proposal, in which case no policy would be delivered. The proposal thus offered for acceptance is "to effect an insurance "subject to all the usual terms and conditions of "this Company," and pending the acceptance or refusal of the Company, and until the policy is delivered or notice given that the insurance is declined, the property is "held assured under "these conditions." No doubt this last stipulation forms a contract of insurance during this interval; but the whole agreement is preliminary only, and, in substance, the note is a proposal for a policy to be carried into effect, if accepted, by the delivery of a policy; as subsidiary thereto, and for the convenience of the person proposing to insure, immediate protection is granted to

him. The practice of issuing interim notes must have been well known, and apt words might have been found by the Legislature to describe them if they had been intended to be included in the Act. It may have been thought that it would be a clog upon the business of insurance, and would place difficulties in the way of obtaining these interim protection notes, if companies were obliged to prepare them with all the fulness and formalities which the Act requires in the case of policies.

Their Lordships, therefore, are disposed to come to the conclusion that the interim note in question is not a policy of insurance within the meaning of the Act. If in any case it should appear that an interim note or any like instrument was intended by the parties to be the complete and final contract of insurance, and that this shape was given to the instrument for the purpose of evading the Act, the present decision would not be opposed to the instrument being treated as a policy of insurance; the ground of their present decision being that the interim note in this case is what it professes to be, preliminary only to the issuing of another instrument, viz., a policy, which the parties *boná fide* intended should be issued.

These interim protection notes, given by fire insurance companies, bear an analogy to the "slips," commonly used in cases of marine insurance, preliminary to the issuing of policies. The slip contains the heads of the contract, and is in itself a contract of insurance, though by the statute law of England, passed for revenue purposes, it could not, until the recent Act of 23 Vict., c. 23, be looked at by a Court of law for any purpose. Since that Act, it may, for some purposes, be given in evidence. In a case in the Court of Queen's Bench in England, in which the nature and effect of these slips came under discussion, Mr. Justice Blackburn says,

" As the slip is clearly a contract for marine
" insurance, and as clearly is not a policy, it is,
" by virtue of these enactments, not valid, that
" is, not enforceable at law or in equity ; but it
" may be given in evidence wherever it is,
" though not valid, material."

What then are the conditions of the contract which is the subject of this action ? The interim note contains a proposal by the Respondent to effect an insurance on the Company's "usual terms and conditions," and the interim insurance is made subject to these conditions. If the contract of the parties had come to be executed, the Company would perform it by issuing a policy, subject to their own conditions, if they could legally do so. Indeed, if the assured so required, it would be obligatory on them to perform it in this manner. In the view their Lordships take of the Act in question, the Company might, conformably with its enactments, issue a policy with their own conditions, provided that care was taken to print the statutory conditions, and shew the variations from and the additions to them which their own conditions present, in the manner prescribed. They think that it ought to be presumed that the Company would thus perform their contract when they came to issue a policy; and this being so, that their own conditions ought to be read into the interim contract to the extent to which they might lawfully be made a part of the policy when issued, by following the directions of the statute, subject always to the statutable condition that they should be held to be just and reasonable by the Court or Judge.

For these reasons, their Lordships think that the judgment of the Court of Queen's Bench discharging the Appellants' rule for setting aside the verdict for the Plaintiffs, and the judgments affirming it, ought to be reversed, but their Lordships do not see their way to decide the question

which now arises, and was not determined by the Judge who tried the action, or by any of the Courts in Canada, whether the Company's condition with respect to the quantity of gunpowder kept in the building containing the property insured is just and reasonable. They think the rule Nisi should be kept open, and the action remitted to the Court of Queen's Bench in order to the trial of this question, with a direction that the rule be disposed of according to the decision that may be come to upon it, and they will humbly advise Her Majesty to this effect.

The Appellants, though successful on other points, having failed on the important question of the validity of the Ontario Statute, on which special leave to appeal from the judgment of the Supreme Court was granted by this Board, their Lordships think it right to make no order as to the costs of these appeals.