Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of The Home Insurance Company of New York v. *The Victoria-Montreal Fire Insurance Company, from the Supreme Court of Canada; delivered the 2nd November* 1906.

Present at the Hearing:

LORD MACNAGHTEN.
LORD DUNEDIN.
LORD ATKINSON.
SIR ARTHUR WILSON.
SIR ALFRED WILLS.

[*Delivered by Lord Macnaghten.*]

This Appeal raises a question under a so-called re-insurance policy. The only point now open for consideration is whether, according to the true construction of the contract between the parties, the claim is or is not barred by time.

On the 26th of April 1900 a fire occurred in Ottawa, generally known as the Hull Fire. It destroyed a good deal of property belonging to the Canadian Pacific Railway Company. The Railway Company was insured by the Western Assurance Company of Canada. Twenty per cent. of the liability of the Western Assurance Company under their policy was insured by the Home Insurance Company of New York, under a policy dated the 10th of April 1899. On the 29th of December 1899 the Home Insurance Company insured a portion of their liability to the Western Assurance

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Company with the Victoria-Montreal Fire Insurance Company.

In the case of the Victoria-Montreal Fire Insurance Company as well as in the case of the Home Insurance Company the insurance was effected by attaching to a printed form of fire insurance policy a type-written slip or rider containing the special terms of the so-called re-insurance. The printed form (which was the standard Fire Insurance Policy of the States of New York, New Jersey, Pennsylvania, and Connecticut) was not amended except by the insertion of the syllable "re" before the word "insure," thus substituting the expression "does re-insure" for "does insure." So amended, and being No. 16,186, it was expressed to be a re-insurance "against all direct loss or damage "by fire, except as hereinafter provided to an "amount not exceeding ten thousand and "$\frac{00}{100}$ dollars to the following described property "while located and contained as described "herein and not elsewhere." Immediately after these words, there follows the slip or rider. It is headed "Attached to and forming part "of Policy No. 16,186. W. Morgan. RE-"INSURANCE. HOME INSURANCE "COMPANY OF NEW YORK."

It proceeds as follows:—

$10,000. 00.

"On the liability of the Home Insurance "Company under policies issued through "their Railway Department covering "railway property situated in the United "States, Canada, and Mexico."

Then comes a definition of railway property followed by provisions to the effect that no claim could be made for loss under the policy unless the Railway Company suffered by one fire a loss exceeding $50,000, insured either with the Home Company direct or else with some other Company, and a portion re-insured with

the Home Company, nor unless the Home Company sustained a loss by or in consequence of any one fire in excess of $50,000, nor for a greater sum than $5,000 by or in consequence of any one fire. Then, with some other provisions not material to the question now under consideration, there is a provision usual in contracts of re-insurance, leaving the adjustment of claims in the hands of the Company by whom the original insurance was effected, and making the loss payable ten days after presentation of proof of payment. The policy was sealed at the end of the printed form, and the signatures of the President, General Manager, and W. Morgan, the Secretary, were attached.

Although all the terms of an ordinary fire insurance policy were thus apparently incorporated or included in the re-insurance policy, not one of those terms (laying aside for the moment the condition in question in this suit) seems to be applicable to the case of a policy by which the assured is insured, not against direct loss occasioned by fire, but against the liability, or a portion of the liability, undertaken by the original insurer or the insurer covering the original insurer's direct liability.

Among the separate stipulations or clauses, over twenty in number, in the printed form there is the following :—

"No suit or action on this policy for the recovery of any "claim shall be sustainable in any Court of Law or Equity "until after full compliance by the insured with all the "foregoing requirements nor unless commenced within twelve "months next after the fire."

The action in the present case was not commenced within twelve months next after the fire.

It is not suggested on behalf of the Respondents, who are now in liquidation, that it was obligatory upon the Home Insurance Company,

or even possible for them, to comply with the requirements in the printed form described as "the foregoing requirements," but it is contended that the clause prescribing suits or actions after the expiration of one year is applicable, or at least not inapplicable, to the contract of re-insurance, and that the action must consequently fail.

The Trial Judge and the Court of Review held the action maintainable. In the Supreme Court the learned Judges were divided in opinion, and the Judgment below was reversed, Girouard and Nesbitt, JJ., dissenting.

It is no doubt possible to read the sentence prescribing suits and actions, divorced from its immediate context, into the contract of re-insurance. But it will be observed that the type-written slip is complete in itself. It contains all that is required for a re-insurance contract. If the sentence in question be read into it, the printed form upon which the slip is engrafted will after all add nothing to the agreement but one unreasonable condition. The rest of the printed form is foreign to the purposes of a re-insurance contract, inconsistent with the special terms contained in the slip, and in some places in direct conflict with its provisions.

It will also be observed that the slip does specify a series of cases in which no claim can be made under the policy. It may fairly be presumed that if it had been in the minds of the parties to exclude claims for loss in any other case, that case would have been specified in the same connection. To specify there all cases but one, and to leave that one to be discovered in another part of the instrument among a multitude of irrelevant provisions is (to say the least) somewhat misleading.

A clause prescribing legal proceedings after a limited period is a reasonable provision in a

policy of insurance against direct loss to specific property. In such a case the insured is master of the situation. He can bring his action immediately. In a case of re-insurance against liability the insured is helpless. He cannot move until the direct loss is ascertained between parties over whom he has no control, and in proceedings in which he cannot intervene. If the Respondents are right an honest claim might be defeated in such a case as this without any default or delay on the part of the insured owing to unavoidable difficulties or complications, or possibly in consequence of some dilatory proceeding prompted by the very person in whose favour time is running.

It is difficult to suppose that the contract of re-insurance was engrafted on an ordinary printed form of policy for any purpose beyond the purpose of indicating the origin of the direct liability on which the indirect liability, the subject of the re-insurance, would depend, and setting forth the conditions attachedt o it.

In the result their Lordships have come to the conclusion that according to the true construction of this instrument, so awkwardly patched and so carelessly put together, the condition in question is not to be regarded as applying to the contract of re-insurance. To hold otherwise would, in their opinion, be to adhere to the letter without paying due attention to the spirit and intention of the contract.

The question does not seem to have been raised before this in Canada. In the United States, though the point has not been brought before the Supreme Court, the universally accepted opinion appears to be that a clause such as that in question in this case is not applicable to a re-insurance policy, and there are several decisions to that effect.

Their Lordships will humbly advise His Majesty that the Appeal should be allowed, the judgment of the Supreme Court discharged with costs, and the Judgment of the Court of Review restored.

The Respondents will pay the costs of the Appeal.