

ANGLO-AMERICAN FIRE INS. CO. v. MORTON. 1912

ON APPEAL FROM THE COURT OF APPEAL FOR ONTARIO. ^{*}March 27.^{*}June 14.*Fire insurance—Change of risk—Evidence—Use of gasoline.*

APPEAL from a decision of the Court of Appeal for Ontario(1), reversing the judgment at the trial in favour of the defendants (appellants).

This was an action on a policy insuring premises used at the time as billiard and pool rooms and a bowling alley, and the main defence was that a portion of the premises having been leased for a restaurant without notice to the company this was a change material to the risk which avoided the policy. The trial judge gave judgment for the company on this ground.

The Court of Appeal reversed this judgment on the ground that the defendants had not proved that the change in the use of the premises was material and that, in the absence of such evidence, it could not be said that a restaurant, even where gasoline is used, is more hazardous than a billiard room.

On an appeal by the defendants to the Supreme Court of Canada, the court, after hearing counsel on behalf of both parties, reserved judgment and, on a subsequent day, there being an equal division of opinion among the judges, the judgment appealed from stood affirmed.

*Appeal dismissed without costs.**D. W. Saunders K.C.* for the appellants.*Hamilton Cassels K.C.* for the respondents.

*PRESENT:—Sir Charles Fitzpatrick C.J. and Davies, Idington, Duff, Anglin and Brodeur JJ.