Constitutional.—The interest of insurers on this continent in this subject in recent years has been mainly directed to jurisprudence in the United States and particularly the judgment of the Supreme Court of the United States in the case *United States of America* v. *South-Eastern Underwriters Association*, 322 U.S. 533, by which the long-standing judgment of *Paul* v. *Virginia*, 8 Wall. 168, of 1869 was reversed; the latter judgment declared that issuing a policy of insurance is not a transaction of commerce and on the basis of that pronouncement, Courts there, and probably here also, have regarded the whole business of insurance as falling outside the field of trade and commerce. In one of the earliest constitutional cases, *Parsons* v. *The Queen*, the Privy Council was apparently influenced in its decision by the United States judgment and that case has dominated the thinking of that Board, as well as of Canadian Courts, in constitutional cases, particularly those relating to insurance, ever since.

The substance of the reversing decision may be judged from the following quotations from the reasons for judgment of the various members of the Court:—

> "The reasons given in support of the generalization that 'the business of insurance is not commerce' and can never be conducted so as to constitute 'Commerce among the States' are inconsistent with many decisions of this Court which have upheld federal statutes regulating interstate commerce under the Commerce Clause.
>
> "These activities having already been held to constitute interstate commerce, ... it would indeed be difficult now to hold that no activities of any insurance company can ever constitute interstate commerce so as to make it subject to such (federal) regulation;
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> • •
>
> "For constitutional purposes a fiction has been established, and long acted upon by the Court, the states, and the Congress, that insurance is not commerce.
>
> "Any enactment by Congress either of partial or of comprehensive regulations of the insurance business would come to us with the most forceful presumption of constitutional validity. The fiction that insurance is not commerce could not be sustained against such a presumption, "

Section 1.—Fire Insurance

In Canada, fire insurance began with the establishment of agencies by British fire insurance companies. These were usually situated at the seaports and operated by local merchants. The oldest existing agency of such a company commenced business at Montreal in 1804. The first Canadian company dates from 1809 and the first United States company to operate in Canada commenced business in 1821. A short account of the inception of fire insurance in Canada is given at pp. 846-847 of the 1941 Year Book.

A feature of the fire insurance business, besides the large percentage of British and foreign companies, is the continued increase in the number of companies operating on the mutual or reciprocal plan. These companies, in which all profits or losses are directly received or paid by the policyholders, are making themselves felt as competitive factors in the fire insurance business. (See p. 837 *re* farmers' mutuals.)

Subsection 1.—Grand Total of Fire Insurance in Canada

Of the total amount of insurance effected in Canada during each year, a part is sold by the companies holding provincial licences and permits. Such companies generally confine their operations to the province of incorporation, but may be allowed to sell insurance in other provinces.