

Milo Slaven, provision for Milo's costs should have been made, and perhaps was made, and if so my decision will in no way affect any agreement made between plaintiff and defendants other than Milo.

From all that appears before me I can not say that the interests of Milo Slaven were so identical with those of the other defendants, that he should not have been separately represented. Had the case been fought to a finish and had defendants been successful, possibly one set of costs only would have been allowed. I can not say. This is, however, a case in which I should not send parties to a taxation, but should determine the amount of Milo's costs. He did not personally attend the trial, and there are no witness fees payable by him, so I fix the amount at \$40.

LOUNT, J.

JUNE 6TH, 1902.

TRIAL.

SKILLINGS v. ROYAL INSURANCE CO.

Fire Insurance—Notice to Company Terminating Policy— Given by Registered Letter Wrongly Addressed, Received Day After Fire—Ontario Insurance Act, Statutory Conditions 19a, 23.

Action by a firm of lumber merchants in Ogdensburg, New York, to recover amount of loss by fire under a policy issued by defendants and covering certain lumber at Parry Sound, Ontario. By agreement between the parties the following question, among others, was submitted for the opinion of the Court: "Was the policy in question cancelled or surrendered?"

W. R. Riddell, K.C., and A. Fasken, for plaintiffs.

C. Robinson, K.C., and C. S. MacInnes, for defendants.

LOUNT, J.—On the 30th May, 1901, the plaintiffs wrote from Ogdensburg to Mr. Lett, the defendants' agent at Barrie, as follows:

"Enclosed please find Royal policy 7535269 lumber located at Conger Lumber Company's yard at Parry Sound, Ont., expiring January 21st, 1902, which we wish to cancel as of June 5th. We make return premium as \$74.25. If correct kindly send us check for same and oblige." The policy was enclosed with this letter in an envelope, which, by mistake of the plaintiffs' stenographer, was not correctly addressed, the address being "Mr. F. A. Lett, Agent, Parry Sound, Ont.," when it should have been "Barrie," instead of Parry Sound. The policy had indorsed on it at the time, partly printed and partly written, the following: "Surrender. Received from the Royal Insurance Company the sum of \$74.25, being the consideration for the within policy,