

The learned Judge was satisfied that the salvage was grossly overvalued in the adjustment of the loss. The sum of \$200, mentioned in the proofs as salvage of the fixtures, was more nearly right than the amount allowed by the adjuster.

Some evidence was given with the view of raising a suspicion as to the cause of the fire; but the case in that regard was not pressed. The plaintiff's presence in the building late on the night of the fire was satisfactorily explained.

Statutory condition 5 (sec. 194 of the Insurance Act, R.S.O. 1914 ch. 183) had no application to this case. The removal of the goods was by the authority of the defendants; and there clearly was no fraud.

What was done in regard to the adjustment, and the fact that no further proofs of loss were called for, amounted to a waiver of all objections to the proofs of loss: *Mutchmor v. Waterloo Mutual Fire Insurance Co.* (1902), 4 O.L.R. 606; *Adams v. Glen Falls Insurance Co.* (1916), 37 O.L.R. 1.

In the present case the position of the defendants' agent was unique. He had knowledge of the whole position of matters before the fire, and what insurance there was on the property; and, according to his evidence, was well satisfied with the bona fides of the plaintiff in effecting all the insurances upon the property.

Judgment for the plaintiff against the defendants in both actions for the amounts claimed, with costs.

RE FITZPATRICK—BRITTON, J., IN CHAMBERS—NOV. 12.

Infants—Custody—Application by Mother on Return of Habeas Corpus—Peculiar Circumstances—Husband and Wife Living apart—Children Placed in Boarding-school—Order for Payment by Husband of Expenses of Wife Visiting Children—Terms.—Motion by Alice E. Fitzpatrick, upon the return of a habeas corpus, for an order awarding her the custody of her two infant daughters, as against Thomas Fitzpatrick, her husband, the father of the infants. BRITTON, J., in a written judgment, said that the husband and father should provide a home for his wife and daughters, and all should live together as a united family; and this home should be in readiness before the end of the term at the school where the daughters have been placed by him. The husband and wife are living apart, the husband having broken up the home, and the wife is not being maintained by her husband.