

APPELLATE DIVISION.

DECEMBER 16TH, 1913.

LLOYDS PLATE GLASS INSURANCE CO. v. EASTMURE.

5 O. W. N. 498.

Principal and Agent—Accounting—General Insurance Agency—Substitution of Individual for Company—Liability of Individual Thereafter—Assumption of Outstanding Liability—Evidence—Statute of Frauds—Appeal.

SUP. CT. ONT. (1st App. Div.), *held*, that upon the evidence the appellant had been substituted as general agent for the respondent insurance company in 1907, in place of a company in which he was the largest stockholder, and as such was liable to account for the agency business transacted thereafter, but that the evidence did not establish that he assumed any prior liabilities of the company in connection with such agency and the requirements of the Statute of Frauds with regard to the proof of such assumption had in any case not been met.

Judgment of LATCHFORD, J., at trial, varied; no costs of appeal.

Appeal by the defendant Eastmure, from a judgment of HON. MR. JUSTICE LATCHFORD pronounced September 30th, 1913, after the trial of the action without a jury, at Toronto on that day.

J. E. Jones, for appellant.

R. McKay, K.C., for respondent.

G. L. Smith, for Lightbourn.

H. A. Newman, for defendants Eastmure & Lightbourn, Ltd.

The appeal to the Supreme Court of Ontario (First Appellate Division) was heard by SIR WM. MEREDITH, C.J.O., HON. MR. JUSTICE MACLAREN, HON. MR. JUSTICE MAGEE, and HON. MR. JUSTICE HODGINS.

HON. SIR WM. MEREDITH, C.J.O.:—The respondent is an insurance company having its head office at New York, and that action is brought to recover money alleged to be due to it from its general agent for Canada, in respect of premiums collected and not accounted for and other money alleged to be owing by the agent.

The action was brought against the appellant and the defendant Lightbourn trading under the firm name and style of Eastmure and Lightbourn, and in the statement of claim it was alleged that that firm was the general agent for Can-