

Divisional Court.]

[Nov. 29, 1900

KNISELEY v. BRITISH-AMERICA INSURANCE COMPANY.

*Insurance—Apprehension of incendiary danger—Application filled in by local agent—Untrue answer.*

An application for insurance on the contents of a barn, contained the question: "Is there any incendiary danger threatened or apprehended?" to which the answer was "No." The plaintiff, who had not previously carried any insurance, stated that he effected the insurance, having learned that the owner of the barn had placed a high insurance on it, as well as on the adjacent dwelling-house. This was told by the plaintiff to the company's agent, who filled in the application and the answers to the questions. The application was then signed by the applicant, who was not an illiterate man, but he did not read over the application, and was not told that the question had been answered in the negative:—

*Held*, that the plaintiff was bound by the answer to the question, as filled in the application, it being material to the risk, and that it was untrue, for the reasonable inference was that the apprehension of incendiary danger as a fact existed.

*Graham v. Ontario Mutual Insurance Co.* (1887) 14 O. R. 318, *Chatillon v. Canadian Mutual Fire Co.* (1877) 2 C.P. 450, considered and commented on.

*Quere*, whether the inquiry raised by the question was not as to the apprehension of the applicant of incendiary danger, and not whether, as a fact, any incendiary danger was to be apprehended.

*German*, Q.C., for plaintiff. *H. D. Gamble*, for defendant.

Divisional Court.]

CLAYTON v. PATERSON.

[Nov. 29, 1900

*Principal and agent—Hotel manager—Moneys received by—Liability to account.*

The defendant was the manager of the plaintiffs' hotel, and at the close of each day went over the receipts and disbursements and entered a summary thereof in a book, called the "cash-book," the receipts being classified according to the department of the business from which they were derived, and took over the money which constituted the balance on hand, as shewn by such entries, which he kept in his possession all night and subsequently made deposits with the plaintiffs' bankers. During the day the money was kept in a safe in the office, to which a clerk and a stenographer employed in the office, as well as one of the plaintiffs, who for two or three days in each week took part in the management and supervision of the hotel, had access. When any money was taken out, it was the duty and practice to put in a slip shewing the amount so taken and the purpose. The defendant, while admitting the accuracy of the balance up to a specified date, claims that he was not responsible thereafter, by reason