

testimony as to them had been sufficiently corroborated as required by sec. 12 of the Evidence Act, R.S.O. 1914 ch. 76, but reserved for further consideration the question of the sufficiency of the corroborative evidence in reference to the item of \$276.11.

The trial Judge believed the defendant's story that, when he left Canada in April, 1913, he had transferred his balance in a private bank to his brother, the deceased Elias, and appointed him his agent to collect certain moneys that were owing to him, but he did not find that the amount of the bank-account was \$600, as the defendant at first asserted. The Judge found that it was only \$276.11, and allowed that sum.

Reference to *Thompson v. Coulter* (1903), 34 Can. S.C.R. 261, 264; *Voyer v. Lepage* (1914), 7 W.W.R. 933; *McGregor v. Curry* (1914), 31 O.L.R. 261, 270.

The learned trial Judge believed the defendant; his testimony was corroborated on all the other items of the account; the cheques and papers produced by the private bankers supported the defendant's testimony that he transferred the moneys standing to his credit to the deceased, and so dovetailed with the other circumstances surrounding the dealings of the two brothers as to add materially to the other evidence corroborating the defendant's whole story. The defendant's claim as to this item could not and should not be separated from and considered without reference to the other items of his claim—the evidence corroborative of his story should be considered as a whole: see *Voyer v. Lepage*, 7 W.W.R. at p. 937.

Even if this item were separated from the others and from the evidence and circumstances corroborating them, yet the books and records produced by the private bankers furnished evidence which could and should aid the Court in arriving at the conclusion that the defendant's story was to be believed.

Appeal dismissed with costs.

FIRST DIVISIONAL COURT.

APRIL 30TH, 1920.

F. E. SMITH LIMITED v. CANADIAN WESTERN STEEL
CORPORATION LIMITED.

*Contract — Breach — Ear-marked Goods — Waiver — Injunction —
Interim Order—Appeal.*

Appeal by the defendants from the order of LOGIE, J., ante 160, granting an interim injunction and giving directions for a speedy trial of the action.