

George Morton, one of the plaintiffs and part owner of the building, was, with his brother and co-owner, John Morton, responsible for the bringing about of this change by leasing the corner room for restaurant purposes. The carrying on of the business of a restaurant usually and necessarily, I think, requires a greater and more varied and dangerous use of fuel and fire than would be required in the case of a real estate and insurance business or of a pool-room. This would be particularly true in the case of a restaurant conducted in the careless way, as to fire and the use of gasoline, which is shewn to have existed here, and to the knowledge of the plaintiff George Morton and his brother. It was this change which led to the fire in question, as it originated in the restaurant, and occasioned the loss in respect of which this action has been brought.

I do not think that the knowledge of John Morton, their local agent, of the change, which I have found to be one material to the risk, can, in the circumstances, be imputed to the defendants. He did not communicate his knowledge to them, as it was his duty to do. He, no doubt, purposely refrained from doing so, on account of the interest of his brother and himself in the building, and the interest he thought his brother had in the chattel property and its insurance under the policies in question.

Action dismissed with costs.

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BRITTON, J.

NOVEMBER 12TH, 1910.

MCCORMICK v. FRASER.

*Lunatic—Issue as to Lunacy—Inquiry as to Mental Condition—  
Evidence — Presumption — Senile Dementia — Finding in  
Favour of Alleged Lunatic—Costs.*

By order of SUTHERLAND, J., in Re Fraser, 1 O. W. N. 1105, the trial of an issue was ordered to determine whether "Michael Fraser is, at the time of such inquiry, of unsound mind and incapable of managing himself or his affairs." The order was affirmed by a Divisional Court, ante 26.

The issue was tried before BRITTON, J., without a jury, at Barrie and Toronto; and the learned Judge afterwards visited Michael Fraser and talked with him at his home, Fraser not having been present at the trial. This was with the consent of counsel, and two of the counsel accompanied the learned Judge.