

W. J. McMullen and James Wallace, for the plaintiff.
S. G. McKay, K.C., contra.

HON. SIR WM. MULOCK, C.J.Ex.D.:—This action is on a fire insurance policy to recover \$1,500 insurance on a barn, \$200 on a shed, and \$1,251 on contents of the destroyed buildings situate on the east half of lot No. 29 in the 10th concession of the township of West Zorra in the county of Oxford.

The grounds of defence as relied upon at the trial were:

1. Material misrepresentation and concealment in representing the property as free from incumbrance at the time of the application for insurance, whilst it was at the time subject to a mortgage for \$4,500 and to a life charge in favour of the plaintiff's mother.

2. Concealment of the fact that the plaintiff feared incendiarism.

3. False and fraudulent statements by the plaintiff in the proofs of loss in overvaluation of certain of the destroyed chattel property, viz., certain wheat and hay, and in stating that "there was no one except my own family about the place when I returned," whilst in fact one Dennis had returned with him.

4. Omission forthwith after the loss to give written notice to the company.

Dealing with the alleged misrepresentation and concealment respecting the incumbrances on the realty. It appears that the plaintiff acquired the land in the year 1893, under his father's will, subject to a life interest in favour of his mother in a small portion of it, and, also, to her maintenance and to the payment to her of the annual sum of \$50 during her life. All these interests cease on her death. She is still alive, and the plaintiff has met all charges in her favour. Except as to charges created by the will, the property was unincumbered when acquired by the plaintiff in 1893. There was no barn upon it, and in the year 1899, the plaintiff raised, by mortgage, \$2,500, wherewith to erect a barn and otherwise improve the farm. In 1907, that mortgage was discharged. On the 12th of June, 1908, he mortgaged the property for \$3,500. This mortgage was discharged in July, 1910, when he effected a new mortgage for \$4,500. This last named mortgage was in force when, on the 10th of November, 1910, the plaintiff signed the application for the policy in question.