DIVISIONAL COURT. OCTOBER 18TH, 1909.

DREWRY v. PERCIVAL.

Guaranty—Consideration—Belief in Validity of Claim—Forbearance to Sue—Evidence.

Appeal by the defendant George Percival from the judgment of the District Court of Rainy River in favour of the plaintiff in an action, as against the defendant George Percival, upon an alleged guaranty for the repayment of $3,500 lent by the plaintiff to the defendant H. C. Percival.

The defendant H. C. Percival in 1901, being desirous of buying or leasing a hotel, borrowed money from the plaintiff, and gave promissory notes for the amount. H. C. Percival went in as lessee, and there continued until the 27th January, 1902, when the hotel was burned.

The plaintiff swore that the defendant George Percival assured him (the plaintiff) that his account should be paid, that he (Percival) would see it paid, that he would undertake to do it.

After the fire George Percival was seen by one Graham (who had also lent money to H. C. Percival), and it was said that George then made a promise to Graham that he (George) would pay the plaintiff and Graham, who in the matter of the insurance on the hotel were acting together, the insurance being the security they were to receive. Graham did look after the insurance for both parties, and informed the plaintiff that he would do so, and this was acceptable to the plaintiff. Graham informed the plaintiff of the undertaking of George Percival to pay the two creditors. After the fire it was arranged that the policies should be assigned to George, and on the 10th April, 1902, the plaintiff wrote to George that he and Graham were agreeable to do this, and asked if he (the plaintiff) might draw on George for the amount of his (the plaintiff's) account. George answered by letter of the 15th April: "I told Graham I would see you would not be losers for cash advanced; I did not promise to pay the amount, but in time see you were paid." The policies were not assigned to George, but another arrangement was made in December, 1902. In August, 1903, however, George was in Kenora, and asked the plaintiff to wait till the insurance was adjusted. The plaintiff said he waited at George's request, "doing nothing because he asked me not to." George said (the plaintiff swore) that if he did not get sufficient out of the