

street, Toronto, on the night of the 26th February, 1917, damaging their stock-in-trade and fixtures. The defendants were promptly notified of the loss, and every opportunity was afforded to them for determining the amount of it. An agreement for an appraisal was signed by the parties; but, owing to differences between their respective representatives as to the third arbitrator, and not, as pleaded, to any refusal made by the plaintiffs fraudulently or in bad faith, the agreement proved abortive, and no appraisal was made under it. The plaintiffs then put in their proofs of loss, giving as particular an account of the damage as the nature of the case permitted. The claims were not accepted; hence the actions. There was little dispute regarding the damage to the fixtures—so little that counsel for the plaintiffs did not press their claim that its extent was greater than the defendants' estimate—\$395. Apart from certain defences, based on matters of law, the only substantial dispute between the parties was in regard to the extent of the damage to the stock-in-trade. The learned Judge finds as a fact that all the stock-in-trade was damaged sensibly and appreciably by fire or smoke. In many cases, especially where the goods were dark in colour, the damage could not be seen; but the odour of smoke or soot was present in the least visibly affected articles, for weeks after the fire, and greatly diminished their selling value. Where all was damaged, the statutory requirement that damaged property shall be separated from undamaged is without application. At the trial it was found that there was no fraud on the part of the plaintiffs in presenting their claims against the defendants. The only difficulty was in determining how far the experts who estimated the damages on behalf of the respective parties were right or wrong. It was a matter about which there could well be an honest difference of opinion. But the experts called on behalf of the plaintiffs were more entitled to credit than those called by the defendants. The plaintiffs' experts were earlier on the ground, and made much the more careful examination of the goods. Their testimony was supported by witnesses who were employed in the shop before the fire, and afterwards during the sale. Yet, having regard to all the evidence as to value, the loss, placed at 75 per cent. by the witnesses for the plaintiffs, was too high, as the loss, fixed at 25 per cent. by the witnesses for the defendants, was undoubtedly far too low. Having regard to the conflict of testimony, and the peculiar nature of the goods injured, it was difficult to arrive at an accurate determination of the plaintiffs'