

CONNELL V. BUCKNALL—LATCHFORD, J.—DEC. 24.

Principal and Agent—Agent's Commission on Sale of Mining Claim—Commission-agreement—Lost Document—Dispute as to Rate of Commission—Finding of Fact of Trial Judge.—The plaintiff, a mining engineer, brought this action against the defendants for the balance of a commission upon the sale of a mining claim owned by the defendants in the township of Casey. The agreement to pay the commission was made in August, 1906, and was put in writing; but the writing was lost or destroyed in a fire; and there was a dispute as to the rate of commission. The sale was for \$100,000; the plaintiff averred that the commission was at the rate of ten per cent.; the defendants admitted an agreement, but said that the rate was five per cent.; and they had in fact paid the plaintiff \$5,000; so that the action was to recover another \$5,000. Upon conflicting evidence, discussed in a written opinion, the learned Judge found that the agreement of August, 1906, was for the payment of five per cent. commission, and not ten; and that the \$5,000 received by the plaintiff from the defendants on the 25th June, 1907, was accepted by the plaintiff in full payment of all commission payable under the lost agreement. Action dismissed with costs. R. McKay, K.C., and J. M. Hall, for the plaintiff. S. A. Jones, K.C., for the defendants.