

Com. Pleas Div.]

NOTES OF CANADIAN CASES.

[Com. Pleas Div.]

Per ROSE, J.—The plaintiff was equitably stopped from maintaining the action.

Per CAMERON, C.J.—The plaintiff, by the express terms of the contract, was only entitled to commission on moneys received during his employment and not afterwards.

Osler, Q.C., and *T. P. Galt*, for the plaintiff.

Robinson, Q.C., and *Hall* for the defendants.

HARTNEY V. ÆTNA INSURANCE CO.

Insurance—Evidence of loss—Proof of loss.

Action on a policy of insurance on a stock of goods. M., the local agent, and through whom the insurance was effected, stated that he had examined the premises, and considered from the size of the store, the appearance of the goods, and the stock book, that when insurance was effected there were goods to the amount thereof. All the goods on the premises were destroyed by the fire on 20th Oct. The defendants' inspector came immediately, and saw plaintiff, who produced a statement shewing the amount of the stock in May—the policy having been effected in June—the sales since then, and invoices of goods purchased up to the time of the fire. The inspector then gave plaintiff a form from which the proof papers were to be made up; and on his return home sent the proof papers with request to fill in same according to the said form, which the plaintiff did, and requesting defendants to notify him if not correct, when would have same made out to defendants' satisfaction. The defendants wrote in reply stating they thought the amount of loss should be \$12,734.90 instead of \$13,005, the amount claimed; that such sum was not only reasonable, but liberal; and which "we are liable for without prejudice to, or waiver of, any condition of our policy." This letter was received without any objection as to its admissibility. The plaintiff replied that his claim was a just and honest one, but he would accept a deduction of \$400 if claim settled at once. The defendants replied that their offer was a fair and reasonable one, and pointed out what they considered the objectionable items of the claim. The plaintiff then made a statutory declaration of the amount of the loss, according to the above form, which he sent to defendants. The defendants wrote, acknow-

ledging above, and stating that, without admitting, but denying any liability, they drew attention to alleged informalities in the proofs in their not specifying loss in detail under each item, and in not giving detailed statement of salvage. The plaintiff then furnished defendants with a statutory declaration giving a detailed statement of his claim.

Held, there was sufficient evidence of the amount of the goods at the time insurance effected, and also of the goods insured being those destroyed by the fire; and also that under the circumstances there would be no objection to the proofs of loss.

McCarthy, Q.C., for the plaintiff.

J. K. Kerr, Q.C., and *Walker*, for the defendant.

UNITED STATES EXPRESS COMPANY V. DONOHUE.

Accomplices—Civil action—Corroboration.

In an action to recover from defendant moneys alleged to have been stolen from the plaintiffs,

Held (GALT, J. dissenting), that the effect of the judge's charge in this case was to leave on the minds of the jury the impression that the evidence of accomplices in crime—where such crime gives rise to a civil action, in which such accomplices are examined as witnesses—ought not to be credited or relied on unless corroborated, and was misdirection.

J. K. Kerr, Q.C., and *Cooper*, for the plaintiffs.

Osler, Q.C., for the defendant.

PROCTOR V. MULLIGAN.

Sale of land—Independent agreements.

On 5th June, plaintiff executed an agreement whereby he agreed to purchase from the defendant a lot in Winnipeg, at and for the sum that might be placed thereon by D. of Winnipeg, provided that if the price fixed exceeded \$6,000, the excess should be secured by plaintiff, by mortgage on said property, etc., the sum so fixed to be paid by plaintiff deeding to the defendant his interest in certain lots in Toronto. On the same day defendant executed an agreement, whereby defendant agreed to purchase from plaintiff, the plain-