witnesses, the learned Judge thought that the Court should give full effect to the documents, and hold that they evidenced an election by the defendants to affirm the original transaction, and to look to the estate of the debtor and the securities the defendants held for indemnity against their liability on the guaranty: Scarf v. Jardine (1882), 7 App. Cas. 345, 360; Bank of Toronto v. Harrell (1917), 55 Can. S.C.R. 512.

The learned Judge said that he would dismiss the appeal with costs; but the plaintiff bank should have no costs of the taking of the further evidence or of the rehearing, and the defendants should be paid their costs of these by the plaintiff bank.

MEREDITH, C.J.O., and MACLAREN and MAGEE, JJ.A., agreed with the conclusion of FERGUSON, J.A., as to the effect of the new evidence, but adhered to the views expressed in the opinion of the Chief Justice of the 27th January, 1919.

Appeal dismissed.

FIRST DIVISIONAL COURT. MARCH 19TH, 1920.

REX v. ERCOLINO.

Criminal Law—Arson—Setting Fire to Dwelling-house and Store of Prisoner—Contents Insured beyond Value—Circumstantial Evidence—Sufficiency of, to Support Conviction.

Case stated by the Junior Judge of the County Court of the County of Wentworth, upon the trial and conviction of the defendant for setting fire to his own dwelling-house and store in the city of Hamilton. The defendant was tried by the Judge without a jury.

The question stated was, whether there was any evidence to support the conviction. The evidence taken at the trial was made part of the case.

The case was heard by MEREDITH, C.J.O., MACLAREN, MAGEE, HODGINS, and FERGUSON, JJ.A.

M. J. O'Reilly, K.C., for the defendant.

Edward Bayly, K.C., for the Crown.

MACLAREN, J.A., reading the judgment of the Court, went over the evidence with care. There was no direct evidence—no one saw the defendant set fire to the place—but the contents of the building were insured for $3,275, of which $1,275 was put on about