

As to (2) the application must be refused; the commission covers all costs other than disbursements. When the disbursements are taxed by the Master, he takes account of all disbursements proper to be allowed, future as well as past, and the commission covers all costs, future as well as past.

As to (3) subject to what I have said in respect of (1), the order may go.

It seems to be necessary again to call the attention of practitioners to the necessity of filing all the papers which are to be used on motions—it is too much to expect the Court to act the solicitor's clerk and hunt up the missing documents.

I have recently pointed out, also, that the Court does not act as a conduit pipe to draw orders through just because parties desire them. Mere consent will not justify the issue of an order wrong in principle.

HON. SIR WM. MULLOCK, C.J.Ex.D. OCTOBER 21ST, 1912.

PATTERSON v. OXFORD FARMERS MUTUAL FIRE
INS. CO.

4 O. W. N. 140.

Insurance — Fire — Misrepresentation and Concealment in Application for Policy — Want of Notice of Loss — Statutory Conditions 13 and 15—Insurance Act s. 172—Relief from Omission.

Action by a farmer, to recover on a policy of insurance against fire. Defendants alleged misrepresentation, concealment and want of notice of loss as defences to the action.

MULLOCK, C.J.Ex.D., *held*, that the onus was on defendants to prove the materiality of any misstatement in the application and that they had failed to shew that a misstatement in the application, apparently filled in by the agent without plaintiff's knowledge, that the farm was unencumbered, was material.

Morton v. Anglo-American Fire Ins. Co., 19 O. W. R. 870, and *Loute v. London Mutual Fire Ins. Co.*, 9 O. L. R. 555, followed.

That evidence by a director of defendants that the directors would have regarded such misstatement as material and would have refused the policy was inadmissible.

Burrell v. Bederley Holtz, N. P. C. 285; and

Campbell v. Richards, 5 B & Ad. 841, followed.

That a statement in the proofs of loss that "there was no one except my own family around the place when I returned," even if false would not vitiate the policy not being one of the "particulars" mentioned in the statute.

Goring v. London Mutual Fire Ins. Co., 19 O. R. 247, followed.

That the Court had power to relieve against omission to give notice of loss and it was equitable so to do in this case where the company's officers had had immediate actual notice and plaintiff did not know specific notice was required.

Prairie City Oil Co. v. Standard Mutual Fire Ins. Co., 44 S. C. R. 40;

Bell Bros. v. Hudsons Bay Ins. Co., 44 S. C. R. 419, followed.
Judgment for plaintiff for \$2,951.70, and costs.