

FIRST DIVISIONAL COURT.

APRIL 19TH, 1916.

*ADAMS v. GLEN FALLS INSURANCE CO.

Insurance—Fire Insurance—Proofs of Loss—Sufficiency—Absence of Objection—Refusal to Pay Claim for Loss—Proof of Value of Goods Insured—Proof of Damage—Extent of Damage—False Statements in Statutory Declaration—Evidence—Onus—Statutory Conditions 19 and 20, R.S.O. 1914 ch. 183, sec. 194—Stock-taking List—Excessive Claim for Damage by Smoke—Inference of Fraud not Warranted—Findings of Fact of Trial Judge—Appeal.

Appeal by the plaintiff from the judgment of SUTHERLAND, J., 9 O.W.N. 446.

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

G. H. Kilmer, K.C., for the appellant.

Leighton McCarthy, K.C., for the defendants, respondents.

MEREDITH, C.J.O., read the judgment of the Court. After stating the facts, he said that the plaintiff claimed for loss and damage to his stock in trade, caused entirely by smoke, \$3,333.90; for loss and damage to the furniture, caused in the same way, \$150; and for loss and damage to the building, \$250. These claims were disputed by the respondents; and they also set up as defences to the action the failure of the appellant to furnish to them proper proofs of his loss; and that the appellant, in an account of his loss which he did furnish, made false and fraudulent statements with reference to his claim, by which, by virtue of the 20th statutory condition, his claim was vitiated.

The proofs of loss furnished by the appellant were in the form of a statutory declaration accompanied by a detailed statement, sent by the appellant's solicitor to the respondents' solicitors, in a letter in which the writer said, "If there is anything further you require, you might let me know." No answer was made to this inquiry, and no complaint was made as to the sufficiency of the proofs. It was, therefore, not open to the respondents to set up insufficiency, if indeed it was open to them to object to the proofs when they had definitely rejected and refused to pay the appellant's claim or any part of it: *Morrow v. Lancashire Insurance Co.* (1898-9), 29 O.R. 377, 26 A.R. 173.

The finding of the trial Judge that the appellant had not proved that the stock in the store at the time of the fire was of the value of \$14,000, was not only not supported by the evidence, but was directly opposed to it.