

reciting the order. On return to a writ of habeas corpus and motion for the discharge of the prisoner,

Held, that ss. 959 (3) and 870 of the Criminal Code gave the authority and procedure respectively for imposing and collecting costs in a case like the present and that under the last mentioned section defendant could be imprisoned for non-payment of costs only in default of distress and that the order awarding imprisonment without distress as a means of recovering the costs was therefore bad as an excess of jurisdiction.

Power, for prisoner. *Kenney*, for prosecutor.

Province of Manitoba.

KING'S BENCH.

Richards, J.]

HENRY T. BEATTIE.

[Nov. 20, 1902.

*Negligence Insurance agent employed to effect insurance against fire—
Damages.*

Defendant was the agent at Portage la Prairie of the Royal Insurance Company, also of the Hamilton Provident Loan and Savings Company. Plaintiff's uncle formerly owned a quarter section of land which he had mortgaged to the Loan Company, and upon which he afterwards erected a dwelling house and farm buildings. He then conveyed the property to the plaintiff, who was his infant niece living under his care and protection. The conveyance was subject to the mortgage. Being unable to pay the interest due on the mortgage in 1900, the uncle asked the defendant for time and was told that the Loan Company would not give time unless he insured the buildings in their favour as mortgagees. The uncle afterwards went to defendant's office to apply for insurance on the buildings, which defendant had never seen, when defendant took a form of application for insurance in the Royal Insurance Co. and filled it up, getting the necessary information from the uncle who signed it. It called for \$500 of insurance on the dwelling and \$500 on the other buildings. The premium was \$20, of which \$15 was paid at the time and the rest afterwards, and it was intended that the loss, if any, should be made payable to the Loan Company as collateral security to the mortgage. The uncle stated that he applied for the insurance for the benefit of the plaintiff and that he told defendant so and had previously informed him of the plaintiff's interest in the property, whilst defendant denied that he had ever heard of the plaintiff's having any interest in the property. The application was to have been sent to the Loan Company to enable them