

quashing of the conviction, but opposed the motion as regards costs.

W. M. Douglas, K.C., for defendant.

J. H. Moss, for magistrates and prosecutor.

MACMAHON, J.—It is not a case for ordering the magistrates to pay the costs; under a mistake as to the law they considered that they had jurisdiction. *Regina v. Chapman*, 1 O. R. 582, distinguished. Order made quashing the conviction. Costs to be paid by prosecutor. No casts against magistrates.

BRITTON, J.

JULY 4TH, 1903.

TRIAL.

DAVIDSON v. INSURANCE CO. OF NORTH AMERICA.

Fire Insurance—Apportionment of Loss—Existence of Concurrent Policy—Difference in Parties Insuring and Properties Insured.

Action upon policy for loss by fire on the 25th January, 1902, of furniture in the Hotel Cecil at Ottawa.

J. Lorn McDougall, Ottawa, and E. J. Daly, Ottawa, for plaintiff.

G. F. Shepley, K.C., and A. T. Kirkpatrick, for defendants.

BRITTON, J.—By the terms of the policy further concurrent insurance was permitted without notice. The defendants invoked condition 9 of the statutory conditions; "In the event of any other insurance on the property herein described having been assented to as aforesaid, then this company shall, if such other insurance remains in force, on the happening of any loss or damage, only be liable for the payment of a ratable proportion of such loss or damage, without reference to the dates of the different policies." Defendant's policy was for \$3,500. They alleged that at the time of the fire there was concurrent insurance upon the same property, \$5,100 in the Phoenix, and \$3,500 in the Union. The plaintiff's total loss was \$9,033.43. Defendants paid into Court \$2,615.87, exclusive of interest. The plaintiff was the owner of the hotel premises and of a large quantity of the furniture therein. The hotel was leased to C. H. Genslenger, who was the licensee and hotel keeper, and the owner of other furniture which he brought into the hotel. There was no joint ownership. Plaintiff had insurance on his own furniture to the amount of \$6,000, \$2,500 in the Union and \$3,500