

Full Court.] BROWNELL v. ATLAS ASSURANCE CO. [Nov. 15, 1898.

Fire insurance—Condition in policy—Proofs of loss—Waiver—Agency—Estoppel—Assigner and assignee.

A policy on a stock of goods owned by the plaintiff B. required the insured, in the event of a loss occurring, to deliver within fifteen days after the fire, in writing, as particular an account of the loss as the nature of the case permitted. A fire having occurred, J., who acted as adjuster for the defendant company for the provinces of Nova Scotia and New Brunswick, called upon B. and demanded and obtained from him his books, invoices and other documents, and proceeded to make up an estimate of the loss. The proofs of loss were prepared by J., with the assent of B., upon forms which J. brought with him for that purpose. J. failed to complete the proofs within the time limited by the policy. The jury, among other things, found that J., by his acts, words and conduct, induced B. to delay sending to the company or its agent the necessary proofs within 15 days, and the facts being such as to warrant that conclusion,

Held that J. must be treated as agent of the company, and that the latter were estopped from alleging as a defence to the action that the proofs of loss were not put in within the time limited.

Per HENRY, J., dissenting. The condition as to the time for putting in the proofs of loss, under the terms of the policy, could only be waived by writing indorsed upon the policy and signed by the principal agent of the company in the district where the loss occurred.

Per MEAGHER, J., McDONALD, C.J., concurring. B. was entitled to sue notwithstanding that he had made an assignment which in form and terms included the cause of action, provided notice of the assignment had not been given. Also that the legal right to the money, as well as to the remedies for its recovery, remained in the assignor until notice in writing was given. Also that until such notice was given, the assignee could sue in the name of the assignor for the recovery of the debt or chose in action assigned.

H. McInnes for appellant. Dickey, Q.C., and F. T. Congdon for respondent.

New Brunswick.

SUPREME COURT.

Barker, J.]

RE JEWETT ARBITRATION.

[Dec. 12, 1898.

Arbitrator's fees.

A man who chooses to act as an arbitrator cannot fix his fees upon the basis of the value of his services in his own special business for the time