

C. P.]

NOTES OF CASES.

[C. P.]

*Per GALT J.*, that such other evidence was sufficient, and without it he would hesitate as to accepting the indictment as sufficient by itself.

The order for extradition was therefore allowed.

*J. K. Kerr*, Q. C., for the Crown.

*McMichael*, Q. C., for the prisoner.

#### ROBBINS V. VICTORIA MUTUAL INS. CO.

*Mutual Ins. Co.—Failure to deliver proof within thirty days.—Mistake—Recovery.*

Upon a policy issued by a Mutual Company, the statutory conditions were endorsed with variations, one of which was, (being the same as sec. 56 of the Mutual Act, R. S. O., ch. 161,) that the proofs, declarations, &c., called for by the statutory conditions should be furnished to the company within thirty days after loss, &c. The loss occurred on the 2nd October, 1878, and on the 5th the plaintiff notified defendants by letter. A few days after, the plaintiff saw one S., an agent of the defendants for obtaining applications, but not for settling claims, but who had acted for plaintiff in settling a previous loss with defendants, and asked him to act for him on this occasion, and do whatever was proper, which S. promised to do. On 17th October the defendant's president came up and saw plaintiff, who informed him of the loss, and all the circumstances relating thereto, and plaintiff was told by him, in answer to his enquiry thereto, that nothing further need be done. The plaintiff, in consequence, did nothing; but subsequently, on hearing that the defendants disputed the claim, some correspondence took place, which resulted in plaintiff employing a solicitor, and proofs were thereupon put in, but after the lapse of the thirty days.

*Held*, that sec. 2 of the R. S. O., ch. 162, applies to Mutual Companies, and that as the evidence shewed that the non-compliance with the condition as to putting in proof within thirty days was by mistake, &c., the plaintiff was protected, and was therefore entitled to recover.

*Lennox* (of Barrie), for the plaintiff.

*McCarthy*, Q. C., for the defendants.

#### QUINLAN V. THE UNION FIRE INSURANCE COMPANY.

*Insurance—Statutory conditions—Buildings within 100 feet—Failure to give notice of—Diagram by agent after personal inspection—Evidence.*

The first statutory condition endorsed on a policy of insurance, provided that if any person insures his building or goods and causes them to be described otherwise than as they really are, to the prejudice of the company, or misrepresents, or omits to communicate any circumstance which is material to be made known to the company, in order to enable them to judge of the risk undertaken, such insurance shall be of no force in respect to the property regarding which the misrepresentation or omission is made. The second statutory condition so endorsed, provided that after application for insurance, it shall be deemed that any policy sent to the assured is intended to be in accordance with the terms of the application, unless the company point out the difference relied on; with a variation added, that such application, or any survey, plan, or description of the property to be insured, shall be considered a part of the policy, and every part of it, a warranty by the assured, but the company will not dispute the correctness of any diagram or plan prepared by its agent from a personal inspection. The 20th condition as varied, provided that in case any agent takes any part in the preparation of the application for the insurance, he shall, with the exception above provided in case of a diagram or plan, be regarded in that work as the agent of the applicant. By the application, which was signed, not by the applicant, but by the agent, the applicant was required to make known the existence of all buildings within 100 feet of the insured premises, and it appeared that the applicant had omitted to make known the existence of a small building used for storing coal oil within such distance. A diagram was made and filled in by the agent, and signed by him in his own name as well as the insured, which contained no reference to this building. The diagram was not made from a personal inspection at the time, but from a previous inspection, and the knowledge thereby acquired.

*Held*, that even if by the above conditions the plaintiff would be relieved from the effect of the