burnt, probably by the fault of the railway company. The barns were valued for the purposes of this action at $1,250, and were insured by defendants for $550. Plaintiff had received $450 from the railway company, but not in full of his claim. It was held at the trial that plaintiff could not recover for the benefit of the railway company.

W. H. Blake, K.C., for plaintiff, contended that the right to subrogation arises only where the insurer pays the total loss.

H. D. Gamble, for defendants, contra.

THE COURT (MEREDITH, C.J., MACMAHON, J., MAGEE, J.), held that it was competent for plaintiff, acting bona fide, to compromise his claim against the railway company for a sum less than the total loss by the burning of his buildings, assuming that they were liable to him. Also, that a settlement for $1,000, in the circumstances of the case, was not unreasonable, and a settlement for that amount could not be said to be otherwise than a bona fide one. If plaintiff were willing to treat his claim against the railway company as amounting to $1,000 and to be debited with that sum, there should be judgment in his favour for $250 with costs; but no costs of appeal to either party. If plaintiff were not willing to do that, there must be further investigation of the circumstances of the transaction between the railway company and the plaintiff; the evidence upon this point to be taken at the next sittings at St. Thomas. Plaintiff to have time to elect.

SEPTEMBER 19TH, 1907.

DIVISIONAL COURT.

MILLS v. SMALL.

Building Contract—Provisions of—Construction—Architect—Remuneration—Extra Work—Payment for, outside Contract—Increase in Cost—Knowledge and Acquiescence of Owner—Breach of Covenant—Damages—Cross-action—Stay of Execution.

Appeal by defendant from judgment of RIDDELL, J., 9 O. W. R. 893, in favour of plaintiffs in an action to recover