

1897; and by way of counterclaim he seeks to recover from the claimants the amount of the assurance with interest and costs, and he also asks for such further and other relief as may be deemed necessary and proper.

The facts, as they are succinctly stated in the opinion of my brother Street, were these: "The defendant Brophy was an elderly man and a priest; Cromar was an insurance agent canvassing for one Company, and perhaps for more, and in 1885 he began to do some insurance business for Brophy. At that time Brophy was in the habit of buying annuities from insurance companies, insuring his own life and allowing the annuity payments to go in payment of the premiums on the policies on his life. Cromar did all his business in insuring his life; and an arrangement was made between them by which Brophy in effect received the benefit of part of the commissions which Cromar got from the insurance companies to whom he took Brophy's application for insurance. Then in the year 1896 or the beginning of 1897, a new system was adopted upon Cromar's suggestion, and Brophy took out eleven policies of insurance in different companies which are mentioned in the schedule which has been put in, amounting in all to upwards of seventy thousand dollars. That system was this: Brophy purchased an annuity upon his own life in the company in which he was insured; in the case of the North American Life, which is typical of this, he purchased an annuity upon his own life for three hundred dollars. Then, instead of insuring his own life, he insured Cromar's, that being part of the arrangement between him and Cromar—for an amount the premiums upon which would be equal to the amount of the annuity which Brophy had purchased. Then there was a further agreement, as Brophy, who is the defendant in this action, tells us, under which the policies were at once assigned to him, Brophy. The advantage which Cromar was to get from this was the commissions on the premiums payable to the insurance company and on the original insurance. This arrangement was carried out with regard to policies in eleven companies; and in ten companies Cromar carried out the arrangement to the letter. That is to say, contemporaneously with and as a part of the insurance and of the annuity transaction, Cromar made an absolute assignment to Brophy of the policies; but he began to think apparently before he had completed the assignment of the North American policy that he was not getting enough out of it, that he was allowing Brophy to insure his