

Ct. of Ap.]

NOTES OF CASES.

[Q. B.

Held, generally, on appeal from the County Court, that under section 88 of the Insolvent Act of 1875, if the dividend is derived wholly out of joint estate, the joint creditors alone can share until fully paid; if wholly out of separate estate it belongs wholly to separate creditors till they are paid; if partly out of each class of assets, it should go *pro rata* to each class of debts. The assignee being in a position to ascertain the character of the assets, it was left to him to adjust the dividends; and under the circumstances costs were allowed to all parties out of the estate.

M. Clark for appellant.

W. R. Mulock for respondent.

QUEEN'S BENCH.

IN BANCO—HILARY TERM.

NEILL, ADMINISTRATRIX V. THE UNION MUTUAL LIFE INSURANCE COMPANY.

Life policy—Overdue premium—Payment.

J. N. was insured with the defendants by a policy dated 8th May, 1877, on which quarterly payments were due on the 10th days of February, May, August, and November, in each year. The policy among others contained the following conditions:—"If any premium, etc., shall not be paid when due the consideration of this contract shall be deemed to have failed, and the company shall be released from liability, and the only evidence of payment shall be the receipt of the company, signed by the President or Secretary." "If for any reason the premium is received after it becomes due it is upon the express condition that the party is in good health, and of correct, sober, and temperate habits, otherwise the policy shall not be put in force, etc." "In case any note, cheque, or draft, given towards the payment of any premium, shall not be paid at maturity, this policy lapses in the same manner as upon the non-payment of the premium."

McN., the general agent of the company at Toronto, was in the habit of receiving payment of premiums after they were due, of which the company were aware, and did not disapprove. On 24th September, 1879, a cheque was given by the assured's firm to McN., with

the understanding that it was to be held till there were funds, as he had often done formerly. It was several times presented and dishonored. On 8th October, McN.'s successor in office notified the assured that if the cheque were not paid at once the receipt would be returned to the company. On 21st October, in answer to S., the agent's messenger, assured's partner said that there were funds for the cheque at the bank; but as it was nearly three o'clock, S. said he would wait till the morning. That evening the assured was killed, and the cheque was therefore not presented, but was retained by the company. The plaintiff produced all the premium receipts, except that of 10th August, 1879.

The jury found that the defendant's agent had waived the payment of the premium due 10th August by receiving the cheque, and a verdict was entered for the plaintiff.

Held, (CAMERON J., *dissenting*), that though the defendants appeared willing up to the 21st October to receive payment and keep up the policy, yet there was no waiver of the terms of payment, and no existing agreement or anything binding them to extend the time for payment and to remain liable, and that the cheque was not taken in payment.

Per CAMERON J. The application by the defendant's agent on the 21st October for payment of the premium and the retention of the cheque, was equivalent to accepting a new cheque, which (there being funds therefor) would be payment.

Ferguson, Q. C., (with him, *G. H. Watson*), for plaintiff.

Robinson, Q. C., for the defendants.

MOFFATT V. THE RELIANCE MUTUAL LIFE ASSURANCE SOCIETY.

Life policy—Authority of general agent—Overdue premium—Promissory note.

J. M. was insured by a policy under which thirty days grace were allowed for payment of premiums. A lapsed policy might be renewed within a year upon proof of health, payment of arrears and a fine. S. was the resident secretary in Canada of the defendants, with the powers of a general manager. There was a local board of directors in Canada, but S. communicated directly with the board in England,