proposed to shew that the prisoner, on the day preceding the homicide, had a knife, which, according to the medical testimony, was not calculated to inflict the wound which caused the death of the deceased. The learned Judge, at the trial, refused to admit this evidence.

Held, Galt, J., dissenting, that the evidence was properly rejected.

J. Crerar, for the Crown.

McMichael, Q.C., for the prisoner.

Perkins v. Beckett.

Promissory note—Action on by insolvent—Non-intervention of assignee—Recovery.

To an action by the endorsee against the maker of a promissory note, it is no answer, where the assignee in insolvency does not intervene, that the defendant is an uncertificated bankrupt.

Robinson, Q.C., for the plaintiff.

J. K. Kerr, Q.C., for the defendant.

Giraldi v. The Provincial Insurance Company.

Act relating to—Statutory conditions—Construction of—Non payment of premium—Effect of.

One of the conditions of a policy provided that no insurance, whether original or continued, should be considered as binding until the actual payment of the premium. The defendant set this up and averred non-payment.

Held, that even although this could not be set up as a condition, not being one of the statutory conditions or a variation thereof, it might still be relied upon as an agreement of the parties which went to the foundation of the contract, and denied that the insurance ever came into existence.

Held, per Gwynne, J., dissenting from *Ulrich* v. *National Insurance Company*, 42 U. C. R. 141, and *Frey* v. *Mutual Insurance Company of Wellington*, 43 U. C. R. 102, that the proper construction of "The Fire Insurance Policy Act" was, that the statutory conditions are to be regarded and adjudged as part of every policy, whether without conditions at all or not, in accordance with the statute.

J. K. Kerr, Q.C., and *Smythe* (Kingston), for the plaintiff.

Robinson, Q.C., for the defendants.

Benedict v. Kerr.

Storage of grain—Fire—Recovery.

The plaintiff, a farmer, stored some barley with the defendant, a grain dealer, and received a receipt from the defendant acknowledging that he received from the plaintiff in store 552 bushels of barley. The plaintiff intended to sell to the defendant, but as the market price was low, it was left with the defendant in store, and mixed with other large quantities, and dealt with by defendant as his own, the plaintiff being at liberty at any time to accept the market price, or to call upon defendant to return him an equal quantity, though not the identical grain. No price was ever agreed upon, nor the barley returned. The defendant's store was subsequently destroyed by fire, and a large quantity of grain destroyed. The defendant having refused to pay for the barley or return a similar quantity, the plaintiff brought an action against the defendant to recover the amount of the same.

Held, that plaintiff was entitled to recover.

McMichael, Q.C., and *Smythe*, for the plaintiff.

Hardy, Q.C., for the defendant.

Murphy v. Yeomans.

Partnership—Sale after dissolution—Validity

G. D. and A. D., who were in partnership as bakers, purchased some wheat for their business, but which was not used by them, not being of the required quality. On January 28th, 1876, the partnership was dissolved by an instrument under seal, G. D. giving A. D. $165 in cash, and a note for $500, retaining the assets and continuing the business. On March 14th, G. D., on the ground of his being a minor and not bound by the dissolution, filed a bill in Chancery by his next friend, for a partnership account. On the 16th of March, G. D. sold the wheat for value to the plaintiff, who was aware of its being partnership property