

the city by a person who had in consequence of the blow been upset while driving along the street. Judgment of ROSE, J., affirmed.

P. D. Crerar and W. W. Osborne, for appellants. MacKelcan, K.C., and J. L. Counsell, for respondents.

From ROSE, J.]

[May 14.

HARGROVE v. ROYAL TEMPLARS OF TEMPERANCE.

Benevolent society—Misstatement of age—Rules regulating mode and amount of payment.

A benevolent society's certificate provided for payment to the plaintiff upon his total disability or upon his attaining the age of seventy years, out of the total disability fund, in accordance with the laws governing the fund, sums not exceeding in the aggregate one thousand dollars. In his application, upon which it was declared the certificate was founded, the plaintiff gave his age as fifty-four when it was in fact fifty-five, the latter age being within the age allowed for entrance and the assessments and fees chargeable being the same for both ages. The plaintiff attained the age of seventy on the 10th of December, 1899, and brought this action on the 15th of May, 1900, asking for payment of \$1000.00. The jury found that the plaintiff's age was not material to the contract and that the statement as to age was made in good faith and without any intention to deceive:—

Held, that the certificate was binding, and that the plaintiff was entitled to payment thereunder upon in fact attaining the age of seventy, but that the "laws governing the fund" applied though not set out, and that under them the plaintiff was entitled at the time of action brought only to an instalment of \$225.00. Judgment of ROSE, J., reversed.

Washington, K.C., for appellant. Gallagher, for respondents.

From MACMAHON, J.]

[May 14.

LEGGO v. WELLAND VALE COMPANY.

Bailment—Fire—Damages—Sale of goods.

The defendants agreed to make for the plaintiff certain tools used in making hubs of a special kind, and, in consideration of being allowed to use the tools, to make also a number of the hubs:—

Held, that the use of the tools was an unconditional appropriation thereof to the contract, so that the property in them had passed to the plaintiff; that while using them the defendants were bailees thereof for hire, and after ceasing to use them, gratuitous bailees; that the defendants having neglected to send the tools to the plaintiff after repeated requests, were liable to him in damages; but that these damages were nominal only, and that the plaintiff could not, upon the destruction of the tools by an accidental fire while retained by the defendants, recover from them their