to on the argument of the appeal nor at the trial; and, if the decision here were to rest solely on that ground, it would be proper that counsel should be heard as to it.

The learned Judge then referred to sec. 166 of the Ontario Insurance Act, 1912, which had six sub-sections; to the amendment made by the Act of 1913, 3 & 4 Geo. V. ch. 35, sec. 8, by which sub-secs. 7, 8, 9, and 10 were added; to sec. 166 as it appears in the revision of 1914, R.S.O. 1914 ch. 183, by which sub-sec. 1 was divided so that sub-sec. 6 would have become sub-sec. 7, but it was placed after sub-secs. 7, 8, 9, 10, and became sub-sec. 11; and to the further amendment (made since the judgment of BRITTON, J.), by the Ontario Insurance Amendment Act, 1916, sec. 4 of which repeals sub-sec. 11 and substitutes a new sub-sec. 11, whereby only sub-secs. 1 to 6 are made applicable to both past and future contracts, and it is declared that "this section shall be deemed to have been in force on and from the 16th day of April, 1912, but nothing in this section shall affect the disposition of any costs in any action now pending or heretofore determined," etc.

The effect of the change was merely to make sub-sec. 11 apply only to sub-secs. 1 to 6, instead of sub-secs. 1 to 10, and it left sub-secs. 7 to 10 as free as if in a separate section, or as if in the Act of 1913 they had not been added to sec. 166. The Legislature wished only to relieve the societies from having any doubt that they were not bound to call in old certificates and pass-books from all parts for the purpose of inserting the printed notice therein.

Upon both grounds, the plaintiff's action was not premature, and the judgment should stand for the full amount insured, with interest, and the appeal should be dismissed with costs.

MACLAREN, J.A., agreed in the result of the judgment of MAGEE, J.A.

HODGINS, J.A., read a judgment in which he said (after dealing with the facts and referring to the statute) that the contract and clause 59 of the defendants' constitution required only proof of death and that the insured was then in good standing. In these circumstances, it was not open to the defendants, without proving either mistake or fraud in regard to age, to refuse payment of the claim; they were bound, under clause 87, to shew that there was an initial error. The defence pleaded was effective for delay only (see sec. 165 (4) of the Act), as it did not charge error, mistake, or fraud.

The appeal should be dismissed with costs.