RECENT DECISIONS.

The first case in No. 1. of Vol. 5 of the Supreme Court Reports, now before us, is the *Ætna Life Insurance Co.* v. *Brodie*, being an appeal from the Court of Queen's Bench for Lower Canada. The action was on a policy of insurance, which the defendants desired to prove by parol evidence, had been issued, by mistake, for double the amount really intended. This they were allowed to do and obtained judgment. At p. 18 Ritchie, C. J., makes the broad statement that in case of an instrument signed in due course of business, "when from the nature of the transaction it is obvious a fair *quid pro quo* must have been contemplated, if the inadequacy of the consideration is so very gross indeed as to shock the conscience and understanding of any reasonable man, the Court I think, ought to infer, from that alone, mistake, inadvertence or fraud." There is also a noticeably broad statement of the law as to the admission of parol evidence in the judgment of Gwynne, J., (p. 33) where he says: "That there was a mistake in inserting the $2,000 in the policy and in the body of the application also, is a fact which the appellants may establish by any evidence they can adduce, parol or otherwise." But notwithstanding these expressions, it may be observed that there is nothing in the actual facts of this case which makes it conflict with the general rule as to the admission of parol evidence in the analogous case of the question of mortgage or no mortgage, which is deduced from all the Canadian and English cases, in some recent articles on that subject by the present writer, in a contemporary legal periodical. The rule as there arrived at is as follows: "In order to render parol evidence on the question of "mortgage or no mortgage" admissible in Courts of Justice, it is necessary first to show by something *which does not depend upon parol evidence*, that there is reason to believe the instrument, owing to some fraud, mistake, accident or surprise, other than a mistake in law, does not truly speak the agreement made,—or that subsequent dealings have taken place between the parties inconsistent with the fact of the deed being absolute, and causing a fraud to be committed on the mortgagor in case the parol evidence is excluded, and then parol evidence will be received to show what relief ought to be granted." In the case under review there was this extrinsic evidence other than parol evidence, *e. g.*, the memorandum in the margin of the application was for the alleged right amount, though in the body of the application and in the policy the alleged wrong amount was mentioned; and as counsel for the appellants urged,—that, supported as it was by parol evidence, by the premium paid, the published rates of the company, the contemporaneous entry made by the agent in this register of the correct amount, and other facts and circumstances, entitled the appellants to succeed.

The next case is *Welden* v. *Vaughan*, an appeal from the Supreme Court of New Brunswick. This was an action of assumpsit brought by a part-owner of a vessel against certain merchants in England. The plantiff alleged that while he had entire charge of the said vessel as ship's husband, the defendants, being his agents, refused to obey and follow his directions in regard to the vessel, and so broke their agreement. It appeared at the trial that plaintiff had sold a fourth share to E. V., brother of the defendants. The defendants alleged accord and satisfaction, and relied on a letter written by the plaintiff, in which he referred to the fact that the defendants complained of the "eternal bickerings," which they said were not their fault,—and then reiterating his complaints, closed with the words: "To end the matter, if your brother will dispose of his quarter, I will purchase it, say for $4,200 in cash." The New Brunswick Court held that the expression "to end the matter" should