THE UNCERTAINTIES OF LAW.

It has been said that the Act of Parliament has not yet been framed in which sufficient loop-holes have not been left for a coach and four to be driven through. This has been again singularly exemplified in the decision under the Consolidated Insurance Act of 1877, rendered last week in the Superior Court here by Judge Mathieu in the case of the Globe Mutual Life Insurance Company of New York, and Wells, assignee, and Fish *es qual.*, contesting, and the said assignee respondent.

As most of our readers are so far familiar with the case it is now necessary only to state simply that the points at issue were: 1st. Whether the Canadian policy-holders of the Globe Mutual Life Insurance Company were insured on the "Mutual" principle within the meaning of the Act and, as such, entitled only to rank in the distribution of the assets of the Company *pro rata* with all the other policy-holders of said Company whether in this country or the United States; or, if not on the "Mutual" principle therefore entitled to have their claims paid in full out of the deposit made with the Canadian Government. 2nd. Whether the Canadian policy-holders were accorded all the rights and privileges as policy holders enjoyed by all other policy-holders of the Company in the United States or elsewhere.

With a view to rendering the true bearing of the question more intelligible, it is necessary, before proceeding further, to recapitulate to some extent what was stated in our review of said Act shortly after it became law, as contained in our issue of May 3rd, 1878. The Bill "to amend and consolidate the several Acts respecting insurance" was originally introduced in 1876, but withdrawn, owing to the lateness of the season. It was re-introduced early in the session of 1877. The main object of the Bill was to give, as nearly as possible, absolute security to Canadian policy-holders in American and other Foreign Life Companies, while at the same time providing amply for the security of Home Companies. The gist of it was contained in the sixteenth section which, as originally introduced, read as follows:

Upon the insolvency of any company, such Court as aforesaid having jurisdiction in the Province (or sitting in the district, if such Province be the Province of Quebec or of Manitoba) where the chief agency in Canada of such company is situated, shall appoint an assignee or assignees who may be an officer or officers of such Court, who shall forthwith call upon the company to furnish a statement of all its outstanding policies in Canada, and upon all such policy-holders to file their claims; and upon the filing of the claims before the assignees, the parties interested shall have the right of contestation thereof, and the right of appeal from their decision to such Court as aforesaid, according to the practice of such Court; and all policy-holders in Canada shall be entitled to claim for the full net values of their several policies at the time (including bonus-additions and profits accrued) and such claims shall rank with judgments obtained and claims matured on Canadian policies in the distribution of the assets; and the said assignees may require the superintendent of Insurance to value, or procure to be valued under his supervision, the policies before mentioned, basing such valuation on the mortality table of the Institute of Actuaries of Great Britain and on a rate of interest at four and one half per centum per annum, and the expenses of such valuation at a rate of three cents for each policy or bonus-addition so valued shall be retained by the Receiver General from the securities held by him. Upon the completion of the schedule to be prepared by the assignees of all judgments against the company upon policies held in Canada, and of all claims upon policies matured or outstanding, as aforesaid, the Court having jurisdiction, as above provided, shall cause the securities held by the Receiver General for such company, and the assets held by the trustees as provided in the seventh section of this Act, or any part of them to be sold, or realized in such manner and after such notice and formalities as the Court may appoint; and the proceeds thereof, after paying expenses incurred, shall be distributed *pro rata* amongst the claimants according to such schedule, and balance, if any, shall be surrendered to the Company; but if any claim matures after the statement of such outstanding policies has been obtained from the company as hereinbefore provided, and before the final order of the Court for the distribution of the proceeds above mentioned, or if the said proceeds are not sufficient to cover in full all claims recorded in the schedule, such policy-holders shall not be barred from any recourse they may have either in law or equity against the company issuing the policy, other than that for a share in the distribution of the proceeds above mentioned.

This, from the policy-holders' point of view, was all that could be desired. There was, however, another side to the question, and it was contended on the part of the Companies interested, especially the "Mutuals," that it is contrary to the principles of any Mutual Society, whose members have co-ordinate rights, to grant any special privileges, or to set apart any portion of their assets for the benefit of any particular class of members to the exclusion of any other class, and that their charters and by-laws precluded them from doing so. Consequently, if the law was passed in such a shape there would be no alternative for them but to leave the country, to the serious detriment of their large body of existing policy holders. With regard to "mixed" companies, i. e., partly stock and party mutual, or, to be more definite, granting two distinct classes of policies, viz., "non-participation," and "participation," the difficulty was not quite so apparent, although regarded by many as quite as real. It could not be denied that these were no mere frivolous objections, especially as regards "Mutuals," and the influence of their numerous policy holders, and through them of the members of the Legislature, was enlisted against the Bill. The opposition was so well directed that it became quite evident that some concession must necessarily be made, at least on behalf of the "Mutuals," but the mixed Companies could not be satisfied unless their "Mutual" or "participation" class of policy holders were placed upon the same footing. Therefore, in order to meet this emergency, the following proviso was introduced, viz.:

Provided always that, in all cases of distribution of the proceeds of the deposit in the hands of the Receiver General and the assets vested in the trustees as provided for in this section, if it appears from the charter, act of incorporation, or articles of association of the company, and from the conditions of the policy, that any Canadian policy-holder claiming a share in such distribution has been insured on the "mutual" principle,—then such policy-holder shall be entitled only to claim a share in the distribution as aforesaid, at the same rate as all other holders of policies under the same conditions may be entitled to claim in the distribution of the total assets of the company, whether such be holders of Canadian policies or otherwise; but this proviso shall apply in the cases of such companies only as by the laws of the country (if such country be other than Canada) in which such company is chartered, incorporated or associated together, a Canadian policy-holder in such company is entitled to claim a share in the distribution in such country other than Canada, at the same rate as all other holders of policies under the same conditions may be entitled to claim in the distribution of the total assets of the company, and to enjoy all the rights and privileges as policy-holders which are enjoyed by the policy-holders who are natives of or naturalized in such country.

During the course of the discussion both before the Committee on Banking and Commerce, and before the "House," the words "mutual" and "participation" policy-holders were used indiscriminately and synonymously, thus showing clearly that the word "mutual" in said proviso was intended to be employed in its restricted meaning of the simple right of participation in profits. A judge, however, is not supposed to have anything to do with intentions, but takes the law as he finds it in the Statute Book, and interprets it in conformity with what appears to him to be the general scope and bearing thereof. Our space will not admit of giving the full text of the judgment, but the following extracts will show the learned judge's views upon the first point:

Considering that it appears by the Charter of the company and by the Acts of the State of New York, chap. 463, that said insurance company is an incorporated company, and that the contract of insurance between Canadian policy-holders and said corporation has been made on one side by said corporation, and on the other side by said insured, and that the said insured are not members of said company;

Considering that mutual insurance, or insurance on the mutual principle, consists in the reciprocity of obligations of the insured, who reciprocally insure;

Considering that Canadians insured in said company have not contracted any obligation as insurers of their co-insured in said company, and that there is no reciprocity of obligations on the subject of insurance;

Considering that the allowance which was to be made to the insured, according to the