vessel was $5,000, it became necessary for him to effect a re-insurance, and he immediately directed his clerk to write a memorandum of application and acceptance on the books of the Canada Fire and Marine Insurance Company for a re-insurance for $2,700, which was done, but the clerk whose duty it was to endorse the particulars on the open policy, prepare the certificate, and report the transaction in the daily return, unintentionally omitted to do so, and no notice of the re-insurance was given to the re-insuring company until after the loss occurred.

Held, affirming the decree of PROUDFOOT, V. C., that the defendants were not liable, as the application and acceptance of the risk were, under the circumstances, sufficient to make a binding contract of re-insurance.

Appeal dismissed.

From C. C. Simcoe.] [March 2

Barrie Gas Company v. Sullivan.

Contract.

The defendant contracted with the plaintiffs to sink an artesian well at seventy-five cents a foot. Having sunk a distance of one hundred and sixty feet, an impediment occurred, and defendant refused to proceed with the work.

Held, that he was entitled to be paid for the work done, as the evidence did not show that he agreed that he should receive nothing unless he succeeded in finding water.

Pepler for the appellant.

McMichael, Q. C., for the respondent.

Appeal allowed.

From Q.B. and C.P.] [March 3.

Wright v. Sun Mutual Insurance Co.

Insurance Policy—Want of seal—Estoppel—Departure.

The policy sued on in this case was issued by the Company without the corporate seal being affixed, although the attestation clause stated that the Company had thereunto affixed its seal. The Act of Incorporation of the Company provided that "all policies ..... shall be signed, ... and being so signed and countersigned, and *under the seal of the Company*, shall be deemed valid and binding upon them." *Held* affirming the judgments of the Queen's Bench and Common Pleas, that the policy was a valid insurance contract notwithstanding the absence of the seal. The declaration was on a policy of insurance and to the plea of "*non est factum*," the plaintiff replied, setting out that the policy was issued and acted upon by all parties as a valid policy, and that the seal was inadvertently omitted to be affixed, and claiming that the defendants should be estopped from setting up the absence of the seal or ordered to affix it. *Held* a good replication, and not a departure from the declaration.

Bethune, Q. C., for appellant.

H. J. Scott, for respondent.

Wright v. London Life Insurance Co.

This case was similar to the preceding, except that the statute incorporating the Company provided that "no contract shall be valid unless made under the seal of the Company, and signed ..... except the interim receipt of the Company." *Held*, that the policy was, nevertheless, binding, and (*per* Patterson, J.,) would be construed if necessary, as an interim receipt.

Bethune, Q. C., for appellant.

H. J. Scott, for respondent.

QUEEN'S BENCH.

IN BANCO—HILARY TERM.

Canadian Bank of Commerce v. Green et al.

Principal and surety—Negligence of creditor—Discharge of surety.

Defendants were maker and endorser respectively of a promissory note for the accommodation of D., who discounted it with the plaintiffs, they having knowledge of the facts.

On the maturity of the note plaintiffs handed it to D., who was their solicitor, for