

the company, and sued for the appointment of a referee to take account and report to the court whether he had so received his share. It was charged by the plaintiff that in November, 1876, he complained to the company's agent at Toronto that he was not receiving his share of the profits, and that the president admitted, in correspondence, that for a year or two the profits had not all been divided, but that the undivided surplus had been invested and that he would receive his proportion at the settlement of the policy or before. The defendant company admitted \$2,598 as due the plaintiff, which they stood ready to pay, and claimed that in the final dividend and in those from year to year he had received his full share of the divisible profits. It was admitted that surplus profit had not all been divided some years since 1871, but it was urged that the company had the right to hold over a portion of the apparent surplus from year to year to ensure stability, and that at the maturity of his contract each policyholder would receive his share. It was urged that the actuary draws up a plan of dividend, and submits it to the directors for approval. The question for decision was whether the plaintiff was bound to submit to the discretion of the actuary and directors in this regard, or whether he was entitled to an account, fraud not being charged. The judge held that the plaintiff is bound to acquiesce in the discretion of the actuary and directors *bona fide* exercised, and to take his share of what is allotted or apportioned as divisible surplus, and that his case is not helped by the brief statements cited from the company's leaflets, nor by the president's letter of November, 1876. He also adverted to the inconvenience of such a company being subjected to similar suits by its 50,000 policyholders, and dismissed the action with costs.

#### FIRE INSURANCE.

CALIFORNIA SUPREME COURT. *Farnum et al. vs. Phoenix Ins. Co. of Brooklyn.* (Pacific Reporter.)

**Credit.**—An express provision in the policy, that the company shall not be liable thereon until the premium is actually paid, is waived by the unconditional delivery of the policy to the insured under an agreement that a credit shall be given for the premium. An agent who has power to countersign and deliver policies, and who is responsible to the company for the collection of all premiums on policies issued by him, binds the company by an agreement to give credit on the premium for a certain time, though he is expressly authorized to give such credit only for a shorter time.

**Cancellation.**—A company cannot cancel a policy for failure of insured to fulfill certain conditions without giving notice to the insured, and a notice sent by mail is ineffectual unless received.

**Waiver.**—A provision in the policy, that "the use of general terms or anything else less than a specific agreement, clearly expressed and endorsed on this policy, shall not be construed as a waiver" of any condition, did not have the effect to render the waiver invalid as not endorsed on the policy, since the agent had ostensible authority to waive the endorsement.

**Arbitration.**—A provision in the policy, that the damage "may be determined by mutual agreement, or, failing to agree, the same shall be submitted to arbitration," does not require arbitration unless the parties fail to agree; and the fact that the company, when proofs of loss to a certain amount were furnished, made no objections to the amount, but denied its liability on other grounds, and denied the existence of the policy, is sufficient proof that the company acquiesced in the amount of the loss and waived submission to arbitration.

**WANTED**—By a gentleman of long experience, a position as Inspector for a Fire Insurance Company. References, capability and character undoubted. Address "Inspector," care INSURANCE AND FINANCE CHRONICLE.

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## THE EQUITABLE LIFE ASSURANCE SOCIETY.

### ANNUAL STATEMENT.

JANUARY 1, 1890.

ASSETS,	-	-	\$107,150,309.12
LIABILITIES,	-	-	\$4,329,234.92
SURPLUS, 4% -	-	-	22,821,074.20
" 4 1/2% -	-	-	29,063,684.00
NEW ASSURANCE,	-	-	175,264,100.00
OUTSTANDING ASSURANCE,	-	-	631,016,666.00
INCOME,	-	-	30,393,288.28

H. B. HYDE, President.

**SEARGENT P. STEARNS, Manager.**

183 St. James Street, MONTREAL.