

the premium paid and the policy forwarded to the agent with instructions to reconcile a discrepancy between the application and the doctor's return as to D.'s age before delivering it. The agent then ascertained that the age of 64 given in the application should have been 65, and obtained from D. the additional premium required for a \$1,000 policy at that age. A new policy was sent by the head office to the agent who did not deliver it on hearing that D. was ill. She died a few days later. The beneficiary brought action for specific performance of the contract to deliver a policy for \$1,000 or for payment of that amount. A condition of the policy sent to the agent was that it should not take effect until delivered, the first premium paid and the official receipt surrendered during the lifetime and continued good health of the assured.

*Held*, affirming the judgment of the Supreme Court of New Brunswick (43 N.B. Rep. 580), and of the trial Judge (43 N.B. Rep. 325), Davies and Brodeur, JJ., dissenting, that there was no completed contract of insurance between the company and D. at the time of the latter's death as the condition as to delivery and surrender of the receipt during the lifetime and continued good health of the assured was not complied with. *North American Life Assurance Co. v. Elson*, 33 S.C.R. 383, distinguished.

Appeal dismissed with costs.

*Daniel Mullin*, K.C., for appellam; *Fred. R. Taylor*, K.C., for respondents.

Ont.]

GILLIES v. BROWN.

[June 24.]

*Debtor and Creditor—Surety—Statute of Frauds—Advances to Company—Third party's promise to pay.*

B., a director of a mining company advanced money for the company's purposes which G., the president and largest shareholder, orally agreed to pay.

*Held*, affirming the decision of the Appellate Division, (35 Ont. L.R. 218) which reversed the judgment for the defendant at the trial (34 Ont. L.R. 210), Idington, J., dissenting, that this was not a promise to pay a debt of the company and void as a contract by virtue of the fourth section of the Statute of Frauds; that G. was a primary debtor for