INSURANCE DECISIONS.

In our last issue, the case of Nicholson *vs.* Phœnix Insurance Company, should have read, "Phœnix Mutual Insurance Company (of Toronto)."

PROVINCE OF QUEBEC.—COURT OF QUEEN'S BENCH.

MONTREAL, January 26, 1881

DORION, C.J., MONK, RAMSAY, CROSS, BABY, JJ.

FLETCHER (plff. below), Appellant & THE MUTUAL FIRE INSURANCE CO. FOR STANSTEAD & SHERBROOKE COUNTIES (defts. below), Respondents.

Procedure—Motion in arrest of Judgment to be made before Court of Review.

The appeal was from a judgment of the Superior Court, at Sherbrooke, granting a motion for a new trial.

The action was brought for $800, amount of respondents' policy, and the case being tried before a special jury, the appellant obtained a verdict for $600.

The respondents then gave notice of three motions, one asking for a new trial, a second in arrest of judgment, and the third for judgment *non obstante veredicto.*

The second of these motions—that in arrest of judgment—was presented to the Superior Court at Sherbrooke, and was granted. It was from this judgment that the present appeal was taken. (The other two motions according to the notice, were to be presented before the Court of Review at Montreal.)

The appellant, among other grounds, contended that the Court, consisting of one judge, could not legally adjudicate upon a motion in arrest of judgment.

The appeal was maintained, and the judgment reversed unanimously. The judgment reads as follows:—

"Considering that under Art. 423, C.C.P., as amended by 34 Vict. ch. 4, sec. 10, and by 35 Vict. ch. 6, sec. 13, and under the provisions of Art. 424, all motions for new trial, for judgment *non obstante veredicto*, and in arrest of judgment, must be made before three Judges of the Superior Court sitting in Review, and that a single Judge sitting in the Superior Court had no jurisdiction to hear and adjudicate on the motion in arrest of judgment made in this cause;

"And considering further that the said motion in arrest of judgment is not based on any of the grounds for which a motion in arrest of judgment can be made;

"And considering that there is error in the judgment rendered by the Superior Court sitting at Sherbrooke on the 20th November, 1878;

"This Court doth reverse the said judgment of the 20th November, 1878, and doth reject the said motion in arrest of judgment, and doth condemn the respondents to pay to the appellant the costs incurred as well on the said motion as on the present appeal, and the Court doth order that the record be remitted to the Court below, in order that such further proceedings may be had as to justice may appertain."

Judgment reversed.

PROVINCE OF ONTARIO—COURT OF QUEEN'S BENCH.

IN BANCO.—HILARY TERM.

NEILL, ADMINISTRATRIX v. THE UNION MUTUAL LIFE INSURANCE CO.

Life Policy—Overdue Premium—Payment.

J. N. was insured with the Defendants by a policy dated 8th May, 1877, on which quarterly payments were due on 10th Feb., May, Aug., Nov. in each year. The policy among others contained the following conditions:—"If any premium, &c., shall not be paid when due, the consideration of this contract shall be deemed to have failed, and the company shall be released from liability; and the only evidence of payment shall be the receipt of the company, signed by the President or Secretary." "If for any reason the premium is received after it has become due, it is upon the express condition that the party is in good health, and of correct, sober and temperate habits, otherwise the policy shall not be put in force, &c." "In case any note, cheque or draft, given towards the payment of any premium, shall not be paid at maturity, this policy lapses in the same manner as upon nonpayment of the premium."

McN., the general agent of the company at Toronto, was in the habit of receiving payment of premiums after they were due, of which the company were aware, and did not disapprove; on the 24th September, 1879, a cheque was given by the assured's firm to McN., with the understanding that it was to be held until there were funds, as he had often done formerly; it was several times presented and dishonored. On the 8th October McN's successor in office notified the assured that if the cheque were not paid at once the receipt would be returned to the company. On the 21st of Oct., in answer to S., the agent's messenger, assured's partner said that there were funds for the cheque at the bank; but as it was nearly three o'clock, S. said he would wait till the morning. That evening the assured was killed, and the cheque was therefore not presented, but was retained by the company. The Plaintiff produced all premium receipts, except that of 10th Aug., 1879.

The Jury found that the Defendant's agent had waived the payment of the premtum due 10th Aug. by receiving the cheque, and a verdict was entered for the Plaintiff.

Held, (Cameron, J., dissenting), that though the defendant appeared willing up to the 21st October, to receive payment and keep up the policy, yet there was no waiver of the terms of payment, and no existing agreement or anything binding them to extend the time for payment and remain liable, and that the cheque was not taken in payment.

Per CAMERON, J. The application by the defendant's agent on the 21st October, for payment and the retention of the cheque, was equivalent to accepting a new cheque, which (there being funds therefor) would be payment.

MOFFATT v. THE RELIANCE MUTUAL LIFE ASSURANCE SOCIETY.

Life Policy — Authority of General Agent — Overdue Premium—Promissory Note.

J. M. was insured by a policy under which thirty days grace was allowed for payment of premiums. A lapsed policy might be renewed within a year upon proof of health, payment of arrears and a fine. S. was the resident secretary in Canada of the defendants, with the powers of a general manager. There was a local board of directors in Canada, but S. communicated directly with the board in England, took his instructions from them, and laid before them monthly accounts, from which it could be ascertained whether premiums falling due the preceding month were unpaid, the assured being unable to pay a premium about to fall due, wrote to S., asking him to take a note at three months. S. replied: "I am sorry you require three months' time, but I suppose it must be done, although it is against our rules. I shall have to take the responsibility myself. I enclose your draft for acceptance, which please return early." He also wrote the company were very particular about overdue premiums. From this time S. accommodated the assured by taking notes, to which interest was added. On the 9th Aug., 1879, E., the cashier, of the defendants acknowledging the receipt of his letter with a blank note which had been sent to S., to be filled up for the renewal of a note about to fall due, and saying that S. was absent from town, and that as the two premiums of Nov. '78, and May, '79, were so long overdue, he would have to refer the matter to S., on his return; adding, "until the back premiums are paid, the Society is off the risk."

The death occurred on the 24th October, '79, at which time there were two notes outstanding,—one for the premium due, 30th Nov. '78, date 7th Feb. '79, at 6 months, which was unpaid; and one dated 21st June, '79, at 6 months for the premium which fell due on the 30th May, '79, which was still current. After the death, the amount of these two notes was tendered to the defendants and refused.

The Jury found that the notes were taken by defendant's agent as cash payments; that the taking of them was within his authority, that he had waived payment upon the dates the premiums were due, and a verdict was entered for plaintiff.

Held, (HAGARTY, C.J., *dissenting*), that the evidence shewed that it was within the authority of the resident secretary to accept notes in payment of premiums, and there was nothing in the evidence which would give notice to assured of any want of such authority, and the verdict ought not to be disturbed.

Per ARMOUR, J. The defendants had become aware of the acceptance of notes, and had ratified it.