McGEACHIE *v.* NORTH AMERICAN LIFE ASSURANCE CO.

Insurance — Life — Premium note — Non-payment of—Forfeiture—Election—Conditions of policy—Conduct of defendants—Evidence.

The defendants insured the life of the plaintiff's husband and issued a policy to him, taking his promissory note for the amount of the first year's premium. The note was several times renewed, and at the death of the insured, which took place within the first year, one of the renewals was overdue and unpaid. During the currency of one of the renewal notes, the insured wrote to the defendants asking them what they would let him off with by cancelling the policy, and they answered him that his request that they should cancel the policy was unreasonable. On the day before the death of the insured the defendants wrote to him that they had expected to hear from him with a remittance, and asked him to kindly give the matter his immediate attention. After the death the amount of the note and interest was tendered to the defendants, but they refused to accept it. In the application for the insurance, which was made part of the contract, it was provided that if a note should be given for a premium and should not be paid at maturity the insurance or policy should thereupon become null and void, but the note must nevertheless be paid; and indorsed on the policy was a provision that if any premium note should not be paid when due the policy should be void, and all payments made upon it forfeited to the defendants.

Held, that the policy was voidable upon default being made in the payment of the premium note, but only at the election of the defendants; that, upon the evidence, the defendants had elected not to forfeit it, but to continue it, and had treated it as subsisting up to the time of the death; that the policy was in force at the time of the death, and no subsequent act of the defendants could affect the plaintiff's claim.

Held, also, upon the evidence, that it could not be said that the defendants were at any time electing to forfeit the policy and nevertheless insisting upon the payment of the note, as they might have done under the provision in the application above mentioned.

Aylesworth, Q.C., for the plaintiff.

Wm. Macdonald for the defendants.

VILLAGE OF NEW HAMBURG *v.* COUNTY OF WATERLOO.

Municipal corporations— Bridges—R.S.O., c. 184, ss. 532, 534—Counties and villages—Rivers and streams—Width of, how ascertained.

Upon the proper construction of ss. 532 and 534 of the Municipal Act, R.S.O., c. 184, the county council is by the former provision given exclusive jurisdiction over all bridges, by whomsoever built, crossing streams or rivers over 100 feet in width, within the limits of any incorporated village in the county, and connecting any main highway leading through the county, and is by the latter provision compellable to build such bridges only where necessary to connect any main public highway leading through the county.

Regina v. *Wellington*, 39 U.C.R. 194, not followed.

The place at which the width of a stream or river is to be ascertained is the place at which the bridge crosses, and the width is to be determined by the width of the natural channel of such stream or river, taking it in its highest ordinary state.

W. R. Meredith, Q.C., for the plaintiffs.

King, Q.C., for the defendants.

DENISON *v.* MAITLAND.

Landlord and tenant—Action for arrears of rent and recovery of demised premises—Election to forfeit lease—Retraction of—Payment of rent and costs—Implied request to be relieved from forfeiture—R.S.O., c. 143, ss. 17-22—Vacant land—Evidence.

Rent under a lease made pursuant to the Short Forms Act becoming in arrear, the landlord served the statutory notice of forfeiture and brought an action against the tenants both for the recovery of the demised premises and of the arrears of rent. Before the action came to trial the defendants paid the arrears and costs.

Held, that the bringing of the action was an election on the part of the landlord to forfeit the lease, which could not be retracted by him. To enable him to get rid of the forfeiture there must have been a request on the part of the tenants, either express or implied, to be relieved from the forfeiture, and the mere payment, after the forfeiture, of rent which accrued due before would not amount to such a request.