ground that, under the facts of the case, his death was not covered by the policy. A judgment having been rendered against the company, this writ of error was brought.

The only question presented by the assignment of errors is whether, under the issues made by the pleadings, it was necessary for the plaintiffs, before they could recover, to show by evidence that they had notified the company of the death of Osterman, and made the necessary preliminary proofs required by the policy before the suit was begun. We think it was not. It is directly averred in the petition that such notice was given and proof made. The answer is to be construed as a whole. There has been no attempt to set up separate defences, such as is allowed in common-law pleadings. No direct issue is made upon the fact of notice and proof, but the whole effort is to show that, notwithstanding such notice and proof, the plaintiffs cannot recover. It is true there is a general denial of all and singular the allegations of the petition, "so far as the same may have a tendency to give said plaintiffs any right or cause of action against the respondent;" but this we understand to be no more than a denial of such averments as are inconsistent with the specific defences set out in the other parts of the answer. Taken as a whole the answer in legal effect admits that the plaintiffs must recover unless the specific defences relied on are sustained. This evidently was the understanding of all parties at the time of the trial, for the objection now insisted upon was not made until the case on both sides had been closed, and the court was about to charge the jury.

The judgment is affirmed, and as it is apparent to our minds that this writ was sued out for delay, damages to the amount of one thousand dollars are awarded in addition to interest.

Mr. Thomas J. Semmes for plaintiff in error. *Mr. J. P. Hornor* and *Mr. W. S. Benedict* for defendant in error.

McINTYRE *v.* GIBLIN.

ERROR TO THE SUPREME COURT OF THE TERRITORY OF UTAH.

No. 173. October Term, 1879. — Decided December 1, 1879.

In an action to recover damages for carelessly and negligently shooting and wounding the plaintiff, it is no error to charge the jury that in computing the damages they may take into consideration a fair compensation for the physical and also for the mental suffering caused by the injury.

Rice *v.* Edwards.

The case is stated in the opinion.

Mr. Chief Justice Waite delivered the opinion of the court.

This was a suit to recover damages for the careless and negligent shooting and wounding of Giblin, the plaintiff below, by McIntyre, the defendant. On the trial the court charged the jury that in computing the damages they might take into consideration "a fair compensation for the physical and mental suffering caused by the injury," and the only question submitted to us now is whether this charge was erroneous because the words "and mental" were included.

We think, with the court below, that the effect of this instruction was no more than to allow the jury to give compensation for the personal suffering of the plaintiff caused by the injury, and that in this there was no error.

Judgment affirmed.

Mr. Benjamin Sheeke and *Mr. S. A. Merritt* for plaintiff in error.
Mr. E. D. Hoge for defendant in error.

RICE *v.* EDWARDS.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

No. 222. October Term, 1879. — Decided April 5, 1880.

A decree in equity will not be reversed for an immaterial departure from technical rules when no harm has been done.

If a bond contains a provision that on default of the payment of interest the principal shall become due at the election of the holder, and such default takes place, the commencement of suit to collect the principal and interest and the production of the bond at the trial are sufficient proof of such election.

The case is stated in the opinion.

Mr. Chief Justice Waite delivered the opinion of the court.

This case shows that on the first day of May, 1874, Henry M. Rice applied to the Equitable Trust Company, of New London, Conn., for a loan of twenty-five thousand dollars for five years, with interest at the rate of ten per cent per annum. His application resulted in his executing to the company twenty-five bonds of one thousand dollars each, payable five years after date, with interest semiannually at the rate of seven per cent per annum. The difference between seven and ten per cent interest was taken in advance,