

IMPORTANT ACCIDENT INSURANCE CASE.**British Court of Appeal Pronounces as to Proximate and Intervening Cause.**

An accident insurance appeal case lately dismissed by the Court of Appeal, England, is of somewhat direct and timely interest in Canada, in view of recent local discussion as to the liability of casualty companies, where death occurs after illness consequent upon an accident. The case was an appeal by the Lancashire and Yorkshire Accident Insurance Company from the judgment of a lower court, in favour of the administratrix of the estate of Ambrose Herbert Etherington, deceased, under a personal accident insurance policy dated February 25, 1900.

By the terms of the policy the appellants undertook that if at any time during the continuance of the policy the insured should sustain any bodily injury caused by violent, accidental, external, and visible means, then:—(a) In case such injury should, within three calendar months from the occurrence of the accident causing such injury, directly cause the death of the insured, to pay to the legal personal representatives of the insured the capital sum of one thousand pounds. The policy further provided as follows:—Provided always and it is hereby as the essence of the contract agreed as follows:—3. That this policy only insures against death.....where accident within the meaning of the policy is the direct or proximate cause thereof, but not where the direct or proximate cause thereof is disease or other intervening cause, even although the disease or other intervening cause may itself have been aggravated by such accident, or have been due to weakness or exhaustion consequent thereon, or the death accelerated thereby.

A Hunting Accident and Pneumonia.

On February 13, 1907, the insured while hunting was violently thrown to the ground, falling upon his left shoulder and side. Owing to the dampness of the ground he was, on remounting, wet to the skin. According to the arbitrators upon whose finding the first judgment was based, the insured suffered no trauma or wound to the body or lung, but did suffer a severe shock to the nervous system whereby the general vitality of his body was impaired. The cumulative effect of this, and of the further exertion of riding home (but not the effect of either exclusively of the other) was to lower the general vitality of his body to an extent which made the onset of the pneumo-coccus possible, and the arbitrators found that the onset thereupon took place one-and-a-half hours after the accident. It is recognized by medical experts that the pneumo-coccus is generally present in the respiratory tracts of the normally healthy, but remains innocuous until the vitality of the lung is lowered either directly and locally by physical injury to it, or indirectly by the general vitality of the body being lowered. The continuance of impairment of vitality allows the germs to multiply to an extent causing the condition recognized as pneumonia. Recovery of vitality may so effectually check the multiplication as to ward off the attack.

It was shown by the company that on February 14, the assured, against the opinion of his medical attendant, being still in great pain, took a journey

occupying one hour and half by train to London. He then transacted his business until 6 p.m., when he developed the first physical signs of pneumonia. The arbitrators found as a fact that he was by 6 p.m., on February 14, 20½ hours after the accident, suffering from fully-developed pneumonia, from which he died on February 20. The journey to London and a day's work in the condition in which he then was diminished his resistance to the pneumo-coccus, so increasing the severity of the attack. Nevertheless the lower court held, though not without doubt, that the special finding of the arbitrators had brought the facts of the case within the terms of the policy, and that the death was caused by an accident within the meaning of the policy, and gave judgment for the claimant.

Appeal Confirms Judgment against Company.

The company then took the case to the higher court, which however dismissed its appeal. Lord Justice Vaughan Williams (whose views were concurred in by Lord Justice Farwell and Lord Justice Kennedy) in giving his finding stated: that it was well established that in the construction of any policy of insurance, whether life, fire, or marine, any really ambiguous clause should be construed against rather than in favour of the insurance company. In this case he would say that to adopt the construction of the policy put forward by the insurance company, it would lead to this result, that it would be very difficult to establish the liability of an insurance company on a policy in any case except where death had resulted in what he might call death on the spot. In every other case there was always the possibility of there having been some other intervening cause. He thought that it was impossible to limit the proximate cause of death to one fact of the accident. The truth was that an accident ordinarily, according to its nature, produced certain consequences; and, if death resulted as the final step in the consequences, the whole train of events was the proximate cause of the death which resulted. In his opinion "intervening cause" in this policy meant a cause independent of the accident and its ordinary consequences. Notwithstanding the fact that it would be natural to construe the words "weakness or exhaustion consequent thereon" as covering a case where the weakness or exhaustion was brought about by the accident itself, he was of opinion that in this policy those words ought not to be so construed.



AT THE MEXICAN POWER COMPANY meeting on Wednesday of this week the following new board of directors was elected with one ballot. Dr. F. S. Pearson, president; Sir William Van Horne, vice-president; Messrs. George Flett, R. C. Brown, Z. A. Lash, K.C.; J. M. Limantour, E. R. Wood, Walter Gow, and Miller Lash.

In reply to rather spirited criticism of the interests now in control, Mr. J. H. Plummer said: "I speak as a shareholder when I say that I think we are going on under new control of an independent directorate, independent of any personal or selfish interests. While I regret that the Power Company is going into new hands, I hope we will get equally satisfactory government."