

MARCH 13TH, 1905.

DIVISIONAL COURT.

WALLER v. INDEPENDENT ORDER OF FORESTERS.

Trial—Life Insurance—Contract—Validity—Suicide of Assured—Issue as to Sanity—Separate Trial—New Trial of Whole Case Directed by Appellate Court.

Appeal by defendants from judgment of MEREDITH, J., ante 16.

W. H. Hunter, for defendants.

J. C. Makins, Stratford, for plaintiff.

The judgment of the Court (MEREDITH, C.J., ANGLIN, J., MAGEE, J.), was delivered by

MEREDITH, C.J.—The defendants are a friendly society incorporated by special Act of the Parliament of Canada, and the action is by plaintiff, as widow and administratrix of the estate of her deceased husband, John Waller, to recover from defendants \$3,000, which, as is alleged in the statement of claim, defendants, “by a benefit certificate or insurance policy issued by them, agreed to pay as upon a contract of life insurance to the administratrix of the said John Waller at his decease.”

Defendants by their statement of defence alleged that it was a term or condition of the contract of insurance that they should not be liable for the sum insured if the assured should commit suicide, whether he should be sane or insane at the time, and that the deceased did commit suicide, but they bring into Court \$200, and say that it is the whole amount for which they are liable according to the constitution and laws of the society, which, as they allege, form part of the contract of insurance.

When the case came on for trial, the parties were not ready to try the question whether the deceased was sane when he committed suicide, and the trial was proceeded with as to the other branch of the case, viz., whether the term or condition relied on by defendants formed part of the contract of insurance, and, after hearing the evidence adduced, the trial Judge reserved his judgment, and after consideration determined that the term or condition relied on by defendants did not form part of the contract of insurance, and was not, by reason of the provision of sec. 144 of the Ontario Insurance Act, R. S. O. 1897 ch. 203, binding upon the