

death within ninety days from the happening thereof, and provided that "the insurance should not extend to hernia, &c., nor "to any bodily injury happening directly or indirectly in consequence of disease, nor to any death or disability which may "have been caused wholly or in part by bodily infirmities or "disease, existing prior or subsequent to the date of this contract, "or by the taking of poison, or by any surgical operation or "medical or mechanical treatment, nor to any case except where "the injury aforesaid is the proximate or sole cause of the disability or death."

The policy also provided that "in the event of any accident or "injury for which claim may be made under this policy immediate notice must be given in writing, addressed to the manager "of this company at Montreal, stating full name, occupation and "address of the insured, with full particulars of the accident and "injury; and failure to give such immediate written notice shall "invalidate all claims under this policy."

On the 21st March, 1886, the insured was accidentally wounded in the leg by falling from a verandah, and within four or five days the wound, which appeared at first to be a slight one, was complicated by erysipelas, from which death ensued on the 13th of April following. The local agent of the company at Simcoe, Ontario, received a written notice of the accident some days before the death, but the notice of the accident and death was only sent to the company on the 29th April, and the notice was only received at Montreal on the 1st of May. The manager of the company acknowledged receipts of proofs of death, which were subsequently sent without complaining of want of notice, and ultimately declined to pay the claim on the ground that the death was caused by disease, and therefore the company could not recognise their liability. At the trial there was some conflicting evidence as to whether the erysipelas resulted solely from the wound, but the Court found on the facts that the erysipelas followed as a direct result from the external injury. On appeal to the Supreme Court:

*Held*, reversing the judgment of the Court below, Fournier and Patterson, JJ., dissenting, that the company had not received sufficient notice of the death to satisfy the requirements of the policy, and that by declining to pay the claim on other grounds there had been no waiver of any objection which they had a right to urge in this respect.

Per Fournier and Patterson, JJ., affirming the judgment of