SECOND DIVISIONAL COURT. FEBRUARY 18TH, 1916.

*MARTIN v. PROTECTIVE ASSOCIATION OF CANADA.

Insurance—Accident Insurance—Insured Injured by Reason of Jump from Moving Train—Want of Care—Indirect Result of Intentional Act—Voluntary or Negligent Exposure to Unnecessary Danger.

Appeal by the defendants from the judgment of the County Court of the County of Carleton in favour of the plaintiff for the recovery of $650, under a policy of accident insurance, for the loss of a hand caused by the plaintiff falling when jumping from a moving train.

The appeal was heard by MEREDITH, C.J.C.P., RIDDELL, LENNOX, and MASTEN, JJ.

A. H. Armstrong, for the appellants.

H. S. White, for the plaintiff, respondent.

MEREDITH, C.J.C.P., delivering judgment, said that the contract provided for the payment of $650 for the loss of a hand; and also that the insured should at all times exercise due care and diligence for his personal safety and protection.

It was admitted that the law of this Province relating to the conditions of a contract of this character was applicable to this contract; that one question now in issue was, whether the plaintiff was disentitled to the compensation by reason of his want of care; and that the law upon that question was, as applied to the circumstances of this case, that, so to disentitle the plaintiff, his injury must have been "the indirect result of his intentional act," such act "amounting to voluntary or negligent exposure to unnecessary danger."

That the injury was the indirect result of his intentional act was undeniable; and it could be nothing else than a voluntary exposure to unnecessary danger.

Reference to Cornish v. Accident Insurance Co. (1889), 23 Q.B.D. 453; Garcelon v. Commercial Travellers' Eastern Accident Association (1907), 195 Mass. 531.

If the man's life, or a great fortune depended upon it, one might not blame him for taking the risk; but, even in such a case, the risk could not be justly put upon the insurance company. In this case the plaintiff travelled by a train which he knew did not stop at the station near his home, and jumped from the moving train when near his home merely because he