

I think the judgment should be set aside and the action dismissed, both with costs if demanded.

HON. MR. JUSTICE LEITCH:—I agree.

NOTE. In view of the fact that in the result the appeal was dismissed the dissenting Justices withdrew their judgment as to costs, and agreed that the dismissal of appeal directed by the Court should be with costs.

HON. SIR JOHN BOYD, C.

NOVEMBER 10TH, 1913.

DAVIS v. LOCOMOTIVE ENGINEERS.

5 O. W. N. 279.

Insurance—Accident Insurance—Death of Insured—Delay in Making Claim—Disputed Cause of Death — Defendants' Tribunal not Satisfied that Death Caused by Accident—Evidence—Refusal to Permit of Autopsy—Non-compliance with By-laws of Defendants—Dismissal of Action.

BOYD, C., dismissed an action brought against the defendants upon a policy of accident insurance, holding that the finding of the defendant's own tribunal that the plaintiff had not proven that the death of the insured was caused by an accident was warranted by the evidence.

Action by the widow of Frederick Davis, to recover \$2,000 upon a policy of accident insurance, the plaintiff's husband, the assured, having died, as the plaintiff alleged, as the result of an accident.

C. St. Clair Leitch, for plaintiff.

L. F. Heyd, K.C., and R. H. McConnell, for defendants.

HON. SIR JOHN BOYD, C.:—The defendants are a fraternal benefit society, incorporated in the United States, but doing business in Canada, made up of policyholders with certificates of membership and confined to locomotive engineers who are in the brotherhood.

Policies are issued for life insurance and accident insurance and the deceased Davis was insured in both kinds.

He died on 15th November, 1910; proof of death by disease certified by the physician as "disease of the heart and vessels causing heart failure" was sent in by the local