

morning, by the engine-driver of the south bound train, who loudly sounded the whistle, but the train men saw no sign of life, and the body was run over and so mangled as to make it impossible to tell whether he was alive or dead when struck. On the 6th June, 1898, his son informed defendants' agent at Orillia, and he wrote to the manager at the head office for Canada in Montreal, informing him of the death and stating that the assured "seems to have been walking on the track to or from the station when he was overtaken by a train," and the letter asked for claim papers. The manager in reply forwarded the usual papers, which were completed and returned at once.

H. Cassels and R. S. Cassels, for the appellants.

G. Lynch-Staunton, K.C., and L. F. Stephens, for the plaintiff.

ARMOUR, C.J.O.—The letter of the agent and the fatal death claim forms furnished constitute sufficient notice and particulars to satisfy the condition in the policy that notice and full particulars of the accident must be given within 21 days to the corporation: *Brawstein v. Accidental*, 1 B. & S. 705. In December, 1898, the manager wrote plaintiff that, under the circumstances attending the death, the defendants did not consider themselves liable owing to clause B2 of the policy. . . . This amounted to a waiver of fuller particulars or proofs: *Boyd v. Cedar Rapids Ins. Co.*, 70 Iowa 325; *Morrow v. Lancashire*, 29 O. R. 377, 26 A. R. 173; *McCormack v. Royal Ins. Co.*, 163 Penn. St. 184. There is no doubt that the death of deceased was from bodily injury caused by violent external and visible means, but the question was whether it was accidental, and of this the plaintiff was bound to satisfy the jury. "Accidental" is defined by R. S. O. ch. 203, sec. 152. Three causes of death were suggested by the evidence: (1) death at the hands of another; (2) death by his own hands; (3) death by a locomotive engine, through voluntary or negligent exposure to unnecessary danger. There was evidence in support of each of these causes which must have been submitted to the jury: *Trew v. Railway Passengers' Assce. Co.*, 5 H. & N. 211, 6 H. & N. 839; *Fidelity Co. v. Wein*, 182 Ill. 496; *Anthony v. Mercantile*, 162 Mass. 354. The charge at the trial called attention to all the facts, and has not been questioned. The jury found that there was "no evidence to satisfy us that this man came to his death by his own hand, but that he came to his death through external injuries unknown to us." This is not a finding that death was "accidental"