

for services rendered by the plaintiff in faith of such contract, and had directed a reference to fix the amount, which had not been fixed prior to the last appeal.

*Hesseltine v. Nelles*, 10 D.L.R. 832, 47 Can. S.C.R. 230, referred to; *McDonald v. Belcher*, [1904] A.C. 429, and *St. Jean v. Molleur*, 40 Can. S.C.R. 139, applied.

*S. B. Wood*, K.C., and *O. M. Biggar*, K.C., for appellant. *J. H. Leech*, K.C., and *W. L. Scott*, for respondents.

Ont.]

[Feb. 3.

WADSWORTH V. CANADIAN RY. ACCIDENT INS. CO.

*Accident insurance—Construction of policy—Special conditions—Increased and diminished indemnity—Injuries from fits causing death.*

In an accident policy an insurance company agreed to pay the insured the principal sum in case of death or specified injuries, double that sum if such death or injuries occurred under certain conditions and one-tenth for "injuries happening from fits causing death." W., holder of the policy, went at night with a lantern to an outbuilding of the fishing club which he was visiting. Shortly after the outbuilding was seen to be on fire. The fire was extinguished and W. brought out badly burned in the effects of which he died the next day. In an action on the policy the trial judge found as a fact that W. had been seized with a fit and in that condition caused the fire. This finding was concurred in by the two provincial appellate courts. The trial judge held that the company was liable for one-tenth only of the insurance. The Divisional Court reversed this ruling (26 O.L.R. 537).

*Held*, affirming the judgment of the Appellate Division, Duff and Anglin, JJ., dissenting, that the injuries causing the death of W. happened from a fit within the meaning of the clause in the policy diminishing the indemnity to be paid. *Winspear v. Accident Ins. Co.*, 6 Q.B.D. 42, and *Lawrence v. Accident Ins. Co.*, 7 Q.B.D. 216, distinguished.

Per Fitzpatrick, C.J.:—The clause diminishing the indemnity payable is not an exempting clause, but one of the three separate contracts between the insurers and insured as to amount of liability.