FEBRUARY 10TH, 1913.

*YOULDEN v. LONDON GUARANTEE AND ACCIDENT CO.

Accident Iusurance—Death Claim—Cause of Death—Injury from Lifting Heavy Weight—Evidence—Statement of Deceased—Admissibility—Conditions of Original Policy—Non-compliance with—Renewal Receipt—Fresh Contract—Reference to Original Policy—Sufficiency—Insurance Act, R.S.O. 1897 ch. 203, sec. 144.

Appeal by the plaintiff from the judgment of MIDDLETON, J., 26 O.L.R. 75, 3 O.W.N. 832.

The appeal was heard by GARROW, MACLAREN, MEREDITH, MAGEE, and HODGINS, JJ.A.

J. L. Whiting, K.C., for the plaintiff.

W. N. Tilley and C. Swabey, for the defendants.

MEREDITH, J.A.:—The insurance in question originated in 1902, and was evidenced by the policy No. 65996. That insurance seems to have been renewed from year to year, and was in force when the insured person died in 1909; and his death took place under such circumstances that, admittedly, the plaintiff has no legal claim against the defendants under the policy. How then can she recover? What sort of difficulty does the case present?

The contention is, that the policy must be disregarded, and that the contract of insurance must be taken to be the mere renewal receipt; and, as no conditions are set out in or upon it, none are applicable to the case. But how can any such contention reasonably be made? The ''accident renewal receipt'' is, upon its face, and was in fact, nothing but a receipt for the premium by which the policy No. 65996, was renewed for another year. Indeed, without the policy, the plaintiff, suing in her own right only, as she does, would have no right of action. The ''insurance contract,'' was the contract which was first made in 1902, and thereafter renewed from year to year, the contract evidenced by the policy No. 65996, and none other; that contract, admittedly, complies with the requirements of the law; and, under it, admittedly, there is no right of action. The premiums might just as well, as a matter of law, have been paid without any re-