AN ACCIDENT INSURANCE CASE.

In the case of North American Accident Insurance Company vs. Newton, the Supreme Court of Canada was called on to decide an interesting point in reference to employers' liability policies.

It appeared from the evidence in the case that the N. A. Company issued an ordinary indemnity policy to the firm of Nelson & Foster to protect the latter against loss from liability for damages on account of bodily injuries suffered by the employees of Nelson & Foster, with a proviso in the policy that the North American Accident Insurance Company would not be liable except for a loss actually sustained and paid in money by Nelson & Foster in Satisfaction of a judgment recovered against them by the injured employee after trial of the issue.

One Fornell, an employee of Nelson & Foster, was injured while in their employ, and started suit against the firm.

Then, while the suit was going on, Nelson & Foster made an assignment for the benefit of their creditors under the laws of the Province of Manitoba to one Newton.

Fornell succeeded in getting a judgment against Nelson & Foster, but Newton, the assignee, could not pay the judgment in full, as there was not enough to pay the creditors one hundred cents on the dollar, even before Fornell recovered his judgment.

At this stage of the game a man named Brandon appeared on the scene, and, while he was not a creditor of Nelson & Foster, he was, apparently, a friend in need for poor Fornell, as he (Brandon) gave Newton money enough to pay Fornell's judgment.

Newton then brought suit against the Insurance Company under the indemnity policy for the full amount paid to Fornell, but the Company fought the claim on the ground that it was not liable to pay the full amount of Fornell's judgment.

"If Fornell had recovered his judgment against Nelson & Foster and the latter had made no assignment, but had paid Fornell's judgment in full, we would be bound to pay it in full," the Insurance Company argued, "but, when Nelson & Foster made an assignment Fornell would be entitled to no more on the dollar than Nelson & Foster's estate would pay, and that's all that we are bound to pay, namely, the amount of Fornell's dividend from the insolvent estate. This man Brandon by coming in and making a present to the assignee of the estate sufficient to pay Fornell's claim in full, can't put us in any worse position. If Brandon wants to be charitable and kind-hearted and all that sort of thing, he's perfectly welcome to use his own money as far as he likes—but not ours."

The Supreme Court of Canada, however, decided that the Insurance Company was bound to pay the full amount of the claim on the ground that the liability of the Company became absolute as soon as the Fornell judgment was paid. Judge Anglin, in delivering judgment, held that "under the terms of the policy sued upon actual payment by the assured of a liability of the class insured against imposed upon him by law was not merely a condition precedent to his right of action, but the very thing against loss from which the insurance was effected. In other words, not only would no right of action against the insurer arise until such payment but no actual or absolute liability on its part would exist.

"Nevertheless, when his employee, Fornell, was injured, a contingent right arose in favour of the assured against the insurer and there was a corresponding contingent liability on the part of the latter. Upon payment of whatever liability the law imposed in consequence of the injury sustained by Fornell, ascertained by due process, that contingent right, as well as the correlative contingent liability, would become absolute. This was the situation when the insured, having become insolvent, made an assignment for the benefit of his creditors under the 'Assignments Act'. I am satisfied that the contingent right of the assured against the company thereupon passed to his assignee."

On the point that the amount of Fornell's judgment had been paid by Brandon, the Court disposed of that argument in the following words :—

"Nor is the Insurance Company entitled to inquire, or to base a defence upon, the source from which the money paid by the assignee to Fornell came, any more than he would be entitled to make a like inquiry or to raise such a defence if the payment had been made by the assured himself. It would be intolerable that a person bound to indemnify or reimburse a judgment debtor should escape liability because the latter had borrowed or had received as a gift from some kindly disposed friend either of himself or of the judgment creditor the money required to meet his obligation. The assignee has paid a judgment against the assured-assignor as he was entitled to do in the interest of all his cestuis que trustent—the other creditors as well as the debtor. He is accountable only to them for the money so expended. The source from which it came is their business, but not that of the insurer."

SLOUCHY INDIFFERENCE TO BUSINESS.

An agent of a certain insurance company proved to be unsatisfactory and a special agent was sent out to discontinue the agency. In his report to the company he said, among other things: "As another evidence of his slouchy indifference to his business, I find among the accumulated 'debris' on his desk nearly a year gathering of a very good insurance journal in unbroken wrappers, unopened, unread, and perhaps unpaid for." —Exchange.