

possible to conclude that there must be implied an agreement on the part of the third parties to indemnify the defendants . . . in order to give the transaction such efficacy as both parties must have intended it to have. There would have been no claim to be indemnified against if the defendants' agent had performed his duty to his employers, and it surely would be contrary to principle to imply an agreement by the third parties to protect the defendants from the consequences of their own carelessness.

Judgment must be entered in each action dismissing the defendants' claim against the third parties with costs.

DIVISIONAL COURT.

JULY 16TH, 1910.

COPELAND v. LOCOMOTIVE ENGINEERS MUTUAL LIFE
AND ACCIDENT INSURANCE ASSOCIATION OF
CLEVELAND, OHIO.

Accident Insurance — Locomotive Engineer — "Total and Permanent Loss of Sight"—Practical Loss of Sight—Construction of Rules of Benefit Society.

Appeal by the plaintiff from the judgment of BOYD, C., dismissing without costs an action upon an accident insurance certificate.

The plaintiff was a locomotive engineer on the Grand Trunk Railway, and on the 26th August, 1905, he suffered an accident upon the effects of which this action was based.

The plaintiff had in June, 1905, applied to become a member of the defendant association, for \$1,500 insurance; in his application he agreed to be governed by the rules and by-laws of the association — the application to "form the basis of the contract between the society and the insured." His application was accepted.

The accident caused serious and lasting injury to one eye of the plaintiff; and he made a claim upon the defendants under sec. 42 of the constitution and by-laws, which is as follows: "Any member of this association . . . sustaining the total and permanent loss of sight in one or both eyes shall receive the full amount of his insurance. In case of loss of sight, certificate must be made out on a form furnished by the association and signed by two experienced oculists. Where the eye or eyes have not been removed from the socket, certificate will be filed at home office