

The
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APPELLATE DIVISION.

FEBRUARY 15TH, 1915.

LINKE v. CANADIAN ORDER OF FORESTERS.

*Life Insurance—Proofs of Death of Insured—Waiver—Auth-
ority of Chief Officer of Society—Presumption of Death—
Evidence—New Trial—Costs.*

Appeal by the defendants from the judgment of BRITTON, J.,
ante 516.

The appeal was heard by FALCONBRIDGE, C.J.K.B., RIDDELL,
LATCHFORD, and KELLY, JJ.

G. H. Watson, K.C., for the appellants.

E. P. Clement, K.C., for the plaintiff, respondent.

THE COURT were against the appellants on the defence that formal proofs of death were not furnished; holding that the defendants' Chief Ranger had authority to waive and had waived such proofs. Upon the question of the presumption of death, also raised by the appellants, the Court took the view that the evidence of witnesses who might have seen or heard of the insured more recently than those who were called, was obtainable, and that there should be a new trial; costs of the last trial and of the appeal to be costs in the cause unless the Judge at the new trial should otherwise order; the evidence already taken to be used at the new trial if the parties desire.