the negligence of the injured party would prevent a recovery. I do not think it can be construed as conveying any such intimation. The insurance there was against a particular kind of accident; that was a railway accident, and the only question was, whether the injury was occasioned by an accident of that kind. The court held that it was, and although it mentions the fact that there was no negligence on the part of the assured, that cannot be considered as any intimation what would have been the effect of negligence if it had existed.

The general question as to what constituted an accident was considered in two subsequent cases in England. The first was *Sinclair* v. *The Maritime Passengers' Assurance Co.*, 3 El. & El. 478 (E. C. L. R. vol. 107), in which the question was, whether a sunstroke was an accident within the meaning of the policy. The court held that it was not, but was rather to be classed among diseases occasioned by natural causes, like exposure to malaria, &c., and while admitting the difficulty of giving a definition to the term accident which would be of universal application, they say they may safely assume "that some violence, casualty, or *vis major* is necessarily involved." There could be no question in this case that all these were involved.

In the subsequent case of *Trew* v. *Railway Passengers' Assurance Co.*, 6 Hurl. & Nor. 839, the question was, whether a death by drowning was accidental. The counsel relied on the language of the former case, and urged that there was no external force or violence. But the court held that if the death was occasioned by drowning, it was accidental within the meaning of the policy. And in answer to the argument of counsel they said: "If a man fell from a housetop, or overboard from a ship, and was killed; or if a man was suffocated by the smoke of a house on fire, such cases would be excluded from the policy, and the effect would be, that policies of this kind, in many cases where death resulted from accident, would afford no protection whatever to the assured. We ought not to give to these policies a construction which will defeat the protection of the assured in a large class of cases."

There was no suggestion that there was any question to be made as to the negligence of the deceased, and yet the court said: "We think it ought to be submitted to the jury to say whether the deceased died from the action of the water, or natural causes. If they are of the opinion that he died from the action of the water, causing asphyxia, that is a death from external violence within the meaning of the policy, whether he swam to a distance and had not strength enough to regain the shore, or on going into the water got out of his depth."

Now either of these facts would seem to raise as strong an inference of negligence as an attempt to get upon cars in slow motion. Yet the court said that although the drowning was occasioned by either one of them, it would have been a death within the meaning of the policy, and the plaintiffs entitled to recover. I cannot conceive that it would have made such a remark except upon the assumption that the question, whether the injured party was guilty of negligence contributing to the accident, does not arise at all in this class of cases. I think that is the true conclusion, both upon principle and authority, so far as there is any upon the subject; and the only questions are, first, whether the death or injury was occasioned by an accident within the general meaning of the policy, and if so, whether it was within any of the exceptions.

This conclusion is also very strongly supported by that provision of the policy under which the plaintiff was nonsuited. That necessarily implies that any degree of negligence falling short of "wilful and wanton exposure to unnecessary danger" would not prevent a recovery. Such a provision would be entirely superfluous and unmeaning in such a contract, if the observance of due care and skill on the part of the assured constituted an element to his right of action, as it does in actions for injuries occasioned by the negligence of the defendant.

The question therefore remains whether the attempt of the deceased to get upon the train was within this provision, and constituted a "wilful and wanton exposure of himself to unnecessary danger?" I cannot think so. The evidence showed that the train having once been to the platform, had backed so that the cars stood at some little distance from it; while it was waiting there the deceased was walking back and forth on the platform (of the depot). It is very probable that he expected the train to stop there again before finally leaving. But it did not. It came along, and while moving at a slow rate, or as fast as a man could walk, he attempted to get on and by some means fell either under or by the side of the cars and was crushed to death. The act may have been imprudent. It may have been such negligence as would have prevented a recovery in an action based upon the negligence of the company if there had been any. But it does not seem to have contained those elements which could be justly characterized as wilful or wanton. The deceased was in the regular prosecution of his business. He desired and expected to leave on that train. Finding that he would be left unless he got on while it was in motion, it was natural enough for him to make the attempt. The strong disinclination which people have to being left, would impel him to do so. The railroad employees were getting on at about the same time. Imprudent though it is, it is a common practice for others to get on and off in the same manner. He had undoubtedly seen it done, if he had not done it himself, many times without injury. I cannot regard it, therefore, as a wilful and wanton exposure of himself to unnecessary danger within the meaning of the policy.

The judgment is reversed, and a *venire de novo* awarded.—*American Law Register.*

SUPREME COURT OF THE UNITED STATES.

William Ward et al v. Francis L. Smith.

The fact that an instrument is made payable at a bank does not make the bank an agent of payee to receive payment, unless he actually deposits the instrument there, or in some express manner authorizes the bank to act for him.

When an instrument is lodged with a bank for collection, the bank becomes the agent of the payee or obligee to receive payment. The agency extends no further, and without special authority an agent can only receive payment of the debt due his principal in the legal currency