

HON. MR. JUSTICE MIDDLETON.

APRIL 22ND, 1914.

## OCEAN ACCIDENT CO. v. GILMORE.

6 O. W. N. 255.

*Insurance—Automobile—Action to Recover Money Paid on Policy—  
Fraudulent Claim.*

MIDDLETON, J., *held*, that the proper inference from evidence was that defendant deliberately placed his automobile upon the railway tracks where it was destroyed. Judgment for plaintiffs for amount paid under the policy with costs.

Action to recover amount paid by plaintiff to defendant under a policy upon an automobile destroyed by being run down by a Grand Trunk train, the ground being that the payment was procured by the fraud of defendant, who, it was said, placed the automobile upon the railway track for the purpose of bringing about its destruction, and that he falsely and fraudulently claimed that an accident had taken place. Tried at Toronto non-jury sittings, 20th April, 1914.

M. K. Cowan, K.C., for plaintiff.

J. M. Godfrey, K.C., for defendant.

HON. MR. JUSTICE MIDDLETON:—The evidence in this case is extremely unsatisfactory.

On Sunday evening, 2nd November, 1913, at eight o'clock, Gilmore left his place in West Toronto, in company with Cochrane, a half brother of his brother-in-law, in the automobile, for the purpose of having Cochrane's assistance in the adjustment of the carburetor, which it is said was not working satisfactorily. The night was dark and cold with rain and snow. The automobile was an open roadster. Instead of contenting themselves with a trip upon the city streets, they headed for the country, along the Dundas Road for some distance, turning south and reaching the Lake Shore Road near Port Credit. Some time was spent in making adjustments to the carburetor, and finally in cleaning it out, as it became clogged with sand. In the result they were at the Rifle Ranges near Port Credit at 11.30 p.m. This hour is fixed by two reliable witnesses, and is admitted by Gilmore.

The next thing known definitely is that at 1.40 a.m. the car was standing upon the Golf Club crossing of