

ARNOLD INSURANCE CASE JUDGMENT

Companies Justified in Resisting Payment, Says Judge,
but Suicide was not Proved with Reasonable Certainty

The text of the judgment of Chief Justice Hunter in reference to the payment of the life insurance policies on the life of the late Mr. W. R. Arnold, managing director of the Dominion Trust Company, is reported in the Vancouver press as follows:—

"The main defence put forward by the companies is that what appears to have been an accidental death was in reality a case of suicide. It is for this controversy as to whether the death was the result of wilful self-destruction or an accident that the evidence has been chiefly directed. In support of the theory of suicide a number of circumstances have been brought out in the evidence which has been led by the defence. In the first place it appears that not only Arnold himself, but his company were in a state of extreme insolvency. The company was indebted to the extent of some \$2,000,000, for which it had no visible assets. He himself was apparently indebted, either himself personally or through the medium of Syndicate 8 and the so-called Phillip account to the extent of somewhere between \$800,000 and \$1,000,000. At the time of his death he was owing for rent; he owed a number of workmen for wages in connection with the clearing of his land; he owed his gardener and he owed his chauffeur some small amounts of money.

Misappropriated Large Sums.

"Certain it is that he had misappropriated large sums of money and that he had engaged in a lot of speculations which were visionary and chimerical in character. Not only was he, according to the admission of all the counsel engaged in the case, liable to criminal prosecution, but, according to the evidence of Hodges, he made the admission himself to this gentleman some two weeks before his death, having said to Hodges that he had done things for which he could be sent to the penitentiary, and that he (Hodges) knew it. Now if that was the condition of affairs, it is urged by the defendants that in desperation, Arnold, who, no doubt, had good qualities, wished to protect the company as far as he could; wished to save his own name and reputation as far as he could, and, in addition, wished to leave something for his family. And for that purpose he made a will, which will is dated some two days before his death.

"It is to be observed in connection with his will that it appears to have been a mere repetition of a former will, which was drawn up on the 15th of January of that year, that is six or eight months previous, and that the only alteration, as far as the evidence tells us, was in connection with Syndicate 8, which necessitated the re-typewriting of the third page of the original document. However, the argument is for the insurance companies, that that was his best way, according to his idea, out of the difficulties into which he had got; and the only way in which he could save his good name, to some extent, at all events, was by taking out a large sum of insurance with the intention of doing away with himself when the necessity finally came.

Was to Take Out Insurance.

"Now the next circumstance which has been pointed to, in connection with this theory of suicide, is that he knew at the time of the taking out of these enormous policies of insurance that he was not financially able to carry them. He did give a note on October 3rd for \$668 in connection with the short-term policy, and another note for \$1,275 in respect of the ordinary life policy. These notes would have been matured, one of them nine days from the time he died, and the other twenty-four days from the time he died. Now the suggestion is a very natural one that he was coming rapidly to the end of his tether, and that the default in the payment of these notes would precipitate general knowledge of his true condition, that is to say, that he was hopelessly bankrupt, and that that was one of the strongest possible reasons for doing away with himself at the time he did. Of course, it is to be noted in connection with that, that the true legal position was not that the policies would immediately lapse by reason of the non-payment of these notes. As a matter of law, they would be carried until the time came for the payment of the next premium. It may very well be that Arnold fully realized that; that he considered the policies quite safe as long as the term covered by the premium had not yet expired, and left the future to take care of itself as

to how he should meet these notes, either by renewal or by borrowing money from other sources, or by standing off creditors in the best way that he could, and defending any suit brought in the courts."

Suicide Theory Scouted.

Continuing, his lordship said: "The first outstanding fact to my notion of the matter is that this man Arnold was still young; that he was 31 years of age; that he was in robust health; that he was happy in his personal relations with his family; that he was a man of sanguine temperament. In fact, so far as the evidence shows, with a possible exception of that incident related by Buchanan, he was not much given to worry. In fact, I doubt if there are very many business men in Vancouver situated in the position he was in that would have given any less exhibition of personal worries than appears to have been exhibited by Arnold. The fact seems to be that he was somewhat of a bluffer, that he had been used to bluffing his way through the world and elbowing his way through difficulties from the time he was a boy, and he appears to have very successfully fended off auditors, directors, shareholders and everybody else from gaining any true knowledge of this concern, although it was in a shaky condition for eighteen months or more. He seems to have been an adept at juggling both accounts and assets in order to meet difficulties as they arose."

Theory of Accident.

His lordship reviews very closely the evidence dealing with the trip on the day before his death to the ranch of Gibson, and then deals with the character of the gun, which, he declares, the evidence shows was of an extremely tricky and dangerous type. He points out the circumstance that nothing was left to the wife except \$50. The house was expensive to maintain. There was nothing for the two children and the wife to keep them in the manner in which they had been accustomed to live, the ordinary allowance being from \$300 to \$350 a month. Not only was there no provision made for her by way of ready cash, but there was no policy endorsed to her.

That, to his mind, was a very strong circumstance to negative the theory of suicide. Then there was the evidence that deceased appeared to have considered the advisability of dropping some of his policies. In regard to securities, which Mr. Hodges called for, his lordship says it appears to be undisputed that these securities were produced promptly.

Was in Robust Health.

"It does seem to me that the facts which I have detailed, which go to show an accident, to a large extent, if not absolutely, neutralize the facts which have been detailed to prove suicide. The outstanding fact is that the man was in robust health; that he had been accustomed all his life to facing difficulties; and that he was happy in his family relations, and that he was a man of very sanguine temperament. Now I am aware that there is some danger of the court projecting its own mortality into circumstances of this sort, and that because it considers that it might have acted in a given way itself, it, therefore, should ascribe such action to the actions of the man who is being considered. If I were to be called upon to decide the matter as one of the balance of probabilities, I think I could safely say that the balance of probabilities, inclines to the theory of accident and not the theory of suicide. Although there is danger in one assuming to decide under such circumstances as these as to what was the main stream of Arnold's intent and what were merely the back-eddies and cross-currents, and it is to a very large extent vain speculation.

Onus of Proof.

"I think I am, however, relieved from finally deciding the matter as a question of probability, for the reason that the onus of proof is on the defendant companies. Not only is the onus of proof on the defendant companies, but, in my opinion, there is a double onus of proof. In the first place, suicide is one of the expected risks specified in the policies. In the second place, as we all know, it is against the teachings of the Christian religion; it is against the common law. An attempt to commit suicide is made a criminal act by the criminal code, and it is against the law of nature, and, in fact, against all instincts of self-preservation. But the task which anyone alleging suicide has to accomplish, to my mind, is made very much greater in the case of a man who was in the prime of life, enjoying robust health, and who was happy in his own private domestic relations. As I say, it is difficult to decide, finally and conclusively, as to whether this man was prompted to commit suicide, or whether the