

provided that it was not to apply to accidents at illegal speed.

A defence of this nature by insurance companies was foreshadowed by *O'Hearn v. Yorkshire Insurance Co.*, 64 D.L.R. 437, and 67 D.L.R. In this latter case the plaintiff had struck and injured a pedestrian, who died of his injuries. The plaintiff was sued, and judgment was recovered against him. He was also convicted under section 285 of the Criminal Code. (Injuring persons by furious driving.) He was drunk and was driving at the rate of about forty miles an hour when the accident happened. He sued upon his policy of insurance. The company contested the claim on the ground that it was contrary to public policy that the plaintiff be indemnified against his own criminal act. The company was successful both at the trial and upon appeal.

In the *O'Hearn* case the plaintiff had been found guilty of an actually criminal act, and it was not surprising that the insurance company should contest the claim. After that decision the idea of an insurance company setting up a similar defence to claims arising from an ordinary accident occurred to the minds of several solicitors, but as a matter of practical business policy it was thought unlikely that anyone would take this decisive step. However, the Rubicon was crossed in *Sowards v. London Guarantee and Accident Co.* As a result the insuring public knows that payment of claims under the public liability and property damage clauses of automobile insurance policies is an uncertainty depending perhaps on the grace of the insurance company. When a motor car owner insures against "public liability" he insures against having to pay damages to a person whom he has personally injured. If he has injured such person without negligence on his own part, he is immune from judgment and needs no insurance. If he injures such person because of negligent driving, he is guilty of an illegal act, and may find it set up against him when he seeks to recover upon his policy.

Insurance men when confronted with the result of this case will be furnished with some food for thought, and may find it necessary, when endeavouring to secure business, to emphasize the argument that their companies are not desirous of taking advantage of this case.