

Co. (decided June 8, 1903, 75 S. W. 180) expressly declines to follow the Hicks case.

There is one important qualification which must be made as to the effect of this exception against accidents "caused directly or indirectly by disease," and this is as to what constitutes disease. It is quite generally held that a mere temporary disorder, such as a fainting spell, a sudden attack of vertigo, and the like, is not a disease within the meaning of the exception. The disorder must be of a more permanent or chronic character in order to be termed a disease. (*Dorgan vs. Insurance Co.*, 58 Fed. Rep. 945, and cases cited.)

A member of this Association recently sent me, with the request for suggestions, the draft of a policy his company proposed to place on the market in which he had eliminated every condition and exception usually to be found in an accident policy. It came as near being the "plain promise to pay" as any policy I have ever seen. I wrote to him that if he did not insert an exception against death "due directly or indirectly to disease" he would live to regret it. He replied by inquiring whether he had not covered this point in the insuring clause, which read as follows: "against loss as herein provided caused by bodily injury effected exclusively and directly by external, violent and accidental means," etc. I replied that in my opinion the insuring clause had not obviated the difficulty and cited him to two cases, which have been the undoing of accident insurance companies in many cases, namely, *Lawrence vs. Insurance Co.*, 7 Q. B. D. 216; *Winspear vs. Insurance Co.*, 6 Q. B. D. 42.

In the *Winspear* case the policy provided that "it should not extend to any injury caused by or arising from natural disease or weakness or exhaustion consequent upon disease."

The insured, while fording a stream, was seized with an epileptic fit and fell into the stream, and was drowned while suffering from the fit. It was held that the company was liable.

In the *Lawrence* case the policy provided: "This policy covers injuries accidentally occurring from material and external cause, operating upon the body of the insured, where such accidental injury is the direct and sole cause of the death of the insured, but it does not insure in case of death arising from fits . . . or any disease whatsoever, arising before or at the time of or following such accidental injuries, whether consequent upon such accidental injury or not, and whether causing such death directly or jointly with such accidental injuries."

The insured, while at a railway station, was seized with a fit and fell forward off the platform across the railway track, and an approaching train ran over and killed him. It was held that the company was liable.

The reasoning upon which these two decisions are based is that the direct and proximate cause of the death in the *Winspear* case was the drowning and not the fit, and in the *Lawrence* case the impact of the train against the insured and not the fit. That while it was true that the indirect cause of the injuries and accident in both cases was disease, yet, the direct cause was in the one case drowning and in the other the blow from the train. It will be observed that in neither policy was there language excluding injuries due indirectly to disease.

Judge Taft in the *Dorgan* case, 58 Fed. 945, says that if the policies construed in the *Winspear* and *Lawrence* cases had contained an exception excluding injuries due "directly or indirectly to disease," the result would, in his opinion, have been different. The reasoning of the *Lawrence* and *Winspear* cases is so subtle and refined that the ordinary mind finds it difficult to grasp the distinction, but both decisions were rendered by a court of the highest authority in England, and they have been

followed on this side of the Atlantic. These cases are referred to with approval by Mr. Justice Gray in delivering the opinion in the now famous case of *Crandall vs. Insurance Co.*, 120 U.S. 527, and in many other cases in this country. It would therefore appear that any policy which fails to contain a proviso against injuries due directly or indirectly to disease will not exempt the company in cases where death is due partly to disease and partly to accident or to both combined.

A recent practice adopted by some of the companies, which I regard as a step in the wrong direction, is that of issuing personal accident policies on an unsigned application called a "Schedule of Warranties." The purpose of this innovation is to aid the solicitor in getting business, and I fear that the companies who have adopted this plan will learn to their regret that it is better to write a small business at a profit than a large business at a loss. The practical operation of this method is as follows: The solicitor obtains from the insured the data usually found in an application for accident insurance; this he reduces to writing, and the company, and in some instances its general agent, endorses in a blank form provided for that purpose the statements contained in the schedule upon the policy, which is then ready for delivery. The policy recites that it is issued in consideration of the statements and warranties contained in the schedule, and that the insured by accepting the policy warrants such statements to be true and complete. Nothing is signed by the insured. All the writing is done by the solicitor or the company. The argument is that by accepting the policy the insured has adopted the answers filled in the blanks of the schedule as his own to the same extent as if he himself had written them.

Now I undertake to venture my humble opinion that the instances will be few and far between in which the company can succeed in establishing the defence of breach of warranty on such a policy as this. It seems to me difficult enough now to show a breach of warranty with a formal application, regularly signed by the insured, and without a signed application, I think this defense is gone entirely.

There is only one type of application, which is, in my opinion, reasonably safe, and that is the one which is not only signed by the insured, but in which the answers are also in the handwriting of the insured. It is the invariable contention of the fraud and the cheat, who has made false statements in his application, that he gave the correct information to the solicitor, but, that the solicitor erroneously filled out the answers, and where this is shown it is held in most of the States that the false statements are not binding on the insured. It must be obvious, therefore, that when the insured cannot be confronted even by his signature, the door is opened wide to fraud and deception. When it is remembered that there is no medical examination, and that the sole basis upon which the policy is issued is the application, the importance of having an application upon which the insured can be held bound cannot be overestimated.

It is true that from a strictly legal and theoretical standpoint an unsigned application ought to be binding where the policy recites that the statements therein are confirmed by the acceptance of the policy, but as a practical proposition I do not think the courts will have as much difficulty in disposing of this provision of the policy as the advocates of this form of policy imagine. At best the warranties in such a schedule are not actually but only constructively made by the insured, and it does not strike the judicial mind with favour to let a company plead as a defense a false statement in an application which was never signed or made by the insured and which, perhaps, he never saw.

(To be continued.)