THE OCEAN ACCIDENT AND GUARANTEE CORPORATION v. FOWLIE.

1902

*Dec. 4, 5.
*Dec. 12.

Accident insurance—Proof of loss—Waiver—Finding of jury—Verdict.

Judgment appealed from (4 Ont. L. R. 146) affirmed.

APPEAL from the judgment of the Court of Appeal for Ontario (1) reversing the judgment of the trial court and ordering a new trial of the action.

The evidence shewed that the proofs of loss were furnished within the time limited by the policy without objection being taken as to their sufficiency, but payment of the claim was refused on the ground that the circumstances surrounding the death of the person insured brought the case within a clause of the policy providing against liability where death occurred through suicide, duelling, etc., or from natural causes. Objection to the sufficiency of the proofs was taken for the first time in the statement of defence delivered a couple of years afterwards. The judgment appealed from held that the proofs furnished were sufficient and that the right to take objection to them had been waived.

The body of the insured was found on a railway track, having been run over by a train; it was seen by the engineer lying on the track before it was struck by the train; shots had been heard shortly before this and a pistol was found near by; two holes, which might have been caused by pistol bullets, were found in the cap of deceased. By the policy death was

* PRESENT :—Sir Elzéar Taschereau C.J. and Sedgewick, Girouard, Davies and Mills JJ.

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required to be by accidental bodily injury caused by violent external means; while the Insurance Act, R. S. O., 1897, ch. 203, sec. 152, which is to be read with the policy, defines "accident" as any bodily injury occasioned by external force or agency, and happening without the direct intent of the person injured, or happening as the direct result of his intentional act, such act not amounting to violent or negligent exposure to unnecessary danger. The jury found that there was no evidence to satisfy them that deceased came to his death by his own hand, but that he came to his death by external injury unknown to them. The judgment appealed from held that the finding was too vague to be construed as a finding of accidental death, set aside the judgment entered at the trial and ordered a new trial, such new trial to be confined to the question as to whether or not the deceased died in consequence of an accident within the meaning of the policy on which the claim was founded and ordering further that the costs should abide the event of the new trial. The defendants appealed.

After hearing counsel for the parties the Supreme Court of Canada reserved judgment and, on a subsequent day, dismissed the appeal with costs for the reasons given in the judgment appealed from.

Appeal dismissed with costs.

Hamilton Cassels K.C. for the appellants.

Staunton K.C. and *Stephens* for the respondent.