ROSE WADSWORTH (PLAINTIFF) ....APPELLANT;

AND

THE CANADIAN RAILWAY ACCIDENT INSURANCE COMPANY (DEFENDANTS) ..... RESPONDENTS.

1913
*Dec. 2,3.
1914
*Feb. 3.

ON APPEAL FROM THE APPELLATE DIVISION OF THE SUPREME COURT OF ONTARIO.

Accident insurance—Construction of policy—Special conditions—Increased and diminished indemnity—Injuries from fits causing death.

In an accident policy an insurance company agreed to pay the insured the principal sum in case of death or specified injuries, double that sum if such death or injuries occurred under certain conditions and one-tenth for "injuries happening from * * * fits causing death." * * * W., holder of the policy, went at night with a lantern to an outbuilding of the fishing club which he was visiting. Shortly after the outbuilding was seen to be on fire. The fire was extinguished and W. brought out badly burned, from the effects of which he died the next day. In an action on the policy the trial judge found as a fact that W. had been seized with a fit and in that condition caused the fire. This finding was concurred in by the two provincial appellate courts. The trial judge held that the company was liable for one-tenth only of the insurance. The Divisional Court reversed this ruling (26 Ont. L.R. 55, 3 D.L.R. 668), but it was restored by the Appellate Division (28 Ont. L.R. 537, 13 D.L.R. 113).

Held, affirming the judgment of the Appellate Division, Duff and Anglin JJ. dissenting, that the injuries causing the death of W. happened from a fit within the meaning of the clause in the policy diminishing the indemnity to be paid. *Winspear* v. *Accident Ins. Co.* (6 Q.B.D. 42), and *Lawrence* v. *Accidental Ins. Co.* (7 Q.B.D. 216), distinguished.

Held, per Fitzpatrick C.J.—The clause diminishing the indemnity payable is not an exempting clause but one of the three separate

*PRESENT:—Sir Charles Fitzpatrick C.J., and Davies, Duff, Anglin and Brodeur JJ.

1914

WADSWORTH v. CANADIAN RAILWAY ACCIDENT INS. CO.

contracts between the insurers and insured as to amount of liability.

Per Anglin J.—It does not create a new liability, but is a clause of limitation in favour of the company and to be strictly construed.

APPEAL from a decision of the Appellate Division of the Supreme Court of Ontario(1), reversing the judgment of a Divisional Court(2), by which the amount awarded to the plaintiff at the trial was increased.

The substance of the material portions of the policy held by appellant's husband and sued on in this case is stated in the head-note. The clauses thereunder are set out in full in the opinions of the judges given on this appeal.

The insurance company in defending the action claimed to be liable for one-tenth only of the principal sum insured, on the ground that the injuries causing the death of the insured happened through a fit. The trial judge agreed with this contention and gave judgment accordingly. The Divisional Court held that the fit was a remote, and not the direct, cause of the injuries and awarded the principal sum for which deceased was insured. The Appellate Division restored the judgment given at the trial.

Aylen K.C. and *R. V. Sinclair K.C.* for the appellant. The decision of the courts in England strongly support the view of the Divisional Court that the fit was only a remote cause of the injuries. See *Pink* v. *Fleming*(3); *Winspear* v. *Accident Ins. Co.*(4); *Lawrence* v. *Accidental Ins. Co.*(5), and the reasoning in

(1) 28 Ont. L.R. 557.
(2) 26 Ont. L.R. 55.
(3) 59 L.J.Q.B. 559.
(4) 6 Q.B.D. 42.
(5) 7 Q.B.D. 216.

Manufacturers' Accident Indemnity Ins. Co. v. *Dorgan*(1), at pages 947 and 954. See also *Canadian Casualty and Boiler Co.* v. *Boulter, Davies & Co.*(2).

The appellate courts are not bound by the finding of the trial judge that the insured caused the fire while in a fit. That is not a finding of fact, but merely an inference from the evidence and, we submit, an unwarranted inference. See *William Hamilton Mfg. Co.* v. *Victoria Lumber and Mfg. Co.*(3).

Hellmuth K.C. and *McConnell* for the respondents referred to *Mendl* v. *Ropner & Co.*(4), and contended that the finding of the trial concurred in by both appellate courts below must be accepted, and being accepted the judgment in appeal must stand.

THE CHIEF JUSTICE.—In December, 1907, the respondent company entered into two contracts to insure the husband of the appellant each in the principal sum of $5,000

against bodily injuries caused solely by external violent and accidental means, as specified in the following schedule (subject, however, to the terms and conditions hereinafter contained).

In October, 1910, Wadsworth dies.

The finding of the trial judge was that deceased took a fit, that while in that fit, he either dropped or knocked over a lantern, the lantern exploded or was spilled or broken in the fall. The result was that the oil escaped, and there was almost immediately a very extensive flame which enveloped the deceased and inflicted the very serious injury from which he died.

(1) 58 Fed. R. 945.
(2) 39 Can. S.C.R. 558.
(3) 26 Can. S.C.R. 96.
(4) 29 Times L.R. 37.

1914

WADSWORTH v. CANADIAN RAILWAY ACCIDENT INS. CO.

The Chief Justice.

That finding has been concurred in by both courts below.

This appeal turns upon the question whether the injuries sustained by the deceased causing his death happened from fits within the meaning of the policies (clause G). The parts of the policies most material are parts C, G. and H. Part C reads as follows:—

> If such injuries are sustained while riding as a passenger in a passenger steamship or steamboat, or in any steam, cable or electric passenger railway conveyance, or in a passenger elevator, *or are caused by the burning of a building in which the insured is therein* at the commencement of the fire, the amount to be paid shall be double the sum specified in clause under which the claim arises.

Part G.—

> In case of injuries *happening from* any of the following causes, viz: intentional injuries inflicted by the insured, or any other person (other than burglars or robbers), *fits*, vertigo, sleep-walking, duelling, war or riot, exposure to unnecessary danger, engaging in bicycle, automobile or horse-racing, or while under the influence of intoxicating liquors or narcotics, causing death, loss of sight or limb as stated in Part "A," the company will pay one-tenth of the amount payable for bodily injuries as stated in Part "A," under which claim arises; or if such injuries result in total or partial disability as provided in Part "B," the Company shall pay one-tenth of the amount payable for weekly indemnity as stated in said Part "B," under which claim arises.

Part H.—

> In case of the happening of injuries mentioned in Special Indemnity Clauses D, E, F and G, claims shall be made only under said clauses, and the amount to be paid under said clauses shall be the full limit of the Company's liability, and such claim will not be entitled to double benefit as provided in Part "C."

There are a number of cases in which accidental insurance policies have been construed by the courts, and they are practically all dealt with in the various judgments below and here. In every policy, however, which has been construed in those cases, the excepted clause was construed as a clause exempting from all liability.

1914

WADSWORTH v. CANADIAN RAILWAY ACCIDENT INS. CO.

The Chief Justice.

Here the respondents argue: the policy is based on the hazard of the risk and provides a schedule of indemnities first, for bodily injuries caused solely by external violent and accidental causes (Part A): second, for injuries sustained in the circumstances enumerated in Part C, and third, if the injury is fairly attributable to some constitutional defect in the insured — fits, vertigo or sleep-walking — or the assumption by him of some extra risk, such as duelling, then the indemnity is fixed by clause G at "one-tenth of the amount payable for bodily injuries, as stated in Part A under which claim arises." In such case, the liability of the company varies. If the death is caused solely by external violent and accidental means, then the capital sum of $5,000 is due under each policy (Part A). If the death occurs in the circumstances enumerated in Part C double payment is provided for, and finally if the injury is fairly attributable to some constitutional defect, then the indemnity is fixed at one-tenth, as provided for by clause G. The case turns upon the meaning of this clause. It is not an exempting clause, but is one of several clauses fixing the liability of the company at different sums according to the different risks, and making the sum in each case proportionate to the risk run. The words to be construed are:—

In case of injuries *happening from* any of the following causes * * *

I construe them to mean that the company undertakes, in case the injury, as in this case, comes to pass by chance or otherwise as a result of the fact that the insured had a fit, to assume an obligation to pay one-tenth of the amount which would be payable for bodily injuries under Part A, as it would be obliged

1914

WADSWORTH v. CANADIAN RAILWAY ACCIDENT INS. CO.

The Chief Justice.

to pay double the amount of the capital sum if the injury was sustained in any one of the cases enumerated in Part "C." In other words, if the bodily injuries are not caused solely by external violent and accidental means, but arise as a result of any one of the causes mentioned in Part "G," the liability is fixed at one-tenth. Shortly stated, the proximate cause of the death was the injuries received from the burning oil which was set on fire as a result of the fit with which the deceased had been previously seized, and this brings the claim within Part "G."

I would dismiss the appeal with costs.

DAVIES J.—This was an action brought by the widow of her deceased husband who had been insured under a policy issued by the company defendant

against bodily injuries *caused solely by external violent and accidental means* as specified in the following schedule.

That the death of the assured was within the terms of the policy was not denied. The substantial question in dispute was as to the amount of the company's liability, and the company's contention was based upon Part G of the schedule, which provided that:—

In case of injuries happening from any of the following causes, viz.: Intentional injuries inflicted by the insured or any other person (other than burglars or robbers), fits, vertigo, sleep-walking * * * causing death * * * the company will pay one-tenth of the amount payable for bodily injuries as stated in Part "A."

There was no dispute as to the amount payable in case it was held that the death of the assured came within this clause G, as having been caused from injuries happening from fits.

The findings of the trial judge on the facts were as follows:—

Now this was an injury happening from a fit which this unfortunate man had. He took a fit when he was in the closet, and I think the proper finding of fact is that while in that fit he either dropped or knocked over the lantern, the lantern exploded or was spilled or was broken in this fall—the result was that the oil escaped and there was almost immediately a very extensive flame which enveloped him and inflicted the very severe injuries from which he died, and I think it is the very kind of case that falls within this clause.

These findings of fact were concurred in by the Divisional Court, and also by the Appellate Division, and I think are amply sustainable from the evidence. I fully agree also with the conclusions that the injuries which the deceased received and which caused his death were not caused by the burning of a building at all and that the double liability of the company provided in Part C does not arise in this case. The question to be determined by us is whether under these findings of fact the case is one within Part G of the policy.

There has been much conflict of judicial opinion upon the point. The learned trial judge held that

it was the very kind of case that falls within this clause.

A majority of the Divisional Court (the Chief Justice with much hesitation) reached the conclusion stated by Mr. Justice Riddell that

the injuries which caused the death are the burns,

and that

the burns were caused primarily and immediately by the fire,

the fire was "the proximate cause," or as Chief Justice Falconbridge put it, that

the injuries happened not from the fit but from the fire.

Hodgins J. dissenting in the Appellate Division based

1914

WADSWORTH v. CANADIAN RAILWAY ACCIDENT INS. CO.

Davies J.

his judgment on the same grounds, namely, that the injuries "happened from a flame."

A majority of the Appellate Division held with the trial judge and Mr. Justice Latchford of the Divisional Court that the case was one clearly within Part G of the policy, and that a fit was the proximate and efficient cause of the happening of the injuries causing death.

I have read carefully all the cases cited by the learned judges in their judgments, but I cannot find that any of them afford us much assistance in the construction of this clause G. In those cases the question under the special terms of the assurance policies was: What was the cause of the *death* of the assured? Here that is not the main or controlling question, which is: What was the cause of the *happening of the injuries which caused death?*

It is not then a question as it was in the two English cases cited: *Winspear* v. *Accident Ins. Co.,* in 1880(1), and *Lawrence* v. *Accidental Ins. Co.*, in 1881, (2), where the *cause of death* was considered. It is a question of the *cause of the happening of the injuries* which caused death.

The cause of the happening of these injuries is found explicitly stated in the findings of fact of the trial judge accepted by all the courts as sustainable under the evidence. The fit was the efficient cause of the injuries received by the deceased assured and from which he died. I agree with the judgment of the Appellate Division stated by Meredith J.A. that this fit was the predominate and proximate cause of the injuries, the scorchings or burnings of the body of the

(1) 6 Q.B.D. 42. (2) 7 Q.B.D. 216.

1914

WADSWORTH v. CANADIAN RAILWAY ACCIDENT INS. CO.

Davies J.

assured, which caused his death, and that

the fit set the fire free and bound the man while it burned him.

It does seem to me that to hold such a case as this not to be within Part G of the policy would be to disregard its plain words and leave it practically meaningless. Construing the policy as a whole, it seems clear that no liability arises under it at all except in those cases of

bodily injuries caused solely by external, violent and accidental means.

The plaintiff brought herself within that risk and satisfied the onus which lay upon her when she proved that the death of her husband was caused by the burning of his body from the upset lamp. Now, if she had proved that her husband had died simply from a "fit" and had failed to prove any

bodily injuries caused solely by external, violent and accidental means

which in themselves caused his death she could not have recovered under the policy at all. It was common ground that this onus had been satisfied.

Then comes the next question as to the amount recoverable. It seems to me it was just such cases as this of bodily injuries caused by fits and in turn themselves causing death that this clause G was intended to cover.

To my mind the language of the clause itself is not ambiguous. If it was so the court might be justified in straining the language used against the company which, of course, prepared the policy. It appears to me the clause clearly expresses and limits the company's liability in cases of injuries happening from fits and causing death. With great respect I think

1914

WADSWORTH v. CANADIAN RAILWAY ACCIDENT INS. CO.

Davies J.

it is putting a forced construction upon the clause to say that the injuries of burning and scorching of his body were not "injuries happening from fits." Of course, the "flame" or the "fire" caused the injuries, but they none the less "happened" from the fits which were in my judgment the proximate and efficient cause of the injuries from which death resulted.

The clause did not limit or affect the company's liability in cases of death arising directly from fits and without any "external, violent and accidental means." Such a death was not covered by the policy at all which was one of accident insurance simply. It did, however, cover, and was intended to cover, cases of death caused by bodily injuries happening from fits which in my judgment is the case before us.

The object, purpose and intent of the clause can be gathered from reading the collocation of other causes than "fits" mentioned in it. Such purpose was to provide a limited liability only in cases of injuries happening to the person assured from any of the several causes mentioned and causing death. Once that conclusion is reached as to the object and intent of the clause, then it follows, to my mind at any rate, that not only are the cases relied upon by the appellant on policies which raised the question of the "cause of death" irrelevant, but that the findings of fact of the trial judge bring the case directly within clause G.

I think the appeal should be dismissed with costs.

DUFF J. (dissenting).—After the most anxious consideration the view at which I have arrived is that the respondent has failed to shew that this case is governed by Part G. In order to bring the case within that

part the respondent must make it appear that the injuries which led to the death of the appellant's husband come within the description,

injuries happening from any of the following causes * * * fits.

Questions of legal causation, to use a very loose phrase, commonly give rise to marked differences of judicial view; and this case is no exception. When the term "cause" is used in common speech one does not, of course, use the word in any strictly logical sense, but (abstracting from the totality of the conditions) one indicates some class of facts or some relation brought into prominence by the practical interest of the moment; and such terms as "cause" and "proximate cause" when employed by lawyers in denoting the grounds for assigning legal responsibility or in defining the conditions of such responsibility ought to be interpreted in light of the known meaning usually attached to such phrases and their equivalents in similar circumstances. And, indeed, speaking more generally, in the case of insurance policies — prepared by professional men on behalf of an insurance company — where phrases that have been construed in well known cases are made use of, it may be presumed that the insurance company so employing them had such decisions in view.

Now it so happens that stipulations which, in my judgment, ought to be considered as in all relevant respects equivalent to that in question here have been interpreted by very high authority in reported decisions which have since been applied in other cases without a doubt as to the correctness of them; and adopting as I do the principle of construction above indicated, the real point for determination seems to be

1914

WADSWORTH v. CANADIAN RAILWAY ACCIDENT INS. CO.

Duff J.

whether the circumstances of this case are so different from the circumstances of the cases in which the decisions referred to were pronounced as to require us to hold that this case falls on the other side of the line.

Those decisions have this in common; that the insured having, as the immediate consequence of being seized by a fit, been exposed to a noxious agency which destroyed his life, it was held that the injury that was the immediate cause of death was not "caused" by the fit within the meaning of the insurance policy. In the first of these cases, *Winspear* v. *Accident Ins. Co.*(1), the court held that the insured having been drowned as a result of falling into a stream while in a fit, the "cause" of death was not the fit. This decision was followed in *Lawrence* v. *Accidental Ins. Co.*(2), and in *Manufacturers' Accident Indemnity Ins. Co.* v. *Dorgan*(3), and was referred to seemingly with approval in *Accident Ins. Co.* v. *Crandal*(4), at page 532.

In delivering the judgment of the Supreme Court of the United States in this last mentioned case, Mr. Justice Gray discussing the case of suicide committed while in a state of insanity said:—

> If insanity could be considered as coming within this clause, it would be doubtful, to say the least, whether, under the rule of the law of insurance which attributes any injury or loss to its proximate cause only, and in view of the decisions in similar cases the insanity of the assured, or anything but the act of hanging himself, could be held to be the cause of his death. *Scheffer* v. *Railroad Co.*(5); *Trew* v. *Railway Passengers' Assurance Co.*(6); *Reynolds* v. *Accidental Ins. Co.*(7); *Winspear* v. *Accident Ins. Co.*(8), affirmed (1); *Law-*

(1) 6 Q.B.D. 42.
(2) 7 Q.B.D. 216.
(3) 58 Fed. R. 945.
(4) 120 U.S.R. 527.
(5) 105 U.S.R. 249, at p. 252.
(6) 5 H. & N. 211; 6 H. & N. 839, at p. 845.
(7) 22 L.T. 820.
(8) 42 L.T. 900.

rence v. *Accidental Ins. Co.*(1); *Scheiderer* v. *Travellers' Ins. Co.* (2).

I cannot satisfactorily distinguish in principle the *Winspear Case*(3) from the present. Accepting the trial judge's finding that the breaking or explosion of the lantern was in some way connected with the onset of an epileptic seizure, still the immediate cause of the injuries was the fire coming into contact with the insured or the insured coming into contact with the fire. The fall that led to the drowning of the insured in the one case seems no more remote from the suffocation that ensued than was the fall which it may be assumed in the case before us directly or indirectly brought the fire into contact with the body of the unfortunate victim. If the deceased being overtaken by a seizure had fallen into a fire and been burned in such a manner as to cause his death, the analogy with the facts of the *Winspear Case*(3) would be obviously complete. The analogy would not be less obviously complete if it had appeared that as the immediate result of falling upon the lantern or if in some other way as the immediate and direct consequence of the fit the clothing of the deceased had been brought into direct contact with and had caught fire from the flame of the lantern itself. It appears to me to be plainly impossible to affirm, upon the facts in evidence, that the burning of the insured's body from which he died was not solely attributable to some part of his clothing being brought into direct contact with the flame of the lantern by some movement which followed immediately upon his seizure. Holding this view, the decision

(1) 7 Q.B.D. 216, 221. (2) 58 Wis. 13.
(3) 6 Q.B.D. 42.

1914

WADSWORTH v. CANADIAN RAILWAY ACCIDENT INS. CO.

Duff J.

of the case appears to me to be governed by the decision of the Court of Appeal in the *Winspear Case*(1).

I am not overlooking the argument that this construction of Part G deprives some parts of that stipulation of all meaning, for example, in the application of the provision to "injuries happening from sleep-walking." I am not convinced that this is so. And a comparison of Part C with Part G shews that in framing the policy the distinction between injuries suffered while in a given situation and injuries attributable to a situation or a condition as a "cause" was not overlooked. At all events my view is that in dealing with the subject of injuries arising from fits it was easily possible for the insurance company to make it clear by apt language that the construction acted upon in the *Winspear Case*(1) was to be excluded. And the respondents having not only failed to do so, but having, on the contrary, used the words as I think indistinguishable in effect from the phrases construed in that and subsequent cases the considerations which prevailed in those cases ought to be given effect to here.

ANGLIN J. (dissenting).—The material facts and the relevant portions of the insurance policies sued on are sufficiently set out in the judgments of the provincial courts — particularly in the very careful opinion delivered by Mr. Justice Riddell in the Divisional Court.

That the injuries sustained by the injured were not

caused by the burning of a building, etc.,

(1) 6 Q.B.D. 42.

was a conclusion accepted in both the provincial Appellate Courts, and, in my opinion, is the only reasonable conclusion to be drawn from the evidence. This disposes of the plaintiff's claim to recover double payments under Part C of the policies.

There is no doubt that the death of the insured was caused by burns. It is a legitimate inference from the evidence that the fire from which these burns were received was ignited as the result of a lantern being either dropped or knocked over by the insured owing to his loss of self-control while in a fit. As put by Latchford J., who dissented in the Divisional Court:—

> Mrs. Wadsworth was obliged to establish, and did establish that external, violent and accidental means caused injuries to her husband and that injuries caused by such means caused his death.

While the case is, therefore, covered by the policies, the question for determination is whether the burns, which caused death, sustained under these circumstances, were

> injuries happening from any of the following causes, viz., * * * fits

within the meaning of Part G of the policies, so that the plaintiff's recovery should be limited to one-tenth of the amounts which would be payable if death had been due to some accident wholly disconnected with fits or any of the other special matters included in Part G. Five judges — Middleton and Latchford JJ., and Garrow, Meredith and Magee JJ.A., have held that they were — and this was the opinion of the majority in the Appellate Division; while four judges, Falconbridge C.J., Riddell J., and Maclaren and Hodgins JJ.A., have held that they were not — and this view prevailed in the Divisional Court.

1914

WADSWORTH v. CANADIAN RAILWAY ACCIDENT INS. CO.

Anglin J.

Did the injuries, *i.e.*, the burns, which caused the death of the injured, happen from the cause — fits ? Were fits in law the cause of these injuries ?

Two opposite views of the construction of clause "G" are presented — both of them supported by cogent arguments. In one view the clause is dealt with without reference to canons of legal construction, and an effect is given to it which it may be supposed the insurers had in mind, although they may not have sufficiently expressed their intention. In the other view, the language employed is assumed to have been used in the light of rules laid down by the courts for the construction of insurance contracts — and only the expressed intention to be gathered from the terms used when given the meaning thus put upon them is taken into account.

If in construing these insurance policies we might assume that neither the insured nor the insurer was aware of the well-known legal rule embodied in the maxim *in jure non remota causa sed proxima spectatur,* or of its constant and special application in insurance law (17 Halsbury's Laws of England, 567, 437, 530; Broom's Legal Maxims (11 ed.), p. 179, *et seq.*), a very formidable argument could be made for the defendants that it must have been just such an occurrence as that now before us that they meant to cover by clause (G).

Fits, sleep-walking and several of the other "causes" mentioned in clause (G) do not, as a general rule, *per se* produce injuries. They often occasion and give rise to other secondary causes from which injuries result. Therefore, it is contended, it must be to injuries immediately produced by such secondary causes themselves resulting from the enumerated

causes that clause (G) was meant to apply. This aspect of the case is forcefully presented in the opinion delivered by Meredith J.A., concurred in by Garrow and Magee JJ.A.

But in construing the language of an insurance policy it is impossible to ignore a principle, of which the application is so well established in insurance law as is that embodied in the maxim now under consideration. To do so would be to introduce uncertainty in regard to the construction of contracts in daily use — a consequence to be avoided. *Thames and Mersey Marine Ins. Co.* v. *Hamilton, Fraser & Co.*(1), at page 490; *Philips* v. *Rees*(2), at page 21. The application of this maxim sometimes makes against the liability of the insurer: *Taylor* v. *Dunbar*(3); *Livie* v. *Janson* (4); it sometimes makes for it; *Walker* v. *Maitland* (5); *Redman* v. *Wilson*(6). In either case, whether he is contracting for liability or is providing to exclude, limit or reduce it, the insurer, when he refers to the cause of loss, injury or death, must be taken to mean the proximate and immediate cause: *Fenton* v. *Thorley & Co.*(7), at pages 454-5; *In re Etherington and The Lancashire and Yorkshire Accident Ins. Co.* (8), at pages 601-2; *Waters* v. *Merchants Louisville Ins. Co.*(9), at pages 223-4; unless he uses language which will clearly cover a remote cause and thus preclude the application of the ordinary canon, as was done in *Smith* v. *Accident Insurance Co.*(10).

(1) 12 App. Cas. 484.
(2) 24 Q.B.D. 17.
(3) L.R. 4 C.P. 206.
(4) 12 East 648, at p. 653.
(5) 5 B. & Ald. 171.
(6) 14 M. & W. 476.
(7) [1903] A.C. 443.
(8) [1909] 1 K.B. 591.
(9) 11 Pet. 213.
(10) L.R. 5 Ex. 302.

1914

WADSWORTH v. CANADIAN RAILWAY ACCIDENT INS. CO.

Anglin J.

No doubt the present case is distinguishable from two English cases much relied upon by counsel for the plaintiff—*Winspear* v. *Accident Ins. Co.*(1), and *Lawrence* v. *Accidental Ins. Co.*(2). In neither of these cases did the epileptic fit bring into activity the instrument which proximately caused the injuries or death. It was rather in the nature of a cause *sine qua non*. In the present case the fit was undoubtedly, though not the immediate cause of the injuries from which death ensued, a *causa causæ causantis*. Meredith J.A., says that the fit was in a double sense the predominative and proximate cause of these injuries — it caused the fire and it prevented the escape of the victim. In the *Winspear Case*(1), and also in the American case, *Manufacturers' Accident Indemnity Ins. Co.* v. *Dorgan*(3), cited by Riddell J., the fit undoubtedly prevented the escape of the assured quite as much as in the present case, yet in neither instance was the fit on that account regarded as the efficient or proximate cause of the injuries. See also *Reynolds* v. *Accidental Ins. Co.*(4). In *Taylor* v. *Dunbar,* already referred to, as in *Busk* v. *Royal Exchange Assce. Co.* (5), at page 80; *Walker* v. *Maitland*(6), at page 174, and *Bishop* v. *Pentland*(7), at page 223, cited by Riddell J., and in *Pink* v. *Fleming*(8), cited at bar, the causes relied upon to found, or to exempt from, liability were undoubtedly in the direct chain of causation; they were not merely *causæ sine quibus non;* they were *causæ causarum causantium;* but because they were remote and not the immediate causes of the

(1) 6 Q.B.D. 42.
(2) 7 Q.B.D. 216.
(3) 58 Fed. R. 955.
(4) 22 L.T. 820.
(5) 2 B. & Ald. 73.
(6) 5 B. & Ald. 171.
(7) 7 B. & C. 219.
(8) 25 Q.B.D. 396.

losses, they were deemed immaterial and were held insufficient in some of the cases to support liability, in others to exclude it. As put by Watkin Williams J., in the *Lawrence Case*(1) :—

> It is essential * * * that it should be made out that the fit was a cause in the sense of being the proximate and immediate cause of the death before the company are exonerated.

He quotes from Lord Bacon's Maxims of the Law:

> It were infinite for the law to consider the causes of causes and their impulsions one of another; therefore it contenteth itself with the immediate cause.

My conclusion from these authorities is that upon a proper construction of clause (G) the injuries which caused the death of the insured did not happen from the fit which he suffered. The fit was a remote cause; the proximate cause was the fire.

I do not rely on the decision of this court in *Canadian Casualty and Boiler Co.* v. *Boulter*(2), because of the stress placed in the judgments in that case on the word "immediate" which was used in the policy.

I do not read clause (G) as creating a new and distinct liability. The injuries with which it deals are the

> bodily injuries caused solely by external, violent and accidental means

to which the application of the entire contract is at its outset confined. The indemnity for such injuries when they happen (*inter alia*) from fits is by clause (G) reduced to one-tenth of the sum which would be payable under clause (A) if they happened from other causes. Clause (G) is a clause of limitation introduced by the company in its own favour and, like

(1) 7 Q.B.D. 216. (2) 39 Can. S.C.R. 558.

1914

WADSWORTH v. CANADIAN RAILWAY ACCIDENT INS. CO.

Anglin J.

a clause of exception, is to be given a strict construction.

Moreover, as is pointed out by Taft J., in *Manufacturers' Accident Indemnity Co.* v. *Dorgan*(1), at page 956:—

> Policies are drawn by the legal advisers of the company, who study with care the decisions of the courts, and, with those in mind, attempt to limit as narrowly as possible the scope of the insurance. It is only a fair rule, therefore, which courts have adopted to resolve any doubt or ambiguity in favour of the insured and against the insurer. *Fitton* v. *Accidental Death Ins. Co.*(2).

In view of the great divergence of judicial opinion as to its proper construction it would savour of temerity to insist that clause (G) of the policies before us is wholly free from ambiguity. While of the opinion that, when construed according to well established legal principles, clause (G) does not cover the present case, I am not prepared to say of those who hold the contrary view (adapting the language in which Meredith J.A. refers to the Divisional Court) that "it is easily demonstrated that (they) err and how." I appreciate the force of the argument in favour of the defendant company's contention. But, if I should be wrong in the view which I have taken as to its proper construction, I agree with Hodgins J.A., that the ambiguity and uncertainty of the clause, which the defendants invoke, should be resolved in favour of the assured. *In re Bradley and Essex and Suffolk Accident Indemnity Society*(3), at pages 422, 430; *In re Etherington*(4), at pages 596, 600.

With all proper respect for the learned judges who think otherwise, I am, for these reasons, of the opin-

(1) 58 Fed. R. 945.
(2) 17 C.B.N.S. 122.
(3) [1912] 1 K.B. 415.
(4) [1909] 1 K.B. 591.

1914

WADSWORTH v. CANADIAN RAILWAY ACCIDENT INS. CO.

Anglin J.

ion that the correct conclusion was reached in the Divisional Court and that its judgment should be restored. The appellant should have her costs in the Appellate Division and her costs of the appeal to this court. The cross-appeal should be dismissed with costs.

BRODEUR J.—I am in favour of dismissing this appeal for the reasons given by Sir Louis Davies.

Appeal dismissed with costs.

Solicitor for the appellant: *R. V. Sinclair.*
Solicitors for the respondents: *Perkins, Fraser & McCormack.*