1928

THE LONDON LIFE INSURANCE COMPANY (DEFENDANT) ..... } APPELLANT;

AND

TRUSTEE OF THE PROPERTY OF THE LANG SHIRT COMPANY, LIMITED, DEBTOR (PLAINTIFF) ..... } RESPONDENT.

*Nov. 29, 30.
*Dec. 21.

METROPOLITAN LIFE INSURANCE COMPANY (DEFENDANT) ..... } APPELLANT;

AND

MARGARET ELIZABETH MOORE (PLAINTIFF) ..... } RESPONDENT.

AETNA LIFE INSURANCE COMPANY (DEFENDANT) ..... } APPELLANT;

AND

MARGARET ELIZABETH MOORE (PLAINTIFF) ..... } RESPONDENT.

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

Life Insurance—Death of insured—Recovery under policies—Allegation of suicide—Circumstances of death—Motive—Presumption against suicide—Presumption against crime—Policy providing for insurance in case of death and for further insurance if death results from accident—"Contract of accident insurance"—Application of s. 179 of Ontario Insurance Act, 1924, c. 50—Bodily injury happening "without the direct intent of the person injured, or as the indirect result of his intentional act"—"Bodily injuries effected solely through external, violent and accidental means"—"Internal injuries" revealed by autopsy.

The defendant insurance companies appealed from the judgment of the Appellate Division, Ont. (62 Ont. L.R. 83) which (reversing judgment of Meredith C.J.C.P., 60 Ont. L.R. 476) held that the deceased's death was not from suicide, but was an accident within the meaning of the insurance policies in question, and that plaintiffs were entitled to recover on the policies.

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*PRESENT:—Anglin C.J.C. and Mignault, Newcombe, Rinfret and Smith JJ.

1928

LONDON LIFE INS. CO. v. TRUSTEE OF THE PROPERTY OF LANG SHIRT CO. LTD.

METROPOLITAN LIFE INS. CO. v. MOORE.

AETNA LIFE INS. CO. v. MOORE.

Held: On the facts and circumstances in evidence, and the question being one of probabilities and inferences, as to which an appellate court was in as good position to decide as the trial judge, and having regard to the presumption against suicide, the finding of the Appellate Division that the death was an accident within the meaning of the policies was affirmed; and the appeals were dismissed.

Per Anglin C.J.C., Mignault and Rinfret JJ.: Under the criminal law of Canada suicide is a crime (Russell on Crimes, 8th ed., vol. 1, p. 618; Blackstone, Commentaries, Lewis's ed., vol. 4, marg. p. 189; discussion of the point by Riddell J.A., in this case, 62 Ont. L.R. 83; *Cr. Code,* ss.10, 269, 270, referred to). Moreover, in this case, the contention of suicide was coupled with the suggestion that deceased planned to give his death an appearance of death by accident, to enable recovery of insurance moneys, thus committing a fraud, and such fraud would be a crime. Before crime can be held to be established, there is required proof of a more cogent character than in ordinary cases where crime is not imputed; and it is a rule, although it may not be so strict in civil cases as in criminal, that when a right or defence rests upon the suggestion that conduct is criminal or quasi-criminal, the court should be satisfied not only that the circumstances proved are consistent with the commission of the suggested act, but that the facts are such as to be inconsistent with any other rational conclusion than that the evil act was in fact committed (Rule as stated by Middleton J.A. in this case, 62 Ont. L.R. 83, at p. 93, adopted).

The regard to be paid to evidence of existence of motive to commit suicide discussed; reference to *Dominion Trust Co.* v. *New York Life Ins. Co.,* [1919] A.C., 254, at p. 259. (That case distinguished on the facts.) It was held that here the evidence did not establish such an impelling motive as would warrant the assumption that deceased contemplated taking his life, if, indeed, proof of motive, however potent, can, without more, ever justify such an inference.

S. 179 of the *Ontario Insurance Act,* 1924, c. 50, notwithstanding its collocation, is applicable to every contract of accident insurance, including contracts, such as were here in question, where there is insurance in the event of death generally, irrespective of its cause, and also further insurance made payable only when the death results from an accident; this second species of insurance is a "contract of accident insurance" to which s. 179 applies.

Held, further, that the deceased's death, which was caused by carbon monoxide poisoning, through his having started his motor engine in his garage, happened "without the direct intent of the person injured, or as the indirect result of his intentional act" within the reasonable intendment of those words in said s. 179; further, that his death was the result of "bodily injury effected solely through external, violent and accidental means" within the terms of policies in question; also, that an autopsy had revealed "internal injuries," within the terms of a policy in question, when the internal tissues, and the blood, were found to have the cherry red colour characteristic of carbon monoxide poisoning.

1928

LONDON LIFE INS. CO. v. TRUSTEE OF THE PROPERTY OF LANG SHIRT CO. LTD.

METROPOLITAN LIFE INS. CO. v. MOORE.

AETNA LIFE INS. CO. v. MOORE.

APPEALS by the defendants from the judgment of the Appellate Division of the Supreme Court of Ontario (1).

The actions were to recover upon certain insurance policies upon the life of one Moore. They were tried together (along with another action not now in question) and were dismised by Meredith, C.J.C.P. (2), whose judgment was reversed by the Appellate Division (1), which held that the plaintiffs were entitled to recover.

The appeals were argued at the same time, and are dealt with together, the main question of fact being the same in each, namely, did Moore die by his own act, or was his death a death by accident within the meaning of the policies? The material facts and circumstances of the case are sufficiently stated in the judgment of Mignault J. now reported. The appeals were dismissed with costs.

R. S. Robertson K.C. and *S. E. Weir* for the appellant The London Life Insurance Company.

I. F. Hellmuth K.C. and *G. W. Mason K.C.* for the appellant Metropolitan Life Insurance Company.

G. W. Mason K.C. for the appellant Aetna Life Insurance Company.

W. Lawr for the respondent the Trustee of the property of the Lang Shirt Co. Ltd.

G. Grant K.C. and *V. H. Hattin* for the respondent Moore.

The judgment of Anglin C.J.C., Mignault and Rinfret JJ., was delivered by

MIGNAULT J.—These three cases were tried together. In each of them the action is based on an insurance policy on the life of William Raymond Moore, the husband of Margaret Elizabeth Moore, who, in two of these cases, is the plaintiff; and is here a respondent. The other action is on behalf of the trustee in bankruptcy of the property of the Lang Shirt Company, Limited, of which William Raymond Moore was president and managing director. By the judgments of the Second Appellate Divisional Court of Ontario (1), reversing (Latchford C.J., dissenting) the judgments at the trial of Meredith C.J.C.P. (2), the trustee of

(1) (1928) 62 Ont. L.R. 83. (2) (1927) 60 Ont. L.R. 476

1928

LONDON LIFE INS. CO. v. TRUSTEE OF THE PROPERTY OF LANG SHIRT CO. LTD.

METROPOLITAN LIFE INS. CO. v. MOORE.

AETNA LIFE INS. CO. v. MOORE.

Mignault J.

the Lang Shirt Company, Limited, recovered $26,311.64 against The London Life Insurance Company, and Mrs. Moore recovered $5,294.52 against the Metropolitan Life Insurance Company, and $10,924.54 against the Aetna Life Insurance Company. The three insurance companies appeal from these judgments. There was also an action by Mrs. Moore against the London Life Insurance Company, tried at the same time and dismissed by the learned trial judge. Mrs. Moore appealed from this judgment but she subsequently abandoned her appeal. This fourth action is therefore not in question in these proceedings, and need not be further mentioned.

The three appeals were argued at the same time, and will be dealt with together, the main question of fact being the same in each, to wit: did William Raymond Moore die by his own act, or was his death a death by accident within the meaning of the insurance policies? It will be convenient to state at once the nature of the contract of insurance in each case.

The policy of the London Insurance Company, dated the 2nd of February, 1924, on the life of W. R. Moore, issued by that company in favour of the Lang Shirt Company, Limited, as beneficiary, was for $25,000, payable if the insured died before the expiration of seven years from "the policy year date," defined to be the 2nd of February, 1924. Its seventh condition was as follows:—

7. *Suicide.* In case the insured shall die within two years from the date when this policy is signed and sealed, by his own act, whether sane or insane, this policy shall be void and the company shall not be liable thereunder.

The policy of the Metropolitan Life Insurance Company, dated the 9th of August, 1920, was issued by that company on the life of Moore, in favour of his wife, the respondent, as beneficiary, for $5,000, payable on the death of the insured. By a clause of the policy, in consideration of an additional premium of $6.25, the company promised to pay the beneficiary, on the receipt of due proof of the death of the insured "as the result of bodily injury effected solely as described below," a further sum equal to the amount of assurance, on the following conditions:—

Conditions: The indemnity provided for herein shall be payable only if the death of the insured result in consequence of bodily injury effected solely through external, violent and accidental means, within sixty days

after such injury, independently and exclusively of all other causes. This indemnity shall not be payable if the death of the insured results directly or indirectly from disease or from bodily or mental infirmity, or from self-destruction whether sane or insane, or from bodily injury received while the insured is engaged in military or naval service in time of war, or in aeronautic or submarine operations, nor if such death occur in time of war as a direct or indirect result of travel on the high seas or residence or travel in any war zone outside the continental limits of the United States or the Dominion of Canada, or while engaged in Red Cross or other Relief Service in the territory last described.

The company paid the $5,000 of insurance on the life of Moore, but disputes its liability to pay an equal amount under the clause just quoted, its contention being that Moore's death was not accidental within the meaning of this clause, but was a death by suicide.

The policy of the Aetna Life Insurance Company, dated the 6th of November, 1920, was for $5,000, payable on the death of Moore to Mrs. Moore as beneficiary. The policy contained a clause whereby the company undertook to pay a further amount of $5,000 on the death of the insured if such death results directly and independently of all other causes from bodily injuries effected solely through external, violent and accidental means within ninety days from the occurrence of such accident, and if such accident is evidenced by a visible contusion or wound on the exterior of the body (except in case of drowning and internal injuries revealed by an autopsy), and if such death does not result from suicide, while sane or insane, nor from military or naval service in time of war, nor from an aeronautic flight or submarine descent, nor directly or indirectly from disease in any form.

All these policies are governed by the law of Ontario.

Moore was found dead in his garage at Kitchener, at about 8.40 p.m., on the 17th of December, 1925. It is not disputed that his death was the result of carbon monoxide poisoning. It will be necessary, however, to state in some detail the surrounding circumstances, in order to make clear whether his death should be held to have been accidental, or, as the appellants contend, a death by suicide.

Moore had arrived in Kitchener that day at about noon, returning from a business trip to Ottawa. One of his friends, Isaac Hertel, met him on the street shortly after his arrival, and arranged to have a game of bridge with him that evening. Moore walked to his house and had dinner with his wife and children. After dinner, Moore and his wife went into the living room and busied themselves tying up several parcels, Christmas presents, to be sent to the United States. At about 2 p.m. he telephoned to his fac-

1928

LONDON LIFE INS. CO. v. TRUSTEE OF THE PROPERTY OF LANG SHIRT CO. LTD.

METROPOLITAN LIFE INS. CO. v. MOORE.

AETNA LIFE INS. CO. v. MOORE.

Mignault J.

tory enquiring whether a certain person had called for him, and stating that he would be there about three o'clock. Moore then told his wife that he would take the car, because he was going uptown first, uptown being in the opposite direction from the factory. During the previous week Moore had been out in the car with his wife, and had stopped to try to repair the chain on the right rear tire, some part of which was loose and striking the mudguard. He did not succeed in fixing it at that time, and remarked to his wife that if he had a hammer he could repair it because it was nothing serious.

At about 2.20 p.m., Moore went to the kitchen door to go to the garage, but came back and told his wife that he was going to fix the chain. He then had on his overcoat. He went to the cellar door where the hammer was kept. His wife did not see him after that, and assumed that he had gone to the garage.

This garage is a wooden structure to the right hand side of the house, but further back, and on the opposite side to the kitchen. A roadway from the street leads up to it. It measures $20\frac{1}{2}$ feet in length by $14\frac{1}{2}$ feet in width, these being outside measurements. There are four windows, two on the left side, and two in the rear wall. In front are two large doors opening to the outside, and in the left wall a smaller door near the large doors.

After Moore left his house saying he was going to fix the chain, no one saw him alive. The day was windy, but there is no evidence that it was also cold, and about three o'clock, one Albert Steffer, a driver for a bakery, came to the house and delivered bread there. He says that he saw the side door of the garage open about a foot and swinging in the wind. From where he was he could not see the large front doors. He also heard the car (the engine) going, and says he could hear a knock inside which sounded like a tool in use. The learned Chief Justice of the Second Appellate Division discredited this testimony, but nothing appears to show that the learned trial judge rejected it.

At 7.15 p.m. Hertel, who had arranged to have a game of bridge that evening with Moore, called at the house. Moore was not there, and Hertel came back, he says, about 8.35 p.m. At that time Mrs. Moore was anxious about her husband, and had telephoned to the factory to find out if he

was there. As a result of what she told Hertel, the latter went out to the garage and entered by the side door; he cannot say whether it was closed or not, but remembers that it was not locked or hooked. He found the motor car running fairly slowly, and the first thing he did was to turn on the headlights of the car and then to stop the engine. The car was facing inwards. After turning on the lights, Hertel looked for Moore, called his name, and receiving no answer, walked round to the back of the car, and in so doing he struck Moore's feet. Moore was lying on the floor of the garage cross-wise, at the rear of the car, and between it and the front doors of the garage, his head on a cushion near the rear right wheel, which cushion was used in the car. There was a hammer near him, and towards the side wall of the garage there was an iron spade. Moore's hat lay in a child's express wagon near the back wheel. Hertel felt Moore's heart and found the body warm. He pushed open the front doors of the garage, dragged Moore's body out, and with Mrs. Moore's assistance carried it into the house.

The learned Chief Justice of the Appellate Court, in his dissenting judgment, says:—

> It is certain that the large doors of the garage were closed and that they remained closed until opened by Hertel about 8.40 in the evening. The small side door, it is equally certain, was also closed when Hertel entered by it.

With respect, there is no certainty on the point whether the front doors were closed when, or immediately after, Moore went into the garage. Moore may have opened them before attempting to work on the broken chain, as the respondents suggest, and they may have been later closed by the wind. The only testimony on this point is that of Hertel, who merely says that he "pushed open" these doors, which apparently were not fastened. And, with regard to the side door, there is certainly nothing to show that it was closed when Hertel went into the garage.

Moore was undoubtedly dead when he was brought into the house; but, as the body was still warm, the doctors and other people who were called in worked over it and tried in vain to induce artificial respiration. According to the medical testimony, Moore's body was cherry red, an indication of carbon monoxide poisoning. The way carbon monoxide operates, when inhaled, is thus described. It is

1928

LONDON LIFE INS. CO. v. TRUSTEE OF THE PROPERTY OF LANG SHIRT CO. LTD.

METROPOLITAN LIFE INS. CO. v. MOORE.

AETNA LIFE INS. CO. v. MOORE.

Mignault J.

absorbed by the haemoglobin of the blood, and the oxygen of the air is excluded, thus bringing about what Dr. Crowley calls a chemical change in the blood, and causing asphyxiation or suffocation. An autopsy was subsequently performed on Moore, and the tissues inside the body were likewise found to have this characteristic cherry red colour diffusely distributed all over the body, the blood being also cherry red. The first and practically immediate effect of the carbon monoxide gas, when inhaled, is to produce a semi-conscious condition. The person who has inhaled it is unable to make an effort to escape, the muscles lose their power to act, and death ensues sooner or later.

None of the physicians who were called could say even approximately how long Moore had been dead when his body was discovered. The warmth of the body is not a dependable indication, for sometimes it persists for hours after death. In this case the fumes may have produced almost immediately a state of unconsciousness, yet death may not have supervened for some time. Dr. Powell, one of the physicians called, speaks of a case which came under his personal observation where his man went into the garage and started the engine, and this man, within three minutes, was rendered unconscious, although one of the doors of the garage was open.

In all these circumstances, I have been unable to discover anything which is inconsistent with the conclusion of the appellate court that Moore's death was accidental. It is said that Moore was aware of the danger of inhaling carbon monoxide gas. Most men are in a general way, but, nevertheless, it is common knowledge that accidental deaths are not infrequently caused by exposure to this gas. The appellants ask why Moore started his engine. But this was the obvious thing to do, unless he jacked up the car, if he wished to move the wheel so as to get at the broken part of the chain. The appellants also claim that unless the large front doors were opened, there would not be sufficient light to work in the right hand corner of the garage, but one of the photographs seems to show enough light with the front doors closed and the side door open; and, as already pointed out, there is nothing to show that the front doors were not open when Moore lay down to work at the broken chain, as the plaintiffs suggest he did. That these doors were then

closed is a mere conjecture. Then stress is laid on Moore's position in the rear of the car, with his head on the cushion, but it is well known that that is a convenient position for a workman to take to repair a part of car which is not otherwise readily accessible. It may be objected that these are mere surmises, but they are less conjectural than is the supposition that Moore deliberately planned to commit suicide by inhaling the fumes of the engine.

It will now be convenient to consider the rules of evidence applicable to a case such as that at bar.

With all deference, I think that there can be no doubt that, according to our criminal law, suicide is a crime, although the learned trial judge thought otherwise. It is obvious, of course, that there can be no punishment under modern law when suicide is successful, except with regard to abettors of the crime, and it is clearly not "homicide" within the *Criminal Code* (s. 250). But it is an indictable offence to aid or abet a person in committing suicide (s. 269 *Crim. Code*); it is also an indictable offence to attempt to commit suicide (s. 270 *Crim. Code*), and I am unable to follow the contention urged upon us by the appellants that where the criminal attempt is successful there is no crime. At common law it seems clear that self-murder, *felo de se*, is a crime (Russell on Crimes, 8th ed., vol. 1, p. 618). Speaking of suicide, Blackstone, Commentaries, says:—

> The law has therefore ranked this among the highest crimes, making it a peculiar species of felony, a felony committed on one's self (Lewis's Edition, vol. 4, marginal page 189).

I do not think the point requires elaboration, but, if I may, I would like to refer to the discussion of it by Riddell J.A., in the court below. See also s. 10 of the *Criminal Code*.

Moreover, the contention that Moore committed suicide is coupled with the suggestion that not only did he do so, but that he deliberately planned to give to his alleged self-inflicted death the appearance of a death by accident, in order that his wife and family, and not only these persons so closely connected with him, but also the Lang Shirt Company, might recover his insurance, thus committing a fraud against the appellants that could be described by no other term than that of crime.

That there is, in the law of evidence, a legal presumption against the imputation of crime, requiring, before crime can

1928

LONDON LIFE INS. CO. v. TRUSTEE OF THE PROPERTY OF LANG SHIRT CO. LTD.

METROPOLITAN LIFE INS. CO. v. MOORE.

AETNA LIFE INS. CO. v. MOORE.

Mignault J.

be held to be established, proof of a more cogent character than in ordinary cases where no such imputation is made, does not appear to admit of doubt. In criminal cases this rule is often expressed by saying that the crime imputed must be proved to the exclusion of reasonable doubt. There is authority for the proposition that the same presumption of innocence from crime should be applied with equal strictness in civil as well as in criminal cases (Taylor, Evidence, 11th ed., vol. 1, par. 112, and cases referred to). Whether or not, however, the cogency of the presumption is as great in civil matters as in criminal law (a point not necessarily involved here), I would like to adopt the statement of the rule by Middleton J.A., in the court below, which appears entirely sound:—

> * * * While the rule is not so strict in civil cases as in criminal, I think that when a right or defence rests upon the suggestion that conduct is criminal or quasi-criminal, the Court should be satisfied not only that the circumstances proved are consistent with the commission of the suggested act, but that the facts are such as to be inconsistent with any other rational conclusion than that the evil act was in fact committed. See Alderson, B., in *Rex* v. *Hodge* (1).

I would also refer to the authorities cited by Riddell J.A., in the court below, dealing with the presumption against suicide.

I am, clearly, of the opinion that, taking into consideration all the circumstances of Moore's death, it cannot be said that the facts proved are inconsistent with any other rational conclusion than that he committed suicide. They are, as has been already said, entirely consistent with the conclusion that Moore's death was accidental, and, on the evidence relating to the attendant circumstances, giving due weight to the presumption against criminal intent, it must be held to have been accidental.

It is scarcely necessary to say that the finding of the learned trial judge to the contrary is based upon inferences drawn by him from the facts in evidence. We are therefore at liberty, as was the Judicial Committee in *Dominion Trust Co.* v. *New York Life Insurance Co.* (2), to substitute our findings of fact for those of the learned Chief Justice of the Common Pleas, the more so since the appellate court has set aside the latter findings.

(1) (1838) 2 Lewin C.C. 227. (2) [1919] A.C., 254.

There remains to be considered the argument addressed to us on the question of motive, the contention of the appellant being that if the facts in evidence are consistent either with an accidental or a self-inflicted death, the existence of an impelling motive for self-destruction would justify the court in coming to the conclusion that Moore's death was a death by suicide.

But it must be observed that, as stated by Lord Dunedin, in rendering the judgment of the Judicial Committee in *Dominion Trust Company* v. *New York Life Insurance Co.* (1).

> Motive, however, can never be of itself sufficient. The utmost that it can do is to destroy or attenuate the inference drawn from the experience of mankind that self-destruction, being contrary to human instincts, is unlikely to have occurred. The proof of suicide must be sought in the circumstances of the death.

This rule was laid down in that case, although Lord Dunedin was there of the opinion that "if ever there can be said to be motive for self-destruction, such motive was present in this case." The Judicial Committee, it is true, found on the facts that suicide had been proved in the *Dominion Trust Company's case* (2), but it was vastly different from the case now under consideration.

I have very carefully read the evidence on which the appellants rely as establishing a motive for self-destruction. It may be granted that Moore's financial position, when he returned to Kitchener after his trip to Ottawa, was quite precarious. When he became president and manager of the Lang Shirt Company, Moore had purchased the stock, or a large portion of the stock, of Lang, the founder and practically the owner of the company. In order to pay for this stock he had drawn on the company's funds by cheques signed by himself as manager, counter-signed by one Oliver Moyer, the accountant and book-keeper of the company, and cashed by the bankers of the concern, the amount outstanding on such cheques being about $19,000. These cheques or drawings were entered in what was termed a "suspense account" and also, as Moore himself told the auditor, Walter Berner, in the sales or accounts receivable ledger. The company's financial position was not at the time good and, about the time of Moore's Ottawa trip, the

(1) [1919] A.C., 254, at p. 259. (2) [1919] A.C. 254.

1928

LONDON LIFE INS. CO. v. TRUSTEE OF THE PROPERTY OF LANG SHIRT CO. LTD.

METROPOLITAN LIFE INS. CO. v. MOORE.

AETNA LIFE INS. CO. v. MOORE.

Mignault J.

directors, with Moore's full consent, had arranged to have an audit made of its affairs, and Berner, the auditor, was engaged on this audit when Moore returned from Ottawa.

A short time before, an inventory of the company's stock-in-trade had been taken, and the sheets containing the inventory went to the company's office in the usual course. Summaries or extensions of these sheets were made out in the office and on them Moore or Moyer inserted the prices. Moyer says that after this was done, some alterations were made in the quantities marked on the extensions, by inserting a figure before or after the amount carried into the extension sheets, the effect being to indicate a larger stock-in-trade than really existed, to a value, the auditor says, of $11,800 in material and manufacturing cost. No witness says that Moore himself made these alterations, but the appellants rely on the circumstance that when on his return from Ottawa Moore telephoned to his office, as above stated, Moyer says he told him that the auditors had discovered that some figures had been changed in the inventory sheets, and Moore replied that "he guessed they would have it in for him."

Moore's house in Kitchener, which had cost originally $4,900, was mortgaged for $8,000. Outside of his interest in the Lang Shirt Company, he had no property, and the balance of his private bank account at his death was $12.42. The motor car was the property of his wife.

Reverting again to the financial position, the Lang Shirt Company is now established to have been insolvent, its assets, outside of the insurance policy sued on, having yielded only 25 cents on the dollar to its creditors. Moore was endeavouring at the time to raise money by disposing of some of his shares, and he had taken up the matter with Mr. A. A. Fournier, the proprietor of a departmental store in Ottawa. Fournier had invented a reversible shirt cuff, and had granted to the Lang Shirt Company a license for its manufacture. It was to him that Moore had applied, trying to get him to take shares held by him (Moore) in the Lang Company, and the object of his trip to Ottawa, in December, 1925, was to discuss that matter with Fournier. The trip was not immediately successful from this point of view, and Moore so told Hertel on his arrival, but Moore stated to Hertel that he hoped that Fournier would

take an interest in the company in January. From Fournier's testimony it does appear that he had given Moore some sort of hope that after the Christmas season he would do this, although he says that if Moore had been able to read between the lines, he would have seen that such financial assistance from him was unlikely. But Moore was apparently hopeful that Fournier would take some of his shares, and in this connection we are told that Moore was of an optimistic, energetic and even enthusiastic disposition. He was still a comparatively young man, forty-one years of age, and in perfect health. Mr. George B. McKay, called by the appellants, and manager of the Bank of Toronto at Kitchener, where both Moore and the Lang Company had their bank accounts, was well acquainted with Moore and his business affairs, and he says in cross-examination:—

Q. Moore was energetic, always working, and on the job? A. Yes.
Q. He realized it was an uphill road? A. Yes, he did.
Q. But he was determined to see it through? A. Yes.
Q. And you had confidence he would do that? A. Yes.

There is still another matter that should be mentioned here bearing on this question of motive. At the time of Moore's return from Ottawa, two representatives of creditors of the Lang Company for large amounts were anxious to see Moore. They were Mr. Rose of the Wabasso Company and Mr. Lilley, who represented an English company. Much stress is laid by the appellants on the assumed fact that Moore, expecting to be dunned by Rose and Lilley in connection with the indebtedness of the Lang Shirt Company, had endeavoured to avoid meeting them. But both these gentlemen were called in rebuttal, and each said that the object of his visit was not to demand payment, but to try to sell more goods to Moore. The learned Chief Justice of the appellate court states that Moore, who had been asked, on the 17th of December, to telephone to Lilley and make an appointment with him, did not do so, as "there was perhaps no person whom he wished less to talk to or see." But Lilley says that Moore did telephone to him and made an appointment with him to see him the next day, the 18th. And Lilley adds: "We had every confidence in him (Moore) and so did our office in Manchester."

There was, further, a question at the trial of a small draft drawn by Lilley on the Lang Company, payment of which, on the instructions of Mr. Clement, the vice-president, had

1928

LONDON LIFE INS. CO. v. TRUSTEE OF THE PROPERTY OF LANG SHIRT CO. LTD.

METROPOLITAN LIFE INS. CO. v. MOORE.

AETNA LIFE INS. CO. v. MOORE.

Mignault J.

been refused. But Mr. Lilley states that it was not on account of the return of this draft that he desired to see Moore in Kitchener. He adds: "That didn't worry us."

There are other matters referred to in the evidence, among them that Moore telephoned from Ottawa to Moyer asking how the auditors were getting on, which I mention merely to show that I have not overlooked it, since, in my opinion, it has no significance.

I think I have stated everything in any way material which has been relied on as showing that Moore had a motive to commit suicide, but I am unable to come to the conclusion that there was here such an impelling motive as would warrant the assumption that Moore ever contemplated taking his life, if, indeed, proof of motive, however potent, can, without more, ever justify such an inference. I cannot help thinking that there has been some exaggeration in this part of the appellants' case.

There remains the contention of the appellants, that Moore's death, assuming it not to have been suicidal, was not a death by accident within the terms of the policies sued on. This contention is not open to the London Life Insurance Company in the suit brought against it by the trustee of the Lang Shirt Company, because the policy issued by the London Company was an insurance on the life of Moore for a period of seven years irrespective of the cause of death, but with an exclusion of liability in case of suicide within two years. On the other hand, the policies of the Metropolitan Life Insurance Company and of the Aetna Life Insurance Company contain contracts of insurance on the life of Moore in the event of his death by accident as therein described. It is therefore open to these two latter companies to raise this point, and the question is whether Moore died as a result of "bodily injury effected solely through external, violent and accidental means."

The material clauses of each policy need not be repeated. The governing statute is *The Ontario Insurance Act*, 1924, 14 Geo. V, c. 50.

The clause relied on by the learned judges of the appellate court as applicable to these policies is section 179, which is as follows:—

179. In every contract of accident insurance, the event insured against shall include any bodily injury occasioned by external force or agency, and happening without the direct intent of the person injured, or as the

indirect result of his intentional act, and no term, condition, stipulation, warranty or proviso of the contract, varying the obligation or liability of the insurer shall, as against the insured, have any force or validity, but the contract may provide for the exclusion from the risks insured against of accidents arising from any hazard or class of hazard expressly stated in the policy.

Mr. Hellmuth, on behalf of the appellants, contended that this section, being found in Part VII of The Insurance Act, which is a group of sections under the title of "Accident and Sickness Insurance," does not apply to contracts like those under consideration. He also referred to section 180, his argument being that if this were really accident insurance, the conditions therein mentioned would, in each case, govern the contract, and these conditions, he argued, are inconsistent with a life insurance contract.

Section 179 must be read with section 2, paragraph 1, which defines "accident insurance" as insurance against loss from "accident" to the person of the insured; and section 179 should itself be regarded as a definition of "the event insured against," namely, injury occasioned by "accident." I can see no reason why, in a life insurance policy, there may not be, on the one hand, insurance in the event of death generally, and irrespective of the cause of death, and, on the other hand, further insurance made payable only when the death results from an accident. Under both clauses, death is the event insured against, but, under the second clause, the death must be accidental.

This second species of insurance is certainly a "contract of accident insurance," for it is an insurance against death by accident, although it may differ from the usual accident insurance, some of the benefits of which are payable although the person insured does not die from the effects of the accident.

I think we may look on section 179, notwithstanding its collocation, as a provision applicable to every contract of accident insurance, for there can be no doubt that "accident insurance," properly so called, may be restricted to the case of an accident causing death. The object of the Legislature was unquestionably to put an end to the controversies that had arisen with regard to the meaning of the word "accident," and it is noticeable that most statutes dealing with accidents, such as the *Workmen's Compensation Act*, contain definitions of this term.

1928

LONDON LIFE INS. CO. v. TRUSTEE OF THE PROPERTY OF LANG SHIRT CO. LTD.

METROPOLITAN LIFE INS. CO. v. MOORE.

AETNA LIFE INS. CO. v. MOORE.

Mignault J.

But on the assumption that section 179 applies, Mr. Hellmuth argued that Moore's death cannot be said to have happened "without the direct intent of the person injured, or as the indirect result of his intentional act." Everyone, he contended, must be held to have intended the natural result of his acts, and, consequently, when Moore started his engine, knowing of the danger of inhaling carbon monoxide gas, he must be deemed to have intended the natural result, namely, his death by what has been called, perhaps loosely, poisoning by carbon monoxide gas.

I think, however, that the case now under consideration comes within the reasonable intendment of the words "without the direct intent of the person injured, or as the indirect result of his intentional act." If Moore's death was caused by "the direct intent of the person injured," it would be a case of suicide. I cannot look on it as being other than "the indirect result" of an intentional act of Moore's in starting his engine before attempting to repair the broken chain. His death resulted from what I may call a concurrence of circumstances entirely fortuitous as far as the evidence indicates; and I know of no word that can better describe it than the word "accident." Indeed to give effect to the contention submitted would render recovery impossible in most cases of accident insurance.

Mr. Hellmuth cited the case of *In re Scarr and General Accident Assurance Corpn.* (1). I have carefully considered it but it appears to me to be an entirely different case.

Assuming however, that, as contended by Mr. Hellmuth, the scope of section 179 is so restricted by the introductory section (177) of Part VII of The Insurance Act that it cannot be applied to these policies, I think the circumstances of Moore's death come well within the conditions of the contracts of insurance. The descriptive words common to each policy are "external, violent, and accidental means." We have seen that Moore's death was "accidental." The means that caused death were both "external" as opposed to "internal," and "violent" since the inhalation of the carbon monoxide gas produced suffocation or asphyxiation. The learned trial judge said, although he would himself have thought otherwise, that the decided cases seemed to require him to hold that the taking in of

(1) [1905] 1 K.B. 387.

the poisonous gas was an external means, and that the disturbances by it of the respiratory functions, internally, of the man, were violent means, within the meaning of the words "external, violent and accidental means" employed by the parties to the contracts in question.

Special reference at the argument was made to the additional condition of the policy of the Aetna Company "and if such accident is evidenced by a visible contusion or wound on the exterior of the body (except in case of drowning and internal injuries revealed by autopsy)." There was an autopsy here and it certainly revealed internal injuries, to wit, the condition of the internal tissues and of the blood to which I have already referred.

I think the respondents have shewn that Moore's death was accidental within the meaning of the policies in suit. I would, accordingly, dismiss the three appeals with costs.

NEWCOMBE J.—This case depends upon the circumstantial evidence of the manner in which the assured met his death, and my difficulty is to find a reasonable inference which points to a cause other than his own act. The plaintiff's theory, as the case is put, is, to my mind, scarcely consistent with accident; but, in fact, the man may not have attempted to repair the chain, nor deliberately have put himself in the fatal position. He may have been stricken very suddenly in the course of his preparations, and guilty of nothing worse than negligence in starting his engine before opening the doors of the garage; or the cushion may have been left on the ground by the children, who were accustomed to play with it. Strange things are apt to happen. The question is one of probabilities and inferences, and the Appellate Division was as well qualified to weigh and determine these as the learned trial judge. There is a presumption of law against suicide; and, after most careful and anxious consideration of the whole case, I am not satisfied to reverse the standing judgment.

SMITH J.—Viewing all the circumstances in connection with the death of the assured in this case, I have found myself in considerable doubt as to the correct finding of fact. Viewing these circumstances independently of motive, the act of the deceased in proceeding to make repairs to one of the chains of the rear wheel of his automobile with the

1928

LONDON LIFE INS. CO. v. TRUSTEE OF THE PROPERTY OF LANG SHIRT CO. LTD.

METROPOLITAN LIFE INS. CO. v. MOORE.

AETNA LIFE INS. CO. v. MOORE.

Smith J.

engine running and the doors closed, so as not only to shut out light from the place where the repair was to be made, but to confine the poisonous gases escaping from the exhaust within the small garage, points strongly towards a design to commit suicide, assuming that the deceased was quite aware of the deadly effect of these gases.

The inference, however, to be drawn from these circumstances has been considerably weakened by the close analysis of the evidence made by my brother Mignault. The evidence does not disclose anything beyond a general knowledge by the deceased that these gases were poisonous. The side door, by which the deceased is supposed to have entered the garage, was apparently flapping in the wind, and therefore admitting a draught of air which of itself might be expected to dilute the gases, and which deceased might be expected to close, if he had a design to commit suicide, in order to make the fumes more effective. The larger double doors were not shown to have been fastened, and, according to the witness, he simply pushed them open; and it is argued that therefore these doors may in fact have been open, and have been closed by the wind.

The evidence further shows that one of the windows threw light upon the particular place at which the repairs were to be made, although that light would necessarily be very much dimmer than the light that the open door would have supplied.

While, as stated, I find it difficult to remove doubts from my mind, in view of the fact that the burden is upon those who allege suicide to establish it, I am not prepared to dissent, on the mere question of balance of probability, from the judgment of the Appellate Division and the conclusion of the other members of this Court.

Appeals dismissed with costs.

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