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Automobile Accident Insurance--Judicial Definition of Term "Accident"

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statutory formalities. *Merril* v. *Boal,* 47 R. I. 274, 132 Atl. 721, 45 A. L. R. 830; *In re Bybee's Estate,* 179 Ia. 1089, 160 N. W. 900; *Earle* v. *Arnold,* 119 Va. 500, 89 S. E. 900; *Rice* v. *Freeland, supra; Milan* v. *Stanley,* 33 Ky. L. R. 783, 111 S. W. 296; *Arendt* v. *Arendt,* 80 Ark. 204, 96 S. W. 982; *Cowley* v. *Knapp,* 42 N. J. L. 297, *Buffington* v. *Thomas,* 84 Miss. 157, 36 So. 1039; *Byers* v. *Hoppe,* 61 Md. 206, 48 Am. Rep. 89; *Alston* v. *Davis,* 118 N. C. 202, 24 S. E. 15; *In re Estate of Kimmel,* 123 Atl. 405. The case of *Rice* v. *Freeland, supra,* was substantially the same as to facts as the case under discussion. In that case letters written in France in direct contemplation of the fact that the writer might not survive the war, containing a definite expression of the disposition, which in that event he desired to have made of whatever property he might leave behind, were construed as a valid will, notwithstanding that the testator in all probability did not think he was writing a will.

In the case of *Thompson* v. *Randall,* 150 S. E. 249 (Va. 1929), an attempt was made to probate two letters as a will, both letters having been written by the alleged testator to his daughter and granddaughter, and each letter containing language to the effect that they were to have his house and lot when he died. One letter was written eight years before his death and the other, two years before his death. The Virginia court refused to probate these two letters as a will, saying, "that the letters which the plaintiffs seek to have probated do not show the testamentary intention with sufficient clearness, at the time the letters were written, to dispose of the property by the letters themselves." It would seem that the nearer to the impending death such letters are written the better chance they have of surviving as valid wills, when offered for probate. The result of *Langfitt* v. *Langfitt, supra,* is justifiable under our statute, ch. 77, §3, and the case follows what seems to be a decided weight of authority.

—PAUL E. BOTTOME.

AUTOMOBILE ACCIDENT INSURANCE—JUDICIAL DEFINITION OF TERM "ACCIDENT".—A deputy sheriff was escorting a prisoner to jail in an open car, and was driving along at a speed of from twenty-five to thirty-five miles an hour, when the latter jumped out. The deputy, abandoning the wheel, jumped out after him to prevent his escape and was thrown to the ground, receiving fatal injuries. The Supreme Court of Appeals of West Virginia in a recent case denied the beneficiary a recovery under his accident insurance policy, holding that he was not "accidently thrown"

from the car within its meaning. *Sizemore* v. *National Casualty Insurance Company,* 151 S. E. 841 (W. Va. 1930).

The only question the court had to decide was whether or not the policy was intended to cover the particular hazard involved here.

The court reached its conclusion, first, by defining "accident" and "accidental means". Other courts have followed this same procedure and have variously defined these terms. Some say that an accident is a "casualty happening suddenly and unexpectedly". *Price* v. *Occidental Life Insurance Company,* 169 Cal. 800, 147 Pac. 1175. Others, that it is "an event which takes place without one's foresight or expectation." *Phoenix Accident, etc., Association* v. *Stiver,* 42 Ind. App. 636, 84 N. E. 772. Our own court in the principal case defined it as "an event happening without any human agency, or, if happening through such agency, an event which, under circumstances, is unusual and not expected by the person to whom it happens." The court said, further, in defining "accidental means", that "when the injury or death follows or results from a voluntary act of the insured, and the act is one which is manifestly dangerous, and one which is not ordinarily done or performed without serious consequences to the doer, such result is not caused by accidental means". It is submitted that no case can be decided by following such technical definitions.

For instance, suppose that the insured is driving along a dangerous road at sixty miles an hour, and there is a crash. His act is "voluntary" and "manifestly dangerous" but it is believed that a recovery would be allowed under an accident insurance policy. Or, suppose that the driver leans out of his car to see if his rear tire is flat while he is driving at a high rate of speed, and he falls out. It is submitted that this would be termed an "accident", and he would be said to have been "accidently thrown from his car." It would probably be an event "happening suddenly and unexpectedly", but would anyone say that the "accident" in the principal case was not just as "sudden" and just as "unexpected?"

What the courts are evidently trying to do in these cases is to interpret the policies to include all the hazards that a normally careless individual would be apt to incur, and yet to protect the insurance company from having to pay for injuries received in a way that is entirely foreign to the normal conduct of even a reckless person. The action of the insured in the principal case was not that of an ordinary person driving a car, but it was the normal conduct to be expected of a deputy entrusted with the care of a prisoner. All that the court had to decide was whether or not

the policy was intended to protect the insured in his conduct as a deputy.

The court, further, in its opinion, laid down the familiar rule of construction that "in a case where it can be fairly claimed that two constructions can be placed upon the language used in the policy, it is equally well settled that the one is to be adopted which is most favorable to the insured, and, in case of doubt as to the meaning of the terms employed by the company, they are to be construed most strongly against the insurer." The rule is the same as that adopted by the American Law Institute in its Restatement of the Law of Contracts, 232 (d), and is one that is frequently cited by our courts. *Milam* v. *Norwich Union Indemnity Company,* 107 W. Va. 574, 149 S. E. 668; *Copen* v. *Fire Insurance Company,* 107 W. Va. 608, 149 S. E. 830; *Pacific Mutual Life Insurance Company* v. *Turlington,* 140 Va. 748, 125 S. E. 658.

There is hardly any question but that the words of the policy here could, by a liberal interpretation, be held to cover the hazard involved in the principal case; yet the court found against the insured. The court has evidently disregarded the rule for the particular case, and yet wished to approve of it so that they might be able to use it in another case if they find need of it.

—HARRIET L. FRENCH.

PLEADING—MISJOINDER OF PARTIES DEFENDANT.—In a recent case the assignee of a non-negotiable instrument sued the maker and his assignor jointly. The maker alone appeared and demurred to the declaration on the ground of mis-joinder of parties defendant. The lower court sustained the demurrer, and the Supreme Court of Appeals of West Virginia affirmed the ruling. In so holding, the court expressly disapproved of syllabus 1 of *Hunt* v. *Mounts,* 101 W. Va. 205, 135 S. E. 323, and syllabus 2 of *Urton* v. *Hunter,* 2 W. Va. 83, "in so far as they may be construed as holding that a mis-joinder of parties defendant in an action *ex-contractu* must be made the subject of a plea in abatement". *Stewart* v. *Tams,* 151 S. E. 849 (W. Va. 1930).

The opinion of the court in overruling these two cases upon this point follows closely the criticism of them published by Mr. Leo Carlin in an article in 33 WEST VIRGINIA LAW QUARTERLY 101. In his discussion of the case Mr. Carlin collected the decisions in the state, and pointed out that these two cases were inconsistent